

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

(articles 19, 22 and 35 of the Constitution)

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

Report III (Part 1A)

General Report
and observations concerning particular countries

ISBN 92-2-113033-9
ISSN 0074-6681

First edition 2004

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

ILO publications can be obtained through major booksellers or ILO local offices in many countries, or direct from ILO Publications, International Labour Office, CH-1211 Geneva 22, Switzerland. A catalogue or list of new publications will be sent free of charge from the above address.

The **Committee of Experts on the Application of Conventions and Recommendations** is an independent body composed of legal experts charged with examining the application of ILO Conventions and Recommendations in ILO member States. The annual report of the Committee of Experts covers numerous matters related to the application of ILO standards. This year the structure of the report was changed and it is now divided into the following parts:

- (a) **Reader's note** describes the Committee's mandate, functioning and the institutional context in which it operates (**Book 1A, pages 1-2**).
- (b) **Part I: General Report** highlights the general trends of the observations of the Committee on the application of ratified Conventions with regard to certain subjects, describes the extent to which member States have fulfilled their constitutional obligations in relation to international labour standards, and emphasizes important issues concerning the relationships between the international labour standards and the multilateral system (**Book 1A, pages 3-29**).
- (c) **Part II: Observations concerning particular countries** on the application of ratified Conventions presented by subject matter (see section I below), and on the obligation to submit instruments to the competent authorities (see section II below) (**Book 1A, pages 31-393**).
- (d) **Part III: General Survey**, in which the Committee of Experts examines the application of ILO standards, ratified or not ratified, in a particular subject area. The General Survey is published as a separate volume (Report III (Part 1B)) and this year examines the application of the Employment Policy Convention, 1964 (No. 122), the Human Resources Development Convention, 1975 (No. 142), the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169), and the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189) (**Book 1B**).

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

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

<http://www.ilo.org/ilolex/gbe/ceacr2004.htm>

READER'S NOTE	1
Overview of the ILO supervisory mechanisms	1
The Committee of Experts on the Application of Conventions and Recommendations: Its mandate and functioning	1
Role of employers' and workers' organizations	2
PART I. GENERAL REPORT	3
I. INTRODUCTION	5
Subcommittee on working methods	5
Relations with the Conference Committee on the Application of Standards	6
II. HIGHLIGHTS AND MAJOR TRENDS IN THE APPLICATION OF INTERNATIONAL LABOUR STANDARDS IN CERTAIN AREAS	7
Labour inspection (Conventions Nos. 81 and 129)	7
Indigenous and tribal peoples (Conventions Nos. 107 and 169)	9
Maternity protection (Conventions Nos. 3, 103 and 183)	9
III. RESPECT FOR OBLIGATIONS	12
Reports on ratified Conventions (articles 22 and 35 of the Constitution)	12
Role of employers' and workers' organizations	19
Submission of Conventions and Recommendations to the competent authorities (article 19, paragraphs 5, 6 and 7, of the Constitution)	20
Instruments chosen for reports under article 19 of the Constitution	22
IV. COLLABORATION WITH OTHER INTERNATIONAL ORGANIZATIONS AND FUNCTIONS RELATING TO OTHER INTERNATIONAL INSTRUMENTS	24
A. Cooperation in the field of standards with the United Nations, the specialized agencies and other international organizations	24
B. United Nations treaties concerning human rights	24
C. European treaties	25
D. Matters relating to human rights	25
E. Meetings during the current session	26
APPENDIX TO THE GENERAL REPORT	27
Composition of the Committee of Experts on the Application of Conventions and Recommendations	27
PART II. OBSERVATIONS CONCERNING PARTICULAR COUNTRIES	31
I. OBSERVATIONS CONCERNING REPORTS ON RATIFIED CONVENTIONS (ARTICLES 22 AND 35, PARAGRAPHS 6 AND 8, OF THE CONSTITUTION)	33
General observations	33
Freedom of Association, Collective Bargaining, and Industrial Relations	37
Forced Labour	122
Elimination of Child Labour and Protection of Children and Young Persons	177
Equality of Opportunity and Treatment	197
Tripartite Consultation	229
Labour Administration and Inspection	235
Employment Policy and Promotion	264
Vocational Guidance and Training	280
Employment security	283
Wages	284
Working Time	303
Occupational Safety and Health	318
Social Security	330
Maternity Protection	346
Social Policy	356
Migrant Workers	357

Seafarers.....	359
Fishermen	365
Dockworkers.....	367
Indigenous and Tribal Peoples.....	369
Specific Categories of Workers	378
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).....	380
APPENDICES	
Appendix I. Table of reports received on ratified Conventions as of 12 December 2003 (articles 22 and 35 of the Constitution)	396
Appendix II. Statistical table of reports received on ratified Conventions as of 12 December 2003 (article 22 of the Constitution).....	409
Appendix III. List of observations made by employers' and workers' organizations	411
Appendix IV. Information supplied by governments with regard to the obligation to submit Conventions and Recommendations to the competent authorities (31st to 90th Sessions of the International Labour Conference, 1948-2002).....	415
Appendix V. Overall position of member States with regard to the submission to the competent authorities of the instruments adopted by the Conference (as of 12 December 2003).....	422
Appendix VI. Summary of information supplied by governments with regard to the obligation to submit the instruments adopted by the International Labour Conference to the competent authorities	424
Appendix VII. Comments made by the Committee, by country	428
Appendix VIII. List of Conventions by Subject	440

Afghanistan		
C105	122	
C111	197	
General observation	33	
Submission to the competent authorities	381	
Albania		
C026	284	
Algeria		
C087	37	
C111	197	
C120	318	
C122	264	
C127	318	
C142	280	
Submission to the competent authorities	381	
Angola		
C026	284	
Submission to the competent authorities	381	
Antigua and Barbuda		
C087	38	
Submission to the competent authorities	381	
Argentina		
C029	122	
C068	359	
C087	39	
C088	264	
C098	39	
C111	198	
Armenia		
General observation	33	
Submission to the competent authorities	381	
Australia		
C029	122	
C087	40	
C098	41	
C111	198	
Austria		
C087	41	
C103	346	
Azerbaijan		
C087	42	
C138	177	
General observation	33	
Bangladesh		
C087	42	
C098	43	
Submission to the competent authorities	382	
Barbados		
C087	44	
C108	359	
C118	330	
Belarus		
C052	303	
C087	44	
C098	44	
Belgium		
C001	303	
C087	44	
C111	198	
C138	177	
Belize		
C087	45	
C098	45	
Submission to the competent authorities	382	
Benin		
C041	303	
C087	45	
Bolivia		
C001	304	
C020	304	
C030	304	
C077	178	
C078	178	
C081	235	
C087	46	
C098	47	
C103	346	
C111	199	
C121	330	
C128	332	
C129	236	
C130	334	
C131	284	
C169	369	
Submission to the competent authorities	382	
Bosnia and Herzegovina		
C081	236	
C087	48	
C111	199	
General observation	33	
Submission to the competent authorities	382	
Brazil		
C029	124	
C089	304	
C098	48	
C103	347	
C111	200	
C115	318	
C118	335	
C131	285	
C137	367	
C144	229	
Submission to the competent authorities	382	
Bulgaria		
C087	49	
C120	319	
Burkina Faso		
C087	50	
C129	236	
Burundi		
C029	128	
C087	51	
C094	286	
Submission to the competent authorities	383	
Cambodia		
General observation	33	
Submission to the competent authorities	383	

Cameroon			
C078	179		
C087	52		
C100	201		
C132	305		
Submission to the competent authorities	383		
Canada			
C087	53		
Cape Verde			
C098	56		
Submission to the competent authorities	383		
Central African Republic			
C041	305		
C052	306		
C062	319		
C087	56		
C095	286		
C119	320		
Submission to the competent authorities	383		
Chad			
C026	287		
C029	129		
C087	57		
General observation	34		
Submission to the competent authorities	383		
Chile			
C020	306		
C103	347		
C111	202		
Submission to the competent authorities	383		
China			
Hong Kong Special Administrative Region			
C087	58		
C097	357		
C098	58		
C115	320		
Colombia			
C024	336		
C025	336		
C029	129		
C087	59		
C095	287		
C098	60		
C100	202		
C129	237		
C169	369		
Submission to the competent authorities	384		
Comoros			
C098	60		
Submission to the competent authorities	384		
Congo			
C029	130		
C087	61		
C095	288		
General observation	34		
Submission to the competent authorities	384		
Costa Rica			
C001	306		
C081	238		
C087	61		
C098	62		
C102	336		
C129	239		
C138	179		
C169	371		
Côte d'Ivoire			
C041	306		
C052	307		
C081	239		
C095	289		
C098	64		
C129	239		
C144	229		
Submission to the competent authorities	384		
Croatia			
C087	64		
C098	65		
C111	202		
C162	320		
Cuba			
C001	307		
C087	65		
C098	66		
C103	348		
Cyprus			
C087	67		
C100	203		
C122	265		
General observation	34		
Czech Republic			
C098	68		
C111	203		
Democratic Republic of the Congo			
C087	68		
C094	289		
C098	68		
C144	229		
Submission to the competent authorities	384		
Denmark			
C029	131		
C087	69		
C098	69		
C169	372		
Djibouti			
C019	337		
C081	240		
C087	70		
C095	289		
C120	321		
Submission to the competent authorities	384		
Dominica			
C087	71		
C138	180		
Submission to the competent authorities	385		
Dominican Republic			
C087	71		
C098	72		
C100	205		
C111	205		
C138	181		
Ecuador			
C087	73		
C098	74		
C103	348		

C111.....	206
C131.....	290
C153.....	307
C169.....	372
Egypt	
C087.....	75
C092.....	359
C094.....	290
C098.....	77
C106.....	307
C139.....	321
El Salvador	
C029.....	131
C111.....	206
C122.....	265
C141.....	78
C142.....	280
Submission to the competent authorities.....	385
Equatorial Guinea	
C001.....	308
C030.....	308
General observation.....	34
Submission to the competent authorities.....	385
Eritrea	
C111.....	207
Ethiopia	
C014.....	308
C087.....	78
C098.....	79
C111.....	207
Fiji	
C098.....	80
Submission to the competent authorities.....	385
Finland	
C100.....	208
France	
C081.....	240
C115.....	322
C138.....	181
French Guiana	
C115.....	322
French Polynesia	
C019.....	338
C129.....	240
Guadeloupe	
C115.....	322
C129.....	241
Martinique	
C115.....	322
New Caledonia	
C127.....	322
Réunion	
C115.....	323
Gabon	
C081.....	241
Submission to the competent authorities.....	385
Gambia	
General observation.....	34
Submission to the competent authorities.....	385
Georgia	
C122.....	266
Submission to the competent authorities.....	385
Germany	
C029.....	132
C087.....	80
C098.....	81
Ghana	
C030.....	308
C087.....	81
C089.....	309
C094.....	291
C103.....	348
Greece	
C087.....	82
C100.....	209
C115.....	323
Grenada	
Submission to the competent authorities.....	386
Guatemala	
C001.....	309
C014.....	309
C029.....	134
C030.....	310
C087.....	82
C094.....	291
C098.....	83
C100.....	209
C101.....	310
C103.....	349
C106.....	310
C111.....	210
C144.....	229
C169.....	372
Submission to the competent authorities.....	386
Guinea	
C026.....	291
C081.....	242
C087.....	84
C098.....	85
C099.....	292
C105.....	136
C118.....	338
C120.....	324
C121.....	339
C122.....	267
C140.....	281
C144.....	231
Submission to the competent authorities.....	386
Guinea-Bissau	
Submission to the competent authorities.....	386
Guyana	
C087.....	85
C129.....	242
C139.....	324
Haiti	
C014.....	311
C024.....	340
C025.....	340
C029.....	136
C081.....	243
C087.....	86
C098.....	86
C100.....	211
C106.....	311

General observation.....	34	C122.....	268
Submission to the competent authorities.....	386	C159.....	269
Honduras		General observation.....	34
C081.....	243	Submission to the competent authorities.....	387
C087.....	86	Lao People's Democratic Republic	
C098.....	87	Submission to the competent authorities.....	387
C100.....	211	Latvia	
C138.....	182	C100.....	219
C169.....	374	Submission to the competent authorities.....	387
Hungary		Lebanon	
C098.....	88	C029.....	141
Iceland		Liberia	
C087.....	88	C022.....	360
C098.....	89	C029.....	141
India		C055.....	360
C100.....	211	C058.....	360
C107.....	374	C087.....	95
Submission to the competent authorities.....	387	C092.....	360
Indonesia		C098.....	96
C029.....	137	C105.....	142
C087.....	90	C112.....	365
C098.....	90	C113.....	365
C100.....	212	C114.....	365
C106.....	311	C133.....	361
C111.....	213	General observation.....	34
C138.....	182	Libyan Arab Jamahiriya	
Ireland		C103.....	349
C122.....	267	C121.....	340
Islamic Republic of Iran		C122.....	270
C095.....	292	C128.....	340
C111.....	214	C130.....	341
Italy		C131.....	292
C115.....	325	Submission to the competent authorities.....	388
Jamaica		Luxembourg	
C087.....	91	C081.....	245
C098.....	92	Madagascar	
C105.....	139	C087.....	96
Japan		C119.....	325
C029.....	139	C120.....	326
C087.....	92	Submission to the competent authorities.....	388
C098.....	93	Malawi	
C156.....	217	C081.....	245
Jordan		C129.....	245
C098.....	94	C138.....	185
C106.....	312	Submission to the competent authorities.....	388
C111.....	219	Malaysia	
Kazakhstan		C081.....	246
Submission to the competent authorities.....	387	Peninsular Malaysia	
Kenya		C019.....	341
C029.....	140	Sabah	
C081.....	243	C097.....	358
C098.....	95	Sarawak	
C129.....	244	C014.....	313
C138.....	183	C019.....	341
Kuwait		Mali	
C001.....	312	C029.....	143
C030.....	313	C081.....	246
C105.....	140	Submission to the competent authorities.....	388
C106.....	313	Mauritania	
Kyrgyzstan		C029.....	143
C087.....	95	C081.....	247
C095.....	292	C087.....	97

C102.....	342	Norway	
C122.....	270	C081.....	250
Mauritius		C115.....	326
C081.....	248	C129.....	250
C094.....	293	C169.....	375
C108.....	361	C170.....	327
C138.....	186	Pakistan	
Mexico		C029.....	155
C022.....	361	C081.....	250
C029.....	145	C087.....	101
C087.....	98	C098.....	103
Mongolia		C100.....	223
Submission to the competent authorities.....	388	C105.....	157
Morocco		Submission to the competent authorities.....	389
C004.....	313	Panama	
C081.....	248	C003.....	352
C100.....	219	C100.....	223
C111.....	220	Papua New Guinea	
C129.....	248	C105.....	159
C136.....	326	General observation.....	35
C138.....	187	Paraguay	
Mozambique		C029.....	159
C081.....	248	C079.....	188
Submission to the competent authorities.....	388	C081.....	251
Myanmar		C087.....	105
C026.....	293	C090.....	188
C029.....	146	C098.....	105
C052.....	314	C111.....	223
C087.....	99	C120.....	327
Nepal		C169.....	377
Submission to the competent authorities.....	388	Submission to the competent authorities.....	390
Netherlands		Peru	
C081.....	249	C029.....	160
C098.....	100	C081.....	252
C103.....	350	C169.....	377
C118.....	342	Philippines	
Aruba		C087.....	106
C087.....	100	C089.....	315
C094.....	294	C105.....	161
C138.....	188	Poland	
C144.....	232	C095.....	294
C145.....	362	C129.....	253
Netherlands Antilles		C149.....	379
C089.....	314	Portugal	
New Zealand		C081.....	253
C014.....	314	C103.....	352
C047.....	315	C129.....	254
C100.....	221	C146.....	362
C111.....	222	Republic of Korea	
Nicaragua		C081.....	244
C003.....	351	C160.....	245
C122.....	270	Romania	
Niger		C087.....	107
C029.....	153	C138.....	189
C081.....	249	Russian Federation	
C087.....	101	C122.....	271
C098.....	101	C138.....	191
Submission to the competent authorities.....	389	Rwanda	
Nigeria		C026.....	296
C105.....	154	C081.....	255
C123.....	188	C100.....	223
Submission to the competent authorities.....	389	C138.....	192

Submission to the competent authorities.....	390	Sri Lanka	
Saint Kitts and Nevis		C029.....	163
General observation.....	35	C081.....	256
Saint Lucia		C103.....	353
C100.....	224	Sudan	
General observation.....	35	C026.....	296
Submission to the competent authorities.....	390	C029.....	164
Saint Vincent and the Grenadines		C081.....	257
Submission to the competent authorities.....	390	Submission to the competent authorities.....	392
Sao Tome and Principe		Suriname	
C081.....	256	C081.....	257
C087.....	107	Submission to the competent authorities.....	392
C144.....	232	Swaziland	
Submission to the competent authorities.....	390	C029.....	166
Saudi Arabia		C081.....	258
C029.....	161	C096.....	273
C081.....	256	Submission to the competent authorities.....	392
Senegal		Sweden	
C087.....	108	C100.....	226
C098.....	108	C122.....	273
C100.....	224	C129.....	258
C111.....	224	C152.....	367
Submission to the competent authorities.....	390	Switzerland	
Serbia and Montenegro		C142.....	281
C087.....	108	C144.....	233
C098.....	109	Syrian Arab Republic	
Sierra Leone		C019.....	344
C008.....	363	C029.....	167
C017.....	343	C081.....	258
C029.....	162	C087.....	110
C059.....	192	C095.....	297
C081.....	256	C105.....	168
C088.....	272	C118.....	344
C098.....	110	C129.....	259
C101.....	316	Submission to the competent authorities.....	392
C105.....	162	Tajikistan	
C111.....	224	C087.....	111
C119.....	327	C122.....	274
C125.....	365	C138.....	192
General observation.....	35	General observation.....	35
Submission to the competent authorities.....	391	Submission to the competent authorities.....	392
Slovakia		Thailand	
C100.....	225	C029.....	170
C122.....	272	Submission to the competent authorities.....	393
C144.....	232	The former Yugoslav Republic of Macedonia	
Solomon Islands		C087.....	111
C008.....	363	C098.....	112
General observation.....	35	General observation.....	35
Submission to the competent authorities.....	391	Submission to the competent authorities.....	393
Somalia		Trinidad and Tobago	
General observation.....	35	C087.....	112
Submission to the competent authorities.....	391	C100.....	226
South Africa		C105.....	171
Submission to the competent authorities.....	391	Tunisia	
Spain		C081.....	259
C029.....	163	C087.....	113
C053.....	363	C122.....	275
C103.....	352	C142.....	282
C136.....	328	Turkey	
C138.....	192	C081.....	260
Submission to the competent authorities.....	391	C087.....	113
		C095.....	297

C098.....	114	Tanganyika	
C122.....	275	<i>C081</i>	259
C138.....	192	Uruguay	
Turkmenistan		C081.....	261
General observation.....	35	C094.....	299
Submission to the competent authorities.....	393	C098.....	115
Uganda		C103.....	354
C017.....	344	C122.....	277
C029.....	172	C129.....	262
C081.....	260	C131.....	300
C098.....	114	C138.....	195
C105.....	173	C151.....	115
C122.....	276	Submission to the competent authorities.....	393
General observation.....	36	Uzbekistan	
Submission to the competent authorities.....	393	General observation.....	36
Ukraine		Submission to the competent authorities.....	393
C095.....	297	Venezuela	
C119.....	328	C003.....	354
C138.....	193	C029.....	176
C182.....	194	C041.....	316
United Arab Emirates		C081.....	263
C029.....	173	C087.....	115
C138.....	194	C098.....	117
United Kingdom		C100.....	227
C029.....	174	C122.....	278
C100.....	226	C138.....	195
C105.....	175	C144.....	234
Bermuda		Submission to the competent authorities.....	394
<i>C082</i>	356	Yemen	
Jersey		C087.....	118
<i>C081</i>	260	General observation.....	36
United Republic of Tanzania		Zambia	
C029.....	168	C087.....	119
C105.....	169	C122.....	278
C137.....	367	C138.....	196
C142.....	281	Submission to the competent authorities.....	394
C144.....	233	Zimbabwe	
Submission to the competent authorities.....	392	C098.....	119

Overview of the ILO supervisory mechanisms

Since its creation in 1919, the International Labour Organization has had both the function of adopting and promoting international labour standards as well as supervising their application in its member States. The ILO's supervisory system has two facets. First, under article 19 of the ILO Constitution, a number of obligations arise for member States upon the adoption of international labour standards, including the requirement to submit newly adopted standards to national competent authorities and the obligation to report at intervals on measures taken to give effect to the provisions of non-ratified Conventions and Recommendations.

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

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

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

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

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

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

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

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

The analysis of the application of Conventions by the Committee is reflected in two kinds of comments: *observations* and *direct requests* (see also paragraphs 65-67 of the General Report). The observations contain comments on fundamental questions raised by the application of a particular Convention by a government. These observations are reproduced in the Committee's report. The direct requests usually relate to more technical questions or questions of lesser importance. They are not published in the report, but are communicated directly to the governments concerned.²

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

Role of employers' and workers' organizations

The ILO was one of the first international organizations to associate non-governmental actors in its activities as a natural consequence of its tripartite structure. The participation of employers' and workers' organizations in the supervisory mechanism is recognized in the Constitution under paragraph 2 of article 23 which provides that reports submitted by governments in accordance with articles 19 and 22 must be communicated to the representative organizations. In practice, these occupational organizations may submit comments on the contents of the reports provided on the implementation of a ratified Convention. They may for instance draw attention to a discrepancy in law or in fact that might otherwise have gone unnoticed, and thus trigger the process whereby the Committee of Experts will request further information from the government, and ultimately make an observation that may open to a tripartite discussion at the Conference Committee on the Application of Standards. Further, workers' and employers' organizations can submit directly to the Office comments on the application of Conventions and request that these comments be forwarded to the Government concerned (see also paragraphs 73-79 of the General Report).

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

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



Part I. General Report

I. Introduction

1. The Committee of Experts on the Application of Conventions and Recommendations, appointed by the Governing Body of the International Labour Office to examine the information and reports submitted under articles 19, 22 and 35 of the Constitution by States Members of the International Labour Organization on the action taken with regard to Conventions and Recommendations, held its 74th Session in Geneva from 27 November to 12 December 2003. The Committee has the honour to present its report to the Governing Body.

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

3. The Committee noted with regret that Mr. Razafindralambo was not able to participate in its work. The Committee also noted that Ms. Letowska and Mr. Tan Boon Chiang submitted their resignation from the Committee before the beginning of the present session; moreover, Mr. von Maydell informed the Committee that he would not seek a renewal of his mandate for the following session. The Committee would like to express its great appreciation for the outstanding manner in which these experts carried out their duties over many years.

4. The Committee was deeply saddened to learn of the death, on 12 August 2003, of Sir William Douglas, former President of the ILO Administrative Tribunal and former Chairperson of the Committee of Experts. Within the ILO Administrative Tribunal and the Committee of Experts, all those who had the privilege of knowing him or working with him will remember his charm, humane nature, outstanding intelligence and magnanimity. The Committee wishes to express the esteem and friendship which all its members felt for Sir William Douglas, as well as its gratitude for the devotion and competence he brought to the cause of international labour standards.

5. The Committee was also deeply saddened to learn of the death on 21 November 2003 of Mr. Nicolas Valticos, former Assistant Director-General of the ILO, Special Adviser on International Labour Standards, and ad hoc judge at the International Court of Justice in The Hague. An exceptional jurist, an accomplished diplomat, a tenacious negotiator, Mr. Valticos dedicated the greatest part of his professional life to the promotion and defence of international labour standards. In rendering homage to his memory, the Committee recognizes the invaluable role Nicolas Valticos played in his work defending the dignity of persons at work.

6. The Committee elected Ms. Robyn Layton, QC, as Chairperson and Mr. Anwar Al-Fuzaie as Reporter.

Subcommittee on working methods

7. The Committee has in recent years undertaken a thorough examination of its working methods. In 2001, in order to guide its reflections on this matter in an efficient manner, the Committee decided to create a subcommittee. This subcommittee has as a mandate to examine not only the working methods of the Committee as strictly defined but also any related subjects, and to make appropriate recommendations to the Committee.¹

¹ This subcommittee is composed of a core group and is open to any member of the Committee wishing to participate in it.

8. In 2002, the Committee of Experts considered and adopted the first recommendations of its subcommittee, prepared after a wide-ranging review of the Committee's work, to which all members of the Committee had had an opportunity to contribute during the year.

9. This year, the subcommittee focused in particular on changes to the presentation and structure of the contents of its report and to some of the language used, with a view to providing a more concise and accessible report, whilst simultaneously preserving its integrity and value. The proposed changes were approved by the Committee and will be implemented as soon as is reasonably practicable. Further consideration will be given to the increased use of technology in improving the presentation and accessibility of the information contained in the report in the future. In addition, the Committee discussed and agreed further improvements to its working methods in order to ensure the most efficient use of experts' time during their session, to encourage a more collaborative approach on the linked Conventions and to permit opportunities for discussion on the impact of the Committee's work.

Relations with the Conference Committee on the Application of Standards

10. A spirit of mutual respect, cooperation and responsibility has consistently prevailed in the Committee's relations with the International Labour Conference and its Committee on the Application of Standards. The Committee of Experts takes the proceedings of the Conference Committee into full consideration, not only in respect of general matters concerning standard-setting activities and supervisory procedures, but also in respect of specific matters concerning the way in which States fulfil their standards-related obligations. In this context, the Committee again welcomed the participation of the Chairperson of its 73rd Session as an observer in the general discussion of the Committee on the Application of Standards of the 91st Session of the International Labour Conference (June 2003). It noted the request by the abovementioned Committee for the Director-General to renew this invitation for the 92nd Session of the International Labour Conference (June 2004). The Committee has accepted the invitation.

11. The Chairperson of the Committee of Experts invited the Employer and Worker Vice-Chairpersons of the Committee on the Application of Standards of the 91st Session of the International Labour Conference to pay a joint visit to this Committee at its present session. Both accepted this invitation and discussed with the Committee, in a special sitting, matters of mutual interest.

II. Highlights and major trends in the application of international labour standards in certain areas

12. In the following section, the Committee wishes to highlight general trends which have been noted from the analysis of reports submitted by member States on the application of ratified Conventions. The Committee wishes to address the following subjects this year.

Labour inspection (Conventions Nos. 81 and 129)

13. In the course of this session, the Committee has addressed comments on the application of Convention No. 81 to 67 countries and comments on the application of Convention No. 129 to 27 countries. An analysis of the reports and of information from a variety of sources shows that improvement in working conditions depends first and foremost on the importance that policy-makers attach to the role of the labour inspectorate. A real awareness of the need to protect workers in the performance of their jobs and of appropriate budgetary and institutional measures where the active involvement of the social partners are the best guarantees of an effective system of labour inspection. The efforts that many member States are making to develop the organization of inspection services reflects a growing interest in the institutionalization of labour inspection as a full-blown system. Progress in the operation of inspection services is most significant in industry and commerce and relatively modest in the agricultural sector, where labour inspection is in many cases still embryonic, particularly in countries facing economic and political difficulties or where trade union action is obstructed or non-existent.

Training and status of inspection staff

14. The Committee has often pointed to recruitment procedures and training methods and the status and career plans of inspectorate staff as indicators of development and progress in the various inspection systems.

15. As a rule labour inspectors are public officials. In a number of countries, however, particularly in Central and Eastern Europe, labour inspection is carried out by public institutions created for purpose but also by trade unions. The information supplied by governments on the status and conditions of service of labour inspectors does not in all cases reflect compliance with the criteria of stability and independence required by Conventions Nos. 81 and 129.

16. In some Latin American countries labour inspectors, although public officials, are nonetheless authorized, subject to certain reservations, to carry on other professional activities in parallel where subsistence so demands. In the Committee's view, such a situation is contrary to the Conventions in that it is liable at the very least to undermine the authority and impartiality with which inspectors must conduct their relations with employers and workers, and is at all events incompatible with the need for inspectors to be available, particularly if they are to visit workplaces without advance warning to the extent possible. In some countries it is precisely this need for visits to be unexpected that the legislation fails to endorse by systematically requiring prior authorization through official channels or the issuing of inspection orders. This may not only detract from the labour inspectors' authority vis-à-vis the social partners but can be a serious obstacle to effective supervision, of which unannounced inspections are the best guarantee. The Committee has consistently drawn the attention of the governments concerned to these dangers, inviting them to revise their legislation and practice so as to ensure that inspectors may freely enter workplaces in the conditions laid down by the Conventions.

Powers of labour inspectors

17. In accordance with Conventions Nos. 81 and 129, labour inspectors must as a rule be endowed with powers of injunction and the power to bring proceedings, the exercise of which is particularly appropriate in the event of danger to the health and safety of workers. By and large these powers are recognized in laws and regulations, but are sometimes impaired by administrative encumbrances. This is particularly true of indirect powers of injunction; and administrative and penal proceedings brought by the inspectors or at their request come up against similar obstacles.

18. The scant information available on the manner in which the abovementioned powers are exercised in practice and on the impact of penalties is above all a reflection of the complexity of the procedures involved and the cumbersome nature of the machinery for cooperation between the competent authorities. The Committee continues to point out that penalties must be sufficiently dissuasive, in other words fines must be sufficiently high for employers to prefer to invest in bringing working conditions up to par.

Labour inspection activities reports

19. Shortcomings in the operation of various labour inspection systems are inevitably a sign that the central inspection authority, where such an authority exists, is unable to produce the annual inspection report the publication of which has particular importance for the Committee. The content of the annual reports that reach the Office varies significantly from one country to another with regard to the requirements of relevant provisions of the two Conventions and in many cases it is not established that the reports are published as the instruments prescribe. Furthermore, the time limits within which they are prepared, published and communicated to the Office rarely meet those prescribed by the Conventions, which causes delay in the attainment of the objectives set by the provisions in question.

20. Difficulties in applying the provisions on the form and content of annual inspection reports mostly have institutional and/or economic causes. Where more than one institutional authority is responsible for supervising the application of the legal provisions covered by the Convention, and if the machinery for disseminating information and for cooperation is not working properly, the central authority specified by governments in their reports on the application of these instruments lacks useful information on each of the subjects listed in the relevant articles and is therefore not in a position to include them in the annual report. As a result, the latter is incomplete and its scope considerably reduced.

Resources of the inspection services

21. The Committee has noted a growing resolve among public authorities to improve labour inspection systems. The abundance of laws and regulations in both the rich countries and the less developed countries bear witness to this fact. However, in many countries the economic situation, compounded by the weakness, or in some cases, non-existence of tripartism in the mechanisms for formulating and implementing the labour administration policy, is reflected in a labour inspectorate which is ineffective and which is called upon largely to provide services other than those that derive from the functions of labour inspection set forth in the two Conventions, namely the activities involved in settling the many social conflicts that arise. Adequate means must be made available if the inspection services are to attain the social and economic objectives they pursue. In far too many countries, particularly in economies beset by serious problems, the Committee has observed that labour inspection is assigned a derisory share of the national budget. Where this is the case the labour inspectorate is characterized by an embryonic infrastructure, understaffing, poorly qualified and unmotivated personnel, and virtually inexistent equipment, transport facilities and other resources needed for work. As a result, only minimum measures are implemented, sometimes only in the geographical areas which are the most accessible in terms of transport and communication facilities. Being seldom or never invited to participate in setting the objectives of labour inspection, the social partners suffer this state of affairs without being able to cooperate in improving it, as the two Conventions require. The Committee invites the governments concerned to develop tripartism and to seek international financial cooperation, with ILO support.

Statistical evaluation of occupational risks

22. Pursuant to the Committee's general observation of 1996, governments are making every effort to take the necessary steps to ensure that, in accordance with the provisions of these Conventions, occupational accidents and diseases are notified to the inspection services in the cases and under the conditions established in the national legislation, so that relevant statistics can be included in annual inspection reports on a regular basis. The Committee observes that notification of occupational diseases is the area which gives rise to the greatest difficulty, including in countries with strong economies. Dialogue continues and significant progress has been observed, in particular the adoption of legal measures and relevant mechanisms. The Committee has noted the strong tendency among northern European countries to focus on "new occupational risks" such as stress, psychological harassment and sexual harassment, and to gear part of their action towards these phenomena.

The role of labour inspectors in combating child labour

23. Further to the Committee's general observation of 1999, in which it pointed out the interest of labour inspectors' participation in combating child labour and addressed arrangements for such participation, most governments provide abundant information which reflects a strong resolve and shows encouraging results. In the most critical cases,

however, efforts are impaired by insufficient resources. Thanks to activities conducted under the project of the International Programme on the Elimination of Child Labour (IPEC) and to assistance from international financial cooperation, it may be hoped that efforts in the area of legislation and the weight of an increasingly sensitive national and international public opinion will bring about in the countries most affected, a regression of the phenomenon to the advantage of measures to train and educate the younger generations.

Indigenous and tribal peoples (Conventions Nos. 107 and 169)

24. Reports were due this year from all the countries that have ratified either the Indigenous and Tribal Populations Convention, 1957 (No. 107), or the more up-to-date Indigenous and Tribal Peoples Convention, 1989 (No. 169), with the exception of first reports from three countries that have recently ratified Convention No. 169, whose first reports are due next year.

25. Not all the reports due arrived, and some of those reports contain too little information to allow an assessment of the implementation of these detailed and complex instruments. The Committee looks forward to receiving fuller reports in reply to the detailed questions it is raising in its comments in order to allow an evaluation to be made.

26. The Committee remains concerned at the serious problems encountered by these peoples, who remain the poorest and most excluded portions of the national population in most cases. Serious abuses are often practised against them, and they continue to lose their lands, to be the most poorly educated and to have the most health problems in their respective countries.

27. Nevertheless, the Committee finds encouragement in the fact that in almost all countries there is evidently a growing awareness of the need to address the situation of the indigenous and tribal peoples, as a matter of justice and as a prerequisite to national development. The statement in the ILO Constitution that "Poverty anywhere is a threat to prosperity everywhere" was never truer than when it is related to these peoples. Even where the efforts remain insufficient, or even in some cases misdirected, the level of legislative, regulatory and development activity demonstrated in the reports the Committee has examined is very different and much greater than ten years ago.

28. In addition, it is evident that Convention No. 169 itself is the basis for national and international discussions on the measures to be taken, even in countries which have not yet ratified it. These two ILO instruments are the only Conventions ever adopted in international organizations on this subject, though some other instruments refer to them more or less directly, and indigenous and tribal peoples are of course covered by all the human rights instruments adopted by the United Nations or regional systems. In addition, Convention No. 169 is at the centre of recent developments such as the Permanent Forum on Indigenous Issues, which has already held its second session (May 2002, New York).

Maternity protection (Conventions Nos. 3, 103 and 183)

29. The Committee wishes in the first place to recall that maternity protection is a field which has always received the closest attention from the International Labour Organization from the first year of its existence. One of the very first instruments adopted in 1919 was the Maternity Protection Convention (No. 3). This Convention was revised in 1952 by Convention No. 103 in order to extend the scope of the protection afforded to a larger number of categories of women workers and to take into account developments in the field, particularly in relation to social security. The entry into force in February 2002 of the Maternity Protection Convention (No. 183) constituted a new step forward with regard to both persons covered and protection provided and implied closure of the ratification of Convention No. 103, as ratification of Convention No. 183 by a State party to Convention No. 103 involves the automatic denunciation of the latter. However, Convention No. 3 remains open for ratification, even though there have only been five new ratifications over the past 30 years. In this respect, the Committee wishes to recall that, as the ratification of Convention No. 183 does not result in the automatic denunciation of Convention No. 3, it is possible, as occurs in practice, for certain States to be parties to the two instruments. Considering the differences between the two Conventions, the Committee strongly encourages States which are in this position to denounce the older instrument out of a concern for greater clarity and legal certainty.²

30. In its examination this year of the application of the maternity protection Conventions, the Committee has observed on the basis of the law and practice in the various countries that these instruments are applied in a globally satisfactory manner. It has been able to note with interest many cases of progress, although various problems of application remain. The following observations of a general nature are intended to indicate briefly the principal issues arising in the application of these instruments.

An ever-increasing number of women workers protected

31. In the first place, with regard to the scope of the national provisions on maternity protection, the Committee observes a trend for the extension of protection to all employed women, as reflected in the texts of the three Conventions. The women covered by Convention No. 3 only included those in public or private industrial or commercial undertakings, while Convention No. 183 applies to all employed women, including those in atypical forms of dependent work.

² See in this respect the Governing Body document GB.283/LILS/WP/PRS/2.

32. Although in certain countries the protection of women engaged in agriculture or working at home or as domestic workers continues to lag behind to some extent, the Committee has been able to note that the legislation in an ever-increasing number of countries affords the protection set out in the Conventions to these categories of women workers, which could facilitate the ratification in the near future of Convention No. 183, the objective of which is to protect all employed women. In this connection, the Committee considers that the concern expressed in 1985 by the International Labour Conference when it called upon States to give priority consideration, as appropriate to national circumstances, “to the gradual extension of maternity protection to women in all sectors of activity and enterprises of all sizes, including women who are casual, temporary, part-time, sub-contract and home-based workers, as well as self-employed and family workers”,³ remains pertinent today.

33. Furthermore, the national provisions giving effect to the Convention are, in the great majority of cases, applicable throughout the national territory. However, this situation is tempered by the fact that in most cases national law and practice is different in its scope in terms of both the coverage of labour legislation (maternity leave, nursing pauses, protection against dismissal) and of social security (entitlement to cash and medical maternity benefits). It may also be noted that, in certain countries, although the national social security legislation is in theory applicable throughout the territory, its implementation is not guaranteed everywhere. In such circumstances, and in view of the importance that it attaches to this issue and the fact that none of the instruments concerned authorizes the exclusion from their scope of parts of the national territory, the Committee has made comments in several cases concerning the need to take measures to secure the protection set forth in the Conventions in practice to all the women workers covered by these instruments throughout the national territory.

Maternity leave: As much an obligation as right

34. The Committee has also noted that the right to maternity leave, a fundamental component of maternity protection, is very broadly respected and applied and is sometimes covered by provisions at the constitutional level. The essential nature of the right to maternity leave is emphasized by the absence in the Conventions of any conditions as to length of service in order to benefit from maternity leave, a principle that is respected in the very large majority cases in national law and practice.

35. The length of maternity leave has tended to increase in overall terms, although in certain cases in which maternity leave has traditionally been particularly long measures have recently been taken in national law and practice to reduce its length with a view, among other objectives, to maintaining an economic and financial balance and so that the possibilities for women to return to active life are not jeopardized. In this respect, the adoption of Convention No. 183 constituted progress in terms of the length of maternity leave, which is increased from 12 weeks in Conventions Nos. 3 and 103 to a minimum of 14 weeks in the new instrument and 16 weeks in the corresponding Recommendation No. 191.

36. The examination of the reports provided by governments on the application of these Conventions has, however, shown that in a not insignificant number of cases the compulsory nature of the portion of postnatal leave during which the woman must not be allowed to work has not been explicitly established. In this connection, the Committee wishes to emphasize that this principle, which is common to the three maternity protection instruments, constitutes a fundamental component of the protection afforded. This obligation covers both the woman and the employer and represents an additional protection measure intended to prevent the woman from being persuaded to return to work, by reason of pressure or material gain, but to the detriment of her health and that of her child, before the expiry of a minimum period set by the Conventions at six weeks after confinement. The Committee notes in this respect that an increasing number of reports indicate that it is possible for fathers to use the maternity leave in place of the mother. Such a practice, although not explicitly envisaged by any of the three Conventions, has not been considered to be in contradiction with them, provided that it does not impinge upon the compulsory period of leave and the woman has given her prior agreement.

Appropriate maternity benefits: A reality for an ever-increasing number of women

37. The provision during the period of maternity leave of medical care and cash benefits is another essential component of the maternity protection afforded by the three Conventions and is provided for in the law and practice of the great majority of countries. The Committee has noted that in many countries the provision of the above benefits is subject to a minimum qualifying period or coverage by the insurance system; it has accepted this condition, provided that it is set at a reasonable level and that women who do not meet the condition are provided, subject to certain means-related conditions, with appropriate benefits financed through social assistance funds. In certain cases, it has noted with interest that national programmes have as an objective the progressive elimination of this qualifying period, thereby affording a greater number of working women improved financial and health protection during their maternity leave.

38. Examination of the reports has shown that, on the whole, the medical care includes, in accordance with the provisions of the Conventions, prenatal care and care related to confinement, postnatal care and hospitalization. In this respect, the Committee considers that, from the point of view of health protection, the adoption of Convention No. 183

³ Resolution on equal opportunities and equal treatment for men and women in employment, adopted by the International Labour Conference at its 71st Session, 1985.

constituted major progress as this instrument prohibits a pregnant or breastfeeding woman from performing work which has been determined at the national level as being prejudicial to her health or that of her child, or where an assessment has established a significant risk to the mother's health or that of her child. At the practical level, the Committee has noted that in certain countries in which difficulties persist, compulsory medical programmes covering the health of mothers and children have made it possible to place emphasis on improving access to care through efforts for broader coverage.

39. With regard to cash benefits, in most countries their level corresponds to a percentage of the former earnings taken into account for insurance purposes and subject to a ceiling, although in certain cases they may consist of a flat-rate benefit, provided that the rate of the benefit is sufficient to ensure in full the maintenance of the woman and her child in proper conditions of health and with a suitable standard of living and that it is adjusted regularly to take into account fluctuations in the cost of living.

40. In several cases, the Committee has had to recall the importance of the principle that the employer shall in no case, in accordance with Conventions Nos. 3 and 103, be individually liable for the cost of the benefits due to women whom they employ. This principle is maintained in the new instrument, although greater flexibility has been introduced, as it allows employers to be individually liable for maternity benefits in cases where they have given their specific agreement, where this was provided for at the national level before the adoption of Convention No. 183 or where it is agreed at the national level by the government and the social partners.

Employment protection and non-discrimination

41. Recognizing the link between maternity protection and the substantive implementation of the right to equal opportunity and treatment between women and men in employment, Convention No. 183 calls on States to adopt appropriate measures to ensure that maternity does not constitute a source of discrimination not only in employment, but also in access to employment. Such measures are to ensure, among other elements, that mandatory pregnancy tests are not permitted where they are used for a discriminatory purpose. On several occasions, the Committee has found mandatory pregnancy testing to be a violation of the more general provisions of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). The Committee has found the few ratifying States of Convention No. 183 to provide adequate protection against discrimination based on maternity.

42. Protection against dismissal is another important element provided by the three Conventions to protect maternity and fight discrimination. This aspect of protection has evolved over time, with the result that Convention No. 183 contains new provisions on this subject, which differ from those of Conventions Nos. 3 and 103. The employment protection afforded by the latter instruments may be termed absolute in so far as it is intended to extend, irrespective of the reason for dismissal, the statutory period of notice by the additional time required to complete the period of maternity leave and any extension of that leave by reason of illness resulting from the pregnancy or confinement. Convention No. 183 extends the protected period to include the pregnancy and such period following the return to work from maternity leave to be prescribed by national laws or regulations. This extension of the protected period is counterbalanced by greater flexibility in the prohibition of dismissal, which is however only authorized when termination occurs on grounds unrelated to the pregnancy or birth of the child and its consequences or nursing, with the burden of proof resting on the employer. This evolution of international standards is reflected at the national level, where the Committee has noted a fairly widespread trend for the extension of the period during which employment is protected, beyond the strict context of maternity leave, and for dismissal to be authorized during this period on grounds that are unrelated to pregnancy, the birth of the child, its consequences or nursing. The Committee has noted this trend in the law and practice of certain countries which are bound by Conventions No. 3 or No. 103, in which cases it has recalled the requirements of these Conventions and invited certain of the States concerned to consider the possibility of ratifying Convention No. 183, which contains provisions that are closer to those of their national legal systems. It has also noted that, in certain cases, dismissal has no impact on the entitlement of women to receive their maternity benefits up to the end of their leave.

Nursing pauses: Practices which differ but are necessarily based on a common principle

43. Following maternity leave, the three Conventions set forth the right of women returning to work to benefit from breaks for breastfeeding. This right is today generally recognized, even though there remain broad differences at the national level with regard to its implementation in practice: the pauses may be longer or shorter; there are differences in the period during which such pauses are authorized; it may be possible to convert such pauses into a reduction in working time, thereby allowing the mother to arrive at work later and leave earlier; and special nursing rooms or crèches may be provided within or outside enterprises. When examining national situations, the Committee has focused in particular on compliance with the principle that nursing breaks shall be counted as working time and remunerated accordingly.

III. Respect for obligations

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

A. Supply of reports

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

45. In accordance with the changes in the reporting system adopted by the Governing Body in November 2001 and March 2002,⁴ particularly with a view to facilitating the collection of information on related subjects at the national level, requests for reports on Conventions covering the same subject are addressed simultaneously to each country.⁵ In addition, in the case of the 12 fundamental and priority Conventions, as well as for certain other groups of Conventions containing a large number of instruments, reports are requested, with a view to balancing their submission, in accordance with the English alphabetical order, one year by member States beginning with the letters A to J, and the second year by those whose names begin with the letters K to Z, or the converse.⁶ For a list of subject matters and corresponding Conventions, please see Appendix VIII.

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

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

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

Reports requested and received

47. A total of 2,344 reports were requested from governments on the application of Conventions ratified by member States (article 22 of the Constitution). At the end of the present session of the Committee, 1,544 of these reports had been received by the Office. This figure corresponds to 65.87 per cent of the reports requested, compared with 64.57 per cent last year.

48. In addition, 266 reports were requested on Conventions declared applicable with or without modifications to non-metropolitan territories (article 35 of the Constitution). Of these, 156 reports, or 58.65 per cent, had been received by the end of the Committee's session, in comparison with 69.23 per cent last year.

⁴ Documents GB.282/LILS/5, GB.282/8/2, GB.283/LILS/6 and GB.283/10/2.

⁵ Information concerning requests for reports by country and by Convention is available on the ILO web site: <http://webfusion.ilo.org/public/db/standards/normes/appl/index.cfm>

⁶ Information concerning the regular reporting schedule by country and by Convention is available on the ILO web site: <http://webfusion.ilo.org/public/db/standards/normes/schedules/index.cfm>

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

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

Compliance with reporting obligations

51. Most of the governments from which reports were due on the application of ratified Conventions have supplied most or all the reports requested (see Appendix I). However, no reports due have been received for the past two or more years from the following 14 countries: **Afghanistan, Armenia, Equatorial Guinea, Haiti, Kyrgyzstan, Liberia, Sierra Leone, Solomon Islands, Somalia, Tajikistan, The former Yugoslav Republic of Macedonia, Turkmenistan, Uganda, Uzbekistan.** In addition, all or the majority of the reports due this year have not been received from the following 32 countries: **Antigua and Barbuda, Australia (Norfolk Island), Bosnia and Herzegovina, Botswana, Cambodia, Cameroon, Congo, Democratic Republic of the Congo, Denmark, Denmark (Faeroe Islands, Greenland), Djibouti, Eritrea, France (French Southern and Antarctic Territories, New Caledonia), Georgia, Ghana, Grenada, Iraq, Israel, Kiribati, Libyan Arab Jamahiriya, Malawi, Netherlands (Netherlands Antilles), Pakistan, Paraguay, Saint Kitts and Nevis, Saint Lucia, San Marino, Serbia and Montenegro, Swaziland, United Republic of Tanzania (Tanganyika, Zanzibar), Trinidad and Tobago, United Kingdom (Anguilla, Bermuda, Falkland Islands (Malvinas), Montserrat), Yemen.**

52. The Committee urges the governments of these countries to make every effort to supply the reports requested on ratified Conventions. The Committee is aware that where no reports have been sent for some time, it is likely that administrative or other problems are preventing the government concerned from fulfilling its obligations under the ILO Constitution, and it may be that in cases of this kind, assistance from the Office, in particular through the specialists on international labour standards of the regional or subregional offices, could enable the government to overcome its difficulties.

Late reports

53. The Committee is still concerned about the number of reports being received after the prescribed time period, especially given the large number of reports received this year. The reports due on ratified Conventions should be sent to the Office between 1 June and 1 September of each year. Due consideration is given, when fixing this date, particularly to the time required to translate the reports, where necessary, to conduct research into legislation and other necessary documents, and to examine reports and legislation.

54. The supervisory procedure can function correctly only if reports are communicated in due time. This is particularly true in the case of first reports or reports on Conventions where there are serious or continuing discrepancies, which the Committee has to examine in greater depth.

55. The Committee observes that the great majority of reports are received between the time limit fixed and the date on which the Committee meets: by 1 September 2003, the proportion of reports received was only 24.23 per cent. This percentage is slightly lower than for its previous session (25.34 per cent) and the Committee is concerned over this fact, since it notes that it is often first reports and those relating to Conventions on which the Committee has made comments that are received the latest. In these circumstances, the Committee has been bound in recent years to postpone to its following session the examination of an increasing number of reports, since they could not be examined with the necessary care owing to lack of time. It has thus had to examine a number of reports at its present session which had previously been deferred.

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

57. Furthermore, the Committee notes that a number of countries sent some or all of the reports due by 1 September 2002 on ratified Conventions during the period between the end of the Committee's December 2002 session, and the beginning of the June 2003 session of the International Labour Conference, or even during the Conference.⁷ The Committee emphasizes that this practice disturbs the regular operation of the supervisory system and makes it more

⁷ For the reports received and not received by the end of the Conference, see Report of the Committee on the Application of Standards, Part Two, II, Appendix I (*Provisional Record* No. 24, 91st Session, ILC, 2003). See also information on article 22 reports requested and received on the ILO web site: <http://webfusion.ilo.org/public/db/standards/normes/appl/index.cfm>

burdensome. It wishes to provide the following list of those countries which followed this practice in 2002-03, as requested by the Conference Committee on the Application of Standards: **Angola** (Conventions Nos. 26, 29, 68, 73, 74, 91, 92, 98, 100, 111); **Azerbaijan** (Conventions Nos. 29, 87, 92, 100, 103, 105, 119, 120, 131, 133, 135, 138); **Barbados** (Conventions Nos. 19, 26, 74, 87, 100, 122, 135, 138, 172, 182); **Botswana** (Conventions Nos. 29, 100); **Cambodia** (Convention No. 100); **Chad** (Conventions Nos. 26, 135); **Chile** (Conventions Nos. 9, 29, 100, 122, 151, 182); **China** (Conventions Nos. 22, 170); **Côte d'Ivoire** (Conventions Nos. 6, 13, 14, 19, 26, 33); **Cuba** (Convention No. 92); **Cyprus** (Conventions Nos. 87, 92, 100, 114, 122, 138); **Denmark** (Conventions Nos. 9, 29, 87, 98, 100, 182); **Fiji** (Conventions Nos. 26, 58, 84, 85, 144, 169); **France** (Convention No. 29); **Guinea** (Conventions Nos. 3, 13, 26, 29, 81, 87, 89, 94, 95, 98, 99, 100, 105, 111, 112, 119, 120, 122, 133, 135, 144, 149); **Iceland** (Convention No. 122); **Republic of Korea** (Conventions Nos. 19, 100, 122, 138); **Kuwait** (Convention No. 182); **Lao People's Democratic Republic** (Conventions Nos. 13, 29); **Libyan Arab Jamahiriya** (Convention No. 103); **Luxembourg** (Conventions Nos. 9, 13, 19, 26, 29, 68, 87, 92, 100, 103, 105, 138, 166); **Madagascar** (Conventions Nos. 26, 29, 87, 88, 100, 119, 120, 122, 138, 159, 173); **Republic of Moldova** (Convention No. 108); **Mongolia** (Conventions Nos. 59, 87, 111, 122, 135, 144, 155, 159); **Netherlands**: Aruba (Conventions Nos. 9, 29, 81, 87, 94, 101, 114, 118, 121, 137, 140, 144, 145, 146, 147), Netherlands Antilles (Conventions Nos. 9, 58); **Niger** (Conventions Nos. 29, 138); **Pakistan** (Conventions Nos. 16, 22, 29); **Panama** (Conventions Nos. 29, 182); **Saint Kitts and Nevis** (Convention No. 182); **Slovakia** (Conventions Nos. 128, 130, 142); **Slovenia** (Conventions Nos. 9, 91, 103, 119, 122, 126, 129, 135, 147); **Spain** (Convention No. 166); **United Republic of Tanzania** (Conventions Nos. 11, 12, 87, 95, 131, 138, 170); **United Republic of Tanzania – Tanganyika** (Convention No. 81); **Trinidad and Tobago** (Convention No. 87); **Tunisia** (Conventions Nos. 26, 29, 87, 91, 99, 100, 119, 120, 122, 138, 182); **United Kingdom**: British Virgin Islands (Conventions Nos. 10, 26, 29, 87), St. Helena (Conventions Nos. 17, 29, 58, 87).

Supply of first reports

58. A total of 167 of the 297 first reports due on the application of ratified Conventions were received by the time that the Committee's session ended, compared to last year when 159 out of the 277 first reports had been received. However, a number of countries have failed to supply first reports, some of which are more than a year overdue. Thus, certain first reports on ratified Conventions have not been received from the following 18 States: since 1992 – **Liberia** (Convention No. 133); since 1995 – **Armenia** (Convention No. 111), **Kyrgyzstan** (Convention No. 133); since 1996 – **Armenia** (Conventions Nos. 100, 122, 135, 151), **Uzbekistan** (Conventions Nos. 47, 52, 103, 122); since 1998 – **Armenia** (Convention No. 174), **Equatorial Guinea** (Conventions Nos. 68, 92), **Uzbekistan** (Conventions Nos. 29, 100); since 1999 – **Turkmenistan** (Conventions Nos. 29, 87, 98, 100, 105, 111), **Uzbekistan** (Conventions Nos. 98, 105, 111, 135, 154); since 2001 – **Armenia** (Convention No. 176), **Cambodia** (Conventions Nos. 105, 111, 150), **Congo** (Conventions Nos. 81, 98, 100, 105, 111, 138, 144), **Kyrgyzstan** (Convention No. 105), **Tajikistan** (Convention No. 105); and since 2002 – **Azerbaijan** (Conventions Nos. 81, 129), **Bosnia and Herzegovina** (Convention No. 105), **Chad** (Conventions Nos. 132, 182), **Cyprus** (Convention No. 182), **Gambia** (Conventions Nos. 29, 105, 138), **Kyrgyzstan** (Convention No. 81), **Papua New Guinea** (Conventions Nos. 103, 111, 138, 158, 182), **Saint Kitts and Nevis** (Conventions Nos. 29, 87, 98, 100, 105, 111, 144), **Saint Lucia** (Conventions Nos. 154, 158, 182), **Yemen** (Convention No. 182).

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

Replies to the comments of the supervisory bodies

60. Governments are requested to reply in their reports to the observations and direct requests made by the Committee, and the majority of governments have provided the replies requested. In accordance with the established practice, the International Labour Office wrote to all the governments who failed to provide such replies, requesting them to supply the necessary information. Of the 42 governments to which such letters were sent, only ten have provided the information requested.

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

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

62. In all there were 325 cases of no response (concerning 37 countries).⁸ There were 379 such cases (concerning 42 countries) last year. It is bound to repeat the observations or direct requests already made on the Conventions in question.

⁸ **Albania** (Conventions Nos. 29, 100, 105, 111); **Antigua and Barbuda** (Conventions Nos. 14, 81, 87, 101, 111); **Bosnia and Herzegovina** (Conventions Nos. 87, 111); **Botswana** (Conventions Nos. 29, 87, 98, 111, 144); **Cambodia** (Conventions Nos. 4, 13, 87, 98, 122); **Cameroon** (Conventions Nos. 14, 78, 87, 89, 100, 106, 111, 122, 132); **Central African Republic** (Conventions Nos. 18,

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

B. Examination of reports

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

Observations and direct requests

65. In many cases, the Committee has found that no comment is called for regarding the way in which a ratified Convention has been implemented. In other cases, however, the Committee has found it necessary to draw the attention of the governments concerned to the need to take further action to give effect to certain provisions of Conventions or to supply additional information on given points. As in previous years, its comments have been drawn up in the form either of "observations" which are reproduced in the report of the Committee, or "direct requests", which are not published in the report, but are communicated directly to the governments concerned.⁹

66. As in the past, the Committee has indicated by footnotes the cases in which, because of the nature of the problems met in the application of the Conventions concerned, it has seemed appropriate to ask the government to supply a report earlier than would otherwise have been the case.¹⁰ Under the present reporting cycle,¹¹ which applies to most Conventions, such early reports have been requested after an interval of either one or two years, according to circumstances. In some instances, the Committee has also requested the government to supply full particulars to the Conference at its next session in June 2004. In addition, in certain cases the Committee has requested governments to furnish detailed reports when simplified reports would otherwise be due.

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

Practical application

68. The Committee also notes with interest the judicial and administrative decisions on questions of principle relating to the application of ratified Conventions to which certain countries have referred in their reports. It noted that 76

41, 62, 87, 95, 98, 117, 118, 119); **Chad** (Conventions Nos. 14, 26, 29, 41, 135); **Congo** (Conventions Nos. 26, 29, 87, 95, 149, 152); **Democratic Republic of the Congo** (Conventions Nos. 98, 100, 102, 150); **Denmark** (Conventions Nos. 52, 111, 119, 120, 129, 139, 144, 169); Faeroe Islands (Conventions Nos. 9, 16, 92), Greenland (Conventions Nos. 14, 106, 122); **Equatorial Guinea** (Conventions Nos. 1, 30, 138); **Eritrea** (Conventions Nos. 87, 98, 111); **France**: French Southern and Antarctic Territories (Conventions Nos. 58, 87, 111), New Caledonia (Conventions Nos. 89, 95, 100, 111, 127, 129, 131, 142, 144, 149); **Georgia** (Conventions Nos. 29, 87, 98, 100, 111, 138); **Ghana** (Conventions Nos. 30, 87, 89, 94, 100, 111, 117, 149); **Grenada** (Conventions Nos. 81, 87, 144); **Guinea** (Conventions Nos. 3, 10, 16, 29, 33, 62, 81, 87, 94, 95, 105, 111, 113, 117, 118, 119, 120, 121, 122, 133, 139, 140, 142, 144, 152, 159); **Haiti** (Conventions Nos. 14, 24, 25, 29, 77, 78, 81, 87, 98, 100, 106, 111); **Israel** (Conventions Nos. 98, 100, 111, 117); **Kyrgyzstan** (Conventions Nos. 14, 29, 52, 77, 78, 79, 87, 95, 98, 100, 122, 124, 148, 149, 159, 160); **Lao People's Democratic Republic** (Conventions Nos. 13, 29); **Liberia** (Conventions Nos. 22, 29, 53, 55, 58, 87, 92, 98, 105, 111, 112, 113, 114, 133, 147); **Libyan Arab Jamahiriya** (Conventions Nos. 118, 121, 122, 128, 130, 131, 138); **Malawi** (Conventions Nos. 29, 81, 89, 105, 107, 129, 138, 149); **Mali** (Conventions Nos. 14, 81, 159); **Paraguay** (Conventions Nos. 1, 30, 52, 79, 81, 87, 89, 90, 98, 111, 117, 119, 120, 122, 169); **Serbia and Montenegro** (Conventions Nos. 102, 121); **Sierra Leone** (Conventions Nos. 8, 17, 26, 29, 59, 81, 88, 95, 98, 99, 100, 101, 105, 111, 119, 125, 126, 144); **Slovakia** (Conventions Nos. 29, 102, 105, 115, 128, 130); **Solomon Islands** (Conventions Nos. 8, 14, 16, 26, 29, 81, 95); **Swaziland** (Conventions Nos. 11, 81, 89, 96, 131); **Tajikistan** (Conventions Nos. 14, 29, 47, 52, 77, 78, 87, 95, 98, 100, 103, 111, 115, 122, 124, 126, 138, 142, 160); **Trinidad and Tobago** (Conventions Nos. 29, 105); **Uganda** (Conventions Nos. 17, 26, 29, 81, 94, 98, 105, 122, 123, 143, 144, 154, 158, 162); **United Arab Emirates** (Conventions Nos. 1, 29, 105); **United Kingdom**: Anguilla (Conventions Nos. 29, 140), Montserrat (Conventions Nos. 26, 29, 82, 95).

⁹ ILO: *Handbook of procedures relating to international labour Conventions and Recommendations*, Geneva, Rev.2/1998, para. 54(k). These comments appear in the CD-ROM version of the ILOLEX database.

¹⁰ Convention No. 1: **Bolivia**; Convention No. 3: **Venezuela**; Convention No. 19: **Djibouti, France** (French Polynesia); Convention No. 24: **Colombia, Haiti**; Convention No. 25: **Colombia, Haiti**; Convention No. 26: **Guinea**; Convention No. 29: **Myanmar, Sudan**; Convention No. 30: **Bolivia**; Convention No. 77: **Bolivia**; Convention No. 78: **Cameroon**; Convention No. 88: **Argentina**; Convention No. 94: **Egypt**; Convention No. 95: **Colombia, Islamic Republic of Iran, Poland, Ukraine**; Convention No. 97: **China: Hong Kong Special Administrative Region, Malaysia: Sabah**; Convention No. 98: **Czech Republic**; Convention No. 103: **Chile, Ghana, Guatemala, Libyan Arab Jamahiriya, Sri Lanka, Uruguay**; Convention No. 107: **India**; Convention No. 115: **Brazil**; Convention No. 118: **Barbados, Netherlands, Syrian Arab Republic**; Convention No. 131: **Bolivia, Uruguay**; Convention No. 133: **Liberia**; Convention No. 142: **Algeria, Switzerland**; Convention No. 144: **Guatemala, Guinea**; Convention No. 153: **Ecuador**; Convention No. 169: **Bolivia, Ecuador, Guatemala, Paraguay**.

¹¹ After the first report, subsequent reports are requested every two years for the priority Conventions and every five years for other Conventions (doc. GB.258/6/19).

reports contain information of this kind and thereby shed additional light on the problems raised in these cases by the practical application of the Conventions in question.

Cases of progress

69. In accordance with its usual practice, the Committee has drawn up a list of the cases in which it has been able to **express its satisfaction** at the adoption of necessary changes in a country's law or practice following comments by the Committee on the degree of conformity between national law or practice and the provisions of a ratified Convention. Details concerning the cases in question are to be found in Part II of this report and cover 34 instances in which measures of this kind have been taken in 28 countries. The full list is as follows:

List of the cases in which the Committee has been able to express its satisfaction at certain measures taken by the governments of the following countries:	
<i>State</i>	<i>Conventions Nos.</i>
Argentina	111
Belarus	52
Belgium	138
Bolivia	129
Bulgaria	120
China – Hong Kong Special Administrative Region	115
Colombia	29
Costa Rica	138
Côte d'Ivoire	52
Cyprus	100
Democratic Republic of the Congo	98
Egypt	106
France	115
Jordan	98
Latvia	100, 131
Luxembourg	81
Morocco	129
Peru	29
Poland	129
Portugal	81, 103, 129
Russian Federation	138
Rwanda	81
Saudi Arabia	81
Spain	138
Syrian Arab Republic	19, 95, 118, 129
Tunisia	81
United Kingdom – Jersey	81
Zimbabwe	98

70. Thus, the total number of cases in which the Committee has been led to **express its satisfaction** with the progress achieved following its comments has risen to 2,376 since the Committee began listing them in its reports in 1964.

71. In addition, there have been 213 cases in which the Committee has been able to **note with interest** various measures that have been taken following its comments with a view to ensuring a fuller application of ratified Conventions. Details concerning the cases in question are to be found in Part II of this report and in the requests

addressed directly to governments concerned and cover 213 instances in which measures of this kind have been taken concerning 106 countries. The full list is as follows:

List of the cases in which the Committee has been able to note with interest various measures taken by the governments of the following countries:	
<i>State</i>	<i>Conventions Nos.</i>
Albania	138
Algeria	24
Angola	26
Argentina	3, 29, 138
Australia	10, 100, 123, 173
Austria	87, 111
Azerbaijan	103
Bahamas	26
Barbados	118
Belarus	103, 138
Belgium	111, 138
Belize	26, 100, 111
Bolivia	103, 123, 160
Brazil	29, 89, 98, 100, 111, 162
Bulgaria	19, 87, 106
Burkina Faso	138
Cambodia	138
Central African Republic	138
Chile	111, 138
China – Hong Kong Special Administrative Region	3, 160
China – Macau Special Administrative Region	98
Colombia	111, 129, 169
Costa Rica	100, 102, 111
Côte d'Ivoire	3
Croatia	87, 91, 100, 111, 132
Cuba	103, 138
Cyprus	87, 100
Czech Republic	105, 123, 150
Denmark	100
Djibouti	87
Dominica	87
Dominican Republic	138
Ecuador	138, 182
Egypt	98
El Salvador	29
Eritrea	111
Estonia	14

Finland	100, 138
France	138
Gabon	111
Germany	111
Ghana	29
Guatemala	98, 100, 103, 169
Guinea	10, 33, 136
Guyana	111, 129, 138
Honduras	138, 169
Hungary	100
Indonesia	29, 98, 138
Ireland	26, 132, 160
Italy	29, 115, 138
Jamaica	87, 100, 111
Kazakhstan	98
Kenya	138
Kuwait	81
Latvia	3
Lebanon	52, 90, 100
Lithuania	81, 138, 173
Luxembourg	138
Malaysia	138
Mali	182
Mauritania	81
Mauritius	81, 138, 182
Republic of Moldova	103, 138
Mongolia	111
Morocco	81, 129, 138
Namibia	138, 182
Nepal	138
Netherlands	81, 103, 138
New Zealand	81, 100
Nicaragua	138
Norway	81, 115, 138
Panama	81, 100, 138, 182
Paraguay	29
Philippines	138
Poland	138
Portugal	81, 138
Qatar	81
Romania	131, 138, 182
Russian Federation	98, 138, 150
Rwanda	138, 182

Saint Lucia	87, 95
Saint Vincent and the Grenadines	81
San Marino	100, 138
Saudi Arabia	81
Senegal	138, 182
Serbia and Montenegro	138
Slovakia	89, 123, 138, 173
Slovenia	13, 103
South Africa	100, 138, 182
Spain	29, 81, 103, 115, 123, 136, 138
Sri Lanka	29, 81, 103, 138
Sweden	9, 100, 120
Switzerland	138, 182
Syrian Arab Republic	81, 129
United Republic of Tanzania	138
United Republic of Tanzania – Tanganyika	81
Thailand	29, 123
Togo	138
Tunisia	81, 99, 138
Turkey	138
Ukraine	95
United Arab Emirates	138
United Kingdom	105
United Kingdom – Jersey	81
Uruguay	129, 138
Venezuela	81
Yemen	138
Zambia	138
Zimbabwe	14, 100, 138

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

Role of employers' and workers' organizations

73. At each session, the Committee draws the attention of governments to the important role of employers' and workers' organizations in the application of Conventions and Recommendations. Moreover, it highlights the fact that numerous Conventions require consultation with employers' and workers' organizations, or their collaboration in a variety of measures. The Committee notes that almost all governments have indicated in the reports supplied under articles 19 and 22 of the Constitution the representative organizations of employers and workers to which, in accordance with article 23, paragraph 2, of the Constitution, they have communicated copies of the reports supplied to the Office. Almost all governments have indicated the organizations to which they have communicated copies of the information supplied to the Office on the submission to the competent authorities of the instruments adopted by the Conference.

Observations made by employers' and workers' organizations

74. Since its last session, the Committee has received 297 observations (compared to 400 last year), 37 of which were communicated by employers' organizations and 260 by workers' organizations. The Committee welcomes this increase, and recalls the importance it attaches to this contribution by employers' and workers' organizations to the tasks of the supervisory bodies, which is essential for the Committee's evaluation of the application of ratified Conventions in law and in practice.

75. The majority of observations received (284) relate to the application of ratified Conventions (see Appendix III).¹² Thirteen observations relate to the reports provided by governments under article 19 of the Constitution of the ILO relating to the Employment Policy Convention, 1964 (No. 122), and the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169), and aspects relating to the promotion of full, productive and freely chosen employment of the Human Resources Development Convention, 1975 (No. 142) and of the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189).¹³

76. The Committee notes that, of the observations received this year, 190 were transmitted directly to the Office, which, in accordance with the practice established by the Committee, referred them to the governments concerned for comment. In 107 cases the governments transmitted the observations with their reports, sometimes adding their own comments.

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

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

79. The Committee notes that the matters dealt with in these observations have touched on a very wide range of Conventions. The second part of this report contains most of the comments made by the Committee on cases in which the comments raised matters relating to the application of ratified Conventions. Where appropriate, other comments are examined in requests addressed directly to the governments.

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

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

- (a) information on the steps taken to submit to the competent authorities the instruments on safety and health in agriculture (Convention No. 184 and Recommendation No. 192), adopted by the Conference at its 89th Session (June 2001);
- (b) information on the steps taken to submit to the competent authorities the Promotion of Cooperatives Recommendation, 2002 (No. 193), the List of Occupational Diseases Recommendation, 2002 (No. 194), and the Protocol of 2002 to the Occupational Safety and Health Convention, 1981, adopted by the Conference at its 90th Session (June 2002);
- (c) additional information on the steps taken to submit to the competent authorities the instruments adopted by the Conference from its 31st Session (1948) to its 89th Session (2001) (Conventions Nos. 87 to 184, Recommendations Nos. 83 to 194 and the Protocols);
- (d) replies to the observations and direct requests made by the Committee at its previous session (November-December 2002).

81. The table in Appendix IV of Part Two of this report shows the position of each member State on the basis of the information supplied by governments regarding the obligation to submit the instruments adopted by the Conference to the competent authorities. Appendix V shows the overall situation with regard to the instruments adopted since the 31st Session (June 1948) of the Conference. Appendix VI contains a summary indicating, where the information has been provided, the name of the competent authority to which the instruments adopted by the Conference at its 89th and 90th Sessions (June 2001 and 2002) were submitted and the date of submission.

89th Session

82. The instruments on safety and health in agriculture adopted at the 89th Session (June 2001) of the Conference were to be submitted to the competent authorities within one year or, where that was not possible, under exceptional circumstances, within 18 months of the closure of the session, that is before 21 June 2002 and 22 December 2002, respectively. The Committee notes with interest the information on submission to the competent authorities provided by

¹² Information on observations made by employers' and workers' organizations on the application of Conventions received during the current year is available on the ILO web site: <http://webfusion.ilo.org/public/db/standards/normes/appl/index.cfm>

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

the following 76 States, in addition to those mentioned in the last report: **Argentina, Australia, Austria, Belarus, Belgium, Benin, Bolivia, Bulgaria, Cameroon, Canada, China, Colombia, Costa Rica, Cuba, Czech Republic, Denmark, Dominica, Ecuador, Egypt, El Salvador, Eritrea, Ethiopia, Finland, Georgia, Germany, Greece, Guatemala, Guinea-Bissau, Guyana, Honduras, Indonesia, Islamic Republic of Iran, Israel, Italy, Japan, Jordan, Kenya, Republic of Korea, Kuwait, Lebanon, Lithuania, Luxembourg, Malta, Mauritania, Mauritius, Republic of Moldova, Morocco, Myanmar, Netherlands, Nicaragua, Nigeria, Norway, Oman, Philippines, Poland, Qatar, Romania, San Marino, Serbia and Montenegro, Singapore, Slovakia, Sudan, Switzerland, The former Yugoslav Republic of Macedonia, Togo, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States, Venezuela, Viet Nam, Yemen and Zimbabwe.** The Committee also notes that Convention No. 184, which came into force on 20 September 2003, has received three ratifications.

90th Session

83. The Promotion of Cooperatives Recommendation, 2002 (No. 193), the List of Occupational Diseases Recommendation, 2002 (No. 194), and the Protocol of 2002 to the Occupational Safety and Health Convention, 1981, adopted at the 90th Session (June 2002) of the Conference, were to be submitted to the competent authorities within one year or, where that was not possible, under exceptional circumstances, within 18 months of the closure of the session of the Conference, that is before 20 June 2003 and 20 December 2003, respectively. The following 49 governments have provided information on the steps taken with a view to the submission of the Recommendations and the Protocol to the authorities which they consider competent: **Angola, Belarus, Benin, Cambodia, Canada, China, Costa Rica, Dominican Republic, Ecuador, Egypt, Estonia, Finland, Germany, Guatemala, Honduras, Italy, Japan, Jordan, Kuwait, Lebanon, Lithuania, Luxembourg, Malaysia, Malta, Mauritius, Morocco, Myanmar, Namibia, New Zealand, Nicaragua, Nigeria, Oman, Pakistan, Philippines, Poland, Romania, Saudi Arabia, Singapore, Slovenia, Suriname, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom, Viet Nam, Zambia and Zimbabwe.**

31st to 88th Sessions

84. The Committee welcomes the special efforts made by the following governments: **Angola, India and Suriname.**

General aspects

85. The discussions in the Conference Committee have shown that the obligation of submission reinforces the relations between the Organization and the competent authorities and stimulates the ratification of Conventions and tripartite dialogue at the national level. The Worker members and the Employer members of the Conference Committee have emphasized that the submission to national parliaments, as required by article 19 of the Constitution of the ILO, should be a matter of course in a democratic State.

86. As it explained in its general considerations in November-December 1998 on the obligation set forth by the Constitution of the ILO to submit the instruments adopted by the Conference to the competent authorities, the Committee wishes to recall that this presentation of the instruments to parliamentary bodies in no way infringes the freedom of the competent bodies of the State to decide whether or not to ratify a Convention. Indeed, irrespective of the final decision that is taken in this respect, the action taken with a view to submission provides an opportunity for the national authorities and the social partners to carry out a detailed examination of the instruments adopted by the Conference. The transmission of the instruments adopted by the Conference to the parliamentary bodies provides an opportunity for the State's bodies to be informed of the instruments adopted by the Conference and for public opinion to be made aware of the Organization's standard-setting instruments. In this spirit, the Committee hopes that the comments that it is addressing this year to some 130 governments will mean that they are better equipped to discharge the constitutional obligation of submission and will thereby contribute to the dissemination of the standards adopted by the Conference and to the ratification of recent Conventions.

87. Dialogue with the governments concerned sometimes makes it possible to identify the consultative body to which the instruments adopted by the Conference have to be submitted for information. Informing such a body, instead of a parliamentary body, makes it possible to carry out a full examination of the issues addressed by the Conference. This process ensures that the instruments are widely disseminated among the public, which is one of the purposes of the obligation of submission.

88. Under the terms of article 23, paragraph 2, of the Constitution, Members have to communicate to the representative organizations of employers and workers copies of the information transmitted to the ILO concerning the submission to the competent authorities of the instruments adopted by the Conference. This provides these occupational organizations with an opportunity to make their own observations on the effect given or to be given to the instruments that are submitted.

89. For the 110 States which have already ratified the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), effective consultations have to be held on the proposals made to parliaments when submitting the instruments adopted by the Conference (Article 5, paragraph 1(b), of Convention No. 144). Fulfilment of

the submission procedure is an important moment of dialogue between government authorities, the social partners and parliamentarians.

Comments of the Committee and replies from governments

90. As in its previous reports, the Committee in section III of Part Two of this report makes individual observations on the points that should be brought to the special attention of governments. In addition, requests for additional information on other points have been addressed directly to a certain number of countries (see the list at the end of Part II, section II).

91. Emphasis should be placed on the importance of the communication by governments of the information and documents called for in *points I and II of the questionnaire* at the end of the Memorandum of 1980 concerning the obligation to submit Conventions and Recommendations to the competent authorities. The Committee must be provided for examination with a summary or copy of the documents by which the instruments have been submitted to the parliamentary bodies and the proposals made on the effect to be given to them. The obligation of submission is in practice only fulfilled when the instruments adopted by the Conference have been submitted to parliament and the competent authorities have reached a decision on them. The Office must be informed of this decision in the same way as of the submission of the instruments to parliament.

Special problems

92. The Committee regrets that no information has been supplied by the governments of the following 14 countries showing that the instruments adopted by the Conference during at least the last seven sessions (from the 83rd to the 89th Sessions) have in fact been submitted to the competent authorities: **Afghanistan, Armenia, Cambodia, Comoros, Haiti, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Sao Tome and Principe, Sierra Leone, Solomon Islands, Somalia, Turkmenistan and Uzbekistan.**

93. In response to the call made by the Director-General for the highest priority to be given to the ratification of the Worst Forms of Child Labour Convention, 1999 (No. 182), some governments were particularly prompt in sending information on the steps taken with a view to the submission of this instrument, adopted by the Conference on 17 June 1999 at its 87th Session. Some 17 States have not yet submitted the instruments of 1999 (Convention No. 182 has received 147 ratifications). The Committee remains concerned that some States which, although they have ratified Convention No. 182, have built up a very significant backlog in the submission to the competent authorities of the instruments adopted by the Conference. These countries (**Belize, Bolivia, Bosnia and Herzegovina, Cameroon, Central African Republic, Congo, Dominica, Guinea-Bissau, Grenada, Kazakhstan, Madagascar, Mali, Saint Lucia, Senegal**) were mentioned in previous reports.

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

95. The Committee hopes to be able to note the progress achieved in its next report. It reminds governments of the possibility of having recourse to the technical assistance of the ILO, particularly through the standards specialists in the field and the relevant branches of the Office.

Instruments chosen for reports under article 19 of the Constitution

96. In accordance with the decisions taken by the Governing Body, governments were requested to supply reports under article 19 of the ILO Constitution on the Employment Policy Convention, 1964 (No. 122), and the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169), and aspects relating to the promotion of full, productive and freely chosen employment of the Human Resources Development Convention, 1975 (No. 142), and of the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189).

97. A total of 545 reports were requested and 283 received.¹⁴ This represents 51.93 per cent of the reports requested.

98. The Committee notes with regret that, for the past five years, none of the reports on unratified Conventions and Recommendations requested under article 19 of the ILO Constitution has been received from the following 27 countries: **Afghanistan, Bosnia and Herzegovina, Cameroon, Central African Republic, Congo, Democratic Republic of the Congo, Equatorial Guinea, Georgia, Grenada, Guinea, Iraq, Ireland, Kyrgyzstan, Liberia, Mali, Mongolia, Nepal, Saint Vincent and the Grenadines, Sao Tome and Principe, Sierra Leone, Slovakia, Solomon Islands, Tajikistan, The former Yugoslav Republic of Macedonia, Turkmenistan, Uganda, Uzbekistan.**

¹⁴ ILO: Report III (Part 1B), ILC, 92nd Session, 2004.

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

100. Part Three of this report (issued separately as Report III (Part 1B)) contains the General Survey on employment policies. In accordance with the practice followed in previous years, the survey has been prepared on the basis of a preliminary examination by a working party comprising three persons appointed by the Committee from among its members.

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

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

101. In the context of the collaboration established with other international organizations on questions concerning the supervision of the application of international instruments relating to subjects of common interest, copies of the reports received under article 22 of the Constitution were forwarded to the United Nations, to certain specialized agencies and other intergovernmental organizations with which the ILO has entered into special arrangements for this purpose. The list of the Conventions and the international organizations to which reports were forwarded is as follows:

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

B. United Nations treaties concerning human rights

102. The Office regularly sends written reports and submits oral information, in accordance with existing arrangements with each one of them, to the various bodies responsible for the application of United Nations Conventions that are relevant to the ILO's mandate. These bodies constitute the supervisory machinery established by the United Nations to examine reports which governments are required to submit at regular intervals on each of the UN instruments that they have ratified. Since the Committee's last meeting, this has been done with regard to:

- the International Covenant on Economic, Social and Cultural Rights (three sessions);
- the International Covenant on Civil and Political Rights (two sessions);

- the International Convention on the Elimination of All Forms of Discrimination against Women (three sessions);
- the International Convention on the Elimination of All Forms of Racial Discrimination (two sessions);
- the Committee on the Rights of the Child (three sessions).

103. The Office has established productive relationships with all these committees, and each of them regularly refers to information provided by the ILO and recommends the ratification of appropriate ILO Conventions or measures to apply them more fully. The recent entry into force of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families will give rise to similar activities with the body established to supervise the application of that Convention.

104. The Office was also represented at the 15th Meeting (June 2003) of Chairpersons to discuss closer cooperation between the United Nations treaty bodies and the ILO and, in particular, how the treaty bodies would make better use of the detailed information provided in the ILO reports. In addition, the Office was represented at the Tenth Annual Meeting of Special Rapporteurs/Experts/ Representatives and Chairpersons of UN Working Groups, at which progress was achieved in ensuring that these UN mechanisms work in closer cooperation with the ILO.

C. European treaties

European Code of Social Security and its Protocol

105. In accordance with the supervisory procedure established under article 74(4) of the Code, and the arrangements made between the ILO and the Council of Europe, the Committee of Experts examined 16 reports on the application of the European Code of Social Security and, as appropriate, its Protocol. It noted that the States parties to the Code and the Protocol continue in large measure to apply them. At the sitting in which the Committee examined the reports on the European Code of Social Security and its Protocol, the Council of Europe was represented by Ms. Michelle Akip. The conclusions of the Committee regarding these reports will be sent to the Council of Europe.

106. In addition, representatives of the ILO took part as technical advisers in the meeting of the Committee of Experts on Standard-Setting Instruments in the field of social security held in Strasbourg (France) in September 2003, to examine the application of these instruments on the basis of the conclusions of the Committee of Experts. The Committee of Experts on Standard-Setting Instruments endorsed the conclusions of the Committee of Experts. Joint missions with the Council of Europe with a view to the ratification of the Code and the ILO's social security Conventions were carried out in the following countries: **Armenia** (November 2003), **Azerbaijan** (June 2003), **Hungary** (March 2003), **Romania** (December 2003) and the **Russian Federation** (April 2003).

European Social Charter

107. In accordance with Article 26 of the European Social Charter, the ILO participates in an advisory capacity in the sessions of the Committee of Independent Experts responsible for supervising the application of the Charter. Since the last session of the Committee, **Croatia** has ratified the European Social Charter, the Protocol amending the Social Charter and the Additional Protocol to the Charter providing for a system of collective complaints. The latter two instruments have also been ratified by **Belgium**. Furthermore, **Latvia** has ratified the Protocol amending the Social Charter.

D. Matters relating to human rights

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

109. The Committee recalls that the Governing Body decided, at its March-April 1995 session, to collect information on the ratification situation of the ILO Conventions dealing with fundamental human rights (Conventions Nos. 29 and 105, 87 and 98, 100 and 111, and 138 and 182, the last having been added after its adoption in 1999) and, at its subsequent sessions, examined reports collating the replies of member States to the Director-General's letter calling for their universal ratification. The Governing Body has also examined reports of the Office's assistance to the member States for the ratification and application of these instruments. The campaign has been a great success, with more than 400 new ratifications or confirmations of ratifications previously applicable, undertaken by 130 countries. To date, of the Organization's 177 member States, 99 countries (16 more than a year ago) have ratified the eight fundamental Conventions, 33 have ratified seven, and increasing numbers of States continue to deposit ratifications of these instruments. Among the eight fundamental Conventions, the Worst Forms of Child Labour Convention, 1999 (No. 182), has now acquired 147 ratifications, attaining the fastest ratification pace of any ILO Convention in its history, while the Minimum Age Convention, 1973 (No. 138), also continues to be ratified at a rapid pace and approaches the levels of ratification of the other fundamental Conventions. The campaign continues, and detailed periodic reports are submitted to the Governing Body each year.

110. The ILO participates in the observance by the United Nations system of international years and decades whenever they are relevant to its work. Mention may be made of the Third Decade to Combat Racism and Racial Discrimination (1993-2003), the International Decade of the World's Indigenous People (1995-2004) and the United Nations Decade for Human Rights Education (1995-2004).

E. Meetings during the current session

111. During the present session, the Committee exchanged views with the President and members of the European Committee of Social Rights on matters of common interest. Moreover, the Committee received an official visit from judges of the Supreme Court of Spain, during which there was an exchange of views on the application of international labour standards. Finally, the Committee had the opportunity to meet and exchange views with experts of the Committee on Economic, Social and Cultural Rights of the United Nations Economic and Social Council.

* * *

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

Geneva, 12 December 2003.

(Signed) Robyn Layton, QC,
Chairperson.

A. Al-Fuzaie,
Reporter.

Appendix to the General Report

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

Mr. Rafael ALBURQUERQUE (Dominican Republic),

Doctor of Law; Professor of Labour Law, Pontificia Universidad Católica Madre y Maestra; former Minister of Labour from 1991 to August 2000; Special Representative of the Director-General of the ILO for cooperation with Colombia from September 2000 to June 2001; Doctor of Law *honoris causa* of the Universidad Central del Este of the Dominican Republic; Academic Adviser, San Martín de Porres University (Lima); member of the Drafting Committee for the Labour Code and its implementing regulations; member of the “Academia Iberoamericana de Derecho del Trabajo y de la Seguridad Social”; former President and Secretary-General of the “Instituto Latinoamericano de Derecho del Trabajo y la Seguridad Social”.

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

Professor of Private Law of the University of Kuwait; attorney; member of the International Court of Arbitration of the International Chamber of Commerce (ICC); member of the Administrative Board of the Centre of Arbitration of the Chamber of Commerce and Industry of Kuwait; former Director of Legal Affairs of the Municipality of Kuwait; former Adviser to the Embassy of Kuwait (Paris).

Ms. Janice R. BELLACE (United States),

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

Mr. Prfullachandra Natvarlal BHAGWATI (India),

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

Ms. Laura COX, QC (United Kingdom),

Justice of the High Court, Queen's Bench Division; LL B, LL M of the University of London; previously a Barrister specializing in employment law, discrimination and human rights; Head of Cloisters Chambers, Temple (1995-2002); Chairperson of the Bar Council Sex Discrimination Committee (1995-1999) and Equal Opportunities Committee (1999-2002); Bencher of the Inner Temple; member of the Independent Human Rights Organisation Justice (former Council member) and one of the founding Lawyers of Liberty (the National Council for Civil Liberties); previously a Vice-President of the Institute of Employment Rights and member of the Panel of Experts advising the Cambridge University Independent Review of Discrimination Legislation; currently Chairperson of the Board of INTERIGHTS, the International Centre for the Legal Protection of Human Rights and Chairperson of the Equal Treatment Advisory Committee of the Judicial Studies Board.

Ms. Blanca Ruth ESPONDA ESPINOSA (Mexico),

Doctor of Law; Professor of International Public Law at the Law Faculty of the National Autonomous University of Mexico; former President of the Senate of the Republic (1989) and of the Foreign Relations Committee; former President of the Population and Development Committee of the Chamber of Deputies and member of the Labour and Social Security Committee; former President of the Inter-American Parliamentary Group on Population and Development and former Vice-President of the Global Forum of Spiritual and Parliamentary Leaders; member of the National Federation of Lawyers and of the Lawyers' Forum of Mexico; recipient of the award for Juridical Merit "the Lawyer of the Year (1993)"; former Director-General of the National Institute for Labour Studies; former Commissioner of the National Migration Institute and former editor of the *Mexican Labour Review*.

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

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

Mr. Pierre LYON-CAEN (France),

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

Mr. Sergey Petrovitch MAVRIN (Russian Federation),

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

Baron Bernd von MAYDELL (Germany),

Professor of Civil Law, Labour Law and Social Security Law; former Director of the Max Planck Institute for Foreign and International Social Law (Munich).

Mr. Cassio MESQUITA BARROS (Brazil),

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

Mr. Benjamin Obi NWABUEZE (Nigeria),

LL D (London); Hon. LL D (University of Nigeria); Senior Advocate of Nigeria; Laureate of the Nigerian National Order of Merit; former Professor of Law at the University of Nigeria; former Professor and Dean of the Faculty of

Law at the University of Zambia; former member of the Governing Council, Nigerian Institute of International Affairs; Fellow of the Nigerian Institute of Advanced Legal Studies; former member, Council of Legal Education; former Minister of Education for Nigeria; former Constitutional Adviser to the Government of Kenya (1992), Ethiopia (1992) and Zambia (1993); Honourable Fellow of four higher educational institutions in Nigeria; International Intellectual of the Year for the year 2001.

Mr. Edilbert RAZAFINDRALAMBO (Madagascar),

Honorary First President of the Supreme Court of Madagascar; former President of the High Court of Justice; former Professor of Law at the University of Madagascar and at the Malagasy Institute for Judiciary Studies; former Arbitrator of the ICSID and of the International Civil Aviation Organization; former member of the International Council for Commercial Arbitration; former member of the International Court of Arbitration of the International Chamber of Commerce; Arbitrator at the Joint Court of Justice and Arbitration, ECOWAS (Africa); former Judge of the Administrative Tribunal of the ILO; former Alternate Chairman of the Staff Committee of Appeals, African Development Bank; former Vice-Chairman of the United Nations International Law Commission.

Mr. Miguel RODRIGUEZ PIÑERO Y BRAVO FERRER (Spain),

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

Mr. Amadou SÔ (Senegal),

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

Mr. Budislav VUKAS (Croatia),

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

Mr. Yozo YOKOTA (Japan),

Professor, Faculty of Law, Chuo University; Special Adviser to the Rector, United Nations University; Member of the UN Sub-Commission on the Promotion and Protection of Human Rights.



Part II. Observations concerning particular countries

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

General observations

Afghanistan

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

Armenia

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

Azerbaijan

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

Bosnia and Herzegovina

The Committee notes that the first report due since 2002 on Convention No. 105 has not been received. The Committee trusts that the Government will not fail in future to discharge its obligation to supply the report due on the application of this Convention, in accordance with its constitutional obligations and, if necessary, requesting appropriate assistance from the Office.

Cambodia

The Committee notes with regret that the first reports due since 2001 on Conventions Nos. 105, 111 and 150 have not been received. The Committee trusts that the Government will not fail in future to discharge its obligation to supply

the reports due on the application of ratified Conventions, in accordance with its constitutional obligations and, if necessary, requesting appropriate assistance from the Office.

Chad

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

Congo

The Committee notes with regret that the first reports due since 2001 on Conventions Nos. 81, 98, 100, 105, 111, 138 and 144 have not been received. The Committee trusts that the Government will not fail in future to discharge its obligation to supply the reports due on the application of ratified Conventions, in accordance with its constitutional obligations and, if necessary, requesting appropriate assistance from the Office.

Cyprus

The Committee notes that the first report due since 2002 on Convention No. 182 has not been received. The Committee trusts that the Government will not fail in future to discharge its obligation to supply the report on the application of this Convention, in accordance with its constitutional obligations and, if necessary, requesting appropriate assistance from the Office.

Equatorial Guinea

The Committee notes with regret that, for the sixth year in succession, the reports due have not been received. It also notes with regret that the first reports due since 1998 on Conventions Nos. 68 and 92 have not been received. The Committee trusts that the Government will not fail in future to discharge its obligation to supply reports on the application of ratified Conventions, in accordance with its constitutional obligations and, if necessary, requesting appropriate assistance from the Office.

Gambia

The Committee notes that the first reports due since 2002 on Conventions Nos. 29, 105 and 138 have not been received. The Committee trusts that the Government will not fail in future to discharge its obligation to supply the reports due on the application of ratified Conventions, in accordance with its constitutional obligations and, if necessary, requesting appropriate assistance from the Office.

Haiti

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

Kyrgyzstan

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

Liberia

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

Papua New Guinea

The Committee notes that the first reports due since 2002 on Conventions Nos. 103, 111, 138, 158 and 182 have not been received. The Committee trusts that the Government will not fail in future to discharge its obligation to supply the reports due on the application of ratified Conventions, in accordance with its constitutional obligations and, if necessary, requesting appropriate assistance from the Office.

Saint Kitts and Nevis

The Committee notes that the first reports due since 2002 on Conventions Nos. 29, 87, 98, 100, 105, 111 and 144 have not been received. The Committee trusts that the Government will not fail in future to discharge its obligation to supply the reports due on the application of ratified Conventions, in accordance with its constitutional obligations and, if necessary, requesting appropriate assistance from the Office.

Saint Lucia

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

Sierra Leone

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

Solomon Islands

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

Somalia

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

Tajikistan

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

The former Yugoslav Republic of Macedonia

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

Turkmenistan

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

Uganda

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

Uzbekistan

The Committee notes with regret that, for the eighth year in succession, the reports due have not been received. It also notes with regret that the first reports due since 1996 on Conventions Nos. 47, 52, 103 and 122 have not been received; nor have the first reports due since 1998 on Conventions Nos. 29 and 100; nor the first reports due since 1999 on Conventions Nos. 98, 105, 111, 135 and 154. The Committee trusts that the Government will not fail in future to discharge its obligation to supply reports on the application of ratified Conventions, in accordance with its constitutional obligations and, if necessary, requesting appropriate assistance from the Office.

Yemen

The Committee notes that the first report due since 2002 on Convention No. 182 has not been received. The Committee trusts that the Government will not fail in future to discharge its obligation to supply the report on the application of this Convention, in accordance with its constitutional obligations and, if necessary, requesting appropriate assistance from the Office.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Antigua and Barbuda, Australia (Norfolk Island), Bosnia and Herzegovina, Botswana, Burundi, Cambodia, Cameroon, Congo, Democratic Republic of the Congo, Denmark, Denmark (Faeroe Islands, Greenland), Djibouti, Eritrea, France (French Southern and Antarctic Territories, New Caledonia), Georgia, Ghana, Grenada, Iraq, Israel, Kiribati, Lesotho, Libyan Arab Jamahiriya, Malawi, Netherlands (Netherlands Antilles), Pakistan, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, San Marino, Serbia and Montenegro, Swaziland, United Republic of Tanzania (Tanganyika, Zanzibar), Trinidad and Tobago, United Kingdom (Anguilla, Bermuda, Falkland Islands (Malvinas), Montserrat), Yemen.*

Freedom of Association, Collective Bargaining, and Industrial Relations

Algeria

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

The Committee notes the Government's report.

The Committee recalls firstly that its last comment related to the following four issues:

- section 8 of Act No. 90-14 of 2 June 1990 concerning the registration of trade union organizations and, more precisely, its general application in practice and in particular in the case of the Algerian Confederation of Autonomous Trade Unions (CASA);
- section 1, in conjunction with sections 3, 4 and 5, of Legislative Decree No. 92-03 of 30 September 1992, defining as subversive certain activities, and its possible repercussions on the exercise of the right to strike;
- sections 43 and 48 of Act No. 90-02 of 6 February 1990 providing, on the one hand, for the prohibition of strikes on grounds of a serious economic crisis and, on the other, for compulsory arbitration to bring an end to a collective dispute; and
- the reform of the conditions of service of the public service.

Articles 2 and 5 of the Convention. Right of workers, without previous authorization, to establish and join organizations of their own choosing and to establish federations and confederations. The Committee notes that the Government's comments on the provisions of Act No. 90-14 are confined to indicating that it gives full effect to the Convention and that the laws governing freedom of association contain no provisions limiting, in any way, the exercise of the right to organize. The Government indicates, among other points, that no prior authorization is required under Act No. 90-14 for the establishment of a trade union organization and that this Act applies in identical terms to all salaried employees irrespective of their sector. The Government adds that the Act provides for penal sanctions against any hindrance of the free exercise of the right to organize. The Committee nevertheless recalls that, in its previous comments, the International Confederation of Free Trade Unions (ICFTU) contended that, in practice, the authorities prevent the registration of certain trade unions by refusing to issue a receipt of registration; the ICFTU referred in this respect to the case of CASA. At that time, the Government had already indicated that Act No. 90-14 required no authorization for the establishment of a trade union organization and that, with regard to the case of CASA, unions could conduct their activities within the framework of the envisaged confederation without awaiting the legal opinion of the Ministry of Labour and Social Security. The Committee, however, noted that the Government's reply in Case No. 2153 examined by the Committee on Freedom of Association referred to its refusals of the application for registration of two confederations, including CASA (see 327th Report, paragraphs 140-161).

The Committee therefore recalls that questions arise not in relation to the provisions of Act No. 90-14 themselves, but concerning their application in practice. In this respect, it once again draws the Government's attention to the fact that national regulations governing the constitution of occupational organizations are not in themselves incompatible with the provisions of the Convention, provided that they do not impair the guarantees granted by the Convention, and particularly that they are not equivalent in practice to a requirement for previous authorization for the establishment of trade union organizations, which is prohibited by *Article 2* (see General Survey of 1994 on freedom of association and collective bargaining, paragraphs 68 and 69). The Committee also notes that the Government recognized in the case examined by the Committee on Freedom of Association that difficulties might arise in the interpretation of the provisions respecting the right of the social partners to establish federations and confederations. In these conditions, the Committee once again requests the Government to provide clarifications on the application in practice of section 8 of Act No. 90-14, and particularly on the following aspects: the grounds on which registration may be refused, the related provisions, and their practical implications for the existence and functioning of an occupational organization and the right of appeal of such organizations against a refusal of their registration or the absence of acknowledgement of registration within the prescribed time limit. Finally, the Committee requests the Government to provide precise information on the manner in which the issue of the registration of CASA has finally been resolved.

Article 3. Right of organizations to organize their activities and formulate their programmes without any interference from the public authorities. Noting with regret that the Government has not provided any information with regard to Legislative Decree No. 92-03 of 30 September 1992, the Committee recalls that section 1 of this Decree, read together with sections 3, 4 and 5, defines as "subversive acts" offences directed, in particular, against the stability and normal functioning of institutions through any action intended to: (1) obstruct the operation of establishments providing public services; or (2) impede traffic or freedom of movement in public places or thoroughfares, under penalty of severe sanctions including imprisonment for up to 20 years. In the past, the Government had indicated that this Decree, issued under special circumstances, was not intended to cover the right to strike or freedom of association and that it had never been applied to workers exercising the right to strike peacefully. The Committee recognized in this respect that the great

majority of the provisions of the Decree do not lie within the scope of the protection afforded by the Convention. However, the very general wording of certain provisions, and particularly of those referred to above, implies a risk of violation of the right of workers' organizations to organize their activities and formulate their programmes to defend the interests of their members, including through recourse to strike action. The Committee therefore requests the Government to limit the scope of the Legislative Decree through the adoption of legislative measures or regulations which have the effect of ensuring that this text may not in any event be applied to workers who have exercised the right to strike peacefully. The Committee also requests the Government to keep it informed of any cases in which this Decree has been applied in the context of a strike.

Also noting with regret that the Government has not supplied any information on Legislative Decree No. 90-02 of 6 February 1990, the Committee recalls that section 43 of this Decree bans strikes not only in essential services the interruption of which would endanger the life, personal safety or health of the population, which the Committee has always considered admissible, but also where the effect of the strike is likely to engender a serious economic crisis, with collective disputes in such cases being subject to the conciliation and arbitration procedures provided for by the law. Furthermore, section 48 authorizes the Minister or the competent authority, where the strike persists and after the failure of mediation, to refer a collective dispute to the arbitration commission, after consultation of the employer and the workers' representatives. In previous reports, the Government contended that cases are only referred to the arbitration commission in the event of urgent economic and social necessity. The Committee wishes to emphasize once again that referral to arbitration in order to end a collective dispute should be allowed only if both parties so request and/or only in the event of a strike in essential services in the strict sense of the term, or in the case of a strike the extent and duration of which are likely to give rise to a serious national crisis. It therefore requests the Government to indicate the measures adopted or envisaged to amend the legislation as indicated above with a view to fully guaranteeing the right of workers' organizations to organize their activities and formulate their programmes without interference by the public authorities, in accordance with *Article 3*. The Committee also requests the Government to provide information on the manner in which sections 43 and 48 have been applied in practice.

Finally, the Committee reiterates its request to the Government concerning the progress made in the work of the National Commission for the Reform of State Institutions and requests it to provide any documentation on this subject, including any draft legislation respecting the conditions of service of the public service.

Antigua and Barbuda

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

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

In its previous comments, the Committee had recalled the need to amend sections 19, 20, 21 and 22 of the Industrial Court Act, 1976, which permit the referral of a dispute to the court by the Minister or at the request of one party with the consequent effect of prohibiting any strike action, under penalty of imprisonment, and which permit injunctions against a legal strike when the national interest is threatened or affected, as well as the overly broad list of essential services in the Labour Code. The Committee had noted the Government's indication in its latest report that the interruption of all these services on the list of essential services in the Labour Code would endanger the life, personal safety or health of the whole or part of the population. The Government further stated that the Minister is obliged to refer disputes to binding arbitration in cases of acute national crisis.

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

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

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

Argentina

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

The Committee notes the Government's report. The Committee also notes the comments made by the Central of Argentine Workers (CTA) and requests the Government to send its observations on these comments in its next report.

The Committee recalls that its comments relate to certain provisions of Act No. 23551 of 1988 respecting trade union associations and implementing Decree No. 467/88. More specifically:

- section 28 of the Act requires a petitioning association, in order to contest the trade union status of an association, to have a “considerably higher” number of members; and section 21 of implementing Decree No. 467/88 qualifies the term “considerably higher” by laying down that the association claiming trade union status should have at least 10 per cent more dues-paying members than the organization which currently has that status;
- section 29 of the Act provides that a “trade union at the enterprise level may be granted trade union status only when another first-level association and/or trade union does not already operate within the geographical area or the activity or category concerned”;
- section 30 imposes excessive conditions (existence of a difference of interests justifying separate representation and the lack of representation of the workers concerned under the status of the existing association or trade union) for granting trade union status to unions representing a trade, occupation or category;
- section 38 of the Act only permits associations with trade union status, and not associations that are merely registered, to benefit from the check-off of trade union dues; and
- sections 48 and 52 of the Act provide that only the representatives of associations which have been granted trade union status may benefit from special trade union protection (*fuero sindical*).

The Committee notes the Government's indication that: (1) it is making gradual progress with a process of generating the political and institutional conditions that will make it possible to achieve further compliance with the comments of the Committee of Experts based on consensus with the social partners, given that the current legal system is the result of a situation affected by historical, socio-economic and political factors and that the amendment of the legal provisions therefore requires a change in the balance of these factors, with the outcome affecting the rights guaranteed therein; (2) the implementation of specific measures has to be encouraged so that trade union organizations benefit from the necessary facilities to guarantee effectively the right of workers to freedom of choice and, in this respect, the proposal is intended to make progress in the legislation in strengthening the organizations established under section 23 of Act No. 23551 respecting trade union associations, by optimizing the protection of trade union delegates of such organizations (extending the scope of protection provided under Act No. 23542 to combat discrimination), strengthening the economic capacities of such organizations by providing for the employer to check off trade union dues and reducing the percentage referred to in section 28 of the Act respecting trade union associations; (3) the viability of the relevant legislative amendments and their subsequent sustainability require not only the political will of the Government, but also the achievement of a sufficient level of consensus between trade union organizations so that the collective interest can be maintained; and (4) contacts between the various trade union federations are being promoted and established to facilitate an agreement to simplify the task of the State in the adoption of the reforms, by incorporating the results of negotiations in the legislation and backing up the consensus solutions resulting from dialogue with the political force for their immediate implementation through a sufficient level of agreement between trade union organizations.

In this connection, the Committee observes with concern that for many years it has been referring to the above provisions of the legislation which raise serious problems of compliance with the Convention. The Committee hopes that the dialogue with the social partners, the beginning of which has been announced by the Government, will be reflected in the near future in the amendment of the legislative provisions upon which it has been commenting. The Committee requests the Government to provide information in its next report on any measures adopted in this respect.

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

The Committee takes note of the Government's reports.

1. *Article 4 of the Convention.* The Committee has been commenting for several years on certain provisions which restrict free collective bargaining by requiring the Ministry of Labour's approval for collective agreements which are broader in coverage than enterprise agreements. Under these provisions, and in granting approval, the Minister considers not only whether the collective labour agreement contains clauses that are contrary to the public order provisions of Acts Nos. 14250 and 23928, but also whether it meets criteria relating to productivity, investment and the introduction of technology and vocational training systems (section 3 of Act 23545, section 6 of Act No. 25546 and section 3 of Decree No. 470/93). The Committee observes that the Government has not communicated information on this matter. That being so, it once again asks the Government to take steps to repeal or amend the provisions in question in order to bring the legislation into full conformity with the Convention. The Committee requests the Government to provide information on all such measures in its next report.

2. The Committee further notes that, under section 7 of Act No. 25250 of May 2000, collective agreements concluded at enterprise level with the association having trade union status in the enterprise, must likewise be approved. The Committee asks the Government to provide information in its next report on the grounds on which such approval may be denied (stating whether they are the same as the criteria for approval of the agreements that are broader in scope than enterprise agreements, referred to in the previous paragraph).

3. Furthermore, in the light of the recommendations made by the Committee on Freedom of Association (Case No. 2117, 326th Report, paragraphs 196-209), the Committee also pointed out the need to ensure the right to collective bargaining of public officials in the province of Buenos Aires, since the Convention allows only public officials engaged in the administration of the State to be excluded from this right. The Committee notes that the Government has not commented on this matter. It accordingly asks the Government to provide information in its next report on any measures adopted to ensure that the workers in question enjoy the right to collective bargaining.

4. Lastly, the Committee takes note of the comments dated 17 November 2003, made by the Confederation of Argentine Workers (CTA), and requests the Government to send its response thereto.

Australia

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

The Committee notes the information provided in the Government's report, and the decisions of various courts at state and federal levels. The Committee further notes the recent communications by the Australian Council of Trade Unions and the Australian Chamber of Commerce and Industry and requests the Government to transmit its comments thereon.

Federal jurisdiction

1. *Workplace Relations Act, 1996*. The Committee's previous comments concerned the provisions of the Act dealing with the restrictions on the objectives of strikes, the prohibition of action in support of multi-employer agreements and the restrictions on industrial action beyond essential services. The Government reiterates its previous comments as follows:

- as regards *multi-employer agreements*, the Act itself does not prohibit strike action except in relation to industrial action during the period of operation of a certified agreement (section 170MN); the existing scope of protected industrial action is appropriate; extending protection to action associated with the negotiation of multi-employer certified agreements would discourage workplace level agreements and could potentially encourage disputes about matters extraneous to the parties, over which they have no power to agree;
- as regards *strike pay*, the prohibition in the legislation is not incompatible with freedom of association principles and merely reflects the common law rule that denies remuneration to workers who don't perform the work required by their contract of employment, as confirmed by national courts;
- as regards *industrial action threatening to cause significant damage to the economy and sympathy action*, the existing provisions have neither the effect of prohibiting industrial action beyond essential services or of amounting to an outright ban on strikes; termination or suspension of a bargaining period under section 170MW does not operate automatically and requires the exercise of a discretion by the Australian Industrial Relations Commission (AIRC), which must first identify whether one of a number of statutory criteria exist in the particular factual situation and then decide whether to exercise its discretion to suspend or terminate the bargaining period, as shown by a number of such decisions by the AIRC; in the event a bargaining period is suspended or terminated, further orders need to be obtained before any sanctions can be applied to those taking industrial action; these mechanisms provide ample safeguard against blanket prohibition on industrial action.

Noting with regret that the Government reiterates that it is not contemplating any legislative reform to bring its legislation into conformity with the Convention on the abovementioned points, the Committee recalls that: workers' organizations should be able to take industrial action in support of multi-employers agreements without running the risk of being sanctioned; providing in legislation that workers cannot take action in support of a claim for strike pay is not compatible with the principles of freedom of association; prohibiting industrial action that is threatening to cause significant damage to the economy goes beyond the definition of essential services in the strict sense of the term. In the case of the latter restriction, however, the Committee has considered that, in order to avoid damages which are irreversible or out of proportion to the occupational interests of the parties to a dispute, as well as damages to third parties, namely the users or consumers who suffer the economic effects of collective disputes, the authorities could establish a system of minimum service in services which are of public utility rather than impose an outright ban on strikes. The Committee requests the Government to amend these provisions of the Act.

2. *Trade Practices Act, 1974. Secondary boycotts*. In its previous comments, the Committee noted that section 45D, as amended, continued to render unlawful a wide range of boycott activity directed against persons who are not the employers of the boycotters and that breach of this provision could be sanctioned by severe pecuniary penalties, injunctions and damages. The Committee requested to be informed of the results of the review undertaken by the Committee for review of the competition provisions of the Trade Practices Act. The Government indicates that the Review Committee has made no recommendations with respect to section 45D of the Act; it concluded that these

provisions have served Australians well, have sustained a competitive environment which has benefited consumers, has achieved an appropriate balance between the prohibition of anti-competitive conduct and the encouragement of competition. Competition laws need to be distinguished from industry policy and should not be seen as a means of achieving social outcomes unrelated to the encouragement of competition. No judicial decisions have been issued in this respect during the period under review.

The Committee recalls once again that a general prohibition on sympathy strikes could lead to abuse and that workers should be able to take such action, provided the initial strike they are supporting is lawful. The Committee again expresses the firm hope that the Government will amend the legislation accordingly, and requests it to continue to provide information on the practical application of the boycott provisions of the Act.

3. *Crimes Act, 1914.* The Committee's previous comments concerned the repeal of the provisions of the Act banning strikes in services where the Governor-General had proclaimed the existence of a serious industrial dispute "prejudicing or threatening trade or commerce with other countries or among the states" (section 30J), and prohibiting boycotts resulting in the obstruction or hindrance of the performance of services by the Australian Government or the transport of goods or persons in international trade (section 30K). The Government indicates that it is still considering the Committee's request to repeal these provisions but that, since no action has been taken under these provisions for over 40 years, amending the Crimes Act would be given low priority. The Committee notes this information, reiterates its hope that the Government will take measures to amend this legislation, and requests the Government to keep it informed of any practical application of these provisions.

State jurisdictions

1. *Queensland.* In its previous comments, the Committee had noted that section 638 of the Industrial Relations Act, 1999, provides that an organization may be deregistered if its members are engaged in industrial action that prevents or interferes with trade or commerce. The Government reiterates that the powers under section 638 would be used only in extreme circumstances and that such deregistration may only occur through an order of the full bench of the Queensland Industrial Relations Commission, which must perform its functions in a way that furthers the objects of the Act and that avoids unnecessary technicalities and facilitates the fair and practical conduct of proceedings under the Act. The Government considers that these provisions protect against deregistration of industrial organizations unless an exceptional situation arose. Recalling that this provision results in a prohibition of strikes going beyond essential services in the strict sense of the term, the Committee requests the Government to indicate the measures taken or envisaged to amend this provision.

2. *South Australia.* Noting that the Government of South Australia refers generally to the ongoing review of industrial relations in the State, the Committee requests the Government to keep it informed of any progress made in amending section 222 of the Industrial and Employees Relations Act, 1994 (secondary boycott provisions).

3. *Northern Territory and Victoria.* The Committee requests the Government to keep it informed of developments concerning the Northern Territory (Self Government Act), 1978, and the Victorian Commonwealth Powers (Industrial Relations) Act, 1996, and again requests it to take measures to have these state legislations amended in the light of the corresponding comments concerning the Federal Workplace Relations Act, 1996.

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

The Committee notes the Government's extensive reports. It further notes the detailed comments made by the Australian Council of Trade Unions (ACTU) and by the Australian Chamber of Commerce and Industry (ACCI), as well as the Government's response to these comments, which it received recently. In these conditions, the Committee was not able to examine the questions relating to the application of the Convention and will examine them next year.

Austria

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

The Committee notes with interest the information provided in the Government's report according to which the Ministry of Labour and Economy is working on a draft Bill which will amend the Industrial Relations Act (*Arbeitsverfassungsgesetz*) with the intention to extend to foreign workers the right to stand for election to work councils. The Committee notes that, according to the Government, the draft Bill will be submitted to Parliament within the current year (2003).

The Committee notes that it has been commenting for a number of years on the need to amend section 53(1) of the Industrial Relations Act so as to enable foreign workers to be eligible for election to work councils. The Committee trusts that the Government will finalize the draft Bill and will present it to Parliament in the very near future, so as to bring its legislation into full conformity with the Convention. The Committee requests the Government to keep it informed of progress made in this respect and to transmit the amended provisions once adopted.

Azerbaijan

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

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

Article 3 of the Convention. Right of workers' organizations to organize their activities and to formulate their programmes. The Committee notes with regret that the Government does not provide any new information with regard to the Committee's previous comments concerning restrictions on the right to strike (section 188-3 of the Criminal Code) and on the political activities of trade unions (section 6(1) of Act No. 792 on trade unions of 24 February 1994).

The Committee once again urges the Government to explicitly amend or repeal section 188-3 of the Criminal Code, which contains major restrictions on collective action with a view to disrupting public transport, associated with penalties of imprisonment, and to ensure that any restriction or prohibition on the right to strike is limited to public servants exercising authority in the name of the State or to essential services, the interruption of which would endanger the life, personal safety or health of the whole or part of the population.

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

The Committee recalls that in its previous report, the Government had stated that it had referred these matters to the bodies concerned in the ongoing reform of its legislation which would also review the Criminal Code. It requests the Government to communicate in its next report any measures taken or contemplated within the context of this reform in order to address the above comments and bring the legislation into full conformity with the Convention.

Bangladesh

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

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

The Committee notes that according to the Government, the draft Labour Code has been re-examined by the Tripartite Labour Code Review Committee and necessary prior action is being taken for its submission to Parliament, while the issue concerning the right of association of workers in the Security Printing Press has also been placed before the Review Committee. The Committee requests the Government to transmit a copy of the draft Labour Code and trusts that the process of amending the Labour Code will be concluded soon and that the legislation will be brought into full conformity with the requirements of the Convention.

The Committee notes in this respect that the Government's report is confined to reiterating previously provided information with regard to the Committee's long-standing comments concerning serious discrepancies between the national legislation and the Convention:

- the exclusion of managerial and administrative employees from the right of association (Industrial Relations Ordinance (IRO), 1969);
- restrictions on activities of public servants' associations (Government Servants (Conduct) Rules, 1979);
- restrictions regarding membership in trade unions and election of union officers (section 7-A(1)(b) of the IRO and section 3 of Act No. 22 of 1990);
- excessive external supervision of the internal affairs of trade unions (Rule 10 of the Industrial Relations Rules, 1977);
- the "30 per cent" requirement for initial or continued registration as a trade union (sections 7(2) and 10(1)(g) of the IRO);
- denial of the right to organize of workers in export processing zones (EPZ Authority Act, 1980);
- restrictions on the right to strike (sections 28, 32(2) and (4), 33(1), 57 and 59 of the IRO).

The Committee once again urges the Government to take all necessary measures in the very near future so as to bring its national legislation into full conformity with the Convention. The Committee requests the Government to inform it of any progress made in this regard.

In addition, a request regarding certain points is being addressed directly to the Government.

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

The Committee notes the Government's report.

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

- lack of legislative protection against acts of interference (*Article 2 of the Convention*);
- rights guaranteed for workers in export processing zones (EPZs). In this connection, the Committee had noted with interest that the Government had issued on 31 January 2001 a declaration (SRO No. 24, Law/2001) that would allow workers in EPZs the right of association and other facilities, as from 1 January 2004 and had requested the Government to provide the text of that declaration;
- obstacles to voluntary bargaining in the private sector (sections 7(2), 22 and 22A of the Industrial Relations Ordinance, 1969 (IRO)). In this connection, the Committee had requested the Government to take the necessary steps to remove the requirements: (a) in section 7(2) that, in order to be registered under the IRO, a trade union must have a membership of at least 30 per cent of the total number of workers in the establishment or group of establishments in which it was formed; and (b) in sections 22 and 22A of the IRO that only unions which were registered in accordance with section 7 may become collective bargaining agents;
- restrictions on voluntary bargaining in the public sector (section 3 of Act No. X of 1974), in particular through the practice of determining wage rates and other conditions of employment by means of government-appointed wages commissions.

1. Protection of workers' and employers' organizations against acts of interference by each other (or their agents).

The Committee notes that the Government refers to sections 15, 16 and 53 of the IRO concerning the protection of workers against "acts of anti-union discrimination". The Committee recalls, however, that *Article 2* of the Convention requires the prohibition of "acts of interference" by organizations of workers and employers (or their agents) in each other's affairs, designed in particular to promote the establishment of workers' organizations under the domination of employers or employers' organizations, or to support workers' organizations under the control of employers or employers' organizations. The Committee therefore requests the Government to adopt specific measures, coupled with effective and sufficiently dissuasive sanctions, against acts of interference, and keep it informed in this respect.

2. Trade union rights in EPZs. The Committee regrets that the Government has not sent the declaration of 31 January 2001 (SRO No. 24, Law/2001) concerning the right of association in EPZs and requests it to provide the text thereof.

3. Thirty per cent requirement for registration of a trade union and the requirement to have one-third of employees as its members in order to be able to negotiate at the enterprise level (sections 7(2) and 22 of the IRO). While noting that the Government considers that these requirements are justified in the national socio-political and economic context and are not opposed by workers, the Committee points out that these requirements may impair and make difficult the development of free and voluntary collective bargaining. The Committee therefore once again requests the Government to lower the percentage requirements set for registration of a trade union and collective bargaining (at least on behalf of its own members) and to keep it informed in this respect.

The Committee further recalls that where, under a system for nominating an exclusive bargaining agent, there is no union representing the required percentage to be so designated, collective bargaining rights should be granted to the existing unions, at least on behalf of their own members. The Committee therefore requests the Government to amend section 22 so as to bring it into conformity with the Convention and keep it informed in this respect.

4. Practice of determining wage rates and other conditions of employment in the public sector by means of government-appointed tripartite wages commissions (section 3 of Act No. X of 1974). While noting that the Government indicates that the present tripartite system is facilitative and gainful and that the collective bargaining agents enjoy the right to bargain with their stakeholders so that voluntary bargaining is not restricted, the Committee recalls that, in line with the Convention, free and voluntary collective bargaining should be conducted between the directly interested workers' organization and an employer or an employers' organization, which should be able to appoint freely their negotiating representatives. It therefore once again requests the Government to amend its legislation and to modify the present practice so as to bring them into conformity with the Convention, and to keep it informed in this respect.

5. The Committee further notes that the Government once again indicates that the draft Labour Code, submitted by the National Labour Commission, had raised several objections from various quarters (workers, employers and other legal bodies) and was reviewed by a committee of legal experts which, in turn, has submitted its views and report, and that the Government is taking active steps to have it passed by Parliament. The Committee, once again, strongly encourages the Government to ensure that the above comments are duly taken into consideration and reflected in the future legislation. The Committee requests the Government to inform it in its next report of any progress made in this respect.

Barbados

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

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

The Committee observes that the report does not contain any reply to the comments that the Committee has been making for many years now concerning section 4 of the Better Security Act, 1920, according to which any person who wilfully breaks a contract of service or hiring, knowing that this may endanger real or personal property, is liable to a fine or up to three months' imprisonment. The Committee recalls that in its previous comments it had pointed out that, although according to the Government this provision has never been invoked in the context of strike action, its amendment is nevertheless advisable so as to eliminate the possibility of invoking it in case of future strikes, with the possible exception of those in essential services in the strict sense of the term. The Committee requests the Government to provide information in its next report on the current legal status of the Better Security Act, 1920, as well as to confirm that section 4 has still not been invoked in the context of strike action and that it is not considered as applicable to strike action.

The Committee also notes the comments communicated by the International Confederation of Free Trade Unions (ICFTU) according to which, while trade union recognition is generally straightforward and respected by employers, it is not mandated by law and thus workers' right to join and form unions can be subject to pressure from employers. In this respect, the Committee notes from the Government's report that the process of reviewing legislation regarding trade union recognition, to which it has referred in previous reports, is still ongoing. The Committee requests the Government to provide information on any developments in this regard in its next report.

Belarus

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

Further to its previous comments concerning the observance of the Convention by Belarus, the Committee has taken note of the discussion that took place in the Conference Committee on the Application of Standards and the decision to place its conclusions in a special paragraph of its report for continued failure to implement the Convention. The Committee further notes the conclusions of the Committee on Freedom of Association in Case No. 2090 (330th, 331st and 332nd Report, approved by the Governing Body at its 286th, 287th and 288th Sessions in March, June and November 2003).

While taking due note of the Government's latest report in reply to its previous comments, the Committee observes the decision taken by the Governing Body at its 288th Session to constitute a commission of inquiry into the non-observance by Belarus of Conventions Nos. 87 and 98. In these circumstances, and in accordance with usual practice which suspends the functioning of the supervisory machinery during the period of operation of a commission of inquiry, the Committee will renew its supervision of the application of the Convention in Belarus once the commission has concluded its work.

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

See under Convention No. 87.

Belgium

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

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

The Committee recalls that its previous comments have for many years focused on the need to take measures for the adoption of objective, pre-established and detailed legislative criteria determining rules for the access of the occupational organizations of workers and employers to the National Labour Council, and that in this respect the Organic Act of 29 May 1952 establishing the National Labour Council still contains no specific criteria on representativeness, but leaves broad discretionary power to the Government. The Committee notes, from the Government's report, that a change in the situation would not be appropriate in the short term for the following reasons: successive social elections show an undeniable strengthening of representative organizations, whereas the non-representative trade union, which is nevertheless specific to higher and middle-level managerial staff, has seen a constant and very significant reduction in its support; the new social elections which will be held in May 2004 will provide new elements for assessing general trends; it would therefore be premature to undertake changes in the system that are of a particularly delicate nature in the meantime; the problems of representativeness and the role accorded to workers' and employers' organizations in the

European Union provide a context which will be increasingly essential over the next decade; the situation is also characterized by the weak employment situation.

The Committee considers that, despite the elements referred to by the Government in its report, namely a trend favouring trade unions recognized as being representative and a decline in the representativeness of trade unions specifically devoted to representing managerial staff, it is nevertheless necessary to adopt objective, pre-established and detailed criteria governing the rules of access of the occupational organizations of workers and employers to the National Labour Council. The Committee considers that the absence of such criteria is likely to unduly influence the choice of an organization by workers and to establish obstacles to the emergence of other representative organizations. The Committee recalls in this respect that this issue has been the subject of several complaints to the Committee on Freedom of Association. However, the objective of the development of such criteria is not in any way to impose a change in the current representation of workers, but solely to allow such a change if the workers so wish. The Committee also recalls that the Government enjoys broad discretion as to the criteria to be adopted in order to respond to the needs of the country's current delicate situation, as indicated in its report. The Committee therefore requests the Government to take all the necessary measures to adopt objective and pre-established criteria that are appropriate to the needs of the country in the very near future and to keep it informed of any measure adopted or envisaged for this purpose.

Belize

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

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

In its previous comments, the Committee had recalled the need to amend the Settlement of Disputes (Essential Services) Act of 1939, as amended by Ordinances Nos. 57, 92, 51 and 32 in 1973, 1981, 1988 and 1994, respectively, which empowered the authorities to refer a collective dispute to compulsory arbitration, to prohibit a strike or to terminate a strike in such services as postal, monetary, financial and revenue-collecting services, transport services (civil aviation) and services in which petroleum products are sold, which are not essential services in the strict sense of the term.

The Committee notes with interest from the Government's report that Ministerial Order No. 117 of 1998 has repealed Ordinance No. 32 of 1994 pursuant to which revenue services were included in the list of essential services. The Committee also notes that according to the Government, at present there is no list, as the Settlement of Disputes (Essential Services) Act was last amended in 1998.

As the 1998 repeal order only appears to deal with the question of the essential nature of revenue services, the Committee requests the Government to confirm that the abovementioned Ordinances, in so far as they concern the restriction of strike action for workers in the postal, monetary, transport (civil aviation), and petroleum sectors, are no longer in force and to provide copies of the relevant repealing orders.

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

The Committee takes note of the Government's report.

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

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

Benin

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

The Committee notes the information contained in the Government's report and recalls that in its previous observation:

- it requested the Government to indicate the measures taken to amend the provisions of the Labour Code requiring the filing of trade union by-laws to obtain legal personality from the authorities, including the Ministry of the Interior, under penalty of a fine (*Article 2 of the Convention. Right to establish trade unions without prior authorization*).

- it once again requested the Government to remove the obligation to notify the duration of the strike, as envisaged in Act No. 2001-09 of 21 June 2002 on the exercise of the right to strike (*Article 3. Right of workers' organizations to organize their administration and activities and to formulate their programmes*).
- it also requested it to amend Ordinance No. 38PR/MTPTPT, which does not grant seafarers the right to organize or the right to strike and provides for sentences of imprisonment for breaches of labour discipline, in order to afford seafarers the guarantees established by the Convention (*Article 2. Right of workers without distinction whatsoever to establish trade unions*).

The Committee notes that, according to the Government, the current process of the adoption of the OHADA Code (Organization for the Harmonization of Business Law in Africa), a text that is of regional scope, will provide a basis for amending the Labour Code with regard to the first two points and, in relation to the third point, a new Maritime Code taking into account the observations of the Committee is currently being formulated.

The Committee requests the Government to ensure that, in the process of amending the labour legislation, the above comments are fully taken into account in order to ensure that the national legislation is in conformity with the Convention.

With regard to the obligation to file by-laws under penalty of a fine, the Committee requests the Government to provide information on the application of these provisions in practice, and particularly to indicate whether penalties have been imposed in this respect over recent years.

In relation to the trade union rights of seafarers, noting that a new Maritime Code is being prepared, the Committee trusts that the provisions of this Code will take fully into account its previous observations. Reminding the Government that it can receive the technical assistance of the Office as from the stage of the formulation of the draft legislation, the Committee requests it to communicate a copy of the text as rapidly as possible.

Bolivia

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

The Committee notes the Government's report. The Committee observes with concern that it has been making comments on the application of the Convention in relation to the following points for many years:

- (1) the exclusion of agricultural workers from the scope of the General Labour Act of 1942, and therefore from the rights and guarantees of the Convention (section 1 of the General Labour Act of 1942 and Regulatory Decree No. 224 of 23 August 1943 issued under the General Labour Act);
- (2) the denial of the right to organize of public servants (section 104 of the General Labour Act);
- (3) the requirement that 50 per cent of the workers in an enterprise give their agreement to establish a trade union in any industry (section 103 of the General Labour Act);
- (4) the broad powers of supervision conferred upon the labour inspectorate over trade union activities (section 101 of the General Labour Act);
- (5) the requirement to be of Bolivian nationality for eligibility to trade union office (section 138 of the Regulatory Decree) and to be a permanent employee of the enterprise (sections 6(c) and 7 of Legislative Decree No. 2565, of June 1951);
- (6) the possibility of the dissolution of trade union organizations by administrative decision (section 129 of the Regulatory Decree);
- (7) restrictions on the right to strike: (i) requirement of three-quarters of the workers of the enterprise to call a strike (section 114 of the General Labour Act and section 159 of the Regulatory Decree); (ii) the illegality of general and sympathy strikes, subject to penal sanctions (sections 1 and 2 of Legislative Decree No. 2565); (iii) the illegality of strikes in the banking sector (section 1(c) of Supreme Decree No. 1959 of 1950); and (iv) the possibility of imposing compulsory arbitration by decision of the executive authority in order to bring an end to a strike, including in services other than those that are essential in the strict sense of the term (section 113 of the General Labour Act).

I. Article 2 of the Convention. Right of workers, without distinction whatsoever, to establish organizations of their own choosing

A. Agricultural workers

The Committee notes the Government's indication that draft legislation has been prepared entitled "Regulations respecting rural wage employment", which is at its initial stage and will be examined in a tripartite context so that, once the necessary consensus has been obtained, it can be submitted to Congress for approval. The Committee once again

emphasizes the importance of the right to organize for all agricultural workers, whether they are wage earners or self-employed workers, and expresses the firm hope that the above Bill will guarantee the right to organize of these categories of workers. The Committee requests the Government to keep it informed of developments relating to the Bill and to send a copy of it when it has been adopted.

B. Public servants

The Committee regrets to note that under section 104 of the General Labour Act and section 7 of the Act issuing the conditions of service in the public service of 1999, the right to organize of this category of workers is still not recognized, thereby excluding public servants from the right to establish trade unions, irrespective of their classification or position. The Committee notes the Government's indication that, in view of the socio-political situation experienced by the country, it maintains its position with regard to the provisions of the conditions of service of the public service, although it does not discard the possibility that they may be revised in the near future. The Committee recalls that *Article 2* applies to all workers without distinction whatsoever, including those engaged in the centralized public sector, and once again urges the Government to take the necessary measures as soon as possible to ensure that this category of workers is granted the right to organize in the very near future.

In general, with regard to the other matters raised by the Committee, the Government indicates that, despite its intention to update the General Labour Act, the Central of Bolivian Workers is reticent about any change or study with a view to improving the current Act, particularly in view of the current national and global situation. The Government adds that it will nevertheless make every effort to take the necessary measures in the near future within a tripartite context, with a view to formulating and adopting new legislation, which will contain provisions guaranteeing and taking into account the observations of the ILO. The Committee notes that the Government requests the Office to provide technical assistance to a tripartite committee with the principal objective of amending the General Labour Act, in accordance with the observations and recommendations made by the Committee. The Committee hopes that, with the Office's assistance, the Government will be in a position to amend its legislation in relation to the various aspects referred to by the Committee in order to bring it into conformity with the Convention. The Committee requests the Government to provide information in its next report on the measures adopted in this respect.

Observations made by the Central of Bolivian Workers (COB)

The Committee once again requests the Government to provide information on the dismissal of workers of the SABSA enterprise as the result of a strike.

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

The Committee takes note of the Government's report.

Articles 1, 2 and 3 of the Convention. In its previous comments the Committee had requested the Government to take steps to update (from 1,000 to 5,000 bolivianos) the amount of the fines established in Legislative Decree No. 38 of 7 February 1944, in order to make them sufficiently dissuasive against acts of anti-union discrimination or interference. The Committee notes the Government's statement in its report that, in view of the current economic crisis in the country, it is not possible to increase the amount of the fines. The Committee once again stresses the need for penalties to be sufficiently dissuasive and again requests the Government to take measures in the near future to bring the amount of fines up to date.

Articles 4 and 6. The Committee had observed previously that the legislation denies public employees the right to organize and requested the Government to take steps to have the legislation amended so that public employees not engaged in the administration of the State have the right to bargain collectively through their organizations. While noting that in its report the Government maintains its position regarding the Public Service Regulations, in view of the current political and social climate in the country, but does not exclude the possibility of a revision in the near future, the Committee hopes that the Government will shortly take steps to remedy this serious breach of the Convention and requests it to provide information in its next report on any developments in this respect.

Lastly, the Committee had previously requested the Government to take measures, in accordance with *Article 4* of the Convention, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment (which are not limited to wage matters) by means of collective agreements. The Government states in this connection that in 1997 the new administration of ENTEL and its workers signed a first collective labour agreement, which was renewed in 2001. The Committee takes note of this information and again requests the Government to provide information on collective agreements in force, their content and the number of workers they cover.

Bosnia and Herzegovina

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

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

Article 2. Right of employers and workers, without distinction whatsoever, to establish and join organizations of their own choosing without previous authorization

Time limits. The Committee recalls that in its previous comments it had noted, pursuant to the conclusions and recommendations of the Committee on Freedom of Association in Case No. 2053, that the time limitations prescribed in the legislation for the registration of associations, including trade unions, were very short and were equivalent in practice to a system of previous authorization. In this respect, the Committee observes that although the recent Law on the Associations and Foundations of Bosnia and Herzegovina lifted the requirement that a registration request be filed within 15 days from an organization's constituent assembly, sections 30(2), 34 and 35 of the new Law continue to lay down brief time limits in the context of changing the name or emblem of an association, making corrections to the statute of an association, completing a registration request or lodging a complaint against a decision to deny registration. The Committee further notes with concern that the consequences of exceeding such time limitations include the dissolution of the organization in question, or cancellation of its registration. It considers such a severe penalty totally disproportionate to a delay in meeting formal registration requirements. The Committee therefore requests that the Government take all necessary measures in the very near future in order to amend its legislation so as to provide more reasonable time limitations with respect to the registration of employers' and workers' organizations and to ensure that they shall not suffer disproportionate consequences as a result of a delayed request. It also requests that the Government transmit information in its next report concerning the measures taken in this respect and to indicate the current status of the Associated Workers' Trade Union of Bosnia and Herzegovina (URS/FBiH), the complainant in Case No. 2053.

Articles 2 and 5. Right of employers and workers to establish and join organizations of their own choosing; right of employers' and workers' organizations to establish federations and confederations

Employers' organizations. The Committee notes the conclusions and recommendations of the Committee on Freedom of Association in Case No. 2140 concerning registration requirements which constitute obstacles to the establishment of employers' confederations and the commencement of their activities at the level of the Republic of Bosnia and Herzegovina and its two Entities (329th Report, November 2002, paragraphs 290-298). The Committee notes in particular that it is impossible to obtain the registration and legal recognition of an employers' confederation at the level of the Republic of Bosnia and Herzegovina as a whole. The Committee notes moreover that, at the level of the Federation of Bosnia and Herzegovina and the Republika Srpska, employers' confederations can only obtain registration under the status of "citizens' associations" which seriously impedes the commencement of their activities. The Committee recalls that the Convention covers both employers and workers and that, in accordance with *Article 2*, employers shall have the right to establish and, subject only to the rules of the organization concerned, join organizations of their own choosing without previous authorization (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 63). The Committee requests the Government to take all necessary measures in the very near future to amend its legislation so as to ensure that employers' confederations can obtain registration under a status conducive to the full and free development of their activities as employers' organizations both at the level of the Republic of Bosnia and Herzegovina and its two Entities. The Committee requests that the Government transmit information in its next report on measures taken in this respect and on the effective registration of the Employers' Confederation of the Republic of Bosnia and Herzegovina at the level of the Republic as a whole. The Committee also requests that the Government indicate the current status of the complainants in the abovementioned Case No. 2140, namely, the Employers of the Federation of Bosnia and Herzegovina and the Employers' Confederation of Republika Srpska (SAVEZ POSLODAVACA).

The Committee trusts that the Government will fully take into account the abovementioned comments and draws the Government's attention to the availability of ILO technical assistance in this respect.

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

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

Brazil

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

The Committee notes the Government's report. It also notes the Government's observations on the communication of 10 October 2002 from the Single Confederation of Workers (CUT), raising two matters on which the Committee had been commenting for several years (the use of the "dissidio coletivo" procedure as compulsory arbitration by the judicial authority, and the need to ensure that public officials who are not engaged in the administration of the state have the right to bargain collectively).

With regard to the possibility for one of the parties to the collective bargaining or for the authorities to resort to a "dissidio coletivo" (compulsory judicial arbitration; section 616 of the Consolidation of Labour Laws (CLT)), the Government states that: (1) the decisions of the High Labour Court show a downward trend in "dissidios coletivos" from the second half of the 1990s (statistics appended to the report record a decline in their number from 2,725 in 1990 to 713 in 2001); and (2) Bill No. 623/98, under which the policy-setting powers of the labour courts were to be revised and

recourse to “dissidio coletivos” was to be made voluntary, was shelved by the Executive and the National Congress has before it a new bill (No. 16/84) the aim of which is to secure adoption of the text of Convention No. 87. In these circumstances, the Committee hopes that section 616 of the CLT will be amended so as to restrict recourse to arbitration by the judicial authority to cases in which both parties request it, and to essential services in the strict sense of the term or to acute national crises. The Committee requests the Government to report on any developments in this area.

With regard to the comments the Committee has been making for several years, and to which the CUT refers, concerning the need for public employees who are engaged in the administration of the State to have the right to bargain collectively, the Committee notes that according to the Government: (1) public employees do not have the right to bargain collectively because under the Constitution their remuneration can be set or modified only by specific legislation; (2) as stated previously, an administrative reform is under study with a view to establishing several schemes for recruitment in the public administration, allowing certain categories of public servants to negotiate collectively to fix their conditions of employment, as is already the case in state enterprises and joint venture companies; (3) in accordance with the tendency of the case law, the High Labour Court endorsed the interpretation that public employees do not have the right to conclude collective labour agreements. The Committee accordingly asks the Government to provide information in its next report on any measures adopted to ensure that public employees who are not engaged in the administration of the State have the right to such collective bargaining.

The Committee notes that the Government has not responded to its comments on the need to repeal section 623 of the CLT under which provisions of an agreement shall be declared void where they are contrary to the standards established by the government economic and financial policy or the wage policy in force. In the Committee’s view, restrictions of this kind affect the independence of the social partners in the collective bargaining process and are not such as to encourage voluntary collective bargaining between employers or their organizations and workers’ organizations for the purpose of setting conditions of employment. The Committee accordingly asks the Government to take steps to secure the repeal of the abovementioned provision.

Lastly, the Committee notes with interest that, according to the Government, a National Labour Forum has been set up to review the labour and trade union legislation. The Forum will be attended by social players who have links with the world of work and its main objective will be to democratize labour relations and adapt the legislation to the new realities of the labour market by encouraging the adoption of a system of freedom and independence for trade unions in keeping with the conventions and recommendations of the ILO. According to the Government, it is hoped that when the work of the Forum has been completed, all the current legislative obstacles to full freedom of association and collective bargaining will have been overcome. The Committee hopes that the National Labour Forum will complete its work in the near future and that account will be taken of the comments it has been making for several years, in order to bring the legislation into full conformity with the Convention.

Bulgaria

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

The Committee takes note of the report submitted by the Government. The Committee also notes the comments made by the Confederation of the Independent Trade Unions of Bulgaria (CITUB) and the Union of Private Bulgarian Entrepreneurs – Vazrazdane, which were transmitted by the Government with its report. The Committee notes the observations submitted by the International Confederation of Free Trade Unions (ICFTU) and requests the Government to provide its comments thereon.

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

- the scope of the right to organize in the civil service, in light of sections 3(2) and 43 of the Civil Servant Act as amended in 2000 and 2001;
- the prerequisites to the exercise of the right to strike under section 11(2) and (3) of the Act of March 1990 regarding the settlement of collective labour disputes;
- the compensatory guarantees afforded to workers in the energy, communications and health sectors, who are denied the right to strike, with the creation of the National Institute for Conciliation and Arbitration;
- the limitation to the exercise of the right to strike in the civil service under section 47 of the Civil Servant Act.

Article 2 of the Convention. Right of workers, without distinction whatsoever, to establish and join organizations of their own choosing. In its previous comment, the Committee noted that while section 43 of the Civil Servant Act provided that civil servants had the right to associate, section 3(2) provided that persons implementing technical functions in the administration are not considered as civil servants. The Committee asked the Government to indicate whether the persons covered by section 3(2) of the Act have the possibility to establish their own organizations and to specify the nature of the functions exercised by these persons. In its report, the Government indicates that the Act applies exhaustively to all civil servants designated in section 2 with the exception of the persons mentioned in section 3, who are not considered as civil servants, and in particular, persons who perform technical and subsidiary tasks in the administration. The Government adds that, as a special law, the Act applies only to persons that are considered to be civil

servants and that all other workers exercise their right to organize, in accordance with section 49(1) of the Constitution and section 4 of the Labour Code. The Committee takes due note of the information provided by the Government which confirms that the persons referred to in section 3(2) of the Civil Servant Act have the right to establish and join organizations of their own choosing in accordance with *Article 2*.

Article 3. Right of workers' organizations to organize their administration and activities in full freedom. In its previous comments, the Committee requested the Government to: (1) indicate the measures taken or envisaged to amend section 11(2) of the Act so that, with respect to a strike ballot, only the votes cast would be taken into account and the quorum fixed at a reasonable level; (2) amend section 11(3) of the Act so as to eliminate the obligation to give notification of the duration of the strike. In its report, the Government indicates that a working group was created to prepare amendments to the Act, following a seminar organized with the participation of the ILO. The group is presently working, together with the ministries and the employers' and workers' organizations concerned, on a bill "on amendments and supplements to the Collective Labour Dispute Act". The group is currently examining, among other things, the issues relating to the conditions applicable to the decision to go on strike, including the reduction of the quorum, and to the necessity to inform the employer of the duration of the strike. The Committee also notes the information provided by the Union of Private Bulgarian Entrepreneurs – Vazrazdane, to the effect that employers' organizations have reached an agreement on the necessity to lessen the quorum currently determined by section 11(2) and to propose to workers' organizations a reduction to the simple majority of the employees of the enterprise concerned, without taking into account the employees absent for an objective reason. The Union of Private Bulgarian Entrepreneurs – Vazrazdane indicates that discussions within the working group are continuing but that hopefully the group will soon finish its work. The Committee takes note of this information. It requests the Government to keep it informed in its next report of the progress made in the drafting of the bill that will amend the Act regarding the settlement of the collective labour disputes and to communicate a copy of any draft or final text thereof.

With regard to the provision of compensatory guarantees for workers in the energy, communications and health sectors whose right to strike is denied, in its previous comment, the Committee noted the creation, in March 2001, of the National Institute for Conciliation and Arbitration and requested the Government to indicate if the said Institute was operational. In its report, the Government indicates that the Institute was inaugurated on 25 April 2003. Further, the "Rules on the organization and the functions of the National Institute for Reconciliation and Arbitration" and the "Rules on the realization of the reconciliation and arbitration when settling collective labour disputes", were adopted at a meeting of the board of the Institute and the board approved a list of mediators and arbitrators. The Committee notes this information with interest. It requests the Government to keep it informed on the use made of the machinery provided under the auspices of the Institute.

With respect to the exercise of the right to strike by civil servants, the Committee recalls that section 47 of the Act restricted the right to strike to the carrying and placing of suitable signs and symbols, protest posters and armbands, whereas restrictions on the right to strike should be limited to public servants exercising authority in the name of the State. In its 2002 report, the Government indicated that the Ministry of Labour had presented on 29 May 2002 a draft Bill amending and supplementing the Civil Servant Act, which would extend the right to strike to civil servants. The Committee noted in this respect that section 24 of the draft Bill was to amend section 47 of the current Act so as to enable public servants not only to strike symbolically but also to discontinue their work effectively. The Committee further notes that, under the draft Bill, a decision to go on strike should be taken by a majority vote by an assembly attended by more than half of the public servants concerned. The Committee asked the Government to indicate the type of employees who would be covered by this new law and expressed the hope that the draft Bill would be adopted soon. In its report, the Government indicates that the working group referred to above will examine the issue of the recognition of the right to strike to civil servants in the Act regarding the settlement of collective labour disputes. The Committee takes note of this information. It would like to underline that the problem of compatibility with the Convention has specifically arisen with respect to section 47 of the Civil Servant Act. It trusts therefore that the Government will take the necessary measures so as to guarantee effectively the right to strike to all civil servants who cannot be considered to be exercising authority in the name of the State, by a specific amendment to section 47 of the Civil Servant Act. It requests the Government to indicate in its next report the progress made in this respect and to provide any relevant draft or final text.

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

Burkina Faso

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

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

Article 3 of the Convention. Power to requisition. The Committee recalls that in its previous comments it referred to the need to amend sections 1 and 6 of Act No. 45-60/AN of 25 July 1960 regulating the right to strike of public servants and state employees. Under these provisions, public servants may be required to perform their duties in order to ensure the continuity of the administration and the safety of persons and property. The Committee recalled in this connection that it would be advisable to restrict the public authorities' power to requisition workers to cases in which the

right to strike may be limited or even prohibited, namely: (1) public servants exercising authority in the name of the State; (2) essential services, that is those the interruption of which would endanger the life, personal safety or health of the whole or part of the population; (3) in the event of an acute national crisis (see General Survey of 1994 on freedom of association and collective bargaining, paragraphs 152, 158 and 159). In its latest report, the Government indicates that a rereading of the Act took place to achieve convergence of views on the concept of essential services. The Government specifies in this regard that draft legislation to issue a new Labour Code is being finalized but that there is still no convergence of views concerning requisition. The Government adds that during the period covered by the report, no decision to requisition workers has been taken.

While noting the information communicated by the Government on draft legislation that is being finalized to issue a new Labour Code, the Committee draws to the attention of the Government that its request related to sections 1 and 6 of Act No. 45-60/AN regulating the right to strike of public servants and state employees, whose conditions of work have been governed, until now, by a specific law (Act No. 013/98/AN of 28 April 1998 issuing the rules governing jobs and employees in the public service) and not by the Labour Code. The Committee therefore requests the Government to indicate whether and to what extent the draft legislation to issue a new Labour Code is to be applicable to employees in the public service, particularly in respect of the exercise of the right to strike, and to further indicate the measures taken or envisaged to amend or repeal sections 1 and 6 of Act No. 45-60/AN, if it is to remain in force after the new Labour Code has been issued. Moreover, the Committee requests the Government to continue to keep it informed of any decision to requisition workers that may have been taken in accordance with section 6. Finally, the Committee requests the Government to provide a copy of the new Labour Code as soon as possible.

In addition, the Committee raises another point in a request addressed directly to the Government.

Burundi

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

The Committee notes that the Government's report has not been received. It must accordingly repeat its previous comments. The Committee also notes that the International Confederation of Free Trade Unions (ICFTU) sent comments on the application of the Convention on 26 March 2003 and the Confederation of Burundi Trade Unions (COSYBU) sent comments on 3 November 2003 to which the Government has not as yet replied.

The Committee requests the Government to transmit any observations it might wish to make in respect of these comments.

Article 2 of the Convention. 1. Right of public employees without distinction whatsoever to establish and join organizations of their own choosing. In its previous comments, the Committee noted that section 14 of the Labour Code excludes state employees and magistrates from the scope of the Code. The Committee notes with interest the entry into force of Act No. 1/015 of 29 November 2002 issuing regulations on the exercise of the right to organize and the right to strike in the public service. The Committee raises a number of questions in this connection in a request addressed directly to the Government. With regard to magistrates, the Committee noted previously the entry into force of Act No. 1-001 of February 2000 amending the magistrates' regulations, and observed that the Act contained no express reference to the magistrates' right of association. Since magistrates are not governed by the same rules as public servants, the Committee again requests the Government to indicate in its next report the provisions that ensure the right to organize of magistrates.

2. Right to organize of minors. For several years, the Committee has been raising the issue of the compatibility of section 271 of the Labour Code with the Convention. Section 271 provides that young people under the age of 18 may not join a trade union without the express permission of their parents or guardians. In its report for 2002, the Government stated that it planned to amend section 271 of the Labour Code so as to enable minors to join trade unions without prior authorization from their parents. The Committee therefore asks the Government once again to indicate the measures taken or envisaged to enable minors who are legally entitled to work, whether as workers or as apprentices, to join trade unions without parental authorization.

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

- *Criminal record.* Under section 275 of the Labour Code, anyone sentenced to more than six months' imprisonment without suspension of sentence may not hold trade union office. In its report for 2002, the Government stated that it was planning to amend this provision, after consulting the National Labour Council, in the light of the Committee's observation that conviction for an act which, by its nature, does not call into question the integrity of the person concerned and implies no real risk for the performance of trade union duties should not constitute grounds for exclusion from trade union office.
- *Belonging to the occupation.* Section 275(4) of the Labour Code requires trade union leaders to have belonged to the occupation or trade for at least one year. The Committee requested the Government to make the legislation more

flexible by allowing persons who formerly worked in the occupation to stand for office or by lifting this requirement for a reasonable proportion of trade union officers. In its report for 2002, the Government stated that it was planning to amend this provision after consulting the National Labour Council.

The Committee requests the Government to report on developments in the amendment of section 275(3) and (4) of the Labour Code and to provide copies of the amendments.

2. *The right to strike.* In its previous comments the Committee raised the matter of the series of compulsory procedures to be followed before taking strike action (sections 191-210 of the Labour Code) which appear to authorize the Minister of Labour to prevent all strikes. The Committee notes in this connection the observation by the ICFTU to the effect that there are conditions of a procedural nature which empower the authorities to determine whether or not a strike is lawful. In practice, this has enabled the authorities to prevent or end strikes on the grounds that they would be detrimental to the national economy and sought to support the enemies (*sic*) of the Government. Lastly, in the course of the last three years several trade union leaders have been imprisoned for calling strikes. The Committee recalls that the right to strike is one of the essential means available to trade unions in order to further and defend the interests of their members. It may be restricted or prohibited only in the following three instances: (1) where public servants exercise authority in the name of the State; (2) in essential services in the strict sense of the term, that is, services the interruption of which would endanger the life, health or safety of the whole or part of the population; (3) in the event of an acute national crisis. The Committee further recalls that penalties may be imposed on strikers only if the prohibitions, restrictions or conditions pertaining to the exercise of the right to strike are consistent with the principles of freedom of association. Furthermore, even in the event of non-compliance with prohibitions or restrictions that are consistent with the principles of freedom of association, the penalties imposed must be commensurate with the seriousness of the offence; measures of imprisonment should accordingly be avoided for peaceful strikes (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 179). In these circumstances, the Committee again requests the Government to provide the draft text implementing the Labour Code concerning procedures for the exercise of the right to strike to which it referred in its previous reports, so that the Committee may ascertain whether it is consistent with the provisions of the Convention, and to reply to the ICFTU's observations on this matter.

The Committee likewise noted previously that under section 213 of the Labour Code strikes are lawful when they are called with the approval of a simple majority of the employees of the workplace or enterprise whereas, according to the Government, in practice no vote was required and a consensus sufficed. The Committee recalls that when voting on strikes, the ballot method, quorum and majority required should not be such that the exercise of the right to strike becomes difficult in practice. If a member State deems it appropriate to establish in its legislation provisions which require a vote by workers before a strike can be held, it should ensure that a count is taken only of the votes cast and that the required quorum and majority are fixed at a reasonable level (see General Survey, *op. cit.*, paragraph 170). The Committee requests the Government to indicate in its next report the measures taken or envisaged to amend section 213 in the light of the above.

Lastly, the Committee notes the ICFTU's observation that the Government is preventing trade union organizations from choosing their representatives on national tripartite bodies, as a result of which the work of the National Employment Council has come to a standstill. Recalling that trade unions have the right to organize their activities in full freedom without interference from the public authorities, the Committee requests the Government to send its comments in this connection.

The Committee expresses the firm hope that the Government's next report will be sent and that it will reply to the above matters.

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

Cameroon

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

The Committee notes with regret that the Government's report has not been received. The Committee notes the discussions in the Conference Committee on the Application of Standards in June 2003 and the decision to include the case of Cameroon in a special paragraph of the Conference Committee report. The Committee further notes the comments of the International Confederation of Free Trade Unions (ICFTU) raising questions about the application of the Convention. The Committee requests the Government to send its observations thereon in its next report.

The Committee repeats its previous observation which read as follows:

In its previous comments, the Committee noted the Bill to amend certain provisions of Act No. 92/007 of 14 August 1992, issuing the Labour Code. Noting that the Government makes no reference to this Bill in its report, the Committee asks the Government to indicate in its next report what progress this Bill has made in the legislative process.

The Committee recalls that for several years its comments have related to the following matters.

1. *Article 2 of the Convention. Prior authorization.* The Committee has been pointing out for many years that Act No. 68/LF/19 of 18 November 1968, under which the existence in law of a trade union or occupational association of public servants is subject to prior approval by the Minister for Territorial Administration, and section 6(2) of the Labour Code of 1992, under

which persons forming a trade union which has not yet been registered and who act as if the said union has been registered shall be liable to prosecution, are not consistent with *Article 2* of the Convention. In this respect, the Committee noted that in the Bill transmitted by the Government, section 6(2) of the Labour Code was deleted in its entirety. It once again requests the Government to provide a copy of the new Act once it has become law.

With regard to the Act of 1968 governing trade unions and occupational associations of public servants, the Government stated in its previous report that the fact that Decree No. 2000/287 of 12 October 2000 amending and supplementing certain provisions ((new) section 72) of the General Statute of the Civil Service which allow a civil servant to be released for the performance of trade union duties was a step towards trade unionism in the public service being allowed by law. In its latest report, the Government indicates that the Bill to amend the Act of 1968 respecting trade unions of public servants is still under examination. The Committee regrets that there have been no developments in this respect and once again urges the Government to amend Act No. 68/LF/19 of 18 November 1968 in order to ensure that public servants have the right to establish organizations of their own choosing without prior authorization.

2. *Article 5. Prior authorization for affiliation to an international organization.* The Committee has been pointing out for several years that section 19 of Decree No. 69/DF/7 of 6 January 1969, which provides that trade unions or associations of public servants may not join a foreign occupational organization without obtaining prior authorization from the Minister responsible for “supervising public freedoms”, is inconsistent with *Article 5* of the Convention. In this respect, the Committee noted the Government’s earlier statements to the effect that the above Decree would be brought into line with the Convention as soon as the new Act on public servants’ unions became law. The Committee once again urges the Government to amend its legislation as soon as possible in order to eliminate the requirement that public servants’ unions obtain prior authorization before joining an international organization.

Finally, the Committee noted the comments made by the Federation of Free Trade Unions of Cameroon (USLC) to the effect that in practice the formalities for registration set out in section 11 of the Labour Code are not respected by the services of the Registry of Trade Unions, which require applicants for registration to submit documents not specified in the Code. In its last report, the Government indicates that the documents to be provided for registration derive from sections 6 to 11 of the Labour Code and practical requirements. In this respect, the Committee recalls that, while member States remain free to provide such formalities in their legislation as appear appropriate to ensure the normal functioning of occupational organizations, problems of compatibility with the Convention may arise where the registration regulations are applied in a manner inconsistent with their purpose and the competent administrative authorities make excessive use of their discretionary powers, which may in practice be a serious obstacle to the establishment of organizations of workers and employers without previous authorization (see General Survey of 1994 on freedom of association and collective bargaining, paragraphs 74 and 75). The Committee trusts that the Government will take full account of the abovementioned considerations with regard to the manner in which the procedures for the registration of trade unions are applied in practice.

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

Canada

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

The Committee notes the Government’s report, the comments received from the International Confederation of Free Trade Unions (ICFTU) and the conclusions and recommendations of the Committee on Freedom of Association in the various cases concerning Canada.

I. Issues common to several jurisdictions

A. *Alberta, Ontario, New Brunswick. Right to organize of certain categories of workers.* In its previous comments, the Committee had noted that workers in agriculture and horticulture in the Provinces of Alberta, Ontario and New Brunswick were excluded from the coverage of labour relations legislation and thereby deprived of protection concerning the right to organize and collective bargaining. The Committee had also noted with regret that other categories of workers (domestic workers, architects, dentists, land surveyors, lawyers and doctors) were excluded in Ontario, under section 13(a) of the Amended Labour Relations Act, 1995.

Furthermore, the Committee had noted that the Supreme Court of Canada held in December 2001 (in the Dunmore case, originating from Ontario) that the exclusion of agricultural workers was unconstitutional and gave the Government of Ontario 18 months to amend the impugned legislation. The Committee had noted that the Government of Ontario had introduced Bill No. 187 in October 2002 (Agricultural Employees Protection Act), which gives agricultural employees the right to form or join an employees’ association. It appears, however, that this legislation does not give agricultural workers the right to establish and join trade unions and to bargain collectively.

In its latest report, the Government of Ontario has confined itself to indicating that a provincial election was being held in Ontario on 2 October 2003 and that information would be provided to the Committee as soon as available. The Committee requests once again the Government to ensure that any new legislation introduced will guarantee full respect of the rights under the Convention for all the categories of workers mentioned above and to keep it informed in its next report.

As concerns the Province of Alberta, the Committee notes with regret that the Government of Alberta has indicated that further review of the organization of agricultural workers will not be done at this time, considering the current challenges in the agricultural sectors. As concerns the Province of New Brunswick, the Committee notes with regret that no legislative changes are being considered to the Industrial Relations Act at this time. The Committee recalls once again

that all workers, with the sole possible exception of the armed forces and the police, have the right to organize under the Convention. It requests the Governments of Alberta and New Brunswick to amend their legislation accordingly and to inform it of developments in this respect in their next reports.

B. *Trade union monopoly established by law.* In its previous report, the Committee had noted that certain provincial laws designate by name the union recognized as the bargaining agent (Prince Edward Island, Civil Service Act, 1983; Nova Scotia, Teaching Professions Act; Ontario, Education and Teaching Professions Act). It had recalled that although a system in which a single bargaining agent can be accredited to represent workers in a given bargaining unit and bargain on their behalf is compatible with the Convention, it nevertheless considers that a trade union monopoly established or maintained by the explicit designation by name of a trade union organization in the law is in violation of the Convention.

The Committee notes with regret that no developments on this point have been reported since 2002 by the Governments of Prince Edward Island, Nova Scotia and Ontario. The Committee requests once again the governments of these provinces to repeal from their respective legislation the designation by name of individual trade unions and to keep it informed of developments in their future reports.

II. *Matters relating to specific jurisdictions*

A. *Alberta.* The Committee recalls that its previous comments concerned the right to strike of certain categories of employees in the hospital sector and the right to organize of university staff.

1. *Right to strike.* The Committee notes with regret that the Government, pursuant to the conclusions of the government MLA Committee Considering a Review of the Labour Relations Code (which concluded that the Labour Relations Code is continuing to balance the needs of employees and employers and is working well), decided that further review of labour relations in the health sector is not necessary at this time.

The Government further mentions in its latest report that the Labour Relations (Regional Health Authorities Restructuring) Amendment Act (Bill No. 27) came into effect on 1 April 2003 and has dealt with the majority of labour issues that were facing this sector. The Committee notes with regret the information supplied by the Government in its report, according to which the Amendment Act has not changed the situation of health workers with regard to the right to strike. The Committee recalls once again that the right to strike is a corollary of the right to organize and any restrictions should be limited to public servants exercising authority in the name of the State or to essential services in the strict sense of the term. It requests the Government to indicate whether kitchen staff, porters, and gardeners (who the Committee considers do not constitute workers in an essential service) are still covered by this strike prohibition and, in the affirmative, emphasizes that these categories of workers should not be denied this fundamental right.

2. *The right to organize of university staff.* As concerns the right to organize of university staff, the Government once again makes reference to a previous decision from the Alberta Court of Queen's Bench that found that the designation sections of the Colleges Act, the Technical Institutes Act and the Universities Act do not violate the freedom of association provision within the Canadian Charter of Rights and Freedoms. Furthermore, it states in its report that both faculty and support staff in Alberta's post-secondary institutions currently have the right to organize and be represented by a union or faculty or staff association. The Committee recalls that for several years it has been commenting on the need to repeal the provisions of the University Act which empower the Board of Governors to designate the academic staff members who are allowed, by law, to establish and join a professional association for the defence of interests, because future designations could be made to exclude faculty members and non-management administrative or planning personnel from membership of the staff associations whose purpose is to protect and defend the interests of these categories of workers. The Committee recalls that all workers, without distinction whatsoever, with the sole possible exception of the armed forces and the police, have the right to establish and join organization of their own choosing without previous authorization. It requests the Government to amend its legislation to ensure that university staff are guaranteed the right to organize, without any possible exceptions based on the powers of the Board of Governors, and to keep it informed in its report of measures taken in this respect.

B. *British Columbia.* In its previous comments, the Committee noted that the Act to bring an end to a collective dispute in certain provincial school commissions was repealed in July 2000 and requested the Government to keep it informed in respect of a new report expected on the collective bargaining regime for support staff.

In its latest report, the Government mentioned it has initiated a broader dialogue on support staff collective bargaining, and has begun discussions with employers and unions in the education sector with a view to considering appropriate models of collective bargaining. The Government stated it was open to expand the discussions to include other unions/employers in areas such as health and the public sector, but that in light of the broader review, the status of the report for support staff had at this time not been determined. The Committee requests the Government to keep it informed of developments in this respect, in particular as concerns dispute settlement regulations or machinery.

The Committee notes the conclusions and recommendations of the Committee on Freedom of Association in Case No. 2173 (330th Report, paragraphs 239-305) concerning the Skill Development and Labour Statutes Amendment Act (Bill. No. 18) and the Education Services Collective Agreement Act (Bill No. 27).

The Committee notes that Bill No. 18 made education an essential service in the strict sense of the term and Bill No. 27, under which a collective agreement was deemed to exist, had the effect of rendering any strike that might have been ongoing illegal. The Committee recalls that the right to strike is one of the essential means through which workers and their organizations may promote and defend their interests and that restrictions on the right to strike should be limited to essential services in the strict sense of the term (the interruption of which would endanger the life, personal safety or health of the population), to situations of acute national crisis or for public servants exercising authority in the name of the State. The Committee requests the Government to repeal the provisions of Bill No. 18 which make education an essential service and to adopt legislative provisions ensuring that workers in this sector may enjoy and exercise the right to strike.

The Committee further notes the conclusions and recommendations of the Committee on Freedom of Association in Case No. 2166 (330th Report, paragraphs 239-305) concerning the Health Care Services Continuation Act (Bill No. 2) and the Health Care Service Collective Agreement Act (Bill No. 15).

The Committee notes that where the right to strike is legitimately restricted or prohibited (Bill No. 2 concerns the health sector which is considered an essential service in the strict sense of the term), adequate protection should be given to the workers to compensate them for the limitation thereby placed on their freedom of action with regard to disputes affecting such services. The Committee notes that the workers did not benefit from impartial and adequate compensatory procedures and that sections 2 and 3 of Bill No. 15 essentially imposed the employer's last offer. The Committee requests the Government to amend its legislation to ensure that workers in this sector enjoy adequate, impartial and speedy procedures to compensate for the restrictions in respect of the right to strike.

C. Manitoba. 1. Arbitration imposed at the request of one party after 60 days (article 87.1(1) of the Labour Relations Act). The Committee notes the Government's statement that the Labour Management Review Committee (LRMC) reviewed the application of sections 87.1 to 87.3 of the Labour Relations Act, but that it did not address the issue of unilateral application to the Labour Board to initiate the dispute settlement process. In its report, the LRMC notes that there was limited experience of the operation of the new provisions upon which to base the review. There were only two applications made with respect to the relevant provisions during the two-year review period, neither of which resulted in the imposition of a collective agreement by the Manitoba Labour Board or by an arbitrator.

While taking due note that the application of this provision has not given rise to the imposition of a collective agreement, the Committee requests the Government to take the necessary measures to ensure that an arbitration award may only be imposed in cases of essential services in the strict sense of the term, of public servants exercising authority in the name of the State or where both parties to the conflict agree.

2. Prohibition of strikes by teachers, section 110(1) of the Public School Act. The Government reiterates its previous indication that the strike prohibition came about following a joint recommendation between the Manitoba Teachers' Society and the Association of Schools. While this agreement dates back to 1956, the Committee observes that it was codified in the Manitoban legislation by the Public School Amendment of 1996, which explicitly prohibits the right to strike under section 110(1). The Committee recalls that the right to strike should only be restricted for public servants exercising authority in the name of the State and in essential services in the strict sense of the term. In this respect, the Committee considers that any voluntary renunciation of the right to strike should not be codified in legislation, which by its nature has no set time limitation. Furthermore, any desire to reclaim such a right in the present circumstances is placed out of the hands of those concerned. On the other hand, the same or similar restrictions, could, in conformity with the Convention, be set forth in legally binding agreements, which may be reviewed by the parties concerned in accordance with such agreements. It, therefore, requests the Government to amend its legislation accordingly and to keep it informed of developments in its next reports.

D. Ontario. In its previous comments, the Committee had noted the conclusions and recommendations of the Committee on Freedom of Association in Case No. 1975 (316th Report, paragraphs 229-274; 321st Report, paragraphs 103-118; persons taking part in community participation activities prohibited from joining a trade union), Bill No. 22 and Case No. 2025 (320th Report, paragraphs 374-414, concerning the Back to School Act, 1998, which brought an end to a legal strike by teachers). The Committee further noted from the conclusions and recommendations of the Committee on Freedom of Association in Case No. 1951 (325th Report, paragraphs 197-215) that principals and vice-principals are still denied the right to organize.

In its latest report, the Government mentioned that a provincial election was being held on 2 October 2003 and that any information provided by the Government of Ontario would be forwarded to the Committee as soon as available. The Committee recalls once again that the only possible exceptions being the armed forces and police, the right to organize should be guaranteed to all workers without distinction whatsoever and that teachers should be allowed to have recourse to strike action. It requests the Government to amend its legislation and to keep it informed of the measures taken in this respect in its next report.

E. Newfoundland and Labrador. The Committee recalls that its previous comments concerned the need to amend the Fishing Industry Collective Bargaining Act (Bill No. 31) so that workers in the fishing industry were not denied the right to strike. The Committee notes that it is the view of the Government that amending the Fishing Industry Collective Bargaining Act to remove the final offer selection process would be contrary to the wishes of fish harvesters as represented by the Fish, Food and Allied Workers' Union/Canadian Auto Workers Union. It further notes that, according

to the Government, the parties that operate under the final offer selection (FOS) agree to forgo the right to strike for a specific period of time.

On the other hand, the Committee notes with interest that, following the adoption of an Act to amend the Fishing Industry Collective Bargaining Act, which came into force on 19 December 2002, the opting out provision has been reconfirmed (section 35.12): either party to collective bargaining may serve notice that it wishes to withdraw from the FOS model. When the opting out provision is invoked, the legislation provides for a return to a more traditional collective bargaining regime, with conventional strike and lockout provisions. The Committee notes with interest that in this regard the prohibition on strikes is not currently a permanent feature of the legislation and can be seen as a legally binding agreement, which allows parties to reclaim such a right.

Cape Verde

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

The Committee notes that the Government's report contains no reply to its previous comments. In its last observation the Committee had noted that so far only one collective agreement concerning several sectors had been signed. The Government had admitted that little progress had been made in the area of collective bargaining and had stated that various measures had been taken to promote collective bargaining, including the organization of seminars.

The Committee requests the Government to pursue its efforts to promote collective bargaining, and expresses the hope that it will be able to note in the near future that significant progress has been made and that more collective agreements have been adopted.

Central African Republic

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

The Committee notes the Government's report and Constitutional Acts Nos. I and II of 15 March 2003 suspending the Constitution of 14 January 1995 and issuing a temporary organization of state powers. The Committee notes that the report does not address the points raised in its previous comments, which concerned the following matters.

Article 3 of the Convention. Right of workers' organizations to elect their representatives in full freedom and to organize their activities freely. The Committee recalls that sections 1 and 2 of Act No. 88/009 provide that any person having lost the status of worker cannot either belong to a trade union or take part in its leadership or administration, and that trade union officers must be members of a trade union. In its report in 2001, the Government indicated that, in the context of a preliminary draft of a new Labour Code, these restrictions would be withdrawn in favour of more flexible provisions. The Committee recalls that legislative provisions such as those referred to above may be interpreted as imposing upon all trade union leaders the obligation to belong to the occupation or to work in the enterprise whose workers are represented by the trade union. It therefore once again requests the Government to relax these eligibility conditions so as to ensure that qualified persons, such as persons employed by trade unions or retirees, may hold trade union office. The Committee requests the Government to keep it informed in this respect.

With regard to section 11 of Order No. 81/028 respecting the Government's power of requisition in the event of a strike when so required in the general interest, the Committee emphasized in its previous comments that it is necessary to restrict powers of requisition to cases in which the right to strike may be limited, or even prohibited, that is, on the one hand, in essential services in the strict sense of the term, namely those the interruption of which would endanger the life, personal safety or health of the whole or part of the population and, on the other, in a situation of acute national crisis. The Committee hopes that the Government will take the necessary measures to amend section 11 of Order No. 81/028 and requests it to keep it informed on this matter.

Articles 5 and 6. Right of workers' organizations to establish federations and confederations of their own choosing. The Committee recalls that the Constitution of 14 January 1995, which is currently suspended, set forth the possibility of trade union pluralism and freedom of association (article 10). However, and even though section 30 of Act No. 61/221 issuing the Labour Code provides that trade unions may form federations, section 4 of Act No. 88/009 of 19 May 1988 amending the Labour Code (which is still in force, according to the Government) was not amended following the adoption of the Constitution of 1995 and continues to provide that occupational trade unions formed into federations and confederations may join together in a single central national organization. In its report in 2001, the Government indicated that it had repealed this provision when formulating the preliminary draft of the new Labour Code. The Committee once again requests the Government to take the necessary measures to amend the Labour Code with regard to trade union monopoly so as to guarantee in full the right of workers' organizations to establish federations and confederations of their own choosing, and to keep it informed on this matter.

The Committee hopes that the Government's next report will contain all the necessary information. It also requests it to provide information on the process of formulating and adopting the preliminary draft of the Labour Code.

Chad

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

The Committee notes the Government's report. It notes in this respect that the Government recalls that Chad has been living under a democratic regime since 1990 which guarantees freedom of expression and freedom of association. The Government refers in this respect to article 12 of the Constitution and section 294 of the Labour Code. However, the Committee observes that these general indications do not reply to the points that it made in previous comments, which are as follows.

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

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

2. *Article 3. Right of workers' and employers' organizations to organize their administration and activities in full freedom.* The Committee noted in previous comments that section 307 of the new Labour Code continues to provide that the accounts and supporting documents for the financial transactions of trade unions must be submitted without delay to the labour inspector, when so requested. In this respect, the Government indicated in previous reports that the texts to be issued under the Labour Code should establish further provisions governing the conditions for such supervision, which could be carried out following a claim or a complaint by a trade unionist. The Committee trusts that the Government will take the necessary measures to provide effective guarantees of the right of occupational organizations to organize their administration without any interference by the public authorities, which involves, among other measures, ensuring that financial supervision is confined to an obligation to submit periodic financial reports and that any verification of accounts is limited to exceptional cases, such as the lodging of a complaint. It requests the Government to keep it informed in this respect in its next report and to indicate, in the event that the texts issued under the Labour Code have still not been adopted, the conditions under which supervision of the financial management of trade unions by labour inspectors is carried out in practice.

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

repealing or amending Decree No. 96/PR/MFPT/94, and to indicate the manner in which the right to strike is exercised in practice in the public service.

China

Hong Kong Special Administrative Region

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

The Committee takes note of the Government's report. It also takes note of the comments made by the Hong Kong Confederation of Trade Unions (HKCTU) and the International Confederation of Free Trade Unions (ICFTU) concerning the proposals to implement article 23 of the Basic Law. While noting the Government's extensive reply to the ICFTU communication and observing that the proposals to implement article 23 have apparently been postponed, the Committee notes with concern the comments raised by the HKCTU and ICFTU in respect of the draft provisions which, among others, would allow for the proscription of any local organization which is subordinate to a mainland organization, the operation of which has been prohibited on the grounds of protecting the security of the State. The Committee notes in this respect the Government's indication that the Bill expressly provides for a number of safeguards in respect of the proscription mechanisms and further notes its strong affirmation that there is no question of the National Security Bill endangering the independent trade union movement in Hong Kong. The Committee therefore expresses the firm hope that any further action on proposed legislation to implement article 23 of the Basic Law will take fully into account the provisions of this Convention, in particular, the right of workers and employers to form and join the organization of their own choosing, and to organize their administration and activities free from interference by the public authorities.

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

The Committee takes note of the Government's report. The Committee also takes note of the comments made by the International Confederation of Free Trade Unions (ICFTU) and the Hong Kong Confederation of Trade Unions (HKCTU) concerning anti-union discrimination and obstacles to collective bargaining. The Committee notes the Government's observations in response to the ICFTU's comments.

Article 1 of the Convention. The Committee takes note of the ICFTU and HKCTU comments which refer to widespread acts of anti-union discrimination due to deficiencies in the legal regime of protection against anti-union discrimination. The Committee notes that the Government refutes these comments and emphasizes that legislation affords adequate protection in this respect. The Committee also notes that the Government has been working on the drafting of an amendment Bill that would empower the Labour Tribunal to make an order of reinstatement/re-engagement in cases of unreasonable and unlawful dismissal without the need to secure the employer's consent. This approach has been endorsed by the Labour Advisory Board which has an equal number of employer and employee representatives. The Committee requests the Government to keep it informed of developments in this respect.

Article 4. The Committee also observes that according to the ICFTU comments, less than 1 per cent of the workforce is covered by collective agreements, which are moreover not legally binding, while the absence of an institutional framework for union recognition and collective bargaining (this specific point is also stressed by the HKCTU), including in the public sector, forces to some extent trade unions to serve mainly as pressure groups and organizers or advisers of workers. The Committee notes that the Government refers to the voluntary nature of negotiations in the framework of the Convention. The Committee recalls, however, that in its previous comments it had requested the Government to give serious consideration to the adoption of legislative provisions which would promote voluntary negotiation between employers' and workers' organizations with a view to regulating the terms and conditions of employment by means of collective agreements, since the Government had stated that machinery for negotiation had not been set up. The Committee recalls, moreover, that its comments were made pursuant to the conclusions reached by the Committee on Freedom of Association in Case No. 1942, with respect to the appropriateness of adopting objective procedures for determining the representative status of trade unions for collective bargaining purposes in view of the absence of legal protection for collective bargaining, the marginal representation of trade unions, and the fact that only very few workers and industries were covered by collective agreements which were moreover not binding and often not followed by the employers (311th Report, paragraphs 235-271, approved by the Governing Body at its November 1998 session).

In this context, the Committee notes with regret that according to the Government's report, in December 2002 the Legislative Council once again voted down a motion calling for the enactment of legislation on collective bargaining. Nevertheless, the Committee recalls that in previous reports, the Government had stated that a few collective agreements had been concluded in the industries of construction, printing, ship maintenance, goods loading and unloading, and transportation, while the Labour Department had taken measures to encourage and promote voluntary and direct negotiation between employers and employees or their respective organizations at the enterprise level and undertook

conciliation, whenever voluntary negotiations failed, to encourage the parties to sign an agreement. The Committee hopes that the Government will take additional measures in this direction.

The Committee also notes from the report that the Government's policy is to encourage and promote collective bargaining on a voluntary basis and to continue to promote tripartite dialogue through nine tripartite committees in the sectors of catering, construction, theatre, warehouse and cargo transport, property management, printing, hotel and tourism, cement and concrete as well as the retail industries. The Committee notes that, according to the Government, these tripartite committees seek to foster an environment conducive to collective bargaining and have assisted the Government in producing sample (apparently individual) employment contracts (catering, cargo transport and construction industries) and reference guides (hotel and tourism industry).

The Committee emphasizes that tripartite committees do not constitute negotiating bodies in the meaning of *Article 4* of the Convention since these committees include government representatives in addition to employers' and workers' organizations and seem to play a merely advisory role. With respect to the measures taken so far by the Government to promote bipartite collective bargaining, the Committee considers that much further progress needs to be made. The Committee therefore once again urges the Government to indicate in its next report any further measures adopted or contemplated including the promotion of new bipartite collective agreements, as well as any new draft legislation which encourages and promotes the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

With regard to the public sector in particular, the Committee notes the Government's statement that it sees no need for a collective bargaining arrangement with civil servants given the existence of a well-established and widespread consultative machinery in this sector with relevant staff unions/associations which the Government describes in detail; in cases of considerable change in conditions of service when an agreement cannot be reached, the matter "may" be referred to an independent commission of inquiry whose recommendations are binding. The Committee notes, however, that "while Article 6 of the Convention allows public servants engaged in the administration of the State to be excluded from its scope, other categories should enjoy the guarantees of the Convention and therefore be able to negotiate collectively their conditions of employment including wages" (see General Survey on freedom of association and collective bargaining, paragraph 262). The Committee therefore requests the Government to take all necessary measures so as to guarantee the right of public employees who are not engaged in the administration of the State, to negotiate collectively their conditions and terms of employment.

The Committee also notes from the Government's previous report that it does not have statistics on the number of collective agreements as there is no statutory requirement of reporting the collective agreements reached. The Committee requests the Government to take all necessary measures so as to collect information in this respect and to provide detailed information in its next report on the number of collective agreements reached, as well as the sectors and number of workers covered by such agreements.

Colombia

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

The Committee takes note of the Government's report. It notes with regret, however, that the report contains no observations on the comments submitted in September 2002 by the International Confederation of Free Trade Unions (ICFTU) and the Confederation of Workers of Colombia (CTC). The Committee also notes the discussions that took place in the Conference Committee on the Application of Standards. The Committee also takes note of the reports of the Committee on Freedom of Association on a number of cases pending that concern Colombia, adopted at its meetings of March, June and November 2003.

The Committee notes that, according to the Government, on 15 January 2003 the Work Plan of the Inter-Institutional Committee for the Prevention and Protection of the Human Rights of Workers was adopted and that its main objective is to promote, encourage and adopt all such measures as may strengthen freedom of association. The Government also states that the special committee to promote investigations into human rights violations is to be strengthened. The Committee notes that, according to the Government, the number of murders of trade union leaders and members has dropped in recent months. The Committee nonetheless observes with deep concern the persistent climate of violence in the country and the conclusions of May 2003 of the Committee on Freedom of Association in Case No. 1787 and those of the Conference Committee on the Application of Standards citing new murders and other acts of violence. The Committee echoes the two abovementioned bodies in requesting the Government to strengthen the relevant institutions still further in order to put an end to the intolerable situation of impunity, which constitutes a serious obstacle to the free exercise of the trade union rights protected by the Convention, so as to punish all those responsible effectively.

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

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

- the prohibition on strikes not only in essential services in the strict sense of the term (namely, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population) but also in a wide range of services which are not necessarily essential (section 450(1)(a) of the Labour Code and Decrees Nos. 414 and 437 of 1952; 1543 of 1955; 1593 of 1959; 1167 of 1963; 57 and 534 of 1967) and the possibility of dismissing trade union officers who have intervened or participated in an unlawful strike (section 450(2) of the Labour Code), even when the unlawfulness of the strike rests on requirements which are contrary to the principles of freedom of association; and
- the authority of the Minister of Labour to refer a dispute to arbitration when a strike exceeds a certain period (section 448(4) of the Labour Code).

The Committee notes with regret that the Government reports only that work on proposals for labour reform has not yet begun. The Committee requests the Government to provide information on the progress made by the Consultative Commission on Labour and Social Policies, which, according to information supplied by the Government to the Conference Committee on the Application of Standards at its meeting of 2002, had been seized of issues pertaining to the application of the Convention. The Committee requests the Government to take steps to have the legislation amended without delay and recalls in this connection the preliminary draft legislation prepared during the direct contacts mission in February 2000. The Committee requests the Government to send a detailed report so that the Committee of Experts may review the situation at its next session.

Lastly, the Committee notes that the World Confederation of Labour (WCL) has sent comments on the application of the Convention. It requests the Government to send its observations on them.

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

The Committee notes the Government's report in reply to the comments made by the Colombian Workers' Confederation (CTC) in a communication dated 21 June 2002, which refer among other matters to the denial of the right of collective bargaining for workers in the public administration. The Committee also notes the comments made by the World Confederation of Labour (WCL) referring to the absence of collective bargaining in the public administration and recourse to collective accords in parallel with collective agreements.

1. The Committee recalls once again that it has been referring for many years to the need to give effective recognition to the right of public employees who are not engaged in the administration of the State to collective bargaining and observes that the Government's report does not refer to this matter. The Committee emphasizes that, in accordance with the provisions of Convention No. 98, public employees who are not engaged in the administration of the State should enjoy the right to collective bargaining. The Committee regrets that the Government has still not taken legislative measures to establish the right of public employees to collective bargaining. The Committee requests the Government to provide information in its next report on any measure adopted in this respect and hopes that it will be able to note tangible progress in the near future.

2. The Committee also recalls that in its observation in 2002 it referred to enterprise, government and judicial practices giving preference to collective accords with non-unionized workers, disregarding collective agreements and existing trade unions. The Committee notes that the Government does not refer to this matter and once again recalls that *Article 4 of the Convention* calls for the full development and utilization of machinery for voluntary negotiation with workers' organizations with a view to the regulation of terms and conditions of employment by means of collective agreements, and that direct negotiations with workers should only be possible in the absence of trade union organizations. The Committee once again requests the Government to provide information on any measure adopted in this respect and on the total number of collective agreements and collective accords, and the number of workers covered by them.

Comoros

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

The Committee notes the Government's report.

The Committee recalls that its previous comments referred to the embryonic state of collective bargaining in both the private and public sectors in the country. In this respect, it noted that one collective agreement, concluded in 1961, is in force in the country, as well as various accords between branch trade unions and their employers, concluded following specific collective disputes, but that these accords were not in general effective.

The Committee notes the Government's indication that: (1) various meetings have been held between the social partners; (2) collective bargaining continues to be a major concern of the Government, which is endeavouring to make dialogue between the social partners more dynamic; and (3) a special adviser has been appointed to the Ministry of Social Affairs with the responsibility of specifically dealing with the promotion of social dialogue.

In this respect, the Committee notes that the Government does not provide information on new collective agreements which have been concluded since the agreement of 1961. The Committee once again reiterates the importance

that it attaches to *Article 4 of the Convention* which provides that measures shall be taken, where necessary, to promote voluntary negotiation between employers and workers' organizations. The Committee once again requests the Government to keep it informed of any memoranda of understanding or collective agreements that are concluded, with an indication of the sector and the number of workers covered. The Committee hopes that it will be able to note substantial progress in this respect in the Government's next report. The Committee recalls that the Government can have recourse to the technical assistance of the ILO.

Congo

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

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

The Committee recalls that its previous comments focused on the need to amend the legislation on the minimum service "indispensable to safeguard the general interest" to be maintained in the public service, which is organized by the employer, wherein refusal to participate constitutes serious misconduct (section 248-16 of the Labour Code). The Committee noted that the definition of the minimum service should be limited to those operations which are strictly necessary to meet the basic needs of the population and that workers' organizations should participate in the determination of such a service. The Committee noted that the Government confirms its intention to review this provision in consultation with the social partners. The Committee again asks the Government to keep it informed of any developments in this area and to provide a copy of the text amending the provision.

The Committee also noted that the Labour Code contains no provisions authorizing workers and employers to include in collective agreements a clause on the deduction of trade union dues from the wages of workers with the latter's consent. The Committee asks the Government to state in its next report whether procedures exist, in practice, for deducting trade union dues from workers' wages.

The Committee requests that the Government keep it informed of progress in the revision of the Labour Code in its next report and provide copies of any draft amendments to the Code so that their conformity with the provisions of the Convention may be ascertained.

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

Costa Rica

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

The Committee notes the Government's report.

1. *Prohibition upon foreign nationals 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 noted previously that Bill No. 13475 (which is currently on the agenda of the Legislative Assembly) amends section 345(e) of the Labour Code so that it no longer provides that the members of the executive board of a trade union must be of Costa Rican nationality, or of Central American origin, or foreign nationals married to a Costa Rican wife and having completed five years of permanent residence in the country; nevertheless, the above Bill provides that the bodies of trade unions must comply with the provisions of article 60 of the Constitution, which provides that "foreign nationals are prohibited from exercising direction or authority in unions". The Committee noted that a draft reform of the Constitution, prepared with the assistance of the ILO, had been submitted to the plenary of the Legislative Assembly in 1998, but that this text does not appear to be on the agenda of the current Legislative Assembly. The Committee drew the Government's attention to the importance of amending not only section 345 of the Labour Code, but also article 60(2) of the Constitution to abolish the current excessive restrictions on the right of foreign nationals to hold trade union office, which are incompatible with *Article 3 of the Convention*. The Committee notes that, according to its report, the Government has forwarded a copy of the Committee's comments to the President of the Legislative Assembly for information and the corresponding action. The Committee also notes that Bill No. 13475 is still on the agenda of the Legislative Assembly. The Committee requests the Government to report any developments at the legislative and/or constitutional level to guarantee the trade union rights of foreign nationals.

2. *The obligation for the trade union assembly to appoint the executive board each year* (section 346(a) of the Labour Code). The Committee notes with interest that Bill No. 13475 no longer requires the appointment of the executive board each year. The Committee requests the Government to report on developments in the processing of the above Bill.

3. *Restrictions on the right to strike*: (i) necessity to obtain the approval of "60 per cent of the persons who work in the enterprise, workplace or establishment concerned" (section 373(c) of the Labour Code); and (ii) prohibition of the right to strike for "workers engaged in rail, maritime and air transport enterprises" and "workers engaged in loading and unloading on docks and quays" (section 373(c) of the Labour Code). The Committee notes that the Government has

provided the text of the ruling by the Constitutional Chamber of the Supreme Court of Justice of 27 February 1998 declaring the above figure of 60 per cent to be constitutional. The Committee notes that, according to the Government, based on the case law of the Supreme Court, the only prohibition of strikes that persists concerns essential services the interruption of which could endanger the life, personal safety or health of the whole or part of the population.

The Committee emphasizes that the exercise of the right to strike should not be subjected to legal or practical requirements which make its lawful exercise very difficult or impossible. The Committee considers that the various points raised are incompatible with the right of workers' organizations to organize their activities and to formulate their programmes in full freedom, as set out in *Article 3* of the Convention. The Committee requests the Government to take measures with a view to the amendment of the legislation to reduce the percentage of workers required to call a strike and to guarantee clearly that a strike may be called by workers in rail, maritime and air transport enterprises.

The Committee notes Directive No. 28 of the Executive Authority, dated 15 September 2003, issued in relation to a strike, which considers as essential services oil refineries and ports and orders the authorities to take the necessary measures to maintain the provision of the above services.

The Committee emphasizes that the above services are not essential services in the strict sense of the term and that the exercise of the right to strike should be guaranteed in such services, without it being possible, for example, to replace striking workers by other workers. The Committee trusts that in future the Government will not have recourse to directives of this type in non-essential services.

In its previous observation, the Committee also noted that a magistrate of the Supreme Court of Justice observed in ruling No. 16-2000 of the Constitutional Chamber that of the approximately 600 strikes that have occurred over the past 20 or 30 years, a maximum of ten have been declared legal. The Committee notes that case law has now clarified the judicial procedures relating to the lawful or unlawful nature of strikes and that hearings are currently held of the trade union organizations concerned within short periods of time. The Committee requests the Government to provide information on the proportion of strikes declared unlawful over the past two years, with an indication of the sectors concerned.

4. *Necessity for Bill No. 13475, in amending section 344 of the Labour Code, to establish a short period within which the administrative authority may reach a decision concerning the registration of trade unions*, and after which, if no decision has been issued, it is understood that they have obtained legal personality. The Committee notes the Government's statement that, in practice and in accordance with the law, the administrative bodies reach a decision as soon as possible and in any event after no more than one month (after which, the assumption of an affirmative decision prevails in the event of the silence of the administration). The Committee requests that section 344 be amended to establish a specific short period.

5. Finally, the Committee notes that the Government has submitted its comments to the Higher Labour Council (a national tripartite body) with a view to their analysis by the commission responsible for examining draft labour legislation. The Committee emphasizes that the pending matters raise substantial problems with regard to the application of the Convention and hopes that it will be able to note important progress in the near future in both law and practice. The Committee requests the Government to keep it informed in this respect.

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

The Committee notes the Government's report and the discussion which took place in the Conference Committee in June 2002. The Committee also notes the comments on the application of the Convention made by the Public and Private Employees' Association (ANEP) on 26 November 2001. The Committee further notes the comments made recently by the Rerum Novarum Confederation of Workers and requests the Government to provide its comments in response.

1. *Slowness and ineffectiveness of recourse procedures in the event of anti-union acts*

In its previous comments, the Committee noted the slowness of the judicial procedures in the event of cases of anti-union persecution and of those applicable in cases of breaches of the labour legislation giving rise to the imposition of penalties, which may last for one or more years, as well as, in contrast, the Government's statement that the prior administrative procedure lasts for a period of two months as established by the Constitutional Chamber. The Committee noted that the Government, workers and employers agree upon the need for proceedings to be rapid and, within the framework of a tripartite consensus, the Executive Authority submitted to the Legislative Assembly a Bill to amend various provisions of the Labour Code (file No. 14676). The Committee noted that the Bill addresses very fully acts of anti-union discrimination and interference (dismissals, transfers, blacklists, etc.) and provides for very rapid procedures prior to dismissal, which have to be fulfilled by the employer, and summary proceedings before the judicial authorities, with compulsory time limits to ascertain the reasons for the dismissal and severe penalties for refusal to reinstate the worker where justified grounds are not proven.

The Committee notes that in its report the Government refers to recent important measures to facilitate labour proceedings and attaches statistics on the progress achieved. The Government adds that it has forwarded the comments made by the Committee of Experts to the President of the Supreme Court of Justice for analysis and consideration.

Nevertheless, the Committee emphasizes that the information and statistics provided by the Government are of a general nature and do not refer specifically to judicial procedures in relation to anti-trade union discrimination. The Committee also notes that the Bill (file No. 14676) referred to in the previous paragraph is before the Permanent Committee on Social Affairs of the Legislative Assembly. Bearing in mind the importance of the problem of the slowness of judicial procedures in cases of acts of anti-union discrimination, the Committee once again expresses the firm hope that the above Bill (file No. 14676) will be adopted in the near future and requests the Government to keep it informed on this matter.

2. *Restrictions on the right to collective bargaining in the public sector, including for employees who are not engaged in the administration of the State, as a result of various court rulings*

In its previous observation, the Committee noted that, according to the report of the technical assistance mission which took place in September 2001, there are good grounds for believing, including the opinion expressed by the President of the Constitutional Chamber, that the Chamber's rulings Nos. 2000-04453 of 24 May 2000 and 2000-7730 of 30 August 2000, as well as the Chamber's vote of clarification (No. 2000-09690) of 1 November 2000, totally exclude collective bargaining for all public sector employees with a statutory employment status, including those working in public or commercial enterprises or in independent public institutions. The Committee noted in the context of this case law the recent Decree No. 29576-MTSS of 31 May 2000 (regulations for the negotiation of collective agreements in the public sector), which only excludes from this right public servants of the highest level in the public sector, and that the above regulations, in accordance with the recommendations of the technical assistance provided by the ILO, include certain substantial improvements in relation to the 1993 regulations (for example, abolition of the approval commission, a sufficiently broad scope of application in terms of the persons covered, limitations on bargaining only for the representatives of public bodies) and which were the subject of certain comments by the technical assistance mission in September 2001 with a view to developing future legislation, in which emphasis was placed on certain problems and issues.

Nevertheless, the Committee emphasized in its previous observation that the technical assistance mission, commenting on the above rulings of the Constitutional Chamber, "emphasizes the confusion, uncertainty and even legal insecurity existing with regard to the scope of the right to collective bargaining in the public sector, in terms of the employees and public servants covered (according to the rulings, the administrations of public institutions or enterprises are responsible for determining which employees have statutory status, and their decision may in turn be appealed to the judicial authorities) and in parallel concerning the validity and effect of certain collective agreements that are in force, as well as the constitutionality of the large number (according to the Government) of de facto negotiations existing, including the recent regulations respecting collective bargaining in the public sector of 31 May 2001". The mission also emphasized that the ruling of 24 May 2000 indicates that it has retroactive effect.

The Committee notes that the trade union organization ANEP emphasizes that the right to collective bargaining should be recognized in the context of municipal authorities.

The Committee notes the information contained in the Government's report on the various measures taken by the Minister of Labour (to intervene with the President of the Legislative Assembly and the leaders of the legislative groups) and the Bills submitted for the proper application of the Convention in relation to the issues raised above, including a Bill to approve Convention No. 151 (placed as item No. 17 of the first readings for the second part of the plenary session), a Bill to approve Convention No. 154 (item No. 18), a Bill to reform article 192 of the Constitution (with a view to which the legislative is examining the possibility of establishing the corresponding commission) and a Bill respecting the negotiation of collective agreements in the public sector and to add a subsection (5) to section 112 of the General Act on public administration (under examination by the Permanent Committee on Social Affairs). The Government hopes that the discussion and examination of these draft texts will result in improvements in the application of Convention No. 98.

Recalling that the Convention only allows for the exclusion from its scope of application of public servants engaged in the administration of the State (*Article 6 of the Convention*), the Committee expresses the firm hope that the draft texts referred to by the Government will be adopted in the very near future and requests the Government to keep it informed in this respect.

3. *Subjecting collective bargaining in the public sector to criteria of proportionality and rationality*

The Committee noted previously that the ruling of the Constitutional Chamber of 30 August 2000 concerning the RECOPE oil refinery (a public enterprise) declared unconstitutional certain clauses of a collective agreement (relating to the vacation bonus, paid and unpaid leave for personal reasons, the attendance bonus for employees who comply with the duty to attend work, etc.) on grounds, in particular, of the criteria of legality, proportionality, rationality and equality, and referring to the unreasonable and disproportionate privileges which in certain cases are secured with public funds. The Committee insists that only on grounds of procedural flaws or non-compliance with minimum legal standards, including constitutional provisions, could clauses of agreements be struck down and it emphasized that the ruling in question may have very prejudicial effects on the confidence placed in collective bargaining as a means of resolving conflicts and may give rise to a loss of autonomy of the parties and the devaluation of collective bargaining itself.

The Committee previously expressed the hope that in future the authorities would take into account the above principle and would refrain from striking down clauses of collective agreements on the basis of the criteria of mere proportionality and rationality. The Committee notes the Government's indication in its report that it has forwarded the proposals of the ILO's supervisory bodies to the President of the Supreme Court of Justice for analysis and consideration, in the context of the principle of the separation of powers, so that the judicial authorities can take into account the principles indicated by the Committee of Experts. The Government reports that various deputies have recently lodged an appeal on grounds of unconstitutionality against various sections of the collective agreement in force in the "RECOPE" enterprise and that the Ministry of Labour joined the action of the trade union of the enterprise in order to maintain the collective agreement in force.

The Committee reiterates its previous conclusions on this matter, and requests to be kept informed in this respect.

4. *Collective bargaining in the private sector*

In its previous observation, the Committee noted with concern the enormous imbalance in the private sector between the number of collective agreements concluded by trade union organizations (12, with very low coverage – 7,200 workers) and the direct accords concluded by non-unionized workers (130). The Committee noted that the trade union confederations link this imbalance with the permanent workers' committees which, in their opinion, mostly act as hidden agents of employers or solidarist associations, an allegation that is denied by employers. In their previous communications, two trade union organizations made allegations concerning the conclusion of unlawful direct accords in the passenger and cargo transport sector.

The Committee once again emphasizes that the ILO's instruments envisage direct negotiation between employers' and workers' representatives only in the absence of trade union organizations. The Committee points out that Convention No. 98 advocates "encouraging and promoting negotiation with workers' organizations" by means of collective agreements and requests the Government to take the necessary measures to promote collective bargaining within the meaning of the Convention and for the holding of an investigation by independent persons of the reasons for the increase in direct accords with non-unionized workers. The Committee notes the Government's indication in its report that it has requested the technical assistance of the ILO Subregional Office for Central America and the collaboration of the judiciary, to which it has transmitted the comments of the Committee of Experts. The Committee reiterates its previous conclusions and hopes that it will be possible to note progress in the near future.

Finally, the Government indicates in general that it has requested the technical assistance of the ILO Subregional Office for Central America for the discussion of the various issues relating to the Convention in a tripartite context, and that a tripartite commission has been established to examine the draft texts of labour law, and met for the first time in September 2002. The Committee requests the Government to keep it informed of any progress achieved in relation to the various issues raised in this observation.

Côte d'Ivoire

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

The Committee notes the Government's report.

Protection against acts of anti-union discrimination. In its previous comment, the Committee noted that Decree No. 64-543 provides that breaches of trade union rights shall be punished as "category three offences" and it requested the Government to provide information on the exact amount of the fines or other penalties applicable in the case of acts of anti-union discrimination against workers who are not trade union leaders. In this respect, the Committee notes the information in the Government's report that section 3 of Decree No. 69-356 of 31 July 1969 imposes a fine of from 10,000 to 360,000 CFA francs and imprisonment for at least ten days and a maximum of two months for category three offences. The Committee also notes that in the case of repeated offences section 15 of Act No. 81-640 of 31 July 1981 provides for a fine of between 50,000 and 1,800,000 CFA francs and/or imprisonment of from two to six months.

Croatia

Convention No. 87: Freedom of Association and Protection of the Right to Organise, 1948 (ratification: 1991)

The Committee takes note with interest of the information supplied by the Government in its report concerning, in particular, the latest amendments to the Labour Law (*Official Gazette* No. 114/03) which allow for the exercise of solidarity strikes.

Noting, however, that the Government's report contains no reply to previous comments concerning the division of trade union assets, the Committee would recall that, in its previous comments, it had noted that trade unions were excluded from the scope of new legislation which gave all other associations a right of property over assets with respect to which they used to have a right of disposal (sections 1(2) and 43(1) of the new Associations Act, *Official Gazette* No.

88/01). The Committee had also observed that the old legislation continued to apply in the case of trade unions, providing that the Government would undertake the distribution of immovable assets which were owned by trade unions prior to World War II, if the trade unions failed to negotiate an agreement for the distribution among themselves (section 38, paragraphs 3 and 4, of the old Associations Act). The Committee had further recalled that, in Case No. 1938, the Committee on Freedom of Association had regretted that neither negotiations nor agreement had taken place in order to determine the division of trade union assets and that no significant progress had been made on this case, which had been pending for more than four years (see 328th Report, paragraph 27). The Committee requests the Government to provide information in its next report on the current situation with regard to the distribution of trade union assets and urges the Government once again to take all necessary measures, including the fixing of reasonable criteria for the division of assets and the establishment of a strict timetable, in consultation with all trade unions, in order to resolve this question. The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

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

The Committee takes note of the Government's report.

Article 4 of the Convention. With regard to its previous comments concerning the Supreme Court decision of 7 December 1995, which acknowledged that legislation may modify the substance of a collective agreement concluded for the whole of the public sector, the Committee takes due note of the Government's statement that it has adopted a new approach for the amendment of collective agreements, based on conciliation and an amicable settlement.

Comments of the Public Services International (PSI) on a possible amendment of the Labour Act detrimental to trade union rights. The Committee notes that the PSI has not forwarded any further comments on the Government's response to its previous comments as requested by the Committee. The Committee notes from the Government's previous and current report that certain legislative amendments concerning new coefficients for the calculation of salaries necessitated the renegotiation of collective agreements in the public sector and that the new collective agreement for public servants and officials was signed in December 2001.

Cuba

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

The Committee notes the Government's report, the comments made by the International Confederation of Free Trade Unions (ICFTU) and the World Confederation of Labour (WCL) and the discussion in the Conference Committee on the Application of Standards. The Committee of Experts also notes the report of the Committee on Freedom of Association on Case No. 2258, adopted at its session in November 2003.

1. Trade union monopoly

Articles 2, 5 and 6 of the Convention. With regard to the need to delete from the Labour Code of 1985 (sections 15 and 16) the reference to the Confederation of Workers, the Committee once again emphasizes that trade union pluralism must remain possible in all cases and that the law must not institutionalize a de facto monopoly. Even where at some point all workers have preferred to unify the trade union movement, they should still remain free to set up unions outside the established structure, should they so wish (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 96).

The Committee also notes the comments of the ICFTU concerning the compulsory membership of all workers of both the Confederation of Cuban Workers (CTC) and the Communist Party, as well as the Government's categorical denial that there is an obligation in the legislation to be a member of the CTC, and its emphasis that workers do so on a voluntary basis. The Committee recalls that, in accordance with the resolution of 1952 concerning the independence of the trade union movement, the fundamental and permanent mission of the trade union movement is the economic and social advancement of workers and that to these ends it is essential for the trade union movement in each country to preserve its freedom and independence, and that for this reason governments should not attempt to transform the trade union movement into an instrument for the pursuance of political aims, nor should they attempt to interfere with the normal functions of a trade union movement because of its freely established relationship with a political party. The Committee requests the Government to guarantee the freedom of trade union membership of workers in accordance with the principles set forth above.

Article 3 of the Convention. With regard to the need to amend Legislative Decree No. 67 of 1983, which confers on the Confederation of Workers the monopoly to represent the country's workers on government bodies, the Committee notes once again the Government's statement that the above Decree was amended by the sixth provision of Legislative Decree No. 147 of 1994. In this connection, the Committee notes, as it did in a previous observation, that this Decree: (1) does not explicitly repeal or amend section 61 of Legislative Decree No. 67; and (2) establishes in its first provision that Legislative Decree No. 147 of 1994 "confirms the organizational and operational bases established in ... Legislative Decree No. 67 of 19 April 1983 ... shall remain in force in so far as they are not contrary to the provisions of this

Legislative Decree". The Committee therefore once again strongly urges the Government to amend the above provision so as to guarantee the possibility of trade union pluralism, for example by replacing the reference to the Confederation of Workers by the words "the most representative organization".

The Committee also notes that, according to the information provided by the Government, these aspects are being examined within the context of the procedures for the revision of the Labour Code, which will be subject to a process of consultation beginning with workers' assemblies; once the process of collecting and compiling the views of the workers has been completed, the draft text will be adjusted and then the ILO's technical assistance will be requested, with a view to the subsequent submission of the draft text for approval by Parliament. The Committee notes that this process has been continuing for many years already and once again expresses the firm hope that it will be adopted in the very near future and will take into account the principle of trade union pluralism. The Committee requests the Government to send the Office a copy of the above draft revision.

Right to strike. The Committee notes the comments of the ICFTU, according to which the right to strike is not recognized in Cuban legislation and that its exercise in practice is prohibited. The Committee also notes the Government's indication that the legislation does not regulate, restrict or prohibit strikes, but that the workers do not need to have recourse to them because the representative trade union organizations of the workers enjoy the necessary guarantees for their participation in the various bodies, both at the enterprise and government level, for the adoption of decisions affecting their interests. The Committee recalls that the right to strike is one of the essential means available to workers and their organizations to promote their economic and social interests. It requests the Government to take measures to ensure that no one is discriminated against or prejudiced in their employment for having exercised their right to engage in peaceful strike action and to keep it informed in this connection.

II. The Committee notes that both the ICFTU and the WCL in their comments, as well as the Conference Committee on the Application of Standards and the Committee on Freedom of Association (Case No. 2258), referred to the non-recognition of independent trade unions, and particularly the Single Council of Cuban Workers (CUTC), the threats, detention and sentencing of its trade union leaders to long prison terms (from ten to 26 years) for their lawful trade union activities, and the confiscation of trade union property. The Committee also notes the Government's comments indicating that the CUTC is no more than a small group of persons who have never carried out trade union activities in any workplace, and which maintains relations with international trade union organizations to which it has supplied false information. According to the Government, the alleged trade union leaders were not convicted for their trade union activities, but by national courts in accordance with the legislation in force for offences set forth in the Cuban Penal Code prior to the facts and in accordance with the procedural guarantees set forth in the Constitution. The Committee of Experts nevertheless endorses the conclusions of the Committee on Freedom of Association in Case No. 2258 to the effect that some of the charges or acts indicated by the Government are too vague and are not necessarily criminal and can come under the definition of legitimate trade union activities and considers, also in the same way as the Committee on Freedom of Association, that the detention and sentencing of trade union officials or members for reasons relating to activities defending the interests of workers is a serious violation of public freedoms in general and of trade union freedoms in particular. The Committee of Experts also recalls that the freedom of industrial association is but one aspect of freedom of association in general, which must itself form part of the whole range of fundamental liberties of man, all interdependent and complementary one to another, and that in a resolution of 1970 the Conference has explicitly listed the fundamental rights essential for the exercise of freedom of association, in particular: (a) the right to freedom and security of person and freedom from arbitrary arrest and detention; (b) freedom of opinion and expression and in particular freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers; (c) freedom of assembly; (d) the right to a fair trial by an independent and impartial tribunal; and (e) the right to protection of the property of trade union organizations (see General Survey, op cit., paragraph 25).

The Committee requests the Government to take the necessary measures to guarantee in law and practice the right of workers to establish the organizations that they consider appropriate, in accordance with the Convention, the recognition of such organizations and the right of their members not to be subject to persecution, threats or detention and to exercise their trade union activities without interference by the Government. The Committee strongly urges the Government to take the necessary measures to free the detained trade union leaders referred to in the comments of the ICFTU and the conclusions of the Committee on Freedom of Association.

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

The Committee notes the Government's report and its reply in which it rejects the comments made by the International Confederation of Free Trade Unions (ICFTU) referring to the non-existence of collective bargaining in Cuba and the Government's control over working conditions in the state sector.

The Committee also notes the Government's information concerning the promulgation of Legislative Decree No. 229 respecting collective labour agreements, dated 1 April 2002, and its implementing regulations, by means of Resolution No. 27/2002.

1. *Article 4 of the Convention.* The Committee notes that section 14 of the Legislative Decree No. 229 provides that “discrepancies which arise in the process of formulating a draft collective labour agreement between the administration or its representative, on the one hand, and the trade union organization or its representative, on the other, shall be resolved by the respective superior levels as rapidly as possible, and with the participation of those affected”. This section is supplemented by section 8 of the implementing regulations, which provides that “discrepancies which arise in the process of formulating, modifying (...) collective labour agreements, if the necessary measures are not adopted for their resolution, shall be submitted to the immediately superior level of the administration and the trade union organization determined by the corresponding national trade union, for such bodies to facilitate together the corresponding solution within a period of up to 30 working days”. The Committee also notes that section 17 of the Legislative Decree provides that “discrepancies which arise in the process of formulating, modifying, revising or during the period in which the collective labour agreement is in force, after the exhaustion of the conciliation procedure (...) shall be submitted to arbitration by the National Labour Inspection Office with the participation of the Confederation of Workers of Cuba and the interested parties. The decision that is adopted is binding”. Sections 9 and 10 of the implementing regulations further specify the provisions of section 17 of the Legislative Decree.

The Committee notes that these provisions constitute interference in the activities of the parties to the negotiations by the administrative authority or the higher level trade union organization in establishing the content of the collective agreement or resolving discrepancies which arise between the parties, in violation of the principles of the Convention. The Committee also emphasizes that, in general, the imposition of compulsory arbitration, whether at the request of only one of the parties or at the initiative of the authorities, is contrary to the principle of voluntary negotiation set forth in the Convention, and therefore to the principle of the autonomy of the parties to negotiations.

The Committee requests the Government to take measures with a view to amending the legislation so that the parties to the negotiations resolve their own differences during collective bargaining without external interference and so that recourse to arbitration with binding effect is only possible with the agreement of the parties to the negotiations.

2. The Committee requests the Government to provide detailed information in its next report on the collective agreements concluded in recent years, the parties signing the agreements, the subjects addressed and the number of workers covered.

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

Cyprus

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

The Committee notes the information provided in the Government’s report.

In its previous comments, the Committee had insisted on the need to amend sections 79A and 79B of the Defence Regulations which grant the Council of Ministers discretionary power to prohibit strikes in the services that they considered essential. The Committee recalled that strikes can only be prohibited in essential services in the strict sense of the term, namely services the interruption of which would endanger the life, personal safety or health of the whole or part of the population. In its previous reports, the Government had indicated that discussions on the right to strike in essential services had been continuing between a ministerial committee and the trade unions and that, as a result, it decided to introduce a framework law which would be confined to defining “essential services” and “minimum services”, and which would bind the parties to a labour dispute in an essential service to follow for settlement, a procedure which would be defined and agreed upon by them. The Committee recalls in this respect that the Government has, over the last ten years, been referring to the review of its legislation in consultation with the social partners but that, according to the Government, the trade unions disagreed, in particular on the method for achieving this reform.

In its report, the Government reiterates that a framework law has been drafted. The draft limits itself to defining “essential services” and “minimum services” and would bind the parties to a dispute in an essential service to follow for its settlement the procedure described in a schedule to the law and which reflects a proposal made by the trade union side in a joint letter with the Cyprus Employers’ and Industrialists’ Federation. The Government considers that the combination of the law and an agreement would secure its commitment to regulate, by law and in a manner compatible with ILO principles and standards, the right to strike in essential services, as well as the effective protection of the public interest and workers’ right to strike. The Government reiterates that the draft was transmitted to the trade unions which insisted that the issue was not a matter for legal regulations and that it should be dealt with in an agreement; the dialogue was thus brought to an end. Nevertheless, the Ministry of Labour and Social Insurance, after consulting the Office on the consistency of the draft law with ILO principles and standards, submitted the draft to the Council of Ministers. The Council gave its approval in principle and authorized the Minister to submit it to the Attorney-General before its final examination by the Council. At the end of May 2002 (end of the period covered by the report), the draft was still before the Attorney-General.

The Committee takes note with interest of the draft law, which had been submitted to the Office for an informal opinion on its conformity with the Convention. It notes, in particular, that this draft law would repeal the discretionary

power granted by law to the Council of Ministers, under sections 79A and 79B of the Defence Regulations, to prohibit strikes and would define essential services strictly in a manner compatible with the Convention. The Committee further notes that the exercise of industrial action in such services would be allowed, provided an agreed minimum service is ensured. The procedure to be followed for dispute settlement would be set out in an agreement, annexed in a schedule to the law. The Government has explained that it has tried in this way to reply to the concerns of the trade unions that the matter be dealt with in an agreement, while ensuring that the discretionary power granted by the Defence Regulations is repealed and that the strict definition of essential services is not subject to negotiation. In these circumstances, the Committee expresses the firm hope that the reform will be completed very soon. It requests the Government to keep it informed of the most recent developments in this respect and to provide with its next report any relevant draft or final text.

Czech Republic

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

The Committee takes note of the report of the Government and its response to the comments of the International Confederation of Free Trade Unions (ICFTU).

The Committee requests the Government to send additional information on the judicial procedure in case of anti-union discrimination or interference and, in particular, to indicate more precisely the average duration of the procedure.

The Committee requests the Government to transmit the text of the draft law on the civil service which, according to the Government, makes it possible to collectively bargain in the public service.

[The Government is asked to reply in detail to the present comments in 2004.]

Democratic Republic of the Congo

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

The Committee notes the comments of 10 July 2003 on the application of the Convention submitted by the Conscience of Workers and Farmers of the Congo (CTP), and the comments of 29 August 2003 submitted by the World Confederation of Labour (WCL). The Committee requests the Government to send its observations on the abovementioned comments with its first report due next year.

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

The Committee notes that the Government's report has not been received. It notes the entry into force of Act No. 015/2002 of 16 October 2002 issuing the Labour Code.

Article 1 of the Convention. The Committee notes with satisfaction the provisions of the new Labour Code (sections 62, 234 and 321) which prohibit all acts of anti-union discrimination, including unilateral termination of employment contracts by employers for membership of a union or union activities, a matter raised by the Committee in its previous comments. The Committee further notes that, under section 63 of the new Code, where a contract of indefinite duration is terminated without due cause, the worker may be reinstated or, failing that, is entitled to damages, the amount of which is to be set by the labour courts. Under section 321 of the Code, breach of section 234 may be sanctioned by a fine of up to 20,000 Congolese francs (constant) (the average monthly wage of a worker is 2,400 Congolese francs).

Article 2. The Committee notes with interest that further to its comments the new Code, in section 235, prohibits all acts of interference by workers' organizations and employers' organizations in each other's affairs on pain of sanctions (section 321). It notes that acts of interference are to be defined more specifically in a ministerial order under section 236 of the Code, and asks the Government to provide a copy of the order once it is adopted.

Article 4. With regard to collective bargaining in the public sector, the Committee notes that section 1 of the Code specifies the Code's scope and expressly excludes career members of the state public service who are governed by the General Regulations (Act No. 81-003 of 17 July 1981 establishing the regulations of career members of the state public service) and career members of the state public service who are governed by specific regulations. In its previous observation the Committee had noted that the Government had set up a joint committee for the purpose of: (1) examining the social conditions of state employees and officials; (2) examining problems specific to the services of these employees and their administrative position; and (3) regulating trade union activities in the public administration. Lastly, the Committee asks the Government to indicate whether public servants who are not engaged in the administration of the State have the right to bargain collectively, and to provide information in future reports on measures to encourage and promote the negotiation of terms and conditions of employment between the public authorities and workers' organizations in this sector.

The Committee notes the comments on the application of the Convention made by the organization Conscience of the Workers and Peasants of the Congo on 10 July 2003 and requests the Government to send its response in this respect.

The Committee is addressing a request directly to the Government.

Denmark

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

The Committee notes the information provided in the Government's report, in the light of which it will pursue its examination in respect of section 10 of Act No. 408 of 23 June 1988, which sets up a Danish International Shipping Register (DIS).

The Committee recalls that, since 1989, it has been requesting the amendment of this provision, because it has the effect of prohibiting workers employed on Danish flagships who are not residents of Denmark from being represented in collective bargaining, if they so wished, by Danish trade unions of which they are members in contravention of *Article 3 of the Convention*.

The Committee has taken note of the considerations presented by the Government in its report. In particular, the Committee has noted that the agreements between the national social partners – the agreement on mutual information, coordination and cooperation concerning DIS ships and the framework agreement relating to the conclusion of collective agreements with foreign trade unions and individual agreements concerning foreign seafarers from outside the European Union and the European Economic Area – have been replaced by new agreements, valid for a period of three years as of 1 March 2002. The Committee notes that these agreements confirm the right to enter into collective agreements with foreign unions, in accordance with Act No. 408, and that Danish trade unions have a right to be represented at negotiations between Danish shipping companies and foreign trade unions, in order to ensure that the results in respect of wages and other working conditions are at an internationally acceptable level. The Committee also notes, however, that two of the parties to the previous agreements, namely the General Workers' Union in Denmark/Seamen's Union in Denmark and the Association of the Restaurant Business, decided not to be parties to the new agreements. The Committee has also duly taken note of the figures presented by the Government concerning the Danish shipping industry, and in particular that, out of a total of 7,729 seafarers, 3,350 were foreigners, as of 30 September 2001.

The Committee welcomes the renewal of the agreements between the social partners for a period of three years. At the same time, the Committee notes that the legislative aspect of the matter has not been resolved yet and that two parties have decided not to be bound by the new agreements. The Committee would like therefore to underline that section 10 of Act No. 408 has the effect of restricting the activities of Danish trade unions by prohibiting them from representing in the collective bargaining process those of their members who are not considered as residents in Denmark. Therefore, the Committee requests the Government to keep it informed on the measures taken or envisaged to amend section 10 of Act No. 408, so as to ensure that there can be no deviation from the spirit of the abovementioned agreements, and so that Danish trade unions may freely organize their activities, in particular by representing all their members – residents and non-residents in Denmark – in the collective bargaining process without any interference from the public authorities, in accordance with *Articles 3 and 10* of the Convention. The Committee also requests the Government to indicate in its next report whether Danish trade unions may freely represent seafarers who are not residents in Denmark in respect of their individual grievances.

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

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

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

1. Negotiating power of Danish trade unions of seafarers in respect of seafarers employed aboard Danish flagships and who are not residents of Denmark

This issue relates to section 10 of Act No. 408 – setting up a Danish international shipping register (DIS) – that grants negotiating powers to Danish trade unions of seafarers only in respect of Danish residents, thus excluding seafarers employed aboard Danish flagships and who are not residents of Denmark. In its previous comments, the Committee noted two agreements concluded between the national social partners: (1) the agreement on mutual information, coordination and cooperation concerning DIS ships; (2) the framework agreement relating to the conclusion of collective agreements with foreign trade unions and individual agreements concerning foreign seafarers from outside the European Union and the European Economic Area. These agreements confirmed the right of shipowners to negotiate collective agreements with foreign unions and the right of Danish trade unions to be represented at these negotiations in order to ensure that the results in respect of wages and other working conditions are at an internationally acceptable level. The Committee noted that these agreements appeared to promote the voluntary negotiation of terms and conditions of employment of seafarers employed aboard Danish flagships who are not residents of Denmark. The Committee requested information on the status

of these agreements as well as on any measures taken or envisaged to bring section 10 into conformity with the existing practice and into full conformity with Article 4 of the Convention.

The Committee notes that the two agreements have been replaced by two new agreements – copies of which have been sent by the Government – based on the same principles and concluded for a period of three years as of 1 March 2002.

While the Committee welcomes the conclusion of the two new agreements mentioned by the Government, it notes that the legislative aspect of the matter has not been resolved yet. The Committee recalls that section 10 of Act No. 408 has the effect of restricting the scope of negotiable issues by the Danish trade unions, by excluding from their bargaining power seafarers working on Danish flagships who are not considered Danish residents. By the same token, these seafarers cannot freely choose the organization they wish to represent their interests in the collective-bargaining process. In these circumstances, the Committee requests once again the Government to indicate in its next report any measures taken or envisaged to bring section 10 of Act No. 408 into full conformity with Article 4 of the Convention.

2. *Collective bargaining rights of majority organizations*

This issue relates to the application of section 12 of the Conciliation Act and has been raised following the examination by the Committee on Freedom of Association of Case No. 1971. This provision makes it possible for an overall draft settlement to cover collective agreements involving an entire sector of activity even if the organization representing most of the workers in that sector rejects the overall draft settlement. In its previous comments, the Committee requested the Government to review the legislation, in consultation with the social partners. According to the Government, the case has been dealt with by the “permanent ILO committee”, and it will be taken up in this committee again once the social partners have completed their discussions. The Committee requests the Government to provide information in its next report on the contents of the discussions taking place between the social partners. It trusts that every effort will be made to fully ensure the collective bargaining rights of majority organizations.

Djibouti

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

The Committee notes the Government’s report. It notes once again the observations made by the International Confederation of Free Trade Unions (ICFTU) in September 2002, concerning the requirement of prior authorization in order to establish trade unions and the broad powers of the authorities to requisition public servants who are on strike. The Committee also notes the discussion that took place in 2001 at the Conference Committee on the Application of Standards.

1. *Article 2 of the Convention. Right to establish organizations without prior authorization.* The Committee noted in its previous comments that section 5 of the Act on associations requires organizations to obtain authorization prior to establishing themselves as trade unions. The Government states in response that section 234 of the draft Labour Code requires only filing and checking formalities in order for a trade union to exist in law, and removes all reference to prior authorization. The Committee notes this information and asks the Government to send a copy of the code as soon as it has been adopted.

2. *Article 3. Right of workers to elect their representatives in full freedom.* The Committee pointed out previously that section 6 of the Labour Code which limits the holding of trade union office to Djibouti nationals is such as to restrict the full exercise of the right of workers to elect their representatives in full freedom. The Committee notes that, in its report, the Government states that section 233 of the draft Labour Code stipulates that “trade unions shall elect their representatives freely, provided that members who are responsible, in whatever capacity, for the management or organization of a trade union, shall be Djibouti nationals or foreign workers who are properly established in the country and enjoy civic and civil rights”. The Committee notes this information and requests the Government to send a copy of the code as soon as it is adopted.

3. *Requisitioning.* With regard to section 23 of Decree No. 23-099/PR/FP of 10 September 1983 which confers on the President of the Republic broad powers to requisition public servants who are indispensable to the life of the nation and to the proper operation of essential public services, the Committee notes that the Government once again states that it is ready to specify the limits of this power. The Committee therefore asks the Government to act accordingly and to amend its legislation in order to restrict the power to requisition to public servants who exercise authority in the name of the State or in essential services in the strict sense of the term.

4. *Reinstatement of trade union leaders.* With regard to the reinstatement in their jobs of nine trade union leaders of the UGTD/UDT who were dismissed in reprisal for their participation in legitimate trade union activities against structural adjustment measures, referred to also by the ICFTU, the Committee notes that, according to the Government, six trade union leaders were reinstated in their former services in 2002 and that the reinstatement of the other three is under way. The Committee notes this information with interest and again asks the Government to endeavour to secure the reinstatement in their jobs of the three other trade union leaders who were dismissed, and to provide information in its next report on developments in this situation.

Dominica

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

The Committee takes note of the Government's report.

The Committee has been referring for a number of years to the need to amend legislation so as to exclude the banana, citrus and coconut industries as well as the port authority, from the schedule of essential services annexed to Act No. 18 of 1986 on industrial relations, which makes it possible to stop a strike in these sectors by compulsory arbitration. The Committee had also noted that sections 59(1)(b) and 61(1)(c) of the Act empowered the Minister to refer disputes to compulsory arbitration if they concerned serious issues in his or her opinion. The Committee notes with interest from the Government's latest report that the Industrial Relations Advisory Committee has submitted recommendations to the Government for the removal of the citrus and coconut industries from the list of essential services. It requests the Government to indicate in its next report the progress made in restricting the list of essential services in this respect. The Committee also requests the Government to indicate the measures taken or envisaged to ensure that workers in the banana industry and the port authority may also have recourse to industrial action. In this respect, the Committee recalls that in order to avoid damages which are irreversible or out of all proportion to the occupational interests of the parties to the dispute, as well as damages to third parties, namely the users or consumers who suffer the economic effects of collective disputes, the authorities could establish a system of minimum service in other services which are of public utility rather than impose an outright ban on strikes, which should be limited to essential services in the strict sense of the term (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 160).

Finally, concerning the practical application of these provisions, the Committee requests the Government to transmit any available statistical data on the number, content and outcome of disputes which have been referred to compulsory arbitration, because they concerned the banana, citrus and coconut industries, the port authority, or issues considered serious by the Minister.

Dominican Republic

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

The Committee notes the Government's report and its reply to the comments made by the International Confederation of Free Trade Unions (ICFTU) in 2002, which referred among other matters to the disregard for trade union rights in export processing zones and sugar cane plantations.

The Committee recalls that its previous comments referred to:

- the requirement that federations must obtain a two-thirds majority vote of their members to be able to establish a confederation (section 383 of the Labour Code of 1992);
- the opposition of certain enterprises in export processing zones to the establishment of trade unions and the disregard for trade union protection;
- respect for trade union rights in sugar cane plantations;
- the requirement in the law of a majority of 51 per cent of votes in order to call a strike (section 407(3) of the Labour Code);
- the exclusion from the scope of the Labour Code (Principle III) and of the Civil Service and Administrative Careers Act of employees of autonomous and municipal state institutions (section 2); and
- the requirement of 40 per cent of the total number of employees in the respective institution for public servants to be able to establish organizations (section 142(1) of the Regulations adopted under the Civil Service and Administrative Careers Act).

Establishment of confederations

The Committee notes that the Government reiterates its previous comment concerning the need for the agreement of the social partners to remove the requirement of the percentage set out in section 383 of the Labour Code of 1992, and that agreement has not been reached on this matter. The Government once again undertakes to continue to seek an agreed solution.

The Committee notes that sections 383 and 388 of the Labour Code require the agreement of two federations, supported by the votes of two-thirds of their members, to establish a confederation. The Committee recalls that provisions which make the establishment of higher level organizations subject to the fulfilment of various excessive conditions are contrary to *Article 5 of the Convention* (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 191). The Committee once again urges the Government to ensure that in the near future it removes from the applicable legislation the restrictions relating to the requirement for two-thirds of the members of federations to vote for

the establishment of a confederation, so that it is left to the rules of federations to establish the criteria in this respect. The Committee also requests the Government to provide information on this matter with its next report.

Establishment of trade unions in export processing zones

The Committee notes that, according to the information provided by the Government, trade unions may be freely established in accordance with the provisions of Act No. 16-92 issuing the Labour Code and that eight collective agreements have been concluded on working conditions between enterprises in export processing zones and their trade unions, and that there are approximately 148 trade unions dispersed throughout the export processing zones in the country. With regard to the issue of trade union protection, raised by the ICFTU in its comments, the Committee notes that Title X of the Labour Code requires compliance with trade union protection and that the General Directorate of Labour of the Secretariat of State for Labour ensures compliance with trade union rights through the organization of training workshops. The Government admits the existence of isolated cases which are duly investigated and punished. The Committee requests the Government to continue ensuring that the right to organize and trade union protection are duly guaranteed in practice in export processing zones and requests it to continue providing information on this subject.

Observance of trade union rights in sugar cane plantations

With regard to the observance of trade union rights in sugar cane plantations, in relation to which the Government had indicated that 38 trade unions had been established in the various branches since the privatization of the sector, the Committee notes that, according to the comments of the ICFTU, trade union leaders do not enjoy freedom of movement in plantations to meet workers and that workers carrying out trade union activities are under threat. The Committee regrets to note that the Government has not provided any comments on this matter. The Committee considers that when their activities in relation to the persons that they represent so require, the leaders of workers' organizations should have the right of access to sugar cane plantations in order to meet workers. The Committee requests the Government to take measures to guarantee in practice access to sugar cane plantations and the right of assembly of trade union leaders and workers, in accordance with the principles set forth in the Convention. The Committee requests the Government to keep it informed of developments in the situation.

Requirement of a majority vote to call a strike

The Committee notes the Government's repeated statement that the social partners did not reach agreement on the amendment of section 407(3) of the Labour Code to reduce the statutory minimum requirement for calling a strike.

The Committee recalls once again that the Government should ensure that account is taken only of the votes cast and that the quorum is fixed at a reasonable level (see General Survey, *op. cit.*, paragraph 170). The Committee therefore urges the Government to amend this aspect of its legislation and to indicate the progress made in this respect in its next report.

Right to organize of employees of autonomous and municipal state institutions

The Committee recalls that all public servants and officials should have the right to establish occupational organizations, irrespective of whether they are engaged in the state administration at the central, regional or local level, are officials of bodies which provide important public services or are employed in state-owned economic enterprises (see General Survey, *op. cit.*, paragraph 49). The Committee requests the Government to take the necessary measures to ensure that the laws and the regulations governing these organizations explicitly allow workers in autonomous state institutions to organize and to guarantee that the other rights set forth in the Convention are guaranteed.

Obstacles to the establishment of trade unions of public servants (requirement of 40 per cent of all employees)

With regard to the requirement of 40 per cent of employees to establish associations of public servants (section 142 of Regulation No. 81-94 adopted under the Civil Service and Administrative Careers Act, as amended by Decree No. 559-01, dated 18 May 2001), which the Committee considers to be too high and which could result in a situation of trade union monopoly, the Committee notes the Government's indication that this provision will be examined. The Committee recalls that the requirement of a minimum number of members should be maintained within reasonable limits so as not to prevent the establishment of organizations and it therefore requests the Government to adapt its legislation accordingly and to provide information on this matter with its next report.

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

The Committee notes the Government's report.

The Committee notes the information provided by the International Confederation of Free Trade Unions (ICFTU) on 30 September 2002, and the Government's reply to a number of these comments.

Article 4 of the Convention. The Committee recalls that for many years it has been referring in its comments to the requirement for a trade union to represent an absolute majority of workers in an enterprise or of the workers employed in a particular branch of activity to be able to bargain collectively (sections 109 and 110 of the Labour Code). The

Committee notes that, in its comments on the application of the Convention, the ICFTU indicates that coverage by collective agreements is minimal, largely as a consequence of these legislative provisions. In this respect, the Committee regrets to note that the Government has not provided any new information on this subject and confines itself to indicating that collective bargaining is a recognized right in the country and reiterating the statement made in its previous report that the Advisory Labour Council will be convened to examine this matter. In these conditions, the Committee emphasizes once again that this requirement is excessive and that in many cases it could constitute an obstacle to collective bargaining and to its promotion in general; in any case, minority trade unions should be able to negotiate on behalf of their own members. The Committee hopes that in the very near future the Government will take the necessary measures to make the necessary amendments to the legislation and requests the Government to provide information in this respect.

The Committee also requested the Government to provide statistical data on the number of collective agreements concluded in the public and private sectors, including export processing zones, during the period covered by the report (with an indication of whether they are collective agreements concluded at the enterprise or branch level and the number of workers covered). The Committee also notes the ICFTU's indication that at the end of 2001 only three collective agreements were in force in export processing zones. In this respect, the Committee notes the Government's statement that 140 trade unions are in operation in the export processing zone sector, that there are eight collective agreements in that sector, and that the Directorate of Mediation in the Secretariat of State for Labour intervened in 51 collective labour disputes, carrying out functions of mediation and arbitration. The Committee requests the Government to indicate in its next report whether the eight collective agreements concluded in export processing zones to which it refers are of recent date, with an indication of the number of workers covered by them, as well as information on the collective agreements that have been concluded in the public and private sectors.

The Committee also requested the Government to provide information on the application of an accord concluded between the Dominican Association of Free Trade Zones (ADOZONA), the United Federation of Workers of Free Trade Zones (FUTRAZONAS) and the National Federation of Workers of Free Trade Zones (FENATRAZONAS) which provides, among other measures, for strengthening and guaranteeing compliance with trade union rights and the promotion of collective bargaining. In this respect, the Committee notes the Government's indication that dialogue and good understanding prevail between the parties and that satisfactory accords have been concluded.

Finally, the Committee regrets to note that, with the exception of a general statement that the legislation provides for trade union protection and that dismissals require the approval of the judicial authority, the Government has not provided information on the comments of the ICFTU which refer to: the failure to give effect to the prohibition of acts of anti-union discrimination; dismissals and other anti-union acts against trade union leaders and members in various enterprises in export processing zones, sugar plantations and health sector institutions; and the denial of collective bargaining in the sugar plantation sector and the health sector. The Committee requests the Government to provide full comments on these observations in its next report.

Ecuador

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

The Committee takes note of the Government's report.

The Committee recalls that for several years its comments have addressed the following points.

1. *Need to reduce the minimum number of workers (30) required to establish associations, works committees or assemblies to organize works committees (sections 450, 466 and 459 of the Labour Code).* The Committee notes with regret that there has been no tripartite discussion about reducing the number of workers required to establish a trade union or a works committee. While recalling that this minimum number would be permissible for industry trade unions, the Committee again requests the Government to take the necessary steps to reduce the minimum number of workers required to form associations or works committees.

2. *The need for civilian workers in bodies associated with or dependent on the armed forces and workers in the shipping sector to enjoy the right to join trade unions, and the refusal to register the Union of Ecuadorian Shipping Transport Workers (TRANSNAVE), which comprises civilian workers of the armed forces.* The Committee notes that the Government once again states that the civilian workers of the armed forces may join organizations and associations (in its previous observation, the Committee noted the Government's statement that they enjoy the right of association under article 35 of the Political Constitution), and that no application to register by a TRANSNAVE union having been found, the Government has requested the trade union to submit an application for registration or a copy of its earlier application.

3. *Need to amend sections 59(f) and 60(g) of the Civil Service and Administrative Careers Act, and article 45(10) of the Political Constitution, with a view to ensuring that public servants have the right to establish organizations for furthering and defending their occupational and economic interests and to have recourse to strike action.* The Committee notes that, according to the Government, there has as yet been no progress regarding the reform of the abovementioned legislation. The Committee recalls that, according to Article 2 of the Convention, all workers, with the sole possible exception of the armed forces and the police, should have the right to organize irrespective of any possible

restrictions on the right to strike for certain categories of workers (public servants exercising authority in the name of the State and workers in essential services, namely services the interruption of which would endanger the life, personal safety or health of the whole or part of the population). The Committee requests the Government to take steps to secure the amendment of the abovementioned provisions of the Civil Service and Administrative Careers Act and of the Political Constitution, and to provide information in its next report of the measures taken to that end.

4. *Need to amend section 522(2) of the Labour Code under which the Ministry of Labour determines the minimum services in the event of a strike in case of disagreement between the parties.* The Committee notes that a proposal to reform the legislation has been drafted and that the Committee will be informed as soon as there are concrete results. The Committee recalls that, in the absence of an agreement between the parties, responsibility for determining the minimum services should lie with an independent body which has the confidence of both parties, and not with the Ministry of Labour. The Committee expresses the hope that the abovementioned reform will be consistent with the principles of the Convention, and requests the Government to provide information in its next report on any developments in the reform.

5. *Implicit denial of the right to strike to federations and confederations (section 505 of the Labour Code).* The Committee notes that the Government has not sent its observations on this matter. The Committee recalls that under *Article 6* of the Convention federations and confederations must have the right to organize their administration and activities and formulate their programmes. The Committee requests the Government to amend section 505 of the Labour Code so as to ensure the abovementioned right.

6. *Prison sentences for participation in illegal work stoppages and strikes (Decree No. 105 of 7 June 1967).* The Committee notes that, according to the Government, as part of the reform of the legislation, Decree No. 105 is to be amended or repealed. The Committee hopes that this decree will be amended in the reform of the legislation, and requests the Government to provide information in its next report on any developments in this regard.

7. *The requirement of Ecuadorian nationality in order to serve as a trade union official (section 466(4) of the Labour Code).* The Committee notes that, according to the Government, consideration has been given to including this matter too in the reform of the legislation. The Committee hopes that, in the course of the abovementioned reform, it will be borne in mind that in conformity with *Article 3* of the Convention “legislation should allow foreign workers to take up trade union office, at least after a reasonable period of residence in the host country” (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 118). The Committee requests the Government to provide information in its next report on any developments in this aspect of the reform.

Lastly, in view of the Government’s statement that there is a proposal for a reform of the legislation, the Committee suggests that the Government may wish to seek technical assistance from the Office to ensure that the reform takes full account of the provisions of the Convention.

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

The Committee notes the Government’s report. It notes with regret that the Government has sent no information in response to most of the comments that the Committee has been making for several years on the following matters.

Article 1 of the Convention. With regard to the need to include in the legislation provisions that guarantee protection against anti-union discrimination at the time of recruitment the Government states that no legislative initiative has been introduced in this respect. The Committee emphasizes the need for such provisions to be included and requests the Government to provide information in its next report on any measures taken to that end.

Article 4. The Committee notes that the Government indicates that there has not been any development with regard to the comments relative to the need to amend the second paragraph of section 229 of the Labour Code, regarding the submission of the draft collective agreement, so that minority trade union organizations which include not more than 50 per cent of workers subject to the Labour Code may negotiate, on their own or jointly, on behalf of their own members. The Committee requests the Government to take steps for the necessary amendments to be made as soon as possible.

The Committee had also referred to the need for the public teaching staff and heads of educational institutions, and for staff who perform technical and occupational duties in the education sector (who are subject to the basic laws on education and the salary scales of teachers) referred to in section 3(h) of the Civil Service and Administrative Careers Act, to benefit from the right to organize and bargain collectively, not only at the national level but also at the local and establishment levels. The Committee observes that the Government mentions the Act on education and hierarchical promotion but has not transmitted the Act. The Committee again requests the Government to provide in its next report the legislative provisions governing the labour relations of these workers and under which they benefit from the guarantees set forth in the Convention.

Article 6. With regard to the need to amend section 3(g) of the Civil Service and Administrative Careers Act so that workers in government departments or other public sector institutions and in private sector institutions that pursue social or public purposes enjoy the rights guaranteed in the Convention, the Committee notes that, according to the Government, no progress has yet been made in the reform of the above Act. The Committee recalls that under *Article 6* of the Convention, only public servants engaged in the administration of the State may be excluded from its scope, and that the workers referred to in section 3(g) of the Civil Service and Administrative Careers Act do not fall into this category. The

Committee again asks the Government to take steps to amend the abovementioned Act and to provide information on all such measures taken in its next report.

Lastly, the Committee notes that the United Workers' Front (FUT) sent comments on the application of the Convention by a letter of 11 March 2003, objecting to section 8 of Executive Decree No. 44 of 30 January 2003 prohibiting an increase in wages and remuneration in the budgets of public sector entities for the financial year 2003. The Committee notes with regret that the Government has not sent its comments thereon. The Committee recalls that all workers in the public administration who are not engaged in the administration of the State must be able to enjoy the guarantees laid down in the Convention and, consequently, negotiate collectively their conditions of employment, including wages and that if, under an economic stabilization or structural adjustment policy, i.e. for imperative reasons of national economic interest, wage rates cannot be fixed freely by means of collective bargaining, these restrictions should be applied as an exceptional measure and only to the extent necessary, should not exceed a reasonable period and should be accompanied by adequate safeguards to effectively protect the standard of living of the workers concerned, in particular those who are likely to be the most affected (see General Survey on freedom of association and collective bargaining, 1994, paragraphs 262 and 260).

Egypt

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

The Committee takes note of the Government's report. In this respect, the Committee notes in particular: (1) the new Labour Code No. 12 of 2003; and (2) the Government's answer to the Committee's previous comments, prepared with a tripartite committee.

At the outset, the Committee would like to recall that the discrepancies between the Convention and the national legislation – i.e. Trade Union Act No. 35 of 1976, as amended by Act No. 12 of 1995, and the former Labour Code, as amended by Act No. 137 of 1981 – concern the following points:

- the institutionalization of a single trade union system under Act No. 35 (as amended by Act No. 12) and in particular sections 7, 13, 14, 17 and 52;
- the control granted by law to the higher level trade union organizations, and in particular the Confederation of Trade Unions, over the nomination and election procedures for trade union office, under sections 41, 42, 43 of Act No. 35 (as amended by Act No. 12);
- the control exercised by the Confederation of Trade Unions over the financial management of trade unions, under sections 62 and 65 of Act No. 35 (as amended by Act No. 12);
- the removal from office of the executive committee of a trade union which has provoked work stoppages or absenteeism in a public service or utility, under section 70(2)(b) of Act No. 35 (as amended by Act No. 12);
- the prior approval of the Confederation of Trade Unions for the organization of strike action, under section 14(i) of Act No. 35 (as amended by Act No. 12);
- compulsory arbitration at the request of one party, in services other than those that are essential in the strict sense of the term, under sections 93 to 106 of the former Labour Code (as amended by Act No. 137).

Articles 2, 5 and 6 of the Convention. In its previous comments, the Committee once again urged the Government to ensure that Act No. 35 was amended to secure for all workers the right, should they so wish, to establish occupational organizations at all levels outside the existing trade union structure. The Government reiterates that, over the years, the Egyptian labour movement has aimed to protect trade unions against fragmentation, which had weakened it in the past, while preserving their independence from public authorities and political parties. The Committee takes due note of this information but recalls that Act No. 35, and in particular sections 7, 13, 14, 17 and 52, are at variance with *Article 2* of the Convention, since trade union unity, directly or indirectly imposed by law, runs counter to the standards expressly laid down in the Convention (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 91). In its 2002 report, the Government mentioned the creation of a tripartite committee to review Act No. 35 in the light of the observations formulated by the Committee in recent years. The Committee requests the Government to indicate in its next report if this committee has been established and, more generally, to keep it informed of the measures taken or envisaged to amend Act No. 35 so as to ensure the right of workers to establish and join organizations of their own choosing, in accordance with *Article 2*.

Article 3. The Committee recalls that in its previous comment it noted that section 41 of Act No. 35 provides that the date and procedure for nomination and election to the executive boards of trade union organizations shall be determined by a decision of the competent minister, with the approval of the Confederation of Trade Unions. Section 42 sets out the manner of filling vacancies in the executive board and also permits the Confederation to determine the conditions and modalities of the dissolution of such boards in the event of a reduction in the number of members. Section 43 provides that, if for any reason, the number of members of the executive boards falls by more than half of the total number, the board shall be deemed to be dissolved by force of law and the executive body of the higher level trade union

organization shall assume its functions temporarily. In its report, the Government indicates that it is the trade union that decides the organization of the elections. The role of the Minister of Manpower and Migration is merely an organizational and procedural one. It provides an official mechanism in order to guarantee that the enterprise will fulfil its obligation to organize elections and that the elections will be held with all the impartiality and neutrality required. In these circumstances, the Committee recalls that procedures for the nomination and election to trade union office should be fixed by the rules of the organization concerned, without any interference by public authorities or by the single trade union central organization designated by the law. To address the Government's statement that elections should be held under all guarantees of impartiality and neutrality, the Committee would point out that legislative provisions can require, in a manner compatible with the Convention, that organizations specify in their statutes and rules the procedure for appointing their executive bodies, and rules ensuring the proper conduct of the election process. Further, if any supervision is deemed necessary, it should be exercised by a judicial authority (see General Survey, *op. cit.*, paragraphs 114 and 115). Finally, the Committee would like to point out that any removal or suspension of executive bodies which is not the result of an internal decision of the trade union, a vote by members or normal judicial proceedings, seriously interferes in the exercise of the trade union office to which officers should be freely elected by members of their trade union. Legislative provisions which permit the appointment of temporary administrators by the single central organization are incompatible with the Convention. Measures of this kind should only be possible through judicial proceedings (see General Survey, *op. cit.*, paragraphs 122 and 123). The Committee thus expresses the firm hope that the Government will make the necessary amendments to ensure that each workers' organization is able to elect its representatives in full freedom in accordance with *Article 3* of the Convention. It requests the Government to keep it informed of the measures taken or envisaged in this regard.

In its previous comments, the Committee noted that section 62 of Act No. 35 provides that the Confederation of Trade Unions shall determine the financial rules of trade unions and obliges lower level unions to pay a certain percentage of their income to higher level organizations, while section 65 provides that the Confederation shall control all aspects of the trade union's financial activities. The Committee recalls that workers' organizations should have the right to organize their administration without any interference from public authorities, which means, among other things, that they should enjoy autonomy and financial independence. The control granted by the law to the single central organization constitutes interference with the free functioning of workers' organizations, contrary to *Article 3*. If such control were to be organized it should be a matter for decision of all the organizations concerned, as reflected in their respective by-laws, and connected to the free choice of lower level organizations to affiliate to higher level organizations. Further, legislation intended to protect the rights of members and to ensure sound and efficient management can provide, in a manner compatible with the Convention, that trade union rules include provisions on the use of funds, the internal financial administration, etc. (see General Survey, *op. cit.*, paragraph 124). The Committee therefore requests the Government to keep it informed of the measures taken or envisaged to amend sections 62 and 65 so that workers' organizations have the right to organize their administration, including their financial activities, without interference, in accordance with *Article 3*.

In relation to section 70(2)(b) of Act No. 35, which provides for the dissolution of the executive committee of a trade union that has provoked work stoppages or absenteeism in a public service by the criminal court at the request of the public prosecutor, the Government indicates that these are public facilities and enterprises of vital services, where a strike might endanger the life and safety of the society as a whole. The Committee recalls that it has always considered that any restriction or limitation on the right to strike should be limited to public servants exercising authority in the name of the State or to essential services the interruption of which would endanger the life, personal safety or health of the whole or part of the population (see the General Survey, *op. cit.*, paragraphs 158 and 159). The Committee considers that the scope of the enterprises covered by section 70(2)(b) goes beyond this definition. However, it recalls that, in order to avoid damages which are irreversible or out of all proportion to the occupational interests of the parties to the dispute, as well as damages to third parties, namely the users or consumers who suffer the economic effects of collective disputes, the authorities could establish a system of minimum service in other services which are of public utility rather than imposing an outright ban on strikes (see General Survey, *op. cit.*, paragraph 160). The Committee therefore requests the Government to indicate the measures taken or envisaged to amend section 70(2)(b) taking into account the above.

The Committee notes that under section 193 of the new Labour Code, workers are prohibited to stage or announce a strike during the mediation and arbitration procedures. The Committee further notes that there are two kinds of arbitration procedures: (1) the private arbitration to which the parties may have recourse, under section 191, on the basis of a mutual agreement, except in the case of a dispute concerning a vital and strategic establishment; (2) the arbitration procedure set forth in the law, which may be imposed by one of the parties under section 179; in accordance with section 187, such procedure results in an award which amounts to a ruling passed by the court of appeal. The Committee must once again point out that the right to strike of workers' organizations may only be prohibited or limited, in particular through compulsory arbitration imposed by one party, in cases of a dispute in essential services in the strict sense of the term, namely services the interruption of which would endanger the life, personal safety or health of the whole or part of the population, or in case of acute national crisis. The Committee therefore requests the Government to amend section 193 of the Labour Code read in conjunction with sections 179 and 187, in order to guarantee that compulsory arbitration imposed by one party will limit the right to strike of workers' organizations only in cases of essential services in the strict sense of the term or in case of an acute national crisis.

The Committee notes that under section 194 of the new Labour Code, a strike is prohibited in strategic and vital establishments and that these establishments will be determined in a decree of the Prime Minister. In light of the considerations recalled above on the restrictions on the right to strike, the Committee trusts that, in the ministerial decree, the Government will limit the determination of such establishments to essential services in the strict sense of the term. It requests the Government to keep it informed in this respect and to provide a copy of the decree.

The Committee notes that, under section 69(9) of the new Labour Code, workers may be dismissed on the grounds of serious error if they have participated in a strike infringing section 194. Recalling that sanctions for strike action should be possible only where the prohibitions in question are in conformity with the principles of freedom of association, the Committee trusts that workers who have participated in legitimate strike action, in light of the considerations made above in respect of section 194, will not be sanctioned. It requests the Government to keep it informed of any concrete case of application of section 69(9) for infringement of section 194.

Articles 3 and 10. With regard to section 14(i) of Act No. 35 under which the Confederation of Trade Unions is empowered to approve the organization of a strike by workers, the Government indicates that the Confederation is, by virtue of its responsibilities, the trade union which includes all workers in the sector concerned at the national level, and the party responsible for the strike financing fund; therefore, it is only natural that it should have a say in the organization of the strike, in view of all the consequences, both financial and in terms of solidarity, that the strike might entail at the level of all workers in the sector. Further, if the Confederation were not to have a say, this would favour the employer who prefers to deal with the workers of the enterprise and the trade union committee and to have a limited confrontation, rather than a confrontation with the general trade union and the workers of the sector concerned. The Committee recalls that the requirement set out in the law of the approval of the Confederation in order to organize a strike is not in conformity with the Convention, as it denies first-level organizations the right to organize their activities and to formulate their programmes independently, including the decision on whether to call a strike. Prerequisites to the exercise of the right to strike should be left to the statutes and rules of the organizations concerned, which may themselves choose to subordinate a call for industrial action to approval by the central organization to which they may be affiliated. The Committee once again urges the Government to amend the legislation in order to bring it into conformity with *Article 3* of the Convention, so that first-level organizations have the right to organize all their activities without the imposition by law of the requirement of prior authorization by the Confederation. It requests the Government to keep it informed of the measures taken or envisaged in this regard.

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

Convention No. 98: Right to Organise and Collective Bargaining, 1949
(*ratification: 1954*)

The Committee notes the Government's report. The Committee also notes the entry into force of the new Labour Code No. 12 of 2003.

The Committee recalls that, for a number of years, it had been drawing the Government's attention to the need to amend section 87 of the Labour Code, as modified by Act No. 137 of 1981, which provides that any clause of a collective agreement, which is liable to impair economic interests of the country, shall be null and void. The Government indicates that the new Labour Code introduces a new section 154 under which any clause of a collective agreement contrary to the law on public order or general ethics shall be null and void.

The Committee notes with interest that, under the new Labour Code, the validity of a collective agreement is not subject any longer to the economic interests of the country. On the other hand, the validity of such an agreement is now subject to the law on public order or general ethics. In order to examine whether such requirement is compatible with the principle of voluntary negotiation contained in *Article 4 of the Convention*, the Committee requests the Government to indicate if the new section 154 refers to any specific legislative provisions and if so to provide a copy of these provisions. If section 154 refers to general concepts, the Committee requests the Government to specify concretely the meaning of "general ethics". Finally, the Committee requests the Government to keep it informed of any specific application in practice of section 154.

The Committee also notes that under section 158 of the new Labour Code, a collective agreement binds the parties once it has been registered with the competent administrative authority which can refuse such a registration by stating reasons. The Committee notes in this regard that the Labour Code does not enumerate the specific reasons for refusing the registration of a collective agreement. The Committee would like to underline that provisions which stipulate that collective agreements must be submitted for approval to the administrative authority or the labour tribunal before coming into force are compatible with the Convention provided they merely stipulate that approval may be refused if the collective agreement: (1) is tainted with a procedural flaw; or (2) does not conform to the minimum standards laid down by the labour legislation (see General Survey, *op. cit.*, paragraph 251). The Committee requests therefore the Government to take the necessary measures so as to ensure that the registration of collective agreements may only be refused in the two cases mentioned above and to keep it informed in this respect.

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

El Salvador

Convention No. 141: Rural Workers' Organisations, 1975 (ratification: 1995)

The Committee notes the Government's report and its reply to the comments made by the Inter-Union Committee of El Salvador on 12 September 2002, relating to various aspects of the Government's opposition to the establishment of rural workers' organization and the low number of trade union organizations existing due to the numerous obstacles that they have to overcome to be established.

The Committee notes that the Government has not provided precise information in relation to the comments of the Inter-Union Committee of El Salvador, but has confined itself to indicating that it is undertaking a study of labour relations and that, once completed, it will have to be approved by the tripartite members of the Higher Labour Council.

The Committee recalls that *Article 3 of the Convention* establishes the right for all categories of rural workers, whether they are wage earners or self-employed, to establish and join organizations of their own choosing without previous authorization. In this respect, the Committee requests the Government to provide information in its next report on the number of rural workers' organizations existing and the number of rural workers who are members of both rural organizations and other trade union organizations.

The Committee also requests the Government to provide information on the measures adopted to facilitate the establishment and growth, on a voluntary basis, of strong and independent organizations of rural workers as an effective means of ensuring the participation of these workers in economic and social development and the benefits resulting therefrom, in accordance with *Article 4* of the Convention.

Ethiopia

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

The Committee notes the Government's reports and the oral information provided by the Government representative to the Conference Committee in 2003, as well as the discussion which took place therein. It further notes the most recent conclusions and recommendations by the Committee on Freedom of Association in Case No. 1888 (see 330th Report, paragraphs 643-662). In this respect, the Committee has recently learned of the ruling made by the Ethiopian Federal High Court on 28 November 2003 concerning the legitimacy of the former leadership of the Ethiopian Teachers' Association (ETA). It requests the Government to transmit a copy of this ruling with its next report and to indicate all measures taken to ensure the full implementation of this ruling.

For many years, the Committee has been making comments concerning serious violations of the Convention which obstructed the rights of workers, without distinction whatsoever, to establish organizations of their own choosing and the right of these organizations to organize their activities without interference from the public authorities.

The Committee now notes from the Government's report that after passing through exhaustive consultations with the social partners, the draft amendments have been finalized and submitted to the legislature.

Article 2 of the Convention. Right of workers, without distinction whatsoever, to establish organizations of their own choosing. The Committee notes the proposed section 114(1), which stipulates that a trade union can be established in an undertaking where the number of workers is ten or more but that the number of workers in a trade union should not be less than ten. Noting from the Government's report that this amendment is intended to allow for union diversity, the Committee asks the Government to confirm that this draft is indeed to be interpreted as meaning that more than one trade union may be established in the same enterprise.

Articles 2 and 10. Restrictions on the right to unionize of teachers and civil servants. In its previous comments, the Committee noted that section 3(2)(b) of Labour Proclamation No. 42-1993 excludes teachers from its scope of application and requested the Government to forward any draft legislation governing teachers' associations and other government employees. In its latest report, the Government mentions that the new law for state administration has already been issued and entered into force. The Government also specifies that teachers are free to form associations to promote their occupational interests and that those working in Government institutions are governed by the Civil Servants Law, while those working in private undertakings are governed by the Labour Law. Recalling that teachers are excluded from the Labour Proclamation, the Committee requests the Government to transmit, with its next report, the specific provisions which guarantee to teachers, both civil servants and non-civil servants, the rights under the Convention. Furthermore, the Committee had noted in its previous comments that judges and prosecutors are also excluded from the Labour Proclamation. The Government states in its latest report that there are specific laws and regulations which govern the employment conditions of judges and prosecutors, namely the Federal Prosecutor Administration Council of Ministers Regulations No. 44/1996 and the Judicial Administration Commission Establishment Proclamation No. 24/1996. Having examined the latter, the Committee notes that this law does not deal with the freedom of association of judges and prosecutors. The Committee therefore requests the Government to transmit with its next report the specific provisions which guarantee to these categories of workers the right to organize to further and defend their occupational interests.

Articles 3 and 10. Right of worker's organization to organize their programme of action without interference from public authorities. The Committee notes with interest the proposal to amend the definition of the list of essential services so as to remove railway services, inter-urban services, banks and postal services. It further notes, however, that air transport and urban bus services and filling stations would remain on the list. The Committee considers that these services do not constitute essential services in the strict sense of the term. The Committee suggests that the Government give consideration to the establishment of a system of minimum service in these services of public utility, rather than impose an outright ban on strikes, which should be limited to essential services in the strict sense of the term. The Committee requests the Government to take the necessary measures so that the abovementioned services are also deleted from the list of essential services.

As concerns compulsory arbitration, sections 141(1), 142(3), 151(1), 152(1), 160(1) and (2) allow labour disputes to be reported by either of the disputing parties to the Ministry for conciliation and binding arbitration by the Labour Relations Board. The draft legislation proposed would channel interest disputes through conciliation and compulsory arbitration leading to a decision of the Labour Relations Board which can be appealed, on both questions of law and of fact, to the Federal High Court. However, the decision of the Federal High Court would still be final and binding. The Committee recalls that, except in situations concerning essential services in the strict sense of the term, and acute national crisis, arbitration awards should only be binding in cases where both parties agree. Furthermore, arbitration procedures should not be excessively long. The Committee therefore requests the Government to modify its draft legislation in this respect.

Article 4. Administrative dissolution of trade unions. The Committee notes with interest section 120 of the proposed amendment, which states that the Ministry may apply to the competent courts to cancel the certificate of registration of an organization on any one of the grounds contained in its subsections, thus eliminating the direct powers of cancellation of the administrative authorities to dissolve workers' organizations or cancel their registration.

The Committee further notes that both the current and the proposed subsection 120(c) would allow the cancellation of an organization's certificate of registration where an organization is found to have engaged in activities which are prohibited under the Labour Proclamation. As the Committee has already noted above, that some of the provisions of the Labour Proclamation restrict the right of workers to organize their activities contrary to the Convention, it requests the Government to ensure that these provisions are not invoked to cancel an organization's registration until they have been brought into conformity with the provisions of the Convention.

Recalling that the Government has been referring to the draft legislation for nine years now, the Committee urges the Government to adopt rapidly the necessary modifications to the Labour Proclamation in order to bring it fully into line with the requirements of the Convention and take all the necessary measures to ensure the full respect of the civil liberties essential for the meaningful exercise of trade union rights.

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

The Committee notes the Government's reports.

Article 2 of the Convention. In its previous comments, the Committee had noted that the legislation contains no specific provisions, coupled with effective and sufficiently dissuasive sanctions, providing for protection against acts of interference. The Committee had recalled that *Article 2* requires that protection be granted to organizations of employers and workers against acts of interference and, in particular, acts which are designed to promote the establishment of workers' organizations under the domination of employers' organizations, or to support workers' organizations by financial or other means, with the object of placing such organizations under the control of employers or their organizations.

In its report, the Government states that workers' and employers' organizations act freely without interference of one over the other. The Government stresses that section 113(1) of the Labour Proclamation guarantees the right of workers and employers to establish trade unions or associations, section 115 states clearly the functions of organizations and section 4(1) stipulates that it is unlawful for an employer to impede the worker in any manner in the exercise of his rights or take any measure against him because he exercises his right. Consequently, according to the Government, the presumption is that the above provisions prohibit interference.

While taking note of this information, the Committee recalls that the Convention requires the Government to take specific action, in particular through legislative means, to ensure respect of the guarantees laid down in *Article 2* (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 230). Therefore, the Committee requests the Government to amend its legislation to give effect to *Article 2* of the Convention in the indicated way.

Articles 4 and 6. For years, the Government had been indicating in its report that special legislation was being prepared to grant civil servants the right to organize and to conclude agreements with their employers. The Committee notes the Federal Civil Servants Proclamation No. 262/2002 which entered into force in January 2002. The Committee notes with regret that the abovementioned legislation does not refer to the right to negotiate of public servants. The Committee recalls that *Article 6* of the Convention only allows public servants engaged in the administration of the State

(civil servants employed in government ministries and other comparable bodies, as well as ancillary staff) to be excluded from its scope while other categories should be able to negotiate collectively their conditions of employment.

The Committee requests the Government to take the necessary measures to ensure the recognition, both in law and in practice, of the right to voluntary negotiation of employment conditions for public servants, with the sole possible exception of those engaged in the administration of the State.

Fiji

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

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

The Committee notes the Government's report, as well as the information provided to the Conference Committee in June 2002 and the debates that took place.

1. *Article 2 of the Convention.* In its previous comments, the Committee had requested the Government to provide information in its next report on the contents of the 1996 report of the subcommittee of the Labour Advisory Board with regard to the measures to be taken to guarantee adequate protection to workers' organizations against acts of interference by employers or their organizations, including sufficiently effective and dissuasive sanctions, and had expressed the firm hope that the Government would take the necessary measures in the very near future to ensure full compliance with the Convention on this point. In its report, the Government indicates that the Labour Advisory Board at its last meeting on 16 July 2002 considered that work on the Industrial Relations Bill should continue. The Government also adds that the situation augurs well for industrial relations in Fiji especially after the ratification of all the core Conventions in April of this year. The Committee recalls that it has been commenting on this issue for several years, and while taking note of this information it once again expresses the firm hope that the Government will take the necessary measures in the very near future to amend the legislation and ensure full compliance with the Convention on this point.

2. *Article 4.* With regard to the Fiji Trade Union Congress' (FTUC) previous comments that the Vatukoula Joint Mining Company has engaged in delaying tactics and has challenged the report of the Commission of Inquiry concerning the refusal by the company to recognize an independent registered Fiji mineworkers' union, the Committee had requested the Government to inform it of the court's decision in this matter once it is issued. In this respect, the Government indicates in its report that the case is still before the court, and that it has initiated actions to have the stay order struck out. The Committee notes this information and requests the Government to keep it informed of the developments in this regard in its next report.

Moreover, the Committee had previously requested the Government to submit the provisions of the Trade Unions (Recognition) Act which have been amended to extend collective bargaining rights to the representative unions in a bargaining unit even when none of them covers 50 per cent of the employees in this unit. The Committee notes with satisfaction that the old legal provisions on recognition of trade unions have been repealed by the enactment of the new Trade Unions (Recognition) Act of 1998, which provides recognition of minority unions for the purposes of collective bargaining.

In its previous comments, the Committee had asked the Government to take the necessary measures to amend section 10 of the Counter-Inflation (Remuneration) Act, which allowed for the restriction or regulation, by order of the Prices and Incomes Board, of remuneration of any kind, and stipulated that any agreement or arrangement which did not respect these limitations would be illegal and deemed to be an offence. The Committee had considered that the powers vested under the Act in the Prices and Incomes Board did not meet the criteria for acceptable limitations on voluntary collective bargaining and had asked the Government to keep it informed of any application in practice of section 10 of the Act. The Government considers in its report that section 10 is in full compliance with the provisions of *Article 4* for the reasons that: (1) it had been invoked by the Minister of Finance to meet national economic interests; and (2) once this objective has been met and free collective bargaining reintroduced, section 10 has again become dormant.

While noting the Government's view on this point, the Committee must once again recall that if, under an economic stabilization or structural adjustment policy, for compelling reasons of national economic interest, wage rates cannot be fixed freely by means of collective bargaining, restrictions should be applied as an exceptional measure and only to the extent necessary, should not exceed a reasonable period and should be accompanied by adequate safeguards to protect effectively the standard of living of the workers concerned (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 260). Since the criteria for acceptable limitations on voluntary collective bargaining do not appear to have been met, the Committee would accordingly once again ask the Government to take the necessary measures to amend section 10 of the Act in order to ensure full compliance with the Convention.

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

Germany

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

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

Articles 3 and 10 of the Convention. Right of public service organizations to formulate their programmes in defence of the occupational interests of their members including by recourse to collective action and strike. The Committee has been requesting for a number of years the adoption of measures so as to recognize the right of public

servants (“Beamte” including postal workers, railway employees, and teachers) who are not exercising authority in the name of the State to have recourse to strike action.

The Committee notes from the Government’s report that not every job which is currently performed by civil servants will continue to have civil servant status in the future. The Committee notes in particular from the Government’s report, that every principal must decide according to the terms of the Constitution (which limits public service to the “execution of authority in the name of the State”) those public duties which are to be undertaken by civil servants. The Committee also takes note of statistical information provided in the Government’s report according to which in 2001 career public servants accounted for 72 per cent of teachers, 23 per cent of teaching personnel in higher education institutions, and 35 per cent of people employed in public service. The Committee notes, moreover, that the number of civil servants in the privatized companies Deutsche Bahn and Deutsche Post continues to decrease and has already declined from around 60,900 to 58,000, and from 175,000 to 170,000 respectively, in the period from 31 December 2001 to 31 December 2002.

Recalling that the organizations of teachers, postal workers and railway employees, among others, should have the right to organize their programmes and activities, including calls for industrial action, free from interference by the public authorities, the Committee requests the Government to keep it informed of any measures envisaged to ensure that these workers will not be sanctioned for exercising legitimate trade union activities, including industrial action, if they so wish, in defence of their economic, social and occupational interests. The Committee further requests the Government to keep it informed of the evolution of statistical trends concerning the number of posts which will change status, especially in the areas of postal services, railways and education.

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

The Committee notes the Government’s report.

The Committee recalls that the issue at stake relates to the collective bargaining rights of teachers. In this respect, the Committee indicates once again that it is contrary to the Convention to exclude from the right to collective bargaining large categories of workers employed by the State but who are not engaged in the administration of the State. In this respect, the Committee considers that teachers carry out different duties from officials engaged in the administration of the State, and therefore should enjoy the guarantees provided for under *Article 4 of the Convention*. The Committee thus invites the Government to study ways with the trade union organizations concerned, in order to ensure a proper application of the Convention.

In its penultimate report, the Government indicated that the Federal Ministry of the Interior and the trade unions signed an agreement on 6 September 2000 under which the experiment of a draft regulation on career, training and examinations was successfully concluded. This project aimed at testing a more extensive collaboration with the trade unions and similar involvement of the leading organizations was planned for further suitable projects. In its report under examination, the Government indicates that the Federal Government will continue, where appropriate, such activities and that, to this date, it has not been possible to arrange for a follow-up project.

The Committee takes note of this information. It invites the Government, with the trade unions concerned, to pursue the initiatives concerning the follow-up project to which it refers, as well as to adopt the necessary measures to ensure the application of the Convention. The Committee requests the Government to keep it informed in its next report.

Ghana

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

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

The Committee notes the Government’s indication that the draft labour Bill, prepared with the assistance of the ILO, is currently before Parliament. The Committee also notes the Government’s statement to the effect that the Trade Union Ordinance of 1941 and the Industrial Relations Act, which were the subject of its previous comments, will be repealed by the new draft labour Bill, and that the Emergency Powers Act will be reviewed in accordance with the Committee’s comments.

The Committee trusts that the labour Bill will be adopted in the very near future and that it will ensure full conformity with the provisions of the Convention. The Committee therefore requests the Government to provide with its next report a copy of the adopted labour Bill in order to enable it to examine its conformity with the provisions of the Convention.

As for the Emergency Powers Act, 1994, the Committee recalls its previous comments concerning the extensive powers granted under this Act to suspend the operations of any law and to prohibit public meetings and processions. The Committee trusts that the Government will take the necessary measures in the near future to repeal this Act or to exclude explicitly the exercise of freedom of association from its scope of application.

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

Greece

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

The Committee takes note of the information provided by the Government in its report.

Freedom of association of seafarers. With regard to its long-standing comments concerning the need to extend the general protection on freedom of association to seafarers and their organizations, the Committee notes from the Government's report that, in 2000, a tripartite committee had been set up by a decision of the Minister of Mercantile Marine, in order to submit a proposal concerning the modernization of the legislative framework in the area of seafarers' freedom of association. The Committee further notes from the Government's report that after having met three times, the tripartite committee was unable to conclude its work mainly because 11 out of 14 first-level seafarers' organizations opposed, in writing, the revision of the legislative framework as unnecessary and premature. The Committee takes note of the Government's statement that the Ministry of Mercantile Marine plans to launch in the future another initiative for the re-examination of the legislative framework in the area of seafarers' freedom of association, the success of which will depend on the level of consensus reached by seafarers' organizations. Furthermore, the Committee notes that, according to the Government, the exemption of seafarers from the scope of Act No. 1264/82 does not imply a complete absence of a legislative framework concerning seafarers' freedom of association, as the right to establish and join trade unions is guaranteed in the Constitution and several other laws, which address certain aspects of trade union elections, the right to strike and collective bargaining. Moreover, the Committee notes from the Government's report that first-level seafarers' organizations representing all specializations as well as a second-level seafarers' organization function freely in accordance with their statutes.

The Committee requests the Government to provide information on the manner in which seafarers are currently represented by seafarers' organizations (representation by category, occupation or class of seafarer) and the manner in which new seafarer organizations are established and function, given that there appear to be no specific legislative provisions on this issue.

Article 2. Recognition of the most representative trade unions. In its previous comments, the Committee had noted that Act No. 3276 of 1994 on collective agreements concerning work at sea authorized the Minister of Mercantile Marine to evaluate freely which seafarers' organizations were the most representative for collective bargaining purposes and had requested the Government to indicate the criteria on the basis of which the representative status of seafarers' organizations was evaluated. The Committee notes from the Government's report that the criteria to evaluate the representativeness of organizations include, inter alia, the number of members, the number and size of ships belonging to the members of the organization, and the tradition of the organization as representative of a specific category of ships. The Committee recalls that when national legislation provides for a compulsory procedure for recognizing unions as exclusive bargaining agents, certain safeguards should be attached, such as: (a) the certification to be made by an independent body; (b) the representative organization to be chosen by a majority vote of the employees in the unit concerned; (c) the right of an organization, which in a previous trade union election failed to secure a sufficiently large number of votes, to request a new election after a stipulated period; (d) the right of any new organization other than the certified organization to demand a new election after a reasonable period has elapsed (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 240). The Committee requests the Government to indicate the manner in which these safeguards are ensured.

Guatemala

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

The Committee notes the Government's report. It notes the comments made by the Trade Union and People's Action Unit (UASP), the International Confederation of Free Trade Unions (ICFTU), the Union of Guatemalan Workers (UGT), the Trade Union Confederation of Guatemala (UNSITRAGUA) and the World Confederation of Labour (WCL), and the Government's response to some of the issues raised.

1. *Murders, acts of violence and death threats against trade unionists.* The Committee notes with concern that in their comments on the application of the Convention, the trade union organizations refer to serious acts of violence against trade unionists. Furthermore, various cases before the Committee on Freedom of Association (Cases Nos. 1970 and 2179), as well as comments by the ICFTU and the UGT, confirm that there are many murders, acts of violence, death threats and intimidation against trade unionists. In its previous observation, the Committee noted and welcomed the Government's indication that a special unit had been set up in the Public Prosecutor's Office and had begun operations to improve the efficiency of the criminal investigations into acts of violence against trade unionists. The Committee stresses the gravity of the situation and points out that trade union rights can be exercised only in a climate which is free of violence and pressure. The Committee expresses the firm hope that the Government will take prompt action to ensure that basic human rights and fundamental freedoms, which are essential to the exercise of trade union rights, are effectively

observed. The Committee further requests the Government to provide information on the results of the work done by the above unit, including relevant statistical data.

2. *Requirement under the Constitution to be of Guatemalan origin in order to be a trade union leader and requirement to be actually working in the enterprise or the occupation in order to be eligible for trade union office (sections 220 and 223 of the Labour Code).* The Committee notes from the Government's report that there have been no new developments in the legislation on these subjects.

The Committee points out that it is for trade union statutes and not the legislation to lay down the eligibility criteria for trade union office. The Committee has nonetheless recognized that a State may require foreign workers to have resided in the country for a reasonable period before becoming eligible for trade union office. With regard to section 223 of the Labour Code, the Committee points out that it may be in the interest of branch or industry unions to have some officers with legal, economic or other experience, without their necessarily working in the occupation in which the trade union operates. The Committee therefore requests the Government to inform it of any measures taken to amend the legislation and the Constitution so as to ensure that workers are able to determine in full freedom the conditions for the election of their officers and hence appoint representatives of their own choosing.

3. *Requirement that, in order to call a strike, the workers must constitute 50 per cent plus one of those working in the enterprise (section 241 of the Labour Code).* The Committee recalls that in its previous comments it pointed out that in votes on the calling of strikes only the votes cast should be counted in calculating the majority and that the quorum should be set at a reasonable level. The Committee asks the Government to take steps to amend the legislation so that only votes cast are counted in reckoning the majority.

4. *Imposition of compulsory arbitration without the possibility of resorting to a strike in public services which are not essential in the strict sense of the term, such as public transport and fuel-related services, and the prohibition of sympathy strikes (section 4(d), (e) and (g) of Decree No. 71-86, as amended by Legislative Decree No. 35-96 of 27 May 1996).* The Committee requested the Government to indicate, in the light of the new version of section 243 of the Labour Code and its definition of essential services in which a minimum service may be imposed (now limited to circumstances endangering the life, personal safety or health of the whole or part of the population), whether or not the restrictions set out in Legislative Decree No. 35-96 had been repealed by implication. The Committee took note of the Government's undertaking to continue to implement the recommendations of the Committee of Experts and noted that on 8 February 2002 a high-level labour committee was established, comprising Ministers of State and representatives of the Trade Union and People's Action Unit (USAP) which was to examine such matters, including the repeal of Legislative Decree No. 35-96. The Government's report, while not providing more information in this respect, points out that there has already been, implicitly, a partial repeal of the decrees criticized by the Committee. The Committee insists on the importance it attaches to the precise determination of trade union rights in legislation and thus requests the Government to take the necessary measures to formally repeal the abovementioned limitations in Decree No. 71-86 as amended by Decree No. 35-96.

5. *Assertion by the trade union federations that in recent years there have been no instances of legal strikes.* The Committee asked the Government to provide statistics on both the legal and the illegal strikes that had occurred in the past two years and to state, in the latter case, why these strikes were declared illegal. The Committee notes that, according to the Government's report, in recent months two strikes have been called in the public sector and in a third instance, the workers in the enterprise concerned sought to have the strike declared legal but the enterprise succeeded in delaying the process until the collective agreement was signed. The Committee requests the Government to continue to provide information on the number of legal and illegal strikes that have occurred in the last three years, indicating the sectors involved.

The Committee notes that the Government has submitted its comments to the Committee on Tripartite Affairs and that the Labour Code is currently being reformed. The Committee hopes that it will be able to note in the near future that significant progress has been made in the areas mentioned.

The Committee noted previously that the Government had requested technical assistance from the ILO. It further notes in this connection that the Government is of the view that the direct contacts mission requested in connection with Convention No. 98 by the Committee on the Application of Standards of the International Labour Conference would be more appropriate under the new Government that would take office after the elections (January 2004).

Lastly, the Committee asks the Government to send its reply to the comments of UNSITRAGUA (17 July, 25 August and 1 September 2003) and the WCL (28 August 2003).

In addition, the Committee is addressing a request on certain points directly to the Government.

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

The Committee notes the Government's report and the discussion that took place in the Conference Committee on the Application of Standards in June 2003. The Committee also notes the comments of the International Confederation of Free Trade Unions (ICFTU) (18 September 2002), the General Confederation of Workers of Guatemala (CGTG) (11

September 2002 and 27 January 2003), the Guatemalan Union of Workers (UGT) (30 October 2002), and the Government's response to them.

1. *Failure to comply with court orders to reinstate workers dismissed for trade union activities.* The Committee notes the Government's statement in its report that section 414 of the Penal Code (which the Committee requested the Government to amend) has been amended by Decree No. 57-2000 and that failure to obey final orders and sentences handed down by the judicial authority is penalized by a fine of from 5,000 to 50,000 quetzales (replacing the former amounts of 250 to 5,000 quetzales). The Government adds that in 2003 the courts registered no instances of failure to comply with court decisions ordering reinstatement. The Committee requests the Government to keep it informed of instances of failure to comply with reinstatement orders.

2. *Tardiness of the procedure to impose penalties for breach of labour legislation, particularly in the event of complaints for breach of trade union rights (according to the ICFTU some cases have taken five years to process).* The Government states that in May 2003, it sent several Bills to the Congress of the Republic to amend the Labour Code in order to speed up the processing of labour cases by introducing improvements, which the Government lists (oral proceedings, concentration of procedures, cautionary measures in favour of workers, a two-month deadline for the holding of hearings, etc.). The Government hopes that positive results will be achieved with these Bills before the end of 2003. The Committee requests the Government to keep it informed in this regard.

3. *Information requested by the Committee on the procedure for consultation and negotiation in the public sector (Legislative Decree No. 35-96). Comments by FENASTEG on the denial of the right to collective bargaining for state workers, through the failure to include the necessary funds in the general state budget.* The Committee notes that according to the Government, since 2002, 16 collective agreements have been concluded in state bodies (including ministries and municipalities), and that the legislation requires collective bargaining in such bodies to take place before the approval of the budget. The Government adds that the bargaining is conducted either directly or through judicial channels, in which case, the judicial authority may order the bargaining.

4. *Government Agreement No. 60-2002, which according to the CGTG, restricts collective bargaining by suspending in the public sector the grant of general wage increments and other benefits.* The Committee notes with interest the information in the Government's report that the Constitutional Court has ruled that these restrictions to collective bargaining are unconstitutional.

5. *The ICFTU's comments on the non-existence of collective agreements in export processing zones.* The Government states in its report that 22 collective agreements were approved in the private sector (two in enterprises in export processing zones); and that between 1998 and 2002, 129 collective agreements were approved in the private and public sectors. The Committee further notes that the Government has penalized enterprises in export processing zones which fail to comply with the labour legislation and, as required by the legislation, has so informed the Ministry of the Economy with a view to the cancellation of their entitlement to tariff benefits. The Government also states that the establishment of a high-level inter-institutional body is about to be approved and that it will comprise representatives of all state authorities having competence in matters relating to exports and export processing. Noting how few collective agreements exist in export processing zones, the Committee requests the Government to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment, by means of collective agreements, in enterprises in the export processing zones, and to provide information in its next report on any new collective agreements concluded in this sector.

6. *The UGT's comment that one-third of municipal trade union leaders have been removed from office by mayors.* The Committee requests the Government to reply to these comments.

7. *UNSITRAGUA's recent comments of 17 July, 25 August and 1 September 2003 and comments of 18 October 2001 by the World Confederation of Labour (WCL).* The Committee requests the Government to send its response to the above comments.

8. The Committee notes that the Government has agreed to the sending of a direct contacts mission, and expresses the hope that the mission will be carried out in the very near future.

Guinea

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

The Committee notes with regret that the Government's report does not contain a reply to its previous comments.

In its previous comments, the Committee noted that public transport and communications do not in themselves constitute essential services in the strict sense of the term, but that they appear on the list contained in Order No. 5680/MTASE/DMTSL/95 of 24 October 1995, which defines and determines essential services in the context of the exercise of the right to strike. While noting the provisions of section 4 (according to which a minimum service shall be established in essential services and that the determination of the jobs necessary for the implementation of the minimum service and the designation of the workers responsible for their execution are the responsibility of the employer and the

trade union body) it observes that, where the parties do not reach an agreement, it is for the public authorities to take the necessary measures to ensure the provision of indispensable minimum services (section 5). The Committee recalls that, where the parties do not reach an agreement, minimum services should be determined by an independent body. The Committee therefore requests the Government to indicate whether, in cases where the parties do not reach an agreement on a negotiated minimum service in transport and communications (which are not considered to be essential in the strict sense of the term), measures are envisaged for an independent body to examine rapidly the difficulties encountered in the definition of the minimum service.

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

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

The Committee notes the Government's report.

Articles 1 and 2 of the Convention. The Committee recalls that its previous comments concerned the need to include in the national legislation specific provisions: (a) to protect all workers, and not only trade union delegates as set out in the Labour Code, against anti-union discrimination at the time of recruitment and during employment; (b) to protect employers' and workers' organizations against acts of interference by each other (or their agents); and (c) to explicitly provide for appeal procedures and sufficiently dissuasive sanctions against acts of anti-union discrimination and interference.

The Committee notes that the Government's last report contains the same explanations as the previous report. Firstly, according to the Government, section 3 of the new draft Labour Code provides that no employer may take into consideration the membership of a trade union and trade union activities of workers in reaching decisions with regard, among other matters, to recruitment, conduct and the allocation of work, termination of the employment contract, etc. The Committee notes that the Government does not indicate whether appeal procedures and sufficiently dissuasive sanctions will also be envisaged. It therefore recalls that general legal provisions, such as section 3 of the draft Labour Code prohibiting acts of anti-union discrimination against workers, are inadequate in the absence of rapid and effective procedures, including the application of sufficiently dissuasive sanctions.

The Committee also notes that the Government repeats that acts of interference in the internal affairs of workers' and employers' organizations are not envisaged in national texts, without indicating whether the draft Labour Code prohibits and penalizes such acts. In this respect, the Committee, observing that such protection apparently does not exist in the draft Labour Code, requests the Government to take specific measures combined with effective and sufficiently dissuasive sanctions.

The Committee hopes that the provisions of the new Labour Code will be in full conformity with *Articles 1 and 2* of the Convention with regard to protection against acts of anti-union discrimination and interference. The Committee requests the Government to keep it informed in this respect in its next report and to provide a copy of the final text of the new Labour Code.

Guyana

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

The Committee takes note of the Government's report. The Committee also takes note of the comments communicated by the International Confederation of Free Trade Unions (ICFTU) dated 29 October 2003 and requests the Government to transmit its observations thereon.

The Committee recalls that, in its previous comments, it had referred to the necessity of amending the Public Utility Undertakings and Public Health Services Arbitration Act (Chapter 54:01, sections 3, 12 and 19) so that compulsory arbitration in respect of a strike, liable to a fine or two months' imprisonment, may only be used with respect to strikes in essential services in the strict sense of the term. The Committee notes that according to the Government, the Act has not yet been amended but it may now be possible to do so. The Committee trusts that the Government will take the necessary measures in the near future so as to bring the legislation into conformity with the Convention, and to ensure that the powers conferred on the authorities to resort to compulsory arbitration to bring an end to a strike are limited to strikes in

services, the interruption of which would endanger the life, personal safety or health of the whole or part of the population. The Committee requests the Government to indicate in its next report any progress made in this respect.

Haiti

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Honduras

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

The Committee notes the Government's report and recalls that it has been commenting for many years on the following points:

- the exclusion from the scope of the Labour Code, and thus from the rights and guarantees of the Convention, of workers in certain agricultural or stock-raising enterprises which do not permanently employ more than ten workers (section 2(1));
- the prohibition of more than one trade union in a single enterprise, institution, or establishment (section 472);
- the requirement of more than 30 workers to constitute a trade union (section 475);
- the requirement that the officers of a trade union, federation or confederation 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));

- restrictions on the right to strike, namely:
 - the ban on strikes being called by federations and confederations (section 537);
 - 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);
 - the power of the Ministry of Labour and Social Security to end disputes in oil production, refining, transport and distribution services (section 555(2));
 - the need for government authorization or a six-month period of notice for any suspension or stoppage of work in public services that do not depend directly or indirectly on the State (section 558); and
 - the submission 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 which are not essential in the strict sense of the term (sections 554(2) and (7), 820 and 826).

The Committee notes the Government's indication that Decree No. 760 of 25 May 1979, which lifted the restriction that 90 per cent of the members of trade union organizations must be Honduran nationals, continues to be in force, but that the requirement to be a Honduran national remains for trade union leaders. With regard to the other issues, the Committee notes that in its latest report the Government confines itself in general to reiterating the indications provided in previous years. The Committee also notes that the tripartite consultations with a view to bringing certain aspects of the legislation into conformity with the Convention, to which the Government referred previously, have still not been held, and that they are at a preliminary stage. The Committee expresses the firm hope that they will be held in the near future and that the necessary measures will be taken to bring all of the legislative provisions commented upon into conformity with the requirements of the Convention. The Committee requests the Government to provide a copy of any preliminary draft text that is formulated and to provide information in its next report on any developments in this respect.

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

The Committee notes the Government's report.

1. *Inadequate protection against acts of anti-union discrimination.* In its previous comments, the Committee requested the Government to take measures to ensure that the legislation, which already prohibits acts of anti-union discrimination, sets forth sufficiently effective and dissuasive sanctions against such acts. The Committee noted in its previous observation that, according to the Government, as the penalties envisaged in section 469 of the Labour Code against persons impairing the right to freedom of association (from 200 to 2,000 lempiras, with 200 lempiras being equivalent to around \$12) had been deemed inadequate by one workers' confederation, a process of tripartite dialogue would be initiated to discuss reforms of the labour legislation to adapt it to the needs of the social partners. In this respect, the Committee notes the Government's statement in its report that, although it has forwarded the observations of the Committee of Experts to employers' and workers' organizations for their opinions, it has not received any reply from them. The Government adds that examination of labour law reforms is envisaged in the strategic agenda of the tripartite dialogue and consultation body and, in particular, the Economic and Social Council. The Committee once again hopes that the outcome of the tripartite discussions on labour law reform will be the preparation of a Bill in the near future providing for sufficiently effective and dissuasive sanctions against *all* acts of anti-union discrimination. The Committee requests the Government to provide information on this matter in its next report. The Committee also reminds the Government that it can seek the Office's technical assistance in drafting the above Bill.

2. *Protection against acts of interference.* The Committee notes the Government's indication in its report that, under the terms of section 511 of the Labour Code, members of a union whose tasks entail representing the employer or who hold positions of management or personal trust, or who are easily able to exert undue pressure on their colleagues, may not hold trade union office. In this respect, the Committee recalls that *Article 2 of the Convention* provides for broader protection for workers' and employers' organizations against any acts of interference by each other (or their agents) and considers as acts of interference, in particular, acts which are designed to promote the establishment of workers' organizations under the domination of employers or employers' organizations, or to support workers' organizations by financial or other means, with the object of placing such organizations under the control of employers or employers' organizations. In this respect, the Committee once again hopes that, in the context of the process of dialogue for the labour law reform, provisions will be included, designed to prohibit and afford full and adequate protection against any acts of interference, as well as sufficiently effective and dissuasive sanctions against such acts.

The Committee once again requests the Government to provide information in its next report on any measure adopted to this end.

Hungary

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

The Committee notes the information contained in the Government's report. The Committee also takes note of the conclusions and recommendations of the Committee on Freedom of Association in Case No. 2118 [see 330th Report, paragraphs 103-116, and 332nd Report, paragraphs 80-83].

Article 2 of the Convention. The Committee notes from the Government's report that protection against interference by workers' or employers' organizations into each other's establishment, functioning or administration may be derived from the general provisions governing the establishment and functioning of these organizations, but is not explicitly integrated into labour legislation. On this issue, the Committee recalls that "Governments which have ratified the Convention are however under the obligation to take specific action, in particular through legislative means, to ensure respect for the guarantees laid down in *Article 2*" (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 230). The Committee therefore requests the Government to take all necessary measures to adopt specific legislative provisions prohibiting acts of interference (in particular, those designed to promote the establishment of workers' organizations under the domination of employers or employers' organizations, or to place workers' organizations under the control of employers or employers' organizations through financial or other means), and establishing rapid appeal procedures, coupled with effective and dissuasive sanctions against such acts.

Article 4. The Committee notes that the Labour Code provides that collective agreements may be concluded: (a) jointly by all trade unions if their cumulative power represents an absolute majority of the votes cast in the elections for works councils (section 33(3)); or (b) jointly by certain trade unions each one of which represents at least 10 per cent of the votes cast in these elections and have obtained altogether more than 50 per cent of the votes (sections 33(4) and 29(4)); and (c) individually, only where one trade union has received more than 65 per cent of the votes cast in the elections for works councils (section 33(5)). The Committee also notes that the Constitutional Court found these provisions unconstitutional because their application prevents the trade union with the widest support from concluding a collective agreement with the employer.

The Committee considers that problems may arise when the law stipulates that trade unions must attain a percentage of 65 per cent (individually) or 50 per cent (jointly) in order to be recognized as bargaining agents, since unions which fail to secure this excessively high threshold are denied the possibility of bargaining. The Committee requests the Government to take all necessary measures to amend section 33 of the Labour Code so as to lower the minimum threshold requirements set for recognition as a bargaining agent, and ensure that, where no trade union reaches these thresholds, collective bargaining rights are granted to all unions in the unit, at least on behalf of their own members. The Committee requests the Government to keep it informed of any measures taken or contemplated in order to bring the legislation into conformity with *Articles 2 and 4* of the Convention.

Iceland

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

The Committee takes note of the information provided in the latest report communicated by the Government concerning difficult negotiations relating to fishermen's wages and which led to major industrial action in the fishing industry. The Committee further notes the conclusions and recommendations of the Committee on Freedom of Association in Case No. 2170 (see 330th Report approved by the Governing Body at its 286th Session in March 2003, paragraphs 885-894) on this matter.

Article 3 of the Convention

Right of workers' and employers' organizations to organize their activities and formulate their programmes free from Government interference. The Committee notes that Act No. 8/2001 (adopted on 19 March 2001) postponed until 1 April 2001 industrial action called by a number of occupational organizations as a result of difficult negotiations relating to fishermen's wages (determined at the time by Act No. 10/1998). The Committee further notes that, under the provisions of the Act, infringements to the temporary prohibition of the strike would be dealt with under the Penal Code and would lead to the payment of a fine if a more severe sanction did not apply under another Act. The Committee notes that the strike resumed on 2 April. Act No. 34/2001, adopted on 16 May 2001, once again prohibited with immediate effect the strike. The prohibition was to last during the whole period of validity of the decision made by the arbitration panel to be established under the Act. The Committee notes that the arbitration panel eventually determined the fishermen's wages by extending the application of a collective agreement reached by some professional organizations of the sector until the end of 2003.

In the Committee's view, Act No. 8/2001 and Act No. 34/2001 constitute yet another legislative intervention in a strike action of the type of those which have occurred over the past years (see Cases Nos. 1458 and 1563, dealt with respectively in the 262nd and 279th Reports of the Committee on Freedom of Association and the comments of this

committee in its 1990 observation). The Committee therefore deems it necessary to draw the attention of the Government to the following points, all the more so as the current collective agreement determining fishermen's wages and declared applicable under Act No. 34/2001 will soon be due for renewal.

First, the Committee recalls that the right to strike may be restricted or prohibited in particular in essential services in the strict sense of the term – that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population (see the General Survey of 1994 on freedom of association and collective bargaining, paragraphs 159 and 160). The Committee takes due note of the Government's comments on the importance of the fishing industry in the Icelandic economy and that its justification for the adoption of both Acts – and in particular the prohibition of the right to strike – is solely based on the economical weight of the sector. Concerning Act No. 8/2001, the Committee notes the Government's comment to the effect that the strike began in the course of the capelin-fishing season, that a large part of the capelin quota remained to be caught and that therefore vital economic interests were at stake; Act No. 8/2001 was thus adopted to avoid substantial damage to the national economy. In respect of Act No. 34/2001, and in particular the economic impact of the six-week strike, the Committee notes the Government's comment that "if the strike would last much longer it would have serious consequences for the country's economy"; the Government also indicates that "the damaging effects of the strike were already beginning to become evident ..." and therefore that "it was necessary to take measures to prevent a major economic disruption ...". While fully recognizing that a work stoppage in the Icelandic fishing industry may have important consequences on the national economy (as stoppages in other important sectors may have for other countries), the Committee does not consider that the work stoppage in question endangered the life, personal safety or health of whole or part of the population. The Committee therefore considers that both Acts Nos. 8/2001 and 34/2001 restricted the right of workers' organizations to freely organize their activities and formulate their programmes for the furtherance and the defence of the interests of their members, in a manner that was not compatible with *Article 3* of the Convention.

In light of the considerations made above, the Committee urges the Government to refrain from legislative intervention aimed at prohibiting legitimate strike action in the future, and in particular in the event that workers' organizations would once again decide to have recourse to industrial action should the negotiations of fishermen's wages give rise to new difficulties.

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

The Committee takes note of the two reports sent by the Government.

In its previous comments, the Committee took note of the collective dispute between certain fishermen trade unions and the federation of the fishing vessel owners concerning the determination of the fishermen's wages and terms of employment. The difficulties encountered eventually led to the adoption of Act 34/2001 which had the effect in particular of fixing fishermen's wages and terms of employment through the imposition of an arbitration process. In addition, the Committee took note of the observations made by the Icelandic Federation of Labour (ASÍ) which considered that Act No. 34/2001 constituted a violation of the Convention. The Committee also noted that the ASÍ had lodged a complaint in this respect before the Committee on Freedom of Association in Case No. 2170. The Committee would like to underline that the circumstances that led to the adoption of Act No. 34/2001 are quite similar to those which resulted in the adoption of Act No. 10/98 under which fishermen's wages had been previously established.

Article 4 of the Convention. The Committee notes the conclusions and recommendations of the Committee on Freedom of Association in Case No. 2170 (see 330th Report approved by the Governing Body at its 286th Session, paragraphs 885-894) and in particular, "that the arbitration process provided for under Act No. 34/2001 infringed the principle of free and voluntary collective bargaining." (see 330th Report, paragraph 894(b)). The Committee also notes that the Committee on Freedom of Association "requests the Government to change the national machinery and procedures concerning collective bargaining to avoid repetitive legislative interventions in the collective bargaining process in the future" (see 330th Report, paragraph 894(c)).

The Committee takes note of these conclusions with all the more concern given that the intervention of public authorities in collective bargaining is an issue that has already come to its attention on several occasions. In its 1998 observation, the Committee had noted the adoption of a series of amendments to the Act respecting Trade Unions and Industrial Relations under Act No. 75/1996 and, in particular, the amendments relating to the earlier involvement of the conciliation and mediation officer and to the possibility for the officer to submit compromise proposals. The Committee notes that in the case of Act No. 34/2001 and Act No. 10/1998 both concerning the fishermen's wages, the parties were unable to reach an agreement after a long period of negotiations and despite the intervention of the State Conciliation and Arbitration Officer. The Committee notes in particular with concern the comment made by the Government that after a number of meetings, the State Conciliation and Arbitration Office was of the view that "it would be difficult to resolve [the dispute] through negotiations". While noting the particular complexity of the negotiations relating to the fishermen's wages (which hinged on the determination of the price of the fish), since past legislative interventions related to other sectors of activities, the Committee is of the view that this situation points out that there are unsatisfactory mechanisms to reconcile the differences between the parties and therefore to enable them to reach an agreement. The Committee considers that the imposition, by law, of compulsory arbitration in respect of the determination of conditions of

employment is incompatible with the principle of free and voluntary collective bargaining set out in *Article 4* of the Convention. Further, in the Committee's view, such an imposition is likely to give rise to labour conflicts.

In these circumstances, the Committee requests the Government to avoid having recourse to legislative intervention to impose on the parties a solution which should be the result of free and voluntary collective bargaining. In addition, it requests the Government to take concrete steps so as to re-examine thoroughly its current machinery and procedures. In this respect, the Committee welcomes the Government's indications that the Minister of Social Affairs and the Ministers of Fisheries will examine the conclusions and recommendations of the Committee on Freedom of Association and will consult the social partners on actions to be taken; more generally, the Government emphasizes that it has always given priority to the negotiations of wages and other conditions of employment through collective bargaining. The Committee requests the Government to keep it informed in detail of the progress made to fulfil its obligation under *Article 4* to promote free and voluntary collective bargaining and recalls that the ILO technical assistance is at its disposal.

Indonesia

Convention No. 87: Freedom of Association and Protection of the Right to Organise, 1948 (ratification: 1998)

The Committee takes note of the information contained in the Government's report. It further notes the entry into force of Act No. 13 of 2003 concerning manpower.

The Committee recalls that, in its previous comments, it had requested the Government to transmit its observations on the communication of the International Confederation of Free Trade Unions (ICFTU) of September 2002. The ICFTU has since sent additional comments concerning the application of the Convention in a communication dated 25 June 2003.

Practical application of freedom of association rights. The Committee notes that the ICFTU mentions that there is considerable anti-union sentiment and activity in Indonesia, which is shown by discrepancies between legislation and practice. The Committee takes note of the list of serious violations of freedom of association rights contained in the ICFTU's report: the growing number of attacks against trade unionists conducted by paramilitary groups; the arrests and detentions of trade union organizers for strike activity; the acts of violence against trade unionists during arrests and/or detention; and the harassment of union activists. Recalling that the guarantees set out in the international labour Conventions, in particular those relating to freedom of association, can only be effective if the civil and political rights enshrined in the Universal Declaration of Human Rights and other international instruments are genuinely recognized and protected (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 43), the Committee requests the Government to transmit its observations on the ICFTU's comments in this respect and to indicate any measures taken to ensure that trade unions can exercise their activities in a climate free of threats and intimidation of any kind.

In this respect, the Committee takes note of the steps taken by the Government, in particular the draft guidelines of the Ministry of Manpower and Transmigration and the Indonesian National Police in order to provide instructions on the role and conduct of police officers in relation to strikes, lockouts and labour disputes in general. It requests the Government to keep it informed of developments in this regard.

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

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

The Committee takes note of the information contained in the Government's report. It further notes the entry into force of Act No. 13 of 2003 concerning manpower.

The Committee notes the Government's response to the comments of the International Confederation of Free Trade Unions (ICFTU). The ICFTU indicates that the new Manpower Act contains many provisions contrary to the principles of freedom of association and collective bargaining. It mentions that the workers in Indonesia have conducted widespread protests over the recent introduction of the Manpower Act. It further states that there are, in practice, numerous restrictions on the rights provided in the Convention.

The Committee notes that, according to the Government, the provisions of the Manpower Act are in line with the Convention. The Committee notes with interest that the Government intends, in cooperation with the ILO, to carry out awareness-raising activities continuously, including training in selected areas, aimed at providing the employers, workers/labourers and community with appropriate understanding of the Convention so that it can be applied properly.

Article 1 of the Convention. Protection against acts of anti-union discrimination. In a previous comment, the Committee noted with interest the provisions of Act No. 21 of 2000 concerning trade union/labour union with regard to protection against acts of anti-union discrimination. The Committee requests the Government to indicate whether the provisions of Act No. 21 of 2000 in this respect are still in force. It further requests the Government to indicate whether in cases of anti-union dismissals (section 153 of Act No. 13 of 2003 concerning manpower), the affected workers have the right to obtain economic compensation.

The Committee notes that the ICFTU refers to an important number of cases of anti-union discrimination and requests the Government to supply statistics on the number of complaints lodged in the last two years and the most frequent problems examined.

Article 2. Protection against acts of interference. The Committee notes that section 122 of the Manpower Act provides that a voting procedure must take place in order to determine which trade union shall have the right to represent the workers in an enterprise. This section establishes that the vote shall be witnessed not only by a government official, but also by the entrepreneur. Given that the presence of the employer may affect the independence of the workers, the Committee requests the Government to amend section 122 so as to suppress the presence of the employer to such a vote.

The Committee further notes that the ICFTU refers to an important number of acts of interference in trade unions affair. In this respect, the Committee requests the Government to supply statistics on the number of complaints lodged in the last two years and the most frequent problems examined.

Article 4. The ICFTU states that the law provides for unilateral recourse to arbitration in the event of an industrial dispute, which restricts the practical value of collective bargaining. The Government's report contains no reply with respect to this comment from the ICFTU. The Committee notes that the procedures for the settlement of industrial disputes include mediation, conciliation and arbitration and that section 136(2) of Act No. 13 of 2003 mentions: "procedures for the settlement of industrial relation disputes that are determined and specified by legislation". The Committee requests the Government to indicate to which specific legislation this provision refers and to supply a copy if it is already in force. Furthermore, it recalls that compulsory arbitration at the request of only one party or of the authorities is only admissible for public servants and workers in essential services in the strict sense of the term.

In its previous comments, the Committee had noted that a Dispute Settlement Bill was being debated in Parliament. The Committee trusts that in the course of the legislative process, account will be taken of the abovementioned principle concerning compulsory arbitration. It requests the Government to provide a copy of the new legislation as soon as it is adopted.

Export processing zones (EPZs). The Committee requests the Government to provide information with regard to the allegations of violent intimidation and assault of union organizers, as well as dismissals for union activities in the export processing zones (EPZs) as reported by the ICFTU. The Committee also requests the Government to provide information on the number of collective agreements in force in EPZs and the percentage of workers covered.

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

Jamaica

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

The Committee takes note of the information contained in the Government's report and notes with interest the adoption of Act No. 13 of 2002 entitled "An Act to amend the Labour Relations and Industrial Disputes Act".

With reference to its previous comments, the Committee notes with interest that Act No. 13 of 2002 amended the First Schedule of the Labour and Industrial Disputes Act No. 14 of 1975, as amended (hereinafter "the Act") by deleting from the list of services deemed to be essential the following services: public passenger transport services; telephone services; any business whose main functions consisted in the issue and redemption of currency, the issue and redemption of Government Securities and the trading in such securities, management of the official reserves of the country, administration of exchange control and providing banking services to the Government; air transport services for the carriage of passengers, baggage, mail or cargo destined to or from Jamaica or within Jamaica. The Committee requests the Government to transmit, with its next report, the list of essential services remaining on the first schedule following this recent amendment.

As regards the power of the Minister to refer an industrial dispute to arbitration, the Committee recalls its previous observation concerning the need to amend sections 9 (in the case services not considered as essential in the strict sense of the term are still included on the list), 10 and 11A of the Act, which empower the Minister to submit an industrial dispute to the Industrial Disputes Tribunal and hence to terminate any strike. The Committee has commented for a number of years that the Minister's powers to refer an industrial dispute to compulsory arbitration are too broad and that the notion "a strike which is likely to be gravely injurious to the national interest" (section 10) can be interpreted very widely. In its latest report, the Government reiterates its previous comment, stating that the Committee's concern has been noted and that this section is still in process of revision.

The Committee once again recalls the need to amend sections 9, 10 and 11A of the Act which provide the Minister with extensive power to refer an industrial dispute to the Tribunal and reiterates that compulsory arbitration should be limited to essential services or situations of acute national crisis; otherwise, recourse to compulsory arbitration should only be possible at the request of both parties to the dispute. The Committee requests that the Government indicate in its next report any progress made in this regard and provide copies of any draft texts proposed to amend the legislation on the abovementioned points.

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

The Committee notes the information contained in the Government's report and recalls that its previous comments concerned the following points:

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

In its report, the Government indicates that the current system of the designation of the bargaining agent and of collective bargaining benefits from the full support of the social partners and that there is no reason to justify the modification of the legislation in this regard. The Government explains that the existence of several bargaining agents for the same unit can result in different working conditions for the same category of workers if they are not members of the same union. Moreover, the withdrawal of this requirement could, according to the Government, lead to *sweetheart agreements* being concluded.

While noting the Government's comments, the Committee wishes to point out that, by ratifying the Convention, the State undertook to promote collective bargaining and that this is compatible with the granting of exclusive collective bargaining rights to the most representative trade union or (jointly) trade unions. The Committee is therefore bound to reiterate its position that if under a system of an exclusive bargaining agent, no union can be designated as representing the required percentage, collective bargaining rights should be granted to the most representative trade unions or unions in the unit, at least in respect of their members. Moreover, where one or more trade unions are established as bargaining agents, a ballot should be made possible when another trade union invokes its most representative status in the unit in order to be considered as a bargaining agent.

The Committee once again requests the Government to take the necessary measures to amend its legislation accordingly in the very near future and to keep it informed in this regard.

Japan

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

The Committee notes the information in the Government's report, as well as the comments made by the Japanese Trade Union Confederation (JTUC-RENGO) in 2002 and by the International Confederation of Free Trade Unions (ICFTU), the ZENTOITSU (All United) Workers Union and the Japan National Hospital Workers' Union (JNHU/ZEN-IRO) in 2003. The Committee requests the Government to provide its observations on these comments with its next report.

The Committee recalls that its previous comments dealt with the denial of the right to organize of fire-fighting personnel, the prohibition of the right to strike of public servants, and the reform of the public service. The Committee also notes the further conclusions and recommendations of the Freedom of Association Committee in Cases Nos. 2177 and 2183 (331st Report, June 2003 session) where all these issues, and some additional ones (e.g. the right to organize of prison staff, the trade unions registration system, lack of compensatory procedures for workers deprived of fundamental rights) have been raised, without any progress being noted.

1. *Denial of the right to organize of fire-fighting personnel.* The Committee recalls that as early as 1973, the Committee stated that it "does not consider that the functions of fire defence personnel are of such a nature as to warrant the exclusion of this category of workers under Article 9 of the Convention" and hoped that the Government would take "appropriate steps to ensure that the right to organize is recognised for this category of workers" (International Labour Conference, 58th Session, Report III(4A), page 122). While it had been hoped that the system of fire defence personnel committees might constitute an important step towards the application of the Convention, the comments submitted over the years by Japanese workers' organizations to this Committee, and the most recent complaint filed to the Committee on Freedom of Association, clearly demonstrate that the system of fire defence personnel committees is not a valid alternative to the right to organize. Noting that the information provided in the Government's report concerning the functioning of these committees is the same as that provided in the Government's reply in Cases Nos. 2177 and 2183, the Committee regrets to note that no progress whatsoever has been made on this issue. The Committee once again requests the Government to take legislative measures in the near future to ensure that fire defence personnel are guaranteed the right to organize, and to keep it informed of developments in this respect in its next report.

2. *Prohibition of the right to strike of public servants.* The Committee recalls that it referred to the detailed comments of the Fact-Finding and Conciliation Commissions on Freedom of Association, and stressed the importance "... in circumstances where strikes are prohibited or restricted in the civil service or in essential services within the strict meaning of the term, of according sufficient guarantees to the workers concerned in order to safeguard their interests" (International Labour Conference, 63rd Session, 1977, Report III(4A), page 153). The Committee also notes in this respect that the Government merely reiterates its previous comments and that the situation has not evolved significantly. It recalls, once again, that the prohibition of the right to strike in the public service should be limited to public servants exercising authority in the name of the State (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 158). It requests the Government to indicate in its next report the measures taken or envisaged to ensure that the right to strike is guaranteed to public servants who are not exercising authority in the name of the State and to workers who are not working in essential services within the strict meaning of the term, and that the others (e.g. hospital workers) benefit from sufficient guarantees in order to safeguard their interests, namely adequate, impartial and speedy conciliation and arbitration procedures, in which the parties have confidence and can participate at all stages, and in which the awards, once made, are binding and fully and promptly implemented.

3. *Reform of the civil service.* The Committee notes that the issues mentioned above, and many others, are to be addressed as part of the major civil service reform currently under way, which has been the subject of a complaint before the Committee on Freedom of Association (Cases Nos. 2177 and 2183). The Committee points out from the conclusions in these cases, including those reflected in the 331st Report, that no progress has been made so far on any of these issues. The Committee notes that the relevant bills have not yet been submitted to the Diet and that the Government intends to continue the consultations and negotiations with the parties. The Committee can only continue to stress that, as the Government embarks upon a reform process which will establish the legislative framework of industrial relations for many years to come, the time would be particularly appropriate to hold full, frank and meaningful consultations with all interested parties, on all the issues which create difficulties with the application of the Convention and whose legal and practical problems have been raised by workers' organizations over the years. The Committee trusts that the Government will take all necessary measures in this regard and requests it to provide information on the progress made in its next report.

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

The Committee notes the information provided in the Government's report. It further notes the comments of the Japanese Trade Union Confederation (JTUC-RENGO) dated 15 October 2001 and 27 August 2003; the Japan National Hospital Workers' Union (JNHU) dated 22 August 2001, 6 August 2002 and 26 August 2003; the Zentoitsu Workers' Union and other worker's organizations dated 26 January, 3 June, 24 September (in connection with Case No. 1991) and 12 November 2002; the International Confederation of Free Trade Unions (ICFTU) dated 31 October 2002. The Committee notes the debate that took place in the Committee on the Application of Standards at the 2002 International Labour Conference, and the Committee's recommendations.

1. *Promotion of negotiation rights of public employees not engaged in the administration of the State.* In its previous comments, the Committee had recalled that the capacity of state employees who were not engaged in the administration of the State to participate in the determination of wages was substantially limited, and it requested the Government to consider the measures that could be taken to encourage the full development and utilization of machinery for voluntary negotiation with a view to the regulation of terms and conditions of employment by means of collective agreements for public employees who are not engaged in the administration of the State.

The Committee notes that, according to JTUC-RENGO, public sector unions cannot really participate in the determination of wages and working conditions; meetings and consultations with the National Personnel Authority (NPA) do not lead to binding agreements and have no concrete effects on the determination of wages and working conditions; the NPA has lost its role as a compensatory system since the meetings between the NPA and the workers' organizations were held only to hear the opinions of the organizations. The recommendations of the local personnel commissions have not been applied by some authorities.

The Committee notes that the Government reiterates its previous statements concerning the steps taken by the NPA to hear the views of public employees' organizations before making recommendations to the Government on the revision of remuneration and working conditions of public employees. The Government adds that the NPA also bases its recommendations on surveys of working conditions. The Government maintains that the recommendation system is a viable one and that the NPA has not lost its role as a compensatory mechanism for the limitations placed upon the trade union rights of public servants. The Government also stresses that the determination of working conditions of the local public service through the local personnel commission system, which follows the same objectives and functions as the NPA system, is functioning well. Even in the cases where local governments had no choice but not to implement the revision of salaries in accordance with the recommendations of the personnel commissions, in view of the current social and economic circumstances, the Government states it has tried to conclude agreements by holding meetings with employees' organizations, and to preserve amicable labour-management relations.

The Committee recalls that while the principle of collective bargaining as regards public servants requires some flexibility in its application, the mechanism chosen by the Government should leave a primary role to collective bargaining and workers and their organizations should be able to participate fully and meaningfully in designing the overall bargaining framework. The Committee further recalls that in a situation where, for imperative reasons of national economic interest, wage rates cannot be fixed freely by means of collective bargaining, the restrictions should be applied as an exceptional measure and only to the extent necessary; they should not exceed a reasonable period; and should be accompanied by adequate safeguards to protect effectively the standard of living of the workers concerned. Noting that the capacity of public employees not engaged in the administration of the State to participate in the determination of wages is substantially limited, the Committee requests the Government to take the necessary measures to ensure the full development and utilization of machinery for voluntary negotiation with a view to the regulation of terms and conditions of employment by means of collective agreements for public employees who are not engaged in the administration of the State.

2. *Civil service system reform.* The Committee notes that the Japanese Government has adopted the “Plan for the Civil Service System Reform” in December 2001 and has since been pursuing the reform on the basis of the Plan. The Committee notes that the Government has been negotiating and consulting with the institutions concerned, trade unions and employees’ organizations, but considers it necessary to make further coordination among the parties concerned before submitting the Bills to the ordinary Diet. The Committee requests the Government to keep it informed of developments in respect of consultations regarding the reform, and to supply copies of the draft legislation as soon as it is available, so that it may examine its conformity with the provisions of the Convention. The Committee also refers to its comments under Convention No. 87 in connection with the public service reform.

3. *Exclusion of certain matters from negotiations in national medical institutions.* In its previous comments, the Committee requested the Government to continue to implement measures to encourage negotiation of terms and conditions of employment in national medical institutions and to indicate developments in that respect in its next report. In its latest report, the Government indicates that the Ministry of Health, Labour and Welfare (MHLW) has been instructing directors to promote collective bargaining, and has provided guidance to institutions in respect of preliminary negotiation. The Committee notes that, as of December 2002, negotiations were held in 13 institutions (out of 190 national hospitals and sanatoriums existing in the country at the end of 2002). The Committee requests the Government to increase efforts to encourage the negotiation of terms and conditions of employment in national medical institutions and to indicate developments in that respect in its next report.

The Committee notes that, according to the JNHWU, the management of hospitals continues to place restrictions on the items to be negotiated, on the grounds that they constitute management and administration matters and are thus not appropriate for collective bargaining (for example, the number of nurses in a night shift and a demand concerning improvement of the promotion system of nursing aids as part of a wage improvement). The Government states in this respect that the Ministry of Health, Labour and Welfare has, in its meeting of institution directors, been instructing them to promote appropriate collective bargaining. Furthermore, the meeting has once again provided guidance through the Reformal Bureau of Health and Welfare for the institutions to cope properly with JNHWU branches by appropriately managing the period of preliminary negotiations. As regards specific cases where, according to the JNHWU, negotiations were rejected, the Government states that preliminary consultations were held between JNHWU branches and hospitals on these matters to determine whether these demands concerned the administration or management; as a result of these negotiations, it was explained and agreed between labour and management that these would not become agendas in the negotiations.

The Committee recalls that it is contrary to the Convention to exclude from collective bargaining certain matters relating to work conditions and that measures taken unilaterally by the authorities to restrict the scope of negotiable issues are often incompatible with the Convention. Tripartite discussions for the preparation, on a voluntary basis, of guidelines for collective bargaining are an appropriate method to resolve these difficulties. The Committee requests the Government to continue to take measures to increase consultations between unions and hospital management, and to keep it informed of developments in this respect.

The Committee requests the Government to send its reply to other matters raised by workers’ organizations in their comments (especially as regards questions related to protection against acts of anti-union discrimination), as well as to the recent communication of Zentoitsu Workers’ Union dated 26 November 2003.

Jordan

Convention No. 98: Right to Organise and Collective Bargaining, 1949 (ratification: 1968)

The Committee takes note of the Government’s report.

1. *Scope of the Convention.* The Committee had previously requested the Government to consider introducing legislative measures in order to extend the rights and guarantees of the Convention to domestic servants, gardeners, cooks and the like, and agricultural workers. The Committee notes with satisfaction that according to the information provided

by the Government in its report, following the amendment of the Labour Code by Law No. 5 of 2002, domestic servants, gardeners, cooks and the like are now covered by the Labour Code. Moreover, as provided by Regulation No. 4 of 2003, agricultural workers in the public sector and at least part of the private sector are also covered by the Labour Code. The Committee requests the Government to specify the categories of agricultural workers employed in the private sector which are not covered by the Labour Code.

2. *Article 2 of the Convention. Need to provide for rapid appeal procedures, coupled with effective and dissuasive sanctions against acts of interference* While noting that according to the information provided in the Government's report, the Labour Code was amended and a new paragraph (c) of section 97 prohibits acts of interference by employers' and workers' organizations in each other's affairs, the Committee once again recalls that, to ensure that measures prohibiting acts of interference receive the necessary publicity and are effective in practice, the relevant legislation should explicitly lay down provisions for rapid appeal procedures, coupled with effective and dissuasive sanctions against acts of interference in order to guarantee the application in practice of *Article 2* of the Convention (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 232). As the Government does not indicate that the recent amendments to the Labour Code deal with this matter, the Committee requests the Government to take the necessary measures in order to adopt legislative provisions providing for rapid appeal procedures and sufficiently dissuasive sanctions against acts of interference and to keep it informed in this respect.

Kenya

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

The Committee notes the report of the Government.

1. *Registration of the Kenya Civil Servants' Union.* In its previous comments, the Committee requested the Government to register this trade union. In a communication of 7 May 2003, the Government indicates that it has, in fact, registered the Kenya Civil Servants' Union on 10 December 2001. The Committee takes note of this information.

2. *Right to collective bargaining of public employees.* The Committee notes that the Government does not address this issue. It trusts that the Government will take the necessary measures to ensure that public employees (with the possible exception of those engaged in the administration of the State) benefit from the guarantees laid down in the Convention, and in particular the right to collective bargaining. The Committee requests the Government to keep it informed of any developments in this respect.

Kyrgyzstan

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

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

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

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

Liberia

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

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

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

- Decree No. 12 of 30 June 1980 prohibiting strikes;
- section 4601-A of the Labour Practices Law prohibiting agricultural workers from joining industrial workers' organizations;
- section 4102, subsections 10 and 11, of the Labour Practices Law providing for the supervision of trade union elections by the Labour Practices Review Board; and
- section 4506 prohibiting the workers of state enterprises and public service from organizing.

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

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

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

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

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

Articles 1, 2 and 4 of the Convention. The Committee recalls that for many years it has been emphasizing the need for national legislation to guarantee workers adequate protection against anti-union discrimination at the time of recruitment and during the employment relationship, accompanied by sufficiently effective and dissuasive sanctions. The Committee has also stressed that national legislation must ensure adequate protection of workers' organizations, accompanied by sufficiently effective and dissuasive sanctions, against acts of interference by employers and their organizations. Finally, the Committee had noted that the possibility of engaging in collective bargaining was not offered to employees of state enterprises and other authorities since these categories were excluded from the scope of the Labour Code, whereas under *Article 6* of the Convention, only public servants engaged in the administration of the State are not covered by the Convention.

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

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

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

Madagascar

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

The Committee notes the Government's report. It also notes that a draft text to revise the Labour Code has been examined by the social partners in the National Employment Council. The Committee also takes due note of the conclusions and recommendations of the Committee on Freedom of Association in Case No. 2132 (see 331st Report, paragraphs 584-592, and 332nd Report, paragraphs 98-104).

Article 2 of the Convention. *Right of workers, without distinction whatsoever, including seafarers, to establish and join organizations.* Section 1 of the Labour Code that is currently in force excludes from its scope workers who are covered by the Maritime Code. In its previous comments, the Committee noted that Act No. 99.028 of 3 February 1999, issuing the revised Maritime Code, refers to "seafarers' trade unions" (section 3.3.02). While also noting that certain rights relating to the right to organize were granted to seafarers, the Committee considered that the legislation should contain specific provisions granting seafarers the right to organize. The Government indicates that the Committee's observations will be transmitted to the departments concerned and that all relevant information will be forwarded to the Committee in due time.

The Committee notes that the draft Labour Code maintains the exclusion from its scope of workers covered by the Maritime Code (that is, seafarers and other crew members). The Committee also recalls that the current version of the Maritime Code does not contain sufficiently clear and precise provisions guaranteeing the workers to whom it applies the right to establish and join trade unions and the related rights. The Committee therefore requests the Government to take the necessary measures so that the Maritime Code (and even the Labour Code) affords the workers to whom it is applicable effective recognition of their right to organize on an equal footing with other workers whose right to organize is currently guaranteed by the Labour Code. The Committee also requests the Government to provide further information of a practical nature on seafarers' trade unions, including the number of such trade unions and of their respective members.

Article 3 of the Convention. *Right of workers' organizations to organize their administration and activities in full freedom without interference by the public authorities.* In its previous comments, the Committee noted that the conditions giving rise to the right of requisitioning, as set out in sections 20 and 21 of Act No. 69-15 of 15 December 1969 respecting the requisitioning of persons and goods, are too broad to be compatible with the Convention; the Committee referred in this respect to the possibility of requisitioning workers in the event of the proclamation of a state of national necessity or a threat to a sector of national life or a part of the population. The Committee recalled that requisitioning is to be avoided, except for the maintenance of essential services in the strict sense of the term, that is those the interruption of which would endanger the life, personal safety or health of the whole or part of the population, or in the event of an acute

national crisis. The Committee notes the Government's indication that it will report any textual changes which improve the application of the Convention.

The Committee also notes with interest that section 199 of the new draft Labour Code provides that the right to strike "may only be limited by requisitioning in the event of an acute crisis or of the strike endangering the life, safety or health of the whole or part of the population". The Committee therefore hopes that Act No. 69-15 of 15 December 1969 will be formally amended to take into account the new provisions of the Labour Code and requests the Government to keep it informed in this respect.

The Committee is also addressing a request directly to the Government concerning certain provisions of the draft Labour Code.

Mauritania

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

The Committee refers to the comments of 9 September 2002 by the International Confederation of Free Trade Unions (ICFTU) and those of 17 December 2002 by the Free Confederation of Mauritanian Workers (CLTM). It notes that the Government has sent a report and has replied to the comments by the CLTM. It further notes that, according to the Government, the Committee's comments were taken into account in drafting the new Labour Code, which is to be adopted at the next session of parliament. The Committee requests the Government to provide a copy of the new Labour Code with its next report (or the draft of the Code if the final version has not yet been adopted). In the light of the Government's reply to the comments made by the CLTM, the Committee wishes to raise the following matters.

Article 2 of the Convention. Right of workers and employers, without distinction whatsoever, to establish and join organizations of their own choosing without previous authorization. The CLTM contends that the principle of freedom of association, although recognized by the Constitution of 20 July 1991, and the provisions of Act No. 93-038 establishing trade union pluralism, are not applied in practice. It further alleges that the following sectors are denied the right to organize: small-scale fishing, agriculture (Nouakchott and Nouadhibou market gardeners), city and intercity transport, and meat processing. In the transport sector, this is also true for employers' organizations. The following organizations are thus recognized but may not carry out any activities and must join the National Transport Federation (FNT), which, in the CLTM's view, is close to the Government: The Transport Workers' Federation (FTM), the General Transport Federation of Mauritania (GMT), the General Federation of Personnel Transport (FGTM) and the Mauritanian Transporters' Federation (FTM). The CLTM furthermore emphasizes that no union may exist and operate without previous authorization. Authorization is rarely granted and more than 100 applications have been blocked at the registry of the Prosecutor of the Republic since the adoption of Act No. 93-038 introducing trade union pluralism. The ICFTU likewise indicates that the Government maintains the right not to recognize a trade union and that its decisions in such matters are discretionary. In response, the Government indicates that public transport drivers have formed an occupational union, which is currently affiliated to the General Union of Mauritanian Workers. Furthermore, the National Federation of Butchers exists and carries on its activities freely. The Government emphasizes that any trade union formed in accordance with the procedures for the constitution of trade unions is immediately recognized. The fact that there are five federations or confederations and hundreds of occupational unions which carry on their activities in full freedom bears witness to the flexibility of the existing legislation.

The Committee takes due note of the Government's reply. It recalls first that, under *Article 2* of the Convention, employers and workers, without any distinction whatsoever, have the right to establish and join organizations of their own choosing. It therefore invites the Government to provide details of the establishment of occupational organizations, particularly in the small-scale fishing and agricultural (Nouakchott and Nouadhibou market gardeners) sectors. Secondly, the Committee recalls although the law may require a number of formalities in order for occupational organizations to be established, such formalities may on no account amount to "previous authorization" in breach of *Article 2*. The Committee therefore requests the Government to provide information on the blockage in the registry of the Prosecutor of the Republic of 100 or so applications to establish trade unions, as reported by the CLTM.

Article 3. Right of workers organizations to organize their administration and formulate their programmes in full freedom without interference from the public authorities. The CLTM states that trade union organizations are not free to carry on their activities normally as they regularly come up against obstacles and pressure on the part of the public administration with the intention of obstructing their activities or influencing their decisions. Examples cited by the CLTM include the following: (1) the public authorities still have a say in the right to strike, which even amounts to a ban in practice; (2) unionized workers are subjected daily to all kinds of pressure or discriminatory measures such as arbitrary dismissal, in particular for exercising the right to strike; (3) trade union posters and general assemblies of workers are not authorized in public and private establishments; (4) leave of absence to participate in trade union activities is often refused, particularly to members of the CLTM. The ICFTU, for its part, indicates that it is difficult to exercise freedom of association in the private sector. The Government states in reply that the right to strike is guaranteed but is exercised in conformity with the existing legislative and regulatory provisions; a strike called by dockers this year which led to their wage claims being met gave rise to no dismissals. The Government furthermore denies that the administration prevented

workers from holding general assemblies: in June, all the occupational unions affiliated to the Union of Mauritanian Workers have held general assemblies throughout the country as well as their national congress. Furthermore, all trade unions may file complaints with the competent courts if they deem their activities to have been restricted. Lastly, the Government states that trade unionists of all leanings participate regularly in seminars organized by the labour administration. The CLTM has always participated in these events, the last of which, a national workers education seminar on occupational health and safety, took place on 19 August 2003. The Government stresses in conclusion that it does not intervene in trade union matters but merely ensures compliance with the existing legislation while seeking to improve the living conditions of all the workers.

The Committee takes due note of the Government's comments. It recalls that for workers' and employers' organizations, freedom of association implies 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 within the bounds of the law. The right to organize consists in particular of the right to hold trade union meetings, the right of trade union leaders to have access to workplaces and the right to strike. The Committee points out that for many years it has been commenting on the restrictions to the right to strike which are set out in the Labour Code, particularly the referral to compulsory arbitration of collective disputes where essential services in the strict sense of the term were not involved. The Committee therefore trusts that, in accordance with the Government's undertaking, its comments will be taken into account in the new Labour Code currently in the process of adoption, and that the organizations will be able freely to organize their activities and formulate their programmes in order to further and defend the interests of their members, in accordance with *Article 3* of the Convention. The Committee requests the Government to keep it informed of progress in this area.

The Committee also requests the Government to respond to the other questions pending (see the Committee's observation of 2002), in its report due in 2004.

Mexico

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

At its last session the Committee noted the comments made by the International Confederation of Free Trade Unions (ICFTU) on the application of the Convention and the Government's reply to them, and decided that it would examine them at the present session. The ICFTU brings up numerous issues, which are referred to below.

Article 2 of the Convention

1. *The right of workers, without distinction whatsoever, to form trade union organizations.*

- (i) *Workers in export processing zones.* The Committee notes that, according to the ICFTU, although Mexican laws and regulations guarantee the same trade union rights for all workers, workers in export processing zones (*maquiladoras*) wishing to form trade union organizations are coming up against considerable obstacles raised by employers with the connivance of the local authorities. The Committee notes with regret that the Government has not sent its comments on this matter and asks it to ensure both in law and in practice that all workers in the export processing zones enjoy the right of association as provided in the Convention.
- (ii) *Workers under service provision contracts.* The ICFTU observes that many workers are treated as service providers and are consequently not covered by labour legislation and are unable to exercise their trade union rights. The Committee notes that the Government merely states that the labour regime is a matter of public policy and that, consequently, any definition in contracts which is contrary to such policy, or which aims to circumvent it is void (having no effect in law). The Committee requests the Government to take steps to ensure that all workers, including those defined as service providers, are able to exercise their trade union rights both in law and in practice.
- (iii) *Domestic workers.* The Committee notes that, according to the ICFTU, domestic workers are not protected under the labour regime and consequently can neither join nor form trade union organizations. The Committee also notes that, according to the Government, domestic workers are covered by the rights and obligations laid down in the federal labour law for workers in general and are also covered specifically by Chapter XIII, Sixth Title, sections 331-343 of the said law. The Committee requests the Government to ensure that domestic workers enjoy, in practice, the guarantees of the Convention which are established in the legislation.

2. *The right of workers to form organizations of their own choosing.*

- (i) *Workers in the service of the State and bank workers.* The Committee notes that, according to the ICFTU, the trade union monopoly imposed by the Federal State Workers' Act and by the Constitution remains in force, despite the fact that the Supreme Court of Justice held in 1999 that such a monopoly was in breach of the guarantee of freedom of association laid down in Article 123 (B) (X) of the Constitution. The legislation also imposes trade union monopoly in the banking sector through the National Federation of Bank Workers' Unions. In its previous observation the Committee noted the Government's confirmation that the legislation imposes a monopoly. The Committee again reiterates the comments it made in that connection and expresses the firm hope that the Government will take steps to repeal or amend these provisions of the law so as to bring them into line with the

Supreme Court ruling and the Convention. The Committee requests the Government to provide information in its next report on all measures taken in this regard.

- (ii) *Delays in registration.* The Committee also notes the ICFTU's observations concerning obstacles and delays in the registration of new trade unions caused by the Conciliation and Arbitration Boards. The Committee notes the Government's description of the trade union registration system. It requests the Government to ensure that, in practice, the registration of trade unions is carried out without delay in order to allow trade unions to exercise their rights fully.

Article 3 of the Convention

3. *The right of workers' organizations to elect their representatives in full freedom.* Prohibition of the re-election of trade union leaders in trade unions of public employees (section 74). The Committee notes with regret that the Government has not commented on these points and requests it to take the necessary measures to ensure that public employees, like other workers, are free to elect their representatives in accordance with the provisions of the Convention.

4. *The right of workers to draw up their programmes. Strikes.* The Committee notes that according to the ICFTU, conciliation and arbitration boards have the authority to declare strikes "non-existent", which can entail the dismissal of workers participating in them. The ICFTU gives figures showing that the boards make frequent use of this authority, strikes being seldom deemed legal. The Committee notes that, according to the Government, the boards may declare strikes to be non-existent only if they meet one or more of the conditions laid down in the legislation: where the object of the strike is not one of those listed in the legislation, where the strike was not decided on by the majority of the workers in the enterprise or when the strike procedure was not triggered by the submission of claims that comply with requirements set by law. The Committee requests the Government to provide statistics on claims submitted with a view to a strike and strikes actually held, indicating specifically those that were declared non-existent and the grounds given by the administrative authority.

The Committee requests the Government to send its comments in its next report together with all relevant information on these matters and on all the points raised by the Committee at its last session (see 2002 observation, 73rd Session).

Myanmar

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

The Committee takes note of the information contained in the Government's report, the oral information provided by the Government representative to the Conference Committee in 2003, as well as the discussion which took place therein and the resulting special paragraph in the Conference Committee's report for continued failure to implement the Convention. The Committee also notes the observations received from the International Confederation of Free Trade Unions (ICFTU) in 2002.

The Committee notes the indication in the Government's latest report that Myanmar is in transition to democracy and is doing its utmost to promote the rights, interests and welfare of workers as well as to find ways to take appropriate interim steps before the drafting of the Constitution. The Government adds that no positive responses to the Committee's comments on formation of first trade-level unions can take place before the emergence of a strong state Constitution.

The Committee nevertheless feels obliged to recall that it has been commenting upon the Government's failure to apply this Convention, both in law and practice, essentially since its ratification 50 years ago. While the Government continues to refer to the ongoing drafting of the new state Constitution and the search for appropriate measures and means to build on existing mechanisms so the workers associations will be able to look after their rights, interests and welfare, the Committee must note with deep regret the total lack of progress in providing a legislative framework in which free and independent workers' organizations can be established. The Committee takes due note of the renewed references in the Government's latest report to workers' welfare associations as the forerunners of trade unions safeguarding and promoting the interests of workers as best as they can at present, as well as of the regret expressed by the Government that the Committee holds a different opinion in respect of the role that may be played by the welfare associations. The Committee must reiterate in this respect that it has always considered that these associations have none of the attributes characteristic of free and independent workers' organizations that are the objective of the Convention. Indeed, the Committee fears that the Government's continued insistence on the role of the welfare associations in respect of the application of the Convention, without any other real progress in this application, is simply an indication of the lack of seriousness given to the fundamental matters raised by the Committee over these many years.

In this respect, the Committee takes due note of the comments made by the ICFTU concerning: the important restrictions placed upon freedom of association by the 1926 Trade Union Act; the dissolution of all trade unions in 1988 by the military regime; Order No. 2/88 of 1988 which makes the gathering, walking or marching of five persons or more a criminal act; and the Unlawful Associations Act which punishes membership in an unlawful association with imprisonment. The ICFTU further refers to the practical application of the Convention and in particular to the Independent Federation of Trade Unions – Burma (FTUB) that it states in the abovementioned context has been forced to

operate clandestinely since its inception in 1991. It further refers to two officials of the FTUB and one trade union leader who remain in prison for having exercised their trade union rights and the total absence of due process in respect of the charges brought against them and their trials. Finally, the ICFTU refers to the continuing illegality of the FTUB-affiliated Seafarers' Union of Burma (SUB) and the continuing prohibition of their contacts with the International Transport Workers' Federation.

The Committee notes with regret that the Government has provided no information in reply to the serious matters raised by the ICFTU. The Committee recalls that respect for civil liberties is crucial for the exercise of freedom of association and urges the Government to take all necessary measures so that workers and employers can exercise the rights guaranteed by the Convention in a climate of full security and in the absence of threats or fear.

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

Netherlands

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

The Committee notes that the Government has not sent its observations on the comments dated 4 November 2002, made by the Netherlands Trade Union Confederation (FNV) with regard to the application of the Convention.

In its observation, the FNV mainly raises two points: firstly, the national legislation does not contain any special provision with regard to the protection of workers against acts of anti-union discrimination other than dismissals – article 611 of Book 7 of the Civil Code only provides for a general obligation of the employer to behave as a fair employer; secondly, the Minister of Social Affairs and Employment disposes of no legal instrument or mechanism to check that a trade union party to a collective agreement is independent, since trade unions have no legal obligation to disclose their financial resources, performance and membership. In this connection, when the Minister of Social Affairs and Employment declares applicable *erga omnes* a sectoral collective agreement, an employer can be exempted from its application, if it has concluded another collective agreement with a trade union. While the FNV accepts this exemption, which corresponds to the exercise of the right to collective bargaining, it is concerned that employers use small unions without any substantial membership to avoid the extension of the sectoral collective agreement.

Concerning the first point, the Committee recalls that in previous comments, it requested the Government to indicate the manner in which workers are protected against acts of discrimination other than dismissal. At the time, the Government indicated that there was no specific legislation, but that particular legislative provisions, as well as collective agreements, afforded workers the necessary protection when taking up employment or upon dismissal. Further, workers could submit the matter to the courts and for urgent cases, a “summary proceeding” was provided for. The Committee has noted, since then and with satisfaction, that article 670, paragraph 5, of Book 7 of the Civil Code has been amended by the Flexibility and Security Act to afford legal protection to trade union representatives and affiliates by prohibiting their dismissal for anti-union reasons. The Committee requests the Government to provide, in its next report, updated and detailed information on the protection afforded to workers against any act of anti-union discrimination other than dismissal, in the course of employment, in accordance with *Article 1 of the Convention*. The Committee invites the Government to submit any relevant legislative or collective agreement, provisions or judicial decisions.

With respect to the second point raised by the FNV, the Committee considers that the real issue at stake is the absence of any legal mechanism to examine the independence of trade unions vis-à-vis employers in the framework of collective bargaining or the extension of sectoral collective agreements. While the Committee notes that the FNV does not refer to specific cases in which the independence of trade unions has been undermined, it requests the Government to send its observations on this issue and invites it to initiate discussions with the most representative workers' and employers' organizations.

The Committee will pursue the examination of the issue concerning the amendment of the Act on the Legal Status of Judicial Officials, which is pending, when it receives the Government's report submitted under the regular cycle.

Aruba

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

The Committee notes the Government's report.

Article 3 of the Convention. In its previous comments, the Committee had asked the Government to amend or repeal section 374(a) to (c) of the Penal Code and section 82 of Ordinance No. 159 of 1964 which prohibit the right to

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

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

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

In addition, the Committee is addressing a request on other points directly to the Government.

Niger

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

The Committee notes the Government's report and the comments made by the International Confederation of Free Trade Unions (ICFTU) in its communication dated 23 September 2003.

Articles 3 and 10 of the Convention. Legislative provisions respecting the requisitioning of labour. In its previous observation, the Committee requested the Government to amend rapidly section 9 of Ordinance No. 96-009 of 21 March 1996 so as to restrict its scope to cases in which work stoppages are likely to provoke an acute national crisis, to public servants exercising authority in the name of the State or to essential services in the strict sense of the term, and to provide a copy of the official text applicable.

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

The Committee also requests the Government to make any comments that it wishes to make on the observations of the ICFTU on the application of the Convention in Niger.

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

The Committee notes the comments on the application of the Convention submitted by the International Confederation of Free Trade Unions (ICFTU) on 23 September 2003 and requests the Government to send its observations thereon.

Pakistan

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

The Committee notes the Government's report. The Committee also notes the observations made by the All Pakistan Federation of Trade Unions (APFTU) in a communication dated 9 July 2003 concerning the application of the Convention, as well as the communications sent by the APFTU and the International Confederation of Free Trade Unions (ICFTU) in 2002. In addition, the Committee notes the conclusions and recommendations of the Committee on Freedom of Association in Cases Nos. 2229 (330th Report, March 2003) and 2242 (332nd Report, November 2003).

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

Article 2 of the Convention. Right of workers and employers to establish and join organizations of their own choosing. 1. *Managerial and supervisory staff.* The Committee notes with interest that the definition of "worker" has been amended by repealing the exclusion of persons employed in a supervisory capacity whose wages exceed 800 rupees per month. The Committee notes however that the definition of "worker" provided for in section 2(xxx) of the IRO continues to exclude "persons who are employed mainly in a managerial or administrative capacity" and that section 63(2) provides that a person promoted or appointed to a managerial position ceases to be a member of a trade union. The Committee recalls in this respect that restrictions may be placed on the right to organize of managerial staff, provided that such workers have the right to form their own organizations to defend their interests and that the category of executive and managerial staff is not so broadly defined as to weaken the organizations of other workers by depriving them of a

substantial proportion of their actual or potential membership (see General Survey of 1994 on freedom of association and collective bargaining, paragraphs 86-88). The Committee requests the Government to amend its legislation so as to ensure that managerial staff may form and join organizations to defend their own social and occupational interests.

2. *Other exclusions.* The Committee further notes with regret that, according to section 1(4) of the IRO, workers employed in the following establishments or industries are excluded from its scope: installations or services exclusively connected with the armed forces of Pakistan including Ministry of Defence lines of the railways; Pakistan Security Printing Corporation or the Security Papers Limited or Pakistan Mint; administration of the State other than those employed as workmen by the railways, post, telegraph and telephone departments; establishment or institution maintained for the treatment or care of sick, infirm, destitute and mentally unfit persons excluding those run on a commercial basis; institution established for payment of employees' old-age pensions or for workers' welfare; and members of the watch and ward, security or fire service staff of an oil refinery or of an establishment engaged on the production, transmission or distribution of natural gas or liquefied petroleum products or of a seaport or an airport.

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

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

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

The Committee further notes with regret that the new IRO does not address the previous concerns of the Committee concerning the right to organize for agricultural workers. In its report, the Government states that the IRO 2002 does not cover agriculture and that "the rights and welfare of agricultural workers has remained without any legal support". It further states that the necessary legislation would be developed within the next five years to ensure the rights and welfare of agricultural workers. The Committee trusts that the necessary measures will be taken in order to ensure the right to organize for agricultural workers in the very near future.

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

Article 3. (a) Right to elect representatives freely. In its previous comments, the Committee requested the Government to amend section 27-B of the Banking Companies Ordinance of 1962, which restricted the possibility of becoming an officer of a bank union only to employees of the bank in question, under penalty of up to three years' imprisonment. The Committee notes the Government's statement to the effect that this section does not restrict the right of workers to elect their representative among members of the union. The Committee once again recalls that provisions requiring officers of trade unions to be chosen from among union members infringes the right of workers' organizations to elect representatives in full freedom by preventing qualified persons, such as full-time union officers or pensioners, from carrying out union duties or by depriving unions of the benefit of the experience of certain officers when they are unable to provide enough qualified persons among their own ranks. Noting further the seriousness of the penalty for violation of this provision, the Committee urges the Government to amend its legislation in order to bring it into conformity with the Convention, either by exempting from the occupational requirement a reasonable proportion of the officers of an organization, or by admitting as candidates persons who have been previously employed in the banking company.

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

The Committee further notes the Government's statement that the federal or provincial Government is empowered to call off a strike before or after its commencement in establishments to which the Essential Services Act of 1952 is applicable. The Government adds that this Act is applied to the establishments where stoppage of work is prejudicial to the national interests or causing serious hardship to the community. In this respect, the Committee recalls that it has been

requesting the Government for some time now to amend the Essential Services Act, which included services beyond those which can be considered essential in the strict sense of the term. The Committee considers that essential services are only those the interruption of which would endanger the life, personal safety or health of the whole or part of the population (see General Survey, op. cit., paragraph 159). The Committee therefore requests the Government to amend the legislation so as to ensure that workers employed in oil production, postal services, railways, airways and ports may have recourse to strike action and so that compulsory arbitration may only be applied in these cases at the request of both parties. Recalling again the heavy penal sanctions linked to violation of the Essential Services Act, it further requests the Government to amend this Act so as to ensure that its scope is limited to essential services in the strict sense of the term. The Committee also requests the Government to specify the categories of workers employed in the “watch and ward staff and security services maintained in any establishment”.

Rather than imposing a prohibition on strikes, which should be limited to essential services in the strict sense of the term, in order to avoid damages which are irreversible or out of all proportion to the occupational interests of the parties to the dispute, as well as damages to third parties, namely the users or consumers which suffer the economic effects of collective disputes, the authorities could however establish a system of minimum services of public utilities. A minimum service should meet at least two requirements. Firstly, and this aspect is paramount, it must genuinely and exclusively be a minimum service limited to the operations which are strictly necessary to meet the basic needs of the population or the minimum requirements of the service, while maintaining the effectiveness of the pressure brought to bear by the strike action. Secondly, since this system restricts one of the essential means of pressure available to workers to defend their economic and social interests, their organizations should be able, if they so wish, to participate in defining such a service, along with employers and the public authorities. It would be highly desirable for negotiations on the definition and organization of the minimum service not to be held during a labour dispute, so that all parties can examine the matter with the necessary objectivity and detachment. The parties might also envisage the establishment of a joint or independent body responsible for examining rapidly and without formalities the difficulties raised by the definition and application of such a minimum service and empowered to issue enforceable decisions (see General Survey, op. cit., paragraphs 160 and 161).

The Committee further notes that section 39(7) provides the following sanctions for contravening a labour court’s order to call off the strike: dismissal of the striking workers; cancellation of the registration of a trade union; debarring of trade union officers from holding office in that or any other trade union for the unexpired term of their offices and for the term immediately following. The Committee recalls in this respect that sanctions for strike action should be possible only where the prohibitions in question are in conformity with the principles of freedom of association. Even in such cases, existence of heavy and disproportionate sanctions for strike action may create more problems than they resolve. Since the application of disproportionate sanctions does not favour the development of harmonious and stable industrial relations, the sanctions should not be disproportionate to the seriousness of the violation (see General Survey, op. cit., paragraphs 177 and 178). More specifically, the Committee considers that the cancellation of trade union registration, in view of the serious and far-reaching consequences which dissolution of a union involves for the representation of workers’ interests, would be disproportionate even if the prohibitions in question were in conformity with the principles of freedom of association. Consequently, the Committee urges the Government to amend section 39(7) of the IRO so as to ensure that sanctions for strike action may only be imposed where the prohibition of the strike is in conformity with the Convention and that, even in those cases, the sanctions imposed are not disproportionate to the seriousness of the violation.

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

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

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

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

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

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

- *Denial of the rights guaranteed by the Convention in export processing zones (EPZ).* The Committee notes the Government’s statement at the Conference Committee of the Application of Standards to the effect that this question was under the jurisdiction of the Ministry of Industries, which had exempted the EPZ from the application of labour laws. However, according to the Government, the Ministry of Labour had taken up the matter with the

Ministry of Industries with a view to withdrawing the exemption and an extensive dialogue was under way. The Committee once again requests the Government to ensure that EPZ workers are very soon provided with all the rights and guarantees enshrined in the Convention.

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

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

- The Committee notes that it results from section 20 that if the trade union, which is the only trade union at the enterprise, does not have at least one-third of employees as its members, no collective bargaining is possible at a given establishment. The Committee recalls in this respect that where, under a system for nominating an exclusive bargaining agent, there is no union representing the required percentage to be so designated, collective bargaining rights should be granted to the existing unions, at least on behalf of their own members. The Committee therefore requests the Government to amend its legislation so as to bring it into conformity with *Article 4* of the Convention.
- The Committee also notes that according to section 20(11), no application for determination of the collective bargaining agent at the same establishment may be made for a period of three years once a registered trade union has been certified as collective bargaining agent. In this respect, the Committee recalls that where the most representative union which, enjoying exclusive bargaining rights, seems to have lost its majority, it should be possible to another union to make appropriate representations to the competent authority and to the employer

regarding the recognition of this union for collective bargaining purposes. The Committee therefore requests the Government to take the necessary measures so as to amend the IRO accordingly and keep it informed in this respect.

- The Committee further notes that according to section 54, the National Industrial Commission may determine or modify a collective bargaining unit on an application made by a workers' organization or reference made by the Federal Government. The Committee recalls in this respect that the choice of collective bargaining unit should normally be made by the partners themselves, since they are in the best position to decide the most appropriate bargaining level, and requests the Government to amend its legislation accordingly.

The Committee requests the Government to keep it informed on measures taken or envisaged in respect of all of the abovementioned points.

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

Paraguay

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

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

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

- the requirement of an excessively high number of workers (300) to establish a branch trade union (section 292 of the Labour Code);
- the imposition of excessive requirements to be able to hold office in the executive body of a trade union (sections 298(a) and 293(d) of the Labour Code);
- the submission of collective disputes to compulsory arbitration (sections 284 to 320 of the Code of Labour Procedure);
- the prohibition on workers from joining more than one union, even if they have more than one part-time employment contract, whether at the enterprise, industry, occupation or trade, or institution level (section 293(c) of the Labour Code);
- the requirement that trade unions must comply with all requests for consultations or reports from the labour authorities (sections 290(f) and 304(c) of the Labour Code);
- the requirement that, for a strike to be called, its sole purpose must be directly and exclusively linked to the workers' occupational interests (sections 358 and 376(a) of the Labour Code), and the obligation to ensure a minimum service in the event of a strike in public services which are essential to the community, without consulting the workers' and employers' organizations concerned on the definition of the minimum service (section 362 of the Labour Code).

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

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

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

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

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

The Committee recalls that for many years its comments have been referring to:

- the absence of legislative provisions affording workers who are not trade union leaders adequate protection against all acts of anti-union discrimination (article 88 of the Constitution affords protection only against discrimination based on trade union preferences); and
- the absence of sanctions against non-observance of the provisions relating to the employment stability of trade unionists and acts of interference by workers' and employers' organizations in each other's organizations (the Committee had noted that the sanctions envisaged in the Labour Code for non-observance of the legal provisions concerning this point (sections 385 and 393) were not sufficiently dissuasive and noted with interest the new Act No. 1416, which amends section 385 of the Labour Code and provides for adequate sanctions; however, the constitutionality of the Act has been challenged and the Act has been suspended).

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

Under these conditions, the Committee regrets that, despite the technical assistance provided by the ILO, progress has not been made on the issues raised and it reminds the Government of the importance of adopting measures to ensure that full effect

is given to *Articles 1 and 2* of the Convention. The Committee hopes that the above measures will be adopted in the near future and requests the Government to provide information on this matter in its next report.

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

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

Philippines

Convention No. 87: Freedom of Association and Protection of the Right to Organise, 1948 (ratification: 1953)

The Committee notes the information contained in the Government's report. The Committee notes the conclusions and recommendations of the Committee on Freedom of Association in Case No. 2252 (see 332nd Report, paragraphs 848-890). It also notes the entry into force of Department Order No. 40-03 amending the Rules of Implementation of Book V of the Labor Code. Furthermore, the Committee notes that Senate Bill No. 2576, which seeks to establish a new Labor Code, has been filed before the Philippines Senate. The Committee requests the Government to provide with its next report a copy of the Bill or of any final text and to keep it informed of any progress made.

Bearing in mind the points raised in its previous comments over the years on the various discrepancies between the Labor Code and the Convention, the Committee would like to draw attention more specifically to the following points.

Article 2 of the Convention. Right of workers, without distinction whatsoever, to establish and join organizations of their own choosing. The Committee notes with regret that the Government's report contains no additional information with regard to certain points raised in its previous comments concerning the following discrepancies between the national legislation and the requirements of the Convention:

- the requirement that at least 20 per cent of workers in a bargaining unit are members of a union (section 234(c) of the Labor Code);
- the prohibition of aliens (other than those with valid permits if the same rights are guaranteed to Filipino workers in the country of the alien workers), from engaging in any trade union activity (section 269) under the penalty of deportation (section 272(b)), and section 2 of Rule II of Department Order No. 40-03, which confirms such restrictions.

The Committee requests the Government to take the necessary measures to amend these provisions and to keep it informed of any developments.

Article 3. Right of workers' organizations to organize their administration and activities and to formulate programmes without government interference. Compulsory arbitration. The Committee has been referring for a number of years to the need to amend section 263(g) of the Labor Code which permits the Secretary of Labor and Employment to submit a dispute to compulsory arbitration. The Committee notes that the Government's report does not provide any information on this matter. The Committee must again point out that this provision of the Labor Code is drafted in such general terms that it could be applied in situations extending well beyond those in which strike action may be limited or prohibited in conformity with the Convention. It recalls that such restrictions are permissible only in the following cases: (i) in essential services, i.e. those services the interruption of which would endanger the life, personal safety or health of the whole or part of the population; (ii) in acute national crises to the extent necessary to meet the requirements of the situation and only for a limited period; and (iii) concerning public servants exercising authority in the name of the State. The Committee recalls that it has been calling upon the Government to amend section 263(g) since 1978. Meanwhile, in practice, this provision is still applied as shown in Cases Nos. 2195 and 2252 pending before the Committee on Freedom of Association (see Case No. 2195, 329th Report, paragraphs 722-739, 332nd Report, paragraphs 131-142, and Case No. 2252, paragraphs 848-890). The Committee notes from the conclusions of the Committee on Freedom of Association that the Department of Labor and Employment has submitted an amendment proposal to the Labor Committees of the House of Representatives and the Senate. The proposal would include the intervention of the Secretary of Labor and Employment only in disputes involving essential services. The Committee expresses the firm hope that this initiative will result in the amendment of section 263(g) and that the new Labor Code will effectively guarantee that workers can exercise their right to strike without interference by the Government. In the meantime, the Committee trusts that the Government will effectively limit the exercise of this power to the considerations made above.

Sanctions for strike action. The Committee notes that its previous comments related to the following penalties in the Labor Code for participation in illegal strikes: the dismissal of trade union officers (section 264(a)), and penal liability to a maximum prison sentence of three years (section 272(a)). The Committee notes that the Government reiterates its previous comments that these provisions only apply in limited circumstances of illegal strikes or commission of illegal

acts and that the penal sanctions have never been imposed. The Committee further notes that, according to the Government, Senate Bill No. 2576 seeks to set forth amendments to the law on strikes and that the proposed changes alter the context of sections 264(a) and 272(a). The Committee notes, however, from the conclusions of the Committee on Freedom of Association in Case No. 2252, that criminal charges have been pressed against trade union members and officers for their participation in a strike action considered to be illegal by the national authorities; these criminal charges are currently pending before the competent court. The Committee recalls that sanctions for strike action should be possible only where the prohibitions and restrictions provided for such actions are in conformity with the provisions of the Convention. The Committee further recalls that sanctions should not be disproportionate to the seriousness of the violation (see General Survey, *op. cit.*, paragraphs 177-178). In particular, prison sentences should be avoided in cases of peaceful strike action. The Committee expresses the firm hope that the Government will take the necessary measures to amend sections 264(a) and 272(a) to ensure that workers may exercise effectively their right to strike and without the risk of being sanctioned in a disproportionate manner. It requests the Government to keep it informed of the measures taken or envisaged in this respect, in particular within the context of the drafting of the new Labor Code.

In its previous comments, the Committee noted that section 146 of the Penal Code provides for imprisonment for the organizers or leaders of strikes and for participants in pickets deemed for propaganda purposes against the Government. The Committee notes the information provided in the Government's report according to which this provision only applies in limited circumstances, which do not include the exercise of the right to strike, where the applicable sanctions are those provided in the Labor Code. The Committee wishes to recall that paragraph 3 of section 146 refers to participation in "any meeting which is held for propaganda purposes against the Government ..." and that "meeting" is defined to include "picketing of Labor groups and similar group actions". While noting the Government's indication, the Committee is of the view that the wording of section 146 and the reference it contains to picketing may lead to its application to a legitimate strike action. The Committee therefore requests the Government to amend section 146 to ensure that it will not be applied to workers peacefully exercising their right to strike. The Committee further requests the Government to keep it informed of any application in practice of section 146 in the case of strike action.

Article 5. Right of workers' organizations to establish and join federations and confederations and their right to affiliate with international organizations. The Committee notes with regret that the government's report contains no information in reply to its previous comment regarding the need to amend section 237(a) of the Labor Code, which sets an excessively high requirement for the number of unions (ten) to establish a federation or a national union. The Committee requests the Government to provide information on the measures taken or envisaged in this respect in its next report.

With respect to international affiliation, section 270 of the Labor Code still includes a provision seeking to regulate the receipt of foreign assistance by any trade union. However, the Committee takes note with interest of the information contained in the Government's report that this provision is no longer enforced in practice and that, the Department of Labor and Employment has indicated to Congress that this provision should be expressly repealed. The Committee trusts that Senate Bill No. 2576 will include such an amendment to the Labor Code and requests the Government to keep it informed of any development in this respect.

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

Romania

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

The Committee notes the comments made by the National Trade Union Bloc (BNS) in its communication dated 25 September 2003 concerning the application of the Convention and requests the Government to transmit any observations it might wish to make thereon with its report due in 2004 on the pending matters (see 2002 observation, 73rd Session).

Sao Tome and Principe

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

The Committee takes note of the Government's report. It notes the adoption of the new Constitution, Act No. 1/03, and of Act No. 4/2002 regulating the requisitioning of civilians and laying down the obligation to maintain minimum services in enterprises or establishments the purpose of which is to meet essential social needs.

1. *Articles 3 and 10 of the Convention.* The Committee notes that, in its report, the Government states that the Ministry of Labour has set up a drafting group to draw up the General Labour Act. The Committee trusts that the group will take full account of its earlier observations concerning the following points:

- the majority required for calling a strike is too high (section 4 of Act No. 4/92);
- with regard to minimum services, it is important, in the event of disagreement in determining such services, that the matter should be settled by an independent body and not by the employer (paragraph 4 of section 10 of Act No. 4/92);

- the hiring of workers to perform essential services in order to maintain the economic and financial viability of the enterprise should it be seriously threatened by a strike (section 9 of Act No. 4/92);
- compulsory arbitration for services which are not deemed essential (postal, banking and loans services) (section 11 of Act No. 4/92).

The Committee further notes the Government's statement that the Ministry of Labour plans to refer the matter of the exercise of the right to strike to the National Committee for Social Cooperation. The Committee hopes that this will be a step towards the amendment of the legislation in order to bring it into conformity with the Convention, and requests the Government to keep it informed of developments in this area.

2. *Article 2.* The Committee again asks the Government to state whether public employees have the right to organize and to indicate the applicable legislation.

3. *Article 6.* The Committee again asks the Government to state whether federations and confederations are able to exercise the right to strike.

Senegal

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

The Committee notes the comments made by the International Confederation of Free Trade Unions (ICFTU) in its communication dated 23 September 2003 concerning the application of the Convention and requests the Government to transmit any observations it might wish to make thereon with its report due in 2004 on the pending matters (see 2002 observation, 73rd Session).

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

The Committee notes the comments on the application of the Convention submitted by the International Confederation of Free Trade Unions (ICFTU) on 23 September 2003 and requests the Government to send its observations thereon.

Serbia and Montenegro

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

The Committee takes note of the observation communicated by the International Organisation of Employers (IOE) dated 7 October 2002 concerning the application of the Convention, as well as the written and oral information provided by the Government representative during the discussion that took place at the Conference Committee in June 2003. The Committee also takes note of the text of the Law on the Termination of the Law on the Yugoslav Chamber of Commerce and Industry which came into force on 4 June 2003.

Article 2 of the Convention. Right of employers to establish organizations of their own choosing. The Committee recalls that in its previous comments it had noted, pursuant to the conclusions and recommendations of the Committee on Freedom of Association in Case No. 2146 (327th Report, paragraphs 893-898), that the Law on the Yugoslav Chamber of Commerce and Industry was contrary to *Article 2* of the Convention as it established compulsory membership in, and financing of, chambers of commerce, and vested such chambers with the powers of employers' organizations in the meaning of *Article 10* of the Convention, like the power to sign collective agreements. The Committee recalls that it had requested the Government to repeal these provisions and to refrain from adopting any other legislative measure which would have a comparable effect.

The Committee takes note of the observations made by the IOE, to the effect that the Government had not taken any measures to repeal the above provisions, while the Chamber of Commerce was trying to bypass any obstacles by creating parallel employers' organizations.

The Committee notes that, according to the written and oral information provided by the Government representative to the Conference Committee in June 2003, the Yugoslav Chamber of Commerce and Industry had been dissolved by the Law on the Termination of the Law on the Yugoslav Chamber of Commerce and Industry. The Committee observes, however, that section 2, paragraph 1, of the repealing law provides that the rights, obligations, financial resources and activities of the dissolved Yugoslav Chamber of Commerce and Industry shall be taken over by the Chamber of Commerce and Industry of Serbia and the Chamber of Commerce and Industry of Montenegro. The Committee observes, therefore, that to the extent that these provisions enable the new chambers to continue to have compulsory membership and to exercise powers which pertain to employers' organizations, the new Law does not depart from the previous legislation but simply reproduces its provisions at the level of the Republic's constitutive entities.

The Committee once again recalls that it would be contrary to *Article 2* of the Convention to establish compulsory membership in chambers of commerce when such chambers have the powers of employers' organizations in the meaning of *Article 10* of the Convention. Moreover, questions concerning the financing of employers' organizations as regards both their own budgets and those of federations and confederations should be governed by the by-laws of the organizations themselves. Finally, granting the right to sign collective agreements to the Chamber of Commerce which is created by law and to which affiliation is compulsory, impairs the employers' freedom of choice in respect of the organization to represent their interests in collective bargaining. The Committee therefore requests the Government to take all necessary legislative measures without delay so as to ensure that membership in and financing of the Chambers of Commerce and Industry of Serbia and Montenegro are not compulsory and so that employers' organizations may be free to choose the organization to represent their interests in collective bargaining. The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

The Committee also takes note of the observations made by the International Confederation of Free Trade Unions (ICFTU) in 2002 which raised a certain number of issues dealt with in the Committee's previous direct request. The Committee requests the Government to provide information as to the progress made in respect of these questions in its report due in 2004.

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

The Committee takes note of the comments made by the International Organisation of Employers (IOE) dated 7 October 2002, as well as of the conclusions and recommendations of the Committee on Freedom of Association in Case No. 2146 (327th Report paragraphs 893-898). The Committee also takes note of the written and oral information provided by the Government representative during the discussion that took place at the Conference Committee in June 2003 in the framework of the discussion on the application of the Convention as well as the text of the Law on the Termination of the Law on the Yugoslav Chamber of Commerce and Industry which came into force on 4 June 2003 and was recently transmitted by the Government.

1. *Article 4 of the Convention. Measures to promote machinery for voluntary negotiation between employers' and workers' organizations.* The Committee takes note of the comments communicated by the IOE in October 2002 to the effect that *Article 4* of the Convention is violated by section 6 of the Law on the Yugoslav Chamber of Commerce and Industry which vests chambers of commerce with the power to sign collective agreements previously negotiated between employers' and workers' organizations. The Committee also takes note of the conclusions and recommendations of the Committee on Freedom of Association in Case No. 2146 according to which, while the law did not appear in itself to provide a monopoly to the Chamber of Commerce to conclude collective agreements, any collective agreement resulting from negotiations should be signed by the Chamber of Commerce which was legislatively constituted and had compulsory membership of all employers. The Committee notes that the Committee on Freedom of Association had requested the Government to take the necessary measures to ensure that the results of negotiations would not be subjected to the approval of the legislatively constituted Chamber of Commerce. The Committee further notes from the IOE comments that the Government had not taken any measure to repeal the provisions that granted the Chamber of Commerce the power to approve the results of collective bargaining, so as to give effect to the recommendations of the Committee on Freedom of Association, while the Chamber of Commerce was trying to by-pass any obstacles by creating parallel employers' organizations.

The Committee notes from the written and oral information provided by the Government representative to the Conference Committee in June 2003, that the Chamber of Commerce and Industry had been dissolved by a law which was not available at the time. The Committee also notes that according to the Government, the Chamber did not participate in collective bargaining, which was reserved to the voluntary associations of employers under section 136, paragraph 1, of the Labour Law.

The Committee takes note of the text of the Law on the Termination of the Law on the Yugoslav Chamber of Commerce and Industry transmitted by the Government in October 2003 on the basis of which the Chamber of Commerce and Industry of Yugoslavia has been dissolved. The Committee observes however, that section 2, paragraph 1, of the Law provides that the rights, obligations and activities of the dissolved Yugoslav Chamber of Commerce and Industry shall be taken over by the Chamber of Commerce and Industry of Serbia and the Chamber of Commerce and Industry of Montenegro. The Committee therefore observes that the new Chambers of Commerce and Industry of Serbia and Montenegro appear to continue to have the power to sign collective agreements and that, therefore, the new legislation does not substantially modify the previous regime.

The Committee considers that the power of chambers of commerce to approve the results of collective bargaining constitutes interference contrary to *Article 4* of the Convention and a violation of the free and voluntary nature of collective bargaining by the negotiating parties. The Committee therefore requests the Government to take all necessary legislative measures without delay so as to eliminate this power of the Chambers of Commerce and Industry of Serbia and Montenegro. The Committee requests the Government to indicate any measures adopted in this respect.

2. *Comments of the International Confederation of Free Trade Unions (ICFTU) on the questions raised by the new Labour Law.* The Committee takes note of the comments made by the ICFTU in September 2002 and will examine the questions raised therein at its next meeting in the framework of the regular reporting cycle.

Sierra Leone

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

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

Articles 1 and 2 of the Convention. Need to adopt specific provisions accompanied by sufficiently effective and dissuasive sanctions for the protection of workers and workers' organizations against acts of anti-union discrimination and acts of interference. The Committee had previously noted that the revision of the labour laws, prepared with ILO technical assistance, had already been submitted to tripartite meetings, that the comments of the tripartite body have been received and that the document has just been forwarded to the Law Officers' Department. The Committee had asked the Government to keep it informed of any further progress made in the preparation of the final draft document and to provide a copy of the revised legislation as soon as it has been adopted.

Article 4. With regard to the right to collective bargaining of teachers, the Committee would again request the Government to provide information in its future reports on any collective agreements covering teachers that have been concluded.

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

Syrian Arab Republic

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

The Committee takes note of the Government's comments, made in response to a communication by the International Confederation of Free Trade Unions (ICFTU).

Trade union monopoly. The Committee notes the comments of the ICFTU to the effect that independent trade unions are outlawed. All workers' organizations must be affiliated with the country's sole official trade union federation, the General Federation of Trade Unions (GFTU), which is strictly controlled by the ruling Ba'ath party and controls most aspects of union activity, determines which sectors or areas of activity can have a union or a federation, and has the power to disband the executive committee of any union. The Committee takes note of the Government's response according to which this issue has been addressed by the adoption of Legislative Decree No. 25 of 2000 which specifies that a trade union shall operate in accordance with the provisions of its internal statutes and thereby excludes any intervention on behalf of the authorities in trade union activities. The Committee notes that in its previous comments, it had already taken note of Legislative Decree No. 25 of 2000 which had amended a certain number of provisions upon which it had been commenting for many years, but had also indicated the need for further measures to amend, among others, the legislative provisions which established trade union monopoly, authorized the Minister to set the conditions and procedures for the use of trade union funds, and determined the composition of the GFTU Congress and its presiding officers. The Committee once again urges the Government to take all necessary steps with a view to repealing or amending the legislative provisions which:

- establish a regime of trade union monopoly (sections 3, 4, 5 and 7 of Legislative Decree No. 84, sections 4, 6, 8, 13, 14 and 15 of Legislative Decree No. 3 amending Legislative Decree No. 84, section 2 of Legislative Decree No. 250 of 1969 and sections 26 to 31 of Act No. 21 of 1974);
- authorize the Minister to set the conditions and procedures for the use of trade union funds (section 18(a) of Legislative Decree No. 84 as amended by section 4(5) of Legislative Decree No. 30 of 1982); and
- determine the composition of the GFTU Congress and its presiding officers (section 1(4) of Act No. 29 of 1986 amending Legislative Decree No. 84).

Nationality requirement. The Committee notes that according to the ICFTU, only workers of Arab nationality can stand for election to trade union office. The Committee notes that according to the Government, by virtue of section 25 of Legislative Decree No. 84 of 1968 and amendments made thereto, workers of a nationality other than Arab can join a trade union of skilled workers. The Committee notes that these provisions relate to trade union membership, not the right to stand for trade union office. The Committee recalls in this respect that provisions on nationality which are too strict could deprive some workers of the right to elect their representatives in full freedom, for example migrant workers in sectors in which they account for a significant share of the workforce and considers that legislation should allow foreign workers to take up trade union office, at least after a reasonable period of residence in the host country (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 118). Recalling that it has been commenting for many years on the need to amend legislation which subjects eligibility for trade union office to Arab

nationality, the Committee once again urges the Government to take all necessary measures with a view to amending section 44(3)(b) of Legislative Decree No. 84 so as to allow at least a certain percentage of trade union officers to be foreigners, at least after a reasonable period of residence in the country.

Penal sanctions for strike action. The Committee notes that according to the ICFTU the right to strike is severely restricted by the threat of punishment, fines and jail terms of up to one year. Strikes involving more than 20 workers in certain sectors and any strike action which takes place on the public highways or in public places, or that involves the occupation of premises, are punishable by fines and prison sentences. Civil servants who disrupt the operation of public services risk losing their civil rights. Forced labour can be imposed on anyone who causes “prejudice to the general production plan”. The Committee notes that according to the Government, the imposition of a penalty on strikes has been repealed by virtue of Act No. 34 of 2000. The Committee recalls that while having taken due note of Act No. 34 of 2000 in its previous comments, it also continued to express the need to amend the legislative provisions which imposed heavy prison sanctions for strike action and furthermore, imposed forced labour for actions which caused prejudice to the general production plan and which were not affected by Act No. 34. Recalling that in its 2001 observation the Committee had noted with interest the establishment by the Ministry of Justice of a committee to consider amendments to the Syrian Penal Code, the Committee requests the Government to provide information on any developments in this respect and in particular, any measures taken or envisaged to amend the legislative provisions which:

- restrict the right to strike by imposing heavy sanctions including imprisonment (sections 330, 332, 333 and 334 of Legislative Decree No. 148 of 1949, issuing the Penal Code); and
- impose forced labour on anyone causing prejudice to the general production plan decreed by the authorities, by acting in a manner contrary to the plan (section 19 of Legislative Decree No. 37 of 1966 concerning the economic Penal Code).

The Committee hopes that the Government will take all necessary measures at the earliest possible date to bring the national legislation concerning trade union monopoly, restrictions on union office for non-Arabs, and penal sanctions for exercising strike action into full conformity with *Articles 2, 3 and 5 of the Convention*. The Government is asked to provide information in its next report on progress made in this respect and to send copies of any amended laws. The Committee further asks the Government to indicate in its next report whether the right to organize of public servants is regulated by legislative provisions and, if so, to provide copies of them.

Tajikistan

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

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

1. *Article 3 of the Convention. Right of workers’ and employers’ organizations to draw up their constitutions and rules, to elect their representatives in full freedom and to organize their administration and activities.* Concerning article 4(1) of the Law on Trade Unions which provides that trade unions shall be independent in their activities and that any interference by state authorities shall not be permitted except in cases specified by law, the Committee requests the Government to specify in its next report in which cases the state authorities are allowed to interfere with trade union activities.

2. *Article 3. Right to strike.* Concerning article 211 of the Labour Code which provides that restrictions of the right to strike shall be subject to the provisions of legislation in force in Tajikistan, the Committee requests the Government to provide the text of the provisions relating to such restrictions. Furthermore, the Committee requests the Government to state whether the former provisions of the Penal Code which were at the time applicable in the USSR, and particularly section 190(3), which contained significant restrictions on the exercise of the right to strike in the transport sector, enforceable by severe sanctions, including sentences of imprisonment for up to three years, have been repealed by a specific text.

The Committee also requests the Government to supply in its next report a copy of the Law of 29 June 1991 regulating the organization and holding of meetings, gatherings, street processions and demonstrations. In addition, the Committee requests the Government to indicate what are the legal provisions on the right to organize of employers.

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

The former Yugoslav Republic of Macedonia

Convention No. 87: Freedom of Association and Protection of the Right to Organise, 1948 (ratification: 1991)

The Committee notes that the Government’s report has not been received. The Committee further notes that, at the Government’s request, technical assistance will be provided in 2004 with the aim of addressing the various issues related to the Conventions which it has ratified. The Committee takes note of the Labour Relations Act (*Official Gazette of the Republic of Macedonia*, No. 80/93-2007) and requests the Government to send with its next report any amendments to the Act relevant to the application of this Convention.

The Committee recalls that its previous comments, pursuant to the conclusions and recommendations of the Committee on Freedom of Association in Case No. 2133 (329th Report approved by the Governing Body at its 285th Session in November 2002), concerned the absence of legislation for the registration and legal recognition of employers' organizations. It further recalls the conclusions of the Committee on Freedom of Association that the state of law and practice in the area of registration constituted such an obstacle to the establishment of employers' organizations that it deprived employers of their fundamental right to establish occupational organizations of their own choosing (see 329th Report, paragraph 545). The Committee indeed notes that, although section 76 of the Labour Relations Act proclaims the right of employers to establish and join organizations of their own choice without previous approval, it does not refer to any procedure for the registration of employers' organizations, while provision is made in section 81 for a special registry of employees' organizations.

Recalling that the Convention covers employers as well as workers (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 67), the Committee again urges the Government to indicate the measures taken or envisaged to ensure the registration and recognition of employers' organizations in a status corresponding to their objectives. It further requests the Government to indicate the steps taken to finalize the registration of the Union of Employers of Macedonia.

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

The Committee notes with regret that the Government's report has not been received. The Committee takes note of the Labour Relations Act (*Official Gazette*, No. 80/93) and requests the Government to transmit in its next report any other laws related to the application of the Convention. The Committee also takes note of the conclusions and recommendations of the Committee on Freedom of Association in Case No. 2133 (see 329th Report, approved by the Governing Body at its 285th Session, paragraphs 535-548) in which it noted that the Economic Chamber, which is based on compulsory membership of all enterprises, cannot be considered as an employers' organization for collective bargaining purposes.

The Committee notes that section 88 of the Labour Relations Act provides with regard to collective bargaining at the national level that "the leading trade union organization concludes a general collective agreement pertaining to employees and employers of the economy of the Republic". However, the Committee notes from the conclusions of the Committee on Freedom of Association in Case No. 2133 that employers' organizations (in particular, the complainant Union of Employers of Macedonia (UEM)) are unable to engage in collective bargaining at the national level, as they cannot be registered (and therefore recognized) due to the absence of legislation on this issue.

Moreover, the Committee notes that, although section 89 of the Act makes reference to branch collective agreements, it is likely that the problem described in the previous paragraph also prevails in practice with regard to negotiations at the branch level, given the abovementioned legislative gaps.

The Committee considers that the legislative gaps which exist in the area of registration and recognition of employers' organizations constitute obstacles to employers' participation in collective bargaining, contrary to *Article 4 of the Convention*, which establishes an obligation to adopt measures to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations. The Committee requests the Government to take all necessary measures so as to fill the existing legislative gaps and promote the full participation of employers' organizations, along with workers' organizations, in voluntary negotiations with a view to the conclusion of collective agreements.

In addition, a request regarding certain points is being addressed directly to the Government.

Trinidad and Tobago

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

The Committee notes the information contained in the Government's report. It notes, in particular, that the Government continues to refer to the fact that a local committee, established to review the provisions of the Industrial Relations Act upon which the Committee has been commenting for many years now, has found these provisions consistent with the cultural and legislative environment of the country.

In this respect, the Committee recalls that its previous comments referred to the need to amend sections 59(4)(a), 61, 65 and 67 of the Industrial Relations Act, 1972, as amended, which can be applied to prohibit a strike which has not been declared by a majority union, or at the request of one party, or in services which are not essential in the strict sense of the term (in particular, the public school bus service), or when the Minister considers that the national interest is threatened, under penalty of six months' imprisonment.

The Committee further noted that section 69 prohibited the teaching service and employees of the Central Bank from taking industrial action, under penalty of 18 months' imprisonment, and requested the Government to indicate

whether these restrictions were still in force and, if so, to take the necessary measures to repeal them so that teachers and bank employees were not prohibited from undertaking industrial action.

The Committee had suggested that the Government might give consideration to establishing a system of minimum service in services which are of public utility rather than imposing an outright ban on strikes.

Recalling that the right to strike is an intrinsic corollary to the right of association protected by the Convention (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 179), the Committee hopes that the Government will make every effort to take the necessary action in the very near future in respect of the abovementioned points, and requests the Government to indicate the progress made in its next report.

Tunisia

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

The Committee notes the Government's report.

Article 3 of the Convention. Right of workers' organizations to organize their administration and activities. For many years the Committee has been drawing the Government's attention to the incompatibility with the Convention of the obligation to obtain the approval of the central workers' union before declaring a strike, as envisaged in section 376bis(2) of the Labour Code. In its latest report, the Government refers to arguments that it had advanced in previous reports to justify such a requirement. According to the Government, trade union organizations voluntarily wish to maintain this approval, which is useful both to keep the central workers' union constantly informed of any strike action envisaged and for the effectiveness of any measures to settle the dispute peacefully. The Government also indicates that neither the administration nor the courts have received any complaints from first-level trade unions that this procedure restricts their right to organize their activities.

The Committee recalls that making the exercise of the right to strike conditional upon the approval of the central workers' union by its very nature limits the right of first-level trade union organizations to organize their activities and defend the interests of their members in full freedom. As the Committee has already emphasized, the prerequisites for exercising the right to strike must be determined by the statutes and rules of the trade union organizations concerned. In the present case, this means that the approval of the declaration of a strike by the central workers' union must be set out in the statutes of first-level organizations and in those of higher level organizations as a condition for the affiliation of first-level organizations. The Committee recalls in this respect that the adoption of such provisions constitutes an approach that is in conformity with *Article 3* of the Convention, as it is based on the free choice of the organizations concerned and that first-level organizations which wish to act independently from the higher level organization may always relinquish their membership of the latter. The Committee therefore once again requests the Government to repeal section 376bis(2) above so as to guarantee workers' organizations, irrespective of their level, the possibility to organize their activities in full freedom with a view to furthering and defending the interests of their members, in accordance with *Article 3* of the Convention.

The Committee also notes that under the terms of section 388 of the Labour Code, whomsoever shall have participated in an illegal strike shall be liable to a penalty of imprisonment of between three and eight months and a fine of between 100 and 500 dinars. Under the terms of section 387 of the Labour Code, a strike is deemed to be illegal where it is not called in compliance with the provisions relating to conciliation and mediation, the period of notice and the requirement of approval by the central workers' union. The Committee recalls firstly that sanctions for strike action should be possible only where the prohibitions in question are in conformity with the Convention (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 177). As a result of the above, the approval of the declaration of a strike by the central workers' union, made compulsory by section 376bis(2) of the Labour Code, is not in conformity with *Article 3* of the Convention. Secondly, even where prohibitions of strikes are in conformity with the Convention, the Committee emphasizes that the sanctions provided for should not be disproportionate to the seriousness of the violations (see General Survey, op. cit., paragraphs 177 and 178); this applies in particular to sentences of imprisonment. In the opinion of the Committee, failure to comply, in particular, with provisions relating to the conciliation of the dispute and the notice period for strike action are not so serious as to justify the imposition of a sentence of imprisonment. In these conditions, the Committee requests the Government to review the sanctions envisaged in section 388 so as to bring them into compatibility with *Article 3* of the Convention.

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

Turkey

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

The Committee takes note of the comments of 3 June 2003 submitted by the Confederation of Progressive Trade Unions of Turkey (DISK) and the reply thereon submitted by the Government. The Committee notes that the Government

merely indicates that it asked a group of academicians to prepare a draft study with a view to amending some provisions of Act No. 2821 on trade unions and Act No. 2822 on collective labour agreements, strikes and lockouts, while it does not address the specific issue of court proceedings for the dissolution of DISK. The Committee notes that, according to the Government's indications, the draft study has been concluded and sent to social partners for their comments. The Government states that the process will result in a draft bill which will address all the points raised by DISK, once it has been enacted.

Article 3 of the Convention. Right of workers' organizations to elect their representatives in full freedom. The Committee notes that DISK continues to refer to the suit filed by the Ministry of Labour against the Confederation on the grounds that its officers do not have ten years of service, as well as the required official document to demonstrate their literacy, despite the amendment to article 51 of the Constitution whereby the precondition for the election of union officers concerning years of employment has been removed. According to DISK, the Ministry has sought from the courts the closure of the Confederation. The case is before the Istanbul Fifth Labour Court. DISK also indicates that similar cases have been brought against its affiliates.

The Committee recalls that, in its previous comments on article 51 of the Constitution and section 14 of Act No. 2821 on trade unions, it has underlined that any precondition for election of union officers concerning years of employment should be a matter to be determined by the organizations themselves. While noting that an amendment to article 51 of the Constitution repealed the precondition concerning ten years of active employment, it drew the attention of the Government to the necessity of amending accordingly section 14 of Act No. 2821. In these circumstances, while noting the developments concerning amendments to Act No. 2821, the Committee requests the Government to submit more specific comments in respect of the court proceedings reportedly instituted for the dissolution of DISK. If the grounds for the suit are those described by DISK, the Committee requests the Government to withdraw the suit (as well as any similar suits that may have been brought against its affiliates), so that the right of workers' organizations to elect their representatives in full freedom is effectively guaranteed, and to keep it informed in this regard. Furthermore, it requests the Government to provide a copy of the draft Bill amending Act No. 2821 and Act No. 2822 as soon as it is available.

The Committee will be addressing the other pending matters in respect of the application of the Convention (see 2002 observation, 73rd Session) at its next meeting when the Government's report is due. At the same time, it will examine the new Labour Law, No. 4857, adopted on 22 May 2003.

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

The Committee takes note of the Government's reply to the comments dated 18 September 2002 made by the International Confederation of Free Trade Unions (ICFTU) and to the comments dated 3 June 2003 made by the Confederation of Progressive Trade Unions of Turkey (DISK). DISK refers to issues pending before the Committee, namely the process under which possible amendments to the Trade Union Act (No. 2821) and the Collective Labour Agreements, Strike and Lockout Act (No. 2822) are considered, and in particular, the need to amend section 12 of Act No. 2822 (under which, in order to be allowed to negotiate a collective agreement, a trade union must represent 10 per cent of the workers in a branch and more than half of the employees in a workplace). The Committee notes that the Government replies that a draft study to modify some sections of the abovementioned laws has been concluded by academicians and has been sent to the social partners for observations before the elaboration of a draft Bill.

The Committee will pursue next year, in the framework of the regular reporting cycle, the examination of the issues raised in its last observation, in light of the comments made by the ICFTU and DISK, as well as the Government's replies thereon. The Committee will also examine the new Labour Law No. 4857 adopted on 27 May 2003.

Uganda

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

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

The Committee notes the conclusions of the Committee on Freedom of Association in Case No. 1996 (see 316th Report of the Committee, paragraphs 642-699, approved by the Governing Body at its June 1999 session).

Article 4 of the Convention. Promotion of collective bargaining. The Committee notes that section 8(3) of the Trade Union Decree of 1976 contains the requirement that there be a minimum number of 1,000 members to form a trade union and that section 19(1)(e) of the same law grants exclusive bargaining rights to a union only when it represents 51 per cent of the employees concerned. The Committee considers that such provisions do not promote collective bargaining within the meaning of *Article 4* since this dual requirement may deprive workers, in smaller bargaining units or who are dispersed over wide geographical areas, of being able to exercise collective bargaining rights, and in particular where no trade union represents an absolute majority of the workers concerned.

The Committee considers that where no union covers more than 50 per cent of the workers, collective bargaining rights should be granted to all the unions in the unit, at least on behalf of their own members (see General Survey of 1994 on freedom

of association and collective bargaining, paragraph 241). The Committee observes in this regard that the Committee on Freedom of Association noted:

... the Government's recognition that these provisions are not compatible with the new Ugandan Constitution of 1995 and that steps to address this problem are being undertaken within the framework of the labour law reform process currently taking place in the country ... (see Case No. 1996, *op. cit.*, paragraph 664).

The Committee further notes the Government's statement that the Trade Union Decree No. 20 of 1976 is being revised to enhance the application of the Convention and that the revised legislation is still in the form of a draft Bill. The Committee trusts that this draft Bill will amend sections 8(3) and 19(1)(e) of the Trade Unions Decree with a view to promoting collective bargaining. It requests the Government to keep it informed of any progress made in the adoption of this Bill and to send a copy thereof as soon as it is adopted.

Exclusion of the prison services from the application of the Trade Union Decree. The Committee had noted in its previous comments under Convention No. 154 that the Trade Union Law (Miscellaneous Amendments) Statute of 31 January 1993, which amended Trade Union Decree No. 20 of 1976, enlarged the category of employees eligible for membership in trade unions, particularly in the public service (including the teaching service) and the employees of the Bank of Uganda. The Committee had noted, however, that other categories as well as the prison services were excluded from membership of trade unions by section 3 and Annex 2 of the above Act. The Committee therefore asks the Government to ensure that the guarantees laid down in the Convention are implemented for these categories, which are excluded from the scope of Decree No. 20 of 1976 as amended by the 1993 Act, and to keep it informed of any measure taken in this regard.

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

Uruguay

Convention No. 98: Right to Organise and Collective Bargaining, 1949 (ratification: 1954)

The Committee notes the comments made by the trade union congress PIT-CNT in May 2003 reiterating comments that it had made previously. The Committee also notes the conclusions and recommendations of the Committee on Freedom of Association in Case No. 2087 [see 328th Report, paras. 606-616] concerning in particular the delays in administrative procedures in cases of denunciations of anti-union discrimination.

The Committee notes that the PIT-CNT refers to the lack of rapid and effective machinery against acts of anti-union discrimination and the impossibility of carrying out collective bargaining in the major sectors, and particularly in the services and commercial sectors. Moreover, in its previous observation, the Committee requested further information on collective bargaining in the public sector.

As it did in its previous observation, the Committee requests the Government to provide further particulars on the average time which elapses between the initiation of investigations of complaints of anti-union discrimination and the imposition of sanctions, or the closure of the case. The Committee also requests the Government to indicate the total number of complaints of acts of anti-union discrimination lodged over the past two years.

The Committee also requests the Government to provide information on the number of collective agreements concluded by enterprise and by economic branch, including the public sector and the public administration, with an indication of the sectors and number of workers covered and, if possible, with a full list of the collective agreements concluded in the country.

Convention No. 151: Labour Relations (Public Service), 1978 (ratification: 1989)

The Committee notes the comments made by the trade union congress PIT-CNT referring, among other matters, to the absence of machinery for collective bargaining in the public administration, the judicial authorities and education. The Committee refers to the comments that it is making under Convention No. 98 and requests the Government to examine these matters with the social partners. The Committee requests the Government to provide information on this matter.

Venezuela

Convention No. 87: Freedom of Association and Protection of the Right to Organise, 1948 (ratification: 1982)

The Committee notes the Government's report and the discussion in the Conference Committee on the Application of Standards in 2003. In particular, the Committee of Experts notes that the Committee on the Application of Standards urged the Government to accept a new direct contact mission in order to assess the situation *in situ* and to cooperate with the Government and all of the social partners with a view to ensuring the full application of the Convention. The Committee hopes that the Government will accept the holding of such a mission without delay.

In its previous observation, the Committee noted the information provided by the CTV and FEDECAMARAS on various allegations relating to the establishment, with the Government's support, of violent or paramilitary groups, including the *círculos bolivarianos*, and on acts of violence (death threats against members of the executive committee of the CTV and the murder of a trade union leader) and of discrimination against trade unionists, and it requested the Government to carry out investigations of the acts of violence and the violent groups mentioned above. The Committee notes the Government's indication that: (1) in the Republic of Venezuela there are no paramilitary or violent groups or

subversive groups outside the National Constitution and the law; (2) the *círculos bolivarianos* have since 2000 been carrying out civic and cultural activities, neighbourhood organization, literacy training and advocacy at the national level and in relation to education and the protection of the environment, and it is untrue that they are armed; (3) the activities of *círculos bolivarianos* are carried out within the scope of the legislation that is in force and up to now there have been no formal charges made to the judicial or administrative authorities concerning the alleged acts by the *círculos bolivarianos* against the CTV, FEDECAMARAS or any other institution; (4) no notification has been provided of any formal complaints made by the CTV concerning the alleged death threats against members of its executive committee, nor of any complaint to the Office of the Public Prosecutor concerning the trade union leader reported to have been murdered by the *círculos bolivarianos*; and (5) the CTV and FEDECAMARAS have placed themselves outside the law and *Article 8 of the Convention*, and their conspiracy led to the coup d'état of 2002 and the sabotage of the principal national industry, which is oil, in December 2002 and January 2003. Deeply regretting that the Government has not ordered investigations into the acts of violence reported, the Committee recalls that the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and it requests the Government to take measures to ensure that this principle is respected.

The Committee also noted in its previous observation that the Government does not hold consultations with the main social partners, or at least does not do so in a significant manner or attempt to reach agreed solutions, particularly on matters affecting the interests of those partners. In this respect, the Committee notes the Government's indication that: (1) on 28 May 2003, with the assistance of the Organization of American States (OAS), the United Nations Development Programme (UNDP) and the Carter Center, the Accord was concluded between the representatives of the Government of Venezuela and the political and social elements which support it and the Democratic Coordination and the political organizations and those of civil society of which it is formed; and (2) through the above Accord, both the Government and the political opposition are endeavouring to bring to an end a phase of political instability caused by the failed coup d'état of April 2002, which implies recognition of the current constitutional framework by the opposition, while investigations are being continued into the acts undertaken outside the law by the members of the executive committee of the CTV and FEDECAMARAS which have placed themselves outside the democratic system for the past two years. The Committee hopes that, as from the signature of the above Accord, intense dialogue will immediately be initiated with all the social partners, without any exclusion whatsoever, with a view to finding solutions in the very near future to the serious problems relating to the application of the Convention. The Committee requests the Government to provide information on any developments in this respect.

With regard to certain legislative provisions on which the Committee has been commenting for many years, the Committee notes the Government's indication that on 9 May 2003 a new Bill to reform the Organic Labour Act was adopted at its first reading on 17 June 2003. According to the Government, the second reading has begun, based on consultation and participation with the social partners. The Committee notes that the above Bill contains certain provisions which are in line with the comments made by the Committee (particularly those repealing sections 408 and 409 containing an over-detailed enumeration of the mandatory functions and purposes of workers' organizations; amending section 419 requiring an excessively high number of employers to establish an employers' organization, reducing this number from ten to four; amending section 418 requiring an excessively high number of workers to establish trade unions of independent workers, reducing this number from 100 to 40; and amending section 404 requiring an excessively long period of residence before foreign workers can become members of the executive bodies of a trade union, reducing this period from ten to five years). The Committee emphasizes the serious nature of the problems which are still pending and hopes that the new Bill will be adopted in the near future. It requests the Government to provide information in its next report on any developments in this respect.

The Committee also referred in previous comments to a number of the provisions of the Constitution of the Republic which are not in accordance with the requirements of the Convention, namely:

- article 95 which provides that “the statutes and rules of trade union organizations shall require the alternation of executive officers by means of universal, direct and secret suffrage.” The Committee notes that the Government reiterates its comments on this subject. The Committee hopes that article 95 will be amended in the near future so that the right of trade union leaders to be re-elected is recognized without ambiguity, if this is so provided in the statutes. The Committee requests the Government to provide information in its next report on any measure adopted in this connection;
- article 293 and the eighth transitional provision, which provide that the Electoral Authority (National Electoral Council) is responsible for organizing the elections of occupational unions and that, pending promulgation of the new electoral laws provided for in the Constitution, electoral processes shall be convened, organized, managed and supervised by the National Electoral Council (NEC). In this respect, the Committee notes the Government's indication that: (i) on 19 November 2002, the new Organic Act respecting the Electoral Authority was published, section 33 of which provides that the National Electoral Council is competent for the organization of trade union elections, in compliance with their autonomy and independence, and in accordance with international treaties, with the NEC being devoted to providing technical support; (ii) this provision limits the activities of the NEC, subjecting its participation to the free and prior consent of trade union organizations; (iii) in accordance with article 23 of the Constitution of the Republic, such treaties and conventions shall be applied in preference and forthwith, making any

participation by the NEC subject to the will and freely given consent of trade union organizations; (iv) the entry into force of section 33 of the Organic Act respecting the Electoral Authority makes null and void in law the eighth transitional provision of the Constitution of the Republic, as well as the transitional special statutes for the renewal of trade union leaders approved by the NEC; and (v) the NEC can no longer participate in convening, supervising or controlling elections. Notwithstanding the Government's comments, the Committee considers that article 293 of the Constitution of the Republic should be amended to remove the power entrusted to the Electoral Authority, through the National Electoral Council, to organize the elections of trade unions. The Committee also considers that section 33 of the new Organic Electoral Act, which empowers the National Electoral Council to organize trade union elections, declare candidates elected, decide upon and declare elections null and void, receive and resolve appeals, complaints and representations, is not in conformity with the provisions of the Convention. The Committee once again reminds the Government that the regulation of trade union election procedures and arrangements must be done by trade union statutes and not by a body outside the workers' organizations, and that disputes relating to elections should be resolved by the judicial authorities. In these conditions, the Committee requests the Government to take measures to amend article 293 of the Constitution of the Republic and the new Organic Act respecting the Electoral Authority in so far as it relates to its intervention in elections of workers' organizations, and to provide information in its next report on any measure adopted in this connection.

In its previous observation, the Committee also requested the Government to repeal resolution No. 01-00-012 of the Office of the Prosecutor of the Republic requiring trade union officials to make a sworn statement of assets at the beginning and end of their mandate. In this connection, the Committee takes due note of the Government's indication that the above resolution was repealed by a new resolution of the Prosecutor of the Republic dated 28 March 2003 (a copy of which is forwarded by the Government) providing that only leaders of trade union organizations who volunteer to do so shall submit a sworn statement of their assets.

With regard to the Bills on the protection of trade union guarantees and freedoms and the democratic rights of workers in their trade unions, federations and confederations, which were criticized by the Committee in its previous observation, the Committee notes the Government's indication that the National Assembly's Permanent Committee on Integral Social Development withdrew the Bill on trade union guarantees from the legislative agenda. The Committee requests the Government also to take steps for the withdrawal of the Bill on the democratic rights of workers in their trade unions, federations and confederations and to provide information in its next report on any measures adopted in this connection.

Finally, in its previous comments the Committee noted that the International Confederation of Free Trade Unions (ICFTU) sent comments on the application of the Convention in communications dated 18 September and 21 November 2002. The Committee notes that the ICFTU's comments relate to matters raised by the Committee and the refusal of the authorities to recognize the executive committee of the Confederation of Workers of Venezuela (CTV) elected in 2001. The Committee notes the Government's indication that: (1) the competent authorities of the State, namely the National Electoral Council and the judiciary, have not yet ruled on the alleged electoral fraud committed during trade union elections; (2) the State has no legal grounds for recognizing an executive committee of the CTV which has not been able to demonstrate to the public registrar of trade unions the number of votes obtained by each of the alleged members of the above board; (3) recognizing the executive committee in violation of the provisions would constitute an infringement of the National Constitution and of Convention No. 87; and (4) there is no denial of the CTV as an institution, as it is duly registered, but only of the alleged executive committee referred to by the ICFTU. In this respect, the Committee notes that the Committee on Freedom of Association has already examined this matter and indicated as follows:

Indeed, the Committee has pointed out on previous occasions that in order to avoid the danger of serious limitation on the right of workers to elect their representatives in full freedom, complaints brought before labour courts by an administrative authority challenging the results of trade union elections should not – pending the final outcome of the judicial proceedings – have the effect of suspending the validity of such elections [see *Digest of decisions and principles of the Freedom of Association Committee*, 1996, para. 404]. The Committee therefore asks the Government to recognize the executive committee of the CTV [see 330th Report of the Committee on Freedom of Association, Case No. 2067, para. 173].

The Committee of Experts endorses the views of the Committee on Freedom of Association in this respect and requests the Government to recognize the executive committee of the CTV immediately. The Committee requests the Government to provide information in its next report on any measures adopted in this respect.

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

Convention No. 98: Right to Organise and Collective Bargaining, 1949 (ratification: 1968)

The Committee takes note of the Government's report.

1. *Protection against acts of anti-union discrimination and interference; majorities required for collective bargaining.* The Committee notes that, according to the Government, a new Bill to amend the Basic Labour Act was submitted to the National Assembly on 9 May 2003 and was approved at first reading on 17 June 2003, and that the second reading has begun, with the consultation and participation of all social partners. The Committee observes that the Bill contains several provisions that take account of the comments the Committee has been making for many years (particularly the provision that where a trade union does not represent an absolute majority of the workers in an enterprise,

it can at least negotiate an agreement on behalf of its members (section 473(2) of the Basic Labour Act); and the provision of protection against acts of anti-union discrimination and interference by means of effective sanctions (sections 637 and 639 of the Basic Labour Act)). The Committee draws attention to the seriousness of the current problems and hopes that the new Bill will be adopted shortly. The Government is requested to provide information in its next report on all developments in this matter.

2. *Comments submitted by the International Confederation of Free Trade Unions (ICFTU) on 17 September 2002 concerning the application of the Convention.* The Committee notes that the ICFTU refers to the questions raised by the Committee in the previous paragraph and makes the following additional points: (1) in the context of state restructuring, the Government issued a decree withdrawing the employment stability laid down in the legislation and collective agreements thus allowing the dismissal of trade union officials in the public sector; (2) in breach of existing collective agreements, officers of the organization of National Assembly employees were transferred and workers of the Guacara Industrial Zone were dismissed; and (3) the Government has negotiated collective agreements with unions which are not representative and which the Government controls (as examples, the ICFTU cites the collective agreement signed by Pequiven, a subsidiary of PDVSA, and the *Fuerza Bolivariana de Trabajadores*). The Committee notes that, according to the Government: (i) it is not, and will not be, government practice to disregard the human and trade union rights of workers, particularly the right to organize and conclude collective agreements; (ii) the executives of more than 2,800 trade unions have been renewed by elections carried out in accordance with the unions' by-laws, so it can hardly be alleged that the Government has intervened or interfered since it is the trade union leaders themselves who, without any kind of pressure or threat, negotiate, approve and conclude the agreements with employers and state institutions; (iii) during the term of the present Government, more than 3,000 collective agreements have been discussed and concluded, to the benefit of some 9 million workers; and (iv) as regards the observations of the supervisory bodies, work is being carried out promptly and transparently to bring the domestic legislation into line with ratified international labour Conventions.

The Committee notes with regret that the Government has sent no specific response to the ICFTU's comments on the transfers and dismissals of workers for trade union activities and the negotiation of a collective agreement with a non-representative organization which the Government controls. The Committee observes that the Committee on Freedom of Association has had to examine a series of cases concerning anti-union dismissals and transfers. The Committee recalls in general that *Article 1 of the Convention* requires workers to be protected adequately against acts of anti-union discrimination both at the time of hiring and in the course of employment, and also upon termination of the employment relationship, and that the protection is against all measures of a discriminatory nature (dismissal, transfer, demotion and any other prejudicial act). The protection provided in the Convention is particularly important in the case of trade union representatives and officers, who must have the guarantee that they will not be prejudiced on account of the union office which they hold (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 223). Furthermore, bearing in mind that the legislation grants the right of collective bargaining to the most representative organization, the Committee requests the Government to ensure that at the outset of the bargaining, unions that are able to demonstrate their representativeness are recognized.

Yemen

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

The Committee notes the Government's report. The Committee also notes the Government's indication that it will transmit a copy of the Law on Trade Unions, which it will examine at its next meeting.

The Committee further notes the Government's indication that the draft amendments to the Labour Code are being prepared in collaboration with the social partners. The Committee trusts that the amendments will take into account the following concerns previously expressed by the Committee:

- the reference to the General Federation of Trade Unions made in certain provisions of the Labour Code and, in particular, in sections 2, 131(c) and 145(2), which could result indirectly in making it impossible to establish a second federation to represent workers' interests;
- the strict conditions for exercise of strike action set out in sections 130, 137, 139, concerning compulsory arbitration, and section 145, concerning the prior approval by the General Federation of Trade Unions in order to call a strike;
- the restricted scope of coverage of the code as concerns foreign and casual workers, domestic workers and similar categories and certain agricultural workers (section 4).

The Committee requests the Government to transmit the amendments of the Labour Code once they are adopted.

Zambia

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

The Committee takes note of the Government's report. The Committee also takes note of the observations communicated by the International Confederation of Free Trade Unions (ICFTU) of 2002.

Articles 3 and 10 of the Convention. Right of organizations to organize their activities and to further and defend the interests of their members. With regard to its previous comments and the observation communicated by the ICFTU concerning certain limitations or restrictions of the right to strike which go beyond the limits permitted under the Convention, the Committee notes that the Government's report does not provide any information in this respect.

The Committee takes note of the observations communicated by the ICFTU according to which the definition of essential services is excessively wide. The Committee recalls that in its previous comments it had taken note of the Government's intention to revise the legislation, in particular, by introducing the concept of minimum negotiated services, and had requested the Government to keep it informed of progress made in bringing the following provisions of the Industrial and Labour Relations Act into conformity with the Convention:

- section 78(6) to (8) under which a strike can be discontinued if it is found by the court not to be “in the public interest”;
- section 100 which refers to exposing property to injury;
- section 107 which prohibits strikes in essential services and empowers the Minister to add other services to the list of essential services in consultation with the Tripartite Consultative Labour Council.

The Committee once again recalls that the right to strike can only be limited or restricted in specified circumstances, namely in the case of an acute national crisis or in essential services in the strict sense of the term, namely those services, the interruption of which would endanger the life, personal safety or health of the whole or part of the population. The Committee requests the Government to keep it informed of the progress made in the legislative revision with respect to these sections of the Industrial and Labour Relations Act.

The Committee takes note of the ICFTU's comments according to which the right to strike is subject to numerous procedural requirements such that it is next to impossible for workers to hold a legal strike. The Committee recalls that its previous comments had related to section 76 of the Industrial and Labour Relations Act, which establishes no time frame in which conciliation should end before a strike can take place. The Committee once again recalls that procedures should not be so slow or complex that a lawful strike becomes impossible in practice or loses its effectiveness. The Committee further notes that its previous comments related to section 78(1) of the Industrial and Labour Relations Act as interpreted by a decision of the Industrial Relations Court according to which, either party may take an industrial dispute to court. The Committee once again recalls that if the right to strike is subject to restrictions or a prohibition, workers should be afforded compensatory guarantees, for example conciliation and mediation procedures leading, in the event of a deadlock, to arbitration machinery seen to be reliable by the parties concerned; recourse to arbitration should be at the request of both parties or in the case of strikes occurring in essential services in the strict sense of the term or in an acute national crisis. The Committee once again urges the Government to amend sections 76 and 78(1) of the Industrial and Labour Relations Act in accordance with the above.

With regard to its previous comments concerning section 107 of the Industrial and Labour Relations Act which empowers a police officer to arrest without a warrant a person who is believed to be striking in an essential service or who is violating section 100 (exposing property to injury), and which imposes a fine and up to six months' imprisonment, the Committee once again emphasizes that sanctions for strikes should not be disproportionate to the seriousness of the violation and requests the Government once again to amend these provisions so as to bring them into full conformity with the Convention, in particular, by ensuring that no worker can be imprisoned for participation in a peaceful strike.

In addition, the Committee is addressing a request on certain other points directly to the Government.

Zimbabwe

Convention No. 98: Right to Organise and Collective Bargaining, 1949 (ratification: 1998)

The Committee notes the Government's reports and the discussions in the Conference Committee on the Application of Standards in June 2003. The Committee notes that the Government has not yet replied to the request of the Conference Committee on the Application of Standards concerning an ILO direct contacts mission. The Committee notes the adoption of the Labour Relations Amendment Act No. 17/2002 and the Statutory Instrument 131/2003.

1. *Recent legislative reform.* The Committee notes with satisfaction that the following previously raised issues have been resolved under the new legislation:

- Protection of workers' organizations against acts of interference of employers' organizations (or their agents) and vice versa is ensured by the Statutory Instrument 131/2003, which prohibits these acts and provides for sanctions such as fines and/or imprisonment in cases of infringement.
- According to the new section 93(5) of the Labour Relations Act, compulsory arbitration is possible only with the agreement of the parties concerned or when conciliation procedures have failed in the essential services.
- According to section 2A(3) of the Labour Relations Act, the Act prevails over any legislation. Therefore, as indicated by the Government, workers engaged in the framework of the Lotteries Act and others, as mentioned in section 14(c) and (h) of the Public Service Act (with the exception of those employed in the prison service) are now governed by the Labour Act and enjoy the rights provided for in the Convention.

2. *Collective bargaining in the public service.* The Committee notes that in reply to the previous request of the Committee, the Government states that teachers, nurses and other civil servants not directly engaged in the administration of the State negotiate collective agreements. It further notes the information sent by the Government concerning the number of collective agreements covering these categories of workers as well as the number of workers covered by such agreements.

3. *Previously commented serious infringements of the Convention.* Noting that the Government repeats the same arguments as in its previous reports, the Committee once again requests the Government to amend the following sections:

- Sections 25(2), 79 and 81 of the Labour Relations Act providing for a requirement for collective agreements to be submitted for ministerial approval in order to ensure that their provisions are not inconsistent with the national laws and that they are not inequitable to consumers, to members of the public generally or to any other party to the collective bargaining agreement. The Committee notes the Government's statement in this respect that it is in the national interest to protect consumers and the general public, given the level of the economic development of the country. The Committee once again recalls that the power of the authorities to approve collective agreements is compatible with the Convention, provided that the approval may be refused only if the collective agreement has a procedural flaw or does not conform to the minimum standards laid down by general labour legislation (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 251).
- Section 25(1) of the Labour Relations Act, according to which if workers' committees reach an agreement with the employer, it must be approved by the trade union and by more than 50 per cent of the employees. The Committee notes the Government's indication to the effect that this issue was addressed by the amendment of section 23, which ensures that if a trade union is registered to represent the interests of not less than 50 per cent of the employees at the workplace, every member of the workers' committee shall be a member of the trade union concerned. While recognizing that certain progress was made in this respect, the Committee underlines that when the indicated percentage is not reached, representatives of non-unionized workers can negotiate even if a trade union exists at the enterprise. The Committee recalls that negotiations, through direct settlement or agreements signed between an employer and the representatives of a group of non-unionized workers, when a union exists in the undertaking, do not promote collective bargaining as set out in *Article 4 of the Convention*, which refers to the development of negotiations between employers or their organizations and workers' organizations.
- Sections 17(2) and 22 of the Labour Relations Act, concerning the right of the Minister to fix a maximum wage and other conditions of employment by statutory instrument prevailing over any agreement or arrangement. Noting the Government's statements to the effect that it is in the national interest to protect consumers and the general public and that therefore it considers that these sections are not contrary to *Article 4* of the Convention, the Committee once again recalls that measures taken unilaterally by the authorities to fix the conditions of employment and therefore restrict the scope of negotiated issues are incompatible with the Convention.
- As concerns the prison staff, the Committee notes that according to the Government, the prison staff, being a disciplined force, is excluded from the scope of the Public Service Act. The Committee further notes section 3(2)(b) and 3(5)(a) of the Labour Relations Act, which excludes members of a disciplined force from the application of the Act. The Committee concludes that this category of workers does not enjoy the rights afforded by the Convention and therefore requests the Government to amend its legislation so as to ensure that prison workers enjoy the right to organize and to collective bargaining.

The Committee requests the Government to keep it informed of the measures taken or envisaged in respect of the abovementioned points.

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States with regard to: **Convention No. 11** (Swaziland); **Convention No. 87** (Albania, Angola, Australia, Bahamas, Bangladesh, Bosnia and Herzegovina, Botswana, Bulgaria, Burkina Faso, Burundi, Cambodia, Cape Verde, Chile, China - Macau Special Administrative Region, Czech Republic, Denmark, Egypt, Eritrea, Estonia, Finland, France, France: French Southern and Antarctic Territories, Gabon, Gambia, Georgia, Grenada, Guatemala, Haiti, Indonesia, Italy, Kazakhstan, Kyrgyzstan, Latvia, Luxembourg, Madagascar, Mongolia, Netherlands: Aruba, Pakistan, Papua New Guinea,

Philippines, Saint Lucia, Saint Vincent and the Grenadines, United Republic of Tanzania, Tunisia, Venezuela, Zambia); **Convention No. 98** (*Albania, Angola, Azerbaijan, Bahamas, Barbados, Belize, Botswana, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Central African Republic, Chile, China - Macau Special Administrative Region, Cuba, Democratic Republic of the Congo, Ecuador, Egypt, Eritrea, Finland, France, Gambia, Georgia, Guinea-Bissau, Guyana, Indonesia, Israel, Kazakhstan, Kyrgyzstan, Mauritania, Mongolia, Morocco, Pakistan, Russian Federation, Syrian Arab Republic, Tajikistan, The former Yugoslav Republic of Macedonia, Venezuela*); **Convention No. 135** (*Azerbaijan, Belize, Brazil, Chile, Kazakhstan, Republic of Korea, Latvia, Mongolia, Netherlands*); **Convention No. 141** (*Belize, France: French Guiana*); **Convention No. 151** (*Belize, Chad, Chile, Colombia, Luxembourg*); **Convention No. 154** (*Belize, Colombia, Uganda*).

The Committee noted information supplied by the following States in an answer to a direct request with regard to: **Convention No. 87** (*China - Hong Kong Special Administrative Region*); **Convention No. 135** (*Chad*).

Forced Labour

Afghanistan

Convention No. 105: Abolition of Forced Labour, 1957 (ratification: 1963)

The Committee notes with regret that no report has been received from the Government. It must therefore repeat its previous observation on the following matters:

Article 1(a) of the Convention. In comments made for a number of years, the Committee has noted that prison sentences involving an obligation to perform labour may be imposed under the following provisions of the Penal Code:

- (a) sections 184(3), 197(1)(a) and 240 concerning, inter alia, the publication and propagation of news, information, false or self-interested statements, biased or inciting propaganda concerning internal affairs of the country which reduces the prestige and standing of the State, or for the purpose of harming public interest and goods;
- (b) sections 221(1), (4) and (5) concerning a person who creates, establishes, organizes or administers an organization under the name of a party, society, union or group with the aim of disturbing and nullifying one of the basic and accepted national values in the political, social, economic or cultural spheres of the State, or makes propaganda for its extension or attraction to it, by whatever means it may be, or who joins such an organization or establishes relations, himself or through someone else with such an organization or one of its branches.

The Committee had noted the Government's earlier indication that the obligation to perform prison labour provided for under section 3 of the Prisons Law covers persons convicted under the abovementioned sections of the Penal Code as well as those convicted of other misdemeanours and crimes; under section 13 of the Prisons Law, those convicted under the abovementioned sections of the Penal Code are kept in custody separately from ordinary prisoners, and are also engaged in different activities to keep themselves physically healthy and to provide themselves with gainful employment for which they are fully paid.

While noting the special status given to prisoners convicted under the abovementioned sections of the Penal Code, the Committee pointed out that the imposition of sanctions involving compulsory labour on these persons remains contrary to the Convention.

The Committee hopes that the penal provisions will be examined in the light of the Convention with a view to ensuring that no sanctions involving forced or compulsory labour may be imposed as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system and that the Government will indicate the measures taken to this end.

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

Argentina

Convention No. 29: Forced Labour, 1930 (ratification: 1950)

The Committee notes the information provided by the Government in reply to its general observation on the privatization of prisons and prison labour.

The Committee notes with interest the provisions of the Act on the execution of sentences of detention (Act No. 24.660, sections 106-132) concerning prison labour.

The Committee notes with particular interest section 120 on the remuneration of work by detainees, under which "the work of detainees shall be remunerated Where the goods or services produced are intended for the State or entities of public utility, the wage of the detainee shall not be lower than three-quarters of the minimum mobile subsistence wage. In other cases or where the organization of the work is the responsibility of a mixed or private enterprise, the remuneration shall be equal to the wage of corresponding free workers in the occupational category concerned".

Australia

Convention No. 29: Forced Labour, 1930 (ratification: 1932)

Referring to its earlier comments, the Committee has noted the information supplied by the Government in its 2002 report. It has also noted the comments on the application of the Convention made by the Australian Chamber of Commerce and Industry (ACCI) enclosed with the Government's report.

Article 1(1) and Article 2(1) and (2)(c) of the Convention.
Privatization of prisons and prison labour

1. In its earlier comments, the Committee noted that private prisons existed in *Victoria, New South Wales, Queensland* and *South Australia*, while there were no prisons administered by private concerns under the *federal, Tasmanian, Northern Territory* and *Australian Capital Territory* jurisdictions. The Government indicates in its 2002 report that, in *Western Australia*, the state's first privately managed prison was opened in 2001 and run under contract by

the Australian Integration Management Services Corporation (AIMS Corp), a private prison service provider, but was still to be controlled by the Department of Justice. The Committee pointed out that the privatization of prison labour transcends the express conditions provided in *Article 2(2)(c)* of the Convention for exempting compulsory prison labour from the scope of the Convention.

2. From the Government's 2002 report there appears to be little change in national law and practice during 2000-02 with regard to the work of prisoners for private enterprises. The Government reiterates that privately managed prisons in Australia remain under the control of a public authority in that the Government establishes guidelines for work in prisons, carries out inspections and imposes penalties for breaches. The private managers must operate within these guidelines, which apply to both publicly managed and privately managed prisons, and prisoners are therefore at the "disposal" of the private contractor only in a very literal sense, and there is no material difference in work obligations or arrangements for prisoners between public and private prisons.

3. The Committee has noted the Government's repeated indications in its reports that, in *Victoria*, prison labour is carried out under the supervision and control of a public authority (the Secretary of the Department of Justice), and that prisoners remain in the "legal custody" of the state; the Office of the Correctional Services Commissioner (OCSC) within the Department of Justice retains full responsibility for the classification and placement of prisoners across the system, and for the monitoring of prisoner welfare and management in accordance with service standards and requirements of the Corrections Act. The Government believes the comprehensive state control and supervision of convicted prisoners in *Victoria*, as ensured by rigorous law and practice, places the work carried out by such prisoners outside the Convention's definition of "forced or compulsory labour". The Committee has also noted the Government's renewed statement that the Victorian Government stepped in to take control of the Metropolitan Women's Correctional Centre (MWCC) in October 2000 after a number of defaults relating to operations at the facility were not resolved by the owner-operator, Corrections Corporation of Australia (CCA), and on 2 November 2000 the Government announced that agreement had been reached with the CCA to transfer the ownership and management of the MWCC to the public sector.

4. In its 2002 report, the Government again referred in detail to prison labour in private prison facilities in *Victoria*, *New South Wales*, *Queensland* and *South Australia*, making special emphasis on the fact that prisoners accommodated in privately operated facilities are "under the supervision and control of a public authority" as required by the exemption in *Article 2(2)(c)*. As regards conditions of work of such prisoners, the Government takes the view that "it is completely unrealistic to suggest or expect that inmates might be remunerated in accord with open market remuneration conditions" (*New South Wales*), "it is anachronistic" to suggest that such prisoners should experience conditions of employment approximating a free employment relationship, since no employment relationship exists between a privately operated facility and prisoners (*Queensland*), and "it would be inequitable to treat prisoners in privately operated prisons more advantageously than those in state-run prisons" (*Victoria*).

5. While having noted these views and comments, the Committee wishes to recall the following. Firstly, that *Article 2(2)(c)* of the Convention expressly prohibits that convicted prisoners are hired to or placed at the disposal of private individuals, companies or associations, in a sense that the exception from the scope of the Convention provided for in this Article for compulsory prison labour does not extend to work of prisoners for private employers (including privatized prisons and prison workshops), even under public supervision and control. The Committee recalls that work or service exacted from any person as a consequence of a conviction in a court of law is compatible with the Convention only if two conditions are met, namely ... that the said work or service is carried out under the supervision and control of a public authority; and that the said person is not hired to or placed at the disposal of private individuals, companies or associations. The Committee has always made it clear that the two conditions are cumulative and apply independently, i.e. the fact that the prisoner remains at all times under the supervision and control of a public authority does not in itself dispense the Government from fulfilling the second condition, namely, that the person is not "hired to or placed at the disposal of private individuals, companies or associations".

6. Secondly, the conditions of employment are not required to be exactly the same as in the open market but to "approximate" a free labour relationship (general observation, 2001, point 10). The Committee again refers in this connection to the explanations given in paragraphs 127-143 of its General Report to the International Labour Conference in 2001 and in points 5-11 of its 2001 general observation under the Convention, where it pointed out that work by prisoners for private companies can be held compatible with the explicit prohibition of the Convention only when such work is performed in conditions approximating a free employment relationship; this necessarily requires the formal consent of the persons concerned, as well as further guarantees and safeguards covering the essential elements of a free labour relationship, such as wages and social security, etc.

7. The argument about "conditions approximating a free employment relationship" should not divert attention from the fact that in privately operated prisons in *Victoria*, *New South Wales* and *South Australia* even the formal consent of prisoners to work does not appear so far to be asked for. In this connection, the Committee would appreciate it if the Government would indicate how such freely given consent of the prisoners concerned is guaranteed in the privately operated prison in *Western Australia*, where, according to the Government's statement in the report, the creation of the private prison would not introduce any instances of forced labour as defined in the Convention.

8. In the light of the above considerations, and noting also the Government's statement in the report that Australia strongly supports the principles of Convention No. 29 and does not seek in any way to undermine the application of these

principles, the Committee reiterates its hope that the necessary measures will be taken to ensure observance of the Convention and that the Government will soon be in a position to report the progress achieved in this regard.

Article 25. Further to its previous comments concerning the coming into force of the Federal Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999 (the Slavery Act), which addresses the growing and lucrative international trade in people for the purpose of sexual exploitation and contains new provisions directed at slavery, sexual servitude and deceptive recruiting, the Committee has noted from the Government's 2002 report that *New South Wales, South Australia, the Northern Territory and the Australian Capital Territory* have enacted the state/territory components of the sexual servitude legislative regime. The Government indicates that there have so far been no prosecutions under the Federal Act. The Committee would appreciate it if the Government would continue to provide information on the application in practice of the new Federal Act and complementary state and territory legislation, as well as on the other aspects of law and practice concerning the trafficking in persons that were raised in the Committee's 2000 general observation under the Convention.

Brazil

Convention No. 29: Forced Labour, 1930 (ratification: 1957)

The Committee notes the detailed information provided by the Government in its report and the information provided in reply to the observations made by the Association of Labour Inspectors of *Minas Gerais* (AAIT/MG) in July 2001. It also notes the comments made in October 2002 by the Single Central Organization of Workers (CUT) and the National Confederation of Agricultural Workers (CONTAG), and the information received from the Government in January 2003 in reply to these comments.

Forced labour practices: Situation

In its previous observation, the Committee noted a convergence of views between national and international workers' organizations and the Government concerning the existence of forced labour practices and on the conditions in which such practices develop. In many regions, a large number of workers is still subjected with their families to degrading conditions of work and debt servitude. Faced with this situation, the Government has on many occasions expressed, as it does once again in its latest report, its commitment to eradicating forced labour from the country and has provided information on the measures adopted for this purpose. The Committee noted previously in this respect:

- the establishment in June 1995 by the President of the Republic of the Executive Group on the Elimination of Forced Labour (GERTRAF);
- the establishment of the Special Mobile Inspection Group (GEFM) (Ordinance No. 550 MTb of 14 June 1995);
- the adoption in 1998 of Act No. 9777 amending sections 132, 203 and 207 of the Penal Code to supplement section 149 of the Code.

The Committee notes with interest, according to the information provided in its latest report, that the Government is continuing to take many measures to combat forced labour, and particularly preventive and rehabilitation measures, such as:

- the establishment, within the Council for the Defence of Human Rights of the Ministry of Justice, of a special commission to specifically address the problem of slave labour. In collaboration with GERTRAF, the functions of this commission include proposing mechanisms to guarantee greater effectiveness in the prevention and elimination of rural violence and the exploitation of forced labour, including, for example, the creation of a mechanism to refuse the granting of public financing to the owners of lands on which such exploitation has been found to exist. Its objectives also include promoting better coordination between the various partners in support of certain initiatives, such as the proposed amendment to the Constitution for the confiscation of the lands of owners exploiting slave labour.
- the launching by the Government of the National Plan for the Elimination of Slave Labour formulated by the special commission in March 2003;
- the launching in April 2002 of a cooperation project between the ILO and the Government of Brazil, entitled "combating slave labour in Brazil", carried out in partnership with several national institutions. The objectives of this project are to strengthen GERTRAF and the means of action of the GEFM, establish a database, launch national awareness-raising plans, develop the national plan of action and implement pilot programmes for prevention and the reintegration of freed workers;
- the adoption in April 2002 of Provisional Measure No. 74 granting temporary financial assistance (three payments each corresponding to the minimum wage) to the workers identified by the inspection services of the Ministry of Labour and Employment, as having been subjected to a system of forced labour or reduced to a situation of slavery. Freed workers are also directed towards the services of the national employment system with a view to their integration into the labour market and their vocational training. With regard to reintegration, the Government also announces in its last report the launching, before the end of 2002, of the programme of action for "temporary assistance to victims of slave-like or degrading work". An agreement is due to be concluded in this context with the

Pastoral Land Commission with a view to securing accommodation, food and training in the rights of the citizen for freed workers.

The Committee also notes the information provided by the Government in its latest report, to the effect that, following the efforts made in 2001, the GEFM has carried out the largest number of operations since its establishment and, in so doing, has recorded the largest number of freed workers (1,433 compared with 583 in 2000).

The Committee notes the following comments of the Single Central Organization of Workers (CUT):

- The CUT considers that the rise in the number of workers who are freed, a rise confirmed in the first half of 2002 with the liberation of a number of workers equivalent to the official figures for freed workers for the whole of 2001, whilst it shows the importance of the activities carried out by the GEFM, at the same time demonstrates the fact that forced labour practices, particularly in the rural sector, cannot be considered to be peripheral.
- Further, the CUT comments on what it views as systematic practices, facilitated by the division within the executive authorities. It indicates that while the Ministry of Labour and Employment and the Ministry of Justice are committed to combating forced labour, other ministries, such as those responsible for industry and trade, agriculture and ownership, as well as the Central Bank, are not involved in this combat, and may aggravate the situation, for example by financing or granting assistance to individuals and entities which have recourse to these practices to increase their profits.
- In addition, on the basis of the information of the Pastoral Land Commission, the CUT expresses its concern at certain indicators demonstrating the extension of these practices (illegal transport of workers, number of denunciations), worsened by the increase in the rate of repeat offences, which shows that agricultural landowners do not fear the measures adopted by the State. In these conditions, the CUT considers that, although certain sectors of the Government that are really involved in combating these practices can claim some progress, the use by the Government of figures for freed workers as a proof of its commitment cannot mask the lack of commitment and will of the Government as a whole, which prevents effective action being taken against forced labour.
- The CUT also expresses concern at the operational inadequacy of inspection activities (GERTRAF and the GEFM). It refers to the delay between the lodging of complaints and inspections which is much too long, leaving workers in catastrophic and even dangerous situations in the case of those lodging the complaint, and providing greater opportunities for the disappearance of evidence.
- The CUT says that the inspection system lacks human resources and appropriate logistics to confront these specific difficulties encountered in certain regions, with the result that inspections are not carried out in areas known to be zones in which slave labour is used (for example, over the past year no inspections have been conducted in São Felix do Xingo e Iriri in the Pará region). The increasing demoralization of inspectors caused by these operational inadequacies and the impunity of the guilty parties are contributing to the loss of credibility of inspections.

In reply to these observations, the Government indicates as follows:

- The rise in the number of freed workers cannot be used to infer that there is necessarily an increase in forced labour practices. The figures have to be linked to the intensified action taken by the State, the investment in material resources and the increased commitment of the institutional partners of the Ministry of Labour and Employment. All these elements have made it possible to carry out more inspections and to deal with an increasing number of complaints, which are not always related to forced labour practices but, most frequently, to violations of the labour legislation. The Ministry of Labour and Employment has not interpreted the figures for freed workers as an indication of a reduction in slave labour, but as proof of the broader action being taken by the State. There are no statistics showing either a decrease or a rise in slave labour.
- With regard to the lack of resources of the inspection services, the Government indicates that relations between the Ministry of Labour and Employment and the federal police have developed in a manner which avoids any bureaucracy and facilitates the training of inspection teams. The Government adds that the renovation of the GEFM's pool of vehicles and the acquisition of modern equipment (computers, radios, GPS systems) bears witness to a constant policy of support by the Ministry for Labour Inspection. Even though certain specific difficulties persist, in overall terms, the GEFM has at its disposal greater means of action than in the past.
- Finally, concerning the allegations made by the CUT and CONTAG concerning the concession of loans and subsidies to owners exploiting slave labour, the Government indicates that this issue is being examined by GERTRAF. A working group has been established to formulate a draft decree to drastically restrict the granting of any public credits to exploiters of slave labour.

The Committee notes all of this information, which reflects the difficulties encountered by the Government in achieving the eradication of forced labour practices. It recognizes the important steps which have already been taken by the Government and trusts that the Government will continue all of its efforts and that it will use all the means at its disposal to further strengthen the inspection services so that action can be taken with the necessary rapidity in all areas in which complaints are lodged or where there is suspicion of forced labour. The Committee particularly emphasizes that the action of the inspectorate, and particularly the GEFM, are an essential prerequisite, without which workers cannot be freed and those responsible convicted. The Committee requests the Government to continue providing detailed

information on this subject and on any developments relating to the draft amendment to the Constitution for the confiscation of the lands of owners who exploit slave labour.

The Committee also notes with interest that, on 18 November 2003, the Minister of National Integration signed a decree containing 52 names (individuals or entities) which use or have used slave labour. These individuals and entities will no longer be able to enter into financial arrangements with a number of public financial institutions or benefit from national subsidies or tax exemptions. The only names included were those covered by a definitive ruling up to December 2002. Finally, this list will be periodically updated. The Committee considers that the adoption of this text marks an important step in combating those who exploit slave labour as it directly affects their financial interests. It would be grateful if the Government would provide full particulars on the application of this decree in practice. It requests the Government to supply the list of names, indicate whether the list has already been revised, specify the list of the financial institutions concerned and the manner in which the Government ensures that no financial advantage is accorded to those who exploit or have exploited slave labour.

Penal sanctions and impunity of those responsible

In its previous comments, the Committee expressed concern at the low rate of legal action against those responsible for having exacted forced labour, even though every year the action carried out by the labour inspectorate, and particularly the GEFM, leads to the liberation of hundreds of workers. The Committee requested the Government to provide statistics on the number of cases of forced labour forwarded by the labour inspectorate to the federal Attorney-General's Office, the number of cases giving rise to criminal proceedings and the number of convictions under Act No. 9777 and section 149 of the Penal Code. According to the information provided by the Government in its report in 2001, a single case was being tried for violation of section 149 of the Penal Code. The Government did not provide any statistical information on this subject in its latest report.

The CUT indicates in its comments that the lack of criminal proceedings is principally due to the fact that the federal judiciary has on several occasions declared itself incompetent to judge these crimes, with the Attorney-General's Office accordingly refraining from transmitting any new cases. The CUT says that the loss of credibility of the enforcement system is also illustrated by the rate of repeat offences and the increasing cruelty of practices related to forced labour. Among the cases reported in 2002, many landowners are repeat offenders already convicted or against whom successive complaints have been made (*Fazenda Alvorcada, Fazenda Rio Vermelho, Fazenda Brasil Verde*). The CUT expresses concern about the absence of information from the Government on the measures taken by the Attorney-General's Office on the reports forwarded by the labour inspectorate.

In its latest report, the Government acknowledges that the principal obstacle to the conviction of persons exploiting slave labour is related to a problem of the definition of jurisdictional competence. The reports of the GEFM are forwarded to the federal Attorney-General's Office and not to the offices of the attorney-generals of the various states, to prevent those charged from exerting pressure at the local level to prevent the investigation of complaints. However, there is a controversy in case law concerning the competence to judge the crime of imposing upon a person a condition similar to that of slavery (section 149 of the Penal Code). Certain courts consider that such trials are not within the competence of the federal judicial system. According to this interpretation, the responsibility for commencing proceedings should therefore be removed from the federal Attorney-General's Office to the offices of the attorney-generals in each state. The Government indicates that in the Special Commission of the Human Rights Council it is planned to set aside this interpretation. The National Association of Federal Judges, which forms part of the above Commission, has emphasized the need to raise the awareness of magistrates concerning the problems encountered in the country in combating slave labour. Such awareness raising could facilitate a reversal of the case law and also lead to the definitive involvement of the judiciary in the national strategy to combat contemporary forms of slavery and other degrading forms of work.

The Government also refers to the experience of a mobile judicial unit tried out in the south of the State of Pará. A Bill on this subject is under examination to allow magistrates to accompany the mobile inspection unit composed of inspectors, members of the federal police and of the federal Attorney-General's Office, so that magistrates are present to certify cases of *flagrante delicto* and judge those responsible forthwith. This mobile judicial unit would make it possible to resolve the problem of witnesses disappearing (freed workers are often difficult to find, particularly in view of their mobility), and the problem of the controversy in case law concerning jurisdictional competence.

The Committee notes all of this information. It notes with regret that the Government has not been able to provide statistical information on the application of penal sanctions against persons found guilty of having exacted forced labour, which illustrates the incapacity of the judicial system to try these cases and punish those responsible. The Committee recalls that, in accordance with *Article 25 of the Convention*, the Government is under the obligation to ensure that the penalties imposed by law are really adequate and are strictly enforced. The Committee considers that all the positive measures taken by the Government in the fields of awareness raising, prevention, the strengthening of the inspection system and reintegration will not result in the eradication of forced labour in Brazil unless they are also supported by a credible judicial system, capable of imposing dissuasive penalties on those responsible. The information received from the CUT on repeat offenders and on the increasingly cruel practices carried out appear to demonstrate that this is not the case. In these conditions, the Committee trusts that the Government will take all the necessary measures to ensure the implementation of *Article 25* of the Convention. It hopes that in its next report the Government will be in a position to

provide information on the number of cases of forced labour which have been reported to the federal Attorney-General's Office by the inspection services of the Ministry of Labour, on the progress achieved in dealing with the cases forwarded by the labour inspectorate, and particularly on the percentage of complaints which have given rise to criminal proceedings in relation to the total number of complaints received by the inspection services, and the number of convictions under Act No. 9777 and section 149 of the Penal Code (please provide copies of the court rulings handed down). The Committee also requests the Government to provide detailed information on the project for a mobile judicial unit, to which it referred.

Administrative sanctions

In its previous comments, the Committee noted the information provided by the Association of Labour Inspectors of *Minas Gerais* (AAIT/MG) concerning Decision No. 13/2001 of the Minister of Labour and Employment approving the opinion of the legal services of the Ministry of Labour on the sanctions (fines) to be imposed in the rural sector in the event of violations of the labour legislation. Under this decision, the fines imposed are those established in Act No. 5889/73 governing rural labour and no longer those set out in the Consolidation of Labour Laws (CLT) for violations of labour legislation in urban areas. However, the fines established in this Act are considerably lower than those provided for in the CLT. In the view of the AAIT/MG, this decision has grave consequences for the interests and rights of rural workers guaranteed by the Constitution of 1998. It reverses the practice established since 1994 by Regulatory Instruction No. 1 of 24 March 1994, which guarantees equality of rights for workers in the urban and rural sectors, with the fines applied in administrative procedures resulting from inspections carried out in the rural sector following the same criteria as those set out in the CLT, particularly in the case of forced labour, the exploitation of work by young persons or indigenous persons, or threats to the life and health of workers. According to the AAIT/MG, the decision by the Minister shows the low level of consideration in the Ministry for the institutions responsible for matters relating to rural work. It brings to an end the application of effective penalties in the event of violations of the labour law in rural areas.

In its latest report, the Government states that there has been no change in the priorities of the Ministry. In its view, certain sectors of the labour inspectorate had wrongly interpreted article 7 of the Constitution. Whilst the article guarantees the same rights for workers in the urban and rural sectors, it does not however establish the equivalence of the penalties applicable to employers in these two sectors for violations of the labour legislation. The Regulatory Instruction of 1994 does not provide that the fines established in the CLT shall be applied for violations of labour legislation reported in the rural sector, but that the criteria for the imposition of fines shall be the same as those set out in the CLT. Since 1999, the legal services of the Ministry of Labour and Employment have issued opinions recalling that the fines applicable in the rural sector are those envisaged in the specific Act (Act No. 5889/73 governing rural labour). Nevertheless, the Government states that certain sectors of the labour inspectorate refuse to abide by these opinions, thereby forcing the Ministry to take Decision No. 13/2001.

The Government adds that, contrary to the inferences made by the AAIT/MG, Act No. 5889/73 does not have the immediate objective of combating forced labour in the rural sector. Forced labour is a crime under the Penal Code. As a result, the inspection services confronted by this scourge in the rural sector have to inform the police authorities and the Attorney-General's Office, which will initiate criminal proceedings.

Finally, the Government reiterates that, in accordance with legal principles, changes in the amount of administrative fines, envisaged in Act No. 5889/73, can only be made by legislative action. Accordingly, in 2001, it submitted a bill to Congress to amend Act No. 5889/73 with a view, among other objectives, to increasing the amount of the administrative fines applicable in the rural sector. In view of the delays in the examination of this proposal in the Congress, and the relevance and urgency of the issue, the Office of the President of the Republic adopted Provisional Measure No. 2.164-40 on 24 July 2001. Section 4 of this Measure amends section 18 of Act No. 5889/73 by increasing the amount of the fines envisaged for violations of the above Act, adding a subsection under the terms of which violations of the provisions of the CLT or of any other relevant legislation committed against rural workers shall be punishable by the fines established in these texts. The difference between the levels of the fines applicable in the urban and rural sectors has therefore been abolished.

The Committee notes all this information. It notes with interest the adoption of Provisional Measure No. 2.164-40, which henceforth allows for violations of the labour legislation in the rural sector to be punished by fines that are as severe as in urban areas. The protection of workers' rights is all the more important in the rural areas as it is essentially in this sector that forced labour practices are encountered. The Committee also considers that compliance with the labour legislation and the effective application of penalties for violations of this legislation are essential elements in combating forced labour practices. Indeed, violations of this nature, including the failure to pay wages, the absence of registration of workers and excessive working hours, are all elements making it possible to identify certain forced labour practices. In these conditions, the Committee hopes that the Government will ensure that the fines imposed for violations of the labour legislation in the rural sector are effectively collected, so as to guarantee the dissuasive nature of these penalties.

The Committee notes with interest that, on 30 April 2003, the labour tribunal of the 8th Region, Parauapebas/PA (Judgement No. 218/2002), upheld the application by the Attorney-General's Office for the owner of a farm who imposed degrading and forced labour upon the workers to be ordered to compensate the collective moral damage, while at the same time confirming the administrative penalties which had already been imposed for violations of the labour legislation. The tribunal found that, from a social point of view, a production system based on the indebtedness of

workers is bound to generate debt servitude. This production system creates neither employment nor income, as the workers do not receive wages and are not registered. Accordingly, no taxes or social contributions can be paid. This practice implies a considerable social prejudice by a reason of the resulting debasement of the worker, the failure of rural enterprises to pay their social contributions and also by reason of the necessity for the State to allocate significant public funds to eradicate this production system.

Coordination between the various government bodies

The Committee requests the Government to continue providing information on the measures adopted to facilitate joint action by all the bodies involved in combating forced labour (the inspection services, the federal Attorney-General's Office, the federal police, the labour courts and the federal judiciary).

The Committee notes the agreement (*Termo de compromisso*) concluded on 9 April 2001 between the representatives of the labour attorney of the 8th region, the Regional Labour Delegation of the State of Pará and three owners of farms in that region. The Committee notes that the CUT refers in its comments concerning the problem of repeat offences to two of the properties belonging to one of the signatories of the above agreement (*Fazenda Rio Vermelho, Fazenda Brasil Verde*). The Committee would be grateful if the Government would provide information on these allegations in its next report (inspections carried out in these properties and, where appropriate, copies of the inspection reports).

Forced prostitution of young persons

In its previous comments, the Committee emphasized that work by young persons in conditions of debt bondage, including the forced prostitution of young persons, comes within the scope of application of the Convention. In view of the conditions in which this work is performed, it cannot be considered, in accordance with *Article 2, paragraph 1*, of the Convention, that the young person has offered her or himself voluntarily for this work. The Committee requested the Government to provide information on the allegations made by the International Confederation of Free Trade Unions (ICFTU) in October 1999 concerning the debt bondage of young persons forced to engage in prostitution in the State of Rondonia. While noting the Government's indication in the past that combating child labour is one of its priorities, the Committee notes with regret that, despite its repeated requests, the Government has still not provided information on any investigations undertaken with regard to these allegations and, where appropriate, the measures taken. It trusts that in its next report the Government will not fail to provide information on this subject.

Burundi

Convention No. 29: Forced Labour, 1930 (ratification: 1963)

1. *Forced recruitment of children during armed conflicts.* In its previous comments, the Committee of Experts noted the concern expressed by the Committee on the Rights of the Child at the use of children by the state armed forces as soldiers or helpers in camps or in obtaining information. The Committee on the Rights of the Child also expressed its concern at the low minimum age of recruitment to the armed forces. According to these observations, there is also widespread recruitment of children by opposition armed forces and sexual exploitation of children by members of the armed forces (CRC/C/15/Add.133, paragraphs 24 and 71). The Committee also noted the evaluation report of the national action programme for the survival, protection and development of children for the 1990s (report produced in January 2001 as part of the follow-up to the World Summit for Children). This report refers to the situation of street children, child soldiers and the sexual and commercial exploitation of children (paragraphs 86 and 94). Child soldiers are between 12 and 16 years of age and are used as messengers, servants, lookouts or scouts. As camp followers of the combatants they are often easy targets, being untrained in protection techniques. The rebels allegedly enrol primary school children from the age of 12 years. Even though the minimum age for conscription in the armed forces of Burundi is 16 years, there are indications that children are used by soldiers for odd jobs.

The Committee notes that in March 2003 the ICFTU made comments on the application of the Convention, confirming the use of child soldiers by the armed forces. The Committee notes that the Government has not provided any reply to these comments. It also notes that in its last report the Government has not provided any information on the measures adopted to protect children against recruitment in the armed forces as soldiers or to perform supporting tasks for military personnel. The Committee expresses particular concern at the situation of these children. It also notes the report of the Secretary-General of the United Nations on children and armed conflict, submitted to the United Nations Security Council in November 2002. At the request of the latter, the report drew up a list of 23 parties to armed conflict that recruit or use child soldiers, in violation of the international provisions protecting them. The Committee notes that this list includes the Government of Burundi, PALIPEHUTU/FNL (*Parti pour la libération du peuple Hutu/Forces nationales pour la libération*) and the CNDD/FDD (*Conseil national pour la défense de la démocratie/Front pour la défense de la démocratie*).

Finally, the Committee notes that Burundi ratified the Worst Forms of Child Labour Convention, 1999 (No. 182), on 11 June 2002. As Convention No. 182 provides in Article 3(a) that the worst forms of child labour include "forced or compulsory recruitment of children for use in armed conflict", the Committee considers that the problem of the recruitment of children in armed forces may be examined more specifically in the context of Convention No. 182. The

protection of children is strengthened by the fact that Convention No. 182 places the obligation upon States which ratify it to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. The Committee therefore requests the Government to provide information on the measures adopted to protect children against forced recruitment to serve as soldiers and to carry out supporting tasks for the armed forces in its first detailed report on the application of Convention No. 182, which is due to be submitted in 2004.

2. In the comments that it has been making for many years, the Committee has drawn the Government's attention to the need to take measures to bring certain provisions of the national legislation into conformity with the Convention. The Committee noted in this respect the Government's stated intention to repeal most of these provisions. In 1993, a process of bringing the legislation into harmony with the Convention was initiated, but could not be completed due to the crisis experienced by the country. The Committee notes the Government's indication in its last report that it has not been possible to adopt any legal texts for this purpose. It hopes that the Government will be in a position in the very near future to report the adoption of specific measures to bring the provisions of the legislation referred to below into conformity with the Convention.

- (i) The Committee previously emphasized the need to set forth in the law the voluntary nature of agricultural work performed in the context of the obligations respecting the conservation and utilization of the land and the obligation to create and maintain minimum areas of food crops (Ordinances Nos. 710-275 and 710-276).
- (ii) The Committee drew the Government's attention to the need to formally repeal certain texts with respect to compulsory cultivation, portage and public works (Decree of 14 July 1952, Ordinance No. 1286 of 10 July 1953 and Decree of 10 May 1957).
- (iii) The Committee noted that Legislative Decree No. 1/16 of 29 May 1979 establishes the obligation, under penalty of sanctions (one month of penal labour performed on one half-day a week), to perform community development work.
- (iv) In accordance with sections 340 and 341 of the Penal Code, in the event of vagrancy or begging a person may be placed at the disposal of the Government for a period of between one and five years during which time such person may be forced to perform work in a prison institution.

Chad

Convention No. 29: Forced Labour, 1930 (ratification: 1960)

The Committee notes with regret that no report has been received from the Government. It must therefore repeat its previous observation on the following matters:

The Committee has been referring for many years to the provisions of section 982 of the Tax Code (formerly 260bis) which allows authorities to impose labour for the purpose of tax collection, and article 2 of Act No. 14 of 13 November 1959 under which persons convicted of penal offences can be subjected, by administrative decision, to work which is in the public interest.

The Committee again notes that, according to the Government's report, these provisions have not yet been amended or repealed although the Government has repeatedly stated that this was its intent. The Committee hopes that the Government will take the necessary measures without further delay to ensure that the Convention is observed on these points.

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

Colombia

Convention No. 29: Forced Labour, 1930 (ratification: 1969)

Work of prisoners for private enterprises; consent and remuneration

In its earlier comments concerning the work of prisoners for private enterprises the Committee pointed out that such work could be compatible with the Convention only when it is performed in conditions approximating a free employment relationship; this necessarily requires a freely given consent of the persons concerned, as well as further guarantees and safeguards, such as normal wages and social security, etc.

The Committee notes with satisfaction a provision of section 62(10) of Agreement No. 011 of the National Penitentiary Institute, which stipulates that with regard to the work of prisoners for private enterprises, both profit-making or non-profit-making, it is necessary that a prisoner gives his/her voluntary consent to perform work or service, in conformity with the provisions of the ILO Conventions. By virtue of section 62(10), contracts concluded with private employers involving the use of prison labour must provide for compensation and a form of payment for prisoners. In no case the said remuneration may be inferior to the legally established minimum wage.

Congo

Convention No. 29: Forced Labour, 1930 (ratification: 1960)

The Committee notes with regret that no report has been received from the Government. It must therefore repeat its previous observation on the following matters:

1. *Article 2, paragraph 2(d), of the Convention.* In its previous comments, the Committee asked for the repeal of Act No. 24-60 of 11 May 1960 which allows persons to be requisitioned for work of public interest in cases which do not constitute the emergencies provided for in *Article 2, paragraph 2(d)*, of the Convention. The above Act establishes penalties of imprisonment of from one month to one year for requisitioned persons who refuse to work.

The Committee noted that Act No. 6-96 to amend and supplement provisions of Act No. 45/75 issuing the Labour Code prohibits forced or compulsory labour. It notes, however, that Act No. 24-60 of 1960 is still in force.

The Committee asks the Government to indicate the measures taken or envisaged to bring the national legislation into line with the Convention.

2. In its previous comments, the Committee noted that the Government may request the population to carry out certain sanitation jobs. The Government indicated that this practice consisted of mobilizing the population for work in the community interest and was based on section 35 of the Statutes of the Congolese Labour Party, but that it no longer exists and such tasks (weeding, sanitation work) are now undertaken voluntarily by associations and employees of the State and local communities.

The Committee notes that in its last report the Government indicates its intention of including, in the Labour Code currently being revised, a provision to establish the voluntary nature of sanitation work. The Committee asks the Government to provide a copy of the new provisions of the Labour Code once they are adopted.

3. *Article 2, paragraph 2(a).* The Committee has several times drawn the Government's attention to section 4 of Act No. 11-66 of 22 June 1966 establishing the National People's Army and section 1 of Act No. 16 of 27 August 1981 introducing compulsory national service. The former provides for active participation by the army in tasks of economic construction for effective production and the latter stipulates that national service, which comprises both military and civic service, enables every citizen to take part in the defence and construction of the nation.

The Committee drew the Government's attention to *Article 2, paragraph 2(a)*, of the Convention which provides that work or service exacted in virtue of compulsory military service laws is excluded from the scope of the Convention only when it is imposed for work of a purely military character. Work exacted from recruits as part of national service, including work related to national development, is not purely military in nature. The Committee referred in this context to paragraphs 24-33 and 49-62 of its General Survey of 1979 on the abolition of forced labour.

According to the Government, the practice of imposing on recruits work which is not purely military in nature has fallen into disuse. The Committee notes that, in its last report, the Government expressed its intention of repealing Act No. 16 of 1981 on compulsory national service.

The Committee hopes that the necessary steps will be taken to repeal the above Act in order to bring the national legislation into conformity with the Convention.

4. In its previous comments, the Committee referred to section 17 of Act No. 31-80 of 16 December 1980 on guidance for youth under which the party and mass organizations would gradually create all the conditions for the formation of youth brigades and the organization of youth workshops.

The Committee notes that, according to the Government, these practices no longer exist. It observes, however, that the abovementioned Act has not been repealed.

The Committee noted that a draft decree on voluntary work for young people was in the process of being approved, and requested specific information on the type of tasks performed, the number of persons concerned, the duration and conditions of their participation.

The Committee asks the Government to indicate the measures taken or envisaged to bring the national legislation into line with the Convention and to provide a copy of the decree on voluntary work for young people as soon as it is adopted, together with relevant information.

5. *Trafficking in persons.* The Committee notes the Government's statement that child trafficking exists between Benin and Congo for the purpose of forcing the children to work in Pointe-Noire in trading (fixed and itinerant) and domestic work. According to the Government, the receiving families force the children to work in unimaginable conditions: they have to work all day, are frequently beaten and subjected to all kinds of hardships. The Government has recognized that such acts are contrary to human rights and has taken a number of measures to curb child trafficking.

The Committee asks the Government to examine the situation of children working in Pointe-Noire in the light of the Convention and to provide full information on their working conditions, specifying their age, the circumstances in which this trafficking takes place and working conditions in Congo.

The Committee also asks the Government to indicate which provisions of the national legislation punish trafficking in people and what measures are taken to ensure that the penalties are strictly applied to those responsible for imposing forced labour.

6. The Committee notes the results of the Government's inquiry into traditional forms of slavery in the district of Ouessou. The Committee notes that, according to the abovementioned inquiry, no form of forced labour exists among pygmies and Bantus in the plantations of the North.

7. The Committee asks the Government to provide copies of the Penal Code, the Code of Penal Procedure and the Order regulating the operation of prisons and prison labour.

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

Denmark

Convention No. 29: Forced Labour, 1930 (ratification: 1932)

The Committee notes a communication received on 21 November 2003 from the Danish Union of Lawyers and Economists, which contains observations concerning the application of the Convention by Denmark. It notes that this communication has been forwarded to the Government, for any comments it might wish to make on the matters raised therein. The Union's observations, as well as the Government's responses to these observations, will be examined at the Committee's next session.

El Salvador

Convention No. 29: Forced Labour, 1930 (ratification: 1995)

The Committee notes the comments made by the Inter-Union Commission of El Salvador, dated 12 September 2002. These comments were forwarded to the Government, on 19 September, for any comments that might be considered appropriate, and the Government's reply was received on 20 December 2002.

The Committee also notes the comments made by the International Confederation of Free Trade Unions (ICFTU), dated 31 January, received on 3 February 2003 and forwarded to the Government on 17 February. The Government's reply was received on 23 April 2003.

1. *Trafficking in persons.* In its communication, the Inter-Union Commission of El Salvador referred to the trafficking in persons and the "worrying frequency" with which foreign nationals from neighbouring countries are subjected to deception and are forced by means of threats to engage in sex work under clearly inhumane conditions.

The International Confederation of Free Trade Unions (ICFTU) raised similar issues, describing the trafficking in women and young persons for the purposes of forced prostitution, occurring in El Salvador, as constituting a "considerable problem".

The Committee notes the study carried out by the International Programme on the Elimination of Child Labour (IPEC) entitled "El Salvador commercial sexual exploitation of girls, boys and young persons: A rapid evaluation", published in March 2002. This report indicates that "based on previous investigations and information received during the current investigation it is possible to state that there is a *migratory flow* of young persons for the purposes of commercial sexual exploitation which is not necessarily concentrated in the capital, but also on the borders and in border towns and in other Central American countries" (page 41).

The Committee also notes the Report of the Special Rapporteur on the sale of children, child prostitution and child pornography (UN document E/CN.4/2000/73/Add.2, 27 January 2000, paragraphs 51, 74 and 107) which refers repeatedly to the presence of young persons from El Salvador in Guatemala. State officials informed the Special Rapporteur that there are children from El Salvador, Honduras, Mexico and Nicaragua who are in Guatemala for prostitution, in much the same way that Guatemalan children are in those countries for the same reason (paragraph 47).

The Committee also notes the Concluding Observations of the United Nations Committee on the Elimination of Discrimination Against Women (UN document A/58/38/, 28th Session, paragraph 271) in which the above Committee noted with concern the problem of exploitation of prostitutes and trafficking and sale of women and girls and the lack of studies, analyses and gender-disaggregated statistics on its incidence.

The Committee notes that sections 367 and 370 of the new Penal Code provide that the trafficking in persons for any purpose and organizing or being a member of "organizations of an international nature devoted to trafficking in slaves, the sale of persons ..." shall be punishable by imprisonment of from four to eight years and from five to 15 years respectively. The Committee hopes that the Government will provide copies of the rulings, sentences and judicial measures applied under these provisions.

The Committee notes that in its reply to the comments made by the ICFTU the Government refers to the draft Code of Children and Young Persons and mentions the "formulation of reforms to the national legislation to combat commercial sexual exploitation", with special emphasis on the "strengthening of penalties for pimps" and the designation as a criminal offence of the acts of exploiters of young girls, better known as "clients".

The Committee hopes that the Government will provide a copy of the Code of Children and Young Persons, as soon as it is adopted, as well as information on the measures to combat the commercial sexual exploitation of young persons and their implementation in practice.

The Committee notes that the sixth report submitted by the Government to the Committee on the Elimination of Discrimination Against Women (CEDAW/C/SLV/6, of 25 November 2002, page 12) contains information on the adoption of two Municipal Codes containing provisions respecting the trafficking in women and the exploitation of the prostitution of women, namely the San Salvador Municipal Code, which entered into force on 1 March 2000, and the Santa Ana Municipal Code. The Committee requests the Government to provide copies of the above Codes.

The Committee recalls that the trafficking in persons, and particularly the trafficking in young persons, constitutes a grave violation of the Convention and urges the Government to take the necessary measures to prevent and combat the

phenomenon. Furthermore, noting that the Government has not replied to the Committee's general observation of 2000, it requests the Government to provide the information requested therein.

2. *Overtime performed in the maquila industry.* The Inter-Union Commission of El Salvador also refers in its communication to the "forced labour conditions frequently encountered (...) in foreign-owned *maquila* enterprises". In support of its allegations, it refers, inter alia, to working days beyond the hours set forth by the law, failure to pay overtime, determination of quotas or targets beyond any reasonable work performance to be completed outside working hours.

The Committee notes the information contained in the monitoring report on the *maquila* and special fiscal areas published by the Labour Relations Monitoring and Analysis Unit of the Ministry of Labour and Social Insurance in July 2000. In this respect, the Committee notes the reservation expressed by the Government in its report with regard to the above report with the indication that "the above publication was never made official by this Secretariat of Labour and Social Insurance, and as a consequence the views expressed therein do not in any way reflect the official position of this Ministry".

According to the above report, during the visits made, it was possible to confirm that overtime is worked on a daily basis in the majority of *maquila* companies, in order to complete the production goals established by the company. Despite finding that in these enterprises the remuneration is in many cases in accordance with the law, the report indicates that most of the overtime hours are worked at night time without being paid the additional rate of 25 per cent for each hour worked as provided by the law. According to the report, "it is also important to point out that in the majority of companies it is an obligation for the personnel to work overtime under the threat of firing or some other kind of reprisal (...)". It is further indicated that "on some occasions, because overtime is extended into the late hours of the night, the workers find themselves obligated to sleep in the factory facilities, which do not have conditions necessary for personal care" (pages 12 and 13).

The Committee hopes that the Government will provide information on the average number of overtime hours performed by workers in the *maquila* sector.

The Committee recalls that the imposition of overtime hours does not affect the application of the Convention in so far as such a requirement lies within the limits established by the national legislation or accepted by collective agreements. In this case, however, the allegations are that overtime hours imposed above such limits and without payment would constitute compulsory labour where performed under menace of dismissal.

The Committee hopes that the Government will indicate the measures taken or envisaged to protect workers in the *maquila* sector against the imposition of compulsory labour.

3. *Article 2, paragraph 2(c), of the Convention.* In its previous comments, the Committee requested information on the measures which have been taken or are envisaged to ensure that convicted persons are able to give their consent to the employment relationship with private entities.

The Committee notes that in its report the Government refers to section 105 of the Prisons Act, which establishes the identity of prison work as free work, in every possible respect, from which it may be deduced that it is of a voluntary nature.

The Committee notes with interest that section 110 of the Prisons Act provides that private entities which engage detainees shall pay no less than the minimum wage required for such work and that all the rights set forth in the labour legislation shall be applicable to prisons provided that they are not contrary to the Prisons Act (section 105).

With regard to the consent which must be given by the detainee for the employment relationship with private entities, the Committee nevertheless notes that under the terms of section 107 of the Prisons Act, "convicted persons shall be obliged to work" and that this provision does not allow the inference that work by detainees for private entities is of a voluntary nature.

The Committee hopes that the Government will indicate the measures that have been taken or are envisaged to establish that detainees must freely give their consent to an employment relationship with private entities.

Germany

Convention No. 29: Forced Labour, 1930 (ratification: 1956)

Further to its previous observation, the Committee has noted the Government's report and the discussion that took place in the Conference Committee in 2002 on the application of the Convention by Germany.

Articles 1(1) and 2(1) and (2)(c) of the Convention. Prisoners working for private enterprises

1. The Committee recalls that under *Article 2(2)(c)* of the Convention, compulsory prison labour is not exempted from the scope of the Convention when a prisoner is hired to a private enterprise. In its previous observation, the Committee noted with concern that prisoners working for private enterprises in Germany fell into two categories, with

some enjoying the full benefit of a free employment relationship, while others were hired to those who use their labour without their consent and in conditions bearing no resemblance whatsoever to the free labour market.

2. The Committee notes the statement made by a Government representative in the Conference Committee in 2002 that in 1929-30, when the Convention was elaborated, the widespread view was that work to be performed by inmates constituted part of the punishment and this had to be reflected in the particularly unfavourable working conditions; that the Convention had been elaborated by taking into consideration these fundamental views prevailing at that time; that today, the issue of reintegration of prisoners through work was prominent in most countries; and that in the light of the Convention, a possible conclusion was that prisoners working for private enterprises must be considered equal with workers in freedom.

A. *Private employment in a free employment relationship*

3. The Committee recalls the Government's indications in its previous report that prisons authorities were obliged to promote free employment relationships; these came into being only at the prisoner's request; the prisoner had a normal labour contract, came under the same legal provisions as workers and trainees in freedom, received wages established by collective agreement, and was covered by the social security systems (pension, health, accident and unemployment insurances) to the same extent as workers in freedom. A contribution for detention costs could be levied, the amount of which depended on the board and lodging provided but could not (in 2000) exceed the equivalent of 337.55 euros. In its latest report, the Government adds that the significance attached to day release by certain *Länder* in order to permit free employment relationships to take place has resulted in such release being granted in 1999 in a total of 21,395 cases among the approximately 50,000 prisoners within the German federal penitentiary system.

4. The Committee notes these indications with interest. However, the conditions of a free employment relationship do not yet apply to the second type of private use of prison labour that is still being practised under national law, as recalled below.

B. *Compulsory work in a privately run workshop*

5. In comments made for a great number of years, the Committee has noted that under the legislation in force, prisoners may be obliged to work in workshops run by private enterprises within state prisons, as already described in the ILO Memorandum of 1931. The fact that prisoners – now as then – remain at all times under the authority and control of the prison administration does not detract from the fact that they are “hired to” a private enterprise – a practice designated in *Article 2(2)(c)* of the Convention as being incompatible with this basic human rights instrument.

6. The Committee notes with regret that section 41(3) of the Act of 13 March 1976 on the execution of sentences under which employment in a workshop run by a private enterprise is to depend on the prisoner's consent, has up to now remained a dead letter, after its entry into force was suspended by the “Second Act to improve the budget structure” of 22 December 1981.

7. Further provisions in the Act on the execution of sentences were to progressively raise the existing conditions of employment of prisoners, including those working in private workshops, by reference to those of a free employment relationship. The Committee notes the Government's indication in its report that it attempted in the eighth, ninth and tenth legislative periods of the federal Parliament to bring into force the provisions on the inclusion of prisoners into the pension insurance scheme, but that these attempts failed due to resistance by the federal council. It thus appears that since the end of the tenth legislative period in 1987, no more attempts were made to restore in any part of Germany the social insurance coverage that had already been effectively extended to prisoners under Prussian legislation referred to in the ILO Memorandum of 1931 on prison labour.

8. As regards the wages earned by prisoners working in private workshops, the Committee previously noted that the 1976 Act on the Execution of Sentences recognized all prisoners' right to wages, but established the initial benchmark level at only 5 per cent of the average wage of workers and employees covered by the old-age insurance scheme. A first increase of this percentage was to be envisaged on 31 December 1980, but not enacted until the federal Constitutional Court found the existing level of prisoners' remuneration incompatible with the principle of rehabilitation and instructed the legislature to set new rules by 31 December 2000 at the latest. The Committee notes from the Government's report that on 1 January 2001, the prisoners' benchmark remuneration was raised to 9 per cent of the average wage (in 1999) of those covered by the workers' and employees' pension insurance scheme. Furthermore, six days off were added per calendar year worked. The Committee notes that the Government shares the view that this is not sufficient; but that draft legislation to raise the benchmark wage to 15 per cent of the reference value could not be passed due to the resistance of the *Länder*. The Government, however, is still endeavouring to reach an agreement with the *Länder* on this question.

9. The Committee also notes the view expressed by the Employer members in the Conference Committee, that with regard to conditions of employment, private employers had to take those prisoners who were available, regardless of skills and productivity, and that these shortcomings needed to be balanced with the level of social insurance and wages. However, in the view of this Committee, this factor has no bearing on the system under consideration, since there is no link between the level of payments made by a private enterprise under contract to the prison authorities for the work of the prisoners hired to the enterprise. The level of payments by the prison authorities to the prisoners is an incommensurably lower statutory amount. Moreover, the latter remuneration may be even further lowered according to

performance: under section 45, paragraph 2 of the Act on the execution of sentences, it may fall below 75 per cent of the benchmark remuneration – that is, below 6,75 per cent of the average outside wage – if the performance of the prisoner does not meet the minimum requirements.

10. Referring to the fact that the wages paid by private enterprises to the prisoners at the level fixed by collective agreements are passed on to the prisoners only up to their statutory remuneration (of 9 per cent of the general average), with the remainder going to the judiciary budget, the Government states in its report that this is justified. The Government claims that because the level of prisoners' wages (leaving aside those under free employment relationships) is fixed by law, a considerably higher remuneration of those prisoners who, more or less by chance, are working for private companies rather than in institutional workshops, is not justified. The Committee must point out that prisoners working under a free employment relationship do draw normal wages and contribute to the detention cost to the reasonable extent mentioned in paragraph 5 above. Such free employment relationships are compatible with the Convention, while the hiring of compulsory prison labour to private employers is specifically prohibited by *Article 2(2)(c)*. Also, the present state of national legislation is no justification for non-compliance with the Convention, ratified in 1956. Finally, the Convention is neither concerned with the level of remuneration in state workshops, nor an obstacle to bringing it into line with the private sector.

11. The Committee has noted the assurances given by the Government representative to the Conference Committee in 2002 that he was looking forward to the present Committee's assessment which would be a determining factor in any subsequent amendments of the Act on the execution of sentences, which would, however, take some time, due to the federal system of the country. The Committee accordingly trusts that the provisions for the consent of prisoners to working in private workshops, already made in section 41(3) of the 1976 Act, will at last be brought into force, as well as arrangements for their contribution to the old-age pension scheme, as foreseen by section 191 et seq. of the 1976 Act in conformity with much earlier state legislation; and that in respect of wages and deductions for detention costs, their position will also be brought into line with that of prisoners already working under a free employment relationship. The Committee looks forward to learning of concrete steps towards these changes.

Guatemala

Convention No. 29: Forced Labour, 1930 (ratification: 1989)

The Committee notes the comments made by the International Confederation of Free Trade Unions (ICFTU) on the application of the Convention, provided on 10 January 2002 and forwarded to the Government on 28 January 2002. The Committee also notes the comments made by the Trade Union Confederation of Guatemala (UNSITRAGUA), which were provided by the Government with its report in September 2002. The same comments were received directly from UNSITRAGUA in November 2002. The Committee notes the Government's reply to the issue raised by UNSITRAGUA, but notes that the Government has not provided any information on the issue of the trafficking in persons, referred to by the ICFTU in its comments.

1. *Trafficking in persons*

In its comments, the ICFTU indicates that, although the Constitution prohibits forced labour, the practice exists of the trafficking in persons, and particularly children, for the purposes of prostitution. It alleges that most of the children who are victims of trafficking come from Guatemala's neighbouring countries and that this situation is evident in the frontier regions with Mexico and El Salvador. The Government has not provided information on these matters. The Committee urges the Government to take the necessary measures to protect children against trafficking and forced prostitution and that it will reply to the serious issues raised by the ICFTU.

2. *Unpaid work performed after normal working hours in the public and private sectors*

Justices of the Peace

The Committee notes that according to the comments made by UNSITRAGUA: "In most of the towns of the country, there is only one Justice of the Peace who has to be on duty 24 hours a day, every day of the year. The auxiliary staff of the justice of the peace have to cover shifts by rotation as additional work supplementing their ordinary working day. The shifts worked on public holidays, Saturdays and Sundays are compensated with time off, but the shifts worked after the completion of the ordinary working day are not compensated in time off nor are they paid. Accord No. 31-2000, issued under the Civil Service Act respecting the judiciary (Decree No. 48-99) does not contain provisions respecting the payment of overtime hours. In addition, failure to perform such shifts constitutes an offence liable to be punished by dismissal."

Plantations

UNSITRAGUA also refers to cases of enterprises which set production targets for workers who, in order to earn the minimum wage, have to work in excess of the ordinary hours of the working day, with the additional hours being unpaid. According to the above organization "such cases are occurring with greater frequency in ranches producing bananas as independent producers for the multinational fruit company in the United States known as *Chiquita*, which is present in the

ranches in the municipality of Morales in the department of Izabal and on the southern coast of Guatemala". It also refers as an example to the "El Real and El Atlántico ranches in the district of Bogos in the municipality of Morales in the department of Izabal, where the employers refuse to negotiate unless it is first accepted that piece-work is not subject to working hours, in violation of the provisions that are in force."

The Committee notes the reports on the corporate responsibility of Chiquita Brands International of 2000 and 2001. In both reports, it is stated that in Guatemala "hourly workers and administrators sometimes work over 60 hours" and that "workers exceeded the maximum number of overtime hours". The Committee notes these figures with concern but at the same time appreciates the transparency of the information contained in the reports, which have their origin in the investigations carried out by *Chiquita* in the context of its voluntary undertaking regarding the social responsibility of the enterprise in its efforts to comply with Labour Standard SA8000.

State employees

UNSI TRAGUA also refers to the situation of state employees belonging to the category 029. The classification of state employees is determined by the budgetary category to which they belong. The category 029 was established to allow the recruitment of skilled professional and technical personnel for specific products and periods, without such workers obtaining the status of public employees. Contracts are renewed when sufficient funds are allocated and these workers do not have the right to benefits to which permanent employees are entitled. UNSI TRAGUA alleges that workers contracted under this system are not paid for the hours worked in excess of the normal working day, that refusal to work these hours affects the evaluation of their performance and could result in the termination of the contract, with no liability for the State.

The Committee notes the Government's reply concerning the matters raised by UNSI TRAGUA. With regard to the situation of employees of Justices of the Peace, the Government states that this type of work is "governed by the provisions of the Labour Code in section 125" and that in this respect there exist "internal rules of the Supreme Court of Justice". The Committee notes that section 125 of the Labour Code lays down the obligation of the executive authorities to determine the manner in which provisions on working hours shall be applied "to transport, communication and all other enterprises in which the work has very special characteristics or is of a continuous nature". The Committee hopes that the Government will indicate whether the legislation applicable to the auxiliary personnel of Justices of the Peace is the Civil Service Act respecting the judiciary (Decree No. 48-99) and its regulations, Accord No. 31-2000 or whether it is the provisions of the Labour Code.

The Government has not provided information on the other matters raised by UNSI TRAGUA, namely the situation of workers who have to work outside the normal working hours to earn the minimum wage, for whom the additional hours worked are not paid. Nor has the Government referred to the situation of state employees in category 029.

Unpaid work performed after the normal working day and the definition of forced labour for the purposes of the Convention

For the purposes of the Convention, the expression "forced or compulsory labour" means all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered her or himself voluntarily.

The Committee notes that in the cases of employees of Justices of the Peace and state employees in category 029, refusal to perform work in addition to the normal hours of work may give rise to loss of employment. In cases of enterprises which determine pay by setting performance targets, the obligation to work beyond the normal working hours is based on the need to be able to earn the minimum wage. In all these cases, the common denominator is the performance of work or a service for which remuneration is not received. In all these cases, the worker has the possibility to "free her or himself" from such imposition but only by leaving the job or accepting dismissal as a sanction for refusing to perform unpaid work.

The Committee notes the vulnerability of workers who in theory have the choice of not working beyond normal working hours, but for whom in practice the choice is not a real one in view of their need to earn at least the minimum wage and retain employment. This then results in the performance of unpaid work or services. The Committee considers that in such cases the work or service is imposed through the exploitation of the worker's vulnerability, under the threat of a penalty, namely dismissal or remuneration below the minimum wage rate.

In relation to this matter, the Committee also refers to its General Survey of 1958 on Conventions Nos. 26 and 99 on minimum wage fixing, in paragraph 92 of which it indicated that "where a minimum wage system is based primarily on piece rates, great care needs to be exercised to ensure that, under normal conditions, a worker can earn enough to be able to maintain an adequate standard of living, and that his output, and consequently his earnings, are not unduly limited by conditions independent of his own efforts."

The Committee hopes that the Government will take the necessary measures to ensure that unpaid work is not exacted from workers paid on a piece-work basis, auxiliary employees of Justices of the Peace and state employees in category 029, by means of the exploitation of their vulnerability, and that the Government will provide information on the measures adopted or envisaged to ensure compliance with the Convention in this respect.

3. The Committee notes the report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mission to Guatemala (E/CN.4/2003/90/Add.2, 10 February 2003). The Special Rapporteur points out that practices persist “whereby indigenous workers are recruited and moved away to work in traditional and new plantations, as well as other ways of recruiting temporary labour at wages falling below the legal minima, without social security coverage or respect for basic rules relating to pay, security of employment or working conditions”. The Committee hopes that the Government will provide information on the practices of recruitment (*enganche*) and the removal of workers, and other forms of recruiting indigenous labour.

4. *Article 25 of the Convention.* In its previous observation, the Committee requested the Government to provide information on the measures adopted to ensure the rapidity of the judicial processes and inquiries undertaken concerning the exaction of compulsory labour in cases where the Attorney-General of the Republic has issued a decision concerning the responsibility of persons against whom the appropriate judicial action had not been taken. In its report, the Government indicates that it has accelerated the administrative and legal proceedings. The Committee hopes that the Government will provide a copy of judicial or administrative decisions punishing the exaction of forced labour.

Guinea

Convention No. 105: Abolition of Forced Labour, 1957 (ratification: 1961)

The Committee notes with regret that the Government’s report contains no reply to previous comments. It must therefore repeat its previous observation which read as follows:

In previous comments, the Committee noted that detention or imprisonment could be imposed for infringements of certain provisions of the Penal Code (sections 71(4), 110, 111, 176 and 177) respecting the exercise of the right of expression. Penalties of detention or imprisonment applicable in the event of infringements of such provisions involve the obligation to work, under the terms of sections 14 and 28 of the Penal Code.

The Committee notes the Government’s statement that a new Penal Code has been adopted. The Committee hopes that the new text will bring the national legislation into conformity with the Convention and that the Government will provide a copy of it with its next report. The Committee also requests the Government to provide copies of any legislation respecting prison work.

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

Haiti

Convention No. 29: Forced Labour, 1930 (ratification: 1958)

The Committee notes with regret that once again no report has been received from the Government. It must therefore repeat its previous observation on the following matters:

1. The Committee refers to its previous comments in regard to the employment of children as domestic servants, known as “restavek”. It had noted the Government’s commitment to communicate statistics in respect of the activities of the Directorate of the Social Welfare and Research Institution (IBESR), the municipal authorities and the labour courts, and to conduct an exhaustive study into general working conditions.

With respect to the ILO’s International Programme on the Elimination of Child Labour (IPEC) project established in Haiti, in order to assist the Government in combating effectively child labour in general, and the “restavek” system in particular, the Committee had expressed the hope that the Government would send a copy of the national plan of action to fight child domestic work which was to be adopted in the framework of this project, as well as any relevant information on developments noted, results obtained, statistical data established and legislative or regulatory measures taken.

Furthermore, the Committee had expressed the hope that the Government would specify the amount of the fines that can be imposed under the provisions of Chapter IX of the Labour Code, as amended, and that it would provide any indications it deemed useful concerning the issue of whether these amounts constitute, under *Article 25 of the Convention*, “really adequate” penalties.

In addition, the Committee hoped that the Government would supply detailed information on the practical application of Chapter IX of the Labour Code, including statistics on the number of permits issued by the IBESR and by the municipal administrations with regard to taking children into domestic service, on the visits and inquiries made in households where there are children in service, on breaches to the provisions of Chapter IX noted, on the reports prepared and inquiries addressed to the labour court by the IBESR, as well as the fines imposed and damages awarded in application of these provisions. The previous concerns of the Committee have been further reinforced by the following additional information transmitted to it.

2. The Committee notes the communication from the International Confederation of Free Trade Unions (ICFTU) dated 24 May 2002, and transmitted to the Government on 22 July 2002, in which it submitted comments on the application of the Convention in Haiti. It notes that, according to the ICFTU, child forced domestic labour is a widespread and very serious problem. Domestic labour by “restavek” children is very common in Haiti, and generally constitutes forced labour or slavery. “Restavek” involves the children of poor, primarily rural, families being sent to live with more affluent families and to perform domestic labour in exchange for room and board. In many cases the poor family receives income from the recipient family, effectively selling their children into slavery. Some estimates suggest nearly 300,000 “restavek” children in Haiti. Very few of the “restavek” children receive an education, only 20 per cent attend school at all, and less than one per cent reach secondary school. The Committee notes that the legal minimum age for domestic service is 12 (section 341 of the Labour Code), but, according to the ICFTU, some children start as young as four years of age. Eighty-five per cent are girls, and nearly a quarter of female “restavek” are raped by their owners, often resulting in unwanted pregnancies. The Committee notes that section 350 of the Labour Code requires that domestic workers of 15 years of age and older receive a salary at least equivalent to that of a hired domestic worker, but, according to the ICFTU, this serves to have families throw “restavek” out of the house before they reach 15, to be replaced by younger children. The Committee further notes the information contained in the ICFTU’s communication,

that there are also reports of the trafficking of Haitians to work on sugar cane plantations in the Dominican Republic, although it is not clear to what extent the existing employment of Haitians in these plantations constitutes trafficking.

3. The Committee also notes the communication from the Coordination Syndicale Haïtienne (CSH) dated 26 August 2002, received at the San José Office, and transmitted to the Government on 18 October 2002. It notes that, according to the CSH, the IBESR as well as the local administration, who are responsible for dealing with the situation of child domestic workers, have failed in their duty. The great majority of these children stay out of the State's control. Children employed in domestic work are treated like absolute slaves, the majority being illiterate, poorly fed, ill-treated, forced to do works which are too difficult for their age. Poorly dressed, they wake up early and stay up late. Their only way out of their situation is to abandon the house. The Committee notes that the CSH also addresses the problem of human trafficking, which takes place secretly between Haitian and Dominican traffickers in the border zone of Belladère.

The Committee observes that, even though not all work done by children in domestic services amounts to forced labour, it is essential to examine the conditions in which such work is carried out and to measure them against the definition of forced labour, particularly as concerns the validity of consent given to performing such work, the young age of the children involved and the possibility of leaving such employment, in order to determine whether the situation falls within the scope of the Convention.

The Committee urges the Government to take the necessary action without delay and to supply the long-awaited information respecting the measures taken to ensure the effective implementation of the existing repressive provisions in view of putting an end to the situation of the "restavek" children submitted to conditions of forced labour.

The Committee also requests the Government to respond to the observations made by the workers' organizations.

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

Indonesia

Convention No. 29: Forced Labour, 1930 (ratification: 1950)

The Committee notes the Government's report. It also takes note of the comments of June 2003 by the International Confederation of Free Trade Unions (ICFTU) on the application of the Convention, a copy of which was sent to the Government on 5 September 2003, and of the Government's response thereto.

1. *Forced labour of children on fishing platforms.* In its previous comments the Committee drew the Government's attention to the situation of children obliged to work in extremely dangerous conditions on fishing platforms (*jermal*) off the north-east coast of Sumatra. The Government stated that this was largely due to the difficulty experienced by the families of these children in finding other sources of income. It also indicated that the local Government of Sumatra had been instructed to replace all the children with adult workers and that the Governor had set up a team to compile statistics, in particular on the number of children who ought to be attending school and the number of children in need of training for work having reached the minimum age for admission to employment. The Committee also took note of the programme carried out with support from the ILO's International Programme on the Elimination of Child Labour (IPEC), the main objective of which was to remove 1,900 children from fishing platforms by 2001. It noted that case studies carried out under the IPEC programme referred to instances of forced recruitment and kidnapping of the main target of which were the most vulnerable children, such as street children.

In its latest report, the Government states that investigations have brought to light no evidence (such as police reports) of any instances of forced recruitment or kidnapping of children. While noting this information, the Committee observes that the Government has provided no new information on the results obtained from the measures announced in its last report. Nor does it provide information on any other measures taken to put an end to the exploitation of child labour on fishing platforms. The Committee notes that the ICFTU, in its comments, emphasizes that although the number of children obliged to work on fishing platforms has been reduced thanks to the action taken by the Government and the ILO, the practice remains.

The Committee notes the adoption of Manpower Act No. 13/74 and notes with interest article 74 of the above Act which prohibits the employment of children in the worst forms of child labour. Article 74 includes in the list of worst forms of child labour, slavery or practices similar to slavery and all kinds of jobs harmful to the health, safety and morals of the child.

The Committee also notes the information supplied by the Government in its first report on the application of the Minimum Age Convention, 1973 (No. 138), to the effect that the draft Regulations on the minimum age for admission to employment and the protection of children and young people, will prohibit the employment of children (persons under 18 years of age) in certain branches of activity including fishing on platforms. The Committee requests the Government to indicate whether the draft Regulations have been adopted and, if so, to provide a copy of them. It furthermore hopes that the Government will provide full information on progress made towards ensuring that children are not forced to work on fishing platforms. It also recalls that children cannot give their valid consent to perform this kind of work, which endangers their health and their safety.

Lastly, the Committee has noted that a letter of agreement was signed on 14 April 2003 between the provincial government of north Sumatra and IPEC/ILO. This agreement constitutes the second phase of the programme to eradicate child labour on the *jermals* and the aim is to complete the elimination of this form of child labour by 2004.

The Committee requests the Government to keep it informed of the actions taken to eradicate child labour on *jermals* and to inform it of the success of the actions in practice.

2. *Trafficking in persons.* In its comments the ICFTU indicates that trafficking in persons, including for the purpose of forced prostitution, is widespread in Indonesia and that many migrants should be considered as victims of trafficking. According to the ICFTU, some sources suggest that as many as 20 per cent of the 5 million Indonesian migrant workers have fallen victim to this trafficking.

In reply, the Government states that the elimination of trafficking is not an easy task because it relates to cross-border crime. Among other measures to combat trafficking in persons the Government mentions the formulation of bills on trafficking-related crimes. Furthermore, 200 special centres for combating trafficking and 19 integrated services centres have been set up. However, the professional competency of the officers responsible for combating trafficking needs to be further improved. The Government also indicates that since January 2003, the police has taken a number of measures to combat trafficking: development of cooperation with the ministries concerned; operations in prostitution areas; development of cooperation in combating child prostitution and return of the victims to their places of origin; settlement of numerous cases of trafficking. The Government expresses the hope that in view of the above information, the ICFTU will treat the issue of Indonesian migrant workers in a balanced manner by providing information on improper practices that may occur in the receiving countries.

The Committee takes due note of the measures already taken by the Government to combat trafficking in persons. It further notes that a National Action Plan was adopted on 30 December 2002 to abolish trafficking in women and children (Presidential Instruction No. 88/2002). The objectives of the abovementioned plan are:

- legal norms and actions against traffickers of women and children;
- legally guaranteed rehabilitation and reintegration of the victims of trafficking;
- prevention of all forms of woman and child trafficking in the family and society;
- cooperation and coordination in the abolition of woman and child trafficking between institutions at the national and international levels.

The Committee also notes that the approval of laws on the abolition of woman and child trafficking, witness and victim protection, and migrant worker protection constitute one of the many targets of the plan. It requests the Government to provide information on the adoption of the draft legislation on crimes and trafficking to which the Government referred in its report, and on any other texts that may have been adopted to meet the objectives of the National Action Plan for abolishing woman and child trafficking. The Committee would also be grateful if the Government would provide information on any other measures taken under the plan, on the results obtained in combating the trafficking in persons in general, and not only the trafficking in women and children (the sole target of the National Action Plan), and on any prosecutions brought for trafficking in persons for the purposes of labour exploitation with a view to punishing the offenders. The Committee recalls in this connection that, according to *Article 25 of the Convention*, the illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and any Member ratifying the Convention is required to ensure that the penalties imposed by law are really adequate and are strictly enforced.

3. The Committee notes that, in its comments received in August 2003 and forwarded to the Government on 26 September 2003, the ICFTU indicates that the requirement for migrants to go through recruitment agencies and the absence of legislation laying down rights and regulating the labour migration process make these workers vulnerable to exploitation. According to the ICFTU, Indonesians wishing to work abroad have to go through recruitment agencies, which charge them extortionate processing and training fees. Migrant workers are thus severely indebted even before they start working abroad. They are required to sign contracts with the recruitment agencies and have little or no power to negotiate their terms. Some contracts are even drafted in a foreign language. Many migrants end up accepting whatever work they are offered, even if it is different from the work they were promised. The ICFTU is of the view that these conditions make Indonesian migrant workers vulnerable to exploitation and forced labour.

The ICFTU considers that prospective migrant workers are exploited before, during and after the period abroad. Agencies require prospective migrant workers to live in training camps for up to 14 months where they may be forced to work for the agency staff. Furthermore, conditions in these centres are poor. Once abroad, they must pay off agency fees, which are usually higher than the maximum set by the Government. Agencies charge fees equivalent to a number of months' salary, which varies according to the country of destination. In such circumstances, even if they are mistreated and forced to work long hours under harsh conditions, Indonesian migrants cannot leave because of the contracts they have signed and the money owed to agencies. They must also pay agency fees in order to renew their employment contract which are higher than the legal maximum. According to the ICFTU, agencies that use coercion and deception in recruiting and transporting migrants for work abroad where they can exploit them fall under the definition of traffickers and should be punished accordingly.

The Committee requests the Government to provide full information in response to the ICFTU's comments on the exploitation of migrant workers.

4. The Committee notes the information supplied by the Government on the working conditions of persons employed in industrial forest plantations established under the logging concessions to develop forestry.

Jamaica

Convention No. 105: Abolition of Forced Labour, 1957 (ratification: 1962)

The Committee notes with regret that the Government's report contains no reply to previous comments. It must therefore repeat its previous observation which read as follows:

Article 1(c) and (d) of the Convention. For a number of years, the Committee has commented on sections 221, 224 and 225(1)(b), (c) and (e) of the 1894 Merchant Shipping Act which provided for the punishment of various disciplinary offences with imprisonment (involving an obligation to perform labour under the Prisons Law) and for the forcible conveyance of seafarers on board ship to perform their duties.

The Government indicates in its report that the new Jamaica Shipping Act, 1998, came into operation on 2 January 1999, and that the provisions related to the forcible conveyance of seafarers on board ship and the punishment of disciplinary offences committed under the Act are not included in the new Act.

The Committee notes, however, that the punishment of disciplinary offences with imprisonment (involving an obligation to perform labour) is still provided for in sections 178(1)(b), (c) and (e) and 179(a) and (b) of the new Act. While the new Act contains no provisions concerning the forcible conveyance of seafarers on board ship, the offences of desertion and absence without leave are still punishable with imprisonment (involving an obligation to work) (section 179). Similarly, penalties of imprisonment are provided for in section 178(1)(b), (c) and (e), inter alia, for wilful disobedience or neglect of duty or combining with any of the crews to impede the progress of the voyage, and by virtue of section 178(2) an exemption from liability under subsection (1) applies only to seafarers participating in a lawful strike after the ship has arrived and has been secured in good safety to the satisfaction of the master at a port, and only at a port in Jamaica.

The Committee points out once again, with reference to paragraphs 117-119 and 125 of its General Survey of 1979 on the abolition of forced labour, that provisions under which penalties of imprisonment (involving an obligation to work) may be imposed for desertion, absence without leave or disobedience are incompatible with the Convention. Only sanctions relating to acts that are likely to endanger the safety of the ship or the life or health of persons (e.g. as provided for in section 177 of the new Shipping Act) have no bearing on the Convention.

The Committee therefore expresses the firm hope that the necessary measures will be taken in the near future to bring the legislation into conformity with the Convention, e.g. by amending or repealing the abovementioned provisions of the Shipping Act, 1998, and that the Government will provide information on progress made in this regard.

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

Japan

Convention No. 29: Forced Labour, 1930 (ratification: 1932)

1. The Committee in its last observation discussed at some length the extent of the mandate of the Committee in respect of the two historical breaches by the Government of the Convention relating to the Second World War and the years leading up to it; namely military sexual slavery referred to as the "comfort women" and wartime industrial forced labour. The Committee concluded in each case that it had no mandate to rule on the legal effect of the bilateral and multilateral treaties and whether they extinguished individual claims for compensation; it refers to its previous observation on the Convention. The Committee in all the circumstances asked the Government to inform it of any future decisions, legislation or government action in respect to the long-running claims being made by the victims. The Committee also suggested that the Conference Committee "may wish to consider whether to look at the matter on a tripartite basis".

2. The Committee notes the information provided by the Government in a lengthy report on 14 January 2003, responding to the observations of the Committee. In its report the Government reiterates its point of view on the legal issues; refers to the expressions of apologies and remorse which have already been made; refers to the activities undertaken by the Asian Women's Fund and provided information on the results of past proceedings before various judicial bodies.

3. The Committee also notes that during the Conference Committee on the Application of Standards in June 2003, whilst there was some general discussion in response to the observation of this Committee, the Conference Committee did not include this issue for examination in more detail on a tripartite basis.

4. Subsequently, the following communications have been received, namely:

- comments made by the Korean Confederation of Trade Unions (KTCU) and the Federation of Korean Trade Unions (FKTU), received on 8 September 2003;
- comments made by the All Japan Shipbuilding and Engineering Union, received on 29 August 2003;
- comments made by the Japanese Trade Union Confederation (JTUC-RENGO), received on 30 September 2003.

5. A report is due from the Government in relation to this Convention in 2004 and the Committee requests the Government at that time to comment on the above communications and any changes occurring in relation to further decisions, legislation or Government action on these issues.

Kenya

Convention No. 29: Forced Labour, 1930 (ratification: 1964)

The Committee has noted the information provided by the Government in reply to its earlier comments.

Over a number of years the Committee has been referring to sections 13 to 18 of the Chief's Authority Act (Cap. 128), according to which able-bodied male persons between 18 and 45 years of age may be required to perform any work or service in connection with the conservation of natural resources for up to 60 days in any year. On many occasions it expressed the hope that these sections would be either repealed or amended so as to give effect to the Convention.

The Committee noted that the amendments introduced by Act No. 10 of 1997 not only failed to bring the legislation into compliance with the Convention, but even raised the maximum age limit for call-up for compulsory labour from 45 years to 50 years. The Government indicated in its previous report that a comprehensive labour law revision project would be undertaken in consultation with the social partners and with the technical assistance of the ILO, and that the labour law reform would integrate amendments/repeals requested by the Committee.

In its latest report, the Government confirms that the task force on the review of labour laws will address the issue of repeal/amendment of sections 13 to 18 of the Chief's Authority Act to bring them into compliance with the Convention.

The Committee urges the Government to take the necessary measures to ensure that the legislation is brought into conformity with the Convention and asks the Government to supply a copy of the amendments, as soon as they are adopted.

Kuwait

Convention No. 105: Abolition of Forced Labour, 1957 (ratification: 1961)

The Committee has noted the information provided by the Government in reply to its earlier comments.

Article 1(a) of the Convention. For a number of years, the Committee has been referring to Legislative Decree No. 65 of 1979 with respect to public meetings and gatherings, which establishes a system of prior authorization (which may be refused without giving reasons, under section 6 of the above Decree) and, in the event of violations, provides for a penalty of imprisonment involving, by virtue of the Penal Code, an obligation to work. The Committee stressed the importance for the effective observance of the Convention of legal guarantees regarding the right of assembly and the direct bearing that a restriction of this right can have on the application of the Convention. Indeed, it is often through the exercise of this right that political opposition to the established order can be expressed, and in ratifying the Convention the State has undertaken to guarantee persons who manifest this opposition in a peaceful manner the protection that the Convention affords them.

In its report received in October 2002, the Government reiterated that the prior authorization provided for in the aforementioned Decree is required for the sake of public security and that no violations of the Decree had occurred and consequently no judicial decisions had been issued. However, in its previous report received in January 2002, the Government stated that meetings politically opposing the current system are not covered by the Decree, since a list of meetings, which shall not be considered public in virtue of section 2 of the Decree and therefore exempted from the scope of the Decree, is not exhaustive. The Committee requests the Government to clarify this issue, particularly with regard to political public meetings, since section 2 apparently excludes only those meetings which are not considered to be public. It hopes that measures will be taken to clearly exclude political public meetings from the application of the above Decree, e.g. by amending the wording of section 2, in order to bring the legislation into conformity with the Convention and the indicated practice. Pending the adoption of such measures, the Committee asks the Government to continue to supply information on the application of the Decree in practice, including the number of convictions for violations of its provisions and copies of any court decisions defining or illustrating their scope.

Article 2(c) and (d). For many years, the Committee has been referring to Legislative Decree No. 31 of 1980 with respect to security, order and discipline on board ship, under the terms of which certain breaches of discipline (unauthorized absence, repeated disobedience, failure to return to the vessel) committed by common agreement by three persons may be punished by imprisonment involving an obligation to work. The Committee noted that penalties imposed for violations of labour discipline or punishment for having participated in a strike do not come within the scope of the Convention where such acts endanger the safety of the vessel or the life or safety of the persons on board, but that sections 11, 12 and 13 of the above Decree do not limit the application of the penalties to such acts.

The Committee has noted with interest the Government's statement in its reports received in 2002 that it attaches great importance to bringing Decree No. 31 of 1980 into conformity with the provisions of the Convention and intends to take the necessary measures in this direction. The Government requests the technical assistance of the International Labour Office in this regard.

The Committee hopes that the necessary measures to amend Legislative Decree No. 31 of 1980 will be taken in the near future with a view to ensuring that the imposition of penalties involving compulsory labour will be limited to cases

in which the violations committed constitute a danger for the vessel or for the life or safety of persons, and that the Government will provide information on the action taken to this end.

Lebanon

Convention No. 29: Forced Labour, 1930 (ratification: 1977)

The Committee has noted a communication dated 27 November 2001, received from the World Confederation of Labour (WCL), which contains observations concerning the application of the Convention by Lebanon. It has noted that this communication was sent to the Government in December 2001 and March 2002, for any comments it might wish to make on the matters raised therein.

In its observations, the WCL refers to cases of the illegal abuse of migrant workers, particularly domestic workers, including non-payment of salaries, corporal punishment, sexual abuse and enforced sequestration. The WCL alleges that, from the early 1990s, there has been a particularly large influx of African and Asian women into Lebanon, serving primarily as domestic labour in private households, particularly from Sri Lanka, and that both the employment relations and social status of these women leave them extremely vulnerable to exploitation and abuse, most of them falling under the category of "contract slavery"; the existence of abuse, violence or threat of abuse and violence, denial of basic freedom of movement and exploitative working conditions contribute to this definition.

The Committee has noted that the Government's report contains no reference to these observations. However, the Committee has noted the information supplied by the Government in reply to its general observation of 2000 concerning measures taken to combat trafficking in persons, in which the Government indicates that persons who employ illegal migrants are punishable by law and that, in practice, the official authorities are endeavouring to stop or prohibit the illegal exaction of force labour which may be encountered by migrant workers who enter Lebanon in an illegal manner. The Committee also notes from the letter by the Legislative and Advisory Unit of the Ministry of Justice, attached to the Government's 2003 report, that the labour legislation of Lebanon does not contain express provisions punishing trafficking in persons, although it can be punished on the basis of the Penal Code provisions in sections 514 and 515 (kidnapping).

The Committee hopes that the Government will refer to the observations by the WCL in its next report and submit its comments on the allegations made therein, as well as the information on the measures taken in relation to the matters raised.

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

Liberia

Convention No. 29: Forced Labour, 1930 (ratification: 1931)

The Committee notes with regret that no report has been received from the Government for the fourth year in succession. It must therefore repeat its previous observation on the following matters:

1. In its previous observation, the Committee referred to a communication of the International Confederation of Free Trade Unions, dated 22 October 1998, by which a report on forced child labour in south-eastern Liberia was sent. That report, dated September 1998, had been prepared by Focus and the Justice and Peace Commission (JPC), two local organizations.

The Committee noted the Government's comments on that communication. It noted the report of the special investigation committee sent by the Government in May 1998 to investigate alleged forced labour in the south-eastern region. It noted that the special investigation committee did not find or establish any conclusive or physical evidence to confirm acts of forced labour in the region. The Committee however observes that the special investigation committee recommended in its report that a national committee be established to trace and reunite displaced women and children that were taken captive during the war and also that a committee be sent to investigate allegations of forced labour and hostage situations particularly in some parts of Grand Kru and Nimba Country. The investigation committee further recommended that, in order to enhance the National Reconciliation and Reunification Programmes, "local authorities should be directed to encourage their citizens to report any acts of alleged forced labour, intimidation, harassment, maltreatment for appropriate investigation and corrective measures".

In their report, Focus and JPC found that the case of forced labour was "a spillover of the gross abuses that characterized the civil war" and that it was a common practice of ex-combatants (mainly former commanders) of former warring factions who chose to take advantage of the extremely difficult economic situation in the region. The report stated that there are practices of exploitative and forced labour and captivity taking place in that part of the country, chiefly in the Government Camp area in Sinoe Country. The report also mentioned Chief Solomon Moses (Chief Solo) in Sinoe Country and Chief Gonda, in Grand Gedeh Country, as alleged perpetrators, both of them being heads of Joint Security Forces. It mentioned the difficult situation of socially abandoned children who had to fend for themselves and orphans who, although in the care of some adult, "due to financial difficulties were made to perform tasks against their will" so as to "raise funds for their support". The Committee notes that in their recommendations, Focus and JPC urge the Government to address the plight of children in the south-east, especially that of children held hostage by adults and used as a source of forced and captive labour.

The Committee noted that both reports found that the south-eastern part of the country was in a grave humanitarian crisis and an extreme state of poverty and that any reported situations of exploitation were due to the consequences of the war. It further noted from the Government's latest report that the region is cut off to a very large extent from the rest of the country because of the bad state of the roads, that the limited resources available do not allow for the immediate building of the needed hospitals and schools and that because of the economic situation in the region, there are hardly any alternatives to farming, small-scale mining and other activities which require massive and cheap labour.

The Committee understands from the documents before it that the Government as well as Focus and JPC have independently sent teams to investigate the situation and report on it. It hopes that the Government will encourage joint efforts and cooperation between governmental bodies and non-governmental organizations at all levels with a view to the effective elimination of all forms of compulsory labour, including that of children, and that the Government will supply full information on measures taken to this end, as well as on action taken on the following recommendations of the special investigation committee:

- (a) the establishment of a national committee to trace and reunite displaced women and children taken captive during the war;
- (b) the sending of a committee to investigate allegations of forced labour and hostage situations particularly in Grand Kru and Nimba Country;
- (c) directing local authorities to encourage the citizens to report any acts of alleged forced labour, intimidation, harassment, maltreatment, for appropriate investigation and corrective measures, in the framework of the National Reconciliation and Reunification Programmes.

The Committee furthermore hopes that the Government will take specific action to investigate the situation in the south-east as regards practices of forced labour, including allegations that children are held hostage by adults as captive labour, and more particularly the allegations that forced labour was being imposed in the Government Camp area in Sinoe Country and by heads of Joint Security Forces in Sinoe Country and Grand Gedeh Country. The Committee hopes that the Government will supply full information on the action taken and the results.

2. *Article 25 of the Convention.* The Committee recalls that under *Article 25* of the Convention, the illegal exaction of forced labour shall be punishable as a penal offence and it shall be an obligation on the State to ensure that the penalties imposed are really adequate and are strictly enforced. It notes from the Government's latest report that the use of forced or compulsory labour is to be held a crime. The Committee hopes that the necessary action to give effect to *Article 25* of the Convention will be completed in the near future and that the Government will send the text of the Act as soon as it is adopted.

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

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

Convention No. 105: Abolition of Forced Labour, 1957 (ratification: 1962)

The Committee notes with regret that no report has been received from the Government for the third year in succession. It must therefore repeat its previous observation on the following matters.

Article 1(a) of the Convention. 1. In its earlier comments the Committee observed that prison sentences (involving, under Chapter 34, section 34-14, paragraph 1, of the Liberian Code of Laws, an obligation to work) might be imposed in circumstances falling within *Article 1(a)* of the Convention under section 52(1)(b) of the Penal Law (punishing certain forms of criticism of the Government) and section 216 of the Election Law (punishing participation in activities that seek to continue or revive certain political parties). The Committee also requested the Government to provide a copy of Decree No. 88A of 1985 relating to criticism of the Government.

2. The Committee notes with interest the Government's indication in its report that section 216 of the Election Law and Decree No. 88A of 1985 have been repealed. Since the copies of repealing Acts referred to by the Government as annexed to its report have not been received at the ILO, the Committee hopes that copies will soon be forwarded. The Committee also requests the Government to state whether section 52(1)(b) of the Penal Law is still in force, and if so, to indicate the measures taken with a view to ensuring observance of the Convention.

3. The Committee previously noted that under a Decree adopted by the People's Redemption Council before its dissolution in July 1984, parties can be forbidden if they are considered to have engaged in activities or expressed objectives which go against the republican form of government or basic Liberian values. The Committee again requests the Government to indicate whether the provisions of this Decree are still in force and, if so, to provide a copy of the text of the Decree.

Article 1(c). 4. In its earlier comments the Committee noted that under section 347(1) and (2) of the Maritime Law, local authorities shall apprehend and deliver a seafarer who deserts from a vessel with the intention of not returning to duty and who remains unlawfully in a foreign country. Referring to paragraph 110 of its General Survey of 1979 on the abolition of forced labour, the Committee must point out that measures to ensure the due performance by a worker of his service under compulsion of law (in the form of physical constraint or the menace of a penalty) constitute forced or compulsory labour as a means of labour discipline and are thus incompatible with the Convention. The Committee hopes that section 347(1) and (2) of the Maritime Law will soon be repealed and that the Government will supply information on the measures taken to this end.

5. The Committee also noted that under section 348 of the Maritime Law various other offences against labour discipline by seafarers such as incitement to neglect duty, assembling with others in a tumultuous manner, may be punished with imprisonment of up to five years (involving an obligation to work). The Committee referred to paragraphs 117 and 125 of its General Survey of 1979 on the abolition of forced labour where it pointed out that sanctions relating to acts tending to endanger the ship or the life or health of persons on board do not fall within the scope of the Convention. However, as regards more generally breaches of labour discipline such as desertion, absence without leave or disobedience, all sanctions involving compulsory labour should be abolished under the Convention. In a great number of maritime nations, similar penal provisions have been repealed, restricted in scope to cases involving a danger to the ship or the life or health of persons, or otherwise amended so as to provide for a fine or some other penalty not falling within the scope of the Convention. The Committee therefore again expresses the hope that measures will be taken to bring section 348 of the Maritime Law into conformity with the Convention, and that the Government will provide information on the action taken to this end.

6. In its earlier comments the Committee referred to Decree No. 12 of 30 June 1980 prohibiting strikes. It notes with interest the Government's statement in its report that a draft law repealing the abovementioned Decree is now before the competent authority for passing into law. The Committee requests the Government to provide a copy of the repealing law as soon as it is adopted.

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

Mali

Convention No. 29: Forced Labour, 1930 (ratification: 1960)

1. *Forced labour and the trafficking of children.* In its previous comments, the Committee requested the Government to provide information on the measures taken to combat the trafficking of children and their exploitation at work. The Government supplied information on a number of measures taken to combat the phenomenon, particularly the cross-border trafficking of Malian children to Côte d'Ivoire. The Committee took note of that information and requested the Government in particular to provide information, pursuant to *Article 25 of the Convention*, on judicial action taken against those responsible for the trafficking (employers and intermediaries) and the penalties imposed.

The Committee notes that in its last report, the Government provides no information on this subject. It recalls that the Government has ratified the Worst Forms of Child Labour Convention, 1999 (No. 182), and this year has sent its first report on the application of that Convention. In so far as Article 3(a) of Convention No. 182 provides that the worst forms of child labour include "all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour", the Committee is of the view that the problem of the trafficking of children for the purpose of exploiting their labour may be examined more specifically under Convention No. 182. The protection of children is enhanced by the fact that Convention No. 182 requires States which ratify it to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. The Committee accordingly asks the Government to refer to its comments on the application of Convention No. 182.

2. *Trafficking in persons.* The Committee notes that adoption of Act No. 02-020 of 3 June 2002 authorizing ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime. It further notes that, although it does not expressly define trafficking in persons the new Penal Code (Act No. 01-079 of 20 August 2001) contains provisions that could allow the authors of this crime to be prosecuted, tried and sentenced (sections 242-244). It hopes that the Government will send full information on the measures taken or envisaged to prevent, suppress and punish trafficking in persons. In this connection, it requests the Government to refer to its general observation of 2000, to which it has not replied. Please provide information in particular on any legal action brought with a view to punishing persons responsible for trafficking in persons in order to exploit them through work, pursuant to *Article 25* of the Convention under which the illegal exaction of forced labour shall be punishable as a penal offence and any Member ratifying the Convention must ensure that the penalties imposed by law are really adequate and strictly enforced.

The Committee is addressing a direct request to the Government on other matters.

Mauritania

Convention No. 29: Forced Labour, 1930 (ratification: 1961)

The Committee notes the report submitted by the Government on the application of the Convention in reply to its previous observation and the comments made by the International Confederation of Free Trade Unions (ICFTU) and the Free Confederation of Mauritanian Workers (CLTM). In addition the Committee notes the information provided by the Government to the Conference Committee on the Application of Standards in June 2003 and the subsequent discussions.

1. In its previous comments, the Committee noted the repeated allegations made by the ICFTU and the World Confederation of Labour (WCL), according to which slave-like practices persisted in Mauritania despite the abolition in law of slavery in 1981 (Ordinance No. 81-234). According to these trade union organizations and certain non-governmental organizations, birth continues to impose an inferior status on the descendants of slaves. These persons generally work as farm labourers, shepherds or servants and are entirely dependent on their master, to whom they give the money that they earn or for whom they work directly in exchange for food and lodging.

The ICFTU comments received in the Office in September 2002 and forwarded to the Government on 31 October 2002 indicate that, while the incidence of slavery has fallen sharply since the beginning of the 1980s, its consequences have nevertheless left many Mauritians in destitution and in conditions close to slavery. The legal prohibition of slavery has not resulted in the liberation of many persons from the domination that is characteristic of slavery. The ICFTU considers that no measures have been taken to promote the integration of these persons.

The CLTM, in its comments received in February 2003 and forwarded to the Government in March 2003, indicates that the State protects practices of slavery through its feudal system. A significant section of society is accordingly confined to serfdom, poverty and exclusion, and denied any economic, social and human rights. The trade union denounces the Government's refusal to take measures to free slaves and integrate them into active life, such as the establishment of specific economic and social programmes and the formulation of legal instruments to protect slaves and punish offenders. The trade union organization illustrates its allegations with a number of examples in practice.

In reply to these comments, the Government indicates in its last report that it has undertaken legal reforms and developed economic, social and cultural programmes over the past 20 years which have made an important contribution to eliminating the consequences of the former stratification of society and to improving the status of previously

underprivileged social groups. The Government states that ascendancy to the position of Prime Minister in July 2002 of a person whose origins are among the descendants of former slaves, shows that Mauritanian society has definitively broken with the former social stratification. This illustrates, according to the Government, the lack of credibility of the CLTM's allegations. It also emphasizes that, in the examples that it provides, the CLTM only refers to the first names of individuals, without giving relevant information that would make it possible to carry out an investigation. The Government questions why the trade union organization has not brought these cases to the relevant jurisdictions.

During the discussion in the Conference Committee on the Application of Standards in June 2003, the Government representative stated that "The Government had never recognized the persistence of slave-like practices in the country. It was true that Mauritania had had castes, but the descendants of former slaves were no longer considered as slaves today, and the fact that a person belonged to a particular historical social category today had no consequences for their rights."

The Committee notes all of the above information. It is bound once again to assess the application of the Convention in practice in view of, on the one hand, the serious and concordant allegations made by trade union organizations of the persistence of practices of forced labour inherited from slavery and, on the other, the denial of these practices by the Government. In this respect, the Committee regrets that it was not possible to conduct the technical mission that the Government had previously accepted. It also notes that, during the discussion of the application of the Convention in the Conference Committee on the Application of Standards (June 2003), the Conference Committee expressed its deep concern at the persistence of situations which constitute grave violations of the prohibition of forced labour and that it urged the Government to accept a direct contacts mission to the country to assist the Government and the social partners with the application of the Convention. The Committee notes that in August 2003 the Office sent a communication to the Government for this purpose, to which effect has not yet been given. The Committee hopes that the direct contacts mission can be carried out as soon as possible and that it will make it possible to assess the situation in practice and will promote the application of the Convention in full.

2. *Article 25 of the Convention.* The Committee notes that the Labour Code prohibits forced or compulsory labour, defined as all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered her or himself voluntarily (section 3 of Book I). Further, that under section 56 of Book V of the Labour Code, persons who contravene section 3 are liable to a sentence of imprisonment and/or a fine. The Committee notes that under the terms of this provision the exaction of forced labour may be punished only by the imposition of a fine. The Committee draws the Government's attention to the penal nature of the sanctions required by *Article 25* of the Convention.

The Committee has previously drawn the Government's attention to the fact that the Labour Code only applies to relations between employers and workers. The Government indicated in this respect that section 5 of the draft Labour Code, which was in the process of being adopted, would extend the prohibition of forced labour to any work situation, even to one not based on a contract, and that any contravention of this provision would be punishable by the sanctions set out in the regulations in force. In its last report, the Government indicates that the draft Labour Code was approved by the Government on 29 May 2003, after amendments of a purely formal nature and that it will be formally adopted as a priority following the presidential elections. The Committee notes this information. It hopes that the new Labour Code will be adopted in the very near future and once again requests the Government to indicate the sanctions that will be applicable in the event of violations of section 5 of the draft Labour Code.

Finally, in considering *Article 25* of the Convention, the Committee notes with interest the adoption of Act No. 025/2003 of 17 July 2003 punishing the trafficking of persons. It notes that, under the terms of section 5, persons committing the crime of the trafficking of persons are liable to a sentence of imprisonment of from five to ten years and a fine. The Committee requests the Government to provide information, where appropriate, on the application of this legislation in practice.

3. *Article 2, paragraph 2(d).* The Committee noted previously that Act No. 71-059 of 25 February 1971, issuing rules to organize civil protection, limits the powers to requisition labour to specific exceptional circumstances corresponding to the definition of cases of emergency set out in *Article 2, paragraph 2(d)*, of the Convention. However, the Ordinance of 1962, which confers very wide powers on local leaders to requisition labour, remains in force. Further to the Committee's request to repeal the above Ordinance, the Government indicates in its last report that the delay that has occurred in repealing this text is due to the significant workload of the Government and Parliament as a result of the need to reform and even formulate new legislative texts. The Committee notes that the Government representative reiterated the Government's intention to formally repeal this Ordinance during the discussion of the application of the Convention in the Conference in June 2003. It hopes that the Government will take all the necessary measures for this purpose.

A further matter concerns the terms of sections 1 and 2 of Act No. 70-029 of 23 January 1970, pursuant to which various categories of persons, in both the public and private sectors, may be required to discharge their functions when circumstances so require, particularly to ensure the functioning of a service considered to be indispensable to meet an essential need of the country or the population. Under the terms of section 5 of this Act, persons who have not obeyed a requisition order issued by the public authorities shall be liable to imprisonment of from one month to one year and to a fine. The Government indicates that the forms of requisition envisaged by the above Act are in accordance with the Convention and that the term "a service considered to be indispensable to meet an essential need of the country or the population" corresponds to the cases of emergency envisaged in *Article 2, paragraph 2(d)*, of the Convention. These

provisions concern public establishments, in which employees may be requisitioned, among other cases, in the event of a strike. The Committee previously requested the Government to provide a complete list of establishments considered as services that are essential for the population and which could be affected by the requisition orders envisaged in Act No. 70-029. As the Government has not provided any information in reply, the Committee trusts that it will provide the information requested in its next report.

4. *Article 2, paragraph 2(c)*. For many years, the Committee has been drawing the Government's attention to Decree No. 70-153 of 23 May 1970 issuing the internal rules of prison establishments, of which certain provisions would allow for the possibility of hiring prison labour to private individuals. In its report in 2001, the Government indicated its intention to amend this Decree. Noting that since then no information has been provided on this subject, the Committee hopes that the Government will take the necessary measures to bring its legislation into conformity with the Convention.

5. Finally, the Committee notes the comments of the WCL, received by the Office on 5 September 2003 and forwarded to the Government on 3 November 2003, containing observations on the application of Convention No. 29 in Mauritania. The Committee requests the Government to provide its comments on the WCL's communication.

Mexico

Convention No. 29: Forced Labour, 1930 (ratification: 1934)

In its previous observation, the Committee noted the comments made by the International Confederation of Free Trade Unions (ICFTU) concerning the trafficking in women and girls within the country and abroad for purposes of forced prostitution. The Committee requested the Government to provide detailed information on this issue.

The Committee notes that the Government's indication in its report that "there is no other information supporting the generalizations made by the ICFTU, and that it is not therefore possible to ascertain their truth".

The Committee notes that a study, carried out in six cities with the support of UNICEF, estimated at 16,000 the number of boys and girls who were victims of commercial sexual exploitation. The objective of the study was to identify the role, relevance and operational methods of networks of organized crime in the procuring, trafficking and exploitation of boys and girls. The Committee also notes the report submitted by the Special Rapporteur to the United Nations Commission on Human Rights (E/CN.4/2003/85/Add. 2, of 30 October 2002), in which the Special Rapporteur expresses concern at the "corruption closely linked to transnational organized crime, and in particular gangs engaged in the trafficking and smuggling of persons", and also refers to the General Population Act under which sentences of imprisonment of up to ten years may be imposed and can even be applied to victims of trafficking and smuggling.

Furthermore, the United Nations Committee on the Rights of the Child, while being "aware of the measures taken by the State Party on the situation of 'repatriated children' (*menores fronterizos*), remains particularly concerned that a great number of these children are victims of trafficking networks, [which] use them for sexual or economic exploitation"... and "about the increasing number of cases of trafficking and sale of children from neighbouring countries who are brought [to Mexico] to work in prostitution" (CRC/C/15/Add. 112, paragraph 32).

The Committee notes the convergence of the information concerning the existence of cases of the trafficking in persons for the purposes of economic and sexual exploitation. Such situations fall within the scope of the Convention and constitute grave violations of it. In practice, the work or service is imposed on the person concerned without her or his consent. Violence, coercion or deception are used to achieve the transfer of the persons concerned with the purpose of subjecting the victims to economic or sexual exploitation, from which they cannot free themselves.

The Committee notes the information provided by the Government concerning the provisions of the national legislation to prevent, repress and punish the trafficking in persons, namely sections 206 to 208 (trafficking and procuring of persons) and 366ter (trafficking of young persons) of the Penal Code and section 2(V) of the Federal Act against organized crime.

The Committee notes that section 366ter affords protection against the removal of young persons outside the national territory by providing that "the crime of the trafficking in young persons is committed by any person who removes a young person under 16 years of age and delivers that person to a third party in an illicit manner, outside the national territory, with the purpose of obtaining an undue economic benefit through the removal or delivery of the young person". The Committee requests the Government to provide information on the provisions affording protection to young persons who are removed from other countries to Mexico for the purposes of exploitation.

The Committee also notes the Government's reference to the measures intended to encourage victims to report their cases to the authorities, including the authorization to remain in the country at least for the duration of the legal proceedings and possibly to reside permanently, and protection against reprisals. The Committee requests the Government to indicate and provide copies of the particular provisions which have this effect.

The Government adds that "the penal legislation imposes heavier penalties in cases in which persons reporting crimes, witnesses or family members are intimidated (Federal Penal Code, section 219)". The Committee notes that the above section establishes the crime of intimidation committed by public servants and requests the Government to indicate the provisions applicable to persons who resort to intimidation and who are not members of the public service. The

Committee also hopes that the Government will provide information on the number of sentences imposed upon public servants for the crime of intimidation, with copies of the rulings made under the above provision.

In its report, the Government reiterates that in practice it adopts different measures which vary according to the type and circumstances of the risk incurred by the person to whom protection is to be provided. The Committee hopes that the Government will provide copies of the provisions envisaging such protection and will indicate the measures concerned.

The Committee also hopes that the Government will provide information on the penalties that have been applied to persons convicted of the trafficking in persons, in accordance with the provisions *Article 25 of the Convention*, under which the illegal exaction of forced or compulsory labour shall be punishable by penalties that are really adequate and are strictly enforced.

Myanmar

Convention No. 29: Forced Labour, 1930 (ratification: 1955)

1. Since 1999, the Committee has examined the measures taken by the Government in giving effect to the recommendations of the Commission of Inquiry appointed by the Governing Body to examine the observance by Myanmar of the Convention. In 1999 and 2000, two orders were issued to render the requisition of forced labour illegal and subject to penal sanction. Since then the ILO has been involved in a number of activities to follow up the recommendation of the Commission of Inquiry. Between May 2000 and February 2002, several technical cooperation missions were undertaken in Myanmar by a representative of the Director General. In September-October 2001, a High-Level Team visited Myanmar to conduct an assessment of the measures taken by the Government in regard to the application of the Convention. In March 2002, as recommended by the HLT, the Government agreed to the appointment of an ILO Liaison Officer in Myanmar in order to assist the Government to ensure the prompt and effective elimination of forced labour. A Liaison Officer ad interim was appointed in May 2002. Since October 2002 a permanent Liaison Officer has been functioning, and reports on the activities of the Liaison Officer, including her travels in the country and her discussions with the authorities, are presented at each session of the Governing Body. On 27 May 2003, the Government and the ILO reached agreement on a Joint Plan of Action for the Elimination of Forced Labour Practices in Myanmar.

2. In 2002, in concluding its observation, the Committee noted that some measures had been taken by the Government to disseminate the prohibition of forced labour and that discussions were under way between the ILO and the Government on a plan of action. The Committee, however, observed that in spite of the indications and rhetoric of the Government, none of the three recommendations of the Commission of Inquiry – namely that the relevant legislative texts be amended; that in actual practice no more forced or compulsory labour be imposed by the authorities, in particular the military; and that the penalties provided for by the Penal Code for the exaction of forced labour be strictly enforced – had so far been met.

3. The Committee takes note of the discussions in the Conference Committee on the Application of Standards in June 2003 (*Provisional Record* No. 24, Part three). It also notes the statements made by the representative of the Government in the Governing Body and at the Conference Committee, as well as the following reports and information supplied by the Government:

- further progress report concerning the implementation of Convention No. 29, dated 4 February 2003;
- further developments on Convention No. 29, dated 24 March 2003;
- replies to comments made by the Committee of Experts, dated 30 May 2003 (received on 6 June 2003);
- report on the application of Convention No. 29, received on 2 October 2003;
- five letters addressed to the Liaison Officer by representatives of the Government in the Convention No. 29 Implementation Committee, including the representative of the Ministry of Defence, in October and November 2003, replying to questions raised in the Implementation Committee.

4. The Committee has also taken note of the following information:

- the reports on “Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29)”, presented to the Governing Body at its 285th (November 2002), 286th (March 2003) and 287th (November 2003) Sessions, which include the reports of the Liaison Officer;
- the discussions and conclusions of the Governing Body on these reports (GB.288/PV);
- a communication dated 20 November 2003, in which the International Confederation of Free Trade Unions (ICFTU) submitted fresh documentation referring to the continuing recourse to forced labour in Myanmar. A copy of this communication was transmitted to the Government on 30 November 2003 for such comments it may wish to present.

5. As in previous years, the Committee will examine the observance of the Convention by the Government under three main parts: (i) the amendment of legislation; (ii) the measures taken to stop the exaction in practice of forced or compulsory labour and information available on actual practice; and (iii) the enforcement of penalties which may be

imposed under the Penal Code for the exaction of forced or compulsory labour. The Committee shall then review the measures taken in regard to the Joint Plan of Action (iv).

I. Amendment of legislation

6. In its report, the Commission of Inquiry had urged the Government to take the necessary steps to ensure that the Village Act, 1907, and the Towns Act, 1907, which confer local authorities wide powers to requisition labour and services in violation of the Convention, be brought into line with the Convention without further delay. In its 2001 observation, the Committee noted that, although the Village Act and Towns Act still needed to be amended, an “Order directing not to exercise powers under certain provisions of the Town Act, 1907, and the Village Act, 1907” (Order No. 1/99), as modified by an “Order Supplementary to Order No. 1/99” dated 27 October 2000, could provide a statutory basis for ensuring compliance with the Convention in practice, if given bona fide effect not only by the local authorities empowered to requisition labour under the Village and Towns Acts, but also by civilian and military officials entitled to call on the assistance of local authorities under the Acts.

7. The Committee notes that, as at the end of November 2003, the amendment of the Village and Towns Acts has still not been made. Noting the Government’s statement in its reply to the Committee’s comments dated 30 May 2003 that Order No. 1/99 and its supplementary order have the force of law and the Towns Act and the Village Act are no longer referred to, the Committee trusts that the Government will therefore have no difficulty in repealing the relevant provisions of these Acts, in order to bring the legislation fully into conformity with the Convention. Pending this, the Committee trusts that the Government will make every effort to ensure that the prohibition on forced labour contained in Order No. 1/99 and its supplementary order is strictly applied and enforced.

II. Measures to stop the exaction in practice of forced labour and information available on actual practice

A. Measures to stop the exaction in practice of forced or compulsory labour

8. In its recommendations, the Commission of Inquiry had stressed that besides amending the legislation, concrete action needed to be taken immediately to stop the imposition of forced labour in practice, in particular by the military. In the Commission’s view, this was all the more important since the powers to impose compulsory labour appear to be taken for granted, without any reference to the Village or Towns Acts. In its previous observations, the Committee had identified four areas in which action needed to be taken by the Government in order to achieve this goal: issuing specific and concrete instructions to the civilian and military authorities; giving wide publicity to the prohibition of forced labour; making adequate budgetary provisions for the replacement of forced or unpaid labour; and monitoring the prohibition of forced labour.

9. *Specific and concrete instructions.* In its observations in 2001 and 2002, the Committee noted that, in the absence of specific and concrete instructions to the civilian and military authorities containing a description of the various forms and manners of exaction of forced labour, the application of the provisions adopted so far turns upon the interpretation in practice of the notion of “forced labour”. This cannot be taken for granted, as shown by the various Burmese terms used sometimes when labour was exacted from the population – including “loh-ah-pay”, “voluntary”, or “donated” labour.

10. In its 2002 observation, the Committee took note of a Directive issued on 1 November 2000 by Secretary 1 of the State Peace and Development Council (SPDC) (Letter No. 4/Na ya ka U/Ma Nya) directing “the State and Divisional Peace and Development Councils to issue necessary instructions to the relevant District and Township Peace and Development Councils to strictly abide by the prohibitions contained in Order No. 1/99) and its supplementary order”. The Committee notes that the reports of the Government and the statements made by representatives of the Government contain many references to “explanations”, “instructions” and “directives” given at offices of the Peace and Development Councils at various levels and offices of the General Administration Department, the Department of Justice and the police forces and township courts, and to the guidance provided by the Field Observation Teams during their visits in the country. However, the Government has supplied no details on the contents of the explanations, instructions, directives or guidance, nor has it provided the text of any instruction or directive which contains details of the tasks for which the requisition of labour is prohibited or the manner in which the same tasks are to be performed without resorting to forced labour.

11. In its reply to the Committee’s observation dated 30 May 2003, the Government indicates that the Myanmar Police Force has issued further directives and explanations with regard to Order No. 1/99 and its supplementary order to police force personnel in order that they may be made more aware of their obligations to the public concerning the “full meaning of the use of forced labour”, and provides a copy of Letter No. 1002 (3) /202/G4 “to prevent illicit summon on the requisition of forced labour”, dated 27 October 2000 and signed by the Director-General of the Police Force. The Committee notes that this Letter again draws attention to the contents of Order No. 1/99 and its supplementary order, and indicates the procedure to be followed by police officers in dealing with complaints on forced labour, without explaining the kind of tasks which constitute forced labour or how these tasks should be performed.

12. Regarding the defence forces, the Committee notes, from the written reply given to the Liaison Officer by the representative of the Ministry of Defence in the Convention No. 29 Implementation Committee, the reference made to a letter of 2001 of the Office of the Minister of Defence “instructing that the orders be made comprehensive to the staff at the lower levels” in its main offices and directorates, and two letters of 1999 and 2000 and a telegram of 2001 issued by the Office of the Chief of Staff (Army) “to make personnel to the lowest level will follow orders explicitly”. The Committee requests the Government to supply copies of these letters and telegram with its next report.

13. On the basis of the information available to the Committee, it appears that clear instructions are still required to indicate to all officials concerned, including members of the armed forces, both the kinds of practices that constitute forced labour and for which the requisition of labour is prohibited, and the manner in which the same tasks are henceforth to be performed. The Committee notes that in the September 2003 meeting of the Convention No. 29 Implementation Committee, it was pointed out to the Liaison Officer that there could be differences of opinion over whether certain practices constituted forced labour and that it was important to take into account the traditional customs of the country. The Liaison Officer offered to meet with a small group of the Implementation Committee to develop common concepts relating to the application of Convention No. 29 in the Myanmar context, the results of which could be reflected in a pamphlet for public distribution. The Committee hopes that with the assistance of the Liaison Officer, the necessary detailed instructions will be issued without delay, and that they will, inter alia, cover each of the tasks listed in paragraph 13 of its 2002 observation.

14. *Publicity given to orders.* The Committee notes from the information supplied by the Government that measures continue to be taken in order to make the prohibition of forced labour contained in Order No. 1/99 and its supplementary order widely known by all the authorities concerned and the general public. These measures include:

- distributing and posting copies of the orders at various administrative levels throughout the country;
- including information on Convention No. 29 in the monthly bulletin of the Ministry of Labour, which is widely circulated;
- preparing a pamphlet on forced labour and Convention No. 29;
- sending Field Observations Teams led by members of the Convention No. 29 Implementation Committee to various parts of the country, to make the local authorities and the public aware of the orders; and translating the orders into ethnic languages.

15. The Committee recalls that in its 2001 observation, it referred to an allegation made by the ICFTU to the effect that villagers had to forcibly buy the “green book” containing the text of the orders, or were forced to purchase the boards on which the orders had to be posted. The Committee takes note of the Government’s reply that according to the General Administration Department the “green books” were distributed free of charge, at no cost to anyone.

16. In its communication received in November 2002, the ICFTU also alleged that “in certain areas villagers had never heard of any orders from Rangoon to the effect that forced labour was now banned, and that many villagers interviewed in Shan State, Karenni State, Karen State, Pegu Division and Mandalay Division still had never heard of announcements or proclamations that forced labour practices should be ended”. The Government has provided no answer to this allegation.

17. Regarding the translation of the orders into ethnic languages, the Committee notes that as at the end of November 2003, the orders had been translated and published in two dialects of the Kayin language, Kayah, Mon, Shan and Kachin, and copies of these translations have been communicated to the ILO. It hopes that the next report of the Government will contain copies of the translations into the four Chin dialects.

18. The Committee notes the statement contained in the Liaison Officer’s first report to the November 2003 session of the Governing Body, to the effect that “there is so far no indication that the translations have been distributed and displayed in the ethnic areas”.

19. The Committee expresses the hope that the Government will continue its efforts to give the widest publicity to the prohibition of forced labour throughout the country, including in the remote areas where most of the allegations of continuing forced labour refer to. In particular:

- (a) As the measures taken until now appear to be addressed mainly if not exclusively to the civilian authorities, the Committee requests the Government in its next report to provide information on the measures taken or envisaged to make the members of the defence forces at all levels fully aware of the existing orders and of the sanctions for their violation. The Government is requested to provide copies of the information provided to the defence forces as well as information about meetings, workshops and seminars organized to disseminate the information to the defence forces.
- (b) As the Field Observation Teams of the Convention No. 29 Implementation Committee do not cover all the 16 states and divisions in the country, the Committee hopes that the work of the Implementation Committee will be extended to cover the whole country and that the next report will contain information on the progress made in this regard.
- (c) The Committee hopes that the pamphlet which has been in preparation since last year will be finalized soon, with the advice of the Liaison Office, and that a copy will be provided with the next report.

(d) The Committee trusts that measures will be taken to ensure the distribution and display of the translations in the ethnic areas, which are those where the prevalence of forced labour practices appear to be the highest.

20. *Budgeting of adequate means.* In its recommendations, the Commission of Inquiry had drawn attention to the need to make adequate budgetary provisions to hire free wage labour for the public activities which are today based on forced and unpaid labour. In its report, the High-Level Team stated that it had received no information allowing it to conclude that the authorities had indeed provided for any real substitute for the cost-free forced labour imposed to support the military or public works projects. In its two previous observations, the Committee has pursued the matter and sought to obtain concrete evidence that adequate budgetary provisions exist to hire voluntary paid labour.

21. In its reply of 30 May 2003, the Government reiterates its previous statements that there is always a budget allotment for each and every project, with allocations which include the cost of material and labour. This has been the case for each project carried out by the Department for the Development of Border Areas. In addition, the Department under the Yangon City Development Committee, the Ministry of Construction and the Ministry of Home Affairs have issued instructions “to strictly follow the rules concerning the hiring of labour, forbidding any form of forced labour as regards the provisions for labour costs”.

22. The Committee takes note of this statement. However, as the information available on actual practice shows that forced labour continues to be imposed in many parts of the country, in particular in those areas with a heavy presence of the army, the Committee can only conclude that the budgetary allocations that may exist are not adequate to make recourse to forced labour unnecessary unless the use of these allocations is not adequately controlled. In this regard, it draws attention to the Liaison Officer’s comment in her first report to the March 2003 session of the Governing Body that the dissemination of Order No. 1/99 and its supplementary order has not been sufficient to have a significant impact on the practice, as it has not been accompanied by other measures, such as providing alternative means to those currently imposing forced labour to carry out the tasks which is their responsibility to perform. The Committee reiterates the hope that adequate budgetary provisions will be made for the civilian and for the military authorities to allow them to carry out their tasks without using forced labour and that the next report will indicate the measures taken in this regard.

23. *Monitoring machinery.* The Committee takes note of the information supplied by the Government and the reports of the Liaison Officer on the activities carried out by the Convention No. 29 Implementation Committee in monitoring the forced labour situation and making the public aware of the orders prohibiting forced labour. Between December 2002 and November 2003, the Implementation Committee held three meetings with the Liaison Officer, in which a number of allegations of forced labour transmitted by the Liaison Officer were discussed. In these meetings, the newly appointed representative of the Ministry of Defence participated, which allowed certain issues concerning the use of forced labour by the army to be discussed. The Field Observation Teams of the Implementation Committee undertook frequent field trips in the country, to investigate allegations of forced labour and disseminate knowledge about the orders and reports on their findings were made to the Implementation Committee. In addition, the Liaison Officer received several written communications from the Implementation Committee, reporting on findings of the Field Observation Teams on the allegations transmitted by the Liaison Officer.

24. The Committee welcomes the dialogue which has developed between the Implementation Committee and the Liaison Officer. It notes however that all the investigations carried out by the authorities, including the FOTs, on allegations of forced labour have concluded that these allegations were unfounded. In this regard, it notes that as part of her proposals to the Government on a Joint Plan of Action, the Liaison Officer had made specific suggestions for a reformed system of inspection, which were not retained by the Government. The Committee also notes that following a request by the Liaison Officer, the Government agreed to let her accompany Field Observation Team on a field trip to Kachin State, in order to observe its methods of work. The Liaison Officer’s observation, as reported in her second report to the November 2003 session of the Governing Body, was that “the manner in which the team conducted its work, while appropriate for information dissemination, was not well suited to investigating allegations and that it would be difficult, if not impossible, to determine the veracity of allegations in such a manner”. The Committee trusts that the Government will take steps to develop a fair and more effective procedure for investigating allegations of forced labour, in particular those involving the army, and that it will continue its dialogue with the Liaison Officer in this regard.

B. Information available on actual practice

25. During its visit to Myanmar in October 2001, the High-Level Team had found that “although the orders prohibiting forced labour had been widely, if unevenly, distributed, the impact on the practice of forced labour was limited and there had been only a very moderate positive evolution since the Commission of Inquiry. The situation remained particularly serious in places with a large military presence, especially in border areas”.

26. In its 2001 and 2002 observations, the Committee noted two communications of the ICFTU which contained a large number of allegations, many of them referring to the continued use by the military authorities of Burma of forced labour on a massive scale. In support of its claims, the ICFTU enclosed a large number of reports and other documents, totalling hundreds of pages, which often included interviews and precise indications of times, places, military battalions or companies involved, and the names of the commanders. The Committee had hoped that the Government would examine the allegations made by the ICFTU and supply detailed information on any action taken to prosecute all persons found responsible for ordering forced labour. The Committee notes that with the exception of two allegations, which were

raised by the Liaison Officer in the Convention No. 29 Implementation Committee, the Government has provided no information in reply to the communications of the ICFTU. On the two allegations, which concerned the death of trade unionist U Saw Mya Than, while forced to work as a porter for the army, and the use of forced labour by TotalFinElf to build a highway between Kanbauk and Maung Ma Gan, the Government's answers were that in both cases, no forced labour had been used and the allegations were aimed at tarnishing the image of the Government.

27. In her first report presented to the Governing Body in March 2003, the Liaison Officer stated her impression that "while there is probably less use of forced labour in central parts of Myanmar, the situation in areas near the Thai border where there is continuing insecurity and a heavy presence of the army, as well as in Northern Rakhine State, is particularly serious and appears to have changed little (since the HLT mission)". This impression is reiterated in her first report to the November 2003 session of the Governing Body, in which she states:

The *Liaison Officer* continues to receive credible reports of forced labour from various sources inside and outside the country, and fresh allegations have come to light during the recent trips to various parts of the country. The *Liaison Officer* continues to be concerned by the question of forced recruitment into the armed forces, including of children, on which no detailed response has been received from the authorities. Another matter which has come to the attention of the *Liaison Officer* is the current widespread and apparently systematic programme of military training for civilians, affecting very large numbers of people across the country since May. Trainees include government employees (for example, teachers), as well as local villagers and townspeople, who are required to participate in this training and in some cases also have to cover the cost of materials (such as bamboo sticks).

28. Regarding the forced recruitment of children into the army, the Committee has noted the answer provided by the representative of the Ministry of Defence in the Implementation Committee and repeated in his letter to the Liaison Officer, that the armed forces only recruit in accordance with the laws and regulations in force and since the Defence Services Act, 1959, provides that only those between the ages of 18 and 25 may be recruited voluntarily, there is no forced recruitment into the armed forces, and no young persons have been found to be recruited into the armed forces. The Committee requests the government to provide information on any investigation that may have been undertaken to ascertain that in practice no person under 18 is recruited into the armed forces. In view of the seriousness of the issue, the Committee hopes that the Government, with the assistance of the ILO, will make every effort to make a thorough assessment of the extent of this practice and will take necessary action to put an end to it.

29. Regarding the programmes of compulsory military training, the Committee notes from the letter of the representative of the Ministry of Defence to the Liaison Officer that "they are done as mentioned in the previous Constitutions saying that ... the State may in a particular part of the country or all over the country conduct military trainings"; "every citizen shall in accordance with law: (a) undergo military training; and (b) undertake military service for the defence of the State"; and "the basic trainings (are) conducted so as to protect the State from all forms of destructive elements". The Committee observes that the previous Constitutions are no longer in force; that in any event the obligation that they impose on citizens to undergo military training or service is "in accordance with the law"; and that the Defence Services Act, 1959, only provides for voluntary, and not compulsory, recruitment. It would appear therefore that the programmes of compulsory military training have no legal basis and constitute a form of forced or compulsory labour under the Convention. The Committee hopes that the Government will put an end to these programmes and that in its next report it will indicate the measures taken in this regard.

Current information

30. In a letter dated 19 November 2003, the ICFTU transmits information on actual practice coming from various sources and covering many parts of the country (Chin, Kayah, Kayin, Mon, Rakhine and Shan States and Ayeyarwady, Magway, Sagaing and Taninthayi Divisions) over the period September 2002 to October 2003. The ICFTU states that this information "ranges from extortion of money and goods in exchange for exemption from forced labour to violent death during forced portering and serving as 'human minesweepers' for the armed forces". The documents appended to the ICFTU letter include:

- An August 2003 report by the Karen Human Rights Group containing translations of some 200 orders mostly from the Myanmar army to villages, requisitioning labour for various tasks as well as materials. There are also translations of more than 100 orders summoning village heads to meetings with the army, at which it is alleged that verbal demands for forced labour were made.
- Documents from the Federation of Trade Unions of Burma (FTUB) containing 17 similar orders from the army to villagers requisitioning labour or materials.
- Three reports from Forum Asia dated 2 December 2002, 29 May 2003 and 31 August 2003 which include numerous allegations of forced labour in Northern Rakhine State, in particular affecting the Muslim population.
- Documents from the FTUB containing details of interviews with 73 villagers who allege they were requisitioned for forced labour. In addition, the documents contain details of interviews with a number of prisoners who had escaped after allegedly being sent to work as porters for the army.
- A document dated February 2003 from the Pa'An Agriculture Workers Union concerning forced labour allegedly requisitioned from 12 villages for a road project in Kayin State.

The Committee requests the Government to examine the allegations of the ICFTU and the documents attached thereto and to supply detailed information on its investigations and any action taken thereupon to prosecute persons found responsible for ordering forced labour.

31. In summary, on the basis of the information at its disposal on actual practice, the Committee must conclude that while there may have been some decrease in forced labour since the report of the Commission of Inquiry in 1998, in particular for civil infrastructure work, forced labour continues to be exacted in many parts of the country. The situation is particularly serious in the border areas which are mostly inhabited by ethnic nationalities and where there is a heavy presence of the army. This clearly shows that in spite of the commitment to the elimination of forced labour expressed repeatedly by the Government the measures taken until now have not been sufficient to bring about rapid and significant progress, in particular as concerns the army.

III. Enforcement

32. In its report, the Commission of Inquiry urged the Government to take the necessary steps to ensure that the penalties which may be imposed under section 374 of the Penal Code for the exaction of forced labour or compulsory labour be strictly enforced, in conformity with *Article 25 of the Convention*. This, in the Commission's view, required thorough investigation, prosecution and adequate punishment of those found guilty.

33. The Committee notes, from the information provided by the Government, that although the Order supplementing Order No. 1/99 and the Directive dated 1 November 2000 from the Secretary 1 of the State Peace and Development Council provide for the prosecution under section 374 of the Penal Code of persons responsible for violating the prohibition on forced labour contained in Order No. 1/99, as of November 2003, no sanction has ever been imposed under section 374 of the Penal Code. Similarly, no complaint concerning the imposition of forced labour has been received until now, although procedures exist for such complaints to be filed, inter alia, at a police station in a court of law or at the Office of the Attorney-General.

34. The Committee is of the opinion that the lack of complaints and prosecutions under section 374 of the Penal Code cannot be taken as indicating that there is no forced labour. Rather, it casts doubt on the credibility of the existing complaint and investigation mechanism and on the real commitment of the Government to completely eliminate forced labour.

35. The Committee recalls that in order to overcome the feeling of fear and the lack of trust in the system of redress which in its view was the reason for the lack of complaints and prosecutions, the High-Level Team had suggested the appointment of an ombudsman, to whom complaints regarding forced labour could be submitted and who would have a mandate and the necessary means to conduct direct investigations without fear or favour and with the required confidence of all parties concerned.

36. The Committee notes with interest that in the Joint Plan of Action agreed on 27 May 2003 between the Government and the ILO, the Government accepted the establishment of an independent Facilitator to receive complaints of forced labour and assist victims in obtaining redress under the national legislation. Under the Formal Understanding on the Facilitator, the Facilitator shall perform his/her functions in strict confidentiality and have free access to the complainant and witnesses and no measures of any kind shall be taken by the authorities against the complainants and witnesses. When seized with a prima facie case of subjection to forced labour, the Facilitator may seek an informal solution with the authority concerned, or transmit the complaint to the competent authority to initiate legal proceedings and take necessary action, and he/she shall be informed of the decisions reached. The Facilitator and his/her assistance and support shall be extended the facilities, assistance, protection and status necessary to carry out their function effectively and in full independence and impartiality. The services of the Facilitator will be available in the whole country and will be tested in the pilot region established in the Plan of Action.

37. The Committee considers that, if applied in good faith, the Formal Understanding on the Facilitator could be an important tool in assisting victims of forced labour to make complaints and obtain redress, and result in the prosecution and punishment of persons responsible for imposing forced labour. As indicated below, the Committee hopes that the Government will take the necessary steps to make it possible for the Understanding to be implemented as soon as possible.

IV. Joint Plan of Action

38. Following the appointment of an ILO Liaison Officer in Yangon, the Director-General had suggested to the Minister for Labour the development of a plan of action capable of making a concrete and verifiable impact towards the complete elimination of forced labour. The Committee notes with interest that, as a result of the discussions which took place over the last year between the Liaison Officer and the authorities in Yangon and between representatives of the Director-General and representatives of the Government in Geneva, a Joint Plan of Action for the Elimination of Forced Labour Practices in Myanmar was agreed on 27 May 2003. The Plan consists of a plan of action proposed by the Government, with a number of work programmes covering, inter alia, dissemination of information and awareness-raising programmes on the prohibition of forced labour, the expansion of animal transportation as an alternative to the use of porters, and the work of Field Observation Teams; a Formal Understanding on the Facilitator, described in paragraph 36 above, and a Formal Understanding on a pilot region. The pilot region is a region where the prohibition of forced labour

will be strictly enforced and where a number of activities, including a local road construction project, will be implemented with the technical assistance and support of the ILO. The designated region is the Myeik District, consisting of four townships in the Tanintharyi Division in the south of the country.

39. The Joint Plan of Action was discussed at the 91st Session of the International Labour Conference during the special sitting on Myanmar of the Committee on the Application of Standards (hereinafter called "Special Sitting"). On this occasion, a Government representative stated that the Joint Plan of Action was a breakthrough, a landmark agreement which was the outcome of a long process of continuous and intensive negotiations and recalled his Government's determination and commitment to resolving the issue of forced labour and to implement it. The Conference Committee welcomed the Plan of Action as follows:

The Committee welcomed the fact that the Government and the ILO has agreed on 27 May 2003 on a Joint Plan of Action for the elimination of forced labour and expressed its support for this Plan. It also noted with interest that, on the basis of the suggestion made by the HLT, the Plan envisaged the designation of an independent Facilitator to assist victims of forced labour to obtain redress under national legislation. It was noted that the Facilitator would carry out his function throughout the country. Under the Plan of Action, the Government had undertaken to strictly enforce the prohibition on forced labour in the pilot region. While emphasizing that the implementation of the Plan of Action was without prejudice to the general obligation of the Government to put an end to forced labour in the whole of the country, the Committee felt that this Plan of Action, if it was applied in good faith, could enable tangible progress to be made in the elimination of forced labour and could open the way to more substantial progress. The Committee urged the Government to take all the measures required for this purpose.

40. At the same time, the Conference Committee noted in the Special Sitting that its debate was taking place at a moment when the climate of uncertainty and fear prevailing in the country as a result of recent events called seriously into question the will and ability of the authorities to make significant progress in the elimination of forced labour. The Committee expressed the view that:

... a climate of uncertainty and intimidation did not provide an environment in which the Plan of Action, and in particular the facilitator mechanism which it established, could be implemented in a credible manner. The Committee trusted that the Government would take the necessary measures to bring an end to this situation. The Committee hoped that the implementation of the Plan of Action would go ahead as soon as the Director General considered the conditions were met for its effective implementation.

41. The Committee shares the concern of the Conference Committee that a climate of fear and intimidation is not an environment where the Joint Plan of Action, and in particular the Understanding on the Facilitator, can be implemented in a credible manner. Taking note of the assurances given by the Minister for Labour in his meeting of 14 November 2003 with the Liaison Officer, as well as those contained in the statement of the representative of the Government at the November 2003 session of the Governing Body, that the Government is firmly committed to the Joint Plan of Action and is ready to go ahead with its implementation, the Committee trusts that the Government will shortly take the necessary steps to restore a climate which will make it possible for the Plan of Action to be implemented in an effective and credible manner.

42. To summarize, in the last three years, the Government, at the highest levels, has given repeated assurances of its intention to put an end to the widespread violations of the Convention which had been noted by the Commission of Inquiry in its report. As noted in the Committee's observation, a number of steps have been taken in this direction, in particular, orders have been issued to prohibit the use of forced labour. These orders have been translated into six ethnic languages and measures have been taken to make them known to public officials and the general public. A mechanism has been established to promote the observance of the orders and to disseminate awareness of them. An intensive dialogue has developed between the ILO and the authorities, which has resulted in the establishment of a presence in the country in the form of an ILO Liaison Officer.

43. The Committee is bound to observe that the three main recommendations of the Commission of Inquiry are still to be implemented. In spite of the Government's assurances of its good intentions, the measures taken until now have not brought about significant progress in actual practice. Forced labour continues to be exacted in many parts of the country, mainly by the army. No person responsible for imposing forced labour has ever been prosecuted or sentenced under the relevant provision of the Penal Code.

44. In view of the slowness of the progress, it could be hoped that the process of dialogue and cooperation which has developed between the ILO and the Government can offer a real chance of bringing about more rapid and concrete results. The Committee considers that the Joint Plan of Action agreed in May 2003 offers an opportunity for the Government, with the technical assistance of the ILO and the financial support of the international community, to move from procedural steps to substantive progress and to dispel the doubts that the current reality may cast about the seriousness of its commitment. The Committee can only express the hope that the Government will do its utmost to ensure the continuation of this process of dialogue and cooperation and will take all the necessary steps in the very near future to make it possible for the Joint Plan of Action to be implemented.

45. The Committee reminds the Government that in any event the obligation under the Convention to suppress the use of all forms of forced or compulsory labour remains its responsibility.

[The Government is asked to supply full particulars to the Conference at its 92nd Session.]

Niger

Convention No. 29: Forced Labour, 1930 (ratification: 1961)

1. The Committee notes the comments on the application of the Convention provided by the International Confederation of Free Trade Unions (ICFTU) on 20 August 2003 and forwarded to the Government on 26 September 2003. According to these comments, prepared by the ICFTU in collaboration with Anti-Slavery International, conditions of slavery continue to be transmitted by birth to individuals from certain ethnic groups. They are compelled to work for their master without receiving a wage, principally as shepherds, agricultural workers or domestic workers. The trade union bases its comments on a study carried out by the national association Timidria in 2002 and 2003 in six regions of Niger, covering 11,001 persons identified by the association as originating from a “slave caste”. These persons generally worked directly for their master in exchange for food and a place to sleep. Certain of the persons questioned indicated that they worked for others and gave the money that they earned to their master. With reference to the definition of slavery set forth in the Slavery Convention of 1926, the great majority of the 11,001 persons questioned are in practice slaves in so far as they identify a person as being their master and the latter makes them work without paying them.

In its reply, the Government recognizes that, although the phenomenon of slavery has not been totally eradicated, its extent as indicated by the ICFTU is fairly exaggerated. It indicates that its attention has been drawn to situations of the persistence of slave-like practices in several areas of the country and that a number of measures have been taken with a view to resolving the situation. At the legal level, in accordance with article 12 of the Constitution, no one shall be subject to slavery. Furthermore, Act No. 2003-025 of 13 June 2003 amended the Penal Code by adding a section on slavery. With regard to the action taken with a view to the effective eradication of slavery and slave-like practices, the Government indicates that a forum on forced labour was held in Niamey in November 2001 with the support of the International Labour Office. The objective of this forum was to raise the awareness of traditional chiefs about this problem and to mobilize them, and these highly respected traditional authorities committed themselves to combating the phenomenon alongside the public authorities. In addition, with the assistance of the project to support the implementation of the ILO Declaration on Fundamental Principles and Rights at Work (PAMODEC), training and awareness-raising activities have been undertaken for several social categories. The Government indicates in this respect that a network of experts on international labour standards has been established to intensify information and awareness-raising activities on fundamental principles and rights at work.

The Committee notes all of this information. It notes that the Government has taken many measures to combat the forced labour of persons reduced to slavery. It notes with particular interest that, following the adoption of Act No. 2003-025 of 13 June 2003, the Penal Code now classifies slavery as a criminal offence and punishes the imposition of slavery on other persons with a sentence of imprisonment of between ten and 30 years and a fine. The Committee requests the Government to provide information on the application of these new provisions in practice and particularly on the number of persons who have been charged, found guilty and punished for having exacted forced labour from persons reduced to slavery. It recalls in this respect that, in accordance with *Article 25 of the Convention*, the Government is under the obligation to ensure that the penalties imposed by law are really adequate and are strictly enforced.

In addition, the Committee notes the study conducted in August 2001 under the auspices of the ILO on the identification of obstacles to the implementation of fundamental principles and rights at work and proposed solutions in Niger. According to this study, there exists in Niger an archaic form of slavery which is found in nomadic communities. The slave is placed at the disposal of the master without charge or in exchange for payment. The relations between master and slave are based on direct exploitation. The Committee notes that this study was discussed and was adopted and validated by the Government and the social partners. On that occasion, a number of proposals for action to combat forced labour exacted in the context of slave-like practices were made, such as:

- the re-enforcement of the legal measures available;
- the organization of information, awareness-raising and education activities for the population on its rights and duties;
- the development of the conditions for access to sustainable means of subsistence through freely chosen employment;
- conducting a national survey to identify forms of slavery, estimate the number of victims and perpetrators and identify the areas affected.

While noting the measures already taken by the Government with a view to strengthening the legal measures and organizing information and awareness-raising activities, the Committee would be grateful if the Government would provide information on the measures adopted to estimate the extent of the phenomenon of slavery in Niger and on the programmes and measures specifically adopted for former slaves or descendants of slaves to prevent them from falling back into slavery as a result of lack of means of subsistence.

2. *Forced labour of children in mines.* In its previous observation, the Committee noted the study undertaken by the ILO in 1999 on child labour in small-scale mining in Niger. This study covers four types of small-scale mining, namely: natron mining in Birini N’Gaouré (Department of Dosso); salt mining in Gaya (Department of Dosso); gold mining in Torodi and Téra (Department of Tillabéry); and gypsum mining in Madaoua (Department of Tahoua).

According to the survey, child labour is extremely widespread in Niger, particularly in the informal sector. The work performed in small-scale artisanal mining enterprises is one of the most dangerous types of activity in the informal sector in Niger. This branch employs several hundred thousand workers with, according to the estimates in the study, a proportion of 47.5 per cent of children in small mines, with this figure rising to 57 per cent in small mines and quarries taken together. In all the above enterprises, the study shows that the working conditions of children are extremely difficult (gold washing being one of the most arduous and hazardous activities). From the age of 8 years, children carry out physically arduous and hazardous work, in most cases every day of the week for a working day of eight or more hours. The work in these concerns involves substantial risks of accidents and diseases and severely prejudices the health of the children. The study notes the absence of modern mining safety techniques on the sites visited and of health infrastructures in the vicinity. In view of the extremely precarious economic situation of the families, the children do not attend school and are often forced to work by their parents.

The Committee recalls that all work performed by children cannot necessarily be classified as forced labour. It is nevertheless indispensable, to determine whether this is a situation covered by the Convention, to examine the conditions under which the work is performed in the light of the definition of forced labour set forth in the Convention, particularly with regard to the validity of the consent given to perform the work and the possibility of leaving it. The Committee considers that neither the children concerned nor the persons exercising parental authority over them can give their valid consent for work in mines, particularly since, as the Committee has already noted, the minimum age for admission to work in Niger is 14 years in general and 18 years in the mining sector, in accordance with the Minimum Age Convention, 1973 (No. 138).

The Committee notes that in its report the Government provides copies of two texts: Order No. 051/MME/DM of 30 May 2003, establishing a technical committee to consider the formulation of proposals to optimize artisanal mining and develop small-scale mines; and Order No. 03/MME/DM establishing procedures for the supervision and control by the administration of gold-washing sites. However, it regrets that since 2001 the Government has not provided any information on the situation of children in mining enterprises. The Committee once again requests the Government to provide information on the working conditions of these children, and on any measure adopted or envisaged to protect them against forced labour.

3. *Forced labour of children and begging.* In its previous comments, the Committee referred to the report of the Working Group on Contemporary Forms of Slavery according to which children are forced to beg in West Africa, including Niger. According to paragraph 73 of this report, for economic and religious reasons many families entrust their children as soon as they are 5 or 6 years of age to the care of a spiritual leader (*marabout*) with whom they live until the age of 15 or 16 years. During this period, the spiritual leader has absolute control over the children. He is responsible for their religious education and in return forces them to perform various tasks, including begging.

The Committee also notes that, in June 2003, in its concluding observations concerning Niger the Committee on the Rights of the Child expressed its concern at the number of children that are begging in the streets. Some of these are pupils under the guardianship of Islamic religious education teachers. The Committee on the Rights of the Child expressed concern at their vulnerability to all forms of exploitation (CRC/C/15/Add.179, paragraphs 66 and 67).

The Committee considers that these children are in a relationship resembling that of a slave to a master, that is lacking freedom to control their own lives and that, as a result of this relationship, they perform work for which they have not offered themselves voluntarily. It once again requests the Government to provide information on the measures taken to protect these children against this form of forced labour. Noting that the study carried out in 2001 under the auspices of the ILO, referred to above, also contains proposals for measures to eliminate begging by these children, the Committee requests the Government to provide information on the measures taken to ensure that effect is given to these proposals.

The Committee recalls in this respect that, while the Labour Code (Ordinance No. 96-039) absolutely prohibits forced labour and establishes the corresponding penalties (sections 4 and 333), it only applies to relations between employers and workers (sections 1 and 2). The Committee has already requested the Government to take measures to extend the prohibition of forced labour to all working relations, including those existing between children and spiritual guides. The Committee hopes that the Government will make every effort to take the necessary measures for this purpose in the very near future.

In conclusion, the Committee acknowledges that the Government has taken steps to combat both slavery and the practices of forced child labour throughout the country. In view of the seriousness and widespread nature of the problems, the Committee urges the Government to give special and urgent attention to implementing effective means to eradicate these practices.

Nigeria

Convention No. 105: Abolition of Forced Labour, 1957 (ratification: 1960)

The Committee notes the information provided by the Government in reply to its earlier comments.

Article 1(a) of the Convention. 1. In its earlier comments, the Committee referred to the Public Order Decree No. 5 of 1979, as amended, which contained provisions under which public assemblies, meetings and processions on public

roads or places of public resort must be previously authorized and may be subject to certain restrictions (sections 1 to 4), offences being punishable with imprisonment (sections 3(c) and 4(5)). The Government indicates in its report that the above Decree has been replaced with the Public Order Act, Cap. 382, Laws of the Federation of Nigeria, 1990, and that in view of enforcement, the Act is implemented more on prevention of crimes related to public processions on public roads than on sanctions and punishment of offenders. The Committee hopes that the Government will supply a copy of the Public Order Act, Cap. 382, as well as information on its application in practice, including information on convictions for violation of its provisions and on penalties imposed, and supplying copies of relevant court decisions.

2. The Committee previously referred to the Nigerian Press Council (Amendment) Decree No. 60 of 1999, which imposed certain restrictions on journalists' activities enforceable with penalties of imprisonment for a term of up to three years. It notes the Government's indication in the report that, since the adoption of the Nigerian Press Council Decree No. 85 of 1992, no journalist has ever been tried or convicted for any offence under it. The Committee also notes that the above enactments have been amended by the Nigerian Press Council (Amendment) Act, 2002; however, it notes that this Act contains provisions imposing similar restrictions on journalists' activities, offences being punishable with imprisonment (section 19(1) and (5)(a)). The Committee hopes that measures will be taken to repeal or amend these provisions in order to bring the legislation into conformity with the Convention on this point. Pending the amendment, the Government is requested to provide information on practical application of these provisions indicating, in particular, any recent convictions under the above Act, as well as penalties imposed, and supplying copies of relevant court decisions.

3. The Committee notes the National Action Plan for the Promotion and Protection of Human Rights in Nigeria, 2002. It also notes the Government's indication that the Human Rights Violations Investigation Panel, established in 1999, has concluded its assignment and forwarded the report to the federal Government, which will release a white paper on it. The Committee would be grateful if the Government would supply copies of the Panel's report and the white paper, as soon as it is released.

Article 1(c) and (d). In its earlier comments the Committee referred to the following provisions:

- section 81(1)(b) and (c) of the Labour Decree, 1974, under which a court may direct fulfilment of a contract of employment and posting of security for the due performance of so much of the contract as remains unperformed, and a person failing to comply with such direction may be committed to prison;
- section 117(b), (c) and (e) of the Merchant Shipping Act, under which seamen are liable to imprisonment involving an obligation to work for breaches of labour discipline even in the absence of a danger to the safety of the ship or of persons;
- section 13(1) and (2) of the Trade Disputes Decree No. 7 of 1976 (now section 17(2)(a) of the Trade Disputes Act, Cap. 432, of 1990), under which participation in strikes may be punished with imprisonment involving an obligation to work in certain cases.

The Committee previously noted the Government's indications that all these provisions were under consideration by the National Labour Advisory Council, and that, in particular, section 17(2) (a) of the Trade Disputes Act, Cap. 432, of 1990, would be tabled for amendment during the review exercise. The Government reiterates in its latest report that the National Labour Advisory Council Subcommittee on the Review of Labour Laws is still compiling the proposed areas of amendments. The Committee expresses firm hope that the necessary action to amend the legislative provisions referred to above, in order to ensure the observance of the Convention, will be taken in the near future, and that the Government will indicate, in its next report, the progress achieved in this regard.

Pakistan

Convention No. 29: Forced Labour, 1930 (ratification: 1957)

1. The Committee has noted the Government's report. It has also noted two communications received in September and November 2002 from the International Confederation of Free Trade Unions (ICFTU) and the All Pakistan Federation of Trade Unions (APFTU) respectively, which contain observations concerning the application of the Convention by Pakistan. The Committee has noted that these communications were sent to the Government in October and December 2002 for any comments it might wish to make on the matters raised therein. It hopes that the Government's comments will be supplied in its next report, so as to enable the Committee to examine them at its next session.

Debt bondage

2. In its earlier comments, the Committee noted the difficulties in the implementation of the Bonded Labour System (Abolition) Act (BLSA), 1992. It referred to the allegations contained in the earlier communications by the ICFTU received in 2001, according to which bonded labour, though prohibited by law, is widespread in practice. The ICFTU referred to an estimate of the International Programme on the Elimination of Child Labour (IPEC) of the ILO that there are several million bonded labourers in Pakistan, a large percentage of whom are children. The Committee also noted the indications by the ICFTU that debt slavery and bonded labour, of adults as well as children, remain most often reported in agriculture, construction in rural areas, brick kilns, and in carpet making. Estimates of the total number of forced labourers vary widely, but it is not disputed that, in many parts of Pakistan, the practice of debt slavery and bonded

labour is still very prevalent, and has a long history. The ICFTU expressed the view that the BLSA prohibits bonded labour, but remains ineffective at addressing the problem in practice. This view has been confirmed in the latest communication by the ICFTU received in 2002 and has also been shared by the APFTU in its communication of 2002 referred to above.

3. The Committee has noted a reference contained in the ICFTU communications of 2001 and 2002 to research by the Pakistan Institute for Labour Education and Research (PILER), a non-governmental organization, which estimated the number of sharecroppers in debt bondage in the year 2000, across the whole of the country, to be over 1.8 million people. The research estimated the upper limit of people in this form of bondage – using the broad definition of “the imposition of unpaid or nominally paid compulsory labour for the landlord on his farm or house (*begar*) regardless of the size of the debt” – to be 6.8 million people across Pakistan in the year 2000. The ICFTU alleges that the role of identifying and attempting to release bonded labourers has not been fulfilled either by vigilance committees or district magistrates, even though these are the institutions required by law to perform such a role.

4. The Committee has noted from the Government’s report that the National Policy and Plan of Action for the Abolition of Bonded Labour and Rehabilitation of Freed Bonded Labourers was approved by the Federal Cabinet in September 2001, and asks the Government to supply a copy, as well as information on its application in practice. The Committee has also noted the Government’s brief indications concerning routine inspections conducted by the Directorate of Labour, assisted by tripartite advisory committees, to ascertain the factual position of child/bonded labour, as well as information on the composition and functions of district vigilance committees which have been constituted to monitor the working under the above National Policy and Plan of Action. Referring to the allegations by the ICFTU that vigilance committees, though nominally established in the mid-1990s, but actually non-existent, the Committee hopes that the Government will provide clarification of this issue and describe measures taken or envisaged to ensure that vigilance committees are functioning effectively.

5. While noting the Government’s statement in the report that the BLSA is difficult to implement because of the identification of bonded labourers, the Committee points out that accurate data are a vital step in both the development of the most effective systems to combat bonded labour and providing a true base for the assessment of effectiveness of those systems. The Committee therefore hopes that the Government will undertake a statistical survey on bonded labour throughout the country, using a valid methodology in cooperation with employers’ and workers’ organizations and with human rights organizations and institutions, and will supply information on the progress achieved in this connection. Noting also the Government’s view expressed in the report that there are in-built deficiencies in labour laws to deal with labour engaged in the agriculture sector, the Committee hopes that the Government will supply further information on the issue, as well as information on measures taken or envisaged to remedy the situation, in the context of the eradication of bonded labour in agriculture.

Specific agreements aimed at eradicating bonded child labour

6. In its earlier comments, the Committee asked the Government to provide information on progress on the implementation of the agreement between the International Programme on the Elimination of Child Labour (IPEC) of the ILO and the Pakistan Carpet Manufacturers’ and Exporters’ Association (PCMEA), and the agreement signed by the Government in 1997 with the European Commission and the ILO to take measures aimed at the eradication of bonded child labour. The Committee expressed its concern about the Government’s inaction in collecting reliable statistics on the numbers of bonded child labourers.

7. While noting the Government’s brief indications in the report concerning measures taken under the Employment of Children Act, such as the number of inspections made, the number of prosecutions, cases decided and fines imposed, the Committee again requests the Government to provide information on the progress in the implementation of the above agreements and on the practical results achieved, and also to provide a comprehensive report containing valid statistical data on the numbers of bonded child labourers. In its report received in 2000 the Government indicated that an establishment-based survey would soon be carried out through the Federal Bureau of Statistics to measure the incidence of child labour in hazardous occupations. The Committee hopes that the Government will supply information on and results from this survey, particularly as to the incidence of bonded labour.

Trafficking in persons

8. The Committee previously noted the allegations of the ICFTU, according to which trafficking in persons is a serious problem in Pakistan, including the trafficking of children. The ICFTU alleged that, according to some reports, more than 100 women were trafficked into Pakistan from Bangladesh each day, and sold for the purposes of prostitution or other forms of forced labour. According to these allegations, women also reportedly arrive from Myanmar, Afghanistan, Sri Lanka and India, many eventually to be bought and sold in shops and brothels in Karachi. There are estimated to be several hundred thousand such trafficked women in Pakistan, with some reports suggesting that the total number is as many as 1.2 million. The ICFTU also indicated that estimates of the number of child prostitutes in Pakistan vary, but most suggest around 40,000.

9. The Committee also noted the indications of the ICFTU that there were reports of several hundred boys from Pakistan having been abducted and sent to the Persian Gulf States to work as camel jockeys. According to these allegations, child slavery and trafficking in children within Pakistan is a major problem, and kidnapping of children

occurs, either for ransom, revenge against the child's family or simply for purposes of slavery. In some rural areas, children are sold into debt bondage in exchange for money or land.

10. The Committee requests the Government to respond to the allegations made in the communications by the ICFTU in its next report.

Restrictions on voluntary termination of employment

11. In its earlier comments, the Committee referred to the information supplied by the Government representative to the Conference Committee in June 1999, according to which an amendment of the Essential Services (Maintenance) Act, under which government employees who unilaterally terminate their employment without consent from the employer are subject to a term of imprisonment, was to be considered by the tripartite Commission on the Consolidation, Simplification and Rationalization of Labour Laws. The Government indicated in its report of 2000 that the Commission's final report was expected at the end of September 2000. As the Government's latest report contains no new information on this subject, the Committee again requests the Government to supply a copy of this report and expresses firm hope that the Government will take the necessary steps to bring the federal and provincial Essential Services (Maintenance) Acts into conformity with the Convention and will report the progress achieved in this regard.

12. The Committee also repeats its request for copies of the full texts of the following Ordinances enacted in 2000: the Removal from Service (Special Powers) Ordinance, No. XVII of 27 May 2000; the Civil Servants (Amendment) Ordinance, No. XX of 1 June 2000; and the Compulsory Service in the Armed Forces (Amendment) Ordinance, No. LXIII of 6 December 2000.

Article 25 of the Convention

13. The Committee previously noted the allegations of the ICFTU, contained in its communications of 2001, according to which the Bonded Labour System (Abolition) Act of 1992 had not been applied in practice, as few officials were willing to implement it for fear of incurring the wrath of the landlords, thus allowing them to use forced labour with impunity. The Committee requested information on the number of inspections and of prosecutions and convictions of offenders under the Employment of Children Act 1991, the Employment of Children Rules 1995, the Bonded Labour System (Abolition) Act 1992, and the Bonded Labour System (Abolition) Rules 1995. While noting the data provided by the Government in its report concerning the Employment of Children Act, the Committee again requests the Government to provide information from each of the provinces and on each of the relevant laws. It also hopes that, more generally, the Government will provide information on the enforcement of laws aimed at punishing the exaction of forced or compulsory labour (such as section 374 of the Penal Code), and on measures it has taken to ensure that penal sanctions applied are really adequate and are strictly enforced, as required by the Convention.

Convention No. 105: Abolition of Forced Labour, 1957 (ratification: 1960)

The Committee notes that no report has been received from the Government. It hopes that a report will be supplied for examination by the Committee at its next session and that it will contain full information on the observations communicated by the All Pakistan Federation of Trade Unions (APFTU) in July 2003 and transmitted to the Government on 5 September 2003, as well as on the following matters raised in its previous observation.

The Committee notes the observations received in September 2001 from the International Confederation of Free Trade Unions (ICFTU) concerning the application of the Convention, which were transmitted to the Government in October 2001 for such comments as might be considered appropriate. The Committee hopes that the Government will refer to these observations in its next report.

Article 1(c) and (d) of the Convention

1. In its earlier comments made under the present Convention and the Forced Labour Convention, 1930 (No. 29), the Committee noted that the Pakistan Essential Services (Maintenance) Act, 1952, and corresponding provincial Acts, prohibit employees from leaving their employment, even by giving notice, without the consent of the employer, as well as from striking, subject to penalties of imprisonment that may involve compulsory labour.

2. The Committee previously noted the comments made under the Convention in July 1999 by the All Pakistan Federation of Trade Unions (APFTU), in which it stated that the provisions of the Essential Services Act apply, inter alia, to workers employed in various public utilities such as WAPDA, Railway, Telecommunication, Karachi Port Trust, Sui Gas, etc., and these workers cannot resign from their service and cannot go on strike. The Committee also noted from a report by the ILO South Asia Multidisciplinary Advisory Team that the Ghazi Barotha Hydro Power Project (in which the World Bank was providing assistance for the construction of a power complex on the Indus river) had been declared by the Government as an essential service, so that the abovementioned restrictions applied to workers on the project.

3. The Committee has noted the Government's repeated statement in its reports that the application of the 1952 Act has been made very restrictive and it is extended only in cases of extreme nature, when peaceful and uninterrupted supply of goods and services to the general public appears to be disturbed. The Government also indicates that all workers covered by the Act join service without force and the requirement to obey justifiable and lawful orders of the employer does not constitute forced labour. The Committee recalls that, during the discussion in the Conference Committee in 2000, the Government's representative repeated indications previously given to this Committee to the effect that the Act applied to only six categories of establishments (a reduction from an initial list of ten categories) which were considered truly essential to the life of the community. As regards the Ghazi Barotha Hydro Power Project, which had been placed under the Act, the Government's representative assured the Conference Committee that the application of the Act to this project was a temporary measure. The Government's representative also informed the Conference Committee that the observations of the Committee of Experts concerning the Act had been placed before the Tripartite Commission on the Consolidation, Simplification and Rationalization

of Labour Laws, and that the Commission's recommendations would be provided to the ILO and to the social partners when finalized.

4. While noting these indications, and referring also to the explanations provided in paragraphs 110 and 123 of its General Survey of 1979 on the abolition of forced labour, the Committee points out once again that the Convention does not protect persons responsible for breaches of labour discipline or strikes that impair the operation of essential services in the strict sense or in other circumstances where life and health are in danger; however, in such cases there must exist an effective danger, not mere inconvenience. Furthermore, all the workers concerned – whether in any employment under the federal and provincial governments and local authorities or in public utilities, including essential services – must remain free to terminate their employment by reasonable notice; otherwise, a contractual relationship based on the will of the parties is changed into service by compulsion of law, which is incompatible with both the present Convention and the Forced Labour Convention, 1930 (No. 29), likewise ratified by Pakistan. The Committee therefore reiterates firm hope that the Pakistan Essential Services Act and corresponding provincial Acts will be either repealed or amended in the near future so as to ensure the observance of the Convention, and that the Government will report on the action taken to this effect.

5. The Committee previously referred to sections 100 to 103 of the Merchant Shipping Act, under which penalties involving compulsory labour may be imposed in relation to various breaches of labour discipline by seafarers, and seafarers may be forcibly returned on board ship to perform their duties. It noted the Government's indications in its reports received in 1997 and 1999 that the abovementioned sections of the Act had been reintroduced in the Merchant Shipping Bill, with some modifications. The Government indicates in its latest report that the Bill has been converted into Ordinance 2001, which is in the process of enactment. In the Government's view, the new Ordinance fulfils the requirements of the Convention. The Committee trusts that the necessary amendments will at last be adopted, so as to remove the penalties involving compulsory labour from sections 100 and 100(ii), (iii) and (v) of the Merchant Shipping Act (or limit their scope to offences committed in circumstances endangering the safety of the ship or the life, personal safety or health of persons) and to repeal the provisions of sections 101 and 102 of the Act under which seafarers may be forcibly returned on board ship to perform their duties. The Committee asks the Government to provide information on the progress made in this regard.

6. In comments made for many years, the Committee has referred to sections 54 and 55 of the Industrial Relations Ordinance (No. XXIII of 1969) under which whoever commits any breach of any term of any settlement, award or decision or fails to implement any such term may be punished with imprisonment which may involve compulsory labour. The Committee expressed the hope that the necessary measures would be taken to bring the Industrial Relations Ordinance into conformity with the Convention, either by repealing sections 54 and 55 of the Ordinance or by repealing the penalties which may involve compulsory labour, or by limiting their scope to circumstances endangering the life, personal safety or health of the population. During the discussion in the Conference Committee in June 2000, the Government's representative indicated that sections 54 and 55 were placed before the Tripartite Commission on Consolidation, Simplification and Rationalization of Labour Laws. The Committee notes the Government's indication in its latest report that the Commission has finalized its recommendations, on the basis of which the draft labour laws are being prepared. It expresses firm hope that the Industrial Relations Ordinance will be brought into conformity with the Convention, and that the Government will supply full information on the provisions adopted to this end.

Article 1(a) and (e)

7. In comments made for a number of years, the Committee has referred to certain provisions in the Security of Pakistan Act, 1952 (sections 10-13), the West Pakistan Press and Publications Ordinance, 1963 (sections 12, 23, 24, 27, 28, 30, 36, 56, and 59) and the Political Parties Act, 1962 (sections 2 and 7) which give the authorities wide discretionary powers to prohibit the publication of views and to order the dissolution of associations, subject to penalties of imprisonment which may involve compulsory labour.

8. As regards the West Pakistan Press and Publications Ordinance, 1963, the Committee previously noted the Government's indication in its report, as well as the information provided by the Government's representative to the Conference Committee in June 2000, according to which the Ordinance was repealed in 1988, and the Registration of Printing Press and Publication Ordinance was enacted. However, the Government indicated in its previous report that the latter Ordinance was allowed to lapse in 1997, and since then there had been no such law in force. The Committee notes the Government's indication in its latest report that a new draft press law has been finalized, in consultation with the All Pakistan Newspapers Society (APNS) and the Council of Pakistan Newspapers' Editors (CPNE); the Government indicates that the draft is now at the vetting stage. The Committee requests the Government to supply a copy of the new press law, as soon as it is adopted.

9. As regards the Security of Pakistan Act, 1952, and the Political Parties Act, 1962, the Committee previously noted that during the discussion in the Conference Committee in June 2000, the Government's representative indicated that both Acts had been brought to the attention of the competent authorities. It notes that the Government's latest report contains no new information on this subject. The Committee expresses firm hope that the necessary measures will soon be taken in order to bring the abovementioned provisions of these Acts into conformity with the Convention and that the Government will report on progress achieved. Pending action to amend these provisions, the Government is again requested to supply information on their practical application, including the number of convictions and copies of any court decisions defining or illustrating the scope of the legislation.

10. In its earlier comments, the Committee referred to sections 298B(1) and (2) and 298C of the Penal Code, inserted by the Anti-Islamic Activities of Qadiani Group, Lahori Group and Ahmadis (Prohibition and Punishment) Ordinance, No. XX of 1984, under which any person of these groups who uses Islamic epithets, nomenclature and titles is punished with imprisonment for a term which may extend to three years.

11. The Committee has noted the Government's repeated statement in its reports that religious discrimination does not exist and is forbidden under the Constitution, which guarantees equal citizenship and fundamental rights to minorities living in the country. The Government states that subject to law, public order and morality, the minorities have the right to profess, propagate their religion and establish, maintain and manage their religious institution. According to the Government's view, the Penal Code imposes equal obligations on all citizens, whatever their religion, to respect the religious sentiments of others; an act which impinges upon the religious sentiments of other citizens is punishable under the Penal Code. The Government indicates that religious rituals referred to in Ordinance No. XX are prohibited only if exercised in public, whereas if they are performed in private without causing provocation to others, they do not fall under the prohibition.

12. The Committee previously noted the report presented to the United Nations Commission on Human Rights in 1991 by the Special Rapporteur on the Application of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Conviction (document E/CN.4/1990/46 of 12 January 1990), referring to allegations according to which proceedings were instituted, on the basis of sections 298B and 298C of the Penal Code, in the districts of Guranwala, Shekhupura, Tharparkar and Attock, against a number of persons having used specific greetings. The Committee also noted from the report by the Special Rapporteur presented to the Commission on Human Rights in 1992 (document E/CN.4/1992/52 of 18 December 1991) that nine persons were sentenced to two years' imprisonment for acting against Ordinance XX of 1984 in April 1990, and that another person was sentenced to one year of imprisonment in 1988 for wearing a badge, the sentence being upheld by the Court of Appeal. It was stated that the Ahmadi daily newspaper had been banned during the past four years, its editor, publisher and printer indicted, and Ahmadi books and publications banned and confiscated. There was also reference to the sentencing under sections 298B and 298C of the Penal Code of two Ahmadis to several years' imprisonment.

13. The Committee requested the Government to provide factual information on the practical application of the provisions of sections 298B and 298C of the Penal Code, including the number of persons convicted and copies of court decisions, in particular in the proceedings mentioned by the Special Rapporteur, as well as of any court ruling that sections 298B and 298C are incompatible with constitutional requirements. The Government indicates in its latest report that five cases have been registered in the district of Attock against persons belonging to Ahmadis: four persons have been acquitted and the conviction of one person has been maintained by the High Court. The Committee also notes the information communicated by the Government on four cases registered against persons belonging to Quadiani group who were professing and convincing other people to join the group, on the basis of section 298C of the Penal Code: two cases were reported for cancellation, two others were pending trial in the court. The Committee observes that no information has been supplied on court practice which would contradict the findings of the Special Rapporteur referred to above.

14. While noting this information, the Committee points out once again, referring also to the explanations provided in paragraphs 133 and 141 of its General Survey of 1979 on the abolition of forced labour, that the Convention does not prohibit punishment by penalties involving compulsory labour of persons who use violence, incite to violence or engage in preparatory acts aimed at violence. But where punishment involving compulsory labour is aimed at the peaceful expression of religious views, or where such punishment (for whatever offence) is meted out more severely, or even exclusively, to certain groups defined in social or religious terms, this falls within the scope of the Convention. The Committee therefore reiterates its firm hope that the necessary measures will be taken in relation to sections 298B and 298C of the Penal Code, so as to ensure the observance of the Convention.

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

Papua New Guinea

Convention No. 105: Abolition of Forced Labour, 1957 (ratification: 1976)

The Committee notes that no report has been received from the Government. It must therefore repeat its previous observation on the following points.

Article 1(c) and (d) of the Convention. In comments it has been making since 1978, the Committee has been referring to section 7(1)(a), (c), (d) and (e) of the Seamen (Foreign) Act, Chapter 177, according to which a seafarer belonging to a foreign ship who deserts or commits certain other disciplinary offences is liable to imprisonment (involving an obligation to perform work). It also noted that under section 8 of the same Act and section 165 of the Merchant Shipping Act, foreign seafarers deserting their ship may be forcibly returned on board ship.

The Committee pointed out that sanctions of imprisonment (involving an obligation to perform labour) would only be compatible with the Convention where they are clearly limited to acts endangering the safety of the ship or the life or health of the persons on board, but not where they relate more generally to breaches of labour discipline, such as desertion, absence without leave or disobedience; similarly, provisions under which seafarers may be forcibly returned on board ship are not compatible with the Convention.

The Committee noted the Government's indication in its previous report that the abovementioned section 165 had been amended. It notes, however, that section 161 of the revised text of the Merchant Shipping Act (Chapter 242) (Consolidated to No. 67 of 1996), supplied by the Government, still contains a provision similar to that of the former section 165 and allows a forcible return of a deserting foreign seafarer on board ship, which is not compatible with the Convention.

As regards section 7(1)(a), (c), (d) and (e) and section 8 of the Seamen (Foreign) Act, the Committee previously noted the Government's indication that, although necessary steps had been taken with the Department of Transport towards amending these provisions, no amendments had taken place due to continuous staff changes and movements. The Committee also noted the Government's intention to ask for ILO technical assistance in this respect. The Government's latest report contains no new information on this point.

The Committee expresses the firm hope that the abovementioned provisions will at last be brought into conformity with the Convention, and that the Government will soon be in a position to indicate the measures taken to this end.

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

Paraguay

Convention No. 29: Forced Labour, 1930 (ratification: 1967)

The Committee notes the Government's detailed report and annexes.

1. *Articles 1 and 2(1) of the Convention.* The Committee in its previous comments expressed concern about the existence of cases of debt bondage in the indigenous communities of the Chaco. The Committee notes that the Government forwarded with its report copies of the communications it had sent to the Ministry of the Interior, the Office of the Public Prosecutor, the Supreme Court of Justice, the House of Deputies and the Senate, as well as to the Federation of Production, Industry and Commerce (FEPRINCO) and the Rural Association of Paraguay (ARP), the employers' organization representing the owners of large ranches in the Chaco. In these communications, the Ministry of Justice and Labour requested that "all the information available on these allegations be provided as soon as possible".

The Committee notes that "the Office of the Public Prosecutor is aware of the labour problems that a number of indigenous communities are experiencing in the Chaco" and that "the ranches in the Chaco should be inspected immediately". The Government also indicates that the Ministry of Justice and Labour has planned such inspections.

The Committee regards debt bondage as constituting a serious violation of the Convention. The Committee trusts that the Government will indicate the results of the inspections carried out in the Chaco ranches and that it will take the necessary measures to protect indigenous workers in this region against debt bondage and will inform the Committee of the progress made to this end.

2. *Article 2(2)(c).* In its previous comments, the Committee referred to section 39 of Act No. 210 of 1970, which provides that work shall be compulsory for detainees. Section 10 of the above Act defines detainees as not only convicted persons, but also persons subjected to security measures in a prison establishment. The Committee recalled that, under the terms of *Article 2(2)(c)* of the Convention, work or service may only be exacted from a person as a consequence of a conviction in a court of law. Persons who have been detained but not convicted shall not be obliged to carry out any type of work.

In its report the Government reiterates that a new Prison Code, which is currently being examined, will replace Act No. 210 of 1970. The Committee requests the Government to provide a copy of the Prison Code, once it is adopted.

3. The Committee has also noted the detailed information provided by the Government in reply to its general observation on the privatization of prisons and prison labour. With regard to this issue, the Committee notes with interest that the draft Prison Code contains a provision prohibiting the privatization of the prison system.

Peru

Convention No. 29: Forced Labour, 1930 (ratification: 1960)

1. With reference to its previous comments concerning compulsory prison labour by convicted prisoners, the Committee notes with satisfaction the amendment of section 65 of the Code for the Execution of Sentences (Act No. 27187) establishing the voluntary nature of work performed by convicted prisoners.

2. With reference to its previous comments on the existence of forced labour practices affecting members of indigenous peoples, particularly in the Atalaya and Ucayali regions, the Committee notes the information provided by the Government according to which the joint action taken by the Ministry of Labour, the national police, the Ministry of Agriculture, the judiciary and the Attorney-General's Office, as well as the joint action by the Indian Organization of the Atalaya Region (ORIA) with the labour and social promotion zone of Atalaya, has resulted in the elimination of the *enganche* system and as a result there is no forced labour in this area. The Government adds that administrative and penal sanctions have been imposed upon those responsible for exacting forced labour and that an updated analysis of the labour situation in the region will be provided. The Committee hopes that the Government will provide information on the number of complaints lodged, the proceedings that are under way and copies of judicial rulings imposing sanctions for the exaction of forced labour.

3. In its previous comments, the Committee noted the action taken by the Government to eradicate the process of the migration of the rural population in the departments of Cuzco and Puno towards the department of Madre de Dios, where the phenomenon had been reported of young persons working in mining centres under conditions of forced labour. The Committee notes the Government's indication in its report that the mechanization of the extraction process and the strengthening of the inspection system have contributed to the reduction of work by young persons in these areas.

The Committee requests the Government to provide information on any other measure that is taken with a view to the complete eradication of forced labour by young persons in this area.

4. The Committee notes the information provided by the Government on productive work by detainees. Nevertheless, the report does not contain information on the measures that have been adopted or are envisaged to ensure that detainees can give their consent when the work that they perform is for private individuals. The Committee hopes that the Government will provide information on this matter in its next report, as well as on the working conditions of detainees who work for private enterprises, including remuneration, social security, etc.

Philippines

Convention No. 105: Abolition of Forced Labour, 1957 (ratification: 1960)

The Committee has noted the Government's report.

Article 1(a) of the Convention. In its earlier comments the Committee noted that, under section 142 of the revised Penal Code, a penalty of imprisonment may be imposed upon persons who, by means of speeches, proclamations, writings or emblems, incite others to acts constituting sedition, utter seditious words or speeches, or write, publish, or circulate scurrilous libels against the Government. Under section 154(1) a penalty of imprisonment may be imposed on any person who, by means of printing, lithography or any other means of publication, maliciously publishes as news any false news which may endanger the public order or cause damage to the interests or credit of the State.

The Committee recalled that the Convention prohibits the use of forced or compulsory labour as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system. It requested the Government to indicate the measures taken or envisaged to ensure that no penalties of imprisonment (involving, under section 1727 of the Revised Administrative Code, an obligation to work) may be imposed in the situations covered by the Convention.

The Committee noted the Government's indication in its report of 1999 that a proposal to amend section 1727 of the Revised Administrative Code has been submitted. However, the Government states in its latest report that this section governs the administration of prisons and ensures that the prisoners maintain hygiene and sanitation and keeps them productively occupied while serving their term of imprisonment.

While noting this statement, the Committee wishes to draw the attention of the Government to paragraphs 102-109 of its General Survey of 1979 on the abolition of forced labour, where it pointed out that labour imposed as a consequence of a conviction in a court of law will, in most cases, have no relevance to the application of the Convention; but on the other hand, if any form of compulsory labour, including prison labour, is imposed on a person because he holds or has expressed particular political views, has committed a breach of labour discipline or has participated in a strike, the situation is covered by the Convention.

The Committee reiterates its hope that measures will be adopted in the near future to ensure the observance of the Convention in this regard, and requests the Government to provide, in its next report, information on the action taken. Pending amendment of the legislation, the Government is again requested to provide information on the application in practice of sections 142 and 154(1) of the Penal Code, including statistics of convictions made thereunder and copies of any court decisions defining or illustrating their scope.

Article 1(d). In its earlier comments the Committee noted that, in the event of a planned or current strike in an industry considered indispensable to the national interest, the Secretary of Labour 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 (section 263(g) of the Labor Code, as amended by Act No. 6715). 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 (pursuant to section 1727 of the Revised Administrative Code). The revised Penal Code also lays down sanctions of imprisonment for participants in illegal strikes (section 146).

The Committee pointed out, with reference to paragraph 123 of its General Survey of 1979 on the abolition of forced labour, that any compulsory arbitration enforceable with penalties involving compulsory labour must be limited to services whose interruption would endanger the life, personal safety or health of the whole or part of the population. It noted from the Government's report received in November 1994 that amendments to section 263(g) of the Labor Code had been proposed in Senate Bill No. 1757 which sought to limit the situation only to disputes affecting industries performing essential services and that the Bill had been filed with Congress.

The Committee has noted the Government's indication in its report that the said Bill is still pending in the Senate. The Committee expresses the firm hope that the necessary measures will be taken to amend the above section 263(g) with a view to limiting its application only to disputes in services the interruption of which would endanger the life, personal safety or health of the whole or part of the population, and that the Government will soon be in a position to indicate progress in bringing the legislation into conformity with the Convention.

Saudi Arabia

Convention No. 29: Forced Labour, 1930 (ratification: 1978)

The Committee has noted the Government's reply to its earlier comments.

Article 25 of the Convention. Penalties. For many years, the Committee has been raising its concern about the failure of the Government to comply with *Article 25* of the Convention, which requires that illegal exaction of forced labour shall be punishable as a penal offence. The Government has consistently maintained that forced or compulsory

labour would be regarded as a constraint or oppression under the Shari'a and that, if a case was brought to a tribunal, the judge in applying the Shari'a may subject the offender to penalties in the way of fines, jail or other sanctions at the discretion of the judge. In its latest report, the Government reiterates that the exaction of forced labour is punishable as a sin, and that penalties specified by law vary according to the type of sin committed. The Government also indicates that it is currently examining a new draft Labour Code, which has been submitted to the ILO for comments.

The Committee has previously indicated that *Article 25* of the Convention requires a member State to have a specific law which describes both the exaction of the forced labour and the penalty. The broad discretionary application of the Shari'a does not fulfil the requirements or purpose of the Article. The Committee hopes that measures will soon be taken in secular law, e.g. by way of the new Labour Code, to introduce provisions punishing the illegal exaction of forced or compulsory labour as a penal offence, and that the penalties imposed by law will be really adequate and strictly enforced, as required by the Convention. It requests the Government to supply a copy of the new Labour Code, as soon as it is adopted.

Migrant workers

In its earlier comments, the Committee has raised the problem of migrant workers, and in particular agricultural and domestic workers who are not covered by the present Labour Code. The lack of protection for such migrant workers exposes them to exploitation in their working conditions, such as retention of their passports by their employers, which deprives them of their freedom to leave the country or change their employment. This problem is linked to the Committee's comments in regard to the absence of a penalty provision, as described above.

The Committee has previously noted the adoption, by Decision No. 166 of 12 July 2000 of the Council of Ministers, of the Regulation governing the relationship between employers and migrant workers. It noted that, according to section 3 of the Regulation, "migrant workers may keep their passports or the passports of members of their families and may be authorized to move within the Kingdom as long as they have a valid residence permit". The Committee also noted the provision of section 6 concerning the creation of a rapid mechanism for the examination of conflicts which may arise and for their settlement by the competent authority. It asked the Government to provide details regarding the sanctions which may be imposed in case of non-observance of the provisions of the above Regulation and to communicate further information on the dispute settlement mechanism provided for in section 6.

The Government indicates in its report that the appropriate mechanism has not yet been decided upon, but is currently under examination by the competent authorities. It also indicates that there are special committees which settle labour conflicts within labour offices established everywhere in the Kingdom, to which both employers and workers may submit their complaints without any conditions or restrictions. While noting these indications, the Committee hopes that the Government will provide full information on the dispute settlement mechanism under section 6 of the Regulation referred to above, as soon as it is decided upon and put into operation, as well as on the sanctions which may be imposed for non-observance of the Regulation.

Sierra Leone

Convention No. 29: Forced Labour, 1930 (ratification: 1961)

The Committee notes with regret that no report has been received from the Government for the sixth year in succession. It must therefore repeat its previous observation on the following matters:

In its comments made for a number of years, the Committee asked the Government to repeal or amend section 8(h) of the Chiefdom Councils Act (Cap. 61) under which compulsory cultivation may be imposed on natives. The Committee previously noted the Government's statement that the abovementioned section is not in conformity with article 9 of the Constitution and would be held unenforceable. The Committee also noted the Government's indication that section 8(h) was not applied in practice and that information on any amendment of this section would be provided. In its report received in 1995, the Government stated that measures to change section 8(h) were evident in the new proposed Constitution.

The Committee therefore trusts that measures will be taken in the near future in order to bring section 8(h) of the Chiefdom Councils Act into conformity with the Convention and the indicated practice. It asks the Government to provide information on any progress made in this regard.

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

Convention No. 105: Abolition of Forced Labour, 1957 (ratification: 1961)

The Committee notes with regret that no report has been received from the Government for the sixth year in succession. It must therefore repeat its previous observation on the following matters:

In its earlier comments the Committee requested the Government to supply indications on the evolution of the political situation, in so far as it relates to the application of the Convention. It noted that the Constitution adopted in 1991 (Act No. 6 of 1991) which provided for the recognition and protection of fundamental human rights and freedoms, had been suspended. The Government informed the Committee in its latest report (1995) that public meetings of a political nature remained banned and that new guidelines for publications had been introduced.

The Committee noted that in July 1996 the Constitutional Reinstatement Provisions Act reinstated the suspended parts of the 1991 Constitution. It further noted the change of government in May 1997 and hoped that the Government would supply

information on the developments of the political situation in the country, in so far as the application of the Convention is concerned, and in particular, information on the application of provisions concerning the freedom of speech and press, freedom of peaceful assembly and association. The Committee also asked the Government to provide, in its next report, the information requested in its previous observation on the application in practice of sections 24, 32 and 33 of the Public Order Act (concerning public meetings, the publication of false news and seditious offences). Please also provide particulars of the outcome of work of the Constitutional Review Committee, to which the Government referred in its 1995 report.

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

Spain

Convention No. 29: Forced Labour, 1930 (ratification: 1932)

For many years, the Committee has been drawing the Government's attention to the fact that the voluntary nature of work by prisoners for private enterprises is not formally set out in the provisions of the national legislation governing prison work. Indeed, both the general Organic Act respecting prisons (Act No. 1/79, section 26) and the Prison Regulations (Royal Decree No. 190/96, sections 132 and 133), provide that productive prison work is a right and a duty for detainees. In this respect, the Committee notes the Government's indication that, firstly, prison work is free and, secondly, the expression "work is a right and a duty of detainees" must not be interpreted in a restrictive manner, as it corresponds to article 35 of the Spanish Constitution, under the terms of which "all Spanish nationals have the right and the duty to work". Considering that it is not formally established by the above legislative provisions that the productive work of prisoners, performed for a third party in production workshops in prison premises or outside them, is of a voluntary nature, the Committee requested the Government to take the necessary measures to bring the statutory law into line with practice, as described in the information provided by the Government. The Committee notes with regret that the Government did not take the opportunity afforded by the adoption of Royal Decree No. 782/2001, regulating the special employment relationship of prisoners working in prison workshops and repealing certain provisions of the Prison Regulations (Royal Decree No. 190/96), to amend sections 132 and 133 of the Prison Regulations. It hopes that on the occasion of a future amendment of the legislation, the Government will take its comments into account and will ensure that the legislation explicitly establishes the voluntary nature of work by prisoners performed for a third party in production workshops on prison premises or outside prisons for private enterprises. Furthermore, the Committee notes with interest the information provided by the Government in its latest reports on the remuneration of prisoners and the social security benefits to which they are entitled. The Committee also notes with interest that the labour and social security inspectorate is responsible for ensuring compliance with the rights of prisoners working in production workshops on prison premises in relation to wages, working time, health and safety and social security.

Sri Lanka

Convention No. 29: Forced Labour, 1930 (ratification: 1950)

1. The Committee has noted the information provided by the Government in reply to its earlier comments. It has also noted the comments made by the Employers' Federation of Ceylon and by the Lanka Jathika Estate Workers' Union (LJEWU) on the application of the Convention. The Committee has noted with interest the ratification by Sri Lanka of the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182), as well as the Abolition of Forced Labour Convention, 1957 (No. 105).

Child exploitation

2. In its earlier comments the Committee referred to allegations of child labour exploitation in various sectors, such as domestic service, shops, private coaches, tourist industry, etc. It noted the amendments to the Penal Code made in 1995 and 1998 which had enhanced penalties for the exploitation of children, including sexual exploitation and trafficking. The Government indicates in its 2002 report that during 2001, 42 persons were prosecuted for employing child labour, mainly in domestic work. It also provides information on activities implemented with the assistance of the ILO-IPEC programme in Sri Lanka, such as training programmes for officers of the Department of Labour, Department of Police and Department of Probation and Child Care Services, assisting the Department of Labour in strengthening the regional committees' services relating to domestic workers and carrying out a rapid assessment on child domestic labour in Sri Lanka. The Committee also notes with interest from the Government's latest report that the Employment of Women, Young Persons and Children Act has been amended by Act No. 8 of 2003 in order to enhance penal sanctions with regard to employment of children and to provide for payment of compensation to the child victims. It also notes that the National Steering Committee (NSC) on the International Programme on the Elimination of Child Labour (IPEC) has been set up.

3. While noting the above information with interest, the Committee has noted from the communication by the LJEWU referred to above that the union expressed concern that the implementation of the legislative machinery is not sufficiently strengthened and there are administrative constraints restricting adequate enforcement of the law. The union alleges that national attention is focused on child labour exploitation only when isolated cases of inhuman treatment of child domestic servants are exposed by the print and visual media. The Committee hopes that the Government will refer to these comments in its next report and will supply information on the progress achieved in its efforts to strengthen the

enforcement machinery in order to combat child exploitation. The Committee requests the Government to provide information on the manner in which the amendments to the Employment of Women, Young Persons and Children Act referred to above, as well as the amendments to the Penal Code introduced by Act No. 29 of 1998 and Act No. 22 of 1995 are applied in practice, including the number and extent of penalties imposed in prosecutions which have proceeded under it, as required by *Article 25 of the Convention*. Please also supply information on any further measures to protect child domestic servants from forced labour and to combat child servitude, enclosing relevant extracts from any inspection or other reports.

4. The Committee has noted a statement by the Employers' Federation of Ceylon, in its comments referred to above, which contain a reference to the Global Report *Stopping forced labour* under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, that an area of concern is the forced conscription of children and youth by militant groups, in the regions of the country affected by armed conflict. The Committee requests the Government to provide information on such practices and on any action programmes to prevent them, as well as on action taken against perpetrators.

Emergency regulations

5. In its earlier comments the Committee referred to the state of emergency declared on 20 June 1989 under the Public Security Ordinance, 1947, and the powers of the President under section 10 of the Emergency (Miscellaneous Provisions and Powers) Regulations, No. 1 of 1989. Referring to paragraph 36 of its General Survey of 1979 on the abolition of forced labour, the Committee pointed out that recourse to compulsory labour under emergency powers should not only be limited to circumstances which would endanger the existence or well-being of the whole or part of the population, but that it should also be clear from the legislation that the power to exact labour is limited in extent and duration to what is strictly required to cope with the said circumstances. The Committee has noted from the Government's report that this matter was looked into in a tripartite workshop held with the assistance of the ILO to promote ratification of the Abolition of Forced Labour Convention, 1957 (No. 105), and that a tripartite committee including secretaries of the ministries concerned was appointed to follow up its recommendations. The Committee hopes that the necessary measures will be taken in the near future in order to bring the legislation into conformity with the Convention on this point and that the Government will report the progress made in this regard.

Compulsory public service

6. The Committee previously noted the Government's repeated statement in the report that the Compulsory Public Service Act, No. 70 of 1961, sections 3(1), 4(1)(c) and 4(5), imposing on graduates compulsory public service of up to five years, had led to no prosecutions. It expressed the hope that the necessary measures would be taken to amend or repeal the Act, in order to bring the legislation into compliance with the Convention. The Committee has noted from the Government's 2002 report that this matter was also addressed under the plan of action recommended at the abovementioned workshop relating to the promotion of ratification of Convention No. 105 and the tripartite committee appointed to follow up its recommendations was looking into the matter. The Committee hopes that the Government's next report will contain full information on the developments in this area.

7. The Committee is again addressing to the Government a direct request on certain other points.

Sudan

Convention No. 29: Forced Labour, 1930 (ratification: 1957)

Abolition of slave-like practices

1. For a number of years, the Committee has been examining, in relation to the application of the Convention, information concerning the practices of abduction, trafficking and forced labour affecting thousands of women and children in the southern regions of the country where an armed conflict is under way. The Committee requested the Government to provide information on the measures taken with a view to eliminating the exaction of forced labour and to ensure that, in accordance with the Convention, penal sanctions are imposed on perpetrators.

2. The Committee has noted the information contained in the Government's report and its annexes, including supplementary information on the field work activities of the Committee for the Eradication of Abduction of Women and Children (CEAWC) supplied in October 2003, as well as the discussion that took place in the Conference Committee on the Application of Standards in June 2002. It has also noted the observations received in September 2002 and September 2003 from the International Confederation of Free Trade Unions (ICFTU) concerning the application of the Convention by Sudan, which were transmitted to the Government in October 2002 and September 2003 for such comments as might be considered appropriate. The Committee observes that no such comments have been received from the Government so far and trusts that the Government will communicate its comments on these serious issues in its next report.

Conference Committee on the Application of Standards

3. In its conclusions adopted in June 2002, the Conference Committee again expressed its concern at the serious situation in Sudan. While noting the willingness of the Government to collaborate with the various international

institutions and the plan of action which the Government had formulated for the eradication of forced labour practices, the Conference Committee was bound to observe that all the information provided, inter alia, by workers' organizations, the UN Special Rapporteur and the members of the Committee, demonstrated the persistence of forced labour in Sudan and the inadequacy of the measures taken by the Government to combat this situation. It noted in particular the lack of penalties imposed on those responsible and urged the Government to establish and strengthen the machinery for prevention, identification and punishment. The Conference Committee noted the Government's refusal to accept an ILO direct contacts mission and again decided to place this case in a special paragraph of its report as a case of continued failure to implement the Convention.

United Nations bodies

Special Rapporteur

4. The Committee has noted the interim report of the Special Rapporteur of the United Nations Commission on Human Rights on the situation of human rights in Sudan (UN document A/57/326), transmitted to the General Assembly on 20 August 2002, as well as the report issued on 6 January 2003. The reports include the findings of his visit to Sudan in February-March and September-October 2002, as well as an update on the overall situation based on information collected since then. The Committee has noted that the Special Rapporteur recorded with appreciation a number of steps taken which may lead to an improvement of the human rights situation in the Sudan. He observed, however, that in general, in spite of the commitments made, the overall human rights situation has not improved. As regards abductions, the Special Rapporteur noted that, in an attempt to strengthen the Committee for the Eradication of Abduction of Women and Children (CEAWC), the President of the Republic had moved the Committee directly under his supervision, while providing it with full-time chairmanship and appropriate resources. However, according to the report, no steps had been taken on the prosecution of any person found guilty of new abductions and no specific policy had been put in place aimed at discouraging *murahalleen* from practising abductions. The Special Rapporteur called upon the Government to do more with a view to eradicating abductions and to ensure that perpetrators are brought to justice, thus ending the impunity from which they had benefited so far.

5. The Committee has noted that, in its resolution of 19 April 2002 on the situation of human rights in Sudan (E/CN.4/RES/2002/16), the United Nations Commission on Human Rights again expressed its deep concern about "the abduction of women and children by *murahalleen* groups and other government militias and their subjection to forced labour or similar conditions" and "continuing violations of human rights in areas under the control of the Government of Sudan, in particular". The Committee has also noted the statement of the Special Rapporteur to the UN Commission on Human Rights in 2003, in which he pointed out that, "in spite of some new commitments, so far human rights abuses have not decreased neither in the north nor in southern Sudan and the overall human rights situation has not improved significantly", and that some sources describe CEAWC as "massively dysfunctional".

Comments from workers' organizations

6. In the observations of 2002 and 2003 referred to above, the ICFTU refers to a report (issued on 22 May 2002) of the Eminent Persons Group, which consisted of eight members from the United States, United Kingdom, Italy, Norway and France. The Group has visited the country to investigate slavery, abductions and forced servitude. The report contains references to estimates of the total number of people abducted made by the CEAWC and Dinka Chiefs Committee (14,000), as well as by UNICEF and Save the Children (between 10,000 and 17,000). The ICFTU concludes that the previously made estimate of between 5,000 and 14,000 is consistent with those made by other organizations and strongly supports a recommendation made by the Eminent Persons Group that systematic field based research carried out by independent researchers is still needed.

7. The ICFTU refers to a communication from the CEAWC to Anti-Slavery International dated 30 August 2001, in which it was noted that the number of abductees documented by CEAWC remained at only 1,200; it alleges that only 34 women and children have been released and returned home since September 2001, which shows that the process of the identification and release of abducted women and children has been extremely slow. Referring to the information contained in the statement by the Special Rapporteur to the 58th Session of the Commission on Human Rights and in the report of the Eminent Persons Group referred to above, the ICFTU alleges that the Government has not taken adequate steps to prevent further abductions and particularly has failed to bring forces, fighting on its side, under strict military control. It also refers to the statement in the Eminent Persons Group's report, according to which, with regard to slavery and abductions, there has been no prosecution of a criminal case in the Sudanese courts during the past 16 years. As regards the announcement by the Minister of Justice, in November 2001, of the setting up of two tribunals in West Kordufan to prosecute those responsible for abductions, the ICFTU referred to the Eminent Persons Group's statement in its report that, to the best of its knowledge, at the end of May 2002 the courts had not yet been established. While welcoming the Government's commitment to strengthening and supporting the work of the CEAWC, the ICFTU expresses the view that the CEAWC's stated intention of accomplishing its mandate in a one-year time frame appears extremely optimistic and shares concern of the Eminent Persons Group that it underestimates the scale and nature of the problem.

8. In its comments received in 2003, the ICFTU refers to a report published in January 2003 by CEAWC's chairman, which states that approximately 2,000 cases of abductions have been documented since 1999, and that CEAWC

plans “to document and reunify the remaining 11,500 cases according to the estimates of the Dinka Committee within one year from availability of funds”. The ICFTU is of the opinion that, given the comments by the Special Rapporteur referred to above and the limited progress made by CEAWC in the last two years, the assessment that more than 11,000 cases could be identified and reunified in one year seems entirely unrealistic.

Government’s response

9. In its 2002 report, the Government reiterates its condemnation of all forms of slavery and forced labour, as well as similar acts considered to be crimes penalized by the Penal Code. The Committee has noted the adoption of Presidential Decree No. 14 of 2002 on the re-establishment of the CEAWC, which attached its work directly to the President of the Republic and gave it a mandate to investigate reports which point to the occurrence of abduction cases and to prosecute any person suspected of committing, supporting or participating in the abductions of women and children. The Decree provides for a possibility to establish similar committees at the province level. In the supplementary information on CEAWC field work activities supplied to the ILO in October 2003, the Government informs of the retrieval and documentation of 506 abductees through more than 20 field missions to many locations in South Durruf and West Kordofan. The Committee has also noted that CEAWC has prepared an annual project plan of action for the retrieval of the remaining abductees to be completed within 12 months from the date of availability of the required funds. The Government also indicates that abduction has stopped completely. However, the ICFTU states in its 2003 communication that the fact that CEAWC has not received any new cases of abductions does not indicate that abductions have stopped, since CEAWC does not have the capacity to gather information on abductions and investigate reports and is therefore not in a position to document new cases unless they are brought directly to it. The Committee requests the Government to continue to provide information on the application of Decree No. 14 in practice, indicating, in particular, the number of abducted persons identified and released and the number of perpetrators prosecuted, as well as the information on practical implementation of the CEAWC’s plan of action referred to above. Please also indicate whether similar committees have been established at the province level, and if so, provide information on their practical functioning.

10. The Committee has noted the Government’s indications concerning the setting up by the Minister of Justice of special courts for the prosecution of abductors of women and children. Referring to the above allegations of the ICFTU on this subject, the Committee requests the Government to provide information on the functioning of these courts in practice, indicating the number of courts established and the number of prosecutions made, and supplying sample copies of court decisions.

11. While welcoming some of the positive measures taken by the Government and the Government’s expressed renewed commitment to resolve the problem, the Committee urges the Government to pursue its efforts with vigour and to take a stronger stand to combat the practice of forced labour through abduction of women and children. The Committee trusts that the Government will soon indicate the concrete results obtained from measures taken.

Article 25 of the Convention

12. The Committee previously noted that, under article 162 of the Criminal Code, abduction is punishable by ten years’ imprisonment and requested the Government to take measures to ensure that, in accordance with the Convention, penal sanctions are imposed on perpetrators. However, in its 2002 report, the Government informed the Committee about tribal conciliation meetings held among the various tribes concerned by abduction cases in an attempt to eradicate the phenomenon of mutual abduction within a framework of peaceful coexistence among tribes. The Government expressed the view that any prosecution that may be made against abductors at the present stage would lead to the collapse of the recommendations of those meetings.

13. The Committee observes that refraining from prosecuting abductors could have the effect of ensuring impunity for abductors who exploit forced labour. It recalls that, under *Article 25* of the Convention, “the illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced”. The Committee therefore urges the Government to take the necessary measures in the near future to ensure that legal proceedings are instituted against perpetrators and penal sanctions are imposed on persons convicted of having exacted forced labour, as required by the Convention.

[The Government is asked to supply full particulars to the Conference at its 92nd Session and to reply in detail to the present comments in 2004.]

Swaziland

Convention No. 29: Forced Labour, 1930 (ratification: 1978)

The Committee has noted the Government’s brief report on the application of the Convention.

Article 1(1) and Article 2(1) and (2)(b), (d) and (e) of the Convention. The Committee previously noted the observations on the application of the Convention made in June 1999 and June 2001 by the Swaziland Federation of Trade Unions (SFTU). The SFTU alleged that the new Swazi Administration Order, No. 6 of 1998, which repealed the

Swazi Administration Act, No. 79 of 1950, legalized forced labour, slavery and exploitation with gross impunity and gave the Chiefs the right to penalize non-compliance with the Order with fines, imprisonment, demolition without compensation, etc. The SFTU referred, inter alia, to sections 6, 27 and 28 of the 1998 Order, which provide for the duty of Swazis to assist the Ngwenyama and Chiefs; the duty to attend before Ngwenyama, Chiefs and government officers when so directed, under the threat of punishment; and the duty to obey orders requiring participation in compulsory works.

The Committee has noted the Government's view expressed in the report that participation in the national duties is not a form of forced or compulsory labour, since this is not being done for purpose of financial gain and Swazis offer themselves voluntarily for such services.

However, in its earlier comments the Committee noted that the combination of sections 6, 27, 28(1)(p), (q) and (u) and 34 of the new Swazi Administration Order (No. 6 of 1998) provides for orders requiring compulsory cultivation, anti-soil erosion works and the making, maintenance and protection of roads, enforceable with severe penalties for non-compliance. With reference to the comments it has been making for a number of years concerning the abovementioned Swazi Administration Act, No. 79 of 1950, which contained similar provisions, the Committee observed that provisions of this kind are in serious breach of the Convention. Referring also to paragraphs 36, 37 and 74-83 of its General Survey of 1979 on the abolition of forced labour, the Committee pointed out that, in order to be compatible with the Convention, such provisions should be limited in scope to cases of a calamity or threatened calamity endangering the existence or well-being of the population, or (in case of compulsory cultivation) to circumstances of famine or a deficiency of food supplies and always on the condition that the food or produce shall remain the property of the individuals or the community producing it, or (to fall under the exemption made for minor communal services) to cases where work is limited to minor maintenance and its duration is substantially reduced. Since the above provisions of the 1998 Order are not restricted in application to the circumstances contemplated in *Article 2(2)(d) and (e)* of the Convention, such as e.g. cases of emergency (fire, flood, famine, earthquake, violent epidemic or epizootic diseases, etc.) or minor communal services, they are incompatible with the Convention.

The Committee therefore urges the Government to take the necessary measures in order to repeal or amend the above provisions of the Swazi Administration Order, 1998, so as to bring legislation into conformity with the Convention. Pending the adoption of such measures, the Committee again requests the Government to provide information on the manner in which these provisions are being applied in practice.

Syrian Arab Republic

Convention No. 29: Forced Labour, 1930 (ratification: 1960)

The Committee has noted the Government's reply to its earlier comments. It has also noted the information provided in response to its general observation of 2000 concerning measures to prevent, suppress and punish trafficking in persons for the purpose of exploitation.

1. *Freedom of persons in the service of the State to leave their employment.* Over a number of years, the Committee has been commenting on Legislative Decree No. 46 of 23 July 1974, amending section 364 of the Penal Code, under which a term of imprisonment from three to five years may be imposed for leaving or interrupting work as a member of the staff of any public administration, establishment or body or any authority of the public or mixed sector before resignation has been formally accepted by the competent authority; or evading obligations to serve the same authorities, whether the obligation derived from a mission, a scholarship or a study leave.

The Committee has noted the Government's indications in its report that, in practice, each worker enjoys the full right to submit a request for resignation at any time of his choosing, and the competent authority is committed to accepting the resignation, provided the continuity of the service is ensured. The Government also indicates that the amendment of the Penal Code is currently ongoing and that the Committee's comments are being taken into account in order to bring it into conformity with the Convention. Recalling, with reference to paragraphs 67-73 of its General Survey of 1979 on the abolition of forced labour, that persons in the service of the State should have the right to leave the service on their own initiative within a reasonable period, either at specified intervals or with previous notice, the Committee expresses the firm hope that the necessary measures will be taken in the near future in order to bring the legislation into conformity with the Convention and the indicated practice, and that the Government will provide information on the action taken to this end.

2. *Legislation on vagrancy.* Over a number of years, the Committee has been referring to section 597 of the Penal Code, which provides for the punishment of any person who is reduced to seeking public assistance or charity as a result of idleness, drunkenness or gambling. The Committee recalled, with reference to paragraphs 45-48 of its General Survey of 1979 on the abolition of forced labour, that while the punishment of gambling or the abuse of intoxicating liquor is outside the scope of the Convention, the possibility to impose penalties for mere refusal to work is contrary to the Convention.

The Committee has noted the Government's explanation in the report that the purpose of the above provision is not to impose work, but to refrain from vagrancy; but at the same time the Government indicates that the amendments of the

Penal Code will accommodate the Committee's request. The Committee reiterates its hope that the necessary measures will soon be taken with a view to clearly excluding from the legislation any possibility of compulsion to work, either by repealing section 597 or by limiting its scope to persons engaging in illegal activities, so as to bring legislation and practice into conformity with the Convention.

3. *Article 2(2)(d) of the Convention.* In comments it has been making since 1964, the Committee has pointed out that certain provisions of Decree No. 133 of 1952 with respect to compulsory labour, particularly those of Chapter I (compulsory labour for purposes of health, culture or construction) and sections 27 and 28 (national defence work, social services, road work, etc.), provide for the call up of inhabitants for periods of up to two months, in circumstances that go beyond the exception authorized by the Convention, for "any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity ... and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population".

The Committee has noted the Government's indication in its report that the Civil Defence Law, which was intended to repeal Decree No. 133 of 1952, has not yet been promulgated. The Government also states that the Law on Local Administration promulgated by Legislative Decree No. 15 of 11 May 1971 does not contain provisions similar to those in the above sections 27 and 28 of Decree No. 133. It reiterates that the Committee for Consultation and Tripartite Dialogue set up to examine the Conventions and the Committee of Experts' comments is responsible for the formulation of amendments to the various texts with a view to bringing them into conformity with the Conventions.

The Committee expresses the firm hope that the necessary measures will at last be taken to formally repeal or amend the above provisions of Legislative Decree No. 133 of 1952 so as to limit the possibility of exacting labour to situations of emergency as defined in the Convention, and that the Government will soon be in a position to report on the measures taken to this end, either through the adoption of the draft Civil Defence Law referred to above, or through some other action taken as a result of the deliberations of the Committee for Consultation and Tripartite Dialogue. Please also supply a copy of the Law on Local Administration promulgated by Legislative Decree No. 15 of 11 May 1971, to which reference has been made in the Government's report.

Convention No. 105: Abolition of Forced Labour, 1957 (ratification: 1958)

Article 1(a), (c) and (d) of the Convention. Over a number of years the Committee has been referring to certain provisions of the Economic Penal Code, the Penal Code, the Agricultural Labour Code and the Press Act, under which prison sentences involving compulsory labour can be imposed as a means of political coercion or as a punishment for expressing views opposed to the established political system, and as a punishment for breaches of labour discipline and for the participation in strikes.

The Committee previously noted the Government's repeated indications in its reports that a draft legislative decree amending certain provisions of the Penal Code so as to eliminate all obligation to perform prison labour, was being examined by the competent authorities. The Government indicated in its 2001 report that the draft legislative decree amending the Penal Code had been prepared by the Ministry of Justice in response to the economic and social developments witnessed by the country and to fulfil the request made by the Committee of Experts. The Committee noted from the Government's explanations and from the text of the draft legislative decree received in the ILO in July 2001 that the terms "imprisonment with labour", "life imprisonment with hard labour" or "temporary hard labour" would be removed from the Penal Code. The Committee expressed the hope that, following the adoption of the draft legislative decree, persons convicted for activities coming under the purview of the Convention, and, in particular, persons convicted under the provisions referred to in the Economic Penal Code, the Penal Code, the Agricultural Labour Code and the Press Act, would no longer be under an obligation to perform labour, although they might be allowed to engage in work.

The Committee notes that the Government's latest report received in August 2003 contains no new information concerning the adoption of the above draft legislative decree. The Government indicates that the Ministry of Social Affairs and Labour will set up a legal committee which will include representatives of a number of public bodies and employers' and workers' organizations to examine amendments in the Penal Code in order to bring it into conformity with the Forced Labour Conventions. While noting this indication, the Committee hopes that the Government's next report will contain information on the progress made in the adoption of the draft legislative decree referred to above and on any other measures taken in order to bring the legislation into conformity with the Convention.

United Republic of Tanzania

Convention No. 29: Forced Labour, 1930 (ratification: 1962)

The Committee notes the Government's reply to its earlier comments.

Articles 1(1) and 2(1) and (2) of the Convention. For a number of years the Committee has been commenting on serious discrepancies between national law and practice and the provisions of the Convention.

The Committee referred in this connection to the following provisions:

- article 25, paragraph 1, of the 1985 Constitution, which provides for a general obligation to work; article 25, paragraph 3(d), of the Constitution, which provides that no work shall be considered as forced labour if it is relief

work that is part of compulsory nation-building initiatives, in accordance with the law, or national efforts in harnessing the contribution of everyone in the work of developing the society and national economy and ensuring success in development;

- the Local Government (District Authorities) Act, 1982, the Employment Ordinance, 1952, as amended, the Penal Code, the Resettlement of Offenders Act, 1969, the Ward Development Committees Act, 1969, and the Local Finances Act, 1982, under which compulsory labour may be imposed, inter alia, by administrative authority, on the basis of a general obligation to work and for purposes of economic development;
- several by-laws adopted between 1988 and 1992 under section 148 of the Local Government (District Authorities) Act, 1982, entitled “self-help and community development”, “nation-building”, and “enforcement of human resources deployment”, which provide for an obligation to work.

The Committee expressed its concern at the institutionalized and systematic compulsion to work established in law at all levels, in the national Constitution, Acts of Parliament and district by-laws, in contradiction with Convention No. 29 and Article 1(b) of Convention No. 105, also ratified by the United Republic of Tanzania, which prohibits the use of compulsory labour for development purposes.

The Committee noted the Government’s repeated statement concerning practical difficulties encountered in the application of the Convention, which in most cases were due to application of by-laws and directives issued by local authorities imposing compulsory labour on the population. The Government stated in its 2002 report that such by-laws did not take much into account the provisions of the ILO Conventions and the national Constitution and that it was trying to adopt a new approach for the enactment of new laws in order to ensure compliance with the Constitution and the international obligations.

The Committee previously noted the Government’s indication that the Employment Ordinance No. 366 of 1952 was being revised and that a draft Bill was tabled to the Cabinet. In its latest report, the Government states that it has taken very serious note of the Committee’s concerns, and that the identified laws – such as the Local Finances Act, 1982, the Local Government (District Authorities) Act, 1982, the Penal Code, the Resettlement of Offenders Act, 1969, and the Ward Development Committees Act, 1969 – are being addressed by the Task Force of the current Tanzania Labour Policy and Legislation Reform, which will make appropriate recommendations to the Government.

The Committee urges the Government to take the necessary measures in the very near future to ensure that the provisions incompatible with the Convention are repealed or amended and asks the Government report the progress made in this regard.

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

Convention No. 105: Abolition of Forced Labour, 1957 (ratification: 1962)

The Committee notes the Government’s reply to its earlier comments.

Article 1(a), (b), (c) and (d) of the Convention. For a number of years, the Committee has been referring to certain provisions of the Penal Code, the Newspaper Act, the Merchant Shipping Act, the Industrial Court Act and the Local Government (District Authorities) Act, under which penalties involving compulsory labour may be imposed in circumstances falling within the scope of the Convention. The Committee also asked the Government to provide information on the amendment or repeal of the provisions of various legal instruments, to which it referred in its comments under Convention No. 29, likewise ratified by the United Republic of Tanzania, and which are contrary to *Article 1(b)* of this Convention.

The Committee previously noted the Government’s indications in its 2001 and 2002 reports that the legislation referred to above had been identified by the Law Reform Commission as being among 40 legislative texts which are unconstitutional on the grounds that they are contrary to human rights and incompatible with forced labour Conventions. It also noted the Government’s indication that the Governments of the United Republic of Tanzania and Denmark had signed an agreement concerning financing by DANIDA of a project entitled “A new approach on labour policy and legislative reform”, which covered all labour laws and labour-related legislation in the United Republic of Tanzania, including those texts which had been identified and criticized for non-compliance with ratified Conventions. As regards the abovementioned Merchant Shipping Act, the Government indicated in its 2002 report that the International Maritime Organization (IMO) had prepared proposals for the amendment of the Act, which had been submitted to the Government.

In its latest report, the Government states that it has noted the Committee’s views and comments made on the provisions of the above laws which are incompatible with the Convention, and that the identified laws are being addressed by the Task Force of the current Tanzania Labour Policy and Legislation Reform, which will make appropriate recommendations to the Government.

The Committee trusts that the necessary action will be taken in the near future for the repeal of all provisions incompatible with the Convention, and that the Government will soon be able to report on progress made in this regard.

The Committee is again addressing a more detailed request on the above matters directly to the Government.

Thailand

Convention No. 29: Forced Labour, 1930 (ratification: 1969)

1. The Committee has noted the Government's 2002 report, which was received too late to be examined at its previous session. It has also noted other available information relating to the implementation of the ILO's International Programme on the Elimination of Child Labour (IPEC), with which the Government has been working for a number of years, and in particular the 2003 report on the project entitled "Reducing labour exploitation of children and women: Combating trafficking in the Greater Mekong Sub-Region". Finally, the Committee has noted with interest the ratification by Thailand of the Worst Forms of Child Labour Convention, 1999 (No. 182). The Committee has repeatedly emphasized that forced labour exploitation of children, be it forced child labour, child prostitution, child pornography, whether in factories, sweatshops, brothels, private houses or elsewhere, is one of the worst forms of forced labour, which must be fought energetically and punished severely.

I. Prostitution and trafficking of women and children

2. The Committee has noted with interest the positive steps taken by the Government, some of them in cooperation with IPEC and other international institutions, to adopt legislation and to put into place a coherent national policy framework for dealing with this problem. The Committee encourages the Government to pursue its efforts with vigour and to take effective action to implement the policies it adopts.

3. In its earlier comments, the Committee asked for information on the application of the Prevention and Suppression of Prostitution Act of 1996. It has noted with interest the information provided by the Government in its report concerning the activities of welfare protection and vocational development centres set up under the Act, including statistical information. The Committee has also noted a Memorandum of Understanding on Common Guidelines of Practices for Agencies Concerned with Cases where Women and Children are Victims of Human Trafficking B.E. 2542 (1999), according to which the Ministry of Social Development and Human Security is working in collaboration with other concerned agencies such as Royal Thai Police, the Office of the National Commission on Women's Affairs, the Immigration Bureau and the International Organization for Migration (IOM), to assist trafficked women by providing them with temporary shelters before repatriating to their home towns and by conducting recovery programmes which would enable them to reintegrate into society.

4. The Committee has noted serious concern expressed in the above Memorandum of Understanding that, at present, the trafficking in women and children is on the rise and that the gravity of the problem has very much increased since transnational organized criminal groups use Thailand as the place for gaining huge profit from trafficking in women and children. The Committee therefore requests the Government to supply, in its next report, detailed information on the application of the above Memorandum in practice, as well as the information on the practical application of the Measures in Prevention and Suppression of Trafficking in Women and Children Act of 1997. Please also continue to provide information on the progress in the implementation of the Mekong Delta project on trafficking of women and children, as well as other information on the development of cooperation with neighbouring countries in order to prevent and solve the problems of cross-border trafficking of women and children, and indicate the concrete results achieved.

5. *Preventive measures.* The Committee has noted with interest the detailed information provided by the Government concerning preventive programmes carried out by the Ministry of Education, in particular, with IPEC assistance, including the awareness-raising and training projects. The Committee has noted, in particular, the information on the progress in the implementation of the Se-Ma Life Development Project, initiated by the Ministry of Education to prevent high-risk girls from poor families in five northern provinces of Thailand from falling into sex trade, which was able to help a large number of girls (59,895 during 1994-2001) by allocating funds for scholarships. It has also noted the Government's indications concerning other preventive programmes carried out in cooperation with the Ministry of Public Health (nursing study) and UNICEF (working while studying), as well as basic education programmes. Finally, the Committee noted the information on measures taken by the Ministry of Social Development to increase employment opportunities for young women to enable them to live an independent life and to avoid a threat of becoming a victim of trafficking. The Committee encourages the Government to continue along this path and to take effective action to implement the above programmes and measures. It hopes that the Government will provide, in its future reports, detailed information on the efforts undertaken in this direction and on the results achieved.

II. Other forced child labour

6. In its earlier comments, the Committee repeatedly pointed out that many children continue to work under coercion or in conditions of exploitation which have no resemblance to a free employment relationship. The situation is often linked to forced or false recruitment, deception and trafficking. The Committee stressed the importance of concrete and effective action to deal with the problem of forced child labour exploitation, according to clearly formulated goals and well-defined strategies. It pointed to the necessity of adopting means, such as a comprehensive legal framework, of improving law enforcement, of stimulating community awareness, and of adopting a comprehensive rehabilitation programme.

7. The Committee previously referred to section 44 of the Labour Protection Act, 1998, which raised the minimum age for employment to 15 years, and requested the Government to indicate measures taken or contemplated to extend this

protection to workers in the informal sector. The Government indicates in its report that the ministerial regulations with the provision on minimum age are being drafted by the Department of Labour Protection and Welfare, in order to extend the protection to workers in the agricultural sector. Besides, a draft home work Act submitted by the Department of Labour Protection and Welfare is under consideration by the Advisory Council for National Labour Development, Ministry of Labour. The Committee notes these indications with interest and hopes that the Government will keep the ILO informed of the developments and supply copies of these texts, as soon as they are adopted.

8. The Committee has noted the Government's statement in the report that social and economic problems are a major factor contributing to the exploitation of child labour. In this connection, the Committee has noted the Ninth National Economic and Social Development Plan (2002-04) attached to the report, which, in the Government's view, could serve as an instrument adjusting the social structure to eliminate the gap between the very poor and the wealthy. The Committee would appreciate it if the Government would continue to provide information on practical realization of development strategies of the Plan connected with the improvement of social protection of poor and disadvantaged groups, including, in particular, children in especially difficult circumstances. It also reiterates its request for information on practical effects of the action programme on "Strengthening the capacity of the Employers' Confederation of Thailand to prevent child labour through the creation of an employers' best-practice guide and child-friendly employers' network and the facilitation of vocational training and apprentice schemes", launched by the Employers' Confederation of Thailand with the cooperation of IPEC.

III. Law enforcement

9. *Inspection and prosecutions.* The Committee has noted the information provided in the Government's report on the number of labour inspections during 2000 (33,671 inspected establishments and 2,028,022 inspected employees), which uncovered 4,236 under-age workers of 13-14 years old. The Government indicates that during the period between October 2000 and September 2001 there were 46 cases of grievances received by "hot line" and 22 cases of grievances received by letter, which resulted in the prosecution by labour officials of ten employers on charges of child exploitation and cause of occupational hazards to young workers; all employers were fined in total 29,000 baht and a total of 567,820 baht was claimed as benefit for the children involved. Labour officials also assisted the employees in lodging the grievance with inquiry officers in order to proceed criminal cases against employers on charges of forced prostitution (one case), bodily harm (four cases) and rape (one case). The Committee expresses its concern about the small numbers of prosecutions and the lack of information on convictions in criminal cases. The Government has not yet supplied reliable statistics of prosecutions and convictions related to child prostitution and forced child labour; the figure reported by the Royal Thai Police ("284,870 cases concerning the arrest of prostitution in 2001") does not shed light upon this matter. The Committee strongly expresses the hope that effective measures will soon be taken in this regard and that more precise information on them will be included in the next report.

10. *Article 25 of the Convention.* The Committee would appreciate it if the Government would supply in its next report information on any legal proceedings which have been instituted under the Penal Code Amendment Act (No. 14) B.E.2540 (1997), which has redefined sexual offences to include the procurement or trafficking of children for the purpose of sexual exploitation, indicating penalties imposed and supplying copies of relevant court decisions.

Trinidad and Tobago

Convention No. 105: Abolition of Forced Labour, 1957 (ratification: 1963)

The Committee notes that no report has been received from the Government. It must therefore repeat its previous observation on the following points:

1. *Article 1(c) and (d) of the Convention.* In its earlier comments the Committee referred to sections 157 and 158 of the Shipping Act, 1987, which provide for imprisonment – involving compulsory labour under the Prisons Rules – in cases of disobedience, desertion and absence without leave; and section 162, empowering forcible return on board ship of seafarers in desertion. Referring to paragraphs 110 and 117 of its General Survey of 1979 on the abolition of forced labour, the Committee pointed out that these provisions are incompatible with the Convention, in so far as they imply not only sanctions including compulsory work but also legal compulsion in the form of direct physical constraint or the menace of a penalty for participation in strikes or breaches of labour discipline or to ensure performance of services by workers. The Committee has noted the Government's indications in its reports of 2000 and 2001 that the revision of the Shipping Act is currently under way and all these issues are being considered in the process. It reiterates firm hope that the revising text will be adopted in the near future and that the legislation will be brought into conformity with the Convention. The Committee requests the Government to provide, in its next report, information on the progress made in this regard.

2. The Committee has previously referred to section 8(1) of the Trade Disputes and Protection of Property Ordinance, which lays down penalties involving compulsory labour for breach of contract by persons employed in certain public services and is 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. The Committee has noted the Government's statements in its reports of 2000 and 2001 that this legislation will be repealed soon, since it is "colonial" legislation and is not in practice in Trinidad and Tobago. It hopes that the Government will take the necessary measures in order to ensure compliance with the Convention on this point and asks the Government to report any progress achieved in this regard.

3. The Committee's earlier comments referred to section 69(1)(d) and (2) of the Industrial Relations Act, Chapter 88:01, which prohibits teachers from taking part in a strike, subject to penalties of imprisonment involving an obligation to work. The Government has indicated in its reports of 2000 and 2001 that the committee responsible for reviewing the Act has made no

recommendation in respect of that issue. The Committee reiterates firm hope that the necessary measures will be taken in the near future in order to bring the abovementioned provisions of the Industrial Relations Act into conformity with the Convention. It requests the Government to indicate, in its next report, the progress made in this regard.

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

Uganda

Convention No. 29: Forced Labour, 1930 (ratification: 1963)

The Committee notes with regret that no report has been received from the Government. It must therefore repeat its previous observation on the following matters:

1. *Abolition of slave-like practices.* The Committee previously referred to the alleged activities of the Lords Resistance Army (LRA) abducting children of both sexes and forcing them to provide work and services as guards, soldiers and concubines, these alleged activities being associated with killings, beatings and rape of these children.

According to the Government's indications in its report received in November 2000, abductions have been taking place in the northern region of the country, the most affected locations having been the districts of Lira, Kitgum, Gulu and Apac. According to the UNICEF report of 1998 referred to by the Government, more than 14,000 children have been abducted from districts in Northern Uganda. The Government states that this large scale of abductions has been one of the most tragic aspects of the Northern region conflict, forcing the vulnerable and innocent to become a part of the conflict, either as child soldiers, human shields and hostages or victims of sexual exploitation. The Government indicates that the age group between 10 and 15 years forms the largest percentage of abducted children, and boys between 8 and 15 years of age are the most targeted.

The Committee has noted that the Government is aware of the traumatic experience abducted children go through and that it has made a number of interventions to prevent such practices, which include, inter alia, the following: sensitization of communities and of political and military authorities in the armed conflict areas about proper handling of the children; sensitization on peaceful conflict resolution and ensuring the rights of the child; setting up of disaster management committees in all districts of insurgencies; and sensitization on issues of disaster preparedness and safety issues. The Government indicates that abducted children who have been retrieved are kept in children's centres where counselling services are provided and measures are taken for their reunification with their families and return to primary education; children are rehabilitated and equipped with vocational skills which enables them to be integrated into society. The Committee has also noted that the Government has declared amnesty by adopting the Amnesty Act, 2000, aiming at peaceful conflict resolution.

While noting the Government's efforts to improve the situation, the Committee nonetheless observes that continuing existence and scope of the practices of abductions and the exaction of forced labour constitute gross violations of the Convention. The victims are forced to perform labour for which they have not offered themselves voluntarily, under extremely harsh conditions combined with ill-treatment which may include torture and death, as well as sexual exploitation. The Committee considers that the scope and gravity of the problem are such that it is necessary to take urgent action that is commensurate in scope and systematic. It therefore requests the Government to continue to provide detailed information on the measures taken to eliminate these practices and to ensure that, in accordance with *Article 25 of the Convention*, penal sanctions are imposed on persons convicted of having exacted forced labour.

2. The Committee has noted the information provided by the Government in reply to its earlier comments. It has noted, in particular, that the draft employment bill to amend the Employment Decree No. 4 of 1975 contains specific provisions on forced labour (section 7), which follow the language of the Convention. The Committee requests the Government to supply a copy of the amending legislation, as soon as it is adopted.

3. *Articles 1(1) and 2(1) of the Convention.* In comments made for a number of years, the Committee has noted that, under section 2(1) of the Community Farm Settlement Decree, 1975, any unemployed able-bodied person may be settled on any farm settlement and be required to render service; and that section 15 of the Decree makes it an offence punishable with a fine and imprisonment for any person to fail or refuse to live on any farm settlement or to desert or leave such settlement without consent. The Committee has noted the Government's indication in its latest report received in November 2000 that the abovementioned Decree is being repealed under the law reform exercise of the Uganda Law Reform Commission, which is to be completed in 2001. The Committee trusts that the Decree will be repealed in the near future and requests the Government to supply a repealing text, as soon as it is adopted.

4. The Committee previously noted that under section 33 of the Armed Forces (Conditions of Service (Officers)) Regulations, 1969, the Board may permit officers to resign their commission at any stage during their service. The Committee has noted from the Government's latest report that the 1969 Regulations were replaced by the National Resistance Army (Conditions of Service (Officers)) Regulations No. 6 of 1993, and that section 28(1) of these Regulations contains a provision similar to that of section 33 of the 1969 Regulations referred to above. The Government indicates that the officer applying for the resignation must give his/her reasons for it, and the Board will consider these reasons and, if it finds them fit, will grant a permission to resign. Referring to the explanations given in paragraphs 67-73 of its General Survey of 1979 on the abolition of forced labour, the Committee points out that career military servicemen who have voluntarily entered into an engagement cannot be deprived of the right to leave the service in peacetime within a reasonable period, either at specified intervals, or with previous notice, subject to the conditions which may normally be required to ensure the continuity of the service. The Committee therefore hopes that the necessary measures will be taken with a view to amending section 28(1) of the 1993 Regulations No. 6 so as to bring it into conformity with the Convention. Pending such amendment, the Committee requests the Government to provide information on the application of section 28(1) in practice, indicating in particular the criteria applied by the Board in accepting or rejecting a resignation, and to supply a copy of a complete text of these Regulations.

5. The Committee previously noted that by virtue of the provisions of section 5(2)(a) and (b) of the Armed Forces (Conditions of Service (Men)) Regulations, 1969, the term of service of persons enrolled below the apparent age of 18 years might extend until they are 30 years of age. The Committee has noted with interest the Government's indication in its latest report that this provision was repealed by the National Resistance Army (Conditions of Service (Men)) Regulations No. 7 of 1993, section 5(4), under which a person below 18 years or above 30 years shall not be employed in the Ugandan army. The Committee would appreciate it if the Government would supply a copy of these Regulations with its next report.

6. *Article 2(2)(c)*. The Committee has noted the information concerning employment of prisoners provided by the Government. It requests the Government to supply, with its next report, a copy of the provisions of the Prisons Act (Cap. 313) governing this issue.

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

Convention No. 105: Abolition of Forced Labour, 1957 (ratification: 1963)

The Committee notes with regret that no report has been received from the Government for the third year in succession. It must therefore repeat its previous observation on the following matters:

Article 1(a), (c) and (d) of the Convention. Over a number of years, the Committee has been referring to the following legislation:

- (i) the Public Order and Security Act, No. 20 of 1967, empowering the executive to restrict an individual's association or communication with others, independently of the commission of any offence and subject to penalties involving compulsory labour;
- (ii) sections 54(2)(c), 55, 56 and 56A of the Penal Code, empowering the Minister to declare any combination of two or more persons an unlawful society and thus render any speech, publication or activity on behalf of or in support of such combination illegal and punishable with imprisonment (involving an obligation to perform labour);
- (iii) section 16(1)(a) of the Trade Disputes (Arbitration and Settlement) Act, 1964, under which workers employed in "essential services" may be prohibited from terminating their contract of service, even by notice; sections 16, 17 and 20A of the same Act, under which strikes may be prohibited in various services that, while including those generally recognized as essential ones, also extend to other services, and contravention of these prohibitions is punishable with imprisonment (involving an obligation to perform labour).

The Committee has noted the Government's repeated statement in its reports that the labour legislation has been revised to enhance the application of the Convention, but the revised legislation is still in the form of a draft Bill. It also notes the Government's indication in its latest report that the revision of the legislation (Labour Law Reform Project) is going on under the ILO/UNDP consultancy, and that a technical report is expected by the end of November 2000. The Committee expresses firm hope that a Bill to repeal or revise the abovementioned provisions will be adopted in the near future and that the legislation will be brought into conformity with the Convention. It requests the Government to provide information on the progress made in this regard and to communicate a copy of the revised legislation as soon as it is adopted.

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

United Arab Emirates

Convention No. 29: Forced Labour, 1930 (ratification: 1982)

Trafficking of children and their use as camel jockeys

In its previous observation, the Committee requested the Government to take without delay all the necessary measures to eradicate the trafficking of children to the United Arab Emirates for use as camel jockeys and to punish those responsible.

The Committee notes the comments made by the International Confederation of Free Trade Unions (ICFTU) in its communication of 20 August 2003, which were forwarded to the Government. In its comments, the ICFTU refers to the persistence of the trafficking of children to the United Arab Emirates and refers, among other examples, to the case reported by Ansa Burney Welfare Trust International (ABWTI) of two brothers aged 10 and 8 years, Niamat Ali and Shaukat Ali, who were being used as camel jockeys in Abu Dhabi. Both were repatriated to Pakistan in November 2002.

The Committee notes the discussion in the Committee on the Application of Standards at the International Labour Conference in June 2003. In its conclusions, the Conference Committee on the Application of Standards expressed its deep concern about the fact that numerous underage children continued to be used as camel jockeys, which is an intrinsically hazardous activity, and at "child trafficking and enslavement, a situation which clearly violated" the Convention and it recommended the Government to accept a direct contacts mission. The Government representative of the United Arab Emirates accepted the recommendation and the mission visited the country from 18 to 22 October 2003. The Committee also notes the report of the direct contacts mission. The Committee notes that the members of the mission had the opportunity to meet high-level officials from the Ministries of Labour and Social Affairs, Justice, Foreign Affairs and the Interior, as well as the Commander General of the police forces of Dubai, the Director-General of the Camel Races Union and the Secretary-General of the Professional Associations Coordinating Committee.

According to the report of the direct contacts mission, the measures adopted to combat the trafficking of children include a decision by the Ministry of the Interior of 20 January 2003. This decision obliges persons who claim to be the parents of young persons of 15 years of age and less who are involved in camel races, to undergo an ADN examination to establish their relationship with the young person and thereby prevent children from entering the country and living with persons who falsely claim to be their parents and who have brought the children to the United Arab Emirates for the purposes of exploiting them for use in camel races. This is an indispensable requirement in order to obtain a residence permit and in the event of violations those responsible are liable to legal action. The direct contacts mission received a list of 42 camel jockeys who were deported in compliance with this provision.

The report of the direct contacts mission, also indicates that the Government considers that the above ministerial decision has reduced by half the number of visa applications and appears to be having a dissuasive effect. The Government also informed the mission that the communication that has been established between the Ministry of the Interior and the embassies of the United Arab Emirates in countries which “export” camel jockeys, as well as the inspections carried out by the police during races, are measures which have contributed to reducing cases of the trafficking of children to the United Arab Emirates. With reference to this issue, the Committee notes that in its comment the ICFTU refers to a press release by the Embassy of Pakistan in May 2003 indicating that the Embassy has received the full collaboration of the Government of the United Arab Emirates to combat the exploitation of children as camel jockeys, that 21 children were repatriated in recent weeks and that 86 were repatriated the previous year.

In its previous observation, the Committee noted the measures adopted in 2002 concerning the prohibition of the employment of young persons under 15 years of age and whose weight is under 45 kg as camel jockeys (Order No. 1/6/266), the requirement of a medical certificate and the penalties which may be imposed for violations.

With reference to penalties, the direct contacts mission received copies of three judicial rulings. One of them, dated 13 December 2002, convicted two nationals of Pakistan to three years’ imprisonment for the abduction and sale of two children. A second ruling of 14 May 2003, convicted a national of Sudan to three months’ imprisonment and deportation for the falsification of a passport indicating that the two young persons were his sons. The third ruling in November 2002 concerned another national of Sudan, a trainer of camel jockeys, who was convicted to three months’ imprisonment for the accidental death of a jockey (the age of the jockey is not specified). The Committee hopes that, in accordance with *Article 25 of the Convention*, the penalties imposed by law are strictly enforced and are adequate. This requirement implies that penalties should also be imposed upon persons who, through their involvement in camel races in any form, have knowledge of and tolerate such practices to obtain benefits of any nature. The Committee hopes that the Government will continue to provide information on the penalties imposed upon those responsible for the trafficking of children for use as camel jockeys.

The Committee notes the information contained in the report of the direct contacts mission that the Government is aware of “the seriousness of the issue of the trafficking in children for use as camel jockeys which is incompatible with its obligations” under the Convention and that the Government also acknowledges “that the present legal and practical measures adopted in this respect are insufficient to prevent completely the trafficking of children (...) for work as camel jockeys”. In this respect, the Committee notes the recommendations made by the direct contacts mission, including:

- the need to adopt provisions prohibiting the employment of young persons under 18 years of age as camel jockeys and establishing severe penalties for those responsible for trafficking children for this purpose;
- the establishment of a federal inspection system to identify and combat trafficking in children;
- the adoption of common guidelines for the Gulf region concerning camel races, which are considered to be part of the cultural heritage of the countries of the region.

In view of the close relationship between measures with regard to the minimum age for employment as camel jockeys and the measures to combat the trafficking of children for this purpose, the Committee hopes that the Bill to establish the minimum age of 18 years for employment as camel jockeys, which is currently under examination by the competent authorities, will be adopted in the near future and requests that it be provided with a copy of the Act once it has been adopted.

United Kingdom

Convention No. 29: Forced Labour, 1930 (ratification: 1931)

The Committee has noted the information supplied by the Government in 2002 and 2003 in reply to its earlier comments. It has also noted a communication dated 1 November 2002 received from the Trades Union Congress (TUC), which contains the TUC’s response to the Government’s 2002 report, a copy of which was sent to the Government for any further comments it might wish to make.

I. Domestic workers from abroad

1. In its previous observation, the Committee referred to the statement made by the United Kingdom Worker member at the Conference Committee in 2000 that the underlying problem, which still appeared to be unresolved, was that the de facto relationship under which the domestic worker was admitted to the United Kingdom was not recognized under British law, so that normal legal employment protections did not attach to the circumstances of their employment. The Committee has noted the Government’s statement in its 2002 report that, in the event of a dispute, an employment tribunal can make a ruling on employment status and in doing so will take into account all factors relevant to the case. However, according to the response by the TUC referred to above, only a handful of such cases have been considered by industrial tribunals in recent years, in which the workers concerned have been assisted by organizations such as Kalayaan and the TUC’s affiliated unions. The TUC takes the view that, in most cases, domestic workers will have no knowledge of British labour legislation, including their right to seek a ruling from an employment tribunal, and those workers whose de facto relationship with their employer is one of forced labour are least likely to be able to access such information or

avail themselves of the protection offered by an industrial tribunal. A question that has been raised by the TUC is how the Government intends to ensure that all domestic workers are made aware of their rights and what strategies it intends to implement to ensure that those rights can be realised. The Committee hopes that the Government will comment on this statement by the TUC and supply information on the measures taken.

2. The Committee has noted with interest from the Government's latest report that the new requirements, according to which domestic workers in private households are permitted to change employers regardless of their reasons for leaving their original employer, and that any such change in employer must be reported to the Immigration and Nationality Directorate, were formally incorporated into the Immigration Rules on 18 September 2002 under the title of "domestic workers in private households". The Committee hopes that the Government will supply a copy of these provisions, as well as the information on their application in practice.

II. Prisoners working for private companies

3. Further to its earlier comments, the Committee has noted the Government's statement in its 2002 report that the United Kingdom continues to have in place a robust set of rules and regulations to ensure that prison labour is not abused either commercially or otherwise, and that these rules apply with equal force to public and to private persons and workshops; the Government can see no justification for requiring different systems of employment for public or private sector work in prisons, where adequate safeguards against abuse are in place. The Committee has also noted that these views were rejected by the TUC in its response to the Government's report contained in the communication referred to above. The TUC believes that practical work can and should be undertaken, through tripartite consultation, to explore how the existing requirements of the Convention should be met.

4. While having noted these views and comments, the Committee reiterates that the exception in *Article 2(2)(c) of the Convention* from the scope of the Convention provided for in this Article for compulsory prison labour, does not extend to work of prisoners hired to or placed at the disposal of private employers (including privatized prisons and prison workshops), even if under public supervision and control. The Committee again refers in this connection to the explanations given in paragraphs 127-143 of its general report to the International Labour Conference in 2001 and in points 5-11 of its 2001 general observation under the Convention, where it pointed out that it is only when work or service is performed in conditions approximating a free employment relationship that work by prisoners for private companies can be held compatible with the explicit prohibition of the Convention; this necessarily requires the formal consent of the persons concerned, as well as further guarantees and safeguards covering the essential elements of a free labour relationship, such as wages and social security, etc.

5. Having also noted the Government's renewed suggestion in its 2002 report that this matter be remitted for further consideration in conjunction with penal practitioners, the Committee trusts that, with regard to contracted-out prisons and prison industries, the necessary measures will at last be taken to ensure that any work by prisoners for private companies be performed under the conditions of a freely consented upon employment relationship and that the Government will soon be in a position to indicate steps taken to this end.

Convention No. 105: Abolition of Forced Labour, 1957 (ratification: 1957)

The Committee takes note of the Government's report.

Article 1(c) and (d) of the Convention. In its earlier comments, the Committee referred to section 59(1) of the Merchant Shipping Act, 1995, which provides that a seafarer who combines with other seafarers employed on the same ship at a time when the ship is at sea to disobey lawful commands, neglect any duty which is required to be discharged, or impede the progress of a voyage or the navigation of the ship, is liable, on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both. The Committee noted the Government's statement in its 1997 report that section 59 is applicable to seafarers who withdraw their labour in furtherance of an industrial dispute. It also noted the Government's indication in its 1999 report that consultations took place with the shipping industry on whether or not section 59 should be repealed or amended so that it applied only to mutinies but not strikes, and it was concluded that other parts of the Act and other legislation existed to deal effectively with actions arising from mutinies, if section 59 was repealed.

The Committee notes the Government's explanations in the report concerning the procedure applicable in case of prosecution under section 59. The Government states that, where the actions of a seafarer are considered to have had serious actual or potential circumstances (e.g. where danger to the vessel or risk to the health and safety of persons is or could have been caused), prosecution in a higher court may be considered appropriate either at the outset, or as a result of a referral from a magistrate's court. Conviction by such a court (conviction on indictment) can attract a penalty of imprisonment and/or a fine; the level of penalty to be applied depends upon the seriousness of the offence and is at the discretion of the judge.

The Committee takes due note of this information, as well as of the Government's indication that there have been no prosecutions under this section in recent times. However, it would appreciate if the Government would supply copies of the relevant court decisions, if and when such prosecutions are instituted.

As regards the proposed amendment to section 59, referred to by the Government in its 2001 report, the Committee notes the Government's indication that, in order to incorporate the proposed changes to this section, it will be necessary to

proceed with an order under the Regulatory Reform Act, 2001, which is an extremely time-consuming process, which is subject to parliamentary scrutiny and will require widespread and detailed consultation with industry and other interested parties.

Having noted the above information, the Committee reiterates its hope that the proposed amendment will be adopted so as to bring the merchant shipping legislation into conformity with the Convention.

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

Venezuela

Convention No. 29: Forced Labour, 1930 (ratification: 1944)

The Committee notes the comments of 21 November 2002 by the International Confederation of Free Trade Unions (ICFTU) which were sent to the Government on 3 January 2003 so that it might make any comments it deemed fit.

The ICFTU referred in its comments to “widely reported” trafficking of women and children for the purpose of prostitution. The Committee notes that in its response the Government states that the ICFTU’s allegations are vague and refers to previous comments made in the context of the Convention.

The Committee notes the conclusions of the United Nations Committee on Economic, Social and Cultural Rights (E/C.12/Add.56, 21 May 2001, paragraph 16) in which the abovementioned committee expressed serious concern at the spread of child prostitution and the incapacity of the State party to resolve these problems.

The Committee also notes the concluding observations by the United Nations Committee on Human Rights (CCPR/CO/71/VEN, 26 April 2001, paragraph 16) in which the abovementioned committee stated that it was deeply concerned “by the information on trafficking in women to Venezuela, especially from neighbouring countries, and by the lack of information ... on the extent of the problem and action to combat it.”

The Committee hopes that the Government will provide fuller information on human trafficking, particularly trafficking in children, in Venezuela and on the measures taken to prevent and combat it. Noting that the Government has not responded to the general observation of 2000, the Committee invites it to provide the information requested therein.

The Committee recalls in this connection that according to *Article 25 of the Convention*, the illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and any Member ratifying the Convention must ensure that the penalties imposed by law are really adequate and strictly enforced. The Committee notes that a number of provisions have recently been promulgated to allow human trafficking to be punished (inter alia the Basic Act on the Protection of Children and Young Persons, 2 October 1998, article 54 of the Constitution, 30 December 1999, and section 174 of the Penal Code, 20 October 2000). The Committee asks the Government to provide information on the effect given in practice to the abovementioned provisions and on the number of prosecutions for trafficking and the penalties imposed.

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States with regard to: **Convention No. 29** (Albania, Azerbaijan, Bahamas, Belarus, Botswana, Bulgaria, Burundi, Cape Verde, Chad, Croatia, Cyprus, Djibouti, Egypt, Eritrea, Estonia, Fiji, Georgia, Ghana, Guinea, Guinea-Bissau, Hungary, Iceland, Italy, Kenya, Kyrgyzstan, Lebanon, Liberia, Lithuania, Luxembourg, Malawi, Malaysia, Mali, Republic of Moldova, Namibia, Netherlands: Aruba, New Zealand: Tokelau, Niger, Nigeria, Peru, Poland, Romania, Saint Lucia, Serbia and Montenegro, Sierra Leone, Slovakia, Slovenia, Solomon Islands, Sri Lanka, Syrian Arab Republic, Tajikistan, United Republic of Tanzania, Trinidad and Tobago, Ukraine, United Arab Emirates, United Kingdom, United Kingdom: Anguilla, United Kingdom: Montserrat, United Kingdom: St. Helena, Yemen); **Convention No. 105** (Afghanistan, Albania, Czech Republic, Djibouti, Eritrea, Ethiopia, Fiji, India, Lithuania, Malawi, Mali, Mauritania, Mozambique, Namibia, Netherlands: Aruba, Niger, Pakistan, Russian Federation, Saint Vincent and the Grenadines, Saudi Arabia, Seychelles, Slovakia, Suriname, United Republic of Tanzania, Ukraine, United Arab Emirates, United Kingdom).

The Committee noted information supplied by *Slovenia* in an answer to a direct request with regard to **Convention No. 105**.

Elimination of Child Labour and Protection of Children and Young Persons

General observation

The Committee has examined a very large number of detailed reports by States which have ratified the Convention recently, in relation to which its comments are addressed directly to the States concerned. In this respect, it has been able to note with interest in a number of instances the adoption of national legislation giving effect to several provisions of the Convention. It appears to the Committee that greater awareness of the problem of child labour is emerging among governments and the social partners. However, the Committee notes that the application of the Convention continues to frequently give rise to serious difficulties in practice. Indeed, it has noted that, even in countries which have had recourse to the technical assistance of the ILO to resolve the problem of child labour, thousands of young children continue to work, particularly in the informal economy and in commercial agriculture, plantations, mines, domestic work, construction, fishing, textiles, family enterprises and forestry. The Committee also noted the existence of a substantial disparity among governments which have recently ratified the Convention between the types and scope of the information, including statistics, provided to the Committee. It is therefore necessary for more complete information to be available, on the one hand, to allow an adequate evaluation of the nature, extent and causes of the phenomenon of child labour and, on the other and in particular to measure the progress achieved in both law and practice and to identify short- and medium-term prospects for the eradication of the most serious situations that violate the Convention.

To assist the Committee in evaluating the application of the Convention in practice, it therefore requests governments to provide the fullest possible statistical information in their next report on the nature, extent and trends of work by children and young persons under the minimum age specified by States when ratifying the Convention, extracts of the reports of the inspection services and information on the number and nature of the violations reported and on the penalties imposed. Where possible, the information provided should be classified by sex.

The Committee understands that certain governments are not yet in a position to provide full statistical data in response to its request. The Committee requests these countries to provide all the information currently available and to continue their work of compiling the statistics referred to above with the technical cooperation of the ILO.

Azerbaijan

Convention No. 138: Minimum Age, 1973 (ratification: 1992)

The Committee notes that the Government's report contains no reply to previous comments. It must therefore repeat its previous observation which read as follows:

The Committee had recalled that the minimum age of 16 years was specified under *Article 2, paragraph 1, of the Convention* as regards Azerbaijan. It had noted with regret that the new Labour Code in section 42(3), allows a person who has reached the age of 15 to be part of an employment contract; section 249(1) of the same Code specifies that "persons who are under the age of 15 shall not be employed under any circumstances". Moreover, the Individual Contracts of Employment Agreement Act, section 12(2), sets the minimum age for concluding an employment contract at 14 years. The Committee once again points out that the Convention allows and encourages the raising of the minimum age but does not permit lowering of the minimum age once specified. Therefore, the Committee once again asks the Government to indicate the measures taken or envisaged, pursuant to its declaration under *Article 2* of the Convention, to ensure that access to employment of children of 14 and 15 years of age may be allowed exceptionally, only for work that meets the criteria set out in *Article 7* of the Convention.

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

Belgium

Convention No. 138: Minimum Age, 1973 (ratification: 1988)

Article 1 of the Convention. Further to its previous comments, the Committee notes with satisfaction the information supplied by the Government in its reports. It notes in particular that schooling is compulsory up to the age of 18 years. According to the information supplied by the Government, compulsory schooling is composed of full-time and part-time compulsory education. In the case of full-time compulsory education, young persons must be in education up to the age of either 15 years, in keeping with the minimum age for admission to employment or work specified at the time of ratification, or 16 years, depending on whether or not they have completed the first two years of secondary education. In the case of part-time compulsory education, the age is from 16 to 18 years.

Article 8. Participation in activities such as artistic performances. Further to its previous comments, the Committee notes with satisfaction the detailed information supplied by the Government on the application of the Act of 5 August 1992 and the Royal Order of 11 March 1993 which give effect in law to the provisions of *Article 8* of the Convention.

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

Bolivia

Convention No. 77: Medical Examination of Young Persons (Industry), 1946 (ratification: 1973)

The Committee notes the information communicated by the Government in response to its previous comments. The Committee profoundly regrets to note that the Government has not yet taken appropriate measures to apply in particular *Articles 2, 3, 5 and 7 of the Convention*, despite repeated requests formulated by the Committee for 25 years and, especially in 1998 and 2002, in which the Committee deplores the absence of any laws or regulations, despite the Government's declaration made on several occasions, indicating the intention of adopting general regulations to implement the Act on occupational safety and health and welfare, to give effect to the provisions of the Convention.

The Committee notes the Government's indication that the Ministry of Labour and the Ministry of Health and Sports have signed an agreement on 8 May 2003 to initiate accompanying actions to the Government's measures to accelerate the economy. The Government explains that this bi-ministerial agreement put into effect the Voluntary Plan on the Adaptation of Work (*Plan Voluntario de Adecuación Laboral (VALORA)*) representing a legal-technical instrument to provide technical guidance, free of charge, to those enterprises which adhere voluntarily to the above Plan in order to minimize occupational risks inherent in its productive process. The Plan is also designed to improve both the procedures on occupational safety and health, as well as the work quality in the enterprises. The benefits offered by the Plan are: the decrease of accidents and occupational diseases; the increase of efficiency and work quality; the decrease of production costs, as well as the decrease of social conflicts; the increase of worker motivation, on the one hand, and the commitment of the enterprises, on the other; and finally acknowledgement by society for healthy enterprises. The Government further specifies that the analysis and evaluation of the results obtained from this Plan will serve as a basis for the elaboration of legal standards, which will also incorporate the recommendations and observations provided by the Committee on this Convention. The Committee, taking due note of this information, requests the Government to indicate the time frame in which legislative or regulatory measures will be taken on the basis of the results obtained from the VALORA Plan. With regard to the time elapsed during which the Government has not taken any measures to introduce regulations requiring medical examination for fitness for employment of young persons under 18 years of age, the Committee expresses its firm hope that the VALORA Plan will soon provide results which will enable the Government to draft and adopt laws or regulations giving effect to the provisions of the Convention. In this context, the Committee recalls to the Government that the laws or regulations shall provide for the specific obligation for young persons under the age of 18 years to undergo medical examinations before admission to employment (*Article 2*), the frequency of such examinations (*Article 3*), the frequency of medical examinations until the age of 21 for young persons in occupations which involve high health risks (*Article 4*), the requirement that such examinations be free of charge (*Article 5*), the special measures to be taken where the young person is found by medical examination to be unsuited to work (*Article 6*), and the requirement to file and keep available to labour inspectors the medical certificate for fitness for employment or the workbook (*Article 7*).

The Committee urges the Government to take the appropriate measures in the very near future. It requests the Government to keep the Office informed of any progress achieved in the matter.

[The Government is asked to supply full particulars to the Conference at its 92nd Session and to reply in detail to the present comments in 2004.]

Convention No. 78: Medical Examination of Young Persons (Non-Industrial Occupations), 1946 (ratification: 1973)

The Committee takes note of the information supplied by the Government in reply to its previous comments.

Article 7, paragraph 2, of the Convention. With regard to the methods of identification or other methods of supervision to be adopted for ensuring the application of the system of medical examination for fitness for employment to children and young persons engaged either on their own account or on account of their parents in itinerant trading or in any other occupation carried on in the streets, the Committee requests the Government to take into consideration, when taking the legislative or regulatory measures on the basis of the analysis of the results obtained from the VALORA Plan, the indications contained in Recommendation No. 79 on the medical examination of young persons, particularly Paragraph 14 on methods of supervision designed to ensure the application of the system of medical examination for fitness for employment to children and young persons engaged in itinerant trading or in any other occupation carried on in the streets or in places to which the public have access.

Moreover, the Committee invites the Government to refer to its comments under Convention No. 77.

Cameroon

Convention No. 78: Medical Examination of Young Persons (Non-Industrial Occupations), 1946 (ratification: 1970)

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

The Committee notes the information supplied by the Government in its report. It notes that children under the age of 18 years, even in non-industrial work, must comply with the provisions of section 100 of the Labour Code under which "every employee must undertake a compulsory medical examination before recruitment". The Committee notes that this information does not reply to the comments made in its previous observations. The Committee recalls that the Government emphasized that the independent activities of children and young persons are carried out in the informal sector which eludes the supervision of the labour inspectorate and that application of the Convention to this sector cannot be envisaged until some degree of control is exercised over the sector. The Committee also recalls that during the discussion that took place at the 82nd Session of the Conference (June 1995) the Government representative recognized the soundness of requesting an extension of the requirement of a medical examination for fitness for employment to all categories of young workers. He stated that the Government was aware of the necessity of this examination for children and young persons. Given that on a number of occasions the Government has expressed its intention of taking measures with a view to subjecting children and young persons working in the informal sector to the provisions of the Convention, the Committee reiterates its hope that the Government will take the necessary measures to this end and will communicate the results which will ensure application of this Convention to this category of children and young persons.

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

[The Government is asked to report in detail in 2004.]

Costa Rica

Convention No. 138: Minimum Age, 1973 (ratification: 1976)

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

Article 1 of the Convention. In its previous observation, the Committee noted the comments made by the Trade Union of Employees of the Ministry of Finance (SINDHAC), the Transport Workers' Union of Costa Rica (SICOTRA) and the Rerum Novarum Confederation of Workers (CTRN), according to which, in violation of the provisions of the national legislation and the Convention, children between 5 and 11 years of age work for an average of seven hours a week and that children between 12 and 14 work for an average of 24 hours a week. The majority of child workers are found in the urban informal sector, the traditional rural sector (seasonal work in the coffee and sugar cane harvests) and domestic work. The Committee notes the Government's reply, in which, on the one hand, it indicates that it "is aware of the dimensions of the problem" and, on the other, describes the various measures adopted and projects formulated with a view to eliminating child labour in the country. These measures include the adoption of the Agenda for Children and Adolescents, Objectives and Undertakings, 2000-10, which includes in its long-term objectives "ensuring that boys and girls under 15 years of age, and young persons between 15 and 18 years of age, are enrolled in and remain in the formal education system", and the Memorandum of Understanding with the ILO/IPEC, in which the Government undertakes to make significant efforts for the progressive elimination of child labour. The Committee welcomes the efforts made by the Government, but is bound to express its concern at the situation described by the trade union organizations and urges the Government to continue taking the necessary measures to ensure that the legislative provisions on the minimum age for admission to employment are effectively enforced.

Article 2. With regard to the contradiction that exists between, on the one hand, section 89 of the Labour Code, which provides for a minimum age for admission to employment of 12 years and, on the other, sections 78 and 92 of the Code of Children and Young Persons, which sets the minimum age at 15 years, the Committee had previously noted the Government's indication that the provisions in the latter Code derogate implicitly the earlier legislative provisions which are contrary to it. Nevertheless, with a view to ensuring the protection of young workers and as the employment of young persons under 15 years of age in various economic sectors is encountered in practice, the Committee once again urges the Government to adopt the necessary measures to amend the Labour Code to bring its provisions into line with the Code of Children and Young Persons and requests it to provide information on any progress achieved in this respect.

Article 3. The Committee had previously requested the Government to take the necessary measures to determine, in accordance with the requirements of *Article 3, paragraph 2*, the types of hazardous employment or work prohibited for persons under 18 years of age. In this respect, the Committee notes with satisfaction that, after consulting workers' and employers' organizations and NGOs, the Government has finally adopted the Regulations respecting the recruitment and occupational health conditions of young persons (Decree No. 29220 of 30 October 2000), which enumerates in detail the types of work that are absolutely prohibited for persons under 18 years of age and the types of work permitted under certain restrictions. The Committee requests the Government to provide full particulars on the effect given to the above Regulations.

Dominica

Convention No. 138: Minimum Age, 1973 (ratification: 1983)

The Committee notes that the Government's report indicates that there has been no change in the legislation or practice since the last report on the Convention. It is therefore bound to repeat its previous comments on the following matters.

1. It recalls that the Government has been asked to give effect to several provisions of the Convention since its ratification. The Committee points out in particular that the minimum age for admission to employment or work, which was specified to be 15 years when Dominica ratified the Convention, has not been ensured in the national legislation.

2. *Article 2, paragraph 1, of the Convention.* The Committee recalls that, under section 3 of the Employment of Children Prohibition Ordinance, the minimum age of admission to employment was 12 years and that, under section 4, subsections 1 and 5, of the Employment of Women, Young Persons and Children Ordinance, the minimum age is 14 years. The Government, however, specified a minimum age of 15 years when it ratified the Convention. It urges the Government to take necessary measures in order to raise the statutory minimum age to 15 years, in accordance with this provision of the Convention.

The Committee further noted that the statutory provisions on minimum age applied only to persons employed under an employment relationship or under a contract of employment, whereas the Convention also covered work performed outside any employment relationship, including work performed by young persons on their own account. The Committee hopes that the Government will indicate the measures taken or envisaged to give full effect to the Convention on this point.

3. *Article 3.* The Committee recalls that no higher minimum age had been fixed for work which is likely to jeopardize the health, safety or morals of young people, other than night work. It urges the Government to take measures so as to set such higher minimum age(s) in accordance with *Article 3, paragraph 1*, of the Convention, and to determine the types of employment or work to which higher minimum age(s) should apply, in accordance with *Article 3, paragraph 2*, of the Convention.

4. *Article 7.* The Committee noted that the national legislation allowed exceptions to the above minimum ages as regards the employment of children under the age of 12 years in domestic work or agricultural work of a light nature at home by the parents or guardian of such children (section 3 of the Employment of Children Prohibition Ordinance) and the employment of children under the age of 14 years in an undertaking or on a ship where only members of the same family are employed (section 4, subsection 1 and section 5, of the Employment of Women, Young Persons and Children Ordinance). The Committee recalls that under this Article of the Convention, national laws or regulations may permit the employment or work of persons 13 to 15 years of age on light work which is: (a) not likely to be harmful to their health or development; and (b) not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received. Another condition is that the activities involved and the conditions of work and employment should be determined by the competent authority. It hopes that the Government will take measures to restrict, in accordance with this provision, the possibility to employ children below the minimum age specified, and to determine the activities and conditions of their employment or work.

As regards the Government's reference to the work of family members as the category excluded under *Article 4*, the Committee points out that the exceptions under this provision must be listed in the first report after ratification, and that the Government declared in its first report, received in February 1988, that no use was made of this provision.

5. *Article 9, paragraph 3.* The Committee noted that section 8, subsection 1, of the Employment of Women, Young Persons and Children Ordinance provided for the keeping of registers or lists of young persons of less than 16 years of age, whereas the Convention describes the keeping of such registers of persons of less than 18 years of age. It notes the Government's indication that this provision is not applied in practice. The Committee would nevertheless point out that the Government has an obligation to give effect to the provisions of the Convention in law and practice and therefore asks the Government to take necessary measures so that registers or other documents are kept by the employer concerning workers younger than 18 years of age.

6. The Committee noted the Government's indication that the provisions of the Convention are upheld by custom and practice. Pending the necessary amendments to the legislative provisions as requested above, the Committee asks the Government to supply detailed information on how the Convention is applied in practice, as required under *Part V of the report form*, including, for instance, extracts from official reports, statistics, and information on inspection visits made and contraventions reported.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future. It further requests the Government to provide information on any progress made on the matters that have been raised, and reminds the Government that it may avail itself of ILO technical assistance in this regard.

Dominican Republic

Convention No. 138: Minimum Age, 1973 (ratification: 1999)

The Committee notes the information provided by the Government in reply to the communication of the International Confederation of Free Trade Unions (ICFTU) transmitted to the Office on 30 September 2002, which contains a number of comments on the application of the Convention.

In its communication, the ICFTU indicates that the minimum age for admission to employment or work is fixed at 14 years of age and education is free and compulsory up to this age. Nevertheless, it indicates that child labour is a serious problem in practice. The rate of unemployment and poverty is high, particularly in the Haitian community. Therefore children enter the labour market at a young age to work in informal activities or in agriculture. Furthermore, the number of Haitian children working in sugar plantations alongside their parents is increasing.

In reply to the communication of the ICFTU, the Government indicates that, as an underdeveloped country, the Dominican Republic is extremely poor. It is not however certain that Haitian children work. In this respect, the Government points out that the national inspection service has not reported any such cases and, given that labour in the sugar plantations has been mechanized, there have not been any reported cases of child labour in this sector of economic activity. The Government also indicates that it cannot deny the fact that children enter the labour market at a very young age. However, with the support of the ILO/IPEC programme, it is making efforts to improve the situation. In this respect, the Secretary of State for Labour, in collaboration with the National Committee to Combat Child Labour and employers and workers, removed over 2,000 children working in the agricultural sector. These children were later reintegrated into school. Furthermore, the Government points out that, in collaboration with the Secretary of State for Education, awareness-raising activities for children and the general population were organized, in particular 50 workshops, seven television programmes, round-table meetings and programmes with educators.

The Committee notes with interest the Government's efforts to eliminate child labour, in particular those carried out in collaboration with the ILO/IPEC programme. The Committee requests the Government to continue to provide information on the measures taken to eliminate child labour in practice.

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

France

Convention No. 138: Minimum Age, 1973 (ratification: 1990)

The Committee notes the information provided by the Government in its reports in reply to its previous observation. It notes with interest the adoption of Ordinance No. 2001-174 of 22 February 2001 transposing into national law European Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work, as well as the adoption of Decree No. 2002-789 of 3 May 2002, reducing the hours of work of young persons of under 16 years of age carrying out light work during school holidays. The Committee requests the Government to provide information on the following points.

Article 2, paragraph 3, of the Convention. Minimum age in the maritime sector. The Committee noted in previous comments that new section 8 of the Maritime Labour Code, amended by Act No. 97-1051 of 18 November 1997, extends the provisions of the Labour Code respecting the apprenticeship of young seafarers aboard ship, and that these provisions to be adopted by decree of the Council of State would facilitate the recruitment of young seafarers. It requested the Government to indicate whether the above decree had already been adopted and, if so, to provide a copy with its next report and to continue supplying information on the application in practice of the minimum age in the maritime sector. The Committee notes the information contained in the Government's report according to which the above decree has not yet been adopted. It once again requests the Government to provide information on the application in practice of the minimum age in the maritime sector, and to supply a copy of the decree when it has been adopted by the Council of State.

Minimum age for domestic employees. In its previous comments, the Committee requested the Government to provide information on cases of children aged between 14 and 16 years illegally employed as domestic workers and on the measures taken to ensure the application of the relevant provisions of the Convention. In its report, the Government indicates that the national collective agreement of workers employed by private individuals of 24 November 1999, extended by the Order of 2 March 2000, contains a number of provisions in section 24 respecting young workers. It provides, among other measures, that young workers between 14 and 16 years of age may only be engaged for half of their school holidays, and only in light work. The Committee takes due note of this information.

Article 8, paragraphs 1 and 2. Enterprises involving artistic performances and modelling agencies. The Committee noted in its previous comments that, under the terms of section L.211-6 of the Labour Code, children under the age of 16 years may not be engaged, without prior individual authorization, to participate in activities such as artistic performances. Section L.211-6(2) of the Labour Code provides that an individual permit shall also be required for children engaged or offered by an individual or an association to work as a model. The Committee noted that the procedure for obtaining individual permits, set out in section L.211-7 of the Labour Code, is such as to guarantee the conditions of employment of young persons in this sector. However, the Committee noted that section L.211-6(3) of the

Labour Code explicitly provides that the individual permit is not required where the child is engaged by a modelling agency holding the license envisaged in section L.763-3 of the Labour Code and which has obtained approval enabling it to engage children. In this respect, it requested the Government to indicate the measures adopted or envisaged to bring the national text into conformity with the obligations set out in *Article 8* of the Convention. The Committee notes the information provided by the Government in its report of 2001 according to which the strict requirement of prior individual authorization is tantamount to abolishing the specific system of child modelling agencies. The Government specifies in its report that in its view the system functions by guaranteeing the protection of children and that abolishing the system of child modelling agencies would result in a considerable overload of applications to the administration, without however improving the protection of those concerned. The Committee notes in effect that the conditions and hours of work of child models working for agencies which have obtained the license, as set out by regulations are, in practice, protective. In particular, section R.211-6-1 of the Labour Code specifies that the application for approval shall include a declaration in which the agency undertakes that the child will undergo a medical examination at the expense of the agency, and that such examination shall show whether, taking account the age and state of health of the child, the latter is capable of working as a model without jeopardizing her or his health or development. This examination shall be renewed at intervals which depend on the age of the child and, where the medical opinion is negative, the child may not be engaged. Furthermore, the Committee notes that, under the terms of sections R.211-12-1, R.211-12-2 and R.211-12-3 of the Labour Code, the employment of a child working as a model and prior selection with a view to such an activity are only authorized for a limited period of time, depending on the age of the child. Moreover, where the child is in school, employment is only authorized on rest days and half days other than Sunday; and that, during school holidays, work by the child is only permitted for half of the holidays and in accordance with a maximum number of daily and weekly working hours. The Committee also notes that section L.213-7 of the Labour Code prohibits any derogation from the prohibition of night work for young persons under 16 years of age, except for those referred to in the first subsection of section L.211-6 of the Labour Code, that is children under 16 years of age, who may not be engaged by an enterprise involved in performances, cinema, etc., without an individual permit. Finally, the Committee notes that section R.211-13 of the Labour Code provides that an agency that has obtained approval shall issue to the child whom it is seeking to engage or to the latter's legal representatives, as confirmed by a receipt, an explanatory note indicating the requirements, among others, for the medical supervision of the child, the duration of travel and waiting periods, maximum hours of employment and remuneration conditions. The Committee therefore requests the Government to provide information on the application of these provisions in practice, including statistics on the employment of children and young persons in modelling agencies, the number of such agencies and the duration of the approvals, extracts from the reports of the inspection services and information on the number and nature of the contraventions reported.

Honduras

Convention No. 138: Minimum Age, 1973 (ratification: 1980)

With reference to the comments it previously made, the Committee notes with satisfaction the adoption of the Childhood and Adolescence Code in 1996, and the Child Labour Regulation in 2001. The Committee also notes with interest that this new Code responds to several points raised by the Committee previously.

The Committee is also addressing a direct request to the Government on other detailed points.

Indonesia

Convention No. 138: Minimum Age, 1973 (ratification: 1999)

The Committee takes note of the information provided by the Government in reply to the communication of the ICFTU dated 25 June 2003 containing comments on the application of the Convention by Indonesia. A copy of this communication was forwarded to the Government on 5 September 2003, for comments it wished to make on the matters raised therein.

In its communication, the ICFTU alleges that child labour is widespread in Indonesia and that the education requirements of nine (9) years' compulsory education are not enforced in practice. Most child labour takes place in informal unregulated activities, such as street vending, agricultural and domestic sectors. According to the ICFTU, however, child labour is pervasive even in formal activities, such as construction, factory employment, mining and fishing.

In reply to the ICFTU's communication, the Government indicates that child labour is not merely the problem of the Government of Indonesia, since almost all developing countries or even advanced countries face it. Child labour is mainly caused by structural poverty. Moreover, Indonesia, as a developing country, has taken various efforts to eliminate, or at least reduce child labour. For example, continuous efforts to eliminate child labour have been undertaken with the support of the ILO-IPEC Programme in Indonesia. The Government adds that for a developing country like Indonesia, eliminating or reducing child labour is not an easy task since the problems of working children are closely related to other aspects such as poverty, cultural factors and community awareness.

The Committee notes the efforts undertaken by the Government in order to eliminate or at least reduce child labour, in particular those made in collaboration with ILO/IPEC. It invites the Government to increase its efforts in this regard in order to make substantial progress and to provide precise information on the measures taken to combat child labour in practice.

The Committee is also addressing a direct request to the Government concerning other points.

Kenya

Convention No. 138: Minimum Age, 1973 (ratification: 1979)

The Committee takes note of the Government's report, as well as of the information supplied to the Conference Committee in June 2003, and the detailed discussion which took place thereafter. The Committee requests the Government to provide further information on the following points.

Article 2, paragraph 1, of the Convention. Scope of application. Branches of economic activity covered by the Convention. The Committee had noted that the Government proposed to the task force, which is reviewing the national labour legislation, to extend the provisions on the minimum age for admission to employment or work beyond industrial enterprises to other sectors of the economy. The Committee had recalled that, according to section 25(1) of the Employment Act, the prohibition on employing children (i.e. a person under 16 according to section 2 of the Act) is limited to work performed in industrial undertakings. The Committee notes the Government's statement that the Employment Act of 1976 (Chapter 226) and the Employment Act (Children) Rules of 1977 are being revised so as to bring the national legislation in line with the requirements of ILO Conventions. The Committee reiterates its hope that the amended legislation will extend the application of the minimum age for admission to employment or work to all sectors of the economy.

Unpaid work. The Committee had noted that section 10(5) of the Children Act, 2001, defines the term "child labour" as any situation where a child provides labour in exchange for payment and that section 2 of the same Act defines "child" as any person under the age of 18 years. The Committee notes the Government's indication that many children (78 per cent according to the 1998-99 Child Labour Report, published by the Central Bureau of Statistics of the Ministry of Finance and Planning in June 2001) are working for free in family agricultural activities and business enterprises during school holidays and after school. The Committee notes the statement made by the Government representative to the Conference Committee in June 2003, that such work is regarded as part of their upbringing and is considered to be a positive process of growing up, since it did not interfere with the child's education or moral upbringing. The Government representative acknowledged however that, due to the poverty prevailing in some parts of Kenya, especially in the arid and semi-arid areas, unfortunate situations did occur where children of school age were compelled by their parents or their own economic situation, for example due to HIV/AIDS, to work for their survival. In this connection, he indicated that, in the framework of the ongoing review of the labour legislation, the Government intended to amend section 10(5) of the Children Act, 2001, so as to bring it into line with the provisions of the Convention. The Committee reminds the Government that by virtue of the minimum age specified by it, children under 16 years of age shall not be permitted to work regardless of the type of work performed, and whether it is paid or not, with the exception of light work which can only be carried out under the conditions laid down in *Article 7* of the Convention. The Committee once again requests the Government to take the necessary measures to ensure that children working for free in family agricultural activities and business enterprises are entitled to the protection afforded by the Convention, notably by amending the definition of child labour contained in section 10(5) of the Children Act, 2001.

Derogations to the prohibition to employ children. In its previous comments, the Committee had noted that section 3(1) of the Employment (Children) Rules, 1977, allows the employment of children with the prior written permission of an authorized officer, and that the only restrictions are that such employment should not cause the children to reside away from parents without their approval, that permission for work in a bar, hotel, restaurant, etc., needs the consent of the Labour Commissioner and that such a permit should be renewed annually. The Committee had emphasized that such permits are incompatible, not only with the conditions set out in *Article 7, paragraph 1*, but also with the provisions of *Article 2, paragraph 1*, of the Convention which are mandatory, as Kenya has not availed itself of any of the flexibility clauses contained in *Articles 4 and 5*, of the Convention. The Committee had noted that the provisions of section 3(1) of the above Rules undermine the prohibition set out in *Article 2, paragraph 1*, of the Convention and the provisions of the national legislation establishing the minimum age for admission to employment at 16 years. It was therefore bound to emphasize the fact that no permit should be issued by any person, whether they are parents, guardians or the Labour Commissioner, which have the effect of allowing employment or work: firstly, by persons under 13 years of age, irrespective of the type of work or employment; secondly, for persons between 13 and 15 years of age, unless this is on light work in strict conformity with the conditions set out in *Article 7, paragraph 1*; and thirdly, for persons of between 16 and 18 years of age on any of the types of employment or work covered by *Article 3, paragraph 1*, unless this is in strict conformity with the conditions set out in *Article 3, paragraph 3*. The Committee notes the Government's statement in its report indicating that the Government has taken careful note of the comments of the Committee of Experts, regarding the issue of permits allowing children of certain ages to work and that the Government is taking the necessary measures to address these concerns. The Committee once again requests the Government to take the necessary measures to ensure that

the permits issued under section 3(1) of the Employment (Children) Rules, 1977, are only issued under the conditions outlined above.

Article 2, paragraph 3. Age of completion of compulsory schooling. The Committee had noted that the Ministry of Education was preparing draft legislation to make primary education compulsory. It had also noted that under section 7(2) of the Children Act, 2001, every child shall be entitled to free basic education which shall be compulsory. It had further noted that according to the abovementioned Child Labour Report 1998-99 and the “Child labour policy”, primary education is compulsory from 6 to 13 years of age. The Committee notes with interest the information provided by the Government representative to the Conference Committee in 2003 that a truly free and compulsory primary education for all children of school age, with effect from January 2003, was one of the most important developments in the area of protection of children. As a result of the policy on free primary education, for the period between January to May 2003, 1.6 million children who would otherwise have been engaged in child labour are now enrolled in school. The Committee also notes the Government representative’s statement that the age of completion of free and compulsory schooling remains at 16. However, the Committee notes the Government’s statement, in its report, that the draft legislation on compulsory schooling which will address the gap between the age of completion of compulsory schooling (14 years of age) and the minimum age for admission to employment or work (16 years of age), is being prepared. The Committee requests the Government to provide a copy of the text fixing the age of completion of compulsory schooling.

Article 3, paragraph 2. Determination of hazardous work. In its previous comments, the Committee had noted that section 10(1) of the Children Act, 2001, provides that every child shall be protected from economic exploitation and any work that is likely to be hazardous, or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development. The Committee reminds the Government that, by virtue of *Article 3, paragraph 2*, of the Convention, the types of work or employment considered to be hazardous shall be determined in the national legislation after consultation with the organizations of employers and workers concerned, where such exist. The Government indicates in its report that the social partners will be consulted on the types of work to be prohibited for young persons under 18 years of age during the ongoing review of the national labour legislation by the tripartite task force. The Committee hopes that the list of hazardous work will be adopted rapidly so as to bring the national legislation in line with the Convention.

Article 3, paragraph 3. Admission to hazardous work as from 16 years of age. In its previous comments, the Committee had noted that section 10(4) of the Children Act, 2001, provides that the Minister shall make regulations in respect of periods of work and establishments where children aged at least 16 years may work. The Committee notes the Government’s indication that section 10(4) is included in Part II of the Children Act, 2001, which addresses the protection of children against economic exploitation and any work that is likely to be hazardous. The Committee recalls that the competent authority may authorize, after consultation with the organizations of employers and workers concerned, young persons older than 16 years of age to undertake hazardous work on condition that their health, safety or morals are fully protected and that they receive adequate specific instruction or vocational training in the relevant branch of activity. The Committee therefore requests the Government to indicate whether the regulations referred to in section 10(4) of the Children Act, 2001, have been issued by the competent minister and, if so, to provide a copy. It also requests the Government to indicate the provisions which require that the health, safety and morals of young persons aged 16 to 18 years engaged in these types of work are fully protected and that these young persons have received adequate specific instruction or vocational training in the relevant branch of activity.

Article 6. Apprenticeship. In its previous comments, the Committee had noted that section 25(2) of the Employment Act, 1976, exempts any child employed in an industrial undertaking under a deed of apprenticeship or indentured learnership from the provisions on the minimum age for admission to employment. It had also noted that, by virtue of section 8(3) of the Industrial Training Act (Chapter 237), a minor (i.e. a person under 15 years of age according to section 2 of the Act) may enter into apprenticeship with the authorization of his or her parents or guardian or, in the absence of such authorization, of a district officer or a labour officer. Since no provision in the latter Act sets a minimum age for entry into apprenticeship and no provision in the national legislation determines the age of completion of compulsory schooling, the Committee had noted that authorizations for apprenticeship or training may be granted to children under 14 years of age. The Committee notes the Government’s statement in its report that no provisions set the minimum age for admission to apprenticeship. However, the Government indicates that in practice apprentices have completed primary education. The Government further indicates that the task force, in charge of reviewing the national labour legislation, will address this issue and amend sections 25(2) and 8(3) of the Industrial Training Act (cap. 237) to bring the legislation into conformity with the Convention. The Committee once again recalls in this respect that by virtue of *Article 6* of the Convention, only work done within the context of a programme of training or vocational guidance by persons of at least 14 years of age in enterprises is excluded from the scope of this Convention. It therefore hopes that amendments to the Industrial Training Act (cap. 237) will be adopted soon so as to bring the legislation in line with the Convention.

Article 7, paragraph 1. Admission to light work. In its previous comments, the Committee had noted that under section 3(1) of the Employment (Children) Rules, 1977, children may be permitted to work with the written permission of an authorized officer except in bars, hotels, restaurants or clubs where intoxicating liquors are sold or anywhere as a tourist guide. Employment in such places will be accepted if the Labour Commissioner has consented in writing and the

child is in possession of a copy of such consent (section 3(1)). The Committee recalls that, by virtue of *Article 7, paragraph 1*, of the Convention, children from 13 years of age may be permitted to undertake light work which is not likely to be harmful to their health or development; and not such as to prejudice their attendance at school, or their participation in vocational training programmes. The Committee notes the Government's indication in its report that it will take the necessary measures on the occasion of the ongoing revision of the labour legislation to bring the relevant laws into conformity with the Convention. The Committee urges the Government to indicate the measures taken or envisaged to ensure that light work may only be performed by children of at least 13 years of age.

Article 7, paragraph 3. Determination of light work. As noted in its previous comments, the Committee reminds the Government that by virtue of *Article 7, paragraph 3*, of the Convention, the competent authority shall determine the activities in which employment or work may be permitted as part of light work. The competent authority shall also prescribe the number of hours during which, and the conditions in which, such employment or work may be undertaken. The Committee reiterates its hope that the Government will take the necessary measures on the occasion of the revision of the national labour legislation and ensure that its legislation determines light work activities and prescribes the number of hours during which, and the conditions in which, such employment or work may be undertaken by young persons of 13 years of age and above, in conformity with the Convention.

Article 8. Artistic performances. The Committee notes the Government's statement, in its report that national legislation does not provide for permits to be granted when children participate in cultural artistic performances. The Government further indicates that children take part in extra-curricula school activities and artistic events (such as drama, sports or choirs). However, the Committee observes that section 17 of the Children Act, 2001, provides that a child shall be entitled to leisure, play and participation in cultural and artistic activities. The Committee draws the Government's attention to *Article 8* of the Convention, which lays down that after consultation with the organizations of employers and workers concerned, the competent authority may, by permits granted in individual cases, allow exceptions to the prohibition of employment or work provided for in *Article 2* of this Convention, for such purposes as participation in artistic performances. Permits so granted shall limit the number of hours during which, and the conditions in which, such employment or work is allowed. The Committee observes that the Government's report makes no reference to legislation prescribing a minimum age for artistic performances by children. The Committee recalls that the specified minimum age for admission to employment or work in Kenya is 16 years. The Committee therefore requests the Government to indicate the measures taken or envisaged to ensure that approval for young persons of below 16 years of age to take part in artistic activities is granted in individual cases, and that permits so granted shall prescribe the number and hours during which, and the conditions in which, such employment or work is allowed. The Committee also requests the Government to supply information on the consultations which took place on this subject with the organizations of employers and workers concerned.

Part V of the report form. The Committee had noted the detailed information and statistics provided in the 1998-99 Child Labour Survey, published by the Central Bureau of Statistics of the Ministry of Finance and Planning in June 2001 and in the document entitled; "Child labour policy". It notes with interest that the Government is taking measures to ensure the rehabilitation of street children. The Government indicates that since January 2003, 1,800 street children, mostly aged 16 to 18, have been placed in rehabilitation and vocational training centres. It also notes that the Ministry of Labour and Human Development prepared a report in 2002 entitled: "National Child Labour Policy Towards a Child Labour-free Society". The report aims at identifying the legal statutes that regulate child labour issues and ensuring their effective implementation; analysing the character, nature, size and causes of child labour in order to formulate and implement appropriate programmes of actions; and disseminating information. The Committee notes that the report provides interesting information on the nature of hazardous occupations and major achievements. The Committee asks the Government to continue to provide information on the practical application of the Convention including, for example, statistical data on the employment of children and young persons, extracts from the reports of inspection services and information on the number and nature of contraventions reported.

The Committee notes the Government's indication that the task force, which is in charge of the revision of the Employment Act 1976 (Chapter 226) and the Employment (Children) Rules 1977, announced that the new legislation would be completed by 2003. The Committee requests the Government to provide information on progress made in enacting or amending the legislation. In this respect, it reminds the Government that it may avail itself of ILO technical assistance to bring its legislation into conformity with the Convention.

Malawi

Convention No. 138: Minimum Age, 1973 (ratification: 1999)

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

The Committee noted the communication from the International Confederation of Free Trade Unions (ICFTU) of February 2002, and the comments provided by the Government on the questions raised by the ICFTU.

1. *Article 1, paragraph 1, of the Convention. National policy on child labour.* The Committee noted that according to the ICFTU child labour is a major problem in Malawi, especially in commercial and subsistence agriculture but also in domestic

services where children, mainly girls, are employed in towns. The ICFTU alleged that over 440,000 children between the ages of 10 and 14 are economically active in Malawi, which constitutes over 30 per cent of this age group. More than 20 per cent of the workforces on commercial plantations, especially tobacco plantations, are children. The ICFTU added that much child labour on these commercial plantations is hidden because the tenant farming system encourages the whole family to work. The communication from the ICFTU indicated that the ICFTU and the International Union of Foodworkers (IUF) have signed an agreement with the International Association of Tobacco Producers (IATP) to eliminate child labour on tobacco plantations and that the MCTU and the TTAU have signed a similar agreement with the Tobacco Association of Malawi at national level. The ICFTU concluded that relating to child labour: "little concrete progress has yet been made".

2. In its reply, the Government recalled the financial and technical support provided by the ILO/IPEC to conduct a child labour survey, which will enable to know the extent, nature and characteristics of child labour in Malawi. The Government declared that it initiated, in conjunction with non-governmental organizations and social partners, a number of activities aimed at prevention, withdrawal and rehabilitation of children engaged in hazardous work. Thus the Norwegian Agency for Development Cooperation (NORAD) and UNICEF-Malawi had signed a Memorandum of Understanding according to which the Norwegian Government would provide money for UNICEF to carry out child labour elimination activities in Malawi in conjunction with the Government, the employers, the trade unions, the donor community and the civil society organizations. All these organizations are represented in the governing body on Child Labour Elimination activities in Malawi. The Government also declared that practical efforts are made by people in government or in the private sector to remove the child labour vice in the economy. It explained that a national steering committee and a national task force on the elimination of child labour, which will work in the purposely selected nine districts of Malawi, have been initiated. The plan of action of the project includes: drafting a national policy against child labour; drafting and adopting a code of conduct against employment of children; training more labour inspectors; establishing child labour monitoring committees within the communities; establishing loans for income generating activities and small-scale village banking in target districts or review existing policies and legislation relevant to child labour in Malawi. The Government also referred to the Association for the Elimination of Child Labour, which was established in Malawi out of the private sector initiative especially by the tobacco growing enterprises and estates. The composition of this Association includes the MCTU, which is a member of the ICFTU itself. The Government also referred to the child labour services unit formed by the Tobacco Exporters' Association of Malawi. In connection with the question of child labour in the agricultural sector, the Government recalled that Malawi is part of the ILO/IPEC regional programme on prevention, withdrawal and rehabilitation of children engaged in hazardous work in the commercial agriculture sector in Africa, which also covers Kenya, United Republic of Tanzania, Uganda and Zambia. The Committee observed that the Government has communicated extensive information on the measures taken to ensure the abolition of child labour, but has not provided any details on the results obtained. The Committee requested the Government to provide such information in order for the Committee to assess the effective abolition of child labour in the country and compliance with the Convention.

The Committee also addressed a direct request to the Government on other points.

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

Mauritius

Convention No. 138: Minimum Age, 1973 (ratification: 1990)

The Committee notes the information supplied by the Government in its report. The Committee would like to draw the Government's attention to the following points.

In its previous observation, the Committee had pointed out that the number of children working in breach of the national provisions on minimum age and the Convention, required firm action on the part of the Government, concerning both the measures to take in the framework of the national policy designed to ensure the effective abolition of child labour, and the repressive measures to take in case of violations. The Committee had hoped that the Government would take the necessary measures and provide information on the progress achieved.

The Committee notes with interest, from the information provided by the Government in its report, that various projects are being implemented to ensure the integration of out-of-school children. It also notes the statement of the Government that the Trust Fund for the Social Integration of Vulnerable Groups is providing financial support for the improvement of deprived areas, including assistance to poor families and the rehabilitation of children. The Committee also takes note of the information provided by the Government according to which, as from November 2002, specific child labour inspection visits are no longer carried out on a fortnightly basis. The Government states that instead, prohibition of child labour is being covered in the course of daily routine inspection visits with the aim to achieve a wider coverage. Moreover, the Government indicates that for the period June 2002 to May 2003, out of 4,777 enterprises visited, 17 cases, involving 19 children, were detected. The Committee notes the statement of the Government that the employment of these children was stopped forthwith and that the employers concerned were warned verbally. The Government indicates that in all instances, ensuing visits at these undertakings showed that children were no longer being employed there, so according to it, it was not necessary to resort to prosecution. The Government also states that no case of child employment was detected in Rodrigues Island during the same period.

The Committee would nevertheless remind the Government that, under the terms of *Article 9, paragraph 1, of the Convention*, the competent authority must take all necessary measures, including the provision of appropriate penalties, to ensure the effective enforcement of the provisions of the Convention. The Committee considers that inspection services play an important role in the application of national legislation. Indeed, the Committee is of the view that the best legislation only takes on real value when it is applied. Whatever the severity of the penalties laid down, they will only be effective if they are in fact applied, which requires measures whereby they can be brought to the attention of the judicial and administrative authorities, and if there is a will on the part of these authorities to require compliance [see ILO:

Minimum age, General Survey of the reports relating to Convention No. 138 and Recommendation No. 146 concerning minimum age, report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 4(B), ILC, 67th Session, Geneva, 1981, para. 326]. The Committee therefore considers it necessary to ensure the application of the Convention by applying the penalties provided for in the legislation (section 55 of the Labour Code). It hopes, therefore, that the Government will take the necessary measures, and provide information on the progress achieved.

The Committee is also addressing a direct request to the Government concerning other points.

Morocco

Convention No. 138: Minimum Age, 1973 (ratification: 2000)

The Committee notes the communication by the International Confederation of Free Trade Unions (ICFTU) of 4 June 2003 which contains a number of comments on the application of the Convention. It also notes the Government's comments dated 9 September 2003 on the issues raised by the ICFTU.

In its communication, the ICFTU indicates that the protection of children's rights has been given increasing attention in Morocco during the last decade. The proportion of children registered in school is reported to be 90 per cent for children in the 6-11 year age group and 63 per cent for children in the 12-14 year age group. The ICFTU points out, however, that, due to the lack of schools, the distance to schools or because parents are often too poor to pay school fees, the number of children registered in school in rural areas is lower than in urban areas. In its communication, the ICFTU also indicates that, although the phenomenon of child labour is becoming less accepted, there continues to be a high demand for child labour. Child labour is commonly found in informal craftwork, in general in small family workshops which produce carpets, ceramics, wooden objects and leather articles. The employment of children, in particular girls, in domestic work is also a common practice. Some 50,000 children are employed in domestic work. Of these, approximately 70 per cent are under 12 years of age and 25 per cent under 10 years of age; 80 per cent of these girl servants are illiterate and come from rural areas and approximately 13,000 girls under 15 years of age are employed as servants in Casablanca. Moreover, the ICFTU emphasizes that no inspections are carried out in informal family workshops or in the domestic work sector. Children also work in the carpet and textile industries. An estimated 5-10,000 children work in the carpet industry of which an estimated 2-3,000 work in the carpet export industry. Most of the children are in the 8-14 year age group. Girls between the ages of 12 and 16 are also employed in clothes-making workshops. The ICFTU points out, however, that, in unionized industrial sectors, child labour regulations are in general respected.

In its reply to the comments of the ICFTU, the Government indicates that it has made great efforts in the field of child labour. Morocco ratified Conventions Nos. 138 and 182 and has brought its national legislation into conformity with these Conventions. The minimum age for admission to employment or work was raised from 12 to 15 years of age and the penal sanctions for infringements of the legislation were strengthened. The new Labour Code prohibits certain types of hazardous work from being carried out by children under 18 years of age and recent amendments to the Penal Code impose heavy sanctions for cases of children engaged in work likely to jeopardize their education and health. The Government also indicates that, in collaboration with the social partners and NGOs, measures have been taken in the fields of public information and awareness raising. Training workshops on child labour issues have been organized for labour inspectors. Furthermore, the Government has taken important policy measures to alleviate poverty, extend schooling and promote vocational training and literacy. It also aims to improve the national strategy to combat child labour. The Government also indicates that Morocco has been involved in the International Programme on the Elimination of Child Labour (IPEC) since 2000 and has initiated several projects designed to withdraw from labour children engaged in hazardous types of work and provide alternatives for them and to improve the working conditions of children between 12 and 18 years of age. These projects succeeded in removing 1,310 children from labour in 2002 and the first half of 2003, providing financial support for 150 families and improving the living and working conditions of 2,300 children.

The Committee duly notes the Government's efforts to eliminate child labour and to improve the working conditions of young workers. The Committee nevertheless points out that many children continue to work, in particular in the craft industry in the informal sector and as domestic workers, which is contrary to the provisions of the national minimum wage legislation and of the Convention. The Committee encourages the Government to pursue its efforts to combat child labour, to continue removing children from labour and thereafter providing alternatives for them and to improve the living and working conditions of children.

Furthermore, the Committee is raising other issues in a request addressed directly to the Government.

Netherlands

Aruba

Convention No. 138: Minimum Age, 1973

The Committee notes the Government's reply concerning the comments made by the Teacher's Union of Aruba (SIMAR) that minors are seen working in supermarkets during school hours and that minors in secondary school work after school. The Committee proposes to deal with this issue along with other matters in a direct request addressed to the Government.

Nigeria

Convention No. 123: Minimum Age (Underground Work), 1965 (ratification: 1974)

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

The Committee recalls that for a number of years, it has been requesting the Government to indicate measures taken to give effect to the Convention (*Article 4, paragraph 5*), under which the employer shall make available to the workers' representatives, at their request, lists of the persons who are employed in work underground and who are less than two years older than the minimum age specified by the Government which is 16 years. The lists should contain the dates of birth of persons aged between 16 and 18 years and the dates at which they were employed or worked underground in the undertaking for the first time.

The Committee notes that under section 62 of the Labour Act, every employer is required to keep a register of all young persons in his employment with particulars of their ages, the date of employment and the conditions and nature of their employment and to produce the register for inspection when required by an authorized labour officer. The Committee further notes that under section 91(1) of the same Act, "young person" means a person under the age of 18 years and "industrial undertaking" includes mines, quarries and other works for the extraction of minerals from the earth. The Committee therefore requests the Government to take the necessary measures to ensure that section 62 of the Labour Act is amended so that such registers may also be made available to workers' representatives, at their request. The Committee asks the Government to inform it of progress made in this regard in its next report.

Paraguay

Convention No. 79: Night Work of Young Persons (Non-Industrial Occupations), 1946 (ratification: 1966)

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

In its previous observation, the Committee had noted the amendment of section 122 of the Labour Code by Act No. 496 of 22 August 1995. Under the provisions of new section 122, young persons between 15 and 18 years of age shall not be employed at night for a period of ten hours between 8 p.m. and 6 a.m. The amendment has reduced to ten hours the 12 hours required by the Convention which was laid down in section 122 of the Code before it was amended by Act No. 496 of 22 August 1995. In addition, the new provisions of section 122 do not stipulate an interval of 14 hours for young persons under 15 years of age. The Committee had also noted that section 189 of the Young Persons' Code (Act No. 903/81) prohibits young persons under 18 years of age from carrying out work at night between 8 p.m. and 5 a.m., namely, for a period of nine hours. As well as being in contradiction with national legislation which lays down ten hours (section 122 of the Labour Code), it is also in contradiction with *Article 3 of the Convention* which lays down an interval of 12 consecutive hours.

The Committee took note of the conclusions adopted in June 2002 by the Conference Committee on the Application of Standards, in which the Conference Committee noted with concern the reduction in the protection afforded to children in relation to the restriction on night work. It also noted that, before the Conference Committee, the Government representative endorsed the validity of the observation of the Committee of Experts, and expressed the will of its Government to make the necessary amendments to ensure the application of the Convention.

The Committee had hoped that the Government would take the necessary measures to bring legislation into conformity with the provisions of the Convention by amending sections 122 of the Labour Code and 189 of the Young Persons' Code.

The Committee referred to its comments on the application of Convention No. 90.

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

Convention No. 90: Night Work of Young Persons (Industry) (Revised), 1948 (ratification: 1966)

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

In its previous observation, the Committee noted the new amendment of section 122 of the Labour Code, by means of Act No. 496 of 22 August 1995. According to new section 122, young persons between 15 and 18 years of age shall not be employed during the night for a period of ten consecutive hours, which shall include the interval between 8 p.m. and 6 a.m. The amendment decreased to ten hours, the period of rest of 12 consecutive hours established by the Convention and by section 122 of the Labour Code before being amended by Act No. 496 of 22 August 1995. Furthermore, the Committee observed that section 189 of the Minor Code (Act No. 903/81) prohibits young persons under 18 years of age to perform night work for a period of nine hours between 8 p.m. and 5 a.m. This provision is in violation of both the national legislation that establishes ten hours (section 122 of the Labour code) and *Article 2 of the Convention* that establishes a period of at least 12 consecutive hours.

The Committee took note of the conclusions adopted in June 2002 by the Conference Committee on the Application of Standards, in which the Conference Committee noted with concern the reduction in the protection afforded to children in relation to the restriction on night work. It also noted that, before the Conference Committee, the Government representative endorsed the validity of the observation of the Committee of Experts, and expressed the will of its Government to make the necessary amendments to ensure the application of the Convention.

The Committee hoped that the Government would take the necessary measures to bring the legislation into conformity with the Convention by amending section 122 of the Labour Code and section 189 of the Minor Code.

The Committee referred to its comments on the application of Convention No. 79.

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

Romania

Convention No. 138: Minimum Age, 1973 (ratification: 1975)

The Committee notes the information provided by the Government in its reports in reply to its previous observation. It notes the adoption of Act No. 53/2003 issuing the Labour Code, published in the *Official Gazette* of 5 February 2003, as well as the Ordinance of the Minister of Labour and Social Solidarity No. 508/2002 and the Ordinance of the Minister of Health and the Family No. 933/2002 issuing general labour protection standards, published in the *Official Gazette* of 6 December 2002. The Committee requests the Government to provide information on the following points.

Article 2, paragraph 1, of the Convention. Scope of application. The Committee notes that under the terms of section 2, the Labour Code applies only to persons employed on the basis of a labour contract. The Labour Code therefore excludes work performed outside any contract. However, the Convention covers all forms of employment or work, whether or not there exists a contract of employment and whether or not it is remunerated. The Committee therefore requests the Government to provide information on the manner in which protection is afforded to children carrying out an economic activity that is not covered by a labour relationship, such as work on their own account.

Article 3, paragraph 1. Age of admission to hazardous work. The Committee notes section 13(4) of the Labour Code, which provides that admission to jobs involving arduous or hazardous work is not possible until the age of 18 years. It reminds the Government that *Article 3, paragraph 1*, of the Convention prohibits the admission of young persons under 18 years of age to employment or work that is likely to jeopardize their health, safety or morals. These conditions appear to be tighter than the text of section 13(4) of the new Labour Code, which does not prohibit admission to employment or work that is likely to jeopardize the morals of the young person. The Committee therefore requests the Government to indicate the measures taken or envisaged to bring the legislation into conformity with the Convention on this point.

Paragraph 2. Determination of types of hazardous work. The Committee notes that section 184(1) of the General Labour Protection Standards provides that young persons shall be protected against specific risks to their health, safety, development, risks arising out of their lack of experience, inadequate understanding of existing risks or the fact that young persons are still developing. It also notes with interest that section 125 of the Labour Code prohibits night work by young persons under 18 years of age. The Committee notes the information contained in the Government's report to the effect that section 475 of the General Labour Protection Standards prohibits the employment of young persons under 18 years of age on painting work involving the use of basic lead carbonate, lead sulphate or red lead and all other products containing these pigments. The Government also adds in its report that section 168 of the General Labour Protection Standards determines for young persons between 16 and 19 years of age the maximum weights to be lifted, carried, pulled or pushed in relation to age and gender. The Committee notes with interest that section 184(2) of these protection standards prohibits certain hazardous types of activities, such as harmful exposure to toxic and carcinogenic agents, radiation, activities involving a risk of accidents that the young person cannot identify, placing them in danger through exposure to heat or extreme cold, noise and vibrations, as well as prohibiting activities involving harmful exposure to certain biological and chemical agents, and to other activities (the slaughter of animals, the handling of explosives, risks of electrocution, etc.).

Paragraph 3. Admission to hazardous types of work from the age of 16 years. The Committee notes that section 185 of the General Labour Protection Standards provides that permits to carry out hazardous types of activities determined by the law may be issued for young persons where these activities are indispensable for their vocational training, and on condition that their protection, safety and health are ensured by the supervision of a competent person. The Committee reminds the Government that *Article 3, paragraph 3*, of the Convention permits exceptions for young persons only from the age of 16 years and on condition that their health, safety and morals are fully protected and that

they have received adequate specific instruction or vocational training in the relevant branch of activity. It requests the Government to indicate the age of young persons for whom such exceptions may be granted and to provide information on the application in practice of section 185 of the General Labour Protection Standards.

Article 6. The Committee notes that section 199(2) of the Labour Code provides that employees aged at least 16 years may conclude a vocational training contract if they do not have sufficient skills to allow them to remain with their employer. It also notes section 205 of the Labour Code, which defines apprenticeship contracts, and section 207 of the Labour Code, which provides that any young person without vocational skills and who has not reached the age of 25 years may be employed as an apprentice. The Committee recalls in this respect that *Article 6* of the Convention excludes from its application work done by persons of at least 14 years of age in enterprises, where such work is carried out in accordance with conditions prescribed by the competent authority and is an integral part of education or training. The Committee requests the Government to indicate whether a minimum age has been set for apprenticeship and, if so, to provide a copy of the relevant provision. The Committee also requests the Government to indicate whether consultations have been held with the organizations of employers and workers concerned with regard to the conditions governing work during apprenticeship and for the purposes of vocational training.

Article 7, paragraph 2. Light work and attendance at school. The Committee notes section 13 of the Labour Code, which provides that a young person of 15 years of age may conclude a labour contract with the agreement of her or his parents or legal representatives for activities that are appropriate for her or his development, knowledge and skills, where the young person's health, development and vocational training are not endangered. The Committee reminds the Government that *Article 7, paragraph 2*, of the Convention provides that national laws or regulations may permit the employment of persons in light work or the performance of such work by persons who are at least 15 years of age but have not yet completed their compulsory schooling, provided that such work is not such as to prejudice their attendance at school or their capacity to benefit from the instruction received. The Committee therefore requests the Government to indicate the measures adopted or envisaged to include in the national legislation the condition that light work shall not be such as to prejudice the school attendance of young persons under 15 years of age who are engaged in work.

Paragraph 3. Determination of light work. The Committee notes section 109(2) of the Labour Code, which provides that, for young persons under 18 years of age, working hours are six hours a day and 30 hours a week. Section 130 of the Labour Code provides that young persons under 18 years of age shall benefit from a lunch break of at least 30 minutes where the daily working hours do not exceed four and a half hours. Finally, section 142 of the Labour Code provides that young persons under 18 years of age shall be granted supplementary annual leave of a maximum of three days. The Committee recalls that *Article 7, paragraph 3*, of the Convention provides that the competent authority shall determine the activities in which employment or work may be permitted. The Committee requests the Government to indicate whether types of light work have been determined and, if so, to provide a copy of the corresponding provision. If not, the Committee requests the Government to take the necessary measures for this purpose and to provide information thereon. Finally, the Committee is of the opinion that the working hours set for the performance of light work (six hours a day and 30 hours a week) are too many to allow attendance at school. It therefore requests the Government to provide information on the application of this provision in practice.

Article 9, paragraph 1. Penalties. The Committee notes that section 276(1)(d) of the Labour Code and section 4 of Act No. 130/1999 respecting protective measures for employees provide for sanctions in the event of violation of the provisions relating to age or the utilization of a young person to perform prohibited activities, and the obligation to conclude an individual employment contract in writing. The Committee takes due note of the information contained in the Government's report that, in the event of the failure of the employer to comply with the legislation respecting young persons, labour inspectors impose fines and, where appropriate, refer the matter to the competent authorities.

Paragraph 2. The Committee notes with interest that section 254 of the Labour Code provides that the application of general and specific rules in the fields of industrial relations and occupational safety and health is under the supervision of the labour inspectorate, a specialized body of the central public administration, under the authority of the Minister of Labour and Social Solidarity.

Article 9, paragraph 3. Employers' registers. The Committee notes that section 34(1) of the Labour Code establishes the obligation for employers to keep a general register of employees. Section 34(3) of the Labour Code specifies that this register shall contain all the information concerning the identification of each employee and the conditions of the contract of employment. The Committee notes that section 34(7) of the Labour Code provides that a model of the general register for employees, and of any other element relating to the register of employees, shall be established by decision of the Government. The Committee recalls that *Article 9, paragraph 3*, of the Convention provides that national laws or regulations or the competent authority shall prescribe the registers or other documents which shall be kept and made available by the employer; such registers or documents shall contain the names and ages or dates of birth, duly certified wherever possible, of persons employed or who work for the employer and who are less than 18 years of age. The Committee therefore requests the Government to indicate whether a model register and/or regulations respecting such registers have been established by government decision and, if so, to provide a copy. It also requests the Government to indicate the information concerning the identification of employees which has to be contained in the register, and particularly whether the employer is under the obligation to include the age or date of birth of the persons employed who are less than 18 years of age.

Article 1 (in conjunction with Part V of the report form). In its previous observation, the Committee noted the establishment of the National Agency for the Protection of the Rights of the Child by Emergency Order No. 192/1999. It requested the Government to provide further information concerning the measures taken and action carried out by the National Agency with a view to the progressive elimination of child labour, and particularly on the application of the provisions of the Convention in practice. The Committee takes due note of the information contained in the Government's report in 2002 according to which the National Agency for the Protection of the Rights of the Child and the International Foundation for the Child and the Family have formulated a programme of action to combat child labour, including two different approaches. These consist, firstly, of the development of the institutional capacities of the Specialized Public Services for the Protection of the Child (SPSPE) through training courses for specialists and the introduction of supervisory and coordinating machinery. Secondly, they focus on increasing the awareness of a broader public, including children, parents and community leaders, to understand the concept of child labour and its consequences on the development of children. The Committee notes the information provided by the Government in its report that the direct beneficiaries of the programme are children who work, including children working in the street, as well as parents and community representatives. The Government adds in its report that, during the period 2001-04, the labour inspectorate carried out a campaign with a view to increasing the degree of awareness of employers of child labour and the necessity to comply with the relevant legal provisions with a view to the progressive elimination of the worst forms of child labour. The Committee also notes with interest the information contained in the Government's report that, in order to improve the capacities of labour inspectors, the labour inspectorate launched a programme with the technical and financial assistance of ILO/IPEC. The Committee once again requests the Government to provide information on the application of the Convention in practice, including, for example, statistics on the employment of children and young persons, extracts from the reports of the inspection services and information on the number and nature of the violations reported.

Russian Federation

Convention No. 138: Minimum Age, 1973 (ratification: 1979)

The Committee notes the information supplied by the Government in its report. It notes with interest that the Government ratified the Worst Forms of Child Labour Convention, 1999 (No. 182), on 25 March 2003.

Article 2, paragraph 1, of the Convention. Scope of application. The Committee takes note of section 63, subsection (1), of the Labour Code of 2001 which prohibits children under 16 years of age from concluding a labour contract. Recalling that Convention No. 138 requires the fixing of a minimum age for all types of work or employment and not only for work under an employment contract, the Committee asks the Government to supply information on the measures taken or envisaged to ensure the application of the Convention to all types of work outside an employment relationship, such as self-employment.

Minimum age for admission to employment or work. The Committee had noted in its previous comments that the minimum age for employment was lowered to 15 years of age from the previous 16 years, by virtue of Federal Act No. 182-FZ of 24 November 1995. The Committee had pointed out that a minimum age for admission to employment or work of 16 years had been specified at the time of ratification in accordance with *Article 2(1)* of the Convention, and that the lowering of the existing minimum age was contrary to the principle of the Convention, which was to raise progressively the minimum age as provided for in *Articles 1 and 2(2)*. The Committee notes with interest that the new Labour Code of 2001 entered into force on 1 February 2002. It notes with satisfaction that section 63, subsection (1), of the Labour Code of 2001 states that an employment contract may be concluded only with a person of at least 16 years of age. However, the Committee notes the Government's indication that according to section 63, subsection (2), of the Labour Code of 2001 a person of 15 years of age, who has completed the basic general education or left the general educational establishment, may work. The Committee consequently asks the Government to indicate the measures taken or envisaged, pursuant to its declaration under *Article 2* of the Convention, to ensure that access to employment of children of at least 15 years of age may be allowed exceptionally, and only for work that meets the criteria set out in *Article 7* of the Convention.

Part V of the report form. The Committee had noted the Government's indication that persons under 18 years of age were often engaged in work under harmful and hazardous working conditions, in violation of section 175 of the Labour Code of 1971 which prohibited hazardous work for persons younger than 18 years of age. It had noted that in 1999 state inspectors carried out more than 2,300 targeted inspections to ensure the observance of the labour rights of persons under age. These inspections identified and resolved 8,000 cases of violations. It had further noted the Government's statement to the United Nations Committee on the Rights of the Child in 1998 that the number of juveniles in unregulated employment is on the increase in towns, in connection with the development of the non-state sector of the economy, especially small private businesses. The Committee once again requests the Government to provide information on any measures taken or envisaged to prevent children from working under harmful and hazardous conditions, and to continue to supply information on the practical application of the national legislation giving effect to the Convention, in particular in the non-state sector, including, for example, extracts from official reports, statistical data and the number and nature of contraventions reported.

In addition, a request regarding certain points is being addressed directly to the Government.

Rwanda

Convention No. 138: Minimum Age, 1973 (ratification: 1981)

The Committee notes with interest that the Government adopted a new Labour Code on 1 March 2001 which takes into account some of the comments of the Committee of Experts. It also notes with interest that the Government has ratified the Worst Forms of Child Labour Convention, 1999 (No. 182). The Committee is raising other issues relating to the application of the Convention in a request addressed directly to the Government.

Sierra Leone

Convention No. 59: Minimum Age (Industry) (Revised), 1937 (ratification: 1961)

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

In its previous comments, the Committee noted the draft Employment Act prepared with the ILO's assistance which prescribes the age of 16 years for admission to employments likely to jeopardize the life, health or morals of young persons, so as to give effect to *Article 5 of the Convention*. The draft Act also provides that "the employer shall keep a register of all children under the age of 18 years employed by him and of the dates of their birth", in accordance with *Article 4* of the Convention. The Committee noted that the draft Act had not yet been enacted. Therefore, it expressed the hope again that the new Act would be adopted in the very near future in order to ensure complete conformity of the national legislation with the Convention on these points and that the Government would soon be able to communicate the text of the new Employment Act.

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

Spain

Convention No. 138: Minimum Age, 1973 (ratification: 1977)

The Committee notes with satisfaction the declaration communicated by the Government, in accordance with *Article 2, paragraph 2, of the Convention*, informing the Director-General that the minimum age for admission to employment or work in Spain has been raised to 16 years.

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

Tajikistan

Convention No. 138: Minimum Age, 1973 (ratification: 1993)

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

The Committee recalled that the minimum age of 16 years for admission to employment or work was specified under *Article 2, paragraph 1, of the Convention* as regards Tajikistan. It noted, however, that section 174 of the new Labour Code (Act of 15 May 1997) only prohibits the employment of persons under the age of 15 in contrast to the previous Code which fixed the minimum age of 16 years. The Committee recalled that the lowering of the existing minimum age is contrary to the principle of the Convention, which is to raise the minimum age as provided by *Articles 1 and 2(2)*. It also recalled that *Article 7* of the Convention allows, as an exception, the employment or work of persons 13 to 15 years of age on only light work which is not likely to be harmful to their health or development and not such as to prejudice their attendance at school. Other than such light work, work done by children under 16 years of age, must be prohibited. Therefore, the Committee again asked the Government to indicate the measures taken or envisaged, pursuant to its declaration under *Article 2*, to ensure that access to employment of children of 15 years of age may be allowed, exceptionally, only for work meeting the criteria set out in *Article 7*.

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

Turkey

Convention No. 138: Minimum Age, 1973 (ratification: 1998)

The Committee takes note of the information provided by the Government in its first and subsequent reports. It also takes note of the communications from the Turkish Confederation of Employer Associations (TISK) and the Confederation of Trade Unions of Turkey (TÜRK-IS). Moreover, the Committee takes note of the communications from TÜRK-IS and KAMU-SEN received at the Office on 22 October 2003. It requests the Government to communicate its observations on the content of these communications in its next report.

Article 1 of the Convention. National policy. In its communication, TÜRK-IS indicates that despite the fact that *Article 1* of the Convention provides that each Member undertakes to pursue a national policy designed to ensure the effective abolition of child labour, no national policy is being pursued in Turkey, and the number of child workers is increasing daily. TÜRK-IS adds that a national policy geared to eliminating child labour can be effective in eliminating

the reasons for child labour by increasing the employment of adults and providing job security. However, government practice is not designed on those lines. The Committee requests the Government to provide its observations in respect of these comments.

Article 4. Exclusion from the application of the Convention of limited categories of employment or work. In its previous comments, the Committee had noted the information provided by the Government in its first report to the effect that it envisages using the flexibility clause contained in *Article 4* to exclude from the application of the Convention the categories of employment or work which fall outside the scope of the labour legislation. The Committee had also noted that the organizations of employers and workers concerned were consulted in this respect and that a Bill on child labour was currently being drafted. The Committee had observed that the Government's intention to exclude from the application of the Convention the categories of employment or work which fall outside the scope of the labour legislation appeared to be overly vague and ambiguous.

The Committee notes that subsections (1) and (5) of section 5 of Labour Act No. 1475 excludes from its scope of application sea and air transport and work sites employing three persons or less which come under the definition of section 2 of the Law on Tradesmen and Artisans (Act No. 507). It points out that, according to *Article 5, paragraph 3*, of the Convention, sea and air transport is one of the branches of economic activity for which the provisions of Convention No. 138 should be applied. Therefore, sea and air transport cannot be excluded from the scope of Convention No. 138. Moreover, the Committee recalls that *Article 4* of the Convention allows exclusion only for limited categories of employment or work in respect of which special and substantial problems of application arise. The Committee requests the Government to indicate, for each of the categories of employment excluded, the reasons for which it wishes to exclude them from the application of the Convention (special and substantial problems of application). Moreover, the Committee asks the Government to supply more detailed information on the consultations that have taken place with the social partners on this matter.

In its communication, TÜRK-IS indicates that Convention No. 138 should cover all children without exception. TÜRK-IS also indicates that the national legislation of Turkey does not contain any provision concerning the minimum age at which children working in plantations and agricultural undertakings producing for commercial purposes are admitted to employment. In reply to TÜRK-IS' comments, the Government states that the provisions of the Convention do not apply to work included in section 5 of Labour Act No. 1475 of 1971. However, a draft Bill on the establishment of the minimum age for admission to employment and for the employment of young persons under the age of 18 years is being elaborated and will include agricultural works in the scope of the new Act, as well as other works excluded from the scope of application of Labour Act No. 1475. The organizations of employers and workers were consulted in this respect.

The Committee observes that the scope of application of the draft Bill covers the types of work in industry, commerce, agriculture, forestry, fishing and maritime commerce in which young persons under 18 years of age may be employed including in apprenticeship and/or vocational training, work in open outdoor areas, domestic services and artistic activities in which young people and children may be employed, work in reform schools for children and work carried out for the purpose of other vocational rehabilitation. The draft Bill also stipulates that its scope of application does not apply to work performed in schools and on courses for the purpose of acquiring skills in the fine and visual arts and in the fields of music and sport; activities such as scouting and participation in campaigns focusing on assistance and social activities; and domestic work which is performed and shared in the home with a view to meeting the family's needs and which is not geared to economic advantage. The Committee trusts that the draft Bill will be adopted shortly and requests the Government to provide information in this regard.

Article 9, paragraph 1. Appropriate penalties. In its communication, TÜRK-IS indicates that the penalty for violation of section 67 of Labour Act No. 1475 (minimum age for employment or work) is laid down in section 100 (major fine of not less than turk lirası 45,000 and not more than turk lirası 225,000). However, this sanction is far from ensuring the effective enforcement of the provision of the Convention, as required by *Article 9, paragraph 1*, of the Convention. The Committee asks the Government to reply to these comments made by TÜRK-IS.

The Committee is also addressing a direct request to the Government on other detailed points.

Ukraine

Convention No. 138: Minimum Age, 1973 (ratification: 1979)

The Committee takes note of the communication of 23 August 2002 from the Trade Union Federation of Ukraine containing comments on the application of the Convention. A copy of the communication was sent to the Government on 26 September 2002 so that it could make any observations it deemed appropriate on the issues raised.

The Trade Union Federation of Ukraine alleges in its communication that child labour is an increasingly frequent problem and that there are child workers under the age of 15 in Ukraine. In most cases the children work above all in the informal sector, where labour relations are non-existent and the Government has virtually no control over working conditions. As a result, the children have no right to legal and social protection. Child labour is used in excessive and hard conditions which are harmful to the development of the child. The abovementioned Federation further alleges that not only young people of 15 but also children of 10 years of age are affected by child labour.

The Committee points out that on ratifying the Convention, Ukraine specified a minimum age of 16 years for admission to employment or work. It reminds the Government that under *Article 2, paragraph 1*, of the Convention, no one under the minimum age for admission to employment or work specified upon ratification of the Convention shall be admitted to employment or work in any occupation, and that the only possible exception is light work, which under *Article 7* of the Convention, may be authorized for children of 13 years of age and above. The Committee also reminds the Government that the Convention applies to all sectors of economic activity and covers all forms of employment or work whether or not there is a contractual employment relationship and whether or not the work is remunerated. It accordingly requests the Government to supply information on the legislative measures taken to ensure that children working in the informal sector enjoy the protection provided by the Convention. It also asks the Government to continue to provide information on measures taken to eliminate child labour in practice.

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

Convention No. 182: Worst Forms of Child Labour, 1999 (ratification: 2000)

The Committee takes note of the communication dated 23 August 2002 from the Trade Union Federation of Ukraine containing comments on the application of the Convention. A copy of the communication was forwarded to the Government on 26 October 2002 for any comments it might wish to make on the matters raised therein.

The Trade Union Federation of Ukraine indicates that child labour is an increasingly frequent problem and that there are child workers under the age of 15 in the Ukraine. In most cases, the children work above all in the informal sector, where labour relations are non-existent and the Government has virtually no control over working conditions. The Trade Union Federation of Ukraine also indicate that there are cases of the use of children for prostitution or pornography in Ukraine and, that this not only concerns young people of 15 years of age but also children of 10 years of age.

The Committee requests the Government to provide information on measures taken or envisaged to prohibit the use, procuring or offering of children under the age of 18 years for prostitution, for the production of pornography or for pornographic performances.

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

United Arab Emirates

Convention No. 138: Minimum Age, 1973 (ratification: 1998)

The Committee notes the information supplied in the Government's reports, the discussion held in the Conference Committee on the Application of Standards in June 2002, and the communications of the International Confederation of Free Trade Unions (ICFTU) dated 2 September 2002 and 20 August 2003 concerning work by children as camel jockeys. The Committee notes, with interest, that the Government ratified the Worst Forms of Child Labour Convention, 1999 (No. 182) on 28 June 2001. The Committee requests it to supply further information on the following points.

Article 3, paragraphs 1 and 3. Minimum age for admission to work by camel jockeys. The Committee, like the Conference Committee, had expressed its concern about the employment of children as camel jockeys which resulted in severe injuries and even the death of several children as young as 6 years old. It had noted the absence of a minimum age for admission to such employment. The Committee notes that a declaration made by the President of the Camel Racing Association on 29 July 2002 has been adopted to prohibit the employment of camel jockeys aged less than 15 years. It further notes that the declaration made by the President of the Camel Racing Association on 26 May 2003 is identical to the one made on 29 July 2002. The ICFTU, in a subsequent communication, welcomed the adoption of such a measure. However, it considers camel jockeying to be a dangerous activity which should only be performed by persons of at least 18 years. The communication of the ICFTU dated 2 September 2002 points out that children as young as 4 years old are employed and that numerous cases of under age camel jockeys has been reported each year since 1997. The Committee once again recalls that, under *Article 3, paragraph 1, of the Convention*, the minimum age for admission to any type of employment or work, which by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young persons, shall not be less than 18 years. Moreover, the Committee recalls that while *Article 3, paragraph 3*, of the Convention permits, under strict conditions of protection and prior instruction or vocational training, employment or work as from the age of 16 years, this provision of the Convention deals with limited exceptions to the rule (of prohibiting hazardous work to young persons under 18 years of age), and does not constitute an overall permission to undertake hazardous work as from 16 years of age. The Committee welcomes the prohibition to employ children under the age of 15 as camel jockeys. However, considering the detrimental effect on the health and safety of young children and the reported cases of injury, the Committee, like the Conference Committee, requests the Government to take the necessary measures to raise the age of admission to such employment to 18 years of age. On this question, the Committee refers to its comments on the application of Convention No. 29 on forced labour. Furthermore, noting the absence of reference in the Government's report to the communication of the ICFTU of 2002, the Committee requests the Government to provide its comments on the points raised therein. The Committee also requests the Government to provide its observations on the recent communication of the ICFTU dated 20 August 2003.

Article 9, paragraph 1. Sanctions applicable to persons responsible for employing underage camel jockeys. The Committee notes the detailed discussion which took place at the Conference Committee on the Application of Standards

in June 2002. In its conclusions, the Conference Committee emphasized the need to impose sanctions on those exploiting child camel jockeys. The Committee notes that the declaration made by the President of the Camel Race Association on 29 July 2002 provides for penalties in case of violation of the conditions laid down therein regarding the employment of camel jockeys: (1) the owner or person responsible for camel jockeys is liable to a fine of 20,000 dirhams; (2) the owner of the camel may be arrested and excluded from participating for the duration of an entire season; or (3) the person responsible for the camel jockey concerned is liable to three months' imprisonment in addition to a fine of 20,000 dirhams. The ICFTU, in a communication dated 2 September 2002, expressed its concern about the absence of prosecutions against UAE citizens, and highlighted the impunity which exists for those who are employing children under the age of 15 for camel racing. The Committee consequently requests the Government to provide information in its next report on the violations observed since the entry into force on 1 September 2002 of the declaration of the President of the Camel Race Association prohibiting the use of children younger than 15 years of age as camel jockeys, and the penalties imposed in practice.

The Committee is also addressing a direct request to the Government concerning other detailed points.

Uruguay

Convention No. 138: Minimum Age, 1973 (ratification: 1977)

The Committee notes the information supplied by the Government in answer to the communication from the Inter-Trade Union Assembly – Workers' National Convention (PIT-CNT) sent to the Office on 30 September 2002, and containing comments on the application of the Convention. The Committee takes note of the resolution of 19 December 2002 issued by the National Institute for Minors (INAME), the authority for youth policy matters, under which any exemptions pertaining to the minimum age for admission to employment, extensions of the working day and special or night rest periods, must be authorized jointly with the National Committee for the Elimination of Child Labour (CETI), which comprises representatives of all the social sectors involved, including the PIT-CNT.

In the abovementioned communication, the PIT-CNT stated that INAME had adopted resolutions allowing night work by young persons of 16 years of age in breach of the Night Work of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 79), and the Minimum Age Convention, 1973 (No. 138). According to the PIT-CNT, resolution No. 2028/01 of the INAME National Directorate allows the authorities of the country's departments and the Montevideo Division for Inspection, Training and Labour Market Entry to issue individual temporary permits (for maximum periods of up to three months between 15 December and 15 March) authorizing minors of 16 years of age to work between 10 p.m. and midnight, provided that the work does not interfere with their education or jeopardize their moral or physical safety. Furthermore, prior permission must be obtained from the father, guardian or other person responsible for the minor.

In response to the PIT-CNT's communication, the Government states in its report that the situation described by the latter has changed significantly throughout the country since INAME informed CETI that all exemptions pertaining to the minimum age for admission to employment, extension of the working day and special or night rest periods must be authorized jointly with CETI, of which the PIT-CNT is a member. The Government also states that INAME has authorized no exemptions without a prior decision from CETI.

The Committee notes with interest the information supplied by the Government.

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

Venezuela

Convention No. 138: Minimum Age, 1973 (ratification: 1987)

The Committee notes the communication by the International Confederation of Free Trade Unions (ICFTU), dated 21 November 2002, containing certain comments on the application of the Convention. It also notes the comments made by the Government on 28 January 2003 concerning the matters raised by the ICFTU.

In its communication, the ICFTU indicates that child labour is widespread in the informal sector and in unregulated activities. According to certain estimates, the number of children working in agriculture, domestic work and as street vendors is 1.2 million. In addition, 300,000 children are reported to be working in the formal sector.

While noting the Government's indication that the comments of the ICFTU are imprecise and lack substance, the Committee would be grateful, in view of the high number of working children estimated by the ICFTU, namely 1.2 million, if the Government would provide fuller information on child labour in the informal sector and in unregulated activities, particularly with regard to agriculture, domestic work and as street vendors.

Zambia

Convention No. 138: Minimum Age, 1973 (ratification: 1976)

The Committee takes note of the Government's report, and of the communication of the International Confederation of Free Trade Unions (ICFTU) dated 23 October 2002.

The Committee notes, from the communication of the ICFTU, that child labour in Zambia is almost inexistent in the formal economy; however, children are reported to work in the unregulated economy, often in dangerous or harmful work. According to the ICFTU, children are mostly found in agriculture, domestic service, small-scale mining operations, stone crushing and pottering. It further highlights that 25 per cent of primary-school age children do not receive any schooling and that, in 1999, less than 29 per cent of children reached secondary school. Noting the absence of reference in the Government's report to the communication of the ICFTU, dated 23 October 2002, the Committee requests the Government to provide, in its next report, its comments on the points raised therein.

The Committee is also addressing a direct request to the Government concerning other detailed points.

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States with regard to: **Convention No. 5** (Saint Lucia, Saint Vincent and the Grenadines); **Convention No. 6** (Denmark: Greenland, Viet Nam); **Convention No. 10** (Australia, France: New Caledonia, Guinea, Saint Vincent and the Grenadines, United Kingdom: Isle of Man); **Convention No. 33** (Cameroon, Comoros, France: New Caledonia, Guinea, Netherlands: Netherlands Antilles); **Convention No. 77** (Albania, Haiti, Kyrgyzstan, Slovakia, Tajikistan); **Convention No. 78** (Albania, Haiti, Kyrgyzstan, Slovakia, Tajikistan); **Convention No. 79** (Kyrgyzstan); **Convention No. 90** (Croatia, Cyprus, Czech Republic, Lebanon); **Convention No. 123** (Australia, Bolivia, Czech Republic, Gabon, Madagascar, Mongolia, Slovakia, Spain, Swaziland, Thailand, Turkey, Uganda); **Convention No. 124** (Kyrgyzstan, Tajikistan); **Convention No. 138** (Albania, Algeria, Argentina, Azerbaijan, Belarus, Belgium, Bulgaria, Burkina Faso, Cambodia, Central African Republic, Chile, China, China - Hong Kong Special Administrative Region, Costa Rica, Croatia, Cuba, Denmark, Dominican Republic, Ecuador, Equatorial Guinea, Eritrea, Ethiopia, Finland, Georgia, Guyana, Honduras, Iceland, Indonesia, Ireland, Israel, Italy, Kuwait, Libyan Arab Jamahiriya, Lithuania, Luxembourg, Malawi, Malaysia, Malta, Mauritius, Republic of Moldova, Morocco, Namibia, Nepal, Netherlands, Netherlands: Aruba, Nicaragua, Niger, Norway, Panama, Philippines, Poland, Portugal, Russian Federation, Rwanda, San Marino, Senegal, Serbia and Montenegro, Seychelles, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Switzerland, Tajikistan, United Republic of Tanzania, Togo, Tunisia, Turkey, Ukraine, United Arab Emirates, Uruguay, Venezuela, Yemen, Zambia, Zimbabwe); **Convention No. 182** (Central African Republic, Ecuador, Kuwait, Malawi, Malaysia, Mali, Mauritius, Namibia, Panama, Romania, Rwanda, Senegal, Seychelles, Slovakia, South Africa, Switzerland, Ukraine, Zimbabwe).

The Committee noted information supplied by the following States in an answer to a direct request with regard to: **Convention No. 10** (Netherlands: Netherlands Antilles, United Kingdom: Bermuda, British Virgin Island, Falkland Islands (Malvinas), Jersey); **Convention No. 90** (Slovakia, Slovenia); **Convention No. 123** (Paraguay, Syrian Arab Republic, Viet Nam); **Convention No. 138** (Sweden).

Equality of Opportunity and Treatment

Afghanistan

Convention No. 111: Discrimination (Employment and Occupation), 1958 (ratification: 1969)

1. The Committee recalls its previous observation, in which it stressed the importance of making the Convention an integral part of the ongoing process towards peace, stability and reconstruction. It notes that the Constitutional Commission released a draft Constitution on 3 November 2003 and that a nationwide public consultation process is taking place in which women actively participate. It welcomes the fact that the draft aims at the creation of a civil society free of discrimination, based on the rule of law, social justice, and the protection of human rights and dignity. Section 22 of the draft provides that any kind of discrimination and privilege between citizens of Afghanistan is prohibited and that Afghan citizens have equal rights and duties before the law. Noting that the Draft Constitution soon will be discussed at the Constitutional Loya Jirga, the Committee hopes that the text adopted will take the requirements of the Convention fully into account, providing a constitutional basis for giving effect to the principle of non-discrimination on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, and the promotion of equality in employment and occupation. Beyond the constitutional process, the Committee asks the Afghan Transitional Authority and its successors to take all the necessary measures to declare and pursue, in law and in practice, a national policy designed to promote equality of opportunity and treatment in employment and occupation between women and men and among all ethnic groups as envisaged under *Articles 1 and 2 of the Convention*.

2. With reference to its previous comments on the situation of women and girls in education and employment, the Committee notes with interest that Afghanistan ratified the Convention on the Elimination of All Forms of Discrimination Against Women in March 2003. However, as concerns the situation of women and girls in practice, the Committee notes from the report of the Special Rapporteur of the Commission on Human Rights on violence against women that various factors continue to prevent equal participation of girls in education, including attacks on girls' schools and discriminatory traditional practices (UN doc. A/58/421, 6 October 2003). It also understands that, despite some progress made, women continue to experience discrimination with regard to access to employment and occupation. The Committee therefore hopes that the Transitional Authority and its successors will make every effort to promote and protect the human rights of women and girls in both rural and urban areas, including in respect of education, training, employment and occupation and considers legal literacy and awareness-raising programmes throughout the country as an important tool for achieving this objective. Finally, the Committee once again urges the Transitional Authority to repeal expressly all existing laws, regulations and instructions that restrict the access of women and girls to education and employment, as they are contrary to the Convention.

Algeria

Convention No. 111: Discrimination (Employment and Occupation), 1958 (ratification: 1969)

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

1. *Discrimination on the basis of religion.* Referring to its previous comments the Committee notes the indication of the Government confirming that constitutional articles referring to fundamental rights of the population, read together, guarantee protection against religious discrimination. The Committee reiterates its previous request to the Government to provide copies of all court decisions concerning these articles and to indicate any measures taken to prevent and eliminate the occurrence of religious discrimination in employment and occupation.

2. *Discrimination on the basis of sex.* In its previous comments the Committee recognized that Decrees on part-time work (No. 97-473 of 8 December 1997) and on home workers (No. 97-474 of 8 December 1997) contribute to improving the employment conditions of these workers, who are mainly women. However, the Committee takes note of the indication of the Government in its report that these Decrees allow women to reconcile their obligations as women with a source of supplementary income for the family budget. The Committee must draw attention to the importance of not considering women as supplementary wage earners in order to promote equal opportunity and treatment. Such a notion, while true in some cases, is not true for many women who are important providers for their own and their families' livelihoods. In this regard the Committee refers to the indication of the Government in its previous report according to which, in practice, women are still confronted with discrimination in the field of employment resulting from stereotypes which exist regarding a woman's place in society. It therefore encourages the Government to continue its efforts to further its national policy of promotion of equality of opportunity and of treatment in respect of employment and occupation.

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

Argentina

Convention No. 111: Discrimination (Employment and Occupation), 1958 (ratification: 1968)

The Committee notes with satisfaction the reply provided by the Government in its report indicating the adoption on 15 September 1999 of the Framework Act regulating public employment (Act No. 25164), which, by virtue of section 4 repeals sections 8(g) and 33(g) of Act No. 22140 which had been considered contrary to the Convention. These provisions prohibited access to the national public administration and required the dismissal of officials who belonged to or had belonged to groups advocating the denial of the principles of the Constitution, or who adhered personally to a doctrine of this nature.

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

Australia

Convention No. 111: Discrimination (Employment and Occupation), 1958 (ratification: 1973)

1. Recalling its previous comments concerning the draft Human Rights Legislation Amendment Act No. 2, the Committee notes that this Bill was superseded by the draft Australian Human Rights Commission Legislation Act, 2003, which is currently before the Senate. The new Bill makes education and information dissemination the priority function of the existing Human Rights and Equal Opportunities Commission (HREOC), which will be renamed the Australian Human Rights Commission. According to the Government, the existing powers of the HREOC to investigate and conciliate complaints will be retained. However, the Committee notes that the future Australian Human Rights Commission would no longer have the power to recommend payment of damages or compensation and that this is being considered by the current HREOC as a limitation of its inquiry powers. The future Commission would also no longer have the right to intervene in court proceedings involving human rights and discrimination issues, except with the consent of the Attorney-General. With reference to its previous comments, the Committee further notes that the new Bill replaces the current five portfolio-specific commissioners, including the Aboriginal and Torres Strait Islander Social Justice Commissioner, with three generic human rights commissioners. Aware of the ongoing debate in Australia on these changes, the Committee hopes that the Commission's ability to act as an independent and effective actor in the enforcement of legal provisions on non-discrimination and equality in employment and occupation will be maintained, and asks the Government to provide information on the contents and status of this legislative initiative.

2. The Committee remains concerned over the disproportionately high unemployment rate of indigenous Australians. It notes from the Government's report and data released by the Australian Bureau of Statistics that there were 410,003 people (2.2 per cent of the total population) in Australia who are identified as being of indigenous origin in the 2001 census, which represents an increase of 54.5 per cent since the 1991 census. According to the 2001 census, the unemployment rate among persons of indigenous origin was 20 per cent (men 21.8 per cent and women 17.6 per cent), while the rate for non-indigenous persons was 7.2 per cent. In this context, the Committee notes the information provided by the Government on the policies adopted and measures taken to promote employment of indigenous Australians. According to the Government, a total of 8,612 indigenous persons were placed in employment in 2002-03 through programmes under the Indigenous Employment Policy and that only approximately 57 per cent of the persons placed were still in employment three months after assistance ceased. The Committee requests the Government to continue to provide detailed information on the implementation and impact of the measures taken to promote equal access to education, training and employment of indigenous Australians, with a view to eliminating discrimination and in particular measures to retain indigenous Australians in employment.

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

Belgium

Convention No. 111: Discrimination (Employment and Occupation), 1958 (ratification: 1977)

1. The Committee notes the Government's report, which outlines various legislative measures in the field of equality of opportunity and treatment in employment and occupation. With regard to gender equality, the Committee particularly notes the amendment to section 10 of the Constitution providing that equality of women and men is guaranteed, and it notes the creation of a new Institute for Equality of Women and Men with a broad mandate to promote and monitor gender-equality issues regulated in federal legislation, including initiating judicial proceedings concerning gender equality. It also notes the adoption of the Act of 11 June 2002 on the Protection from Violence and Moral or Sexual Harassment, which introduces measures of prevention and protection.

2. With regard to discrimination on the basis of grounds other than sex, the Committee notes the Act of 25 February 2003 on combating discrimination, which modifies the Act of 15 February 1993 establishing a Centre for Equal

Opportunities and the Fight Against Racism. The Act prohibits direct and indirect discrimination, inter alia, in employment and occupation, on the basis of supposed race, colour, extraction, national or ethnic origin, sexual orientation, marital status, birth, property, age, religious or philosophical conviction, actual or future health status, and disability or any physical characteristic. With regard to *Article 1(2) of the Convention*, the Committee notes with interest that under section 5 of the Act any differential treatment in employment is based on an objective and reasonable justification if, by reason of the nature of the occupation or the conditions under which it is carried out, the characteristic in question constitutes an essential and determining job requirement, provided that the requirement is proportional and there is a legitimate objective. The Committee welcomes this clarification of what constitutes an objective and reasonable justification, which is in accordance with the Convention.

3. The Committee requests the Government to provide information on the application of the new legislation in practice and its impact on the situation of persons falling under the protection of the Convention, including relevant administrative or judicial decisions and the relevant activities undertaken by the Institute for Equality of Women and Men, the Equal Opportunities Council and the Centre for Equal Opportunities and the Fight Against Racism.

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

Bolivia

Convention No. 111: Discrimination (Employment and Occupation), 1958 (ratification: 1977)

The Committee notes the Government's report.

Discrimination on grounds of sex. Further to its previous comments, the Committee regrets that once again the Government refers to a new preliminary draft text which is in the process of being revised and agreed to, but that there is as yet no concrete progress on the adoption of amendments to section 3 of the General Labour Act, under which the proportion of women staff may not exceed 45 per cent in enterprises and establishments which, by their nature, do not require the use of a larger proportion of women workers. The Committee has pointed out on many occasions to the Government that this section is prejudicial to equality of opportunity and treatment on grounds of sex. The Committee reminds the Government once again that, in accordance with *Article 3(c) of the Convention*, each Member for which it is in force undertakes to repeal any statutory provisions which are inconsistent with the policy of equality of opportunity and treatment set out in *Article 2*. The Committee once again urges the Government to take the necessary measures to bring section 3 of the General Labour Act into conformity with the Convention. The above amendment to the labour law should also take into account paragraph 5 of the ILO resolution on equal opportunities and equal treatment for men and women in employment, adopted in 1985, and should provide an opportunity to re-examine, in the light of up-to-date scientific knowledge and technical changes, all protective legislation applying solely to women with a view to revising and repealing it, as appropriate, in consultation with the social partners and women workers, taking into account the measures aimed at promoting equality for men and women in employment.

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

Bosnia and Herzegovina

Convention No. 111: Discrimination (Employment and Occupation), 1958 (ratification: 1993)

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

1. With reference to its previous comments on the fundamental importance of establishing the rule of law and formulating and implementing a genuine national policy of equality of opportunity and treatment in all spheres, including in employment and occupation, in order to promote national reconciliation and peace, the Committee notes the Government's first report on the application of the Convention, which outlines the legal and institutional framework intended to give effect to provisions of the Convention. The Committee takes note in particular of section 5 of the Labour Code and section 3 of the Employment Act of the Republica Srpska, as well as section 5 of the Labour Code (as amended in August 2000) and section 2 of the Employment and Social Security of the Unemployed Act of the Federation of Bosnia and Herzegovina. The Committee welcomes that these provisions prohibit discrimination in employment and occupation, including in the context of employment services, on all the grounds enumerated in *Article 1(1)(a) of the Convention* and that, as stated by the Government, all employers' and workers' organizations had been consulted in the process leading to the adoption of the laws in question.

2. Nevertheless, the Committee recalls that, while the affirmation of the principle of equality in legal provisions is an important element of the national policy to promote equality of opportunity and treatment in employment and occupation as required by *Article 2* of the Convention, it is equally important to take measures to ensure that the Convention's provisions are fully applied in practice. Aware of the enormous challenge rebuilding a multi-ethnic, peaceful and prosperous society in Bosnia and Herzegovina, the Committee emphasizes the need to take decisive steps to ensure that equality and non-discrimination in employment become a reality for men and women throughout the country, irrespective of their sex, religion, race or national extraction, or any other criteria enumerated by the Convention. The Government is therefore requested to provide in its next report information on the practical measures taken to ensure the application of the Convention in the public and private sectors, including sensitization and training of labour market actors.

3. The Committee recalls that, at its 276th Session (November 1999), the Governing Body of the ILO approved the report of the Committee set up to examine the representation alleging non-observance by Bosnia and Herzegovina of Convention No. 111, made under article 24 of the ILO Constitution, by the Union of Autonomous Trade Unions of Bosnia and Herzegovina (USIBH) and the Union of Metalworkers (SM) and entrusted follow-up of its recommendations to the Committee of Experts (see GB.276/16/4, paragraph 23). The Governing Body considered that the facts involved constituted a violation of Convention No. 111, since the type of discrimination described in the representation was of the kind prohibited by *Article 1(1)(a)* of that instrument, in that it involved an exclusion based solely on national extraction or religious belief which had the effect of destroying equality of opportunity and treatment in employment and occupation between workers of Croatian extraction and the workers of Bosnian or Serbian extraction employed by the “Aluminium” and “Soko” undertakings.

4. The Committee previously noted with interest sections 143 and 144 of the new Labour Code (as amended in August 2000) which are designed to provide various levels of compensation to workers who lost their employment during the civil war which ravaged the country from 1992 onwards. The Committee considered that it was too soon to affirm that the provisions in question settle conclusively the situation of workers in the “Aluminium” and “Soko” factories and insisted that it is for the various parties concerned – the Government, the management of the two undertakings, and the workers who made the representation – to apply the provisions of the Labour Code and the recommendations of the Governing Body in such a way that the workers of the “Aluminium” and “Soko” factories who were unable to resume their former employment – solely on the basis of their ethnic origin and/or religious beliefs – can receive appropriate compensation.

5. The Committee notes from the Government’s report that as of 31 March 2000 there were 740 employees at “Aluminium” factories out of which 692 were Croats (93.5 per cent), 27 Serbs (3.9 per cent), and 21 Bosnians (2.8 per cent). Before the civil war the “Aluminium” workforce of 3,278 employees had the following composition: 1,455 Croats (44.4 per cent), 1,082 Bosnians (33 per cent) and 742 Serbs (22.6 per cent). The Government states that an inspection carried out in the “Soko” undertaking displayed a similar situation, with a composition of the 433 employees as of 31 March 2000 as follows: 414 Croats, nine Bosnians, and five Serbs. According to the Government, measures were taken concerning the obligations of the two enterprises in question to establish the legal status required of all employees who did meet the conditions set forth in section 143 of the Labour Code and who submitted applications in this respect. According to the findings at the disposal of the Government of the Federation of Bosnia and Herzegovina, this process has only led to severance payments, while there were no cases of return of such employees to work. The Committee notes this information and requests the Government to provide with its next report detailed information on those workers of the “Aluminium” and “Soko” factories whose employment relationship has formally been terminated in accordance with section 143, include their number, national extraction, and whether they received severance payments. The Government is also requested to provide detailed information on any claims brought by affected employees of these factories before the cantonal and federal commissions for the implementation of section 143 of the Labour Code, including the results of these proceedings.

6. The Committee also recalls the communications of the USIBH and the trade union organization of the “Ljubija” iron mine according to which the managers of the mine in question dismissed all the miners who were not Serbs, namely some 2,000 workers, during the civil war which ravaged the country from 1992 onwards. The Committee noted that the facts alleged by the USIBH are similar to those examined by the Governing Body within the context of the abovementioned representation under article 24, namely that there was dismissal (or non-reinstatement) of workers based solely on their national extraction and stressed that the principle laid down in the Convention is of universal application, that applies whatever the national extraction of the worker discriminated against may be. The Committee once again hopes that it will be possible to resolve this case, and trusts that in its next report the Government will make its comments in reply to these communications, indicating any progress made in respect of this case.

7. The Committee refers also to the comments made under Conventions Nos. 81 and 158.

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

In addition, a request regarding other points is being addressed directly to the Government.

Brazil

Convention No. 111: Discrimination (Employment and Occupation), 1958 (ratification: 1965)

The Committee notes the report sent by the Government, the comments made by the Inter-American Trade Union Institute for Racial Equality (INSPIR), received on 12 September 2002, and the Government’s reply thereto. It also notes a number of publications and reports, including statistical data.

1. *Discrimination on grounds of race, colour and sex.* The Committee notes the summary of the study “Social, racial and gender profile of management in large Brazilian companies”, appended to the communication from INSPIR, alleging discrimination on grounds of race, sex and colour in executive posts and jobs that involve dealing with the public in sectors such as banking, hotels, airlines and shopping malls, where members of the black and mulatto population are employed only in cleaning and maintenance jobs. The Committee notes that according to the report submitted to the Committee on the Elimination of Discrimination Against Women (CEDAW/C/BRA/1-5, 7 November 2002), Afro-descendants account for 70 per cent of the poorest segment of the population. The Committee also notes the information supplied in the Government’s report to the effect that the black population not only receives the lowest wages but often suffers discrimination in access to jobs and in employment relationships.

2. The Committee takes note of the information supplied by the Government in its report to the effect that in January 2003 a Secretariat for Racial Equality and a National Council to Combat Discrimination were created in the public administration for the purpose of proposing, monitoring and evaluating affirmative public policies for promoting equality and protecting the rights of individuals and social and ethnic groups affected by racial discrimination or other

forms of intolerance. Although aware that the Government has undertaken numerous initiatives to apply a policy to combat discrimination, the Committee requests the Government to provide information in its next report on the results of the measures and policies implemented in recent years to overcome discrimination in the labour market on grounds of race, colour and sex (*Article 3(f) of the Convention*).

3. The Committee notes the creation in 2002 of the Secretariat of State for Women's Rights which has ministerial rank. It would be grateful if the Government would provide information in its future reports on the activities conducted by the abovementioned Secretariat to prevent discrimination on grounds of sex and to promote gender equality, including affirmative action in the area of access to education, training and employment.

4. The Committee notes INSPIR alleges that the measures the Government has taken since 1992 to overcome racial discrimination, including in the public sector, were not coordinated and effective enough to overcome racial and gender discrimination at work. The Committee notes that, according to INSPIR, despite the large amount of draft legislation designed to overcome racial discrimination, procedures are slow and the necessary government support is often lacking. The Committee reminds the Government that in the course of the examination of Brazil's application of the Convention that took place in June 2002 in the Conference Committee on the Application of Standards, it was mentioned that black workers were disproportionately over-represented in the unskilled and informal economy and, contrariwise, were disproportionately under-represented in managerial positions, and that "no factor other than direct use of discriminatory criteria based on skin colour [could] explain the systematically unfavourable employment situation for black workers". The Committee again stresses that to be effective, the application of the Convention requires the adoption of active integration policies, such as setting aside posts in the public administration or making public assistance to private enterprises contingent on compliance with anti-discrimination rules, financing vocational training programmes to integrate persons excluded, or encouraging the incorporation of anti-discrimination provisions in collective agreements. The Committee trusts that in its next report the Government will provide information not only on the measures adopted or envisaged, but also on the impact of these measures in preventing the occurrence of discriminatory employment practices and encouraging the recruitment of members of the Afro-Brazilian and mulatto populations of both sexes in posts from which they have traditionally been excluded.

5. The Committee notes from the information sent by INSPIR that there are virtually no complaints of discrimination in state enterprises because employees fear losing their jobs. It also notes the information in the Government's report to the effect that although there is widespread discrimination on grounds of race and colour, there are few complaints because the persons affected are unacquainted with the procedures and because of the difficulties of proving such practices. The Committee also notes that the units created to promote equal opportunities and combat discrimination increased their activities by 75 per cent between 2000 and 2002. The Committee trusts that the Government will take steps to avoid and discourage, both in the private sector and in the public sector, all forms of reprisals against persons submitting complaints of discrimination on grounds of race or colour; and that it will take measures to acquaint the black and mulatto populations with the procedures for lodging complaints of discriminatory conduct. The Committee would be grateful if the Government would provide information in its next report on the complaints that have been filed for each of the grounds of discrimination referred to in *Article 1* of the Convention, if possible indicating the sector or activity in which the cases occurred and the results obtained. The Committee trusts that the Government will continue its efforts to encourage greater participation by workers' and employers' organizations in the Units created in the various regions to promote equal opportunities and combat discrimination.

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

Cameroon

Convention No. 100: Equal Remuneration, 1951 (ratification: 1970)

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

The Committee notes the comments received from the Union of Free Trade Unions of Cameroon (USLC) on 23 February 2001 which relate to the application of the Convention in remote areas and which were transmitted to the Government for comments on 29 March 2001.

The Committee notes that, according to the USLC, the information provided by the Government in its report reflects overall the reality with respect to the legislative texts cited in the Government's report. However, the USLC also indicates that certain employers, especially those in remote areas, apply rates that are not in conformity with the regulations implemented by the Ministry of Employment, Labour and Social Services (MELS), and requests that the inspectors of the MELS be more vigilant in these areas. The Committee notes that the Government does not reply to the comments made by the USLC and it asks the Government to indicate the measures taken or envisaged to eradicate any wage disparity between men and women workers in remote areas, including any action taken to strengthen the capacity of labour inspectors to report cases of wage discrimination in these areas, so as to ensure improved application of the principle of equal remuneration for men and women workers for work of equal value.

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

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

Chile

Convention No. 111: Discrimination (Employment and Occupation), 1958 (ratification: 1971)

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

1. The Committee notes with interest the amendment made to section 2 of the Labour Code by Act No. 19812 of 13 June 2002, broadening protection against discrimination in employment on grounds of previous debts, with the exception of workers who have general administrative responsibilities or whose functions relate to the collection, administration or management of funds or assets. It also notes the administrative decision dated 18 November 2002, which found to be discriminatory the requirement of a certificate attesting to any penal or criminal record for labour purposes, and the ruling of 11 February 2003 which found to be discriminatory and penalized job offers referring in their requirements to some of the conditions envisaged in section 2 of the Labour Code (grounds of discrimination).

2. The Committee notes that the Government has not replied in its report to the request for information in its previous comment concerning discrimination on grounds of political opinion. The Government once again reiterated that the Legislative Decrees (Nos. 112 and 139 of 1973, 473 and 762 of 1974, and 1321 and 1412 of 1976) which grant broad discretionary powers to the vice-chancellors of universities to terminate the contracts of employment of academic and administrative personnel are no longer in force and that the necessary conditions do not currently exist for their application, as they were issued under absolutely exceptional historical circumstances, which have now been superseded. Despite the fact that the Civil Code in sections 52 and 53 provides for the tacit repeal of a law through the enactment of new provisions which cannot be reconciled with the previous legislation, the Committee repeats its previous comments and emphasizes that in its view the best way of ensuring that there is no uncertainty with regard to the positive law that is in force is to explicitly repeal provisions which are not effectively in force. Furthermore, with regard to section 55 of Legislative Decree No. 153 of 19 January 1982 issuing the statutes of the University of Chile and section 35 of Legislative Decree No. 149 of 7 May 1982 regulating the statutes of the University of Santiago de Chile, the Committee notes that they still have not been amended or repealed, as it requested in previous comments. Moreover, the Committee notes that the Framework Bill respecting state universities submitted in 1997 has currently been put aside. The Committee once again requests the Government to take the necessary measures to bring the national legislation into compliance with the provisions of the Convention.

3. The Committee notes that the Government has not replied to its comments concerning the amendment of section 349 of the Commercial Code, which provides that a married woman who is not covered by the marital regime of the individual ownership of property may only enter into a commercial partnership agreement with her husband's special authorization. The Committee hopes that the Government will once again consider the possibility of amending section 349 of the Commercial Code so as to ensure that women, irrespective of their civil status and the marital property regime that they and their spouses have selected, may conclude commercial partnership agreements without the prior authorization of their spouse and exercise their professional activities under equal conditions with men. The Committee refers to this matter in greater detail in a direct request.

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

Colombia

Convention No. 100: Equal Remuneration, 1951 (ratification: 1963)

The Committee notes the information supplied by the Government in its two reports.

For several years the Committee has been pointing to the need to amend the Labour Code in order to establish expressly the principle of equal remuneration for work of equal value so as to bring the national legislation into conformity with the Convention. The Committee notes that section 5 of Act No. 823 of 10 July 2003 establishing rules on equal opportunities for women lays down a principle which is narrower than that of the *Convention* in that it refers to equal pay for "equal work" and not "work of equal value", and thus does not provide for the possibility of comparing work which is different but warrants equal pay. The Committee asks the Government to consider amending the abovementioned provision in order to bring it into line with the principle enshrined in *Article 2, paragraph 1*, of the Convention.

The Committee is also sending a direct request concerning other matters.

Croatia

Convention No. 111: Discrimination (Employment and Occupation), 1958 (ratification: 1991)

1. The Committee notes with interest the adoption of both the Act concerning amendments to the Labour Act and the Equality of the Sexes Act that came into force on 19 and 30 July 2003 respectively. It notes that according to the amended section 2 of the Labour Act the prohibition of discrimination against jobseekers and workers includes new

grounds of sexual orientation and ethnic origin upon which discrimination is prohibited, in addition to the grounds of race, skin colour, marital status, family obligations, age, language, religion, conviction, social origin, wealth, birth, social position, political party membership or non-membership, trade union membership or non-membership and physical and mental difficulties (1); defines what is considered direct and indirect discrimination (2)(3); lays out exemptions (2a); set out provisions on harassment and sexual harassment (2b); establishes the right to damages in the event of discrimination (2c), and that the burden of the proof is upon the employer (2d). It also notes that section 13 of the Equality of the Sexes Act forbids discrimination in employment and occupation. The Committee is of the view that these new provisions are in accordance with the Convention and further strengthening its application in law. It requests the Government to provide information in future reports on their enforcement and their implementation in practice including results achieved.

2. In its previous comment the Committee has noted the amendment of section 3 of the Constitution to include gender equality among the highest values of the constitutional order of Croatia and the amendment of article 3 of the Labour Act to provide that, when hiring workers, employers shall be obliged to give priority to the under-represented sex if candidates meet, in an equal manner, general and specific conditions for employment. The Committee asks the Government to provide information in its next report on the application and impact of these new provisions on the situation of women as regards equal opportunity and treatment in employment and occupation, including their representation in jobs at the decision-making and management level.

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

Cyprus

Convention No. 100: Equal Remuneration, 1951 (ratification: 1987)

1. The Committee notes with satisfaction the adoption on 2 September 2002 of the Act to Provide Equal Pay Between Men and Women for the Same Work or for Work to which Equal Value is Attributed, the purpose of which is to ensure that the principle of equal pay between men and women for equal work or work of equal value is applied (section 3). It notes in particular that section 2 of the Act defines pay as “including the usual basic contribution and any other additional contributions paid directly or indirectly, either in money or in kind, by the employer to the employee in exchange for the work provided”, which is in accordance with *Article 1(a) of the Convention*. The Act also provides, in line with *Article 1(b) of the Convention*, that the principle of equality in pay means “the absence of any kind of direct and indirect discrimination based on sex, as regards pay for the same work or for work to which equal value is attributed”, and defines work of equal value as “work carried out by men and women which is identical or materially identical in nature or to which equal value is attributed, based on objective criteria”.

2. Furthermore, the Committee notes that the Act applies to all employees for all activities related to “employment” (which is given a very broad definition in section 2) and requires that every employer provide equal pay to men and women for the same work and for work to which equal value is attributed, irrespective of the sex of the employee (section 5(1)). Pursuant to section 5(2), professional classification systems should be based on common criteria for male and female employees and designed in such a manner that sex discrimination is excluded. For the purpose of comparison the Act sets out criteria of the nature of the duties, the degree of responsibility, qualifications, skills and seniority, qualifications-related requirements and the conditions under which the work is carried out (section 18).

3. The Act further includes provisions concerning the prohibition of victimization in the case of equal pay complaints and imposing sanctions on employers contravening these provisions. The Committee notes with particular interest that the Act gives a specific supervisory and advisory role to the labour inspectorate on equal pay inspections (sections 10-14) and establishes a special committee for investigation and assessment of work (sections 15-17) to undertake an evaluation of jobs said to be of equal value in the case of complaints.

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

Czech Republic

Convention No. 111: Discrimination (Employment and Occupation), 1958 (ratification: 1993)

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

The Committee notes the detailed information in the Government’s report as well as the Government’s reply to the comments made by the International Confederation of Free Trade Unions (ICFTU) in 2001 concerning discrimination on the grounds of sex, national extraction and political opinion.

2. *Discrimination on the basis of political opinion.* In its previous observations, the Committee took note of the detailed information provided by the Government on the application of Act No. 451 of 1991 (Screening Act) laying down certain political prerequisites for holding a range of jobs and occupations mainly in the public service. The Act had been subject to representations under article 24 of the ILO Constitution (in November 1991 and June 1994) and the Governing Body committees deciding on the matter invited the Government to repeal or modify the provisions in the Screening Act that were incompatible with the Convention. In this regard, the Committee notes the statement by the ICFTU that the Screening Act is intended to exclude those individuals with non-democratic views and excessive ties to the communist regime from senior posts in public

office and the private sector. The ICFTU further states that Parliament outvoted the veto of the President to renew the law, and that, therefore, the law remained in force. In its reply, the Government indicates that the intention was not to extend the Screening Act after the year 2000, but that several Members of Parliament proposed its extension. The Government further states that it adopted resolution No. 435 of 3 May 2000 by which it manifested its disfavour in regard of such a proposal as an unjustifiable extension of an extraordinary act, which it felt had become obsolete. It also drew attention to the unfavourable positions of some international organizations, including the ILO, on this matter. However, Parliament extended the Act, despite the dissent of the Government and its effort to avoid such action. The Committee notes these explanations made by Government. Noting also the Government's statement that the new Civil Service Act of 2002 will replace the Screening Act when it enters into force, the Committee requests the Government to continue to provide information on the status and application of the Screening Act.

4. *Discrimination on the basis of race and national extraction.* In its previous observations, the Committee had noted the series of measures taken and programmes developed by the Government to address discrimination against members of the Roma community and to address their employment and education needs. However, the Committee had also noted the information contained in the report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance (E/CN.4/2000/16/Add.1, 19-30 September 1999) pointing out that the Roma continued to be victims of intolerance and discrimination, particularly regarding employment, housing, education and access to public places. The report indicated that some employers considered them to be "lazy" or "irregular in their jobs", so that even when they had the necessary qualifications, they are not hired. Statistics compiled by the Council of Nationalities indicated that 70 per cent of the Roma were unemployed and this figure was as high as 90 per cent in certain areas, while the general unemployment rate is 5 per cent. The Special Rapporteur also questioned the practice of relegating Roma children to "special" schools as a result of which studies at secondary-school level or in regular apprenticeship are made impossible for Roma children. The report concluded that the lack of qualifications amongst adult Roma was one of the main reasons for their difficulties finding jobs, their dependence on social benefits, and the general marginalization of the entire Roma community.

5. In its communication, the ICFTU states that the Roma continue to be victims of widespread social discrimination, including discrimination in employment, and that according to ILO estimates the unemployment rate of Roma is three times the national average. It also states that the main reason for this unemployment is lack of suitable skills as a result of incompatibility of many Roma schools with the national curriculum and difficulties in progressing in secondary and higher education. Further, according to ICFTU, employers request local labour offices not to send Roma applicants for advertised positions and individual Roma are not able to file grievances concerning discrimination, which must instead be lodged by the State.

6. The Committee notes the Government's reply that the unemployment of the members of the Roma is rather high but that open discrimination is not always the cause of their difficult access to the labour market because Roma are generally characterized as low-skilled or unskilled workers and mostly fall into the group of "hardly employable workers". The Government indicates that resolution No. 640 of 23 June 1999 on measures of promoting the employability of persons hardly employable in the labour market (with emphasis on the Roma community) provides for creating wide conceptual vocational training programmes (CHANCE programme). The Government also indicates that the labour offices give financial compensation to those employers who provide employment to hardly employable workers, especially for public works. Further, with respect to employment promotion, the Government refers to the creation of the ministerial committee for employment for hardly employable citizens and to measures taken to improve the employment of the Roma through the projects carried out under the National PHARE Programme funded by the European Union (EU) and the "EQUAL" initiative of the EU to overcome racism and xenophobia in the labour market. The Committee also notes the detailed information supplied in the Government's report on a series of other measures that have been taken to improve access to basic and higher education for children and youth belonging to the Roma community, including Act No. 19/2000 amending the School Act and allowing persons to be enrolled for high school even if they did not finish basic school.

7. The Committee recalls that in its previous observation, it had urged the Government to take measures to improve significantly the Roma's access to training, education on the same basis as others, as well as to employment and occupation, and to take steps to raise public awareness of the issue of racism in order to promote tolerance, respect and understanding between the Roma community and others in society. It also hoped that the Government would be able to report progress in positively addressing the serious problems facing Roma in the labour market and in society in general. While being grateful for the information supplied by the Government, the Committee notes that the Government's report does not provide any practical information on the actual impact of the abovementioned measures to improve the situation of the Roma in the labour market. It also notes with some concern the Government's statement that there is no discrimination in the area of special education (including vocational training) based on race, colour, nationality, ethnicity or social origin and that clients, especially Roma, do not make sufficient and responsible use of professional offers; the situation needs to be remedied by awareness raising and a suitable social security system. The Committee has to point out that without any practical information, including statistical data, on the impact of the measures referred to by the Government on the educational and employment opportunities of the Roma community, it is unable to assess fully the progress made by the Government to address positively the problems facing Roma in the labour market and in society. Recalling also the importance of translating educational opportunities into real employment possibilities, it urges the Government to provide, in its next report, statistical information on the number of Roma people that have been effectively employed as a result of the abovementioned initiatives, on the number of employers that have received financial compensation for employing Roma and on the measures taken to address in an effective manner the serious prejudices amongst employers to hire members of the Roma community. The Committee also requests the Government to indicate how it intends to assist Roma people who wish to file grievances concerning alleged discrimination by labour offices and employers.

8. *Discrimination on the basis of sex.* In its report, the ICFTU states that salaries of women are approximately 30 per cent lower than men and that women are disproportionately over-represented in lower remunerated jobs and under-represented in senior positions. It also states that while the labour law prohibits sexual harassment, inquiries show that about half of the working women have reported sexual harassment in the workplace. The Committee notes that section 7(2) of the Labour Code governs employees' claims in cases of undesirable behaviour of a sexual nature (sexual harassment) at the workplace if such conduct is unwelcome, unsuitable or insulting, or if it can justifiably be perceived by the participant concerned as a condition for decisions affecting the exercise of rights and obligations ensuing from labour relations. It also understands that a similar section has been introduced in section 80(3) of the Civil Service Act of 2002. Noting that the Government omits to reply to the ICFTU's concerns with respect to sexual harassment at work, the Committee asks the Government to provide information on any sexual harassment cases submitted to court on violations of section 7(2) of the Labour Code and to provide information on the measures taken or envisaged, including legislative action, information campaigns and any other measures to sensitize and encourage

workers' and employers' organizations to combat sexual harassment at work. With respect to the issue of equal remuneration between men and women, the Committee refers to its comments under Convention No. 100.

9. The Committee notes the information supplied by the Government on the various measures taken to promote equality between men and women in employment, awareness raising, improving legal protection and gender mainstreaming, the introduction of positive measures and national mechanisms for promoting equality between men and women. However, the Committee is obliged to reiterate its previous requests to provide information on the *practical* impact, including statistics, of these measures taken to promote equality between women and men in employment and occupation and to raise awareness of girls and young women about employment and training opportunities available to them beyond those considered "typically female" occupations.

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

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

Dominican Republic

Convention No. 100: Equal Remuneration, 1951 (ratification: 1953)

The Committee notes the information provided by the Government in its report, including the statistics, as well as the comments made by the International Confederation of Free Trade Unions (ICFTU) in October 2002 on matters related to the application of the Convention, and the Government's reply.

1. According to the ICFTU's communication, women regularly earn lower remuneration than men for work of equal value and furthermore, despite the fact that there have for several years been more women than men in higher education, most positions of higher responsibility in all areas are occupied by men. The Government replies that the situation changed some years ago in both the public and private sectors, including the situation of women employed in export processing zones. The Committee also notes the information provided by the Government in its report on the application of Convention No. 111 indicating that women receive wages that are equal to or greater than those of men, principally due to the managerial posts that they occupy. The Committee would be grateful if the Government would provide, with its next report, statistical data disaggregated by sex on the remuneration of workers in each branch of activity, with particular reference to data on export processing zones and the hotel industry.

2. In its previous comments, the Committee noted that a draft text was to be submitted to the Congress to modify the restrictive concept set out in section 194 of the Labour Code, thereby bringing it into conformity with the principle of equal remuneration for men and women workers for work of equal value, as set forth in the Convention. The Committee notes that the Government has not provided information on this amendment in its last report and trusts that in its next report it will indicate that this section has been amended to give full effect to the principle set out in the Convention.

Convention No. 111: Discrimination (Employment and Occupation), 1958 (ratification: 1964)

The Committee notes the information supplied by the Government in its report and the attachments thereto. The Committee also notes the comments of October 2002 sent by the International Confederation of Free Trade Unions (ICFTU), concerning discrimination on grounds of colour, race, and sex, together with the comments thereon that the Government sent to the Office. The Committee requests the Government to provide information on the following points:

1. *Discrimination on grounds of colour and race.* The ICFTU indicated that although discrimination on grounds of race is prohibited by law, it exists in practice. In earlier comments the Committee noted the concern expressed by the Committee on the Elimination of All Forms of Racial Discrimination (CERD) regarding the reports received on the existence of racial prejudice not only against Haitians but also against dark-skinned Dominicans (CERD/C/304/Add.74 of 12 April 2001, paragraph 7). The Committee notes the Declaration by the Dominican Republic and the Republic of Haiti to prevent discrimination in the hiring of migrant workers, both Dominican and Haitian. The Committee notes the comments sent by the Government in its report to the effect that there have been no complaints of such discrimination and that Haitian workers have the same conditions of health and hygiene as Dominican nationals; furthermore, there is no discrimination on grounds of colour, 80 per cent of Dominicans being dark skinned. The Committee recalls that the Convention requires the Government to formulate a national policy and to adopt educational and administrative measures to prevent discrimination on all grounds as mentioned in *Article 1*, in particular colour and race, and to promote equality of opportunity and treatment both in law and in practice. In this sense, the Committee would be grateful if the Government would provide information on measures adopted, indicating their impact in terms of avoiding in practice the occurrence of discrimination of the type alleged.

2. *Discrimination on grounds of sex.* The Committee notes that, according to the ICFTU, although gender discrimination, including pregnancy controls and sexual harassment, is prohibited by law, it exists and is allowed in practice. The Committee notes that according to the statistics provided by the Government in its report on the application of Convention No. 100, there were 42 instances of breach of the labour standards protecting maternity. The Committee again requests the Government to provide information in its next report on the machinery for prevention and investigation to combat practices that discriminate against women, such as pregnancy testing at the time of admission to employment. The Committee also notes the information in the Government's report to the effect that, although there have been no

complaints alleging pregnancy testing in the industrial export processing zones, the Government will hold a thorough investigation into the matter. The Committee trusts that the Government will be in a position to send the results of the investigation in its next report.

Ecuador

Convention No. 111: Discrimination (Employment and Occupation), 1958 (ratification: 1962)

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

1. With reference to its previous comments, the Committee notes once again that the Government has not provided any information on the reform of the Cooperatives Act, particularly with regard to section 17(b) of the regulations issued under the Act, by virtue of which married women need the authorization of their husbands to be members of housing, agricultural and family vegetable garden cooperatives. The Committee hopes that this regulation will be amended in the near future and once again requests the Government to report on developments concerning the activities of the board of the National Council for Women (CONAMU) and the Standing Committee for Women, Youth, Children and the Family, and particularly on how the reform is progressing.

2. Also with reference to its previous comments, the Committee regrets to note that the Government has not adopted measures to amend a number of the provisions of the Cooperatives Act and the Commercial Code which impose restrictions on women. The Committee once again points out to the Government that the best means of averting any uncertainty as to the legislation in force is to repeal or amend the provisions found to be unconstitutional by the Tribunal, and it hopes that the Government will adopt the above amendments.

3. With reference to its previous comments, the Committee notes that the Government has not provided any information concerning Afro-Ecuadorian communities. The Committee reiterates its request and asks the Government to provide information on the measures adopted or envisaged to eliminate discrimination and promote equality in employment and occupation for the Afro-Ecuadorian population.

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

El Salvador

Convention No. 111: Discrimination (Employment and Occupation), 1958 (ratification: 1995)

1. The Committee notes the information provided by the Government in its report, and the comments of 31 January 2003 sent by the International Confederation of Free Trade Unions (ICFTU) alleging that even if the Constitution prohibits discrimination, in practice discrimination on grounds of gender and ethnicity is pervasive. It states that women face societal discrimination in terms of education, inheritance and employment, such that they have limited economic opportunities and face discrimination in both access to employment and in remuneration. The ICFTU also indicates that some governmental agencies have direct orders to give preference to male candidates and that in export processing zones (EPZs) approximately 90 per cent of staff is composed of women who are subjected to appalling conditions, and where almost all management positions are occupied by men. The report points out that in the EPZs women are often subject to sexual harassment and mandatory pregnancy testing, and that if they are pregnant they are not hired or are dismissed. Finally, the ICFTU states that indigenous people also face discrimination in employment and access to productive resources and to education, and there are reports that indigenous rural labourers are paid less than non-indigenous rural labourers.

2. The Committee takes note of the Government's brief response stating that the ICFTU information is outdated as it relates to situations which no longer exist, and that the allegations of the ICFTU are not based on solid and substantial evidence. The Committee notes that the Government's reply does not contain information on the situation of women in practice, nor of the situation in the EPZs, or on the allegations concerning indigenous people. The Committee is concerned these allegations raise serious issues concerning the application of the Convention. It requests the Government to provide detailed and specific information on the manner in which equal access of women to positions in the government service, management positions, as well as economic opportunities are promoted and non-discriminatory provisions are enforced. Please also provide specific information on the situation of women in the EPZs, including protection against pregnancy testing and hiring and dismissal practices. Further please provide information on the manner in which equality is ensured for indigenous people in both urban and rural areas as regards working terms and conditions. Finally, it asks the Government to take appropriate measures to investigate and eliminate discriminatory practices.

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

Eritrea

Convention No. 111: Discrimination (Employment and Occupation), 1958 (ratification: 2000)

1. The Committee recalls that at its 282nd Session (November 2001) the Governing Body of the ILO approved the report of the tripartite committee set up to examine the representation alleging non-observance by Ethiopia of Conventions Nos. 111 and 158, made under article 24 of the ILO Constitution by the National Confederation of Eritrean Workers (GB.282/14/5). The Governing Body concluded that large-scale deportations of persons including workers from Ethiopia to Eritrea and vice versa occurred following the outbreak of the border conflict in May 1998 and invited the Committee of Experts to review the situation also in respect to Eritrea when the Government reports on the application of Convention No. 111.

2. In the context of the above, the Committee requested the Government to include in its first report on the Convention information on the measures taken to ensure that there is no discrimination against Ethiopian workers and Eritreans of Ethiopian origin on the grounds of political opinion and national extraction, as well as on the following points: (a) the cooperation with the Government of Ethiopia and social partners in the operation of the mechanisms created in the Algiers Agreement of 12 December 2000, in particular on claims submitted to the claims commission and any decisions reached by the latter; (b) the measures taken, in line with any decision of the claims commission, to remedy as fully as possible the situation of the displaced workers and to grant appropriate relief; and (c) the measures taken to provide for an effective right of appeal for those persons who may be accused in the future of engaging in activities prejudicial to the security of the State.

3. The Committee notes from the Government's first report that under article 14 of the Constitution all persons are equal under the law and that no person may be discriminated against on account of race, ethnic origin, language, colour, gender, religion, disability, age, political view, or social or economic status or any other improper factors. According to section 23(4) of the Labour Proclamation of Eritrea (No. 118/2001) an employee's race, colour, nationality, sex, religion, lineage, pregnancy, family responsibility, marital status, political orientation or social status may not constitute legitimate grounds for the termination of an employment contract by an employer. Section 118(7) provides that acts done by an employer, which discriminate on the grounds of race, colour, social origin, nationality, sex, political orientation or religion, are considered to be unfair labour practice, an offence punishable under section 156 of the Proclamation. The Committee asks the Government to provide information on the application of these provisions in practice and on any concrete measure taken to ensure that there is no discrimination against Ethiopian workers and Eritreans of Ethiopian origin on the grounds of political opinion and national extraction. Further, the Committee reiterates its request for information on points (a)-(c) mentioned in point 2 of the present observation.

In addition, a request regarding other points is being addressed directly to the Government.

Ethiopia

Convention No. 111: Discrimination (Employment and Occupation), 1958 (ratification: 1966)

1. The Committee recalls that at its 282nd Session (November 2001), the Governing Body of the ILO approved the report of the tripartite committee set up to examine the representation alleging non-observance by Ethiopia of Conventions Nos. 111 and 158, made under article 24 of the ILO Constitution by the National Confederation of Eritrean Workers (GB.282/14/5). The Governing Body concluded that large-scale deportations of persons, including workers from Ethiopia to Eritrea and vice-versa, occurred following the outbreak of the border conflict in May 1998 and decided that, in so far as the expulsions that took place were based on national extraction or political opinion, they constituted violations of these Conventions. The Governing Body requested the Committee of Experts to continue to examine this matter.

2. In this context, the Committee notes the Government's statement that Eritrean workers and employers enjoy the same rights and benefits as all other workers and employers in Ethiopia without discrimination whatsoever. The Government has once again referred to the Labour Proclamation No. 42/1993, which prohibits termination of an employment contract on several grounds including nationality, political outlook, race, colour and lineage (section 26(2)). The Committee also notes that the Public Civil Servants Proclamation No. 262/2002 provides that there shall be no discrimination among jobseekers or civil servants in filling vacancies because of their ethnic origin or political outlook or any other ground (section 13(1)). The Committee requests the Government to provide information on whether complaints have been made, or instances otherwise noted, of discrimination against either nationals of Eritrea, or against Ethiopians of Eritrean origin, on the grounds of national extraction or political opinion, either in the private sector (under the Labour Proclamation) or the public sector (under the Public Civil Servants Proclamation).

3. The Committee further notes that the Claims Commission, established under the Algiers Agreement between Ethiopia and Eritrea of 12 December 2000, has started its work and that the issues related to deportation and damages for loss of employment and related benefits will be considered by the Commission in accordance with the schedule established by it. The Committee requests the Government to provide information in its next report on the decisions

reached by the Claims Commission in this regard and on the measures taken, in line with such decisions, to remedy as fully as possible the situation of the displaced workers in accordance with the provisions of Conventions Nos. 111 and 158, and to grant appropriate relief.

4. With regard to its previous comments concerning the right of appeal of persons who may be accused in future of engaging in activities prejudicial to the security of the State, the Committee notes the Government's indications with regard to the right to appeal under Ethiopian criminal legislation. Recalling that the conclusions reached by the tripartite committee deal more specifically with the appeal system under the Ethiopian Immigration Proclamation which establishes the administrative procedures for deportations (GB.282/14/5, paragraph 37), the Committee requests the Government to provide information on how an effective right of appeal against deportation orders is provided to persons accused of engaging in activities prejudicial to the security of the State, in line with the requirements of *Article 4 of the Convention*.

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

Finland

Convention No. 100: Equal Remuneration, 1951 (ratification: 1963)

1. The Committee notes the detailed information provided by the Government in its reports as well as the comments from the Central Organization of Finnish Trade Unions (SAK), the Finnish Confederation of Salaried Employees (STTK), the Confederation of Unions for Academic Professionals (AKAVA), the Confederation of Finnish Industry and Employers (TT), the Employer's Confederation of Services Industries in Finland (Palvelutyöntajat), the Commission of Local Authority Employers (KT), and the State Employer's Office (VTML).

2. Further to its previous observations, the Committee notes that the gender wage gap has remained unchanged in recent years and that women's average earnings in regular work were about 80 per cent of the equivalent earnings of men. It also notes from the study entitled *Gender Wage Differentials in the Finnish Labour Market* of 2002 that the gross wage differential is the lowest among manufacturing workers and local government workers (just under 20 per cent and just above 20 per cent respectively) and the highest for salaried manufacturing employees (over 30 per cent). The study indicates, however, that when excluding the smallest and most segregated occupational categories of manufacturing wage earners, the wage difference drops to 15 per cent. The central Government and private sector employees have a wage differential of approximately 25 per cent. The Committee notes that AKAVA provides more or less similar data on wage differentials in the public and private sectors, but that it indicates that it is impossible to draw direct conclusions from these figures about the real extent of pay discrimination because more accurate figures have to take into account information on sector, job title, job description, training and experience. AKAVA states that if the pay differentials due to differences in job title were removed, this alone would reduce the need to raise women's average pay from 37 per cent to 18 per cent.

3. The Committee notes that the Government's report and the abovementioned study indicate that half of the wage gap is due to differences in job descriptions and careers and the fact that women work in lower-paid sectors and occupations than those in which men work. Proportionately the biggest group of women lagging behind their male colleagues in terms of remuneration consists of well-educated and older women in demanding jobs, especially in the private sector. The differential in the municipal sector is largely explained by occupational segregation and the slightly lower educational attainment of women compared to men while, in the manufacturing industries, it is accruing age that leads to a widening gap between senior males and senior females. In the private sector, segregated selection into occupations generates a wage differential of almost 15 percentage points. The Committee notes that SAK, STTK, TT and Palvelutyöntajat all indicate that pay parity problems arise from the gender division by occupation and that a narrowing of the wage gap is possible only when imbalances in the gender ratio in different occupations are corrected. However, TT and Palvelutyöntajat also state that studies on pay differentials between men and women in different service sectors should take into account the difficulty of work performed in each sector, which is important for comparing pay levels for the same work. They point out that studies carried out in the banking sectors indicate that the most significant explanatory factor was the difficulty rating of the job and that studies in the metal and engineering industries also concluded that by taking into account job difficulty and other factors, men's pay was only 2-5 per cent higher than that of women.

4. The Committee notes in this regard that the application of the difficulty ratings for job evaluation purposes began in 2002 and that pay systems based on difficulty ratings and personal performance, and on the evaluation of these factors, are currently in operation in 26 government departments and agencies, covering 14 per cent of all government employees. However, it also states that no job evaluation system-based difficulty ratings are in use for senior salaried and professional personnel. The Committee asks the Government to continue to provide information on difficulty-based pay systems, including for senior personnel, and their impact on the wage gap between men and women.

5. The Committee notes from the information provided by the VTML and the Government that the collective agreements concluded for the state and municipal employees between 2001 and 2005 seek to reduce pay differentials by incorporating an equality allowance and a sectoral allowance. The VTML states that for the collective agreement concluded between the Ministry of Finance and the principal state employee organizations for 2003-05, the effect of the equality allowance for women was 0.21 per cent. The TT and Palvelutyöntajat indicate that the equality allowance based on incomes policy agreements is problematic for competitiveness, because it affects sectors in which labour costs

rise faster than productivity. The sectors affected have a high proportion of low-income and women employees. They state that within the sectors, pay increases are no longer aimed at women or the lower paid, but are general increments paid to all, regardless of the employees' gender or pay level. The STTK believes that equality allowances for women have a definite corrective effect on the pay differentials between female-dominated and male-dominated sectors, but that reducing pay differentials will require that job evaluation be extended to cover different sectors. The Committee asks the Government to continue to provide information on all efforts taken to identify and correct pay differentials between male-dominated and female-dominated sectors due to the undervaluation of work women perform or any other directly or indirectly related sex-bias factors.

6. *Right to obtain information.* The STTK states that ensuring pay equity requires that the right of shop stewards to obtain data be broadened to include the opportunity to obtain earnings statistics by pay category and gender from the employers. The KT indicates that the general municipal collective agreement requires that shop stewards be provided once a year with information on the basic salaries and job-specific salaries and individual-specific pay components of the personnel represented by them. The Committee notes that under the shop steward agreement between the Palvelutyöntajat and the SAK as well as the general agreement between the TT and the SAK, shop stewards have the right to obtain, either once a year or quarterly, data on the pay category and level and structure of earnings. However, the agreements provide that information on employee groups of fewer than six employees is not to be disclosed for reasons of privacy. The Committee also notes that the amendment of 26 January of 2001 to section 10(1) of the Equality Act provides that if there are reasonable grounds to believe that wage discrimination due to sex has occurred, the employer shall be obliged to disclose information on the wages and employment conditions of the persons concerned to the shop steward or the workers' representative, who may reveal this information. It asks the Government to provide information on the practical application and enforcement of section 10(1) of the Equality Act, including with regard to employee groups of fewer than six employees.

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

Greece

Convention No. 100: Equal Remuneration, 1951 (ratification: 1975)

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

1. In its previous observation, the Committee had noted the Government's indication that there was no need to study equality of remuneration because remuneration was fixed through the General Collective Labour Agreement and sectoral agreements, unequal wages for the same work were formally prohibited and no discrimination on the ground of sex existed. At the same time, the Committee had also noted the information received from the United Nations Committee on the Elimination of All Forms of Discrimination Against Women highlighting the continuing pay gap between women and men and the fact that many of the new jobs occupied by women provide only low pay and limited career prospects. It had asked the Government to consider conducting studies on the position of men and women in the labour market, the extent of pay differentials, and the factors which perpetuate pay differentials between men and women in both the formal and informal economies in order to allow appropriate measures to be taken to improve the application of the Convention.

2. The Committee notes that the Government states in its reply that equal remuneration of men and women for equal work constitutes a political priority. It also notes the Government's statements regarding the application of the existing legislation providing for gender equality and non-discrimination in the private and public sectors, the fact that fixing of wages takes place through the General Collective Labour Agreement and that no wage fixing methods in the public sector are based on prejudices in respect of the respective roles of men and women. The Committee notes that, in addition, the Government indicates that the General Secretariat on Equality has been participating in a number of activities and studies within the context of the European Union's efforts to promote equal remuneration and that, together with the Centre for Equality Issues (KEOI), it elaborated the programmes entitled "Equal Remuneration and the Role of the Social Partners in Collective Bargaining", "Mind the Equal Pay Gap" and "Towards Closing the Equal Pay Gap" carried out between 2001 and 2003. The Committee asks the Government to provide more detailed information in its next report on the specific activities carried out under these programmes, including copies of the studies referred to, as well as an indication of the manner in which these programmes have contributed to a reduction in the pay gap between men and women and the promotion of equal remuneration for men and women for work of equal value in both the public and private sectors.

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

Guatemala

Convention No. 100: Equal Remuneration, 1951 (ratification: 1961)

The Committee notes the report sent by the Government and the attachments thereto. It also notes the comments of 25 August and 1 September 2003 by the Trade Union of Workers of Guatemala (UNSITRAGUA) concerning the

application of the Convention which were sent to the Government on 8 and 15 October 2003 respectively. The Committee will examine these comments along with any reply provided by the Government at its next session.

1. In its previous comments the Committee referred to information sent by the International Confederation of Free Trade Unions (ICFTU) to the effect that there was a large wage differential between men and women and that women had a low participation rate in the better-paid jobs. The ICFTU also pointed out that women's status in the export processing industry was precarious. In response, the Government indicates in its report that in the export processing industry wage discrimination on the ground of sex is rare because of the tasks involved in the work, and that if there is a concentration of women in this sector, it is because they have the necessary motor skills to perform the tasks required. The Committee refers in this connection to the Government's report on the application of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), in which it recognizes that women tend to be employed more in less skilled jobs with less stability and lower pay, reflecting "the feminization of employment" in lower ranking jobs and an economic and social underrating of the jobs performed by women. The Committee asks the Government to provide information in its next report on the measures adopted or contemplated to promote the objective evaluation of jobs for purposes of wage fixing to ensure that the jobs in which women dominate are not economically and socially undervalued. Please also indicate the measures taken to provide women with the same opportunities as men in terms of access to jobs which are better paid and more highly skilled.

2. The Committee notes with regret that the Government once again states in its report that the Political Constitution of the Republic of Guatemala gives effect to the Convention. The Committee reminds the Government that article 102(c) of the Constitution refers to equal pay for equal work, whereas the Convention uses the term "work of equal value", a concept which allows a comparison of jobs which are different but which warrant the same remuneration. The Committee also reminds the Government that section 89 of the Labour Code also narrows the scope of application of the Convention by requiring that the work compared in assessing equality must be carried out within the same enterprise. The Committee urges the Government to take the necessary steps to reflect in law the principle of equal remuneration between men and women workers for work of equal value. It would be grateful if the Government would provide information on the activities of the Tripartite Commission on International Labour Issues which, according to information sent by the Government, is to hold discussions and propose reforms based on the Committee's comments.

3. The Committee notes with regret that the Government's report contains no response to the Committee's repeated requests for information on the manner in which objective job appraisal is undertaken in the country. The Committee pointed out to the Government the importance of using a methodology that allows objective and analytical measurement and comparison of the relative value of tasks undertaken so that effect can be given to the Convention, particularly in the case of tasks which are different but which, for the purposes of applying the principle laid down in the Convention, may be of equal value. The Committee trusts that in its next report the Government will provide information on any measures adopted or envisaged to secure the use of methodologies for job appraisal in the public sector and to encourage this in the private sector.

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

Convention No. 111: Discrimination (Employment and Occupation), 1958
(ratification: 1960)

The Committee notes the report sent by the Government and the attachments thereto. It also notes the comments made by the Trade Union of Workers of Guatemala (UNSITRAGUA) on 25 August 2003 containing information on gender discrimination and on the requirements for admission to employment and working conditions. The Committee forwarded these observations to the Government for its comments. The Committee will deal with the two sets of comments jointly.

1. The Committee notes the information supplied by the Government in its report to the effect that a reform of the Labour Code is under way and that it will add to the grounds of discrimination in work centres those of sex, age, sexual orientation, ethnic group and disability. The Committee notes that the reform leaves out other grounds laid down in the Convention – colour, national extraction and social origin – to which the Committee has been referring in its comments for more than ten years. It requests the Government to envisage the possibility of amending section 14bis of the Labour Code so as to prohibit discrimination on grounds of colour, national extraction and social origin as well.

2. The Committee noted in its previous comments the information supplied by the International Confederation of Free Trade Unions (ICFTU) of 28 January 2002 indicating that discrimination against women in employment is common in Guatemala, particularly in the export-processing sector, where working conditions are very poor. The ICFTU also observed that sexual harassment and physical abuse are common and that women workers are not as a rule unionized because of intimidation and threats of reprisals on the part of employers if they join unions. The Committee notes the information supplied by the Government in its report to the effect that the most common causes of violations of women's rights at work in the export-processing sector have to do with dismissals during pregnancy or during the nursing period; ill treatment; unlawful suspension; unlawful reductions of wages; lack of holidays and massive dismissals. The Committee again points out to the Government that the situations described by the ICFTU and by the Government itself are intimately related to the points raised by the Committee in previous comments. In view of the seriousness of the abovementioned violations, the Committee trusts that the Government will be in a position to provide information in its

next report on the concrete results achieved by the measures adopted or envisaged to prevent and combat discrimination against women in the labour market.

3. The Committee noted in its previous comments that, according to the ICFTU, the average length of schooling for indigenous minors is 1.3 years as compared to 2.3 years for non-indigenous minors. In its comments on the Government's report on the application of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), the Committee noted that a law on the promotion of education against discrimination (Decree No. 81-2002) had been adopted with a view to implementing programmes to combat discrimination in education and the activities of the Ministry of Culture and Sport.

4. In its comments on the Government's report on the application of Convention No. 169, the Committee likewise noted the amendment of the Penal Code (Decree No. 57-2002) in order to penalize discrimination on grounds of race and ethnic group amongst others. It also noted the creation of the Presidential Commission against Racism and Discrimination. The Committee would be grateful if in its next report the Government would provide information on the activities carried out by the above commission to combat discrimination, and on the results obtained. Please also provide information on penal complaints and sentences for discrimination on grounds of race and ethnic group.

5. As it did in its previous comments, the Committee requests the Government to provide information on the results obtained by the Action Plan for Social Development and the Construction of Peace 1996-2000 in promoting equality of opportunity and treatment in employment and occupation.

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

Haiti

Convention No. 100: Equal Remuneration, 1951 (ratification: 1958)

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

The Committee takes note of the comments of the International Confederation of Free Trade Unions (ICFTU), dated 24 May 2002, and of the Coordination Syndicale Haïtienne (CSH), dated 26 August 2002, with regard to certain points on the application of the Convention. Both comments have been forwarded to the Government and the Committee will address them, together with any comments the Government may wish to make thereon, at its next session.

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

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

Honduras

Convention No. 100: Equal Remuneration, 1951 (ratification: 1956)

The Committee notes the brief report provided by the Government in reply to its previous comments and the attached publications.

In its previous comments, the Committee noted the adoption of the Act respecting equality of opportunities, published on 22 May 2000, to eliminate any type of discrimination against women and to achieve equality for men and women before the law. The Committee indicated to the Government that section 44 of this Act requires the payment of equal wages for equal work, provided that the job, the working day and the conditions respecting efficiency and seniority are also equal. The Committee reminded the Government that the Convention requires the establishment of equal remuneration for men and women workers "for work of equal value" and that in selecting the "value" of work as the basis for comparison between the work of men and women, the Convention has a broader meaning than equal remuneration for the same work. Noting the information provided by the Government in its report on the application of Convention No. 111, the Committee observes that the Act respecting equal opportunities for women is undergoing a process of amendment, and that the modifications are to be approved in 2004. The Committee asks the Government to amend section 44 during this revision process so that it fully applies the principle set out in the Convention, thereby making it possible to compare jobs that are different but of equal value.

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

India

Convention No. 100: Equal Remuneration, 1951 (ratification: 1958)

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

1. In its previous observation, the Committee noted that the Government's report contained virtually no reply to the comments made by the National Front of Indian Trade Unions (NFITU) alleging that the principle of equal remuneration between men and women workers for work of equal value was not respected in the informal economy and the unorganized sector. It also noted the comments from the International Confederation of Free Trade Unions (ICFTU) that,

in spite of the Equal Remuneration Act, 1976, wage gaps between men and women persist across all sectors. The ICFTU also maintained that the policies and programmes adopted to promote empowerment of women, included in the Ninth Plan, were superficial and that further action was necessary, especially in the traditional sectors. In this regard, the Committee asked the Government to report on the implementation of the policies under the Ninth Plan to reduce the wage disparity between men and women.

2. With regard to the allegations made by the NFITU, the Committee notes that the Government's report once again does not reply to this matter. The Committee notes, nevertheless, that the Ninth Plan (1997-2002) draws attention to the high representation of women in the unorganized sector "where there are no legislative safeguards even to claim either minimum or equal wages along with their male counterparts". The Plan, therefore, states that special efforts will be made to ensure that the laws relating to both the minimum wage and equal pay shall be strictly implemented in this sector. The Committee also notes from the detailed statistical information provided by the Government that the earnings gap is significantly larger between illiterate men and women in both rural (women's daily earnings amount to 56.6 per cent of men's) and urban areas (women's daily earnings amount to 59.1 per cent of men's) and as compared to men and women in the literate up to graduate categories. The Committee asks the Government to indicate in its next report the strategy developed for implementing minimum wages and equal pay laws in the informal economy in a meaningful way and to report on any results this has achieved in reducing the pay gap between men and women. Please also indicate the collaboration of workers' and employers' organizations in this initiative.

3. With regard to the comments made by ICFTU, the Committee notes the Government's statement that there are no major violations of the provisions of the Equal Remuneration Act, 1976. While the Government acknowledges that, according to the 4th Round Occupational Wage Survey, differences in wage rates exist in certain industries between men and women; it also maintains that these cannot all be considered as violations of the Act, since wage differences in an occupation at unit level could be due to differences in qualification, experience, length of service, employment status, or difference in output. While noting the Government's explanations, the Committee nevertheless recalls that while the explanation provided by the Government may explain the wage differential in part, it would not explain all of that differential. Wage classification structures which are not based on objective job evaluations may also play a part. Moreover, such factors as employment status and experience, which appear to be neutral factors, may in practice be applied differently as between men and women. The low status of women due to stereotypical attitudes towards the roles of men and women and the unequal treatment of women in general as regards their access to vocational and employment opportunities is one of the root causes of inequalities in remuneration and of the undervaluation of the work women do. While noting the policies for the empowerment of women included in the Ninth Plan (1997-2002), the Committee understands that measures to achieve de facto equality of women through their social and economic empowerment have been brought together under a National Policy for the Empowerment of Women (2001). Noting that the policy objectives include equal access for women to quality education and vocational guidance, employment and remuneration, the Committee asks the Government to provide full information in its next report on the measures taken or envisaged to implement these objectives, with a view to reducing wage disparities between men and women in the various sectors of the economy and to report on the results achieved thereof. Underlying the importance to the application of the Convention, which the Committee places on enforcement of the legislation, the Committee asks the Government to supply information on the enforcement of the Equal Remuneration Act by the labour inspectorate and the judiciary.

The Committee is addressing a request directly to the Government in respect of other matters.

Indonesia

Convention No. 100: Equal Remuneration, 1951 (ratification: 1958)

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

1. The Committee notes the communication received by the International Confederation of Free Trade Unions (ICFTU) dated 25 June 2003 on the application of Conventions Nos. 100 and 111 and the Government's reply thereon, received 3 November 2003. In its communication, the ICFTU maintains that there is discrimination against women and that neither the Constitution nor the Manpower Act No. 13 of 2003 expressly prohibit discrimination on specific grounds, including sex. The ICFTU further alleges that women tend to be over-represented in low paying and lower responsibility jobs: in the public service, women constitute only 14 per cent of the employees in positions of responsibility and in the private sector there is a disproportionately high number of women employed as casual labour, resulting in lower pay than their colleagues employed doing similar jobs. Furthermore, many women are dismissed when they take maternity leave and the main reason for employers engaging women as casual labourers is the fact that women are then excluded from the provisions requiring maternity pay and leave. With respect to the alleged violation of the maternity provisions and the omission of specific grounds of discrimination in the legislation, the Committee refers the Government to its comments made on Convention No. 111.

2. Further to the above, the Committee notes that the Government indicates that sections 5 and 6, along with section 92 of the new Manpower Act, protect workers against discrimination and that the prevention of discrimination in wages is undertaken through the examination of company regulations and collective agreements. The Committee notes that, while sections 5 and 6 of the Manpower Act of 2003 provide for equality of opportunity and treatment without

discrimination, they do not refer expressly to specific grounds of discrimination. Both the Government and the explanatory notes on the Act indicate that the discrimination referred to includes discrimination between men and women. The Government notes that section 92 provides that the wages scales and structure shall be formulated by taking into account the functional and structural position, rank, occupation, seniority, education and competence of the worker. However, the Committee also notes that, in contrast to section 113(2) of the former Manpower Act of 1997, which provided that “in determining wages the employers shall be prohibited to practice discrimination on whatever basis with respect to jobs of the same value”, the new Act of 2003 does not include a specific provision guaranteeing that men and women workers shall receive equal remuneration for work of equal value. While appreciating the objective criteria set out in section 92, the Committee regrets this omission of equal value in the new Act. It hopes that the Government will consider amending the Act in order to give expression to the principle of equal remuneration between men and women for work of equal value, and will provide information on the status of any proposed amendments to the Manpower Act of 2003 in this regard. The Committee further asks the Government to indicate the status of Government Regulation No. 8 of 1981, which provided in its section 3 that in determining wages employers shall be prohibited to discriminate between men and women workers for work of equal value.

3. The Committee notes that the Government’s report fails to provide specific information such as statistics of wages of men and women workers in various occupations in both the public and private sectors, studies on employment conditions of women undertaken by the Ministry on the Role of Women or any other agency, or labour inspection reports that may enable the Committee to make a better assessment of the manner in which the Convention is applied in practice. Understanding that the Government is currently developing a national strategy to implement equal employment opportunity policies, the Committee hopes that the strategy will include the principle of equal remuneration for men and women for work of equal value and that the Government will seize the opportunity to collect the necessary statistics to analyse the pay situation and to develop appropriate initiatives to improve the application of the Convention in practice. The Committee hopes that the Government will be in a position to provide in its next report full information in this regard.

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

Convention No. 111: Discrimination (Employment and Occupation), 1958
(ratification: 1999)

1. The Committee notes the communication received from the International Confederation of Free Trade Unions (ICFTU), dated 25 June 2003, on the application of Conventions Nos. 100 and 111, which it has partially set out under Convention No. 100. It also notes the reply of the Government, received on 3 November 2003. Specifically in relation to Convention No. 111, the ICFTU communication draws attention to the omission of specific grounds of discrimination in the provisions of the Constitution and in the newly adopted Act No. 13 of 2003 on manpower. The ICFTU also alleges that transmigration of certain ethnic groups results in discrimination of indigenous groups in public sector employment. In this regard it points to reports of discrimination coming out of Papua and Kalimantan. The ICFTU also alleges that migrant workers leaving the country are subject to discrimination and other forms of mistreatment both in destination countries and in Indonesia.

2. The Government replies that sections 5 and 6 of the Manpower Act prohibit discrimination and that employers should protect the rights and obligations of workers without any discrimination in terms of race, sex, religion, colour or politics; thus they disagreed with the ICFTU’s assertion.

3. The Committee notes that article 281 of the Constitution accords the right to be free of “discriminative treatment on any grounds”. Sections 5 and 6 of the Manpower Act provide for equal opportunity and treatment and freedom from discrimination in employment, and section 32 provides for equal opportunity without discrimination in job placement. None of these provisions define the term discrimination nor do they include and prohibit the specific grounds of discrimination contained in the Convention. The Committee does note that the “Explanatory notes on the Act of the Republic of Indonesia No. 13 of the year 2003 concerning labour” contain a list of grounds upon which discrimination is prohibited and that these cover most of the grounds in the Convention with the exception of social origin, and possibly national extraction. It also notes that Section 158 of the Manpower Act prohibits dismissal of workers based on difference in belief, religion, political orientation, ethnicity, colour, race, sex, physical condition or marital status. The Committee recalls that the Human Rights Act of 1999 prohibits direct and indirect discrimination on, among many other grounds, race, sex, religion, political opinion, national extraction and social origin. The Committee had previously noted that this Act provided a broad framework for the application of the principles and rights laid down in the Convention.

4. While welcoming the broad provisions on the prohibition of discrimination contained in the new Manpower Act, the Committee is concerned over the lack of specificity in the elaboration of specific grounds and the lack of a definition of discrimination in accordance with the Convention. Noting from the document entitled “Notes on the Manpower Act” that sections 5 and 6 of the Manpower Act are intended to cover a number of specific grounds, the Committee urges the Government to consider amending the Act, or otherwise clarifying through regulation or guidelines the precise protection provided under these sections. It asks the Government to ensure that such amendment or clarification be in conformity with the Convention – which means that both direct and indirect discrimination on grounds of race, sex, national extraction, colour, social origin, political opinion and religion should be prohibited.

5. With respect to the allegations of ethnic-based discrimination, the Committee notes that the Government does not provide any information. The Committee considers these allegations to be serious and requests the Government to provide information in its next report on the measures undertaken to address and eliminate discrimination on grounds of race, national extraction, colour and religion at regional level in public and private employment. In particular, it asks the Government to provide information on the specific actions taken to address the situation in Papua and Kalimantan.

6. The ICFTU also alleges discrimination against women in practice based on non-application of maternity protection provisions. The Government replies that maternity protection is provided in the new Manpower Act and sanctions for violations are set out in section 186 of the said Act. The Committee requests the Government to ensure the enforcement of these provisions in practice and the implementation of sanctions for their violation and to report on the manner in which it has done so.

Islamic Republic of Iran

Convention No. 111: Discrimination (Employment and Occupation), 1958 (ratification: 1964)

1. The Committee notes the information in the Government's report and the attached documentation and statistics. It also notes the reply to the comments from the World Confederation of Labour (WCL) on the application of the Convention, which had been received in October 2002 and forwarded to the Government. In addition, it also notes the discussion in the Conference Committee on the Application of Standards in June 2003. The Committee notes that much of the information attached to the WCL comment as well as part of the reply of the Government consist of numerous pages of newspaper clippings on issues related to the application of the Convention such as the situation of women on the labour market, employment creation, social security, and women judges. The Committee has reviewed all this documentation as well as the Government's allegations that the Democratic Union of Iranian Workers, which developed the information contained in the WCL communication, has affiliations to terrorist organisations.

2. *Discrimination on the basis of sex.* The very lengthy information supplied by the WCL emphasizes the existence of a climate of societal and structural discrimination, which women face in trying to obtain equal opportunity and treatment in both law and practice. According to the information, men are treated as head of the household and women are expected to be under their surveillance and guardianship. Some legal reforms are acknowledged but they are not felt to go far enough to establish substantive equality between men and women. The Government replies with assurances that it is giving priority to the promotion and protection of non-discrimination and that progress has been achieved in the last five years, which the Committee has recognized. The Government also emphasizes that the Islamic Republic of Iran is now a dynamic society, which is facing various challenges and from time to time setbacks, but which overall is moving forward in a very positive direction with the process of reform being irreversible. The Government indicates that review of laws concerning women from the perspective of human rights, international obligations and Islamic values continues and it stresses that in the meantime it is trying to find practical solutions to overcome any cases of violation of fundamental rights including the right to be free from discrimination.

3. Over the years the Committee has been following the positive trend in the level of women's participation in education and training, though each year it has also been obliged to note the low level of women's participation in the labour market. The Committee again notes the positive actions taken to improve education and training levels of women, such as designating 30 per cent of all technical and vocational training centres managed by the Ministry of Labour and Social Affairs for female training. The Committee notes that this trend continues with very high participation rates of women in universities, but few job opportunities for graduates and others seeking employment. According to the information from the WCL, statistics published by the Office of the Deputy Minister of Labour and Social Affairs for Employment for 2001, indicate that only one out of 12 jobseekers obtained a job. It further indicates that over the same period, women had more difficulty finding jobs with only one out of 22 female jobseekers obtaining a job. The Committee notes from the Government's report that women's unemployment level is approximately one-third higher than that of men and that while men's unemployment dropped from 13 per cent in 2001 to 10.9 per cent in 2002, women's increased from 19.5 to 19.6 per cent. The Government acknowledges the problems facing jobseekers particularly young persons and women, and details efforts it has been undertaking to speed up privatization and attract foreign capital investment, which it hopes will improve employment opportunities. It specifies the establishment of a comprehensive data-processing system for jobseekers and the development of private placement employment centres as being among the Government's plans next year. Further, the Committee welcomes the initiative of the ILO and Ministry of Labour and Social Affairs to hold a Conference on Women's Empowerment, Employment and Equality in Tehran in March 2004, with the aim of elaborating an action plan to increase employment opportunities, improve the quality and quantity of women's employment and entrepreneurship, and promote better application of the Convention. The Committee requests the Government to provide information on the evolution of the position of women in education, training, and access to jobs, on the impact of the government initiatives to promote women's employment and on the results of this Conference and the implementation of the action plan.

4. With respect to women's position in the labour market, the Committee thanks the Government for the numerous statistical tables and analysis. It notes from the Government's report that the trend of women's participation rate continues

to increase very slowly again in 2003, to 12.2 per cent from 11.8 per cent in 2002 and 10.3 per cent in 2001, but that as compared to men it remains very low. As concerns the need to address the vertical and horizontal occupational segregation to which the Committee has been drawing attention, the Committee notes that women's participation from 1997 to 2001 in services has remained approximately the same, while it has decreased in industries and increased in agriculture. The Committee also notes the increase the number of women in the police, the defence ministry, in university academic boards, and in professions such as pilots. The Committee notes from the Government's report that a number of measures have been taken to improve the status of women in their economic and social life including the introduction of plans for promoting women into management, establishment of more women's cooperatives, creation of a "linking network" among women's rural cooperatives to help empower rural women, formation of a committee and other measures to combat violence against women, issuance of over 300 licences to women to establish advertising centres and publications, increasing the number of women's NGO's, and promoting legal literacy concerning women's rights. The Committee requests the Government to continue to undertake measures and even increase its efforts to improve the status of women on an equal basis with men in economic as well as social spheres in law, as well as in practice, and to continue to provide information on the results achieved.

5. For many years now the Committee has been asking the Government to review, and amend or repeal the following legal and administrative provisions, which are not in conformity with the Convention:

- The obligatory dress code for women and the imposition of sanctions in accordance with the Act on administrative infringements for violations of the code. It reiterates its concern, inter alia, over the negative impact that such a requirement can have on the employment of non-Islamic women in the public sector.
- Section 1117 of the Civil Code under which a husband may bring a court action to object to his wife taking up a profession or job contrary to the interest of the family or to his wife's prestige. As indicated in the past, the extension of the right to women in the 1975 Protection of Family Act does not fully respond to the concerns of the Committee.
- Decree No. 55080 of 1979 concerning change of judicial status of women to administrative status, which in effect prevented women from being judges with power to issue verdicts.

6. The Committee notes that, while study continues on the issues of officially removing the ban on women issuing verdicts and amending the civil code and civil rights laws regarding women, and proposals are being prepared for relevant authorities on these points, no decisions have been taken yet to repeal the relevant legislation. Nevertheless, the Committee notes that the Islamic Republic of Iran's first woman judge has been appointed to the bench of the State Retribution Organization in Isfahan province by the Ministry of Justice with authorization to issue verdicts. It also notes that a proposal to amend section 1117 of the Civil Code has been submitted to Cabinet by the Women's Participation Centre. The Committee welcomes these developments and asks the Government to take the necessary measures to repeal the legislation so that their discriminatory aspects are eliminated in both law and practice, and to indicate the progress made in this respect in its next report.

7. In addition to those regulations listed above, the Committee notes from the information submitted by the WCL a number of administrative regulations that require adherence to the dress code. Among these the Committee's attention is drawn to the Disciplinary Rules for University and Higher Education Institutes Students, which classifies non-observance of Islamic veil requirements as a political and moral offence, with sanctions including dismissal from university or permanent exclusion from all universities. The Committee requests the Government to indicate whether these rules are still in force and, if so, the manner in which they have been applied in practice. The Committee also notes that the information supplied by the WCL includes several administrative rules which restrict the employment of wives of government employees, which in the view of the Committee infers that the employees would only be men and that only women would be restricted. The Committee further notes from the Conference discussion the indication that social security regulations favour the husband over the wife in pension and child benefit provisions when both are working. The Committee asks the Government to revise these laws and administrative regulations to require equal treatment of male and female employees and their spouses, and to ensure that no provisions directly or indirectly infringe on women's right to equal access and conditions of employment in all government service positions.

8. *Discrimination on the basis of religion.* With respect to the existence of religious discrimination in employment and occupation, WCL alleges that in the areas of education and employment minorities face major problems. Specific concerns are raised over preferences based on religion in the selection of teachers under the Act on the selection of teachers and employees of the Ministry of Education, which requires applicants to believe in Islam or one of the religions recognized in the Constitution. The Committee has been raising concern over preferences for Muslim over non-Muslim applicants for a number of years. In reply to its previous comment on the measures taken to promote equal access of religious minorities to jobs in public and private sectors, the Government provides a copy of a circular issued by the Vice-President in November 2001 stipulating that equal terms and conditions of employment should be given to all Iranian citizens, that full observation of the recognized religious minorities' rights including in the fields of employment and recruitment were required, and that this was to be specified in job vacancy advertisements. Further the Government indicates that the Presidential High Screening Board issued an Official Circular, No. 2/47474 in November 2003 to the Interior Ministry in order to call the attention of the governorships country-wide to the necessity of further observance of the recognized religious minorities' rights, particularly with regard to employment and recruitment. The Committee

requests the Government to supply a copy of this Circular. The Government also states that despite the various attempts that have been made over the past few years to eradicate any existing legally based religious and ethnic discrimination, this will not be accomplished in the near future without difficulty. In the meantime, the Government indicates that promotional efforts are being undertaken to combat discrimination. Here again the Committee requests the Government to provide concrete examples of any efforts to combat religious and ethnic based discrimination in law and in practice.

9. In response to the Committee's request for available statistics on employment of minorities in government service, the Committee notes that in 2001, 520 Christian women, 385 Zoroastrian women and 177 Jewish women were recruited and employed in government service. The Committee notes from the Government's report that with respect to the employment of religious minorities in the education sector, a number of positions have been allocated to the open recruitment of the religious minorities in the Education Ministry for the academic year 2003-04. The Government also indicates that religious minorities are entitled to receive financial incentives for job-creating investment projects. The Committee requests the Government to indicate details on the number of positions filled in the education ministry and the number of persons receiving financial incentives, including their sex and religion.

10. Further to the Committee's previous comments on the treatment in education and employment of members of unrecognized minorities, in particular members of the Baha'i faith, the Committee recalls the absence of any protection against discrimination in employment on the basis of religion in the Labour Code. Over the years the Committee has noted discriminatory practices against the members of the Baha'i in education and access to employment, while it has also noted some progress in redressing some of the discriminatory practices. This year the Government provides no new information on the situation of the Baha'i in terms of access to universities and institutes of higher learning or on their situation in the labour market. The Committee, therefore, requests the Government to provide such information in its next report so that it may continue to monitor the situation in terms of application of the Convention. At the same time it urges the Government to continue to address the existing discrimination against the Baha'i.

11. *Ethnic minorities.* In response to the Committee's request for information on the situation of ethnic minorities, the Committee thanks the Government for the information provided on the employment situation of the Azeris and the Kurds, which are the largest ethnic minority groups in the Iranian population. The Committee asks the Government to continue to supply information on the employment situation of these minorities, as well as other significant minority groups such as the Turks, and on all efforts undertaken to ensure equal access and opportunity to education, employment and occupation for members of these groups.

12. *Human rights mechanisms.* The Committee notes the Government's indication that the Islamic Commission on Human Rights will be trying to expand its activities over the next year and that the emphasis placed on combating discrimination by the Human Rights Advocates Network was considered to be effective. The Committee notes the activities undertaken by the Commission to remove discrimination against unrecognized religious minorities including the holding of meetings aimed at collecting information on experiences and developing approaches and solutions which are to be presented in a comprehensive report on the issue for submission to the President. The Committee requests the Government to provide details on the results of the investigations, and on the proposed actions and how they are implemented. The Committee also notes that the Commission continues to handle cases of employment discrimination, although the numbers appear to be very small – 25 in 2002. It also notes the activities undertaken by the Commission jointly with other human rights institutions such as the conferences jointly held between the Islamic Republic of Iran and Denmark that concerned women's rights, among other issues. The Committee requests information on the follow up on these meetings and activities including any practical programmes that may have been developed and implemented.

13. *Tripartite consultation.* The Committee notes the detailed information provided on the various initiatives to improve social dialogue and determine labour dispute settlement procedures. The Committee requests the Government to continue to provide information on the manner in which the tripartite structure and the representatives of workers and employers specifically undertake to promote and improve the application of the Convention.

14. In conclusion, the Committee must note the very full and detailed information provided by the Government in its reports this year and during the 2003 Conference Committee discussion, in which the willingness of the Government to dialogue was appreciated. It welcomes the taking of administrative initiatives during the past year that improve application of the Convention – in particular in relation to the access to employment of the members of recognized religions and the appointment of the female judge with verdict issuing power. The Committee however must express some concern over the slow pace of the development and implementation of a policy on non-discrimination and equality. It notes that a number of the points it has been raising for many years remain the subject of extensive study though in one case they have been formulated into a concrete recommendation for action. It urges the Government to take all necessary steps to adopt measures that will bring the legislation and regulations into full conformity with the Convention. It also trusts that the noted progress on the position of women in education will show positive results on the labour market and that the Government will make special efforts to ensure that this occurs at an ever accelerating pace so that women of all ethnic groups and religions will be able to enjoy fully equal access and terms and conditions of employment. Finally, the Committee asks the Government to provide in its next report up-to-date information on the education and labour market position of the Baha'i including information that will demonstrate specific efforts towards bringing this situation into conformity with the Convention.

Japan

Convention No. 156: Workers with Family Responsibilities, 1981 (ratification: 1995)

The Committee takes note of the information in the Government's report and the attached documentation. It also notes the comments made by the National Hospital Workers' Union (JNHU/ZEN-IRO), the Telecommunication Workers' Union (TSUSHINROSO) and the Japanese Trade Union Confederation (JTUC-RENGO) received in 2002 and 2003, as well as the Government's response.

1. *Article 2 of the Convention.* In its communication of 27 August 2003, JTUC-RENGO once again reiterates the point that the Childcare and Family Care Leave Act, No. 107, does not apply to fixed-term contract workers, which is against the spirit of the Convention. In its previous comments of 2000 and 2001, JNHU/ZEN-IRO also indicated that wage-based workers were excluded from the Childcare and Family Care Leave Act and did not, unlike regular personnel, enjoy paid leave to care for injured, sick or elderly family members. They referred to the draft Bill to be submitted to the 151st Diet session which would modify legislation on childcare and nursing care leave to extend the application of childcare leave to workers who are de facto employed on a permanent basis due to repeated renewals of the employment contract. In its most recent comments of 6 August 2002 and 26 August 2003, JNHU/ZEN-IRO indicates that the Government remains unwilling to institutionalize childcare leave and nursing leave of wage-based workers, and has still not taken any measures to extend the application of the Convention to wage-based workers in state-run hospitals and sanatoriums. In their view wage employees in national hospitals and sanatoriums, who are doing the same work as regular status workers but whose position is unstable, should at the least be eligible for childcare and nursing leave.

2. The Committee notes the Government's reply that the childcare and nursing leave systems are set up for continuous long-term employment and therefore not applicable to part-time workers and wage employees who work on a daily basis and whose contract of employment is predetermined. The Government adds that the revisions of the Childcare and Family Care Leave Act only include measures to limit overtime work for workers raising pre-elementary school children, and measures concerning leave for care-giving for pre-elementary school children. Noting that the draft revised law does not extend the right to childcare and nursing leave to additional categories of workers, such as fixed-term and wage-based workers, the Committee is bound to recall that the Convention applies to all branches of economic activity and all categories of workers. It recalls that the Convention is intended to cover all workers "whether in full-time, part-time, temporary or other forms of employment, and whether in waged or unwaged employment". The Committee therefore asks the Government to indicate, in its next report, how it intends to ensure the right to childcare and nursing leave to part-time, fixed-term and wage-based workers.

3. *Article 4(a). Personnel transfers to remote workplaces.* In its comments of 27 August 2003, JTUC-RENGO continues to express its concern over the fact that company regulations often require full-time employees to work overtime and change workplaces, so that workers with family responsibilities, most of whom are women, are forced to work part time. Instead, full-time and part-time workers with family responsibilities should enjoy the right to be exempted from overtime. In replying to JTUC-RENGO's comments, the Government states that the Childcare and Family Care Leave Act limits overtime within a specific range and that it is desirable for employers and employees to reach agreements on appropriate working hours management. The Committee urges the Government to try to ensure that such agreements are reached in accordance with the intent and provisions of the Convention.

4. In its previous observation, the Committee also noted the comments of TSUSHINROSO regarding the transfer of workers employed at the Nihon Telephone and Telegraph (NTT) and allied companies, which greatly affected the ability of the employees to manage their work and family responsibilities. Similar concerns were also raised by JNHU/ZEN-IRO in its comments of 2000 and 2001, in which it presented data of hospital and sanatorium workers who had undergone transfers without consultation or announcement from the employer prior to transfer. According to the JNHU/ZEN-IRO, workers were being forced to choose between accepting the transfer and being separated from their families, refusing the transfer and risking being dismissed, or simply quitting their job. The Committee notes that concerns regarding the practice of transferring employees to distant workplaces without prior consultation are repeated in recent comments of TSUSHINROSO (dated 7 May 2003) and JNHU/ZEN-IRO (dated 6 August 2002 and 26 August 2003). According to TSUSHINROSO, no measures were taken to benefit the transferred workers with family responsibilities, referred to in their previous comments, and transfers unilaterally imposed by the employer continued. The Committee notes in this regard the appended list of transferred workers, most of whom are men older than 50 years of age. TSUSHINROSO indicates that long-distance commuting or being away from their families has increased the workers' cost of living and dramatically changed their living and working conditions, as well as their family life. The Committee notes that the comments of JNHU/ZEN-IRO also mention the lack of improvement in the manner transfers are unilaterally imposed on the employees of hospitals and sanatoriums, as indicated in the surveys undertaken by the JNHU Tokai-Hokuriku and Kanto-Shinetsu Regional Councils in May and July 2002. The results also show that the promotion of nurses and nursing teachers, most of whom are women, usually involves a transfer to a new institution. The Committee notes that both the JNHU/ZEN-IRO and TSUSHINROSO particularly criticize the transferral of workers nearing retirement age without consultation or special consideration to their family life.

5. In replying to the JNHUWU/ZEN-IRO's comments, the Government states that decisions on personnel transfers are based on the needs of the service, the principle of the merit system, the qualifications, abilities and experience of the personnel, as well as the affected employee's health and family responsibilities. The Government adds that employees are, however, not allowed to refuse a transfer without a rational reason, but that the system does not discriminate against any employees, including those who are up for retirement. It further repeats its previous statements that appropriate rules should be established between employers and employees and that efforts should be made by employers to identify the impact of the transfer on the lives of the employee with family responsibilities. The Government further indicates that the Guidelines of the National Personnel Authority (2001) concerning the enlargement of the recruitment and promotion of female public employees specify that the Office or the Ministry shall take into consideration the family background and family responsibilities of an employee who is being transferred. The Government has not yet responded to the comments made by TSUSHINROSO, dated 13 May 2003.

6. The Committee notes that section 26 of the Childcare and Family Care Leave Act provides that employers must give consideration to workers with family responsibilities in the case of job relocation to remote workplaces. The Committee notes, however, that despite the provisions of the above Act and the established guidelines, it appears that transfers unilaterally imposed by the employers without prior consultation or without recognition of the employee's objections due to family responsibilities continue to occur. Moreover, affected employees are notified of their new place of employment only three weeks prior to their transfer. The Committee must therefore reiterate its previous comments in which it considered that, in order to take a worker's family situation into consideration in accordance with *Article 4(a) of the Convention*, the employer should give the fullest consideration possible to the worker's genuine need to care for members of his or her family. The worker's family responsibilities in this regard should be considered and given appropriate significant weight along with the business reasons underlying the transfer proposal. The Committee points out that efforts to promote the ability of workers with family responsibilities to balance their family and work life, include these workers' ability to balance their family responsibilities with any advances they may make in their professional lives. Therefore, to the extent possible, employer practices should not force workers to choose between retaining their jobs or fulfilling their family responsibilities, in so far as these responsibilities do not impair their ability to perform the job. The Committee urges the Government to take the necessary steps so that the practice of imposing transfers on workers be reviewed and brought into greater conformity with the requirements of the Convention.

7. *Article 4(b)*. With respect to the public sector, the Committee notes with interest the revisions in the relevant laws and regulations covering the public sector expanding full and partial childcare for national and local public employees having a child under 1 year of age to employees having a child under 3 years, and increasing nursing care leave for regular service employees from three to six months. It also notes that section 22(10) of Rule 15-14 of the National Personnel Authority Guidelines establishes a special leave to care for a sick child. With respect to the private sector, the Committee notes that the Childcare and Family Care Leave Act provides (section 25) that employers must endeavour to take measures to provide childcare leave to employees with children who have not yet begun attending elementary school. It also notes the additional support measures for employers that establish childcare systems or appoint a "Work-Family Coexistence Facilitation Officer". JTUC-RENGO points out that the legislation would be more effective if it clearly established childcare and family care leave as a workers' right and did not just require employers to make efforts to provide for childcare leave. The Committee asks the Government to provide information on the practical application of this section of the Act and to indicate whether it intends to extend the legislative measures concerning childcare to workers who wish to take family care leave.

8. *Article 5*. In its recent comments, JNHUWU/ZEN-IRO states that the Government has not yet implemented any measures to improve in-house nurseries in hospitals and sanatoriums. It further states that in 2004 most of the national hospitals and sanatoriums will be transferred to a new independent administrative agency and that it remains unclear what will happen to the in-house nurseries and the employment of their personnel. While welcoming the Government's information on the adoption by the Cabinet of the policy on support measures for balancing work and child-raising in July 2001 which provides concrete goals and measures to increase the numbers of children enrolled in nurseries and to increase the number of establishments for after-school activities, the Committee notes that the Government has omitted to provide specific information as regards the comments made by JNHUWU/ZEN-IRO. It therefore asks the Government to provide information on the status and future of the in-house nurseries and their personnel in national hospitals and sanatoriums.

9. *Article 8*. In its previous observations, the Committee noted the comments raised by JTUC-RENGO concerning the lack of protection in Japanese legislation against termination of employment due to family responsibilities. In its reply, the Government referred to section 1(3) of the Civil Code providing for general protection to persons against abuse of their rights, and to sections 10 and 16 of the Childcare and Family Care Leave Act, No. 107, which prohibit dismissal due to requesting or taking childcare or family leave. In this regard, the Committee pointed out that the protection provided under these provisions was both too general (as they do not specify workers with family responsibilities or protection from termination of employment), and narrower than that contemplated in *Article 8* of the Convention, as it was not directed to family responsibilities in general. Moreover, Act No. 107 appears to exclude daily labourers and workers on fixed-term contracts from its coverage. The Committee notes that the Government does not provide any reply to its previous comments and is therefore bound to reiterate its request to the Government to indicate whether there are

any judicial decisions interpreting the legal provisions referred to, and if so, to provide copies of such decisions. The Government is also asked to provide information in its next report on any measures taken to ensure that the guarantees of *Article 8* are applied fully in national law and practice.

Jordan

Convention No. 111: Discrimination (Employment and Occupation), 1958 (ratification: 1963)

1. The Committee notes the information contained in the Government's report. Further to its previous comments concerning the low participation of women in the public service, the Committee notes the Government's statement that according to Section 46(b) of the Civil Service Regulations No. 55 of 2002, the selection and appointment of employees for work in the Civil Service Authority is made on the basis of criteria which ensure equality between all Jordanians. The Government also indicates that it is adopting an employment policy that makes no distinction between men and women. The Committee recalls that the prohibition of discrimination is not sufficient in itself to eliminate discrimination and achieve equality in reality; it is often necessary to adopt special positive measures to promote equal opportunity and access of women to employment and occupation. Therefore, the Committee again hopes the Government will be in a position to report on specific measures taken or envisaged with regard to recruitment policy and further training policy to achieve an overall increase in the participation of women in the public service, and particularly at the higher levels. The Committee requests the Government continue to provide up-to-date statistics on employment in the civil service classified by category and sex.

2. Further to its previous comments on inequalities between men and women in education and vocational training, the Committee notes the Government's statement that the conditions specified in the Civil Service Regulations for the nomination of officials to training sessions do not distinguish between the sexes, that the Government undertakes to carry out the National Training Project with the participation of 12,000 male and female trainees, and that the National Training Institute has several training centres for both sexes without discrimination. The Committee again requests the Government to provide more detailed information, including statistical data, on targeted measures taken to improve women's educational attainment, technical skills and practical experience, on the progress made in providing training for women in non-traditional sectors, and on the measures taken to ensure that training leads to a wider variety of employment opportunities for women, so that they are able to compete on an equal basis with men for a wide variety of posts in the public and private sectors, especially higher level posts.

3. The Committee notes that the Government's report once again does not provide any information on how the Government is promoting a national policy of equality of opportunity and treatment in employment and occupation with respect to grounds other than sex, as covered by the Convention. It therefore urges the Government to indicate in its next report how protection against discrimination in employment and occupation on the basis of race, colour, national extraction, religion, political opinion and social origin is ensured in law and practice.

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

Latvia

Convention No. 100: Equal Remuneration, 1951 (ratification: 1992)

With reference to its previous comments, the Committee notes with satisfaction the inclusion of the definition of remuneration in line with the Convention in section 59 of the Labour Code of 20 June 2001. The Committee also notes that section 60(1) provides that an employer has a duty to specify equal remuneration for men and women for the same kind of work or work of equal value. In the case of a violation of this principle by the employer, the employee has the right to request the remuneration that the employer normally pays for the same work or for work of equal value (section 60(2)). The Government is asked to provide in its future reports information on the application of these provisions in practice and their contribution to closing the prevailing gender income gap in the country, which is approximately 20 per cent.

Morocco

Convention No. 100: Equal Remuneration, 1951 (ratification: 1979)

1. The Committee notes the communication submitted by the International Confederation of Free Trade Unions (ICFTU) on 4 June 2003 concerning the application of both Conventions Nos. 100 and 111, as well as the Government's reply thereon received on 9 September 2003. In its communication, the ICFTU alleges that, while there is no discrimination between men and women in law, in practice women are concentrated in certain jobs in the public service and few of them occupy management positions or posts of responsibility. The ICFTU further maintains that the majority of women are employed in the services and teaching sectors and that there exists wage discrimination against women,

including with respect to leave benefits. According to the ICFTU, there is a need for better statistics on wages and hours of work of women and men as well as for information on women's conditions of work.

2. The Committee notes that the Government refers, in its reply, to the various legislative texts providing for equality between men and women in access to the public service and protecting against all discrimination in employment and occupation. The Government also indicates that some progress has been made with regard to the access of women to posts of responsibility and refers in particular to the increase in the number of women in parliament due to the review of the Elections Code of 2002 and the observance of the quota system. Other appointments to high-level posts included one counsellor to His Majesty, three ambassadors, one minister and two state secretaries as well as several women directors in the central administration. The Government maintains that all public officials and state officers in the communities and public institutions enjoy the same remuneration without distinction based on sex and that remuneration is determined by reference to the function of and the level to which the public official or state officer belongs.

3. The Committee recalls that, although equality legislation, including equal pay legislation, and the use of gender-neutral salary scales may be essential conditions for the application of the principle of the Convention, they are not in themselves sufficient to apply the Convention. While appreciating the information provided by the Government on the progress made in the access of women to parliament and to certain high-level posts in the public service, the Committee notes that the statistics provided by the Government for the year 2000 on the number of women and their corresponding wages in various public service posts continue to indicate that the number of women in high-level positions remains relatively low. In its previous comments, the Committee had already noted that women were concentrated in a few occupational categories in the public service, including teaching and services, and had pointed out that salary discrimination may result from the existence of occupational categories or jobs reserved for women. The Committee therefore asks the Government to continue its efforts to implement specific measures to encourage the recruitment of women in all categories of the public service, and to provide statistics in this regard, including statistics and information on the wages and the hours of work of both men and women in the various public service posts and on their conditions of work. Noting that the Government did not provide any reply with respect to wage discrimination that might exist with regard to leave benefits, the Committee would be grateful if the Government could also provide specific information on the leave benefits received by men and women in the public sector.

4. With respect to the private sector, the ICFTU alleges that grave violations of the Labour Code exist in the export-oriented textile and informal manufacturing industries, which employ a large number of women. In the textile industry, women often earn less than the minimum wage, work more than 48 hours a week without being paid for supplementary working hours and are not registered with the National Social Security Fund. Many of them do not have a work permit and are not entitled to maternity leave. In the informal manufacturing sector, workers do not have an employment contract, wages are lower than minimum wages and workers are not covered by social security (while employers sometimes deduct social allowances from their wages). Pregnant women often lose their jobs. The ICFTU also takes up the Committee's previous comments that the tripartite agreement of 23 April 2000 addresses several economic and social issues, including wages, and provides for the formulation of programmes to eradicate occupational illiteracy among men and women, but makes no reference to the need for equality of remuneration as between men and women workers for work of equal value.

5. The Committee notes that the Government makes no specific reply to the issues raised by the ICFTU, except for the indication that women occupy some high-level posts, such as company managers. The Government merely reiterates information previously received by the Committee that, since 1975, the principle of equal remuneration between men and women has been legally established pursuant to the amendment of the *Dahir* of 1936 concerning the minimum wages of workers and employees, and that wages are freely negotiated and are the result of a common agreement between the parties without distinction between men and women. The Committee also notes the allegations by the ICFTU concerning the non-payment of minimum wages and supplementary hours of work in the female-dominated export-oriented textile and informal manufacturing industries as well as the lack of social security protection. It therefore asks the Government to indicate in its next report the specific measures taken to ensure the application of the minimum wage legislation in these industries and to provide information on the manner in which the principle of equal remuneration between men and women for work of equal value, including the payment of additional allowances, is applied in these industries. Noting also the absence of any reply concerning the requested data on wages and hours of work disaggregated by sex, as well as on the manner in which the tripartite committee takes into consideration the issue of equal remuneration between men and women, the Committee trusts that such information will be included in the Government's next report.

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

Convention No. 111: Discrimination (Employment and Occupation), 1958
(ratification: 1963)

1. The Committee notes the communication submitted by the International Confederation of Free Trade Unions (ICFTU) on 4 June 2003 concerning the application of both Conventions Nos. 100 and 111, as well as the Government's reply thereon received on 9 September 2003. In addition to the communication detailed under Convention No. 100 and with regard to Convention No. 111, the ICFTU alleges that while, as a matter of law, there is no sex discrimination, in practice women are concentrated in certain jobs in the public service and only a few women occupy posts of

responsibility. The ICFTU further maintains that inequalities between men and women exist in hiring and that legal restrictions are imposed on the employment of women but not of men. It also expresses concern over serious violations of the Labour Code in the textile-exporting and manufacturing industries, including the lack of maternity protection, and over the high illiteracy rate of women and over sex discrimination in family law which has an impact on discrimination against women in the labour market in general.

2. In its reply, the Government refers to the existing legal provisions promoting equality between men and women with regard to access to employment and prohibiting all discrimination in employment and occupation. Specifically, the Government refers to the adoption of the new Labour Code, which, it states, prohibits direct and indirect discrimination based on race, colour, sex, disability, civil status, belief, political opinion, trade union affiliation, national extraction and social origin in employment and occupation, particularly in hiring, the administration and distribution of work, vocational training, remuneration, promotion, enjoyment of social privileges, disciplinary sanctions and dismissals. Apart from this and the indication that some progress has been made in access to employment for women in the public service due to the review of the Elections Code of 2002 and the observance of the quota system, the Committee notes that additional information is needed to make a full assessment with regard to the allegations made by the ICFTU concerning the application of Convention No. 111 in the public and private sectors. The Committee therefore asks the Government to provide, in its next report, more complete information, including statistical data, on: (1) the numbers of men and women employed in the public service at various levels; (2) the conditions of work, including maternity protection, of men and women in the exporting and manufacturing industries; (3) any restrictions imposed indirectly or directly on women's employment; in law or in practice; and (4) any differential treatment of men and women in family law that might operate to disadvantage women in the labour market. The Government is also requested to indicate all the measures taken or envisaged to ensure both *de jure* and *de facto* equality of opportunity and equal treatment of men and women in employment and occupation in the public sector and private sector, particularly in regard to access to jobs. Please also supply a copy of the newly adopted Labour Code. The Committee will examine the Government's reply to these points at its next session.

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

New Zealand

Convention No. 100: Equal Remuneration, 1951 (ratification: 1983)

1. The Committee notes the extensive information provided by the Government in its report and attached documentation, as well as the comments of Business New Zealand (BNZ) and the New Zealand Council of Trade Unions (NZCTU) and the Government's brief response to the latter. It also notes receipt of a communication of 8 May 2003 from the International Confederation of Free Trade Unions (ICFTU), concerning the application of the Convention.

2. In its comments, BNZ points out that it has been illegal in New Zealand since 1977 to pay men and women differently for doing the same job in the same circumstances and with the same work experience, and that the differences in earnings rates as between men and women are attributable to factors other than sex. In BNZ's view, the Convention calls only for equal remuneration as between women and men workers doing the same jobs, in the same circumstances, in the same employment.

3. In contrast, the NZCTU reiterates that compliance with the Convention requires a commitment not only to equal pay in the sense indicated by BNZ, but to pay equity, meaning equal remuneration as between men and women for work of equal value. In this regard, the NZCTU welcomes the appointment of an Equal Employment Opportunities Commissioner within the Human Rights Commission who has some responsibilities with respect to equity in remuneration. It also appreciates the prominence given in the Government's report to the Ministry of Women's Affairs' publication *Next steps towards pay equity: A discussion document*. The NZCTU in particular notes the opportunity that this document provides for exploration by the Government of pay equity options, although it believes the report could have concentrated more on pay equity as compared to equal pay for equal work.

4. The ICFTU refers to the existing earnings gap between men and women and the lack of a government policy to address equal pay for work of equal value.

5. With regard to national legislation, the Government reiterates that equal remuneration for workers performing the same or similar jobs is required by several Acts, including the Employment Relations Act 2000 (ERA), the Human Rights Act 1993 (HRA), and the Equal Pay Act 1972 (EPA). Referring to its previous comments regarding the scope of the protection against sex-based pay discrimination provided by national legislation, the Committee notes that the ERA retains the "substantially similar" employment requirement reflected in earlier legislation and that its definition of employment discrimination appears to be restricted to cases where employees work for the same employer (see ERA, section 104(1)).

6. The Committee must once again draw the Government's attention to the requirement in the Convention for equal remuneration to be paid for "work of equal value", a reference that goes beyond the concept of same or similar work, using instead the concept of the value of the work as the point of comparison for equality to be achieved. With respect to the reach of comparison, the Committee recalls that the scope should be as wide as allowed by the level at which wage

policies, systems and structures are set. The Committee hopes the Government will consider reviewing its legislation to bring it into conformity with the Convention. It nonetheless must note the most recent efforts undertaken to promote the principle of the Convention through the publication of *Next steps towards pay equity: A discussion document* (“*Next steps*”) (as well as the follow-up “Report on public submissions”), a report prepared by the Ministry of Women’s Affairs (MWA) as part of its Pay Equity Project. This project, according to the Government, is intended to raise awareness and to initiate and inform public discussion on issues concerning not only the gender pay gap, but pay equity as well. *Next steps* itself notes that, despite the ratification of the Convention, “no current policies address the longstanding commitment to take action on equal pay for work of equal value for women,” and that the Government needs to take active steps to close this policy gap. In this regard the Committee notes with interest that the MWA, the Department of Labour and the State Services Commission are working together to develop policy directions on equal remuneration for work of equal value, including the exploration of occupational patterns by gender (and ethnicity) in recent census data, and the commissioning of research on the implementation of remuneration equity policies in overseas countries. The Committee asks the Government to report on the progress in the development and implementation of the pay equity policy which, in light of the current legislative limitations, would appear an important element for the implementation of the Convention.

7. The Committee refers to its previous comments that, for progress to be made in the promotion of the principle of equal remuneration for work of equal value, it is essential that a comprehensive approach be taken to ensuring and promoting equality of opportunity and treatment in a wider context. In this regard, the Committee notes with interest the range of continuing government initiatives promoting the principle of equal remuneration, including: (1) the promotion of positive attitudes and practices among employers; (2) research efforts by the State Service Commission such as the collection and annual publication of Public Service-wide Equal Employment Opportunities (EEO) statistics, as well as work on the pay gap in the public service, and the publication of the *2001 Human resource guidance – EEO data in the public service*, which encourages public service departments to promote, develop and monitor equal employment opportunities; (3) work by the Equal Employment Opportunities Trust and the Contestable Fund (including funding by the latter of a project on equal remuneration systems and retention strategies); and (4) the development of work programmes and services by MSD/work and income, providing assistance to women to enter and remain in the workforce. The Committee would be grateful if the Government would continue to provide information on such initiatives and the results they have achieved.

8. *Complaint procedures and enforcement mechanisms.* Referring to its previous comments on the low number of equal pay complaints brought in New Zealand during the last reporting period, the Committee notes that, in the current reporting period, no cases of sex discrimination in pay (under the ERA) were heard by the Employment Relations Authority, that only four complaints of gender-based discrimination were received by the Human Rights Commission and no cases relating to equal pay were heard by the Human Rights Review Tribunal (under the HRA), and that no EPA cases were brought. The Committee notes in this regard the NZCTU’s reiterated assertion that this pattern shows the limitations of the current legislative approach, which requires individual claims, in a context in which information about actual rates of pay and remuneration is limited. The Committee is concerned by the lack of complaints and urges the Government to take measures to ensure the effective enforcement of relevant laws on equal pay through both complaint-based structures, labour inspection or other means. The Committee has raised other points on this matter in its direct request.

9. *The male-female earnings differential.* The Government acknowledges that, according to the EEO Trust Diversity Index 2001, the gender pay gap had increased. However, it asserts that, according to the analysis by the Department of Labour, which used a larger data set (including the firm-based Quarterly Employment Survey (QES) and the Household Labour Force Survey Income Supplement (HFLSIS)), the remuneration gap had in fact decreased. For example, the QES shows an increase in the percentage hourly wage earned by women as compared to men, from 84.3 per cent in June 1999 to 84.4 per cent in June 2001, while the HFLSIS medians measure, the measure the Government believes is the most reliable, shows an increase over that same period, from 85.0 per cent to 87.2 per cent. The Government considers that a further narrowing of the gap will continue to occur gradually. The Committee notes that the NZCTU cautions against the use of medians as a measure of hourly earnings for male and female earners, as they may hide many other inequities either side of the median. BNZ, by contrast, asserts that the median is the “preferred measure” for analysing the gender pay gap. Regardless of which measure is the most accurate, all are agreed that a gap in remuneration as between men and women continues to exist and has not changed significantly. The Committee accordingly trusts that the Government will continue to act, in coordination with the social partners, to reduce this gap.

The Committee has made a direct request to the Government on other points.

Convention No. 111: Discrimination (Employment and Occupation), 1958 (ratification: 1983)

The Committee notes the comments sent by the International Confederation of Free Trade Unions (ICFTU) dated 6 May 2003, which contain information concerning discrimination on grounds of race. These comments have been forwarded to the Government on 9 June 2003 and the Committee will address them at its next session together with the Government’s responses to these comments and to the observation made in 2002.

Pakistan

Convention No. 100: Equal Remuneration, 1951 (ratification: 2001)

The Committee notes the comments sent by both the International Confederation of Free Trade Unions (ICFTU) and the All Pakistan Federation of Trade Unions, dated 18 September 2001 and 9 July 2003 respectively, which contain information concerning the need to adopt legislation to enforce the Convention and disparities in remuneration levels between men and women for work of equal value. These comments were forwarded to the Government on 26 October 2001 and 5 September 2003 respectively, and the Committee will address them at its next session along with any replies received from the Government. The Committee also notes that the Government's first report has not been received, and it hopes that the Government will make every effort to supply the report in the very near future.

Panama

Convention No. 100: Equal Remuneration, 1951 (ratification: 1958)

1. The Committee notes with interest the adoption of Executive Decree No. 53 of 25 June 2002 issuing regulations under Act No. 29 of January 1999 to establish equality of opportunity for women, and particularly section 43 relating to the development of mechanisms and procedures for the appraisal of tasks to ensure the application of the principle of equal remuneration for men and women workers for work of equal value and the obligation to make use of the criteria agreed to in labour centres. The Committee notes with interest the information provided by the Government concerning the system for the appraisal of jobs in the various institutions in the public sector. It also notes the Government's indication as to the preparation of further manuals for the classification and evaluation of jobs for the various decentralized institutions which are covered by the administrative careers system. The Committee welcomes this Decree and the adoption of objective job appraisal systems and asks the Government to provide information on the mechanisms, procedures and criteria adopted to promote equal pay for work of equal value pursuant to this Decree. The Committee also notes that the recently launched Plan for Equality of Opportunities for Women in Panama (PIOM II) 2002-06 envisages "promoting action to guarantee the international principle set out in Convention No. 100 of the International Labour Organization of equal remuneration for work of equal value".

2. The Committee recalls its previous comments noting that section 10 of the Labour Code does not adequately reflect the principle set out in the Convention because it provides that "equal wages shall be paid for equal work in the service of the same employer, performed in the same job, working day, conditions of efficiency and seniority", whereas the principle set out in the Convention is broader since it also applies to work that is different but of "equal value" and carried out for the same or another employer. In view of the new Executive Decree and the Plan for Equality, the Committee hopes that the Government will make every effort to amend section 10 of the Labour Code, thereby bringing its Labour Code into compliance with the broader principle of equal remuneration for men and women workers for work of equal value.

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

Paraguay

Convention No. 111: Discrimination (Employment and Occupation), 1958 (ratification: 1967)

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

Discrimination on the basis of political opinion. In its earlier observation, the Committee noted with interest that, according to the Government's report, section 95 of the Bill on the Status of Civil Servants and Public Employees, which was before the National Parliament, would repeal Act No. 200 of 17 July 1970, which, by stating that "no public official may engage in activities contrary to public order or to the democratic system established by the Constitution", could give rise to discriminatory practices based on political opinion. The Committee notes from the Government's report that to date no Act in respect of public servants has been approved and that three Bills are before the National Parliament, of which one has the approval of the Drafting Committee. Recalling that it has been pointing out since 1985 that the section 34 of the abovementioned Act is in contravention of *Article I(1)(a) of the Convention*, the Committee again urges the Government to take the measures necessary to repeal Act No. 200 and requests it to continue to provide information in this respect.

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

Rwanda

Convention No. 100: Equal Remuneration, 1951 (ratification: 1980)

The Committee notes the Government's report. It recalls that section 82 of the former Labour Code provided for equal remuneration for work in "equal conditions, as regards work, skill and output" and that in their previous comments, the Committee expressed the hope that the revision of the Labour Code would be used to amend this provision to reflect

more faithfully the principle of equal pay for work of equal value. In this context, the Committee notes that section 84 of the new Labour Code (Act. No 51/2001), which replaces section 82 of the former Labour Code, provides that equally competent workers carrying out the same type of work under the same conditions, must be equally remunerated, without any consideration as to their origin, sex, or age. While noting that reference is no longer made to “equal output”, the Committee observes that section 84 still emphasizes comparing “the same type” of work. The Committee therefore draws the Government’s attention once again to the fact that the principle of equal remuneration for work of equal value as contained in the Convention is wider, requiring also the comparison of work which is of a different type, but of equal value. The Committee hopes that the Government will consider further amending section 84 of the Labour Code with a view to reflecting the principle of the Convention more fully and to keep the Committee informed on this matter.

In addition, a request regarding certain other points is being addressed directly to the Government.

Saint Lucia

Convention No. 100: Equal Remuneration, 1951 (ratification: 1983)

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

The Committee welcomes the fact that, in response to repeated direct requests and observations by the Committee of Experts, Saint Lucia has undertaken a number of measures to apply the Convention: it has enacted legislation embodying the principle of the Convention, revoked laws that had fixed separate wages for women and men workers, and taken steps to ensure that collective bargaining agreements in the agricultural sector no longer set forth wage rates differentiated on the basis of sex.

The Committee notes with interest the adoption of the Equality of Opportunity and Treatment in Employment and Occupation Act, 2000, which enshrines the principle of the Convention and revokes both the Agricultural Worker (Minimum Wage) Order, 1970, and the Agricultural Worker (Minimum Wage) (Amendment) Order, 1979, which contained separate wage rates for men and women. Recalling that, in its previous comments, the Committee had asked the Government to indicate what steps it had taken to amend the Agricultural Worker (Minimum Wage) (Amendment) Order of 1977, the Committee asks the Government to confirm whether the Order of 1977 has been revoked by operation of the revocation of the principal minimum wage order of 1970. Further noting the Government’s indication that older legislation stipulating different wage rates for men and women will be revoked with the adoption of the new Labour Code, the Committee asks the Government to supply a copy of the Code upon its adoption and expresses its hope that all other laws and regulations containing differential wages for men and women will be repealed as soon as possible.

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

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

Senegal

Convention No. 100: Equal Remuneration, 1951 (ratification: 1962)

The Committee notes the comments sent by the International Confederation of Free Trade Unions (ICFTU) dated 23 September 2003, which contain information concerning the application of the Convention. These comments were forwarded to the Government on 20 October 2003 and the Committee will address them at its next session, together with any response the Government may make to these comments and to the direct request made in 2002.

Convention No. 111: Discrimination (Employment and Occupation), 1958 (ratification: 1967)

The Committee notes the comments sent by the International Confederation of Free Trade Unions (ICFTU) dated 23 September 2003, which contain information concerning discrimination on the grounds of sex. These comments were forwarded to the Government on 20 October 2003 and the Committee will address them at its next session, together with the Government’s responses to these comments and to the direct request made in 2002.

Sierra Leone

Convention No. 111: Discrimination (Employment and Occupation), 1958 (ratification: 1966)

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

1. The Committee has been noting that the new Constitution (Act No. 6 of 1991) no longer made provision for a one-party system and did not reserve certain high-level public offices for members of the recognized party, as had the Constitution of 1978. (The previous Constitution of 1961, which had included a general provision for the protection of fundamental rights and freedoms on most of the grounds of the Convention was suspended in 1968.) The Committee had also noted with interest that article 8(3) of the new Constitution directs state policy towards ensuring that every citizen, without distinction on any grounds whatsoever, should have the opportunity for securing adequate means of livelihood and adequate opportunities to secure suitable employment and that article 15 lays down certain fundamental human rights and freedoms for all individuals irrespective of race, tribe, place of origin, political opinion, colour, creed or sex. As there had been no progress towards enunciating a national policy

to promote equality of opportunity and treatment in employment and occupation, as required by *Article 2 of the Convention*, the Committee had hoped that, in the light of the new Constitutional provisions and, especially, those of article 8(3), the Government would proceed to formulate a national policy, in consultation with the tripartite Joint Consultative Committee.

2. In its reports, the Government states that, despite the suspension of the 1991 Constitution, the Government has a broad-based policy which ensures jobs for all who apply, regardless of sex, religion, ethnicity and political opinion. The Government also states that the Joint Consultative Committee has yet to make its final recommendations on a national policy. The Committee notes this information with concern. It recalls that in the 30 years since the Convention's ratification, the Government has reported consistently that no legislation or administrative regulation or other measures exist to give effect to the provisions of the Convention and that no national policy has been declared, pursuant to *Article 2*. With the suspension of the 1991 Constitution, there is no national legal instrument or formally declared policy in the country which provides any protection against discrimination. The Committee hopes that the Government will respect its obligations under the Convention. In particular, it trusts that a national policy on discrimination will be formulated, as required by the Convention, and that full details will be provided in the Government's next report, on the measures being taken and contemplated to apply the Convention.

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

Slovakia

Convention No. 100: Equal Remuneration, 1951 (ratification: 1993)

1. The Committee notes the Government's report and recalls the communication concerning the application of the Convention submitted by the International Confederation of Free Trade Unions (ICFTU) on 16 November 2001. The ICFTU alleged that discrimination in employment and occupation on the basis of sex exists in practice, that women earn 18 to 35 per cent less than men, and that the legislation did not include recognition of the principle of equal pay for work of equal value. The Committee recalls that it has previously commented on the existing gender wage gap and expressed the hope that the new Labour Code would incorporate the requirement of equal remuneration for work of equal value in accordance with the Convention.

2. With respect to the situation of women in the labour market and their level of income generally, the Committee notes that, according to the Government, the average earnings of women were 73.8 per cent of the average earnings of men in 2001, with the percentage for the private sector (71.6 per cent) being lower than in the public sector (79.2 per cent). The Committee is concerned that the earnings gap between men and women appears to have been widening over the past five years. According to the Government the main reason for disparities was the concentration of women in sectors and occupations with lower wages. Noting the Government's indication that its 2001 "Conception for equal opportunities of men and women" includes measures to ensure the observance of the principles of the Convention, the Committee asks the Government to provide in its next report detailed information on any measures taken to promote the access of women to higher paid sectors and positions, including measures on women and entrepreneurship, as well as any other measures taken to ensure that female-dominated sectors and occupations are not undervalued. The Committee further notes the adoption of the Public Service Act (Act No. 313/2001) and of the Civil Service Act (Act No. 312/2001) which both provide for gender-neutral conditions of remuneration for male and female public service employees and civil servants. The Committee notes with interest the special tariff scales for pedagogical employees and health-care employees, providing for higher salaries in these often undervalued, female-dominated sectors compared to other public sector employees. The Government is asked to provide full statistical information on the levels of remuneration of men and women in the private and public sectors, as outlined in the Committee's 1998 general observation on the Convention.

3. As regards legislation, the Committee notes that section 6 of the Fundamental Principles of the new Labour Code (Act No. 311/2001) of 2 July 2001 provides that women and men shall be entitled to equal treatment, including with regard to remuneration. Section 119(3) of the Labour Code provides that "wage conditions" must be equal for both men and women without any discrimination on grounds of sex and that women and men are entitled to equal wages for work of an equal level of complexity, responsibility and difficulty, performed under the same working conditions and upon achievement of the same efficiency and work results. While noting that section 119(3) of the new Labour Code refers to criteria such as complexity, responsibility and difficulty, which may assist in objectively determining whether different jobs are of equal value, the Committee notes that the notion of "the same working conditions, efficiency and results" used in this provision does not fully reflect the principle of the Convention. Work performed in different working conditions can nevertheless still be of equal value. The Committee hopes that the Government will consider the possibility of amending section 6 of the Fundamental Principles of the Labour Code and section 119(3) of the Code to bring them fully into line with the Convention. In the meantime, the Government is asked to provide information on measures taken to ensure that the relevant provisions of the Labour Code are applied in a manner consistent with the Convention, including any relevant administrative or judicial decisions.

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

Sweden

Convention No. 100: Equal Remuneration, 1951 (ratification: 1962)

1. The Committee notes with interest the continued efforts made by the Government, and in particular the amendments contained in Act No. 733 of 2000 to the Equal Opportunities Act (Act No. 433 of 1991), introducing the obligation on employers, for enterprises with more than ten employees, to prepare wage mapping on an annual basis as part of their annual equal opportunities plan in order to detect any wage differences due to gender. It notes that employers have to prepare an action plan to remedy any identified pay discrimination and, in particular, that they have an obligation to remedy any wage inequalities within three years at the latest. It notes the Government's statement that the preparation of wage mapping has to focus on differentials between men and women workers performing work of equal value, in particular on comparing different groups of employees doing work which is, or is customarily considered to be dominated by women, and employees performing work which is not, or is not usually considered to be, dominated by women. It also notes with interest the amendment introducing the opportunity for employees' associations which are bound by a collective agreement with an employer, to obtain information about the wages of individual employees from the employer in order to assist in combating pay inequalities and the consequent amendment of the Secrecy Act (Act No. 100 of 1980). The Committee asks the Government to provide detailed information with its next report on the practical impact of the legislative amendments on the application of the principle of equal remuneration for men and women workers for work of equal value, with particular reference to the results obtained and the difficulties encountered in practice with the process of wage mapping.

2. The Committee also notes with interest the adoption of the Act prohibiting discrimination against part-time workers and workers with fixed-term contracts (Act No. 293 of 2002) to implement Directives 97/81/EU and 1999/70/EU and in particular the obligations to pay equal wages to part-time or fixed-term men and women workers for work of equal value and the compensation to be granted in the event of violations of the Act. The Committee asks the Government to provide information with its next report on the impact these new laws have had on closing the average earnings gap between men and women which, according to the Government's report, has remained at 18 per cent since 1996.

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

Trinidad and Tobago

Convention No. 100: Equal Remuneration, 1951 (ratification: 1997)

The Committee notes the information provided by the Government with respect to the sex-based wage differentials contained in the collective agreements concerning government workers, which were attached to the Government's previous report. The Government indicates that men and women actually perform different jobs: women perform the duties of weeding, bundling and sweeping whereas men perform the more strenuous duties of loading and lifting, thus accounting for the difference in salary scales between men and women. The Committee notes, however, that the classification of these jobs on the basis of sex, rather than criteria relating to the work performed, runs contrary to the principle of equal remuneration for work of equal value. The Committee hopes the Government will be in a position to provide information in its next report on the measures taken to remove these sex-based differentials contained in the agreements' salary scales, to ensure that women and men have access to jobs covered by the collective agreements and to ensure that other such agreements entered into in the future do not include sex-based wage differentials.

United Kingdom

Convention No. 100: Equal Remuneration, 1951 (ratification: 1971)

The Committee notes the information contained in the Government's report as well as the detailed additional documentation attached.

1. The Committee notes from the Government's report and studies undertaken in 2002 by the Equal Opportunities Commission (EOC) on pay and income in Great Britain that there has been only limited progress in closing the gender gap. The Committee notes that in 2002 women's average hourly earnings (excluding overtime) amounted to 81.6 per cent of men's in Great Britain, which was an increase of only 0.7 per cent from 1999. The gender pay gap is smaller in the public (10 per cent) than in the private sector (28 per cent) and, amongst occupations, the hourly pay gap is particularly wide for administrators and managers (30 per cent) and in sales occupations (28 per cent). The gender pay gap is narrowest in clerical and secretarial occupations (2 per cent). In Northern Ireland, women's average earnings (excluding overtime), after a slight increase in 2000 (87.6 per cent), reduced to 86.6 per cent of men's in 2001.

2. The Committee notes the various initiatives taken by the Government and the EOC to reduce the gender pay gap, including initiatives to promote good practice and encourage employers to undertake equal pay reviews (EPRs). The Government indicates that government departments are leading by reviewing their pay systems as part of the Modernizing Government Programme and that a target of April 2003 was set for all departments to prepare action plans for reviewing equal pay systems. The Committee notes that the Government continues to be in favour of a voluntary approach to pay

reviews because many employers are currently not in a position to undertake them and adequate tools are needed to conduct reviews properly. It notes in this regard that the EOC has developed and tested the Equal Pay Review Kit for employers to carry out EPRs but that EOC research on “Monitoring Progress Towards Equal Pay” (March 2003) indicates that the majority (54 per cent of the large and 67 per cent of the medium-sized employers) do not plan to carry out a pay review; and that secrecy about pay is still widespread. According to the EOC, there is a need to continue to exert pressure on organizations to carry out EPRs, to ensure that their pay structures and practices are transparent and to reassess, at a future date, the impact reviews have on the pay of women and men. The Committee asks the Government to continue to provide information on any action taken or envisaged, including action taken by the EOC, to ensure more transparency in pay structures and practices so as to be in a better position to assess existing pay inequalities. It also asks the Government to continue to provide information on any action taken or envisaged to narrow the pay gap between men and women, including measures to encourage employers to carry out equal pay reviews, and to indicate the impact of these reviews on the pay of women and men in both the private and public sectors.

3. Further to the above, the Committee notes the Government’s statement that the relative position of women part-time workers has worsened in comparison with male full-time workers and that the average hourly wage for women working part time dropped to 58.6 per cent of the average hourly wage of male full-time workers in 2001. The Committee recalls that in its previous observation it had already noted that in 1999, of all part-time workers, 54.7 per cent women part-time workers earned £66 per week or less, compared to only 9.5 per cent of male workers. The Committee notes with interest that section 5(1) of the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations of 2000 prohibit employers from treating part-time workers less favourably than comparable full-time workers in terms of their conditions of employment, unless different treatment can be objectively justified. It also notes that the regulations were amended in 2002, allowing part-time workers to compare themselves with a full-time colleague, irrespective of whether either party’s contract is permanent or fixed-term, and removing the two-year limit to the period that an employment tribunal may take into consideration when making an award against an employer for having treated a part-time worker less favourably in terms of access to an occupational pension scheme. The Committee asks the Government to provide information on the application and enforcement of the part-time work regulations and their impact on the application of the principle of equal pay for work of equal value.

The Committee is raising related and other points in a request directly addressing the Government.

Venezuela

Convention No. 100: Equal Remuneration, 1951 (ratification: 1982)

The Committee notes the report sent by the Government, the communication sent by the International Confederation of Free Trade Unions (ICFTU), received by the Office on 22 November 2002, and the Government’s comments thereon.

The Committee notes that, according to the ICFTU, not only are women poorly represented in management posts, but their pay is on average 30 per cent less than that of men. The Committee notes the Government’s statement that public policies are being developed to achieve full equality between men and women, and that institutional and legislative reforms are under way. The Committee asks the Government to indicate in its next report how these policies and reforms are facilitating women’s access to posts of greater responsibility and are contributing to narrowing the wage gap between men and women. Please also provide statistical information disaggregated by sex on remuneration and the number of workers employed in the various occupational categories in both the public sector and the private sector in accordance with the Committee’s 1998 general observation.

The Committee is addressing a request directly to the Government in respect of other matters.

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States with regard to: **Convention No. 100** (Albania, Algeria, Angola, Argentina, Australia, Australia: Norfolk Island, Austria, Azerbaijan, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Bolivia, Botswana, Brazil, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Chad, Chile, China, China - Macau Special Administrative Region, Colombia, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Cyprus, Democratic Republic of the Congo, Denmark, Djibouti, Dominica, Ecuador, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, Finland, France: French Guiana, France: French Polynesia, France: Guadeloupe, France: Martinique, France: New Caledonia, France: Réunion, France: St. Pierre and Miquelon, Gabon, Georgia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, Iceland, India, Indonesia, Islamic Republic of Iran, Ireland, Israel, Italy, Jamaica, Jordan, Republic of Korea, Kyrgyzstan, Latvia, Lebanon, Libyan Arab Jamahiriya, Luxembourg, Republic of Moldova, Mongolia, Morocco, Nepal, New Zealand, Nicaragua, Panama, Paraguay, Poland, Russian Federation, Rwanda, Saint Lucia, San Marino, Serbia and Montenegro, Sierra Leone, Slovakia, South Africa, Sudan, Swaziland, Sweden, Tajikistan, Trinidad and Tobago, Tunisia, Ukraine, United Kingdom, Venezuela, Yemen, Zimbabwe); **Convention No. 111** (Algeria, Angola, Antigua and Barbuda, Argentina, Australia, Austria, Azerbaijan, Bahrain, Barbados, Belgium, Belize, Benin, Bolivia, Brazil, Burundi,

*Cameroon, Chile, China - Macau Special Administrative Region, Colombia, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Cyprus, Dominica, Dominican Republic, Ecuador, El Salvador, Eritrea, Ethiopia, France: French Guiana, France: French Polynesia, France: French Southern and Antarctic Territories, France: Guadeloupe, France: Martinique, France: Réunion, France: St. Pierre and Miquelon, Gabon, Germany, Guatemala, Guinea, Guyana, Honduras, Indonesia, Ireland, Israel, Jamaica, Jordan, Liberia, Mongolia, Morocco, Sierra Leone, Ukraine, Zambia); **Convention No. 156** (Australia: Norfolk Island, Belize, Bolivia, El Salvador, Iceland, Japan, Niger, Russian Federation, Ukraine).*

Tripartite Consultation

Brazil

Convention No. 144: Tripartite Consultation (International Labour Standards), 1976 (ratification: 1994)

1. The Committee notes with interest the information provided by the Government in its report on the establishment of the National Labour Forum (FNT) in July 2003. The Government also intends, among other priorities, to promote social dialogue, encourage tripartism and ensure the prevalence of social justice in the field of labour legislation, as well as trade union guarantees. The Government adds that the tripartite committees responsible for examining the instruments on safety and health in construction (adopted at the 75th Session of the Conference in 1978), safety and health in mines (82nd Session, 1995) and safety and health in agriculture (89th Session, 2001) have given their approval, and that the above instruments have been forwarded to the Office of the President for submission to the National Congress. The Committee refers to its observation on compliance with the obligation of submission and would be grateful if the Government would continue to include in its reports on Convention No. 144 the information requested on the consultations held on each of the matters covered by *Article 5, paragraph 1, of the Convention*.

2. With reference to its previous comments, the Committee would be grateful if the Government would indicate whether, in accordance with *Article 4, paragraph 2*, arrangements have been made or are envisaged for the financing of any necessary training of participants in the consultation procedure.

Côte d'Ivoire

Convention No. 144: Tripartite Consultation (International Labour Standards), 1976 (ratification: 1987)

The Committee notes the Government's report received in May 2003, which contains information on the comments that it has been making for several years. It notes with interest that a tripartite committee on ILO issues, the main mission of which is to give advice on the matters covered by the tripartite consultations required by the Convention, was created by the Decree of 9 January 2003 of the Minister of Public Service and Employment. The members of this Committee were appointed by the Decision of 28 May 2003. The Government also indicates that the Office of the Minister chairs the meetings of this Committee, acts as its secretariat, convenes the meetings and establishes the records. Concerning the training of the persons involved in the consultations, seminars on standards have been organized by the Ministry, with the technical and financial assistance of organizations such as the ILO, the United Nations Development Programme (UNDP) and non-governmental organizations. The Committee meets once every three months. The Committee encourages the Government to continue its efforts to give full effect to the Convention, and hopes that it will provide detailed information on the effective consultations held during the period covered by the next report within the tripartite committee on ILO issues, concerning each of the items set out in *Article 5, paragraph 1, of the Convention*.

Democratic Republic of the Congo

Convention No. 144: Tripartite Consultation (International Labour Standards), 1976 (ratification: 2001)

The Committee notes that the Government's first report on the application of the Convention has not been received. It notes the fact that the World Confederation of Labour (WCL) and the Trade Union Confederation of the Congo have made observations on the application of the Convention, which were forwarded to the Government in September and October 2003. The Committee recalls the importance that it attaches to first reports so that it can evaluate for the first time the application of ratified Conventions. The preparation of a detailed report containing replies to all the questions raised in the report form, and in the observations made by the abovementioned workers' organizations, will undoubtedly provide an opportunity for the Government and social partners to carry out an evaluation of tripartite consultations on international labour standards and the situation with regard to social dialogue in the country.

Guatemala

Convention No. 144: Tripartite Consultation (International Labour Standards), 1976 (ratification: 1989)

1. The Committee notes that the Governing Body approved in March 2003 the conclusions and recommendations of the tripartite committee appointed to examine a representation alleging non-observance by Guatemala of Convention No. 144 (document GB.286/19/4, March 2003).

2. In its conclusions, the tripartite committee recalled that the fundamental obligation laid down by Convention No. 144 is contained in *Article 2, paragraph 1*, of that instrument. According to that provision, every State party “undertakes to operate procedures which ensure effective consultations, ... between representatives of the government, of employers and of workers”. The tripartite committee referred to paragraph 29 of the General Survey of 2000 in which the Committee pointed out that the consultations required under the terms of the Convention are intended, rather than necessarily leading to an agreement, to assist the competent authority in taking a decision. For the consultations to be meaningful, they should not be merely a token gesture, but should be given serious consideration by the competent authority. Although the public authorities must undertake consultations in good faith, they are not bound by any of the opinions expressed and remain entirely responsible for the final decision.

3. The tripartite committee also cited the direct request of 2001 to Guatemala, in which the Committee observed that the regulation governing the functioning of the Tripartite Commission on International Labour Issues guarantees equality between the parties since the agenda, discussion materials, conclusions and recommendations are arrived at through absolute consensus. The Committee had observed earlier that the requirement of absolute consensus could lead to a reduction in the effectiveness of the consultations required by the Convention – and the tripartite committee likewise deemed it appropriate to stress that the requirement of absolute consensus, as set out in the Standing Orders of the Tripartite Commission, may have reduced the effectiveness of the consultations it carried out in 2000.

4. Indeed, in its General Survey of 2000, the Committee emphasized that “the representatives of employers and workers who participate in the consultation must in no way be bound by the final decision or position adopted by the Government. It would indeed be contrary to the principle of autonomy of employers and workers with regard to governments, which is applied in the work of the ILO’s bodies, if they were bound by the government’s position simply because they had been consulted”. The Committee further observed that: “In order to be ‘effective’, consultations must take place before final decisions are taken ... The important factor here is that the persons consulted should be able to put forward their opinions before the government takes its final decision. The effectiveness of consultations thus presupposes in practice that employers’ and workers’ representatives have all the necessary information far enough in advance to formulate their own opinions.” (General Survey, paragraph 31.)

5. The tripartite committee found, in the light of the available information, that the difficulties that had arisen in 2000 and that had diminished the effectiveness of tripartite consultations, had been overcome.

6. The tripartite committee expressed the hope that the Government and the social partners, in accordance with their national practice, would continue their efforts to promote social dialogue and tripartism in Guatemala. It also referred to the resolution on tripartism and social dialogue adopted by the Conference at its 90th Session (June 2002), which emphasizes that if tripartite consultations are to succeed, the participants must demonstrate the required aptitude for social dialogue (attentiveness to the positions of the other parties, respect for all participants, adherence to commitments made, and willingness to resolve conflicts).

7. On adopting the tripartite committee’s report, the Governing Body invited the Government of Guatemala to report to the Committee of Experts on the activities of the Tripartite Commission on International Labour Issues, providing specific information on any progress made, with the technical assistance of the Office, in holding tripartite consultations on matters relating to Convention No. 144.

8. In the light of the foregoing, the Committee takes note of the Government’s detailed report, received in August 2003. The Committee refers in particular to the assistance afforded to the social partners by the Office under the project “Tripartism and social dialogue in Central America: Strengthening the processes of consolidating democracy” (PRODIAC). The Government also highlights the assistance provided by the San José subregional office in the preparation of a poverty reduction strategy, which has enabled the social partners to formulate a joint proposal for employment creation.

9. With regard to the activities of the Tripartite Commission, the Government has provided copies of letters convening 25 meetings during the period from July 2002 to July 2003. It has also supplied detailed records of 12 of the meetings that took place during that period. The Committee notes that in the course of the meetings held in the Tripartite Commission, there were consultations on most of the items listed in *Article 5, paragraph 1*, of the Convention.

10. In a letter of 26 May 2003, representatives of organizations of workers and employers which sit on the Tripartite Commission stated that the Government had failed to meet a commitment, undertaken at the meeting of 24 April 2003, to discuss at the meeting of 8 May 2003 draft reforms on sexual harassment, child labour, domestic work and global termination indemnities (*indemnización universal*). Their objection is that the Government submitted its draft to Congress on 7 May 2003, thus precluding the possibility of discussing and reaching agreement on these issues. These organizations stated that they wished to draw the ILO’s attention to repeated violations of Convention No. 144 by the Government of Guatemala, so that the Government might be urged to take the necessary steps to remedy the situation in order to strengthen the tripartite social dialogue process.

11. The Committee notes that in December 2002 the three sectors agreed to set up a “tripartite subcommission on international issues for the study and analysis of labour reforms” (“the Subcommission”) which would discuss a number of pending amendments to align the national legislation with ratified Conventions pertaining to freedom of association. The government sector wished to give the priority to the Labour Code reforms so that proposals could be sent to the

Congress of the Republic. The employers' sector preferred not to rush matters in order to avoid repeating past experience (record of the Tripartite Commission's meeting of 27 February 2003).

12. At a meeting of the Subcommittee held on 5 March 2003, the three sectors agreed to prepare a technical draft with the various labour reform proposals. The Government submitted to the meeting its proposal to amend eight articles of the Labour Code. After four unproductive meetings of the Subcommittee, at a meeting of the Tripartite Commission held on 10 April 2003, the government sector announced a deadline (15 May) for the submission of proposals.

13. At a meeting of the Subcommittee held on 23 April 2003, the workers' sector tabled proposals on sexual harassment, child labour and domestic work, and expressed its opposition to the Government's proposal on global termination indemnities. At a meeting of the Tripartite Commission held the next day, all three sectors agreed to discuss the Labour Code reforms at a meeting of the Tripartite Commission to be held on 8 May.

14. The record of the meeting of 8 May 2003 shows that on the previous day, the President of the Republic had submitted a Labour Code reform package to Congress.

15. The workers' and employers' sectors considered that a severe blow had been dealt to the Tripartite Commission, and that to submit a package of legislative reforms to Congress 24 hours before the meeting of the Tripartite Commission was clearly contrary to the spirit and letter of Convention No. 144 and the Tripartite Commission's own rules. The national authorities had shown scant regard for social dialogue.

16. The Government's position was that at the Subcommittee's meeting of 23 April, there had been no quorum at a time when the three sectors needed to demonstrate their resolve to reach agreement. The draft legislation needed to reach Congress before it went into recess so that the matter could be dealt with in the second half of 2003.

17. It is the Committee's understanding that the circumstances described in the letter of 26 May 2003 are similar to those analysed by the tripartite committee which examined the representation mentioned at the beginning of this observation. The Committee accordingly refers to its comments in paragraphs 2-7 above in order to emphasize that the Government and the social partners should apply procedures which ensure effective consultations – and which may include a precise timetable for the consultations. The efficiency of procedures is necessarily enhanced when each party states clearly its objectives for every aspect of the consultations.

18. The Committee is convinced that, in view of present circumstances in the country (nationwide elections had just taken place as the Committee met in late 2003), there are many opportunities to deepen tripartite consultations still further and to heighten social dialogue in Guatemala. As the Governing Body recalled, the Office has the technical capacity to help strengthen social dialogue and support the activities that governments and employers' and workers' organizations undertake for the consultations required by the Convention.

19. In view of the importance of tripartite consultations on international labour standards, the Committee trusts that the Government will provide new information on progress made in holding effective consultations on the subjects covered by the Convention, including information on the activities of the Tripartite Commission.

20. The Committee hopes that the national authorities and the social partners will be able to benefit from the Office's technical assistance and trusts that the Government's report will also contain comments on the matters raised in this observation.

21. At its next session, the Committee intends also to examine observations sent by a workers' organization on the application of the Convention, which were forwarded to the Government in October 2003.

[The Government is asked to reply in detail to the present comments in 2004.]

Guinea

Convention No. 144: Tripartite Consultation (International Labour Standards), 1976 (ratification: 1995)

The Committee notes that the report received in June 2003 reproduces information from previous reports. It hopes that a report will be provided for examination by the Committee and that it will contain information on the following points, which had already been raised in the previous comments.

1. *Article 2 of the Convention.* The Committee would be grateful if the Government would inform it of the consultation procedures in place, and explain the manner in which the nature and form of these consultations guarantee the application of *Article 2*.

2. *Article 4.* The Government is requested to provide information on any progress achieved in the implementation of the Regional Programme for the Promotion of Social Dialogue in French-speaking Africa (PRODIAF) with regard to the training necessary for the participants in consultation procedures.

3. *Article 5, paragraph 1.* Please provide detailed information on any consultations held on the issues set out in these provisions and information on any reports or recommendations adopted as a result.

4. Finally, the Government is requested to provide any other information relating to the application of the Convention in practice, including in accordance with its normal practice, a copy of any report and of any legislation or documentation mentioned in the report.

[The Government is asked to reply in detail to the present comments in 2004.]

Netherlands

Aruba

Convention No. 144: Tripartite Consultation (International Labour Standards), 1976

In the report supplied by the Government of Aruba, received in November 2002, it noted the strong regret of the Committee with regard to denouncing the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Rural Workers' Organisation Convention, 1975 (No. 141) without prior consultation with the employers' and workers' organizations. The Government states that it has taken due account of the Committee's comments. It also indicates that the ILO Matters Tripartite Committee is momentarily non-active as it only convened for the purpose of the Government's reporting obligations for the past reporting period. The Government will make additional efforts to formalize such consultation by means of a state decree and encourage regular and continuous consultations. The Government also indicates that the Tripartite Committee has too many members, which made it difficult for effective consultation meetings. The Committee refers to its 2003 observation on the Continuity of Employment (Seafarers) Convention, 1976 (No. 145), and recalls again that proposals regarding the denunciation of ratified Conventions must, under *Article 5, paragraph 1(e), of the Convention*, be subject to consultations and that under *Article 2, paragraph 1*, the procedures must ensure "effective" consultations, that is, consultations able to influence the decision by the Government. The Committee hopes that the Government will regularly supply particulars of the consultations held on each of matters set out in *Article 5, paragraph 1*, of the Convention, including information on the frequency of such consultations and the nature of any reports or recommendations made as a result of the consultations. Please also provide information on any revision implemented to ensure the effectiveness of the tripartite consultations on each of the matters covered by the Convention.

Sao Tome and Principe

Convention No. 144: Tripartite Consultation (International Labour Standards), 1976 (ratification: 1992)

The Committee notes the Government's brief report received in September 2003 and the minutes of the meeting held by National Council for Social Consultation on 10 March 2003. It notes with interest that the Council has resumed operations with the support of the Promotion of Social Dialogue project (PRODIAL), financed by the Government of Portugal and executed by the Office. It hopes that the support provided by the Office will facilitate the application of the Convention and that the Government will include detailed information in its next report on the consultations held on each of the items relating to international labour standards under *Article 5, paragraph 1, of the Convention*.

Slovakia

Convention No. 144: Tripartite Consultation (International Labour Standards), 1976 (ratification: 1997)

1. The Committee takes note of the Government's report, received in October 2003, which provides detailed information on consultations held on each of the points set out in *Article 5, paragraph 1, of the Convention*. As regards *Article 6* of the Convention, the Government states that social partners do not consider it appropriate to issue an annual report on the working of the procedures provided for in the Convention, because they are recorded in the scope of general activities of the Council of Economic and Social Agreement (CESA).

2. The Committee notes that the Government has attached to its report the observations of the Confederation of Trade Union Status Report (KOZ SR) on social dialogue in the Slovak Republic. According to the KOZ SR, by the end of 2002, the Government submitted to Parliament draft amendments of 22 Acts without prior discussion in the CESA. A similar situation happened when the Labour Code was amended in 2003. KOZ SR states that the relationship between the social partners has not yet improved and that the Government ignores social partners in submitting to the Parliament draft Acts which have not been discussed with them. The Government states that it does not agree with the facts as stated by the KOZ SR and that these facts do not fall under the scope of the Convention.

3. The Committee recalls that the fundamental obligation under the terms of Convention No. 144 is contained in *Article 2, paragraph 1*. According to that provision, the State party "undertakes to operate procedures which ensure effective consultations, ... between representatives of the Government, of employers and workers". As the Committee of Experts stated in its General Survey of 2000:

The consultations required under the terms of the Convention are intended, rather than leading to an agreement, to assist the competent authority in taking a decision. For the consultations to be meaningful, they should not be merely a token gesture but should be given serious consideration by the competent authority. Although the public authorities must undertake consultations in good faith, they are not bound by any of the opinions expressed and remain entirely responsible for the final decision.

The Committee notes that it is a basic principle of Convention No. 144 that “the outcome of the consultations should not be regarded as binding” and that “the ultimate decision must rest with the government or legislature, as the case may be”.

4. The Committee also recalls the resolution on tripartism and social dialogue, adopted by the Conference at its 90th Session (June 2002), which emphasizes that “social dialogue and tripartism have proved to be a valuable and democratic means to address social concerns, build consensus, help elaborate international labour standards and examine a wide range of labour issues on which the social partners play a direct, legitimate and irreplaceable role”. The resolution also invites governments and organizations of employers and workers to promote and reinforce tripartism and social dialogue.

5. In view of the importance of tripartite consultations on international labour standards, the Committee trusts that the Government will provide in its next report information on progress made in holding consultations on the matters covered by the Convention, including details on the consultations held in relation to the legislative amendments submitted to Parliament (*Article 5, paragraph 1(d)*, of the Convention).

Switzerland

Convention No. 144: Tripartite Consultation (International Labour Standards), 1976 (ratification: 2000)

1. The Committee notes the Government’s first report, received in December 2002, on the application of the Convention. It also notes the communication from the Swiss Federation of Trade Unions (USS) dated 11 October 2002 attached to the Government’s report. The information transmitted by the Government indicates that the consultations required by the Convention are held within the Tripartite Federal Commission for ILO matters created in December 2000, and through written communications. The USS contends that the activities of the Federal Commission are confined to a minimum, and that, with regard to written communications concerning the consultations provided for under *Article 5, paragraph 1(d)*, of the Convention, delays in the transmission of the reports make it impossible undertake a careful analysis and make proposals. Furthermore, the USS considers that training on the role of the social partners is necessary. Recalling that the nature and form of the procedures are to be determined in each country, the Committee would be grateful if the Government would include in its next report information on the consultations held to ensure the effectiveness of the consultation procedures on the matters set out in *Article 5, paragraph 1*, of the Convention, in particular concerning questions arising out of reports to be made to the ILO under article 22 of the ILO Constitution (*Article 5, paragraph 1(d)*, of the Convention). Please also indicate whether arrangements have been made or are envisaged for the financing of any necessary training of participants in the consultation procedures (*Article 4, paragraph 2*).

2. The Committee notes the records of the Federal Commission’s meetings held on 26 February 2001 and 1 March 2002. Please indicate whether consultations were held with the representative organizations regarding the working of the procedures, as provided for under *Article 6* of the Convention.

United Republic of Tanzania

Convention No. 144: Tripartite Consultation (International Labour Standards), 1976 (ratification: 1983)

The Committee notes that no report has been received since May 2000. It hopes that a report will be supplied for examination by the Committee at its next session and that it will contain full information on the matters raised in its 2000 direct request, which read as follows:

The Committee notes the Government’s report which relates to the period ending in October 1999. It notes once again the indication to the effect that reports for submission to the ILO are sent in their final version to the representative organizations for comment. In this regard, the Committee is bound to insist again that the obligation to establish consultations in accordance with *Article 5, paragraph 1(d)*, of the Convention goes beyond the obligation to communicate reports under article 23, paragraph 2, of the ILO Constitution, since it refers to consultations on any question that may arise in these reports. The Committee particularly wishes to recall that, in its latest General Survey on the Convention and Recommendation No. 152, it indicated that the comments on these reports that employers’ and workers’ organizations may transmit to the Office, cannot replace the consultations which have to be held during the preparation of the reports (paragraph 92).

The Committee trusts that these clarifications will be taken into account in order to give full effect to the Convention and that the Government’s next report will provide more detailed information on consultations that have been held not only on questions which may arise in the reports to be submitted to the ILO but also on the other matters listed in *Article 5(1)*, on the frequency of these consultations and on the nature of all resulting reports or recommendations. In this regard, the Committee wishes to draw the Government’s attention to the fact that certain subjects mentioned (items on the agenda of the Conference, submission of instruments to the competent authorities, reports to be submitted to the ILO) entail annual consultation while

others (re-examination of unratified Conventions and Recommendations, proposals for the denunciation of ratified Conventions) require less frequent examination.

Finally, the Committee once again expresses the hope that detailed information will be supplied on the application of the Convention in Zanzibar.

Venezuela

Convention No. 144: Tripartite Consultation (International Labour Standards), 1976 (ratification: 1983)

1. The Committee notes the Government's report received in October 2002 in which it provides detailed information on the consultations relating to items on the agenda of the International Labour Conference, the submission to the National Assembly of the instruments adopted by the Conference and the ratification of Conventions. In its previous comments the Committee recalled that the obligation to consult the representative organizations on the reports to be made regarding the application of the Conventions ratified, arising from *Article 5, paragraph 1(d), of the Convention*, should be distinguished from the obligation to send reports to workers' and employers' organizations under article 23, paragraph 2, of the Constitution, as the consultations required by Convention No. 144 must be carried out at the time that the reports are being drawn up. When consultations are carried out in writing, the Government should transmit a draft report to the representative organizations to obtain their views before finalizing the report. The Committee would be grateful if the Government would continue to provide in its next report substantive information on the consultations held concerning all the issues covered by the Convention (*Article 5, paragraph 1(d), of the Convention*).

2. Noting the various discussions which took place at the 91st Session of the Conference (2003), the Committee refers to the resolution concerning tripartism and social dialogue (adopted by the Conference at its 90th Session (2002)), in which it stressed that social dialogue and tripartism, among others, had proved to be valuable and democratic means to address social concerns, build consensus, helping to formulate international labour standards and examine a wide scope of labour issues in which social partners play a direct, legitimate and irreplaceable role. In this respect, the Committee trusts that the Government will also include in its next report information on the measures taken to ensure that the consultations required under Convention No. 144 are carried out with "representative organizations" which enjoy the right of freedom of association (*Article 1 of the Convention*).

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States with regard to: **Convention No. 144** (*Algeria, Argentina, Bahamas, Bangladesh, Belize, Botswana, Chile, Colombia, Czech Republic, Denmark, El Salvador, France: New Caledonia, Greece, Grenada, Guyana, Jamaica, Kuwait, Mongolia, Sierra Leone, Uganda, Yemen*).

Labour Administration and Inspection

Bolivia

Convention No. 81: Labour Inspection, 1947 (ratification: 1973)

The Committee notes the Government's partial replies to its previous comments, and the attached documents.

1. *Fields covered by labour inspectors.* According to the Government's report, the 75 to 100 inspections carried out each month cover administrative matters. However, under the terms of section 26(1) of the General Act on occupational safety and health, labour inspectors should be responsible, in accordance with *Article 3, paragraph 1(b), of the Convention*, for supervising the application of the standards established under the above Act and other provisions relating to working conditions and environment. This function implies the discharge of technical missions with the appropriate powers. In this respect, the Committee notes that, under the above Act, labour inspectors are authorized, in accordance with *Article 13, paragraph 2(b)*, to cause machines to be shut down and the activities of a workplace to be ceased partially or totally where working conditions give rise to an imminent danger to the life or health of the workers. The Government is therefore requested to ensure that measures are adopted rapidly so that labour inspectors discharge all the missions conferred upon them under the legislation respecting the working conditions and protection of workers, while ensuring that any further duties which may be entrusted to them are not such as to interfere with the effective discharge of their primary duties within the meaning of *Article 3, paragraph 2*, or to prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers.

2. *Collaboration with employers and workers.* The Committee notes that, according to the Government, labour inspectors may establish one or more joint occupational safety, health and welfare committees with responsibility, among other matters, for being informed of working conditions, the operation and maintenance of machinery, equipment and tools, personal protection and any other aspect related with occupational safety, health and welfare, and for collaborating in the implementation of the Act of 1979 on occupational safety, health and welfare and of the technical recommendations made by competent institutions. With reference to its comment made above on the administrative nature of inspections, the Committee would be grateful if the Government would provide further information on the distribution in practice of the respective areas of competence of inspectors and the above committees in the enforcement of legal provisions respecting occupational safety, health and welfare.

3. *Qualification of inspectors.* With reference to the announcement by the Government in a previous report of its intention to take measures to improve the level of legal training and the vocational qualifications of inspectors in the context of the technical assistance provided by the ILO Regional Office, the Committee requests it to indicate the action taken as a result of this project and any measure adopted or envisaged to provide inspectors with training for the effective discharge of their duties.

4. *Remuneration of labour inspectors and reimbursement of their professional travel expenses.* According to the Government, the terms and conditions of service of labour inspectors have not improved significantly, with their monthly wage being equivalent to around US\$135. Furthermore, the procedure for the reimbursement of the expenses incurred for the purpose of their missions is applied on a case-by-case basis, is slow and is subject to the approval of the general directorate of the administration and does not have any legal basis. In the view of the Committee, inspectors should not be under the obligation to pay in advance the expenses required for the discharge of their duties, except in exceptional circumstances, and the reimbursement procedure should be simplified so that it does not infringe upon their purchasing power and their motivation. The Government is requested to take into account the eminently mobile nature of the function of labour inspection and as a consequence to take measures, in accordance with *Article 11, paragraph 1(b)*, to furnish labour inspectors with the transport facilities necessary for the performance of their duties in cases where suitable public facilities do not exist. It trusts that the Government will also ensure that the procedure for the reimbursement to inspectors of their professional travel expenses is determined by a legal text, that it is not such as to infringe upon their professional freedom of action, and that the resources allocated are determined on the basis of the needs of the inspection services and managed by the latter. The Government is requested to provide any relevant information.

5. *Annual inspection report (Articles 20 and 21).* The Committee notes with regret that, 30 years after the ratification of the Convention, no annual inspection report, as envisaged by these provisions of the Convention, has been transmitted to the ILO. Emphasizing once again the essential importance of the annual consolidation of information on the work of the labour inspection services, with the objective of improving their effectiveness and responding to needs arising out of socio-economic developments, the Committee reminds the Government of the possibility of having recourse to ILO technical assistance for this purpose and expresses the firm hope that it will soon be able to report on measures to this end.

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

Convention No. 129: Labour Inspection (Agriculture), 1969 (ratification: 1977)

The Committee notes the Government's report, the partial replies to its previous comments and the attached documentation.

In particular the Committee notes with satisfaction the communication of the Act of 18 October 1996 respecting the National Agrarian Reform Service, one of the final provisions of which expands the scope of the General Labour Act to cover rural wage earners. Considering, however, that the explicit repeal of section 1 of the General Labour Act and of section 1 of Decree No. 224 of 23 August 1943, which exclude agricultural work and agricultural workers from their scope of application, is necessary to harmonize the legislation in this respect, the Committee hopes that the Government will soon be able to provide information on the measures taken for this purpose.

Furthermore, the Committee invites the Government to consider, with respect to the application of the present Convention, the points raised in its observation under the Labour Inspection Convention, 1947 (No. 81), and to provide the requested information in relation to labour inspection in agricultural enterprises (the application of legal provisions establishing the functions of labour inspectors in the agricultural sector; the specific conditions of service, if any, of labour inspectors in the agricultural sector; the facilities and means of transport and the objectives of the publication of an annual report on the activities of the inspection services and on their results in the agricultural sector).

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

Bosnia and Herzegovina**Convention No. 81: Labour Inspection, 1947** (ratification: 1993)

Article 12, paragraph 1(a), of the Convention. With reference to its previous comments, the Committee once again reminds the Government that, further to a joint representation made to the ILO on 9 October 1999 under article 24 of the ILO Constitution by the Union of Autonomous Trade Unions of Bosnia and Herzegovina (USIBH) and the Union of Metalworkers (SM), alleging violation by the Government of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the committee entrusted by the Governing Body of the ILO with its examination considered that the facts submitted constituted a violation of *Article 12, paragraph 1*, of Convention No. 81, concerning the right of labour inspectors' to enter freely into enterprises and workplaces liable to inspection. Further to the recommendations of the latter committee, the Committee of Experts made an observation to the Government in 2001 requesting it to adopt, as soon as possible, all necessary measures to repeal from the legislation the requirement that labour inspectors must seek the authorization of a higher authority to enter enterprises and workplaces liable to their inspection. The Committee once again requests the Government to provide the information requested on this matter.

Articles 4, 20 and 21. The Committee would be grateful if the Government would indicate whether the national inspection system is placed under the supervision and control of a central authority, as envisaged in *paragraph 2, of Article 4*, or under that of the authorities of each federated entity.

In any case, the Committee trusts that effort will rapidly be given to the obligation of the central authority, as required by Articles 20 and 21, to publish and transmit to the ILO a general annual report on the activities of the inspection services under its control and requests the Government to provide information on the measures taken for this purpose.

The Government is also asked to provide the information requested by the report form for the Convention under each of its provisions, and in *Parts IV and V*.

Burkina Faso**Convention No. 129: Labour Inspection (Agriculture), 1969** (ratification: 1974)

The Committee notes the Government's replies to the points raised in its previous comments, which indicate that in agricultural enterprises the labour inspectorate operates with the same human and material resources and according to the same methods as in other branches of activity. In theory, this is not contrary to the prescriptions laid down in the Convention as to the general principles which should be the foundation of any labour inspection system. However, to meet the standard of effectiveness required by the ILO instruments concerning labour inspection, the Committee deems it essential for labour inspection services to be duly adapted to the specific features of each of the economic sectors covered. In this case, by taking into account the particularities of agricultural workers and agricultural enterprises, the Convention aims to ensure the necessary degree of compliance with the legislation on the working conditions of agricultural workers and their protection while engaged in their work.

An appreciation of the effectiveness of the labour inspection system in agriculture is therefore necessarily based on the knowledge of the needs in this area and on periodical updating of the relevant information. The obligation for inspection units to provide periodical reports on their activities in agricultural enterprises (*Article 25*) is specifically intended to enable the central inspection authority to follow, supervise and, if necessary, adjust their activities, as well as the inclusion of information on the items listed in *Article 27* which are specific to the agricultural sector in the general

annual report on inspection activities required by *Article 26*. No such report has been provided to the ILO for around ten years and the number of agricultural enterprises liable to inspection has never been communicated. In its report of 2000 on the application of the Labour Inspection Convention, 1947 (No. 81), concerning labour inspection in industry and commerce, the Government announced the publication and communication of annual reports for the period 1995-99 without following up on it. Consequently, the Committee still lacks the data needed to make even a rough assessment of how far this Convention is applied in practice and is therefore unable to fulfil the supervisory duty vested in it. It wishes to point out to the Government that, as it stated in its General Survey of 1985 on labour inspection, the publication of an annual report is not an end in itself but gives the national authorities significant data on the application of the national labour legislation and any gaps in the legislation which may be instructive for the authorities in the future, on the one hand, and, on the other hand enables employers and workers and their organizations to react, through its publication, with a view to improving the effectiveness of inspection services (paragraph 273). The Committee recalls that, when a member State is unable to fulfil the requirements of a Convention it has ratified due to its economic situation, it may request the technical assistance of the ILO and international financial aid.

Noting that, according to the Government, the available general indicators made it possible, when formulating projects and programmes to combat child labour, to establish that this phenomenon is found mainly in the agricultural sector, including animal husbandry, and that labour inspectors are assigned an important role in this context, the Committee is of the view that the Government would be well advised to take advantage of the implementation of these projects to initiate measures to reactivate the labour inspection services in agricultural enterprises. As a preliminary and objective assessment of the situation in this sector is highly desirable for this purpose, the Committee would be grateful if the Government would ensure that the labour inspection services have access to data on the number and geographical distribution of agricultural enterprises and workers employed therein, and to provide the ILO with any relevant information, including information on the composition and distribution of inspection staff in geographical terms and according to their fields of competence.

Colombia

Convention No. 129: Labour Inspection (Agriculture), 1969 (ratification: 1976)

The Committee notes the Government's report, the partial replies to its previous comments and the attached documents.

Article 17 of the Convention. The Committee once again requests the Government to indicate whether, and if so in which manner the labour inspection services in agriculture are associated in the preventive control of new plant, new materials or substances and new methods of handling or processing products which appear likely to constitute a threat to the health or safety of workers. If they are not so associated, the Government is asked to take the necessary measures to implement this provision and to keep the ILO informed on any progress in this regard.

Article 19. Further to its previous comments, the Committee reminds the Government that, not only shall labour inspectors in agriculture be notified of occupational accidents and cases of occupational disease occurring in the agricultural sector (*paragraph 1*), but they shall be associated, in so far as possible, with any inquiry on the spot into the causes of the most serious occupational accidents or occupational diseases, particularly of those which affect a number of workers or have fatal consequences (*paragraph 2*). However, in accordance with Decree No. 1530 of 1996, to which the Government continues to refer, and the information provided on its application, labour inspectors intervene on the occasion of the above events to impose sanctions where appropriate. The Committee would be grateful if the Government would specify, on the one hand, whether a procedure exists for notifying occupational accidents and cases of occupational diseases to labour inspectors and, on the other hand, whether measures have been taken to ensure the association of labour inspectors in inquiries on the spot into the causes of the most serious occupational accidents or occupational diseases with a view to prevention.

Articles 26 and 27. While noting the statistics on occupational accidents for the period 1997-2000 attached to the Government's report, the Committee once again notes the failure to provide an annual report on the activities of the labour inspection services containing information on each of the items specified under *Article 27*. Emphasizing the importance of also including in such a report up-to-date information on the issues specified in Paragraph 13 of the Labour Inspection (Agriculture) Recommendation, 1969 (No. 133), the Committee would be grateful if the Government would take the necessary measures to ensure that the central labour inspection authority fulfils its obligation to publish and transmit to the ILO the annual report required by the above Articles. In this respect, the Government may find it useful to refer to paragraph 272 et seq. of the General Survey of the Committee of Experts of 1985 on labour inspection.

Security and the particular conditions of service of labour inspections. Referring to its previous comments on this matter and being aware of the problems of public security that the country has been facing for decades, the Committee notes that the labour inspectors who operate in agricultural enterprises located in vulnerable areas are not among the categories of officials covered by specific protection. It therefore once again hopes that the Government will endeavour to examine the possibility of guaranteeing them an appropriate level of protection and that the relevant information will be provided to the Office in the near future.

Costa Rica

Convention No. 81: Labour Inspection, 1947 (ratification: 1960)

The Committee notes the Government's report, the information replying in part to its previous comments and the documentation attached to the report. It also notes the comments made by the National Association of Labour Inspectors (ANIT) on the application of the Convention sent to the Office on 21 February 2003 and the information provided by the Government on the points raised.

According to ANIT, the right of inspectors, employers, workers and their organizations to have the Convention applied in good faith has not been respected. ANIT alleges that the human, material and logistic resources at the disposal of the inspection services and its users are insufficient and that labour inspectors are subjected to constant harassment by the Government, which seriously undermines their authority and credibility vis-à-vis the social partners and public opinion in general. The organization also objects to the lack of an inspection policy and of opportunities for negotiation as recommended by the MATAC/ILO programme (Modernization of Labour Administration in Central America).

1. *Lack of human resources.* According to ANIT, the labour inspectors have an excessive workload because of the many tasks assigned to them over and above their inspection duties. Furthermore, conciliation, which is incompatible with the principles of authority and impartiality underlying the relationship between inspectors and the social partners, is a duty for which the law gives competence to another body. Due to the lack of office staff, the inspectors have to spend approximately 20 per cent of their working hours serving notifications. In response, the Government states that conciliation duties are assigned to inspectors only in very specific cases, which are set forth in sections 43, 46 and 99 of the Organic Act of the Ministry of Labour and Social Security. In view of the training they have received, labour inspectors should therefore have no difficulty organizing their work schedules to accommodate the various functions. The Committee notes that, under the terms of these provisions, the labour inspectors' participation on behalf of workers in conciliation procedures is envisaged in all cases where distance prevents the workers concerned from going in person to the Office for occupational matters and administrative conciliation procedures (currently called the Department of Labour Relations). As one office serves the entire country, it would appear obvious that only workers living or working in its vicinity are able to go there, to the exclusion of workers everywhere else in the country. The Committee would therefore be grateful if the Government would reconsider the issue raised by ANIT in the light of *paragraph 2 of Article 3 of the Convention* which provides 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 or to prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers", and would provide information on any measures adopted to this end.

2. *Lack of material means.* According to ANIT, the offices of the inspection services lack the minimum they need in order to operate. The portion of the budget allocated to transport costs has even been reduced and bureaucratic obstacles have hindered the payment of the per diems to cover inspectors' duty travel. Furthermore, the offices have no officially allotted vehicles and inspectors are not reimbursed for expenses incurred in the course of their duties. In response the Government states that the resources necessary for the operation of the labour inspection services have been provided, in so far as is really feasible under the budget, to all regional offices and ANIT's allegations concerning the allocation of funds for travel expenses and the reimbursement to inspectors of service-incurred expenses are unfounded. According to the Government, eight vehicles and 12 motorcycles are shared by the regional offices, which also have one computer and printer each, and efforts are constantly made gradually to satisfy labour inspection needs. The Government again refers in this connection to Act No. 3462 of 26 November 1964 and resolution No. 4-DI-AA-2001 of 10 May 2001 respecting the reimbursement of expenses and allocation of funds to cover the travel expenses of public servants. An internal communication of the Ministry of Labour, further to a complaint by the labour inspectors, nevertheless asserts that there is no budget for the acquisition of the equipment needed by the inspection services and that specific demands are met as they arise. The Committee cannot overemphasize the importance of determining, as part of the preparation of the annual national budget, the resources necessary for the effective discharge of the various duties assigned to the labour inspectorate, and would be grateful if the Government would provide information on the application in practice of the provisions of the texts to which it refers and would adopt measures to ensure that adequate financial, material and logistical means are made available to the labour inspectors.

3. *Conditions of service of labour inspectors.* According to ANIT, the recent wave of transfers of labour inspectors under the project for the general transfer of inspection personnel decided on by the Government has led to chaos and confusion with negative repercussions for the effectiveness of the service. Moreover, by requiring inspectors and their families repeatedly to uproot, the transfers have impaired their economic, moral and psychological rights. ANIT considers that the reasons the Administration disseminated through the media to justify the transfers (corruption, lack of efficiency) are insulting not only to the inspectors but to the institution itself and are intended to cast suspicion on the inspectors. ANIT also asserts that the inspectors who appealed against the transfers were threatened with dismissal. The Government replies that rotation of inspectors is a sound measure and necessary to internal supervision considering the potential for corruption inherent in the job of labour inspector. It asserts that the allegation that families' rights are impaired is unfounded since most of the transfers took place within one and the same district. It also indicates that the labour inspectors are covered by the public service regime which guarantees the stability of employment of state workers and

that the grounds for dismissal are explicitly defined by law: the Government did no more than remind public servants of their duty of obedience. As to the statements made to the media, the Government asserts that they made no reference to individual cases of corruption as these cases are dealt with and punished in the context of objective and impartial inquiries.

4. The Committee considers that, in order to be able to establish their authority and carry out their duties with full impartiality, inspectors must first and foremost be shown consideration by the public authorities. It would therefore be grateful if the Government would review the issue raised by ANIT and provide information on any measures adopted or envisaged to strengthen the position of labour inspectors vis-à-vis the social partners and public opinion with a view to improving the effectiveness of their services.

Furthermore, noting that, according to the Government, the recommendations made by the general audit and the general sub-audit of the Ministry of Labour and Social Security on the transfer of personnel in regional and district offices of the National Directorate and General Labour Inspectorate amount to obligations, the Committee requests the Government to provide information on the frequency of transfers and the number of inspectors concerned, and on the measures adopted to ensure that they do not jeopardize the stability of employment that labour inspectors are entitled to, in accordance with *Article 6* of the Convention.

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

Convention No. 129: Labour Inspection (Agriculture), 1969 (ratification: 1972)

The Committee notes the Government's report, the replies to its previous comments and the documents appended to the report. It also notes the comments by the National Association of Labour Inspectors (ANIT) on the application of the Convention, and the information and documents that the Government sent in response. The Government is asked to provide in its next report, in so far as it concerns labour inspection in the agricultural sector, the information requested by the Committee in its observation under Convention No. 81 regarding the questions raised by the ANIT on the lack of human and material resources in the labour inspection services, and the conditions of service of inspectors.

Côte d'Ivoire

Convention No. 81: Labour Inspection, 1947 (ratification: 1987)

In reply to the Committee's previous comments on the material situation of the inspection services (*Article 11 of the Convention*) and the number of inspections to establishments (*Article 16*), the Government provides information indicating that the inspection services are almost totally unable to accomplish their duties because they lack the means despite an adequate geographical distribution of facilities and human resources. The deficiencies of labour inspection are also raised in the Government's report on the Minimum Age Convention, 1973 (No. 138).

The Committee notes the Government's announcement of a plan for the labour inspectorate to establish a national register of enterprises with ILO support. It trusts that measures have been taken to this end and that the relevant information will soon be sent. Such a register, if it contains details of the number, nature, size and situation of enterprises, as well as the number and categories of the workers they employ (*Article 10(a)(i) and (ii)*), will undoubtedly be a valuable tool for determining the human resources and material means required to operate a labour inspection system of the kind provided for by the Convention. The Committee draws the Government's attention to the advisability of seeking international financial cooperation for the implementation of this or any other project designed to improve the efficiency of labour inspection. It would be grateful if the Government would take all appropriate steps to this end and at all events inform the Office of any developments relating to the implementation of the obligations arising from the ratification of the Convention.

Convention No. 129: Labour Inspection (Agriculture), 1969 (ratification: 1987)

1. *Establishing the conditions required for the operation of a labour inspection system in agricultural enterprises.* The Committee notes the Government's replies to its previous comments. In connection with its observation under Convention No. 81 and in view of the impact of the economic and political situation on the working and living conditions of people working in the agricultural sector, the Committee trusts that the Government will soon be able, if necessary with ILO technical support and international financial cooperation, to identify the human resources and material and logistical needs required for labour inspection in agricultural enterprises and to define priorities for action in this area. It requests the Government to provide information on any steps taken to this end and on any progress achieved.

2. *Labour inspection and child labour in the agricultural sector.* With reference to its observation of 1999 under this Convention and under Convention No. 81 and the role that labour inspectors' should play in the strategy to combat child labour, the Committee notes from the Government's report on the Minimum Age Convention, 1973 (No. 138), that labour inspectors have been made aware of the issue. It also notes with interest that, in the framework of the WAC/AP project (West Africa Cocoa/Agriculture Project), a committee to combat child trafficking was created and a law adopted on the subject. It requests the Government to provide any relevant documentation as well as practical information on inspection activities conducted with a view to seeking out any breaches of child labour legislation and the results of such inspection.

Djibouti

Convention No. 81: Labour Inspection, 1947 (ratification: 1978)

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

The Committee notes the Government's report and the documentation attached, as well as the partial information provided in reply to its previous comments. With reference to the Government's statements, which have been repeated on many occasions, to the effect that measures would be taken to prevent, in accordance with *Article 3, paragraph 2, of the Convention*, the conciliation duties discharged by labour inspectors interfering with their principal duties, as set out in *paragraph 1* of the same Article, the Committee notes, however, that the situation has deteriorated still further in this respect. Indeed, the information provided shows that, far from having its human and material resources strengthened, the single inspection service suffers from ever more inadequacies in all respects. According to the Government's report, the number of inspections has continued to fall due to the economic crisis, which has resulted in a freeze on the recruitment of labour inspectors and the reduction in their professional means of transport. As they cannot devote themselves to their principal duties, inspectors are therefore principally confined to discharging administrative tasks. The statistics on the activities of the inspection services provided in the annex to the Government's report reflects this situation. Noting the request by the Government for technical assistance, particularly with a view to the publication of an annual inspection report, in accordance with *Articles 20 and 21*, the Committee hopes that this request will be examined favourably, and that such a report will be duly published and transmitted to the ILO in the near future.

In any event, the Government is requested to provide information on the current staffing of the labour inspectorate, the number of workplaces liable to inspection, the number of workers employed therein, with details on the manner in which workplace inspections are carried out (*Article 10(a), (b) and (c)*). Please also describe the means of transport available to labour inspectors for their professional travel (*Article 11, paragraphs 1(a) and 2*).

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

France

Convention No. 81: Labour Inspection, 1947 (ratification: 1950)

With reference to the comments made by the General Confederation of Labour-*Force ouvrière* on 18 February 2002 concerning the annual inspection report for 1999, the Committee hopes that the Government will provide information in reply to the points raised concerning: the time limits for the publication of annual labour reports (*Article 20 of the Convention*); the impact of the inadequacy of the human and material resources of the inspection services on the number and frequency of inspections (*Articles 10 and 16*); and the causes of employment accidents occurring in high-risk sites (*Article 21(g)*).

French Polynesia

Convention No. 129: Labour Inspection (Agriculture), 1969

The Committee notes the Government's reports for the period ending in May 2002.

With reference to its observation of 1998, the Committee notes once again that the information provided by the Government is too vague to serve as a basis for any assessment of the extent to which this Convention is applied.

For example, under *Article 21 of the Convention*, which provides that agricultural enterprises shall be inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legislation, the Government states: "As far as the resources for labour inspection in French Polynesia allow, agricultural enterprises are inspected under the same conditions as enterprises in the other branches of activity." The annual labour inspection report for agriculture for 2001 mentions five inspections in enterprises and 41 violations reported for 180 persons covered while the Government indicates for its part that for the first quarter of 2002, six inspections were carried out in the agricultural sector, that they resulted in 24 violations reported for 75 wage-earners employed in these enterprises, but that these numbers overlap with those of the fishing and pearl farming sectors.

The ratification of this Convention carries with it, in accordance with article 22 of the ILO Constitution, an obligation to report every two years on the measures taken in view of its application. In its report, the Government has to provide the specific information requested by the report form established by the ILO Governing Body under each of the provisions of the instrument. Furthermore, the Government has to ensure that the central authority for labour inspection produces an annual activity report in such a manner that the information requested by each of the items of *Article 27*, and specific to its activities in the agricultural enterprises covered, is easily identified so as to serve as a basis for assessing the extent to which the Convention is applied.

According to the information available on the Internet site of the Overseas Ministry, agriculture in French Polynesia helps to sustain the population of the archipelago, with the most recent census indicating the existence of 6,200 farms with 12,000 permanent workers and more than 600 seasonal workers. It indicates that copra ensures a livelihood for more than 10,000 persons and covers almost three-quarters of the cultivated land area. Fruit and vegetable farms, pig raising and egg production are the other important activities of the region as cattle raising faces strong competition from imports from New Zealand and metropolitan France. It therefore appears to be quite justified from an economic and social point

of view for the labour inspection system to be developed in agricultural enterprises in order to ensure the application of legislation respecting the working conditions and protection of a relatively important portion of the working population. This Convention envisages, under *Article 7, paragraph 3(a)*, the possibility of organizing labour inspection in agriculture in the framework of a single labour inspectorate responsible for all sectors of economic activity, while requiring at the same time in *Article 14* that arrangements shall be made to ensure that the number of labour inspectors in agriculture is sufficient to secure the effective discharge of the duties of the inspectorate and is determined with due regard for:

- (a) the importance of the duties which inspectors have to perform, in particular:
 - (i) the number, nature, size and situation of the agricultural enterprises liable to inspection;
 - (ii) the number and classes of persons working in such enterprises; and
 - (iii) the number and complexity of the legal provisions to be enforced;
- (b) the material means placed at the disposal of the inspectors; and
- (c) the practical conditions under which visits of inspection must be carried out in order to be effective.

The information in the Government's report indicates that the management of the inspection services (the Director, the Assistant Director and the only inspector) are personnel on temporary assignment from metropolitan France and are periodically renewed at the end of each assignment, whereas the two labour supervisors are territorial agents recruited either by competitive or professional examination, or internal transfer within the territorial administration. The recruitment of a medical labour officer and of a woman employee under contract as labour supervisors has also been announced. Furthermore, the Government indicates that it has asked the Central Mission for the Support and Coordination of Decentralized Services (MICAPCOR) for support in order to assess the means to be made available to the labour inspectorate and envisages reinforcing the supervision of health and safety in agriculture in 2002 by increasing the number of inspections compared to the previous years. The Committee would be grateful if the Government would supplement this information by indicating any measures actually taken to give effect to the provisions of *Articles 14, 15, 19, 21* and *25*, relating to the application of the Convention in agricultural enterprises, and if it would ensure that the information specific to the activities of the inspection services in agriculture, as envisaged under *Article 27*, is easy to identify in the annual inspection report published by the central authority.

Guadeloupe

Convention No. 129: Labour Inspection (Agriculture), 1969

The Committee notes the Government's report for the period ending in June 2002. It notes the Government's view the a report on this Convention would either serve no purpose because the Department of Labour, Employment and Vocational Training is not responsible for this matter, or it should be under the responsibility of the Ministry of Agriculture, which provides the inspector assigned to supervise agricultural enterprises.

With reference to its comments in 1998, reiterated in 1999, the Committee notes that apart from the indication that there was only one labour inspector for all the agricultural enterprises on the island, the requested information was not provided, and that an annual report on the inspection activities in the agricultural sector, as required by *Articles 26 and 27 of the Convention*, has still not been provided. The Committee is bound to remind the Government once again of its obligations arising from the provisions of the Convention, to request it to take all the appropriate measures for their implementation and to provide the Office with any relevant information, including the information specified by *points (c), (d), (e), (f), and (g) of Article 27*.

Gabon

Convention No. 81: Labour Inspection, 1947 (ratification: 1972)

The Committee notes the concise information provided on the application of *Articles 6, 7, 10, 11, 12, 14, 16, 17, 20 and 21 of the Convention*.

The Government states that, in response to the discontent among labour inspectors, who complain of a lack of resources, but above all demand the independence necessary for the exercise of their duties, measures have been taken to modernize a number of obsolete administrative bodies, certain external services have been supplied with office furniture and computer equipment and work areas have been refurbished.

The Government indicates that the human resource requirements of the labour inspectorate were planned for the period 1999-2005, but provides no information on the actual measures taken or envisaged in connection with the planning.

With regard to the conditions of recruitment and training of the labour inspection staff, the Government merely refers to certain general provisions of Act No. 08/1991. Noting that under the terms of section 32 of the Act, these issues are regulated by a specific regulation for each sector of public service, the Committee observes that the Government makes no mention of any text or draft text in reply to its request for information on this matter.

The Government's response on an issue as fundamental as the reimbursement of the labour inspectors' travel expenses, is that, in view of the difficult economic situation affecting the country, no measures have yet been taken. The Government thus implicitly recognizes that, although essential to their main duty of supervision, travel is impossible for labour inspectors and their role is thus reduced to a sedentary one as a result. That being so, the information provided by the Government under *Articles 12 and 16* of the Convention concerning the right to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection, and concerning the resumption of inspections envisaged in all the enterprises and establishments in the territory, is more theoretical than practical. Moreover, under such conditions it is impossible for a central inspection authority to produce an annual report of inspection activities that contains information allowing an assessment of the application of the Convention.

The Committee wishes once again to draw the Government's attention to the social and economic importance of implementing each provision of the Convention. In a favourable socio-economic situation, an inspection system based on the principles laid down in the Convention makes it possible to ensure the conditions for durable social peace and harmonious human and economic development. In times of economic and financial difficulties, such a system aims to maintain social achievements and to prevent, to the extent possible, the deterioration of working conditions and workers' rights and the social, political and economic unrest that can ensue.

The Committee cannot overemphasize the need for the Government to make every effort to secure recognition of the value of the labour inspection system as a tool for establishing and maintaining social peace and to ensure that political and budgetary decisions are implemented for the progressive establishment of such a system, taking due account of national circumstances and after reviewing the current situation. The order of priority of the activities to be undertaken should be determined according to the urgency of the needs and relevant legislation should be adopted and applied to establish appropriate bodies with the adequate human and material means for the goals set. The Committee reminds the Government of the possibility of seeking ILO technical assistance and international economic aid to this end. It hopes that the Government in its next report will not fail to provide evidence of substantive progress in the application of the Convention or, at the very least, of steps taken to this end and the results obtained.

With reference to its general observation of 1999 on the role labour inspectors should play in combating child labour, and noting that the Government is committed to working actively towards this goal, in collaboration with the ILO-IPEC project to combat child labour in West and Central Africa (May 2002), the Committee hopes that the Government will not fail to take prompt measures enabling labour inspectors to put their skills and experience to good use in this context and will regularly provide information on the results of their activities in its future reports.

Guinea

Convention No. 81: Labour Inspection, 1947 (ratification: 1959)

The Committee notes with regret that the Government has not replied to its previous comments and has once again sent a report and documentation that the Committee already examined at its previous session. It would accordingly be grateful if the Government would provide the information requested on the material situation of the inspection services in each regional and local facility, indicating the measures taken or envisaged for their improvement (*Article 11 of the Convention*), as well as information on the measures taken or envisaged to publish and forward to the ILO an annual report on the activities of the labour inspection services (*Articles 20 and 21*).

The Committee reminds the Government that, where necessary, ILO technical assistance may be sought to facilitate fulfilment of the obligations arising from this Convention. It hopes that steps will be taken to this end and that relevant information will be provided.

Guyana

Convention No. 129: Labour Inspection (Agriculture), 1969 (ratification: 1971)

The Committee notes the Government's report and the annual reports on the activities of the Labour Department for 1998, 2000 and 2002.

Articles 26 and 27 of the Convention. While noting with interest the information included in the annual reports on the activities of the Ministry of Labour on inspection in agricultural enterprises and the data on employment accidents in agriculture provided by the Government, the Committee once again emphasizes the importance, from both a national and an international point of view, of the publication and communication to the ILO of an annual report of the activities of the labour inspectorate. It therefore once again hopes that the Government will take the necessary measures in practice to ensure that the central inspection authority fulfils this obligation set out in the Convention. In this respect the Committee draws the Government's attention to the various forms that the report may take in accordance with *Article 26*, while emphasizing the need to include information that is as detailed as possible on each of the items covered by *Article 27*, with specific reference to the agricultural sector.

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

Haiti

Convention No. 81: Labour Inspection, 1947 (ratification: 1952)

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

The Committee notes the comments made by the Trade Union Federation of Haiti (CSH) regarding the application, by the Government, of Convention No. 81. According to the Federation, while the legislation would be in conformity with the provisions of the Convention, the political will to take the necessary measures for their application was not there. The Office has transmitted the comments of the CSH to the Government on 21 October 2002. The Committee hopes the Government will provide information on each point raised by the trade union for its examination at its next session.

The Committee is again directly addressing its request for information contained in its previous comments.

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

Honduras

Convention No. 81: Labour Inspection, 1947 (ratification: 1983)

The Committee notes the Government's report, the partial replies to its previous comments and the attached documentation. It draws the Government's attention to the following point.

Article 15(a) of the Convention. With reference to its previous comments, the Committee notes that, under the terms of section 626 of the Labour Code, inspectors who accept presents from employers, workers or trade unions or who exceed the limits of their powers shall be liable to dismissal. In this respect, the Committee wishes to emphasize that, although the obligation of impartiality, set out in *Article 15(a)* of the Convention, includes offers of presents or services from employers or workers, the national legislation should be supplemented so that it also prohibits, in accordance with this provision of the Convention, inspectors from having any direct or indirect interest in the enterprises under their supervision. The Committee hopes that the necessary measures will be adopted rapidly for this purpose and that the Government will soon be able to provide a copy of any text adopted in this respect.

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

Kenya

Convention No. 81: Labour Inspection, 1947 (ratification: 1964)

The Committee notes the Government's brief report, in which it indicates that the information sent in reply to its previous comments will be forwarded as soon as it is available. It hopes that this information will be supplied as soon as possible so that it may be examined at the Committee's next session and that additional information will be included on the following points.

1. *Equipment and working environment of the inspection services.* The Department of Labour's annual report attached to the Government's report describes the main operational difficulties that the various bodies of the labour administration come up against: the inadequacy of means of transport and the problems in maintaining existing means, the lack of computers and the poor working environment of the offices. It emphasizes the importance, for the credibility of the inspection services, of their ability to portray the best possible image to the social partners. The Department of Labour was able to acquire equipment thanks to the technical cooperation project Strengthening Labour Relations in East Africa (ILO/SLAREA). The Committee would be grateful if the Government would state how much of this equipment was allocated to the labour inspection services, indicating its nature and any resulting improvements in the operation of the inspection services.

2. *Labour inspection and child labour.* The Government also sent the final draft of the Ministry of Labour's report: "National Child Labour Policy towards a Child Labour Free Society" which recommends, among other strategies that the inspection services should be reinforced so as to ensure, at the very least and until the objectives sought have been met, that the working conditions of children who are still obliged to work are improved, and that a database on child labour should be established and maintained. It also recommends that the issue of child labour should be incorporated into development plans and that it should be allocated resources in the national budget. The Committee hopes that the Government will provide information on the impact these recommendations have had in practice and on the role that labour inspectors play in the endeavours undertaken by the public authorities to combat child labour in the framework of the IPEC programme, in collaboration with the social partners and non-governmental organizations concerned.

3. *Labour inspection and supervision of working conditions in workplaces located in export processing zones.* Noting that employment has increased significantly in the past three years, particularly in export processing zones, the Committee would be grateful if the Government would provide an indication of the scope of the labour inspectors' powers in the above workplaces and of the means at their disposal.

Convention No. 129: Labour Inspection (Agriculture), 1969 (ratification: 1979)

The Committee notes the Government's brief reports and the information provided in reply to its previous comments. It also notes the legislative documents, the statistics and the annual inspection report.

Transport facilities, discharge of the duties of inspection in agricultural enterprises and preparation of an activity report. The absence of an annual report on the activities of labour inspection in agricultural enterprises would appear to be not only due, according to the Government, to the difficulty of separating the specific data requested from those relating to the inspection activities carried out in other economic sectors. Indeed, the Committee notes that the activities reports required under both this Convention and Convention No. 81, are administrative rather than technical and as such are not the proper tool for assessing the extent to which the legal provisions on working conditions and the protection of workers are applied. These reports are more a reflection of the political, structural and financial difficulties that make it impossible to implement a system of labour inspection. The information provided by the Government shows that the lack of transport facilities is the primary obstacle to the discharge of labour inspection duties, particularly in agricultural enterprises. Travel being materially impossible, labour inspectors are inevitably confined to a limited area, which is hardly conducive to securing farmers' compliance with their legal obligations regarding the working conditions and protection of their employees. Such a situation has particularly adverse effects on vulnerable categories of workers (children, young persons, women and persons with disabilities). For employers to be inclined to comply with the law, they must be aware that they are being supervised by the public authorities and that they might be the subject of a workplace inspection at any moment. Prompt efforts are therefore needed to secure the means to ensure the mobility of the inspectors exercising their duties in the agricultural sector. The production of periodical reports of the activities of the labour inspectors in accordance with *Article 25 of the Convention* is contingent upon this, since such reports constitute the basis for the annual report which should be formulated, published and transmitted to the International Labour Office, in accordance with *Article 26*, and should contain the legislative and statistical information requested in *Article 27*. Referring to paragraphs 272 et seq. of its General Survey of 1985 on labour inspection, the Committee once again draws the Government's attention to the importance of annual inspection reports to an assessment of the extent to which the objectives of the Convention are being achieved. It hopes that the Government will ensure that measures are taken rapidly, if necessary with international financial assistance to put into practice the principle of the mobility which is essential to the performance of labour inspection duties, particularly in agriculture, and that it will provide information to the Office on the developments in this regard.

Republic of Korea

Convention No. 81: Labour Inspection, 1947 (ratification: 1992)

Further to its previous comments, the Committee notes the Government's reports which contain the Government's response to the observations made by the Korea Employers' Federation (KEF) and the Federation of Korean Trade Unions (FKTU).

1. *Information and advice for employers and workers (Article 3, paragraph 1, of the Convention).* In its observations, the KEF expressed the view that the labour inspectors' function of technical information and advice needs to be reinforced through specific training programmes and to be enshrined into the provisions of national law. The Government indicates in its reply that the initial training courses are provided for those just appointed as labour inspectors, and thereafter, mid-level further training courses are operating every year for almost all the inspectors. The Committee notes that, according to the Government, one of the major functions of inspectors is to supply advice to employers and workers, although such function is not provided for in the Regulation on Duties of Labour Inspectors. The Committee requests the Government to provide particulars on the way in which the inspectors' training programmes abovementioned helped them giving advice to employers and workers in practice, and on progress made in this regard.

2. *Collaboration with employers and workers (Article 5(b)).* Regarding the KEF's observations on the necessity of in-depth discussion, coordination and cooperation in managing the Industrial Safety and Health Policy Deliberation Committee (ISHPDC), the Committee notes the Government's reply that the ISHPDC, as a tripartite body, has set mid- and long-term basic plans on industrial safety and health, and that it has deliberated and coordinated major policy issues on that area. The Government adds that under the ISHPDC, a working party has been established, among others, to evaluate the annual programmes linked with the abovementioned basic plans. The Committee asks the Government to supply information on the work of the ISHPDC.

3. *Proportion of women inspectors (Article 8).* Regarding the observations by the FKTU, according to which the proportion of women inspectors is not appropriate since the female workers account for 41 per cent of the entire employees, the Committee notes the information provided by the Government that the number of women inspectors has been on the rise, for example, its proportion increased by 8.3 per cent during the period of 1999-2001, and that the Ministry of Labour has already requested the Ministry of Government Affairs and Home Affairs to increase the number of inspection staff in charge of women's issues at regional labour offices. The Committee hopes that the Government will provide information on any progress made in this respect.

The Committee addresses a request directly to the Government concerning certain points related to other issues.

Convention No. 160: Labour Statistics, 1985 (ratification: 1997)

The Committee notes the Government's report, the partial replies to its previous comments and the attached documentation. It also notes the observation by the Korea Confederation of Trade Unions (KCTU) on the application of the Convention, which was forwarded by the Government.

According to the KCTU, the statistics compiled in relation to *Article 1 of the Convention* on the structure of employees only cover full-time workers, making it difficult to gain any appreciation of the situation of workers employed on the basis of atypical arrangements and of temporary workers and part-time workers with a contract for less than one year. As the proportion of these workers is relatively high and their working conditions very poor, the KCTU considers that statistics on these workers are urgently required to understand their real situation.

With regard to the application of *Article 3*, the KCTU indicates that workers' organizations were not given the opportunity to participate fully in the compilation of statistics on the economically active population and on household income and expenditure, as the meetings are held at the discretion of the Government, on a case-by-case rather than a regular basis. Following its exclusion from the Subcommittee on Social Statistics of the National Statistical Office, the KCTU is still awaiting a reply from the Government concerning the creation of a consultative committee on labour statistics.

Finally, in relation to *Articles 7 and 8*, the KCTU considers that certain statistics concerning atypical workers which are no longer collected should be included in the main survey on the economically active population.

The Committee would be grateful if the Government would indicate its position on the points raised by the KCTU and report any measures adopted or envisaged to ensure a better statistical coverage of all categories of workers, including those employed on the basis of atypical arrangements, in surveys on the wage structure and distribution (*Article 10*) and on the cost of labour (*Article 11*).

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

Luxembourg

Convention No. 81: Labour Inspection, 1947 (ratification: 1958)

The Committee notes with satisfaction the information contained in the Government's report and its "Note to the Government in Council on the reform of the inspectorate of labour and mines" for the joint implementation of a labour inspection system based on the recommendations of the tripartite audit mission prepared and organized by the ILO, and intended to improve the application of the fundamental principles enshrined in the Convention.

Attentive to any changes in the situation, the Committee requests the Government to keep the ILO informed of any new developments.

It is addressing a request directly to the Government on certain points.

Malawi

Convention No. 81: Labour Inspection, 1947 (ratification: 1965)

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

The Committee notes the Government's report for the period ending 31 August 2001.

It also notes the attached tables.

The Committee notes that the Government continues to refer to the lack of financial resources which is hindering the effective operation of the labour inspection services. With reference to its previous observation, in which it noted that the request for ILO technical assistance to strengthen the labour inspection services had been approved, the Committee once again requests the Government to provide information on the action taken for this purpose and its results. The Committee draws the Government's attention to the possibility, where the economic situation of the country does not permit an adequate application of the provisions of the Convention, to have recourse to international cooperation with the support of the ILO, if necessary, to seek the necessary funds.

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

Convention No. 129: Labour Inspection (Agriculture), 1969 (ratification: 1971)

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

The Committee takes due note of the information supplied by the Government in reply to its previous comments. The Committee refers to its observation under Convention No. 81 and asks the Government to provide the information requested concerning *Articles 3(1), 7, 10, 11, 20 and 21* of that Convention, which correspond to *Articles 6(1), 14, 15, 26 and 27* of *Convention No. 129*.

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

Malaysia

Convention No. 81: Labour Inspection, 1947 (ratification: 1963)

The Committee notes the Government's report and the replies to its previous comments. It notes in particular, its indication that the new preventive approach to labour inspection has improved the education of both employers and employees. The Government indicates that dialogue between employers and employees has increased and that many consultations have been held in 2000-02. However, despite the Committee's repeated requests and the Government's promises, no annual inspection report has been received for many years, precluding any assessment of the practical impact of the new preventive approaches, as no data, such as statistics of violations reported and penalties imposed or statistics of cases of occupational disease, is provided. The Committee once again requests the Government to take all necessary measures to ensure, in accordance with *Article 20 of the Convention*, that an annual inspection report containing the information requested under *Article 21* is published and transmitted to the ILO.

The Committee also requests the Government to indicate to which organizations of employers and workers the report has been sent and to transmit any comments made by such organizations, in accordance with article 23, paragraph 2 of the Constitution of the ILO.

Mali

Convention No. 81: Labour Inspection, 1947 (ratification: 1964)

The Committee notes that the Government's report contains no reply to its previous comments but repeats the information supplied in its previous report. It notes that the table of the staff of the National Labour Directorate does not show the human resources of the services that are competent for labour inspection within the meaning of the Convention, and that the text of Decree No. 03-192/P-RM of 12 May 2003 on the organization and operation of the National Labour Directorate contains no specific provisions on the manner in which effect is given to the Convention. The Committee requests the Government to provide a copy of Act No. 02-072 of 19 December 2002 establishing the National Labour Directorate referred to by the Government, and to provide the information which it requested in its previous observation, which read as follows.

Article 3 of the Convention. Noting the information that, being subject to the administrative hierarchy, the labour inspectorate is obliged to bring to the notice of the higher authority any defects or abuses not specifically covered by the legislation, the Committee requests the Government to indicate the manner in which this function is discharged in practice by labour inspectors (*paragraph 1(c)*).

The Committee notes the information concerning the functions discharged by labour inspectors in the fields of conciliation, judicial appeals, arbitration, the protection of workers' representatives and the supervision of employment. It notes in particular that conciliation duties prevail over the inspection of workplaces. The Committee considers that the duties thus entrusted to inspectors to the evident prejudice of their principal functions interfere with the latter within the meaning of *paragraph 2* of this Article and it requests the Government to take the necessary measures to ensure that the further duties entrusted to labour inspectors are not such as to interfere with the discharge of their primary duties or to prejudice in any way the authority and impartiality which are necessary to them in their relations with employers and workers.

Articles 6 and 15(a). The Committee notes with concern that the remuneration of the staff of the inspection services is derisory in comparison with that of officials in the administration of finances and public works and lays inspection staff open to the need to undertake parallel gainful activities, or to the temptation to accepting gratuities when discharging their duties. This situation is in violation of the obligation for inspectors not to have any interest in the enterprises under their supervision and to the necessary authority which is indispensable to discharge the function of inspection. It is therefore necessary and urgent for the Government to take measures with a view to ensuring that labour inspectors and their assistants enjoy remuneration and career prospects that are appropriate to their functions so as to assure that they are independent of any improper external influences.

Article 7, paragraph 3. The Committee notes the Government's indication that it would be utopian to expect training for labour inspectors, which is confined to a grounding in labour law at the National School of Administration, a trainee course in the labour services and participation in a training course at the African Regional Labour Administration Centre (CRADAT). In practice, there is no specialized branch in national colleges, nor training grants or university courses in the field of labour and social security. The Committee cannot overemphasize the importance which should be accorded to the technical and practical training of labour inspectors during their employment so that they can cope with the increasing complexity of their duties and it requests the Government to take the necessary measures to provide them with training in accordance with their needs. Please indicate in the next report the measures which have been taken or are envisaged to this effect.

Articles 10, 11, 12, 13, 16, 17 and 18. The Committee notes the difficulties of a practical nature which occur in the application of the Convention, and particularly the inadequacy of the resources made available to the inspection services, which are described by the Government as being purely symbolic (clearly inadequate staff numbers, working conditions and material resources; dilapidated, undersized, unhealthy and unequipped premises; complete lack of documentation). The Committee notes in particular the irregular nature of inspections, the shortcomings of the public transport system and the absence of any transport facilities for the professional travel of labour inspectors, and of any arrangements for the reimbursement of their travelling and incidental expenses. The Government also indicates that the derisory level of fines for violations of the labour legislation means that it is of no avail to take the relevant measures. The Committee notes that it is the Government's own opinion that the application of the Convention depends on the political will to accord the world of work an appropriate priority with the objective of economic and social development. The Committee therefore trusts that measures will be taken in the very near future, where

necessary calling upon international cooperation and the technical assistance of the ILO, to establish the conditions required for the effective organization and operation of a system of labour inspection benefiting from appropriate resources, in which inspectors are in a position to make effective use of the powers entrusted to them by the above provisions of the Convention.

Articles 19, 20 and 21. With reference to its previous comments under these Articles, the Committee notes the indication that the Regional Labour Directorates are obliged to prepare quarterly or annual reports on their activities, which they submit to the National Labour Directorate. The Committee once again requests the Government to provide information on the progress achieved with a view to the compilation by the Central Labour Inspection Authority, on the basis of these regular reports, of an annual general report on the activities of the labour inspection services, and its transmission to the ILO.

Mauritania

Convention No. 81: Labour Inspection, 1947 (ratification: 1963)

With reference to its previous comments, the Committee notes the Government's report and the attached documents. It notes that, three years after the date announced by the Government in an earlier report, and following the discussion in the Committee on the Application of Standards in the International Labour Conference in June 2000, the specific conditions of service of labour inspectors have still not been adopted. It also notes with concern the information contained in the reports of the activities of the regional labour inspectorates concerning their lack of the human, material and logistical resources indispensable for their operation. The maintenance, rent and provision of water and electricity for the premises, which are generally old, short of office furniture and devoid of user reception facilities, are not covered in the labour administration budget, but depend on the assistance provided by the community or the *wilaya*. The lack of vehicles precludes any professional travel by inspectors to areas liable to inspection and far from their offices. Moreover, due to the lack of office and security staff, inspection services are closed to the public during the absence for professional reasons of the sole labour inspector. Furthermore, the confidential nature of certain information cannot be guaranteed, in accordance with *Article 15(b) and (c) of the Convention*, as the typing of inspectors' correspondence is entrusted to third parties. The number of inspections is, under these conditions, derisory with relation to needs, which are not even quantified, as there is no register of workplaces. For example, the Gorgol inspectorate, covering three *wilayas*, only carried out eight inspections in 2002.

The Committee notes with interest the concern expressed in one of the activity reports to develop workers' education and familiarize employers with a view to fostering a harmonious social climate, and that the attention of the competent authority was drawn to the legal shortcomings which, in the labour inspector's view, are responsible for situations that are prejudicial to workers and to a case of confusion relating to the initiation of legal proceedings by the labour inspectorate.

The Government indicates in its report that the Convention is applied in accordance with the legislative provision and regulations that are in force and that the employers' and workers' organizations to which the report has been transmitted have made no observations concerning the application of the Convention. The Committee notes that, in one of the regional reports on the work of the inspection services transmitted by the Government, the relations between the labour inspectorate and the regional structure of the General Confederation of Mauritanian Workers (CGTM) are marked by conflicts and a climate of intimidation, while the other trade union structures have never contacted the labour inspection services concerned. The Committee is bound to remind the Government of the obligation, by virtue of the ratification of the Convention, to adopt all the necessary measures to apply its provisions, in both law and practice, with a view to achieving its primary objective, namely compliance with the legal provisions relating to conditions of work and the protection of workers enforceable by the labour inspectorate in the industrial and commercial workplaces liable to their inspection.

Being aware of the Government's difficulties in achieving the conditions necessary for the application of the Convention, the Committee nevertheless notes that international cooperation projects for the reinforcement of the labour administration have been launched, but that, according to the Government's reports to the ILO under the Declaration on Fundamental Principles and Rights at Work, the inadequacy of the human and financial resources of the labour inspectorate constitutes a major obstacle to its discharge of its supervisory duties in such fields as child labour and wage discrimination. The Committee hopes that, in the framework of these projects, an appropriate share of resources will be allocated to assessing needs and reinforcing the labour inspection system with a view to progressively extending its supervisory, advisory and information services and contributing to the improvement of the legislation, as envisaged by the Convention. The Committee emphasizes the importance of tripartite collaboration in this respect and hopes that the Government will not fail to adopt measures rapidly for its promotion, in accordance with *Article 5(b)* of the Convention, and that it will be in a position to announce in its next report the adoption of the specific conditions of service of labour inspectors, in accordance with the provisions of *Articles 6 and 7* of the Convention, and the legal provisions conferring upon labour inspectors the powers set forth in *Articles 3, 9, 12, 13, 17 and 18* of the Convention and requiring compliance with the obligations set forth in *Articles 15, 16 and 19*.

Mauritius

Convention No. 81: Labour Inspection, 1947 (ratification: 1969)

The Committee notes the Government's report, the partial replies to its previous comments and the attached documents. In particular, it notes with interest the information on the results of inspection activities for the period June 2001 to May 2003 in export processing zones, in which many workers are employed, and in enterprises employing child workers.

Working conditions of labour inspectors. With reference to its previous comments, the Committee notes with interest the documents provided demonstrating the acquisition in recent years of various types of personal protective equipment for health and safety inspectors.

Conditions of service. Further to its previous comments, the Committee notes that the table comparing the wages of the categories of accredited inspectors with various institutions shows that an important difference to the detriment of health and safety inspectors. The Government is asked to indicate whether measures have been taken to compensate for this difference, such as special allowances or bonuses, in view of the complexity of their duties from both a material and human point of view.

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

Morocco

Convention No. 81: Labour Inspection, 1947 (ratification: 1958)

The Committee notes the information sent in reply to its previous comments. In particular, it notes with interest the information on the number and distribution of enterprises and the workers employed in them, the statistics of infringements recorded, the observations addressed to those found to be in breach of the legislation covered by the inspectorate and the inspectors' reports submitted to the courts. The Committee notes that it has not been possible to supply the statistical information it requested concerning the results of child labour inspection because no suitable computer system is available, and that to create such a system assistance from the International Labour Office would be appropriate.

Studies conducted in the course of the research project on child labour in Morocco set up by the ILO in cooperation with UNICEF and the World Bank, have produced some figures on child labour broken down by extent, geographical and sectoral distribution and gender. The studies also show that the difficulties of supervising child labour arise largely because the labour inspectorate is understaffed and inspectors lack authority.

The Labour Code recently adopted by the Chamber of Councillors and the Chamber of Representatives should, according to the Government, come into force in the near future. The Committee hopes that a copy of the Code will soon be available so that, at its next session and in the light of the new provisions and the developments in the labour inspection system, it will be in a position to assess the extent to which this Convention is applied in law and in practice.

The Committee is addressing a request directly to the Government concerning another matter.

Convention No. 129: Labour Inspection (Agriculture), 1969 (ratification: 1979)

The Committee notes the Government's reports, its partial answers to its previous comments and the attached legislation and documentation. It notes with satisfaction the ministerial circular to various structures and the labour and labour law inspectors in agriculture requesting them to pay special attention to the enforcement of child labour legislation and to report in detail to the Ministry on the procedures followed, the number of enterprises inspected and the measures taken. Noting that, according to the Government, the Labour Code adopted in July 2002 contains provisions relating to the working conditions of children and the powers of labour inspectors in this respect, the Committee hopes that future annual inspection reports will provide detailed information on inspection activities and their results in this area and in the context of the new legislation.

The Committee also notes with interest the participation of three agricultural labour inspectors in a three-day training session at the Damas Arab Institute on occupational health and safety in the agricultural sector which, according to the Government, will be followed by other sessions. It is to be hoped that this type of training will contribute to the establishment of the practice of the notification of inspectors of cases of occupational disease and will facilitate the association of inspectors with any inquiry on the spot into their causes, in accordance with *Article 19 of the Convention*. The Government is asked to provide information on any progress made in this respect.

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

Mozambique

Convention No. 81: Labour Inspection, 1947 (ratification: 1977)

Further to its previous comments, the Committee notes that the activities of the labour inspectorate are still very limited, the lack of transport facilities and financial resources being the main obstacles to qualitative and quantitative

improvement in the inspection services. According to the Government, matters are made even worse by the lack of any career prospects for inspectors and the humiliating treatment they receive at the hands of economic operators. The Government further indicates that budgetary constraints have prevented the recruitment and training of labour inspection candidates. Nevertheless, between January and May 2003, inspections were carried out in 1,385 establishments, mostly located in the provincial capitals, accounting for some 23 per cent of visits scheduled for that year. Referring to a previous report in which the Government stated that in most provinces workplaces are often anywhere from 50 to 400 kilometres away from the provincial capital, the Committee would be grateful if the Government would provide detailed information, by province, on the average number of workplaces inspected annually, and specify the proportion of commercial or industrial undertakings classified as harbouring a risk to the health and safety of workers.

The Committee would be grateful if the Government would provide information on the content and length of the course, referred to in the report, on child labour held for inspectors in a number of provinces and on the measures taken to develop inspection activities to combat illicit child labour, their results and the main difficulties encountered.

Noting that the Government makes no mention of having taken steps, as was proposed, to obtain the financial and technical assistance needed for the quantitative and qualitative enhancement of human and material resources or the labour inspection system, the Committee trusts that it will be in a position to do so in its next report and that the conditions needed for more effective application of the Convention will soon be met and reported to the Office.

Netherlands

Convention No. 81: Labour Inspection, 1947 (ratification: 1951)

The Committee notes the Government's report, the annual inspection report for 2001 and the attached report of the Netherlands Advisory Council on International Affairs for the same period.

The Committee notes with interest that, under the terms of the 1998 Working Conditions Act, which empowers labour inspectors to impose administrative fines based on a published list corresponding to the various types of violations of the law, penalties can be adapted so that they are adequate, within the meaning of *Article 18 of the Convention*. Fines are increased for repeat offenders and the size of enterprises is also taken into account in setting the level of the penalties. According to the Government, this administrative procedure has the positive effect of substantially decreasing the workload of the courts, and the inspection report for 2001 shows a significant increase in financial penalties in relation to the previous year and a subsequent doubling in the corresponding budget item.

The Committee also notes, in relation to *Article 5(b)*, which provides that the competent authority shall make appropriate arrangements to promote collaboration between officials of the labour inspectorate and employers and workers or their organizations, that the Cabinet and the Labour Foundation have invited employers and workers to enter into agreements to improve working conditions and, as a consequence, reduce the number of people receiving invalidity benefit.

Among other measures to guarantee safety and health at high-risk workplaces, the Government refers to the entry into force of the Decree of 1999, under which high-risk enterprises have to draw up a safety report, and which gave rise to the establishment throughout 2001 of the coordination machinery required for this purpose between the competent bodies concerned.

Finally, the Committee notes that the labour inspection services continue to take action to combat child labour and reported violations relating to both the employment of children between 13 and 15 years of age and the obligation of the employer to provide information and instructions concerning work-related risks.

The Committee would be grateful if the Government would continue providing information on any new measures taken to give effect to the provisions of the Convention, and the impact of such measures on the degree to which the labour legislation on conditions of work and the protection of workers while engaged in their work is applied.

Niger

Convention No. 81: Labour Inspection, 1947 (ratification: 1979)

The Committee notes the Government's report and the information provided in reply to its previous comments.

The Committee notes that, according to the Government the operation of the inspection services, like that of other administrative bodies of the State, was affected by a lack of resources and the severe restrictions that had to be imposed on recruitment in order to meet the objective of controlling the wage bill. Nevertheless, expectations are high that the state budget for 2004 will bring about improvements for labour inspection services, particularly with regard to human resources. The Committee would be grateful if the Government would provide information on any changes made by the forthcoming budgetary decisions to the portion of the budget allocated to labour inspection and on how that allocation is spent, with a view to reinforcing the human and financial resources as well as the logistical means required to perform the functions envisaged by the Convention.

The Government is asked to provide detailed information on the composition of the labour inspectorate staff (inspectors, supervisors, administrative personnel) and on its geographical distribution; on the transport facilities (public transport, vehicles, two-wheeled vehicles) at the disposal of inspectors for carrying out the supervision of legal provisions related to working conditions in the workplaces liable to inspection as well as the arrangements made to refund to inspectors any expenses they incurred in the performance of their duties (*Article 11*).

Lastly, the Government is asked to provide information on the number of inspectors who participated in training seminars or workshops organized by the ILO and on the length and content of the training given as well as its impact (*Article 7*).

Norway

Convention No. 81: Labour Inspection, 1947 (ratification: 1949)

The Committee notes the Government's report and the annual report of inspections for 2002 as well as the attached report on the activities of labour inspection in the Oslo region for the same year. The Committee notes with interest the contribution of research institutions to identifying the needs and priorities of labour inspection, as well as the manner in which the cooperation provided under *Article 5(a) of the Convention* is being developed between the inspection services, on the one hand, and the various government services and departments engaged in similar activities, on the other hand. In this respect, it notes that a joint database on occupational health and safety has been created with the Directorate for Fire and Electrical Safety, the Industrial Health and Security Organization and the Pollution Control Authority in order to ensure the rational coordination of their respective activities, and that a framework for cooperation at the local and regional levels has been established between the labour inspection services and county employment centres in order to exchange information and explore opportunities for joint action. Noting the Government's statement on the reinforcement of inter-institutional collaboration targeting certain enterprises in particular, the Committee would be grateful if the Government would provide information on the various forms of this collaboration and its impact on the results of inspection activities.

Convention No. 129: Labour Inspection (Agriculture), 1969 (ratification: 1971)

The Committee notes the information provided by the Government in reply to the comments made by the Norwegian Federation of Trade Unions (LO) of January 2001 concerning the downsizing of the staff of labour inspection in agriculture and its consequences on the working environment and the manner in which occupational safety issues are addressed in this sector. According to the Government, this reduction is a consequence of the decline in the number of farms, which are also subject to inspection in relation to occupational hazards by other labour inspector experts with competence in the various sectors.

The Government also refers to the active cooperation, through training courses and the dissemination of information on accident prevention, of the farmers' organization and indicates the establishment by the Norwegian Agriculture Cooperation and client companies of farms of a mandatory quality management system, including occupational health and safety aspects.

The Committee would be grateful if the Government would provide a copy of any document relating to the above quality management system and of any legal text by virtue of which health and safety issues in farms are covered by specialized inspectors outside the agricultural labour inspection services.

Pakistan

Convention No. 81: Labour Inspection, 1947 (ratification: 1953)

The Committee notes that the Government's report has not been received. It is therefore bound to reiterate its previous observation which was made in the following terms:

Legislative amendments. With reference to its previous comments on the observations made in 1994 by All Pakistan Federation of Trade Unions of Pakistan (APFTU) especially with regard to the urgent need for a revision of a few laws which were no longer relevant, the Committee notes with interest the information contained in a presidential press release dated 30 April 2001, by virtue of which the amendment of a few legislative texts were adopted. The amendments were made to the following Acts: Occupational Accidents Act of 1923; Payment of Wages Act of 1936; Mines Maternity Benefits Act of 1941; Employees Social Security Ordinance of 1965; The Companies Profits Workers Participation Act of 1968; Workers Welfare Fund Ordinance of 1971; and Employees Old-Age Benefits Act of 1976. Recalling the Federation's (APFTU) view that it was equally urgent to review the Factories Act of 1934, the Committee would be grateful if the Government would transmit to the ILO copies of the new texts as well as information on the revision of the Factories Act.

Noting further that a new set of amendments is envisaged, the aim of which is to restructure labour legislation; strengthen the labour judiciary; review the minimum salary; and extend the coverage of labour legislation to agriculture, and other activities of the informal sector, the Committee would be grateful if the Government could continue to provide information on any developments in this field, and to communicate to the ILO a copy of any relevant text.

With reference to its previous comments, and based on the information contained in the aforementioned press release respecting the new legislative provisions, and on the Payment of Wages Act, which indicate that salaried workers whose salary is less than 3,000 rupees are entitled to seek remedy in a court of law to be paid delayed salaries and to dispute unauthorized salary

deductions, the Committee would be grateful if the Government would provide precise information on the application of this law vis-à-vis workers employed in the brick kiln industry and undertakings whose workers are maintained in numbers lower than the threshold level specified in the Factories Act.

Labour inspection and inspection of child labour. Articles 7, 16, 17 and 18 of the Convention. The Committee notes with interest the measures taken to reinforce labour inspection so as to combat child labour efficiently, in collaboration with the International Programme on the Elimination of Child Labour (IPEC). It notes in particular the objectives, the national policy strategy, as well as the plan of action on the intensive training of labour officers, especially labour inspectors. The aim of such a measure is to strengthen the monitoring mechanism in the application of the law through adequate logistical means provided to the competent authorities, and the formulation of monthly reports on the level of application of the legal provisions on child labour. It notes that the Task Force set up to evaluate the situation of child labour has solicited views on the directions of work in each province, with respect to the different elements which could be part of a strategy to combat child labour, and that the provincial governments had set in place training programmes on labour inspectors focusing on government policy and legislation on child labour as well as a robust programme of the labour inspection services in this field. The Committee notes with interest the institutionalization of compulsory primary schooling by the governments of the Punjab, and the North West Frontier Province (NWFP).

Noting that the above national policy and action plan are carried out in collaboration with the social partners, and in cooperation with the various ministerial departments concerned with the problem of child labour and that they involve the undertaking of a number of analytical studies on specific sectors of activity, but equally divided by region, in view of the mobility of working children, the Committee would be grateful if the Government would provide information on the results of the above work, and the measures which have been taken or are envisaged to follow up on the recommendations which transpired. In this regard, the Committee notes that the study on child labour in the carpet industry should have been completed in September 2001.

With reference to its previous observations, the Committee would be grateful if the Government would supply precise information on the role played by labour jurisdictions in combating child labour, and to transmit to the ILO the conclusions which have been so far reached as a result of the adoption of the new measures.

Publication of the annual inspection report and its communication. Noting that the ILO has not received any annual report since the last report covering the year of 1995, the Committee hopes that the Government will ensure that the central inspection authority fulfil its obligation as specified under the Convention, which consists in publishing within the time lines established in *Article 20* of the Convention an annual inspection report containing information on each of the subjects enumerated under *Article 21*. The Committee requests the Government to also ensure that statistics on child labour be regularly included in the annual inspection report.

The Committee hopes that the Government will make every effort to rapidly take the necessary measures.

Furthermore, the Committee notes the communication of the All Pakistan Federation of Trade Unions (APFTU) of 9 July 2003 which emphasizes the need to develop training services not only for labour inspectors but also for workers and points out the possible risks involved in the recent transfer of the functions of labour inspection to the local authorities. This observation was forwarded to the Government in September 2003 so that it may provide the information it may wish to submit in reply for examination by the Committee. It would be grateful if the Government would do so in due course.

Paraguay

Convention No. 81: Labour Inspection, 1947 (ratification: 1967)

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

The Committee notes the observations made by the Latin American Confederation of Labour Inspectors (CIIT) of 20 May 2002. These observations, which are supplementary to those provided by the same organization in 1999, were forward by the ILO to the Government on 22 July 2002. In the view of the organization, the situation denounced in 1999 persists and the operational capacity of the inspection services is continuing to deteriorate. The comments made by the CIIT concern matters relating to the establishment of an inspection system, the functions of the labour inspection system, the status and conditions of service of labour inspectors, their training and activities related to the inspection of workplaces.

Furthermore, the Committee takes note of the Government's report received by the Office on 8 November 1999. It also notes the observations by the Latin American Confederation of Labour Inspectors of June 1999 alleging in particular the inadequacy of the number of inspectors and of inspection visits which are conducted mainly following complaints and not following a pre-established programme, as well as the absence of means of transport and the non-reimbursement of expenses.

The Committee notes that, according to the statistics transmitted by the Government, the number of inspectors (73) and visits (1,005) in 1998 is insufficient if compared to the number of undertakings (30,000) liable for inspection. These statistics show that each inspector carried out an average of 1.15 inspections monthly, that is a decrease of about 30 per cent in relation to 1996 when the number, although low in absolute terms, was higher. The Government acknowledges that the inspection services lack means of transport, but that certain expenses are reimbursed.

The Committee takes note with interest of the manual on labour inspection, approved by resolution No. 159 of 30 April 1998, relating in particular to the functions and powers of inspectors and to the inspection procedures; its annex reflects the text of the ILO Conventions on labour inspection, as well as the essential national provisions. It also notes a document of September 1999 sent by the Government on the preparation of programmed visits. Noting however that the Latin American Confederation of Labour Inspectors refers to the absence of a manual or guide for inspectors, the Committee asks the Government to indicate the measures contemplated to disseminate the above manual among inspectors.

The Committee hopes that the various initiatives taken by the Government will contribute to improving the activities of the labour inspectorate and that it will take the necessary measures to make available to the inspectorate the resources needed to

increase the number of inspectors and the frequency of inspection visits, including programmed visits. It requests the Government to provide information on the progress made.

The Committee hopes that a report will be provided for examination at its next session and that it will contain full particulars on all the points raised.

The Committee is also once again addressing its previous request on other points directly to the Government.

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

Peru

Convention No. 81: Labour Inspection, 1947 (ratification: 1960)

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

Requirement for the central inspection authority to publish and transmit to the ILO an annual inspection report. Several decades after ratification of this instrument no annual inspection report has yet been transmitted to the ILO. The Committee therefore draws the Government's attention once again to the essential nature of the reporting obligation incumbent on the central inspection authority under *Articles 20 and 21 of the Convention*. It accordingly urges the Government to take the necessary steps as soon as possible to ensure that the central authority is in a position to fulfil the obligation. The purpose of publishing an annual report of the kind provided for in these Articles of the Convention is, in particular, to inform at the national level the social partners of the labour inspectorate's activities and how effective they are, so that they may express any relevant views. The transmission of such reports to the ILO constitutes, at the international level, an indispensable basis for the supervisory bodies to monitor application of the Convention as part of a constructive dialogue with the Government.

Furthermore, the Committee notes the comments made by the Association of Labour Inspectors of the Ministry of Labour and Employment Promotion (SIT) concerning the application of the Convention and the information supplied in reply by the Government.

According to the SIT, labour inspection is not a priority for the Government and does not therefore benefit from the necessary support from the public authorities. It adds that the establishment of a trade union by labour inspectors with a view to defending the interests of the occupation has been punished by a series of intimidation measures against its leaders and members.

Functions, status, conditions of service and safety of labour inspectors

According to the SIT, over half of labour inspectors, including the leaders and members of the trade union, have been affected by transfers to other duties and unannounced evaluations which may be assimilated to direct or tacit threats of dismissal. The personal safety of labour inspectors is not guaranteed, as they are not even covered in the event of employment accidents and no measures are taken to collaborate with the forces of order in the event of obstructions to the discharge of inspection duties.

The SIT adds that the direction of the labour inspectorate has endeavoured to dissuade labour inspectors from joining the trade union by indicating tacitly, during a meeting concerning the allocation of training grants, that they would be provided to inspectors favourable to the administration, which did occur in practice.

According to the Government, transfers of labour inspectors are not a new development related to the establishment of the trade union. It indicates that they are dictated by the requirements of the service and, more recently, to respond to the training needs of the labour inspectorate, in accordance with the new policy of the Ministry. Certain inspectors, for example, have been made responsible for examining collective redundancies in state enterprises, public sector bodies and local governments. The Government states that the transfers of inspectors to which the SIT refers were prior to the establishment of the trade union and are not therefore related to it. It adds that the new duties are related to the functions for which the inspectors were recruited and do not therefore jeopardize the principle of the employment stability of inspectors. This employment stability is guaranteed by the nature of their employment relationship, which is covered by permanent contracts in the context of the General Act respecting labour inspection and the protection of workers. In the view of the Government, the dismissal of inspectors is subject to the conditions set out by the Act and is undertaken on the grounds of a grave professional fault.

The Government emphasizes the particular interest of the national directorate of labour inspection for the training of inspectors, particularly in the fields of safety and health in industrial activities, and it refers to a training project in the framework of an annual plan involving the selection of candidates on the basis of their professional qualifications and experience, to the exclusion of any other discriminatory criteria.

With regard to the personal safety of labour inspectors, the Government states that labour inspectors are protected and that the relevant criminal procedures are initiated whenever the situation so requires. In response to the allegation of the SIT that no measures have been taken to ensure the support of the police forces for inspectors in the event of difficulties in the discharge of their duties, the Government states that such support is envisaged in section 7(b) of the General Act respecting labour inspection and the protection of workers and that, in addition, the directorate of the labour inspection recently addressed the relevant communications to police stations.

Human resources, material resources, transport facilities and the reimbursement of travel expenses. The SIT indicates that the lack of support from the central government for the inspection services is reflected in the first place in the derisory nature of the budget allocated to the labour inspection services. It indicates that inspectors are obliged to cover personally their professional travel expenses, the reimbursement of which is subject to a complex and burdensome procedures, including for inspections of distant workplaces. In the view of the Government, these allegations are without foundation, as the labour inspectorate benefits from a legal status and conditions of employment that are such as to guarantee the objectivity and professionalism of its personnel, as well as measures to strengthen the human and material resources of the services, despite the budgetary restrictions and other austerity measures affecting the whole of the public sector. The Government nevertheless acknowledges that Act No. 28034 of 2003 respecting new austerity measures has imposed restrictions on the use of service vehicles, with the labour inspectorate having at its disposal a single vehicle. Nevertheless, according to the Government, it has recently decided to allocate labour inspectors a budget to cover their professional travel expenses, including their accommodation and incidental travel expenses for inspections of distant workplaces. With regard to office equipment, it indicates that it will be a case of the inspection services being allocated a monthly budget. Furthermore, in the context of a project for the modernization of the labour inspectorate, with the support of the ILO Regional Office, the purchase is envisaged of new computer equipment, vehicles and furniture, as well as training at the national and international levels for labour inspectors.

The Committee notes that the numerous documents which the Government indicated as being attached, in support of the information provided in reply to the matters raised by the Organization, have not been received by the Office. It hopes that they will be provided in the near future and that they will permit a complete examination of the situation at the Committee's next session.

The Committee renews its direct request of 2001 to the Government.

Poland

Convention No. 129: Labour Inspection (Agriculture), 1969 (ratification: 1995)

1. The Committee notes with satisfaction the Government's detailed replies to its previous comments and the specific information on the manner in which effect is given to each of the provisions of the Convention both in law and in practice. It notes in particular the recently adopted legislative amendments to reinforce the status and the conditions of service of the labour inspectorate, the cooperative agreements concluded between the labour inspectorate and other bodies carrying out similar functions with a view to making the labour inspection system more efficient, as well as the numerous activities undertaken to offer all agricultural workers, whatever their status, technical advice and information on health and safety at work, with a view to reducing the employment accident rate in the agricultural sector, which is particularly high by comparison with the national rate, as members of workers' families live on farms and are also exposed to specific health and safety risks.

2. The Committee also welcomes the detailed information provided by the Government on the inspection activities undertaken in agricultural enterprises and their results, and on the persons covered in the public and private sectors, disaggregated by sex and indicating the proportion of young workers. This information is presented by branch of agricultural activity and shows the types of inspections and their objectives, the seriousness of the employment accidents and the length of the ensuing sick leave, the number of cases of occupational disease, the types and nature of violations reported, and the measures taken to prevent, punish or eliminate violations.

Portugal

Convention No. 81: Labour Inspection, 1947 (ratification: 1962)

The Committee notes the Government's reports, the replies to its previous comments and the attached documentation. With reference to its previous comments on the absence of statistics on cases of occupational disease in the last annual inspection report, the Committee notes with satisfaction the inclusion of these data in the annual reports for 2000 and 2001. Further to its previous comments on the observations made by the Confederation of Portuguese Industry (CIP) and the General Confederation of Portuguese Workers (CGTP), the Committee notes the information provided by the Government in reply.

The CIP states that it is satisfied with the development of the results of the inspection activities, in particular in the area of child labour; it nevertheless recommends that the inspection activities be directed towards less repressive, and more instructive and informative actions. The CGTP on the other hand considers that the main obstacle to more efficient inspection services is the lack of human and material resources. While commending the significant progress in inspection activities, in particular in the area of child labour, it nevertheless considers that the relevant statistics and inspection reports do not reflect the real situation. Many infringements go unpunished and the number of employment accidents and cases of occupational disease is still high. The CGTP deems that, in order to achieve the desired dissuasive effect, the sanctions imposed should be in proportion to the seriousness of the infringement of the legislation supervised by the labour inspectorate and that by increasing the number of labour inspectors, even during targeted inspection campaigns, it

would be possible to avoid leaving totally unsupervised the areas of labour law and the geographical regions not included in these campaigns.

1. *Labour inspection and child labour.* The Committee notes with interest the intensification of inspection activities to combat child labour in collaboration with other institutions and organizations, such as the “surprise” inspections carried out since 1997 in enterprises considered at risk due to the branch of activity, the number of workers and the economic and social circumstances. It notes that the total number of “surprise” inspections considerably increased, from 1,462 in 1997 to 7,100 in 2001, and that the number of children in an illicit situation per 1,000 inspections decreased from 114.2 in 1997 to 22.4 in 2000. A consultation with the social partners is envisaged with a view to revising the legislation in order to provide that young jobseekers under 18 years of age shall have completed the period of compulsory schooling and shall receive vocational training during the period covered by the employment contract.

2. *Human resources, working conditions and inspection activities (Articles 10, 11 and 16 of the Convention).* The Committee notes that the increase in the number of inspectors is being accomplished through training, internal competitions and recruitment (a training session to recruit 66 new inspectors beginning in September 2001, the creation of an internal competition for 45 posts to train for the career of senior inspector and the exceptional recruitment of 80 new labour inspectors, according to the Government’s report). The number of inspections increased from 32,665 in 1999 to 40,231 in 2001, but the total number of workplaces inspected decreased from 43,589 in 1997 to 29,908 in 2001, although there were significantly more health and safety inspections. The Government also alludes to the renovation and refurbishing with equipment of regional offices to improve the inspectors’ working conditions and the user reception service. A database for the exchange of information between the regional and central services of the General Labour Inspectorate (IGT), and between the IGT and the Institute for the Improvement of the Inspection of Working Conditions (IDICT), has been created. The Government also mentions that a large part of this Institute’s parking area is made available to labour inspectors for their occupational needs, and a small amount is allocated to cover travel expenses incurred in the use of personal vehicles for occupational purposes, and travel vouchers and per diems are provided for the labour inspectors’ incidental expenses when away from their place of residence.

3. *The advisory and informative role of labour inspection (Article 3, paragraph 1(b)).* According to the Government, the labour inspection activities are not limited to enforcement but also include providing technical information and advice, as reflected in the annual inspection reports, indicating a decrease in these services between 1994 and 1999, followed by a slight increase between 1999 and 2001, mainly on the initiative of the inspection services. Furthermore, the information activities have been carried out through the collaboration of the IGT with the activities of the “Citizen’s House” in Lisbon, Porto, Viseu, Setúbal, Braga and Aveiro as an integrated response to the information needs of citizens and enterprises, and through the creation of a working group responsible for the formulation of a project to reorganize the labour inspection information system.

4. *Cooperation with other government services and public or private institutions and employers’ and workers’ organizations (Article 5(a) and (b)).* According to the Government, the IGT carries out inspection activities in collaboration with other services, including the inspection services for social security, finances, immigration and border control, and, in the context of the occupational safety policy, the Government mentions the signing in February 2001, with the social partners, of an agreement on working conditions, occupational health and safety and occupational risk control. In the context of this agreement, an action plan to reduce the number of employment accidents and cases of occupational disease in the most vulnerable sectors is envisaged, as well as a national action plan for prevention; the reactivation of the National Occupational Health and Safety Board; the creation of a prevention observatory, the reinforcement of collaboration between the Centre for Prevention of Occupational Risks and other bodies concerned; the revision of the national lists of incapacities resulting from employment accidents and of cases of occupational disease; the adoption or amendment of specific occupational safety legislation in the sectors most prone to employment accidents; the restructuring of the statistical system for recording occupational accidents and cases of occupational disease and the measures for effective follow-up of cases of occupational disease.

5. *Status and conditions of service of labour inspectors (Article 6).* The Committee notes with interest the adoption of Legislative Decree No. 102/2000 of 2 June 2000 on the status of the General Labour Inspectorate; Regional Regulatory Decree No. 14/2001/A of 22 October 2001 on the status of Regional Labour Inspectorate of the autonomous region of the Azores; and Regulatory Decree No. 32/2002/A of 19 November 2002 on the definition and structure of the careers of the technical inspection personnel of the autonomous region of the Azores.

The Committee requests the Government to continue to provide information on any change in the labour inspection situation and a copy of any relevant texts, including the text which affords the basis in law for granting travel vouchers and per diems to inspectors on mission away from their place of residence, and the agreements signed between the IGT and other organizations and institutions mentioned in the report.

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

Convention No. 129: Labour Inspection (Agriculture), 1969 (ratification: 1983)

The Committee notes the information provided by the Government for the period ending in May 2003, the inspection reports for the years 1999-2001 and the annual report of the regional labour inspectorate of the autonomous region of the Azores. It also notes the texts of Regional Regulatory Decree No. 19/97/M of 25 August 1997 issuing the

regulations of the Regional Inspectorate of the autonomous region of Madeira; Legislative Decree No. 102/2000 of 2 June 2000 issuing the regulations of the General Labour Inspectorate; Regional Regulatory Decree No. 21/2000/A of 27 July 2000 on the staff salary scales of the inspectorate and higher inspectorate of the autonomous region of the Azores; and Regional Regulatory Decree No. 14/2001/A of 22 October 2001 issuing the regulations of the Regional Labour Inspectorate of the autonomous region of the Azores. The Committee further notes the observation made by the General Workers' Union (UGT) sent by the Government on 9 September 2002 asserting that the agricultural sector consisted largely of numerous small enterprises, family businesses in the main, making any type of inspection difficult. Despite efforts to increase the human and material resources allocated to the general inspectorate and to raise awareness among workers, employers and even the regional inspection services, the campaign carried out in the agricultural sector suffered from a lack of continuity. The Union further asserts that, although more enterprises are being inspected, to a large extent at the request of unions, in particular in the areas where the largest enterprises are concentrated and in the sectors requiring special attention (forestry saws), there are still many instances of clandestine work being subcontracted out and performed in unacceptable conditions, over which the inspectorate has no control. The Committee would be grateful if the Government would communicate its views on the problem and indicate the measures taken or envisaged to address the specific difficulties encountered by the inspection system in the agricultural sector.

Article 18, paragraph 4, of the Convention. The Committee notes with satisfaction that, following its repeated comments, section 12(2) of Legislative Decree No. 102/2000 on the General Labour Inspectorate amended the previous legislation by prescribing that labour inspectors shall, prior to leaving the establishment visited, transmit the inspection results both to the employer or employer's representative and to the enterprise's trade union representatives. It nevertheless requests the Government to take measures to ensure that, in the absence of a trade union representative in the agricultural enterprise, the results of inspection are made available to workers' representatives, and would be grateful if the Government would communicate any information on these measures to the Office.

Articles 14, 21, 26 and 27. With reference to its previous comments under these Articles of the Convention, the Committee once again requests the Government to take the necessary measures to ensure that the number of agricultural enterprises liable to inspection and the number of persons employed in these enterprises is regularly included in the annual inspection report together with information on the causes of employment accidents and occupational diseases in the agricultural sector (*Article 27(c), (f) and (g)*).

Article 17. Further to its previous comments, the Committee notes the statement that agricultural installations are not subject to any authorization. Drawing the Government's attention to the risks inherent in certain agricultural activities for the health and safety of workers and their families, the Committee once again requests it to take the necessary measures to adopt legislation ensuring that, in accordance with this Article of the Convention, the labour inspection services in agriculture shall be associated, in such cases and in such manner as may be determined by the competent authority, in the preventive control of new plant, new materials or substances and new methods of handling or processing products which appear likely to constitute a threat to health or safety.

The Committee hopes that the Government will provide the information requested on the content of the training given to labour inspectors in the context of the agreement concluded with the Santarem Higher School of Agriculture and on the number of inspectors receiving such training and the extent of their involvement in the 1999 European campaign on health and safety in agriculture.

The Committee is addressing a request directly to the Government concerning certain points.

Rwanda

Convention No. 81: Labour Inspection, 1947 (ratification: 1980)

With reference to its previous comments, the Committee notes the Government's report in which it undertakes to make every effort to remedy the situation of the labour inspectorate. The Committee recalls that this situation, already characterized by the inadequacy of human resources in terms of both numbers and training, and the precarious nature of financial resources, ran the risk of further deterioration due to the decentralization of the inspection services under the authority of the prefects, as announced by the Government. The Committee therefore awaits the information that the Government is requested to provide concerning the measures adopted with the support of international financing and ILO technical assistance to improve the human and material resources of the inspection services, in accordance with *Articles 10 and 11 of the Convention*, and the maintenance of a central labour inspection authority, in accordance with *Article 4, paragraph 1*.

The Committee notes with satisfaction the legislative amendments made in the new Labour Code adopted by Act No. 51/2001 of 30 December 2001, including: the suppression of the functions of the labour inspectorate in the field of the settlement of collective labour disputes, which took up a significant proportion of the working time of inspectors and prejudiced the authority and impartiality necessary in their relations with employers and workers (*Article 3, paragraph 2, of the Convention*); the inclusion in the staff of the inspectorate by section 168 of a medical expert responsible for the supervision of occupational safety and health (*Article 9*); the powers of injunction conferred upon labour inspectors and the medical expert by sections 170 and 171, in accordance with the Convention (*Article 13*); and the obligation for the judiciary to inform labour inspectors of the action taken on reports of violations (*Article 5(a)*).

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

Sao Tome and Principe

Convention No. 81: Labour Inspection, 1947 (ratification: 1982)

The Committee notes the Government's incomplete replies to its previous comments and the two reports on labour inspection attached thereto.

Article 14 of the Convention. The Committee would be grateful if the Government would take prompt measures to ensure that the labour inspectorate is informed of industrial accidents and cases of occupational disease in such cases and in such manner as may be prescribed by national laws or regulations, and provide relevant information.

Articles 20 and 21. The Committee notes that the inspection reports sent by the Government fall short, both in form and in substance, of the requirements set by the Convention. Drawing the Government's attention to paragraphs 272 et seq. of its General Survey of 1985, in which it stressed the importance of such reports from both a national and international point of view, the Committee once again expresses the hope that the Government will soon be able to report that measures have been taken to ensure that the central inspection authority has fulfilled, if necessary with ILO technical assistance, the obligations laid down by the above provisions of the Convention.

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

Saudi Arabia

Convention No. 81: Labour Inspection, 1947 (ratification: 1978)

The Committee notes the Government's report and the information provided in reply to its previous comments, as well as the attached documents.

It notes with satisfaction the provision of the Schedule of occupational diseases established by Order No. 130 of 1421 (*Hejira*) of the Minister of Labour and Social Affairs.

It also notes with interest the very substantial rise in the number of inspections and workers covered over the past six years, as indicated in the annual report for 1423. This increase can be explained by: the concentration of the inspection services on inspection activities; the extension of the working day of labour inspectors; the participation of certain directors of the inspection services in the inspection of workplaces outside working hours; and the special interest accorded to enterprises employing the most workers, as envisaged in the seven-year plan.

The Committee notes with interest the Government's recommendation to recompense and accord distinctions to the inspection offices that are the most efficient and the measures taken to inspect enterprises which are the most likely to employ children, in accordance with Circulars Nos. 6552 of 18/4/1423, 12591/6 of 14/8/1423 and 158076 of 24/10/1423. The Committee notes that, even though inspections have revealed a low number of cases of child labour, the Government has nevertheless decided to continue to supervise in future the rare workplaces where violations are reported.

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

Sierra Leone

Convention No. 81: Labour Inspection, 1947 (ratification: 1961)

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

The Committee notes that the Government has not submitted a report under article 22 of the Constitution and that it has not replied to its earlier comments. It trusts that, with the return of peace and the normal operation of the country's institutions, it will soon be in a position to do so. While reminding the Government that the ILO's regional bodies can be of technical assistance in the search for appropriate solutions with a view to applying the Convention, the Committee asks the Government to provide all available information on the manner in which effect is given to its provisions in accordance with the requirements of the report form adopted by the Governing Body of the ILO.

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

Sri Lanka

Convention No. 81: Labour Inspection, 1947 (ratification: 1956)

With reference to its previous comments, the Committee notes the Government's replies and the copies of new legislation attached thereto. It also notes the observations made by the Lanka Jathika Estate Workers' Union received on 23 October 2003.

Labour inspection on Child labour. Referring to its previous comments, the Committee notes with interest information provided by the Government that the number of inspectors in charge of issues on women and children has been increased, and that through the intensified inspection activities on child labour, the number of prosecutions also increased from two in 1999 to 42 in 2001.

Improvement of the operation of the labour inspection system. With respect to its previous comments, the Committee also notes with interest information on the significant improvement in the operation of the labour inspection system according to the recommendations by the New Delhi ILO multidisciplinary team: the reorganization and upgrading of the local inspection offices; the establishment of a progress-monitoring unit within the labour inspectorate; review of existing inspection forms to suit the changes in labour standards; the introduction of a multidisciplinary inspection system on a tripartite basis.

It also notes, in the meantime, that from the point of view of the Lanka Jathika Estate Workers' Union, the labour inspection system should be more developed in terms of needs to strengthen the function of supplying technical information and advice to employers' and workers' organizations (*Article 3, paragraph 1(b), of the Convention*); training opportunities and transport facilities for the inspectors (*Articles 7 and 11*); right of free entry of inspectors to workplaces in the export processing zones (*Article 12*); and publication of a separate annual inspection report by the Commissioner General of Labour (*Articles 20 and 21*).

The Committee will examine the information provided by the Government in answer to its previous direct request with any comments the Government may wish to formulate on the issues raised by the Lanka Jathika Estate Workers' Union.

Sudan

Convention No. 81: Labour Inspection, 1947 (ratification: 1970)

The Committee notes the Government's brief indications that the Labour Act is being revised, that all 26 states of Sudan have regional offices and that the labour inspectors appointed for each of the offices have at their disposal the necessary resources, including vehicles, for the performance of their duties. Noting once again that the Government has not responded to its previous comments, the Committee is bound to reiterate them:

The Committee [also] notes the Government's commitment to giving high priority to the issue of child labour. Referring to the information concerning the establishment in the Ministry of Labour of a directorate responsible for working women and children, the Committee would be grateful if the Government would supply a copy of the texts relating to the composition and functions of this directorate as well as information on the practical and legislative measures taken to give labour inspectors the means to ensure effective supervision of the legal provisions concerning working conditions of women and children and the protection of women and children at work.

1. *Reporting obligations.* The Committee hopes that forthcoming reports on the application of the Convention will contain information on any changes and developments in the fields covered. This information should relate particularly to new legislative and regulatory provisions concerning the organization of the labour inspection system as well as those whose application falls under labour inspectors' supervision; on numbers of inspection staff and their geographical distribution; on the material means and transport facilities made available for them to carry out their numerous visits; on the status and working conditions of inspectors; on frequency of inspection visits and the powers with which labour inspectors are invested in relation to the development of industrial and commercial activities and the new occupational hazards they involve.

2. *Annual labour inspection reports.* The annual general labour reports that should be published and communicated to the ILO by the central authorities in compliance with *Article 20 of the Convention* and which contain information on the matters listed in *Article 21* should provide an overview at the national level of the situation and effectiveness of the resources used and enable them to be improved. The purpose of publishing these reports is particularly to make them accessible to employers, workers and their organizations and to elicit their views in a constructive manner. Noting that, according to the Government, legislation is undergoing revision, the Committee would be grateful if the Government would take the necessary measures to ensure that a provision giving effect to the aforementioned Articles of the Convention be adopted and to keep the ILO informed of progress made.

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

The Committee hopes that the Government will make every effort to ensure that the necessary measures are taken in the near future.

Suriname

Convention No. 81: Labour Inspection, 1947 (ratification: 1976)

The Committee notes the information sent in reply to its repeated comments on the measures announced by the Government to give effect to *Articles 14, 15(b), 20 and 21 of the Convention* both in law and in practice.

1. *Scope of the principle of professional confidentiality.* The Committee notes that no measure has yet been taken to extend the scope of the principle of professional confidentiality established in *Article 15(b)* in order to ensure that inspectors are bound by it even after leaving service. The basic trust that must underlie the relationship between labour inspectors and employers cannot be established if employers are not legally protected in a durable manner against any dissemination by inspectors, including after they leave the service, of manufacturing or commercial secrets or operating

procedures which they might have learned during the exercise of their duties. The Committee therefore trusts that, in accordance with the undertaking it has given for many years, the Government will promptly adopt the measures to amend the legislation in order to bring it into full conformity with the Convention on this point, and that the relevant information will be communicated in its next report.

2. *Labour inspection and child labour.* The Committee notes that, despite the Government's undertaking to make its best effort to ensure enforcement by the labour inspectors of child labour legislation, no specific resources have yet been allocated to this task. It trusts that budgetary measures will soon be taken to this end and that the Government will provide relevant information on them.

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

Swaziland

Convention No. 81: Labour Inspection, 1947 (ratification: 1981)

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

Further to its previous comments in which it requested the Government to take measures to give effect to *Article 3(2) of the Convention*, the Committee notes with interest the indication concerning adoption of the Industrial Relations Act No. 1 of 2000 to establish a new industrial dispute resolution mechanism which will be provided by an independent body so that in future labour inspectors will be able to concentrate on their primary duties. The Committee would be grateful if the Government would supply a copy of the full text of this Act to enable it to ascertain the impact on the application of *Article 3(2)*.

The Committee notes with interest the detailed information contained in the 1998 inspection report which includes comparative statistical tables on a number of subjects covering the previous four years and providing indications on the frequency of meetings and the subjects discussed by the advisory boards in respect of the matters covered by the Convention. The Committee notes, however, with concern that the Pneumoconiosis Medical Board has found difficulty in operating because the asbestotic patients concerned are no longer employed and cannot afford to pay the travel costs to attend the Board or to pay for the X-rays needed for re-examinations and therefore die sooner. The Committee expresses the hope that the Government will implement appropriate measures to entrust labour inspectors with the task of identifying the persons concerned and that appropriate solutions will be found to alleviate their poverty and give them the care required by their state of health, if necessary resorting to technical cooperation and international funding with a view to developing social security measures for this purpose.

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

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

Sweden

Convention No. 129: Labour Inspection (Agriculture), 1969 (ratification: 1970)

The Committee notes the Government's reports for the period ending 30 June 2003 and the partial replies to its previous comments, as well as the statistics of employment accidents and cases of occupational diseases in the agricultural sector, hunting and related services, including fatal employment accidents, in 1997-2001. With reference to the information provided by the Government concerning the issues raised previously by the Swedish Employers' Confederation and the Swedish Agricultural Workers' Union, the Committee would be grateful if the Government would provide additional information on the manner in which effect is given to the following Articles.

Article 14 of the Convention. The Committee notes that 20 work environment inspectors operate in ten district inspection services. Please specify whether these inspectors work full time in agricultural enterprises and, if not, indicate their geographical distribution and the portion of their working hours allocated by the district inspection services to the enforcement of the legislation in agricultural enterprises.

Article 21. The Government is asked to specify the number of agricultural enterprises liable to labour inspection and any changes in the frequency of inspections in such enterprises.

Article 6, paragraph 2, and Articles 18 and 22. The Government is asked to provide details of the measures envisaged by the "Safer work with agricultural machinery" project to eliminate the deficiencies in the machinery and facilities posing health and safety risks for agricultural workers, as well as other persons living on farms, and to provide the available statistics on the sanctions imposed or the administrative measures applied, as appropriate.

Syrian Arab Republic

Convention No. 81: Labour Inspection, 1947 (ratification: 1960)

The Committee notes the Government's report and the information it contains in reply to its previous comments, as well as the transmission of the 2001 annual inspection report and the decrees issued in 2001 fixing the minimum age for admission to certain occupations. It takes note with interest of the Circular of 26 April 2001 requesting the regional directorates to provide the labour inspection services with the human resources and the material means which would enable them to carry out the inspections of the undertakings falling within their field of competence, with a view to

supervising the compliance with the recently amended legal provisions concerning the minimum age for admission to employment.

In addition, the Committee notes the information regarding the content of the Order of the President of the Council of Ministers No. 2907 of 2003 regarding the obligation of all public institutions to incorporate into their work regulations general principles in respect of safety and health at the workplace and the working environment. It further notes with interest the information concerning the priority accorded by the Government and the General Confederation of Workers to the question of occupational risks and the measures aiming at raising the workers' awareness both in the public and the private sectors. The Committee would be grateful to the Government for providing a copy of the abovementioned Order as well as information on any cooperation between the inspection services and workers' and employers' organizations with a view to applying preventive measures in matters of work safety.

Finally, the Government is requested to indicate whether the annual report of the Labour Inspectorate concerning agricultural enterprises has been published as provided for in *Article 20, paragraphs 1 and 2 of the Convention*. If this is not the case, the Committee hopes that the Government will ensure that measures are taken to give effect to these provisions so that the social partners concerned are informed of the efforts undertaken to progressively adapt the means at the disposal of labour inspection services to current needs and so that they may also express their views on possible improvements.

Convention No. 129: Labour Inspection (Agriculture), 1969 (ratification: 1972)

The Committee notes the Government's reports, the information sent in reply to its previous comments and the annual inspection reports for 1999, 2000 and 2001. It notes with satisfaction that, further to its request, the Government sent instructions to the directors of social affairs and labour in a circular of 26 April 2001, emphasizing the need to provide the inspection services with the human and material resources they need to inspect the agricultural enterprises under their supervision and requesting them to take measures to secure the inclusion in their biannual activities reports of information relating specifically to inspection activities in agriculture, particularly concerning the protection of workers against occupational risks.

The Government also indicates that most of the provisions of Agricultural Relations Act No. 134 of 1958 are being revised and that the provisions relating to labour inspection envisaged by the draft amendment will give effect to this Convention. The Committee would be grateful if the Government would provide information on any developments in this matter.

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

United Republic of Tanzania

Tanganyika

Convention No. 81: Labour Inspection, 1947 (ratification: 1962)

The Committee notes the information provided in reply to its previous comments.

Articles 11 and 16 of the Convention. The Committee notes with interest that, thanks to the technical cooperation project for the reinforcement of labour relations in East Africa (ILO/SLAREA), the Government was able to make available to the inspection services ten motorcycles, thus improving their ability to travel to the establishments under their supervision. It notes, however, that these were not appropriate for travel in areas containing wild animal reserves and that the Government counts on ILO support in the framework of the above project, to obtain financing for four-wheeled vehicles for this purpose.

Articles 20 and 21. The Committee notes that, due to the persistence of economic constraints and the unattractive conditions of service of labour inspectors, the conditions required for the formulation of an annual inspection report have still not been met. It nevertheless notes the Government's hope that during the implementation stage of the recommendations of the Labour Law Reform Task Force, and with ILO support, more resources will be allocated to the fulfilment of this obligation.

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

Tunisia

Convention No. 81: Labour Inspection, 1947 (ratification: 1957)

1. *Content of the annual inspection report.* The Committee takes note of the annual inspection reports for 1999 and 2000 containing detailed information on the activities of the inspection services and their results. It notes with satisfaction the disaggregated figures for: workers covered, by gender, and indicating the proportion of young persons, apprentices and persons with disabilities; inspections by sector, type of inspection and size of enterprise; violations reported according to type and to area of labour law; results of inspections by type of action taken (notices served on employees and reports submitted to the courts); employment accidents by region, branch of activity and type of injury together with an analysis

of the change in the situation regarding work fatalities in recent years; cases of occupational disease according to type of disease and branch of activity.

2. *Quantitative and qualitative reinforcement of human resources.* The Committee also welcomes the substantial increase in the number of labour inspectors between 1999 and 2000, and for the same period the implementation of training programmes for the advancement of labour inspectors in their career and the holding of ad hoc training sessions, some of which addressed the organization of prevention in construction sites and public works, international occupational health and safety conventions and the labour inspector's role in promoting social dialogue.

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

Turkey

Convention No. 81: Labour Inspection, 1947 (ratification: 1951)

The Committee notes the Government's report and the information provided in reply to its previous comments, particularly on the points raised by the Confederation of Progressive Trade Unions of Turkey (DISK) concerning the application of the Convention. It also notes the communication of the new Labour Act adopted on 22 May 2002, as well as the observation received by the ILO on 22 October 2003 from the Turkish Confederation of Employers' Associations (TISK) concerning the application of the Convention. The Committee requests the Government to provide any explanations that it considers appropriate relating to the points raised by the above organization, so that the Committee can examine them together with information provided in the report.

Uganda

Convention No. 81: Labour Inspection, 1947 (ratification: 1963)

The Committee refers to the discussion in the Committee on the Application of Standards at the 91st Session of the Conference in June 2003, and once again notes with regret that the Government's report has not been received.

In its previous comments, the Committee reiterated its concern that the health, social and economic situation may affect the workers' rights laid down in the Convention. It noted in particular that the decentralization of the labour inspectorate implemented in 1995 with an extensive devolution of functions to local governments had not only aggravated the social situation but was contrary to the Convention. The Committee emphasized that decentralization is incompatible with the requirement that a central authority must be responsible for the supervision and control of the labour inspection system (*Article 4*) and with the national and international objective of formulating an annual report of inspection activities. The Committee invited the Government to refer to the discussion on this matter in its General Survey of 1985 on labour inspection (paragraphs 273 et seq.) and requested it to provide regular information on the actions envisaged to establish a system of labour inspection which complies with the Convention, that is, a system which is under the control and supervision of a central authority and involves the cooperation and collaboration of the social partners and the public and private institutions concerned.

The Committee also noted that the lack of material and logistical means, particularly in transport, of the inspection services in a number of districts made it impossible for inspectors to discharge their supervisory functions in the workplaces liable to inspection, and might encourage employers to neglect their legal obligations with respect to working conditions, including in occupational health and safety matters. The Committee expressed the hope that measures would be taken by the Government, possibly with international assistance, to ensure that the part of the budget allocated to labour inspection was commensurate with the importance of the objectives set by the Convention.

In the Conference Committee of June 2003 the Government undertook to supply relevant information to this Committee. The Conference Committee invited the Government also to provide information showing that it was meeting its obligations, both in law and in practice. Noting that the Government had requested ILO technical assistance, the Committee also expressed the hope that, in collaboration with the employers' and workers' organizations it would take the administrative and financial measures that are essential in order to implement inspection services that meet the requirements of the Convention.

The Committee requests the Government to take the necessary measures as soon as possible with the technical assistance requested.

United Kingdom

Jersey

Convention No. 81: Labour Inspection, 1947

The Committee takes note of the Government's report; the information communicated in response to its previous comments and the report on the activities of the Labour Inspectorate in 2002 with the annexed texts.

The Committee notes with satisfaction the information provided on the activities carried out by the Labour Inspectorate in collaboration with other authorities and bodies in the field of safety and health: the Health Promotion Unit on hearing protection and passive smoking and the safety subcommittee of the Jersey Building and Allied and Trades Employers Federation. The Committee also notes that a code of practice on the safe use of rider-operated lift trucks has been adopted and that the code on ionizing radiations has been revised. Publications on noise in construction and risks relating to the use of cement were issued. It further notes that the inspection service has participated in the development of the strategy of the Council of Safety and Health. Several publications as well as information on the activities of the Labour Inspectorate are accessible through the Internet.

The Committee addresses a certain number of points in a direct request.

Uruguay

Convention No. 81: Labour Inspection, 1947 (ratification: 1973)

The Committee notes the Government's report and the comments made by the Latin American Confederation of Labour Inspectors (CIIT), supplementing the information provided in 1999. It also notes the information provided by the Government to the Conference Committee and that provided to the Office in reply to its previous comments, the matters raised by the CIIT in its additional observation in May 2002, and the attached documents. Finally, it notes the new comments made by the Federation of Workers' Unions (PIT-CNT), supplied by the Government in September 2003.

With reference to the discussion in the Conference Committee in 2002, during which the Government expressed its will to revalue the inspectorate and provided information concerning the increase in the staff of the labour inspectorate and the improvement in the level of remuneration of inspectors over recent years, the Committee notes that, according to the CIIT, the Directorate of General Labour Conditions has been headed by an inspector appointed ad interim for the past six years, while there is no head of the Division of Environmental Working Conditions. The degradation of the inspection system, aggravated by the budgetary restrictions which have limited inspections, is masked by having recourse to the collaboration of officials called upon to carry out a large number of inspections in a small locality for a brief period with the sole aim of increasing the statistics. By reason of the inadequacy of travel allowances for labour inspectors, their duties are restricted to workplaces within a radius of 50 kilometres from the inspection premises and budgetary restrictions have even resulted in a lack of paper. The low level of the salaries of labour inspectors encourages them to engage in parallel employment to the prejudice of their principal duties, while another cause of lack of motivation is the discriminatory wage practices between the various services performing inspection duties. Furthermore, the new burden placed upon the labour inspectorate due to the dissolution of the National Port Services Administration (ANSE) has not been accompanied, as it should have been, by an appropriate strengthening of the infrastructure to allow, for example, inspections at night. Furthermore, as statistics on employment accidents and occupational diseases, and information on their causes, are not published, it is not possible to implement any prevention policy. With regard to the question of organization, this situation is reported to have resulted in the desertion of the inspection services by users who do not find that it responds to their concerns.

1. In reply to the points raised by the CIIT, the Government indicates that the post of director of the Division of Environmental Working Conditions is currently filled and that the head of the General Labour Conditions Division should be filled in the near future by means of a competition. It adds that most of the other matters are related to the economic crisis, that all the officials in all public administrations are also affected by the low level of remuneration, the absence of travel allowances and the inadequacy of material resources. With regard to the fall in the number of complaints lodged by workers, it indicates that this is directly related to the rise in unemployment, which is also a result of the economic crisis.

2. With regard to the possibility for labour inspectors to engage in a parallel occupation, under the terms of section 290 of Act No. 16626, the Government reiterates its remarks to the Conference Committee, namely that a declaration to the competent authority and the prohibition from any intervention as inspectors in matters directly or indirectly related to their private activities is sufficient to ensure the compatibility between the two occupations exercised by labour inspectors. The independence of inspectors is not therefore jeopardized. The Government indicates in this respect that any violations reported have given rise to disciplinary proceedings.

3. The problem concerning the overload of work related to the new responsibilities of the inspectorate in the port sector is reported to be being resolved, as a tripartite working group has been established to improve the effectiveness of the action taken with the collaboration of all the stakeholders concerned.

4. Finally, the Government states that the publication of all statistics on employment accidents and occupational diseases lies within the competence of the State Insurance Fund.

The Committee wishes to emphasize the priority nature of labour inspection for the achievement of social objectives and recalls the possibility, where the economic situation of a country does not allow it to comply adequately with the requirements of a ratified Convention, to have recourse to international financial cooperation with, where necessary, the technical support of the ILO, with a view to the financing and implementation of priority measures for this purpose. It trusts that the Government will take the necessary measures for this purpose and that it will rapidly be in a position to implement, in accordance with the request of the Conference Committee on the Application of Standards,

measures to: (1) re-establish for labour inspectors conditions of service ensuring their independence from any improper external influences (*Article 6 of the Convention*) and enabling them to discharge their duties with the authority and impartiality which are necessary in their relations with employers and workers (*Article 3, paragraph 2*); and (2) strengthen the material, financial and logistical resources that are indispensable for the discharge of their duties, in view of the mobility required of labour inspectors (*Articles 11 and 16*). The Committee requests the Government to provide information on all the measures adopted or envisaged for these purposes and the results obtained.

Furthermore, in an observation forwarded by the Government in September 2003, PIT-CNT refers to problems in the application of the Convention in relation to: *Article 5(b)* (collaboration between officials of the labour inspectorate and employers and workers or their organizations); *Article 6* (status and conditions of service of labour inspectors); *Article 9* (association of experts and technicians with the work of labour inspection); *Article 11* (material and logistical resources of the inspection services); *Article 16* (frequency and effectiveness of inspections); *Article 18* (adequacy of penalties). Reacting to the Government's indication concerning the responsibility of the State Insurance Fund for the notification to labour inspectors of employment accidents and occupational diseases (*Article 14*), PIT-CNT considers that it is nevertheless the responsibility of the Government to take measures to ensure the communication of the relevant information to the inspectorate. The Committee would be grateful if the Government would indicate to the Office its point of view on each of these issues.

Noting that, according to the Government, an annual report on the work of the labour inspection services should soon be drawn up based on the development of the computer system of the statistical unit of the General Labour Inspectorate, the Committee once again expresses the hope that a report of this nature containing information on each of the matters covered by *Article 21* will be published and a copy transmitted to the ILO, in accordance with *Article 20*.

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

Convention No. 129: Labour Inspection (Agriculture), 1969 (ratification: 1973)

The Committee notes the Government's report, the documents appended thereto and the replies to its previous comments, particularly those concerning the points raised in the observations made by the Inter-Trade Union Assembly – Workers' National Convention (PIT-CNT) sent to the Office on 30 September 2002. The Committee also notes that the above organization noted, in an observation on the application of Convention No. 81, received at the Office on 14 October 2003, that there were serious reasons for concern at the effects of the lack of human resources in the labour inspectorate on the number and frequency of inspection visits to monitor workers' safety and health in forestry estates, where working conditions, according to the above organization, are akin to conditions of slavery.

1. *Conditions of service and status of labour inspectors.* With reference to its previous comments and the comments of the Conference Committee in 2002 concerning the application of Convention No. 81, the Committee requests the Government to refer to its observation under *Article 3, paragraphs 2 and 6*, which correspond to *Article 6, paragraphs 3 and 8, of this Convention*.

2. *Human resources, transport facilities, number and frequency of inspections (Articles 14, 15 and 21).* The Committee notes that, according to the information supplied in the Government's report for 2002, the human resources have been bolstered by 11 new labour inspectors and an additional vehicle has been acquired for use in the outskirts of the capital and in the provinces, and that the use of public transport in the capital is free of charge for inspectors on duty travel. It further notes that, according to the Government, all expenses and travel costs required for inspection visits are refunded to inspectors pursuant to Decree No. 67/999. The Committee notes from the same report that visits to inspect general conditions of work are carried out automatically in accordance with a pre-established programme based on the characteristics of each area, in the event of a complaint or when sugar-cane is harvested. Visits to inspect environmental working conditions are not scheduled and are as a rule carried out on an ad hoc basis in rice plantations and forestry estates. Referring to the PIT-CNT's observation on this point, and noting that the Government does not provide complete information on inspection activities in agricultural enterprises, the Committee would be grateful if the Government would indicate the number of agricultural enterprises liable to labour inspection, the number of workers they employ and the number of inspections carried out in them by type and by occupation.

In view of the particularities of the work force employed in forestry estates and the inherent danger in the tasks performed, the Committee notes with interest that in 2000 and 2001 labour inspectors received training with a focus on Decree No. 372/999 regulating working conditions in respect of occupational safety, health and hygiene in the forestry sector. The Committee hopes that the inspectorate will make use of this training in the preventive services it provides to employers and workers. It nonetheless draws the Government's attention to the need to take measures to establish a system for enforcing legal provisions on working conditions in general, and particularly those on workers' health and safety, in all agricultural enterprises, as defined in *Article 1* of the Convention; and to make the financial authorities aware of these matters when the next national budget is drafted. It trusts that as a result of such measures human and material resources will be suitably strengthened to ensure a substantial increase in the number and frequency of inspections in agricultural enterprises. It requests the Government to provide information on any developments in this respect, reporting any difficulties encountered.

The Committee is requested to provide in full the text of Decree No. 67/999, concerning the allocation of travel allowances to labour inspectors, mentioned in the report for 2000.

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

Venezuela

Convention No. 81: Labour Inspection, 1947 (ratification: 1967)

The Committee notes the Government's reports and the attached documents.

Status and conditions of service of labour inspectors. The Committee noted in previous comments that section 1 of Presidential Decree No. 1367 of 12 June 1996 was contrary to the provisions of *Article 6 of the Convention* and requests the Government to take measures to guarantee the inspection staff a status and conditions of service such that it is assured of stability of employment and is independent of any improper external influences. The Committee notes that no measures have been taken to this end and that, under the terms of sections 20 and 21 of the Act of 9 July 2002 issuing the conditions of service of the public service, the confidential nature of the function of labour inspection justifies its discharge by persons who are freely appointed and revoked. As the Committee deems that these provisions also are incompatible with the requirement of stability of employment for labour inspectors stipulated by the Convention, it once again hopes that the Government will not fail to take prompt measures to bring the legislation into conformity with the Convention on this point and to keep the ILO informed of any progress made in this matter.

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

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States with regard to: **Convention No. 81** (*Antigua and Barbuda, Benin, Bolivia, Costa Rica, Grenada, Haiti, Honduras, Republic of Korea, Kuwait, Libyan Arab Jamahiriya, Lithuania, Luxembourg, Madagascar, Malta, Mauritius, Republic of Moldova, Morocco, Netherlands: Aruba, Netherlands: Netherlands Antilles, New Zealand, Nigeria, Panama, Paraguay, Peru, Portugal, Qatar, Rwanda, Saint Vincent and the Grenadines, Sao Tome and Principe, Saudi Arabia, Senegal, Slovenia, Solomon Islands, Spain, Suriname, Swaziland, Tanzania, Tanganyika, Tunisia, United Kingdom, United Kingdom: Gibraltar, United Kingdom: Isle of Man, United Kingdom: Jersey, Uruguay, Venezuela, Zimbabwe*); **Convention No. 85** (*Fiji*); **Convention No. 129** (*Bolivia, Colombia, Costa Rica, Croatia, Denmark, France: New Caledonia, Guyana, Hungary, Italy, Madagascar, Malta, Republic of Moldova, Morocco, Portugal, Serbia and Montenegro, Syrian Arab Republic, Uruguay, Zimbabwe*); **Convention No. 150** (*Belize, Benin, Czech Republic, Democratic Republic of the Congo, El Salvador, Russian Federation, Seychelles*); **Convention No. 160** (*Benin, Bolivia, China - Hong Kong Special Administrative Region, Colombia, Ireland, Republic of Korea, Kyrgyzstan, Tajikistan*).

The Committee noted information supplied by *Poland, Singapore, Spain, Switzerland and United Kingdom: Guernsey* in an answer to a direct request with regard to **Convention No. 81**.

Employment Policy and Promotion

Algeria

Convention No. 122: Employment Policy, 1964 (ratification: 1969)

1. In a report received in June 2002, the Government puts into perspective the various youth employment measures adopted over the years: the implementation in 1997 of a youth employment programme (PEJ); the adoption in 1990 of a system of measures for the vocational integration of young persons (DIPJ); and the establishment in 1996 of the National Youth Employment Support Agency (ANSEJ). It indicates that in recent years the principal measures to combat unemployment and poverty have been based on microcredit and labour-intensive public works. Finally, it refers to a programme to support economic recovery during the period 2001-04, with such recovery appearing essential to reduce unemployment, the rate of which was established at 27.3 per cent in the third quarter of 2001 by the National Statistical Office. The Government finally refers to the reorganization and modernization of the National Employment Agency (ANEM), envisaged during a bipartite meeting between the Government and the General Federation of Algerian Workers (UGTA), held on 13 October 2001. In its previous comments, the Committee expressed its concern over whether “an active policy designed to promote full, productive and freely chosen employment” was effectively pursued “as a major goal” and “within the framework of a coordinated economic and social policy” (*Articles 1 and 2 of the Convention*). It trusts that the Government will provide information in its next report to demonstrate that the measures adopted or envisaged in the fields of investment policy, fiscal and monetary policies, industrial and regional development policies and prices, incomes and wages policies contribute to the achievement of the objectives set out in the Convention. It would also be grateful if the Government would provide information on the measures adopted to respond fully to the demand for jobs from underprivileged categories of workers, and particularly women, young persons, workers affected by natural disasters or enterprise restructuring, and persons with disabilities.

2. The Committee regrets that the Government has not provided the information requested in the report form on the manner in which the consultations with the representatives of the persons affected, as required by *Article 3* of the Convention, are ensured in practice. It is bound to emphasize once again the importance that it attaches to full effect being given to this essential provision of the Convention, particularly in a situation of very high and persistent unemployment.

3. Finally, the Committee refers to the observation that it is making this year concerning the Human Resources Development Convention, 1975 (No. 142), the application of which can contribute to the employment promotion objectives set out in Convention No. 122. It trusts that the preparation of a full report on Convention No. 122 will provide an opportunity for the Government and the social partners to evaluate the measures adopted to achieve the objective of full, productive and freely chosen employment. It reminds the Government that it may request the technical assistance of the Office for the implementation of an active employment policy within the meaning of the Convention.

Argentina

Convention No. 88: Employment Service, 1948 (ratification: 1956)

The Committee notes with regret that the Government’s report has not been received. It is therefore bound to repeat its 2002 observation, which read as follows:

In a communication received in June 2002, the Government refers to the serious economic and financial crisis, which has resulted in a lack of external and internal credit, the paralysis of banking activities and the growth of unemployment as a result of the closure of enterprises and its impact on the labour market. In its observation of 2001, the Committee noted the continued deterioration in the employment situation and reiterated the need to ensure the essential function of employment services to achieve the best possible organization of the employment market, including adopting them to meet the new needs of the economy and the active population (*Articles 1 and 3 of the Convention*). The Committee requests the Government to provide the statistical information available in published annual or periodical reports concerning the number of public employment offices established, the number of applications for employment received, the number of vacancies notified and the number of persons placed in employment by such offices (*Part IV of the report form*).

Articles 4 and 5. In reply to the comments that it has been making for many years, the Government stated that it has not taken measures to establish advisory committees. The Committee once again emphasizes the importance, in a context such as the one referred to above, of the cooperation of the representatives of employers and workers, through advisory committees, in the organization and operation of the employment service and in the development of an employment service policy. The Committee expresses the firm hope that the Government will be in a position to indicate in its next report that advisory committees have been established and are capable of operating so as to give full effect to the abovementioned Articles of the Convention.

[The Government is asked to reply in detail to the present comments in 2004.]

Cyprus

Convention No. 122: Employment Policy, 1964 (ratification: 1966)

The Committee notes the detailed information contained in the Government's report for the period ending 31 May 2002.

1. *Articles 1 and 2 of the Convention.* The Government indicates that GDP grew for the fourth consecutive year reaching 4 per cent in real terms in 2001. The fiscal records recorded a marginal rise to 2.8 per cent of GDP while the rate of inflation slowed to 2 per cent and the current account deficit was reduced to 4.3 per cent compared to 5.2 per cent in 2000. Despite poor global economic conditions, external demand for goods and services expanded by 4 per cent in real terms. Registered unemployment decreased, going from 3.4 per cent of the economically active population in 2000 to 3 per cent in 2001. The Government states that Cyprus enjoys "full employment" conditions and that unemployment is low even among vulnerable groups, such as women, youth, recent university graduates and older workers. The Committee notes this information with interest and wishes to continue to be informed of developments in employment levels and trends for the population as a whole as well as for specific groups of workers.

2. The Government states that it is pursuing an active employment policy modelled on the European Employment Strategy and has adopted a Strategic Development Plan 1999-2006 that introduces an integral approach to stimulating employment through active and coordinated cooperation among economic, educational and financial partners. The Committee notes the various measures the Government has taken to promote employment, including modernizing the labour market, improving skills match, updating the training system, and establishing targeted programmes for women, young jobseekers, and the long-term unemployed. It also notes the Government's statement that in conjunction with the European Commission, it is in the process of preparing an employment policy review with conclusions on the outcomes of the various labour market measures and programmes. Please continue to provide information on any further developments in this matter, including copies of the main findings of policy and programme evaluations when they become available.

3. *Article 3.* With reference to previous comments, the Committee would appreciate receiving more detailed information on the Labour Advisory Board and the functioning of this body in relation to the matters covered by the Convention. Please also continue to provide information on how representatives of workers, employers and other persons affected by the measures taken are consulted concerning employment policies, with a view to taking fully into account their experience and views and securing their full cooperation.

El Salvador

Convention No. 122: Employment Policy, 1964 (ratification: 1995)

1. *Article 1 of the Convention.* With reference to its 2001 observation, the Committee notes the full and detailed report from the Government received in December 2002. The Government indicates in its report that, with the support of the multidisciplinary advisory team of the ILO Area Office, it has been possible to implement programmes to take up the challenge of reconstruction following the earthquakes which hit El Salvador in January and February 2001. The Government refers in particular to the Rural Employment Reactivation Programme which, in addition to rehabilitating 941,409 jobs during the period January-June 2001, made it possible to reconstruct infrastructure damaged by the natural catastrophes. The Government also refers to its strategy for the creation of jobs through an increase in exports that will result from the new free trade agreements concluded with its principal trading partners. In the context of these policies, it is envisaged that total employment in the export sector will reach 405,000 jobs by 2005. The Committee hopes that in its next report the Government will include information on the actual results achieved in terms of the creation of productive employment through these measures. The Committee also asks the Government to provide information on the restructuring of the economy and on labour market programmes carried out with a view to matching labour supply and demand so as to ensure that the categories of workers affected by such structural transformations and changes in international trade can enter and remain in the labour market.

2. *Article 2.* The Government confirms, through the statistics compiled and supplied, that despite the macroeconomic discipline achieved, the underutilization of human resources continues to affect development prospects in El Salvador. The Committee notes with concern that underemployment, which affects around one-third of the active population, particularly occurs in rural areas, giving rise to poverty and encouraging rural-urban migration. The occurrence of underemployment in urban areas is reflected in the increase in urban informal activities and the rise in urban poverty. In this respect, the Committee would be grateful if the Government would provide information in its next report on the phenomenon of underemployment in El Salvador. The Committee also trusts that the Government will continue to give priority in its development plans to an active policy designed to promote full, productive and freely chosen employment.

3. *Article 3.* In November 2002, the Office forwarded to the Government the observations made by the Inter-Union Commission of El Salvador (CIES) claiming, among other matters, that the Government did not have an employment policy and that the abolition of the Ministry of Planning and Coordination of Social Development had made it difficult to obtain technical resources for the preparation of development and employment policies. It added that workers'

organizations were not taken into account or consulted in the formulation of an employment policy. The CIES also states that the private sector is not taking action to create jobs and that in view of the economic slowdown, its sole and immediate response has been the dismissal of workers so that firms can be competitive. The Committee also takes due note of the comments received from the Government in December 2002 in relation to the observations of the CIES. The Government refers once again to the measures taken in the framework of the Rural Employment Reactivation Programme and the expectations for the creation of employment in the export sector. The Ministry of Labour and Social Insurance is developing a national employment plan in coordination with various public and private institutions at the national level. It refers to labour market studies on the impact of the vocational training programmes implemented by the Salvadorian Vocational Training Institute (INSAFORP). The Government acknowledges that the continued valuable support provided by the ILO through various programmes and projects (strengthening social dialogue, the management of employment, strengthening labour inspection, eradication of child labour, modernization of the Ministry of Labour) has contributed to El Salvador being one of the seven countries in Latin America that have made progress in relation to decent work. The Committee recalls that *Article 3* of the Convention provides that the measures to be taken in relation to employment policy should take fully into account the experience and views of the representatives of employers' and workers' organizations with a view to securing their full cooperation in formulating and implementing the employment policy. The Committee trusts that in its next report the Government will be able to provide further details on the efforts made to hold the consultations required by this important provision and will also indicate the manner in which the views of the representatives of persons affected by employment policy measures, including the opinions of representatives of those working in the rural sector and the informal economy, are taken into account so as to ensure that the objectives of the Convention are being achieved.

4. In a direct request on the application of the Human Resources Development Convention, 1975 (No. 142), the Committee refers to matters relating to the coordination of education and vocational training policies with prospective employment opportunities.

Georgia

Convention No. 122: Employment Policy, 1964 (ratification: 1993)

1. The Committee notes the Government's first report on the application of the Convention. From the information contained in this detailed report, it notes that the establishment of a socially oriented market economy is a priority for the social and economic development of the country. It further notes that the 2002-03 Programme of Cooperation between the ILO and the Government of Georgia states that at the time of elaboration of the state employment policy and of planning the concrete measures according to this policy, the ILO and social partners in Georgia will be guided by the principles and regulations of Convention No. 122. Employment also figures as the first of the measures to be implemented by the Ministry of Health, Labour and Social Protection in the Matrix of Social and Economic Policy of the 2000 Poverty Reduction and Economic Growth Programme (PREGP) of Georgia. The Committee would appreciate continuing to receive in the Government's reports further indications on the design of an active policy designed to promote full, productive and freely chosen employment (*Article 1, paragraph 1, of the Convention*). Please also provide information on the effects noted or expected on employment as a result of implementation of the PREGP of Georgia.

2. *Article 1, paragraph 3, and Article 2(a) of the Convention*. In its report, the Government recognizes the distortions in the labour market and the difficulties confronting it. The share of the Georgian population below the poverty line reached 60 per cent in 1999, with more than 2.5 million citizens living on less than US\$2 per day. The high level of unemployment contributes to the high poverty rate. The Committee asks the Government to provide information in its next report on decision-making procedures and on employment policy measures, and on how they are reviewed regularly within the framework of a coordinated economic and social policy.

3. The Committee trusts that the Government will also provide in its next report information on regional or local employment programmes implemented with a view to promoting full employment. Please provide information on the impact on employment of the modernization of the transport system, and legislative measures taken in order to encourage entrepreneurship and reintegration to the labour market of the workers affected by privatization. Please also include information on the promotion of productive rural employment.

4. *Article 3*. The Government provides information in its report on the establishment of a National Employment Council whose functions would cover, among others, providing an expert opinion and initiating national, regional, special and sectoral employment programmes. A special commission has been set up, and has started functioning within the Ministry of Labour, whose functions include the conclusion of general and sectoral agreements between the social partners. The Government states its attachment to relations and active cooperation between the social partners. The Committee would appreciate receiving more details on the National Employment Council. Please also indicate how the social partners and other persons concerned are involved in the process of the elaboration and implementation of the PREGP.

5. *Collection and analysis of statistics*. The Committee notes that, according to data from the State Department of Statistics, the unemployment rate in Georgia reached 12.6 per cent in September 2000. The number of people registered in the unemployment centres reached 116,900, which represents a 13.8 per cent increase over the previous year. It further

notes that regular publication of statistical data and materials is envisaged by the Employment Act. In its report, the Government regrets that no systematic study of the labour market in Georgia has been undertaken so far either for the country as a whole or at a regional level. The Committee recalls that the collection of data and analysis of the labour market should be the basis for the formulation of employment policy, which should be decided and kept under review within the framework of a coordinated economic and social policy. The Committee hopes that in its next report the Government will further describe measures taken in this respect.

6. *Education and training.* The Committee refers to its 2003 direct request on the application of the Human Resources Development Convention, 1975 (No. 142), and requests the Government to include in its next report information on measures adopted to coordinate education and training policies with prospective employment opportunities.

7. *Employment service.* The Government indicates in its report that the operation of the employment service was transferred in full to the Central State Employment Fund. The Committee would appreciate receiving in the Government's next report information on the operation of the Central State Employment Fund and the impact of the employment services to provide assistance to job search, training and retraining or public work programmes for unemployed workers.

8. The Government indicates in its report that the current economic crisis has been so profound and comprehensive that it has resulted in a wide gap between workforce supply and demand. It also reports that there has been massive emigration (with 800,000 persons emigrating, mostly to the Russian Federation) such that the country is losing highly qualified specialists of prime working age. Because of emigration, the number of those who join the workforce each year is decreasing: the labour force in 1991-98 declined from 3,161,000 to 3,034,000, with the number of men dropping by 7 per cent while the number of women dropped by 1.5 per cent. Women workers now make up 51.8 per cent of the labour force. The gender and age structure of the economically active population, its professional and qualification composition and the pattern of mobility have all been distorted. The Committee refers to its 2002 direct request on the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and requests that the Government refer, in its next report on the application of Convention No. 122, to the measures taken to promote employment of vulnerable categories of persons (such as women, migrant workers, unqualified workers and self-employed persons).

Guinea

Convention No. 122: Employment Policy, 1964 (ratification: 1966)

1. The Committee notes the report received in June 2003, which in some respects is similar to the Government's previous report. In its observation of 2001, the Committee noted that employment promotion was among the Government's priorities and that a national employment policy was still in the process of being drawn up. It noted that a programme entitled "Component of the formulation of the national employment policy (CFPN)", a steering committee and a National Employment Promotion Agency (AGUIPE) had been established, and that a framework document for employment policy had been prepared with ILO assistance. The Committee further recalls that in February 2000 the World Bank and the International Monetary Fund were of the view that Guinea could apply for a debt reduction plan under the Heavily Indebted Poor Countries (HIPC) initiative. It once again asks the Government to provide information in its next report on the measures taken as a result of the assistance received from the ILO in relation to employment policy, and to indicate any particular difficulties that have been encountered in achieving the established employment objectives, in the framework of a coordinated social and economic policy and in consultation with the representatives of the persons affected, in accordance with *Articles 1, 2 and 3 of the Convention*.

2. The Committee notes that in January 2002 the Government approved the final version of its Poverty Reduction Strategy Paper (PRSP). The specific objectives of the PRSP include increased income, broader access to high-quality basic services and the reduction of inequalities between regions and between socio-economic groups. To attain these objectives a strategy has been devised which consists of three components: acceleration of economic growth; development of and equitable access to basic social services; improvement of governance and strengthening of institutions and human resources. The Committee notes that the measures envisaged include the adoption of a law on the privatization of public enterprises which provides for the winding-up of enterprises deemed to be non-viable, and the restructuring and privatization of those that can be made profitable. It asks the Government to specify in its next report how the strategy to combat poverty contributes to the creation of productive employment in the context of a coordinated economic and social policy, conducted in consultation with representatives of the persons affected. Please also provide copies of any such reports, studies or surveys and other detailed statistics that will facilitate an assessment of the situation, level and trends of employment.

Ireland

Convention No. 122: Employment Policy, 1964 (ratification: 1967)

The Committee notes the information contained in the Government's detailed reports for the period ending May 2003 and the useful documentation attached.

1. *Articles 1 and 2 of the Convention.* The Committee notes with interest that the objectives the Government set in its Employment Action Plan for 1998 in regard to long-term unemployment have been successfully attained. Between 1993 and 2000 long-term unemployment as a percentage of total unemployment went from 9 per cent to 1.2 per cent, representing a total decrease of 84 per cent. The Government states that the dramatic reduction in long-term unemployment in a relatively short period of time is a remarkable achievement and a significant contribution towards reintegrating a disadvantaged group of workers into the labour market. More recent labour force survey data show that during the period in question labour force growth has continued to exceed employment expansion, with the result that unemployment has also continued to increase. In the first quarter of 2003, the unemployment rate stood at 4.6 per cent as compared to 3.7 per cent for the first quarter of 2001. In terms of employment growth, the public sector has exhibited the most significant increase in job growth while employment in agriculture has continued to decrease.

2. The Government explains that with the aim of reducing consistent poverty it has adopted a national anti-poverty strategy that serves as a coherent framework for actions to tackle exclusion and disadvantage in society. The national anti-poverty strategy is reviewed in consultation with the social partners with discussions focusing on six main themes: educational disadvantage; employment; rural poverty; urban disadvantage; housing/accommodation; and health. The Government also states that it has concluded an agreement with the social partners, Sustaining Progress – Social Partnership Agreement 2003-05, in which it sets out several main objectives, including to maintain Ireland's international competitiveness through policies that encourage enterprise and investment, to ensure that those in work have a fair share in the increased national prosperity, to substantially increase resources allocated to social inclusion, and to enable Ireland to become a learning, knowledge-based society, with the capacity to embrace with confidence the opportunities offered by technological change. The Committee takes note of this information with interest and hopes the Government will continue to provide information on the agreements and partnerships established with social partners and the impact they may have on attaining the objectives of this Convention. Please also continue to provide more general information on how employers' and workers' representatives are consulted, as required by *Article 3* of the Convention.

3. The Government states that it has implemented a range of policy and legislative instruments to meet the goal of increasing the female labour force participation rate. Recent legislative developments such as increased maternity leave and the introduction of the Carer's Leave Act, 2001 and the Part-time Workers Act, 2001, are meant to facilitate women's retention of and advancement in employment. Additionally, in terms of childcare investment, the Government has allocated €437 million under the National Development Plan 2000-06 which has already supported an additional 12,200 childcare places. The Committee notes that the relatively strong growth of female employment in recent years has been an important feature in maintaining labour supply in a rapid growth context. Between 1998 and 2003 female employment increased by 26 per cent, while male employment grew by 15 per cent.

4. The Government indicates that immigration from non-European Economic Area countries has grown substantially in recent years. Work permits issued have increased from 6,000 in 1999 to 36,000 in 2001. Due to the increase in unemployment, it has introduced changes in the work-permit scheme to ensure that persons in the domestic and European Economic Area labour markets are given first opportunity to avail themselves of job vacancies (see observation under the Discrimination (Employment and Occupation) Convention, 1958 (No. 111)). Between 1998 and 2002 the proportion of non-nationals in the Irish labour force increased from 3.3 to 5.4 per cent. The total amount of non-European Economic Area nationals has increased most rapidly in recent years, going from 10,000 in 1998 to over 40,000 in 2002. According to the Government, new legislation to regulate immigration and work permits is currently being drafted and is to be introduced in the Irish Parliament in the autumn 2003 session. The Committee requests that the Government continue to provide information on the impact of the new legislation adopted on the integration of migrant workers in the Irish labour market.

Kyrgyzstan

Convention No. 122: Employment Policy, 1964 (ratification: 1992)

1. The Committee notes with regret that a report has not been received from the Government since September 1996. It observes that the Government adopted a Poverty Reduction Strategy Paper (PRSP) in December 2002. From the information on the labour market and the education system available in this paper it appears that structural adjustment in the economy and the recession in many production sectors have resulted in unemployment growth. The level of general unemployment according to the ILO definition is estimated to be in the range of 7-11 per cent. Additionally, 20,000 workers have been discharged due to staff redundancies over the past three years. In view of these developments, the Committee asks that the Government state in its next report whether any particular difficulties have been encountered in achieving the employment objectives established in the PRSP, as part of a coordinated economic and social policy, in consultation with representatives of those concerned, in accordance with *Articles 1, 2 and 3 of the Convention*. It also recalls the relevance of other Conventions ratified by Kyrgyzstan, in particular the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Human Resources Development Convention, 1975 (No. 142), and the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159), whose full application will certainly contribute to the attainment of the objectives of employment creation established by the PRSP. With regard to

employment creation by the private sector, the Government could also refer to the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189).

2. The Committee recalls that in its direct request of 1997 it asked the Government to report on:

- the measures taken or envisaged to compile statistics on the labour market and employment problems in order to obtain data on the characteristics and trends in job offers and demands which are necessary to implement an active employment policy;
- the manner in which measures taken with the support of the International Monetary Fund, the World Bank and other development banks for carrying out the structural reforms necessary or the transition to a market economy contribute to the promotion of employment;
- information on the specific training and placement measures for persons who have particular difficulty in finding and retaining employment such as women, young persons, older workers and disabled persons;
- training and retraining measures for workers affected by structural reforms;
- the manner in which consultations with representatives of employers and workers concerning employment policies take place.

3. The preparation of a detailed report, including the indications requested in this observation, will certainly provide the Government and the social partners with an opportunity to evaluate the achievement of the objectives of full and productive employment of the Convention. The Committee reminds the Government that the technical assistance of the Office is available to comply with the reporting obligations and for the implementation of an active employment policy in the sense of the Convention.

Convention No. 159: Vocational Rehabilitation and Employment (Disabled Persons), 1983 (ratification: 1992)

The Committee notes with regret that the Government's report has not been received. It hopes that a report will be supplied for examination by the Committee at its next session and that it will contain full information on the matters raised in its direct request of December 1995, which read as follows:

Article 5 of the Convention. 1. The Committee notes the provisions of the Employment Act of 1991 concerning the participation of the trade unions in the implementation of the state employment policy and the establishment of advisory committees on employment promotion which include representatives of employers' and workers' organizations. It would be grateful if the Government would indicate, in its next report, whether representative organizations of employers and workers are consulted on the implementation of the national policy on vocational rehabilitation and employment of disabled persons, as required by this Article.

2. The Committee notes the provisions of the Act on the social protection of disabled persons concerning the role of organizations of and for disabled persons in the implementation of the national policy on vocational rehabilitation and employment of disabled persons. It would be grateful if the Government would indicate, in its next report, any other organizations of this kind created under the above-mentioned Act, besides the Society for Deaf and Blind referred to in the report, and describe the manner in which these organizations are consulted on the implementation of that policy, in accordance with this Article.

Article 8. The Government states that the principles of vocational rehabilitation of disabled persons are the same for those living in urban and rural areas of the country, but that it is difficult to put appropriate measures into practice in rural areas due to the unfavourable economic situation. While noting this information, the Committee hopes that the Government will be able to take the necessary measures to promote the establishment and development of vocational rehabilitation and employment services for disabled persons in rural areas and remote communities, as required by this Article, and asks the Government to provide, in its next report, information on any progress made in this regard.

Article 9. The Committee notes the provision of section 17 of the Act on the social protection of disabled persons concerning training of vocational rehabilitation staff which shall be financed and organized by the State. It also notes the Government's statement to the effect that there are no teaching institutions providing training for such staff, though there is a real need to train qualified staff for work with disabled persons. The Committee hopes that the Government will indicate, in its next report, measures taken or envisaged to ensure the availability of suitably qualified vocational rehabilitation staff, in accordance with this Article of the Convention and the national provision referred to above.

Part V of the report form. The Committee notes the Government's indications in the report concerning preparation of new legislative documents relating to the implementation of all provisions of the Convention. The Government states, however, that economic difficulties do not permit all the necessary measures to be taken at the present time. The Committee would be grateful if the Government would provide a general appreciation of the manner in which the Convention is applied, including more detailed information on any difficulties encountered, as well as statistics, extracts from reports, studies and inquiries, concerning the matters covered by the Convention (for example, with respect to particular areas or branches of activity or particular categories of disabled workers).

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

Libyan Arab Jamahiriya

Convention No. 122: Employment Policy, 1964 (ratification: 1971)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its 2001 observation which read as follows:

The Government states in its very brief report for the Convention that it has not yet adopted an employment policy, but it intends to send information to the Office when it becomes available. The Committee emphasizes the fundamental importance of adopting an employment policy and programmes within the framework of a coordinated economic and social policy and in consultation with representatives of workers, employers and other groups affected, such as rural and informal sector workers. It urges the Government to adopt an employment policy and implement appropriate programmes as soon as possible and requests a detailed report on all of the points raised in the report form for the Convention.

The preparation of a detailed report will certainly provide the Government and social partners with an opportunity to evaluate the achievement of the objectives of full and productive employment of the Convention. The Committee notes that the assistance of the Office is available to comply with the reporting obligations and for the technical implementation of an active employment policy in the sense of the Convention.

Mauritania

Convention No. 122: Employment Policy, 1964 (ratification: 1971)

1. *Articles 1 and 2 of the Convention.* The Committee notes the Government's report for the period ending September 2002 and the information that it contains in reply to its previous observation. The Government indicates that, during the period in question, it continued its activities to consolidate the employment information system (SIME) with the support of the United Nations Development Programme (UNDP) and the ILO. Among the principal areas in which progress has been achieved with the SIME, the Government refers to the establishment of a database on labour supply and demand, the formulation of a file of vocational, technical training and higher education establishments and a file of "employers in the structured sector". The availability of reliable, dynamic and regular information is a principal objective of the Government's employment policy. The Committee would be grateful if it could continue to be informed of any progress achieved in this field and also of the employment policy measures adopted as a result of the new labour market information systems that have been established.

2. The Government also sent a document on the employment situation in Mauritania prepared in the context of the support programme for the National Strategy to Combat Poverty. The first Strategic Framework to Combat Poverty (CSLP) for the period 2001-15 focuses on the promotion of employment and the development of small and medium-sized enterprises. It is aimed at reducing unemployment, particularly among women and young persons, developing an integrated network of micro-enterprises in the modern sector and supporting self-employment. This action programme includes employment promotion measures, including the development of labour-intensive activities. The Committee notes these projects with interest and would be grateful if the Government would continue to keep it informed of any progress achieved in the implementation of the National Strategy to Combat Poverty and its impact on employment promotion. In this respect, the Committee requests that the Government provide information on the manner in which the representatives of employers' and workers' organizations and of the other persons affected, such as workers in the rural sector and the informal economy, have been consulted and the outcome of the consultations held with a view to achieving the employment objectives established in the National Strategy to Combat Poverty.

3. *Part V of the report form.* Finally, the Committee notes the information concerning the ILO/UNDP technical cooperation project that is currently being carried out for the development of strategies for the promotion and utilization of micro-enterprises to combat poverty. It would be grateful if the Government would continue to provide information on the action taken as a result of this technical cooperation, and the impact of this action on the labour market.

Nicaragua

Convention No. 122: Employment Policy, 1964 (ratification: 1981)

1. *Articles 1 and 2 of the Convention.* With reference to its comments in 2001, the Committee notes the report received in October 2002, which provides a brief analysis of the employment situation and government policies to achieve higher economic growth. In 2001, the gross domestic product increased by 3 per cent, which amounted to a fall of over two points in relation to the previous year, and inflation remained at the lowest level for the past nine years (an accumulated annual rate of 4.65 per cent). Nevertheless, the labour market indicators show an unemployment rate of 10.7 per cent, with underemployment reaching 12.4 per cent. The national telecommunications company was privatized and new provisions were approved for the protection of bank deposits. The Government is focusing on further strengthening the private sector as a whole and promoting foreign investment. The industrial export processing zone contains 52 enterprises which have generated direct employment for 40,220 persons. The Emergency Investment Fund (FISE) is intended for the most vulnerable categories of the population and in 2001 implemented 846 projects which generated 68,920 direct temporary jobs (in 2002, 109 projects benefited 152,098 persons). The Government recalls that the Reinforced Poverty Reduction Strategy is intended to achieve equitable growth on a broad basis with a high level of

employment generation, with emphasis on rural development, a high level of investment in human capital among the poor to increase competitiveness, an improvement in access to basic goods and services, such as health, education and housing, and the strengthening of institutions. The Committee trusts that the Government will continue to provide information in its report on the manner in which the employment objectives established in the Reinforced Economic Growth and Poverty Reduction Strategy have been achieved.

2. In this context, the Committee understands that in October 2002 the Government concluded an agreement with the ILO on the formulation of a National Employment Policy (PNE) with a view to maximizing the utilization and development of human resources as a means of securing decent work for men and women in order to achieve the national aspiration of living in dignity. The Committee hopes that the Government will be able to include information in its next report on the progress achieved in the context of the PNE and the results observed in terms of the creation of productive employment (*Part V of the report form*). The Committee would also be grateful if the Government would provide information on the situation, level and trends of employment, unemployment and underemployment, with an indication of the extent to which it affects specific categories of the population (women, young persons, older workers, workers with disabilities, rural workers and workers in the informal economy). In particular, the Committee requests that the Government continue providing information on the contribution of export processing zones to the creation of sustainable quality employment for those working in the above zones.

3. With reference to its previous comments, the Government indicates that small, medium-sized and large rural producers are associated in various institutions managing the commercialization of their products, obtaining information and undertaking a full range of activities. There are no distinctions, exclusions or preferences between organizations bringing together persons working in the rural sector and in the organized informal economy. Furthermore, the General Directorate of Employment and Wages is the body responsible for the implementation, coordination and evaluation of employment and labour migration policies. The Committee refers to *Article 3* of the Convention, which requires consultations with the representatives of the persons affected (employers' and workers' organizations, representatives of the rural sector and the informal economy) with a view to taking fully into account their experience and views. The objective of such consultations is to secure their full cooperation in formulating and implementing employment policies. In this respect, the Committee trusts that the Government will ensure that the consultations required by the Convention are taken into account in the context of the PNE, as well as in the employment measures adopted as a consequence of the Reinforced Economic Growth and Poverty Reduction Strategy. The Government is also requested to provide detailed information on these consultations.

Russian Federation

Convention No. 122: Employment Policy, 1964 (ratification: 1967)

1. *Articles 1 and 2 of the Convention.* The Government states in a brief report received in October 2002 that during the period reviewed, unemployment decreased significantly, going from 12.3 per cent in March 2000 to an estimated 8.3 per cent at the end of March 2002. The Government furthermore states that unemployment has decreased considerably in disadvantaged regions. In order to be in a better position to assess fully the labour market situation and the manner in which developments have taken place, the Committee would be grateful if in its next report the Government would provide detailed statistical information on the level and trends in employment, underemployment and unemployment, both for the country as a whole and by region, for the various sectors of economic activity and for the various categories of the population, in particular for disadvantaged groups of workers such as women, young persons, older workers and persons with disabilities.

2. The Government also states that a key target of its economic policy is the promotion of economic diversification in cities heavily dependent upon a single industry. It considers that improvements in the existing legislation have an important role to play in addressing employment problems and to this end it envisages strengthening the role of regional authorities in the state policy of employment promotion. The Committee would appreciate receiving further information on how employment policies and programmes are reviewed within the framework of a coordinated economic and social policy and on the impact of the different policies implemented. Please also continue to report on the Government's efforts to promote employment in regions with high unemployment.

3. *Article 3.* The Committee notes the information supplied regarding the tripartite general agreement between the national employers' associations, national trade union associations and the Government. The Government indicates that it has focused efforts on tripartite consultations with the intention of ensuring that in the future prior to providing financing for projects, it will take better into account the possible impact on job creation particularly in regions with high unemployment. The Committee requests that the Government provide detailed information on the consultations held with representatives of employers and workers concerning employment policy, with an indication of the subjects covered, the views expressed and the manner in which they have been taken into account.

4. Finally, the Committee would be grateful if the Government would supply information on the action taken as a result of ILO technical and advisory cooperation activities in the field of employment in the framework of the programmes of cooperation between the Russian Federation and the ILO (*Part V of the report form*).

Sierra Leone

Convention No. 88: Employment Service, 1948 (ratification: 1961)

The Committee notes with regret that no government report has been received since 1995. The Committee hopes that provisions on the Employment Service Regulations which have been referred to since 1974 will be adopted in the very near future and that the next report will contain the information previously requested on: (a) the setting up of national, and where necessary regional and local, advisory committees ensuring the participation of employers' and workers' representatives in equal numbers in the organization and operation of the employment service and in the development of the general policy of this service, in accordance with *Articles 4 and 5 of the Convention*; and (b) the determination of the functions of the employment service in accordance with *Article 6*.

Slovakia

Convention No. 122: Employment Policy, 1964 (ratification: 1993)

The Committee notes the detailed report supplied by the Government and the comprehensive documentation appended for the period ending August 2002.

1. *Articles 1 and 2 of the Convention.* The data provided by the Government shows that unemployment has continually increased since 1996, reaching an estimated 18.5 per cent in 2002. The Government also indicates that a substantial part of unemployment is of a structural nature and is characterized by: a high level of long-term unemployment (over half of total unemployment); high unemployment among people with lower levels of education; high unemployment among youths in the 15-24 year age bracket; a wide regional variation in unemployment; and a particularly high unemployment rate among the Roma minority. The Government states that the national employment rate is relatively low at 51.8 per cent and that there also exist wide regional variations in employment rates, ranging from 70 per cent in the Bratislava region to as low as 50 per cent in the Kosice region. For the period 1997-2000, the overall employment rate in the country fell by over 4 per cent. However, employment rose by 2 per cent in Bratislava, and remained broadly stable in Trnava and Presov. All other regions experienced falling employment, with the sharpest declines (more than 6 per cent) in Kosice, Zilina and Banska Bystrica.

2. The Committee notes with concern the recent trends in the labour market which indicate a worsening situation and which have reinforced the extent of regional employment imbalances. Bratislava, which is home to only 11 per cent of the national population, accounts for 15 per cent of all employment in the country. On the other hand, rural areas have the highest concentration of unemployed people. To combat rural unemployment and poverty within certain regions, the Government has undertaken the elaboration and realization of a job-creation programme through the development of existing cooperatives and the establishment of new ones, including new types such as cooperatives engaged in savings and credit activities, medical activities and care for the elderly, cooperative nurseries and kindergartens and cooperatives in the field of the travel industry, culture and trades. The Committee notes this information and would appreciate receiving further information on policies and programmes aimed at promoting more balanced regional development and stimulating job creation in rural areas. Please provide further information on trends in regional development, and on the outcome of measures to promote employment in rural areas.

3. The Government explains that unemployment among young persons aged 15-24 is an issue of particular concern. In 2001, unemployment for the 15-24 year age bracket went up by 2 percentage points reaching 37.2 per cent. To address the problems of this group the Government has implemented an employment support programme for young people that provides counselling and job subsidies in the form of wage and social insurance reimbursements for employers. According to preliminary statistical data, through this programme 4,304 registered unemployed persons were placed in jobs, representing a 29 per cent success rate. The Committee notes this information and trusts that the Government will continue to provide information on policies and programmes that address the special needs of vulnerable groups of workers as well as data on the levels and trends in employment for these groups.

4. The Government acknowledges the need for projects with a special focus on increasing the participation of the Roma in active labour market policy programmes. The projects specifically targeting the Roma minority include, inter alia, improving employability; counselling for the long-term registered unemployed; a project for 700 long-term unemployed Roma aiming to collect data with a view to identify better the problems that the Roma face in the labour market; vocational training for registered unemployed persons without education; as well as other support programmes seeking to provide more opportunities to members of this large ethnic minority. The Committee requests the Government to keep it informed of further developments in this regard. Please also indicate the approximate number of workers concerned by these measures and the results obtained.

5. The Government also explains that it has adopted a National Employment Plan (NEP) that follows the four-pillar structure of the European Employment Strategy, but taking into account the specific conditions of the Slovak labour market. A central feature of the Plan is the Government's commitment to preventive strategies, enabling early identification of individual capabilities and needs of unemployed persons. Preferential support will be given to the employment of registered unemployed persons in the open labour market. The activities of the National Labour Office (the public employment service) will be systematically evaluated, as will programmes to integrate the registered

unemployed into employment. The Committee notes this information and would appreciate being kept informed of progress made in the implementation of the NEP. Please also state whether special difficulties have been encountered in attaining the objectives of the NEP and indicate the degree to which these difficulties have been overcome.

6. *Article 3.* The Committee notes the information received on the consultative role of the Council for Economic and Social Agreement (CESA) in the preparation of bills and policy documents of national significance such as the National Employment Plan and the National Action Plan for Employment for 2002 and 2003. Additionally, regional and district bodies of state administration also take part in the documents assessment as well as regional self-government authorities. The Committee would appreciate receiving, in the Government's next report, further information on the decisions taken by the CESA in relation to employment policies as well as any additional information on efforts to engage the social partners in employment promotion in the sense requested by this provision of the Convention.

Swaziland

Convention No. 96: Fee-Charging Employment Agencies (Revised), 1949 (ratification: 1981)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its 2002 observation, which read as follows:

The Committee notes that the Government has not provided the information required in *Part V of the report form* approved by the Governing Body on the practical application of the Convention, in particular with regard to the recruiting of persons for employment on foreign contracts of employment under Part IX of Employment Act No. 5 of 1980. The Committee asks the Government to supply specific information on this matter, as well as a detailed report on the application of the provisions of Part III of the Convention.

Sweden

Convention No. 122: Employment Policy, 1964 (ratification: 1965)

1. The Committee notes the information contained in the Government's detailed report for the period ending in June 2002, as well as Sweden's Action Plan for Employment 2002, attached.

2. *Articles 1 and 2 of the Convention.* The Government indicates that its target of reducing unemployment by half between 1997 and 2000 – from 8 to 4 per cent – was achieved in October 2000. Another target set by the Government concerns employment for persons between the ages of 20 and 64, which is to be at least 80 per cent of the corresponding workforce in 2004. The Committee notes that the Government judges achievement of this target to be within reach and trusts that it will be able to report on this important outcome in its next report.

3. The Committee further notes the information on the labour market supplied by the Government in its report, which supplemented data published by the OECD, shows that during the period in question the employment situation improved. Initial data from 2003 however, suggest a lower level of economic activity and an increase in unemployment. The number unemployed in April 2003 was 201,000 persons, which is an increase of 37,000 persons compared to April 2002. Unemployment seems to be increasing during the first part of 2003 to the levels reached in 2000. The unemployment rate at 4.8 per cent in September 2003 was approximately the same as in September 2000. During the reporting period manufacturing sector employment has declined, while public sector employment, which accounts for roughly a third of all jobs in Sweden has continued to increase. Male employment has also declined while female employment has increased. The Committee would appreciate continuing to receive detailed disaggregated data on labour market trends.

4. The Government states it has set targets for the highest acceptable rate of long-term unemployed and long-term registered at the Public Employment Service. For young people, the aim is that no youth should be unemployed for more than 100 days. The Unemployment Insurance has been reformed and the requirements on the efficiency of the labour market programmes have increased. A measure called the "Activity Guarantee" has been introduced in August 2000 with the aim of putting an end to the vicious cycle between labour market measures and unemployment benefit. For the long-term unemployed an extended recruitment incentive has also been developed. Please continue to supply information on the success of these programmes and the attainment of these targets.

5. The Government states that it has encountered difficulties in recruiting suitable participants among the unemployed for training programmes matching the requirements of the job market. To help provide the labour market with the skills it needs in the fields where manpower shortages are feared, an experimental scheme of bottleneck training for persons already employed was launched. The Committee asks the Government to keep it informed of other developments concerning training programmes and on the outcomes of this experimental scheme.

6. In reply to the Committee's previous comments, the Government explains that disadvantaged groups are prioritized within the framework of all labour market programmes including those dealing with vocational rehabilitation, hiring support, work experience and grants for entrepreneurial start-ups. Additionally, members of disadvantaged groups receive special attention through the "Activity Guarantee". This measure was introduced in August 2000 and is intended for those who are or risk becoming long-term unemployed. The scheme is based on organized jobseeker activities in

tutored groups. Please continue to supply information on the impact of these special programmes on employment promotion for the target groups. Please also provide, if available, the evaluation of the “pattern-breaker projects” to broaden the employment choices of each sex.

7. The Government indicates that to promote employment among the occupationally handicapped it has sought to introduce a series of measures including, inter alia, wage subsidies for employers hiring persons with reduced work capacity, state grants for arranging sheltered work for unemployed persons with occupational disabilities, individual support for jobseekers with a functional impairment, as well as different types of grants to cover the material necessary for the occupationally handicapped to perform a given profession. The Committee would appreciate receiving any available information on the results achieved in terms of long-term integration of persons with disabilities in the labour market. The Government may wish to refer to this matter in the reports due in 2004 on the application of Conventions Nos. 122 and 159.

Tajikistan

Convention No. 122: Employment Policy, 1964 (ratification: 1993)

1. The Committee notes with regret that a government report has not been received since November 1996. It observes that by resolution No. 666 of 19 June 2002 the Supreme Council (*Majlisi Oli*) approved the Poverty Reduction Strategy Paper (PRSP) and asked the Government to implement it. In this paper, it is reported that unemployment affects around one-third of the labour force and that rising unemployment figures have contributed to the increase in poverty. The Government intends to encourage an accelerated, socially fair and labour-intensive economic growth with emphasis on export, efficient and fair provisions of basic social services and targeted support to the poorest groups of the population, with the goal of attaining an employment rate of 59 per cent by 2006 (56 per cent in 2001). The Committee notes that to create employment opportunities, the Government intends to focus on three areas, apart from promoting agricultural development: creating a favourable environment for private enterprise, including in the informal economy; ensuring a well-functioning labour market; and privatization of state enterprises. Labour market policies will aim at creating a more flexible labour market through training and retraining of workers, employment counselling and providing help in seeking jobs. Central to the Government’s success in reducing poverty will be the growth in private sector output and creating jobs. Removing obstacles to the emergence of small and medium-sized enterprises and to activity in the informal economy, and generally creating a positive environment for private initiative, will be a central element in the fight against poverty.

2. The Committee therefore requests the Government to indicate in its next report whether any particular difficulties have been encountered in achieving the employment objectives established, as part of a coordinated economic and social policy, in consultation with representatives of those concerned, in accordance with *Articles 1, 2 and 3 of the Convention*. It also recalls the relevance of other Conventions ratified by Tajikistan, in particular the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Human Resources Development Convention, 1975 (No. 142), and the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159), whose full application will certainly contribute to the attainment of the objectives of employment creation established by the PRSP. With regard to employment creation by the private sector, the Government could also refer to the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189).

3. *Article 3*. The Committee points out that this important provision of the Convention requires the involvement in consultations of government authorities and of representatives of the persons affected by the employment policy measures to be taken. The aim of the consultations is to take fully into account their experience and views and secure their full cooperation in formulating and implementing the employment policy. Representatives of the persons affected must include representatives of employers’ and workers’ organizations and also representatives of sectors of the economically active population such as the rural sector and the informal economy. The Committee would appreciate receiving in the next report information on the consultations held with representatives of the persons affected in the implementation of the PRSP, and in particular with representatives of the rural sector and the informal economy on the matters covered by the Convention.

4. Finally, the Committee recalls that in its direct request of 1997, it asked the Government to report on:

- progress in making available as precise as possible an assessment of the situation of and trends in employment, unemployment and underemployment;
- measures taken to promote full, productive and freely chosen employment, citing specific examples of policies and programmes;
- information on how such policies and programmes are kept under review within the framework of a coordinated economic and social policy, pursuant to the law on the employment of the population of 27 December 1993;
- the impact of the budgetary and monetary policies implemented in agreement with the International Monetary Fund;
- the functioning of the public employment service.

5. The preparation of a detailed report, including the indications asked in this observation, will certainly provide the Government and social partners with an opportunity to evaluate progress towards the achievement of the objectives of full and productive employment of the Convention. The Committee points out that the assistance of the Office is available to the Government to assist it in meeting the reporting obligations and for the technical implementation of an active employment policy within the meaning of the Convention.

Tunisia

Convention No. 122: Employment Policy, 1964 (ratification: 1966)

1. *Articles 1 and 2 of the Convention.* The Committee notes the Government's report received in 2002, which contains useful information in reply to its previous comments and on the achievements relating to employment in the framework of the Ninth Development Plan (1997-2001). The Government indicates in its report that during the course of the Ninth Plan some 322,000 jobs were created. Unemployment has tended to decline and is now 15 per cent. The proportion of illiterate unemployed has also fallen to the level of 9.5 per cent. The Committee requests that the Government provide any data or estimates available with its next report so as to enable the Committee to examine the situation and trends of the labour market. The Committee also asks the Government to provide an indication of the manner in which labour market statistics are kept up to date in the periods between the national population-employment surveys.

2. The Government has implemented a Tenth Economic and Social Development Plan (2002-06). Under this Plan, employment policy is designed to develop human resources and encourage self-employment and investment in employment-intensive sectors. The Government envisages in particular strengthening the role of the private sector with a view to accelerating the pace of investment and thereby increasing the growth rate of jobs. By giving priority to employment in the various sectoral policies, the Government is giving effect to its commitment to achieve the objective of full employment. The Plan also envisages the implementation of an information and analysis system with a view to monitoring employment trends and the level of unemployment. The Committee notes this information and would be grateful if the Government would continue to provide detailed information on the various programmes implemented and their effect on the promotion of employment, both at the overall level and as regards specific categories of workers, such as women, young persons, older workers and the disabled. It also requests that the Government provide information on underemployment, as requested in the report form.

3. *Article 3.* The Committee notes with interest the establishment of a Higher Council for Human Resources Development which includes representatives of the Ministries of Education, Vocational Training, Employment and Higher Education, as well as representatives of political parties, occupational associations and national organizations, including representatives of the social partners. The Council issues opinions on national policy orientations in relation to education and vocational training with the view to ensuring the coherence and coordination of national plans relating to human resource development. The Committee invites the Government to provide further information on the operation of the Council, with an indication of the opinions issued and the manner in which they have been taken into account in the decisions adopted on employment policies. In particular, with reference to *Article 2* of the Convention, it would be grateful if the Government would indicate the procedures followed for deciding on and keeping under review its employment policy within the framework of a coordinated economic and social policy, in consultation with the representatives of employers and workers, as well as representatives of persons working in the rural sector and the informal economy.

Turkey

Convention No. 122: Employment Policy, 1964 (ratification: 1977)

1. The Committee notes the Government's report for the period ending May 2002, which includes, as has often been the case in recent years, observations made by the Confederation of Turkish Trade Unions (TÜRK-İS), the Confederation of Progressive Trade Unions (DISK) and the Turkish Confederation of Employer Associations (TİSK). It also notes the discussions in the Conference Committee on the Application of Standards on the application of the Convention at its 90th Session (June 2002) and the conclusions of the Conference Committee calling for measures to be taken to ensure that effective consultations are held in the context of the Economic and Social Council (EKOSOK) and for the views of the representative organizations of employers and workers and other persons affected to be fully taken into consideration in the formulation, implementation and evaluation of employment policies and programmes.

2. *Article 1 of the Convention.* The Government indicates in its report that the labour market situation deteriorated over the period under review. The average unemployment rate rose from 8.5 per cent in 2001 to 10.6 per cent in 2002. The unemployment rate of women rose to 9.9 per cent in 2002, with the unemployment rate of men increasing to 10.9 per cent. In 2001, the employment rate reached 48.9 per cent, with a rate of 67 per cent for men and 26.3 per cent for women. However, it remains low in comparison with the average for OECD countries, which is 68 per cent. The particularly high unemployment rate of women and young persons is a matter for concern. The problem of registered unemployment is related to that of the expansion of the informal economy. From a level of 50.3 per cent of total employment in 2000,

registered employment giving entitlement to social protection fell to 48.4 per cent in 2001. The Committee requests the Government to continue providing detailed statistics on the active population, employment, unemployment and underemployment in the various sectors and for the different categories of the population, so that it can assess the related levels and trends.

3. The Government states that the growth of employment is one of its policy priorities and objectives in relation to the labour market. Its objectives include changing the structure of employment to favour labour-intensive sectors and to direct vocational training more effectively towards labour market needs. It has also adopted a number of special measures against unemployment among young persons, women and persons with disabilities. The Committee requests the Government to keep it informed of the various labour market policy measures referred to in its report and their impact on employment, particularly with regard to the most vulnerable categories of workers and the sectors most affected by the crisis.

4. *Article 2.* The Government refers in its report to its intention to establish a labour market information council which would include representatives of the Turkish Employment Institute (ISKUR), other public establishments and the social partners. Through this new body, the Government hopes to improve its means of compiling information and detailed statistical data on the labour market. Noting this information with interest, the Committee would be grateful to be kept informed of any progress achieved in this field. It would also be grateful if the Government would indicate the manner in which the labour market information that is compiled is taken into consideration in deciding upon and keeping under review national employment policy measures.

5. *Article 3.* With reference to the Committee's request for further information concerning tripartite consultations, the Government explains that EKOSOK, far from being the only body for dialogue and consultation, contributes alongside others to the formulation of the national employment policy. The decisions taken and opinions expressed by these various bodies are taken into account in the context of the five-year development plans, the annual plans of action of the Sub-secretariat of State for the Organization of State Planning (DPM) and in the activities of ISKUR. For its part, TÜRK-İS indicates that in its view the Government is not pursuing a policy based on job creation and that its employment policy does not apply to the private sector any of the criteria that are characteristic of productive employment. It considers that the fact that the Termination of Employment Convention, 1982 (No. 158), is not reflected in any way in national legislation only exacerbates the situation. Furthermore, the standby arrangements concluded with the International Monetary Fund are in total contradiction with Convention No. 122.

6. From the point of view of DISK, despite the existence of an act establishing the EKOSOK for the purposes of consultation, this body is still not in a position to discharge its functions effectively.

7. TISK has provided a very detailed document in which it emphasizes the importance of a tripartite employment policy based on the reduction of unemployment and the creation of quality jobs, within the context of the strategy adopted in this respect by the European Union. The starting point for a healthy employment policy would be the effective operation of the EKOSOK. Following the first general assembly of ISKUR, held in May 2001, proposals for a national plan of action and an emergency plan of action for an employment policy were adopted. TISK enumerates a number of legal texts adopted in 2001 and 2002 in various fields, including vocational and technical training, the payment of certain employers' contributions and fiscal reform. Finally, TISK would be grateful if the Government would describe the rationalization measures planned for the public sector.

8. The Committee notes that the preparation of a detailed report provided an opportunity for the Government and the social partners to undertake an evaluation of the situation with regard to the objective of full, productive and freely chosen employment, as set forth in the Convention. It hopes that in its next report the Government will provide further information on the tripartite consultations held in practice for the formulation, implementation and evaluation of an active employment policy, including the progress made in the context of EKOSOK and ISKUR in achieving the objectives of the Convention.

Uganda

Convention No. 122: Employment Policy, 1964 (ratification: 1967)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its 2001 observation, which read as follows.

The Committee notes the information contained in the Government's report, which was received in November 2000.

1. *Article 1 of the Convention.* The Committee notes with interest that the draft Employment Policy has been submitted to the Presidential Economics Council. The Government states that the centrepiece of every policy is the Poverty Eradication Action Plan (PEAP), and that some programmes already have been implemented. Two of the central programmes include providing microcredit. The youth entrepreneurs scheme targets young university graduates. To date it has trained 1,200 participants in entrepreneurship and provided loans to 795. The Entandikwa credit scheme targets the poor, and has so far supported 180 rural microcredit institutions and increased access to credit of marginalized people, in particular, women, youth and persons with disabilities. The Committee notes these schemes with interest. It would appreciate receiving further information on the impact of microcredit on employment promotion, and requests further details on other employment promotion programmes implemented.

2. The Committee also notes with interest that the Government has established, with ILO assistance, a special unit within the Ministry of Finance and Planning, to oversee implementation of labour-intensive and labour-based programmes. A large programme on implementation has been completed and the ILO is assisting in the impact evaluation. The Government also has drawn up a plan for modernization of agriculture, which is expected to generate employment, including the agro-processing industries. It has undertaken a project on poverty reduction through skills and enterprise development, with funding from the United Nations Development Programme (UNDP) and assistance from the Office. The UNDP is funding US\$12 million. Furthermore, Uganda is part of the Jobs for Africa Poverty Reduction Strategy in Africa of the ILO, and has completed a study on investment for poverty reduction employment and prepared a draft country action programme which outlines a number of projects and programmes.

3. *Article 2.* The Committee notes that the economy has been growing by an average of more than 6 per cent per year, and the Government has been effective in applying debt relief to reducing poverty, from 55 per cent of the population in 1992 to 35 per cent in 2000. It would appreciate further information on how the objective of employment promotion is taken into account in the Poverty Reduction Strategy Paper prepared by the Government as a condition for debt relief within the Heavily Indebted Poor Countries (HIPC) Initiative of the World Bank and the IMF. The Committee also notes that implementation issues concerning the employment policy are now under consideration. It requests further information on how the employment policy and implementing programmes will be kept under review. Please also provide information on the measures taken to collect and analyse statistical data concerning trends in the size and distribution of the labour force, and the nature and extent of unemployment and underemployment, to facilitate its evaluations.

4. *Article 3.* The Committee notes with interest that the draft employment policy was developed with extensive input from representatives of employers and workers and of other interested groups such as rural and informal sector workers. It would appreciate continuing to receive information on the nature of consultations on employment promotion, including consultations on evaluations and revisions, and on how these views are taken into account, as required by the Convention.

The preparation of a detailed report, including the indications requested in this observation, will certainly provide the Government and social partners with an opportunity to evaluate the achievement of the objectives of full productive and productive employment of the Convention. The Committee recalls that the assistance of the Office is available to comply with the reporting obligations and for the technical implementation of an active employment policy in the sense of the Convention.

Uruguay

Convention No. 122: Employment Policy, 1964 (ratification: 1977)

1. *Articles 1 and 2 of the Convention.* The Committee has examined the Government's detailed report for the period ending May 2002 and the observations made by the Inter-Union Assembly of Workers-National Convention of Workers (PIT-CNT) received in October of the same year. In its report, the Government includes an exhaustive analysis of the situation, level and trends of employment, unemployment and underemployment, which emphasizes that the labour market crisis is each year becoming less cyclical and more structural. The specific unemployment rates of private sector salaried employees, wage earners and craft workers, women and young persons, workers in the manufacturing industry, trade and services are always higher than the average. PIT-CNT emphasizes that unemployment rose to 16.7 per cent of the active population in 2002, the highest rate since 1968. In this respect, the data available from the MERCOSUR Labour Market Observatory (www.observatorio.net) indicate that, when comparing the beginning of 2002 with the beginning of 2003, Uruguay experienced an increase of 3.4 per cent in the unemployment rate (the unemployment rate rose from 14.4 per cent to 17.8 per cent of the active population) and that the employment and activity rates also fell. Taking into account the persistence of a particularly difficult regional situation, the Committee trusts that the Government will continue to promote policies and programmes intended to develop full and productive employment, and particularly to address the needs of the most vulnerable categories of workers (young persons entering the labour market, women, rural workers, unemployed persons without unemployment insurance coverage). Please also include information on the measures intended to meet the labour market needs of persons with disabilities.

2. The Government listed in its report the studies and investigations carried out by the Labour Market Observatory of the National Directorate of Employment (DINAE). The Committee would be grateful if the Government would indicate in its next report the manner in which the surveys undertaken by the DINAE have been used for the adoption of employment policy measures. In this respect, the Committee recalls that, as prescribed by *Article 2* of the Convention, the effect on employment of the measures taken to promote economic development and achieve other economic and social objectives is to be taken into consideration. Please also continue to provide information on how employment policies and programmes are kept under review within a coordinated framework of economic and social policy, in consultation with the social partners.

3. In reply to its previous comments, the Government states that, although it has not been possible to establish a national vocational training system, the private supply of training has been reinforced and extended as a result of the availability of the resources of the Labour Retraining Fund established as an explicit tool of the active employment policy. PIT-CNT indicates that vocational training is in itself insufficient for employment promotion. PIT-CNT expresses concern at the fact that contributions have not been made to the Retraining Fund and that only 15 per cent of workers covered by unemployment insurance receive vocational retraining. In its previous comments, the Committee referred to the instruments adopted by the Conference on the development of human resources and the creation of employment through small and medium-sized enterprises. The Committee would be grateful if the Government would continue

providing information on any further efforts made to coordinate education and vocational training policies with employment opportunities.

4. The Committee notes with interest the information provided on the work of the MERCOSUR Labour Subgroup 10 in relation to employment policies and would be grateful if the Government would include in its next report information on the activities undertaken to coordinate employment policies and programmes, in a tripartite context, among MERCOSUR members.

Venezuela

Convention No. 122: Employment Policy, 1964 (ratification: 1982)

1. With reference to its 2001 observation, the Government supplied a report in October 2002 in which it provided details on the modernization of the General Directorate of Employment for the establishment of a system of labour mediation and an observatory of employment and labour migration. This technological platform operates in Caracas and eight cities in the country. The labour mediation project is being undertaken with the Inter-American Development Bank (IDB) and the United Nations Development Programme (UNDP). The documents attached to the Government's report show that the activity rate was 68.7 per cent in April 2002, with the employed population accounting for 84.1 per cent of the economically active population. A total of 1,816,289 persons were unemployed. The unemployment rate for women (17.3 per cent) remained above that for men (14.9 per cent). According to the data published by the Economic Commission for Latin America and the Caribbean (ECLAC) in its *Economic Survey of Latin America and the Caribbean, 2001-2002*, the unemployment rate rose to 16.4 per cent in January 2002, compared with 15.8 per cent the previous year. In contrast, the unemployment rate for the first seven months of 2002 was lower than for the same period in 2001. There was a significant rise in August 2002, but the figure fell for the rest of the year, ending up at 11.5 per cent in December.

2. In its report, the Government states that as part of its continued policy to generate productive employment it has implemented measures with the objectives of reactivating the productive system of the public sector and generating direct employment. The Committee notes with interest that Decree No. 1944 of 2 September 2002 established an Employment Promotion Plan, which refers explicitly to Convention No. 122 in its preamble and has the objective of promoting employment in the private sector through the creation of demand for employment for the placement of the unemployed. The Committee would be grateful if the Government would continue to indicate in its next report the links established between employment policy objectives and other social and economic objectives, taking into account the requirement set out in the Convention that employment policy measures shall be decided on and kept under review "within the framework of a coordinated economic and social policy" (*Articles 1 and 2 of the Convention*). It would be grateful if the Government would indicate the manner in which the programmes mentioned in the report (and particularly the Employment Promotion Plan) have contributed to the creation of productive and lasting jobs.

3. In this connection, the Committee would also be grateful if the Government would continue providing information on the activities undertaken by the Presidential Commission for the Promotion of the Mass Employment Plan and the subcommissions on social cohesion and employment, established within the framework of the National Dialogue Round-Tables, with a view to the holding of the consultations required by *Article 3* of the Convention. The Committee observes that to give effect to this important provision of the Convention, the consultations held with the persons affected (including representatives of the informal economy and the rural sector) must have the objective of taking fully into account their experiences and views and, in addition, of securing their full cooperation in formulating and implementing an active policy to promote full, productive and freely chosen employment.

Zambia

Convention No. 122: Employment Policy, 1964 (ratification: 1979)

1. *Articles 1 and 2 of the Convention.* The Committee notes the Government's brief report received in October 2003 indicating that the period under review was characterized by increased formal sector employment and by increases in nominal earnings. Formal employment increased by 1.5 per cent, going from 487,340 jobs to 494,457 jobs, mainly in the private sector. This increase was a result of the increase in production, especially in manufacturing, and in wholesale and retail trade. The informal economy continued to grow in line with the growth of the labour force (mostly in the agricultural sector). In the previous comments addressed directly to the Government on the application of the Convention, the Committee already noted that it can be determined that most of those working in the informal economy can be classified as poor. Poverty is more prevalent in rural areas than in urban areas (83 per cent and 56 per cent, respectively, according to data included in the Poverty Reduction Strategy Paper, April 2002) but it has risen faster in urban areas lately due to failing industries and rising unemployment. Most of the rural poor are small-scale farmers, followed by medium-scale farmers.

2. The Government also states that it is expected that an ILO Project on Strengthening Labour Administration (SLASA) covering Botswana, Lesotho, Malawi and Zambia, may extend its assistance in the area of developing a comprehensive labour market information system. It adds that a draft national labour policy is being discussed with the social partners and will soon be submitted before Cabinet.

3. The Committee would appreciate receiving indications on the progress achieved to have a better knowledge of the situation, level and trends of employment, unemployment and underemployment. It trusts that the Government will supply a report containing detailed information on the principal policies pursued and measures taken with a view to ensuring that there is work for all who are available for and seeking work, with particular reference to policies and measures implemented under the national labour policy mentioned above. Please also indicate how the statistical data collected have been used as a basis for deciding on measures of employment policy, within the framework of a coordinated economic and social policy.

4. In its previous comment, the Committee noted that HIV/AIDS threatens the country's capacity-building efforts because it strikes the educated and skilled as well as the uneducated. The long periods of illness of the skilled personnel wherein employment has translated into severe loss in economic productivity (as mentioned in the Poverty Reduction Strategy Paper). The Committee would be grateful if the Government would specify the efforts made to reduce the impact of HIV/AIDS on employment. Please also provide information on the measures taken in order to meet the employment and training needs of particular categories of workers such as women, young people, older workers and workers with disabilities.

5. *Article 3.* The Committee again requests the Government to provide details with regard to the consultations concerning employment policy. The Committee points out that this important provision of the Convention requires the involvement in consultations of government authorities and of representatives of the persons affected by the employment policy measures to be taken. The aim of the consultations is to take fully into account their experience and views and secure their full cooperation in formulating and implementing the employment policy. Representatives of the persons affected must include representatives of employers' and workers' organizations and also representatives of sectors of the economically active population such as the rural sector and the informal economy. In view of the importance of the informal economy, the Committee would appreciate receiving in the next report information on any consultations envisaged with representatives of the rural sector and of the informal economy on the matters covered by the Convention.

6. The preparation of the next report, which is due in 2004, including information requested in this observation, will certainly provide the Government and the social partners with an opportunity to evaluate the progress made towards the achievement of the objective of full and productive employment of the Convention. The Committee reminds the Government that the technical assistance of the Office is available to comply with the reporting obligations and for the implementation of an active employment policy in the sense of the Convention.

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States with regard to: **Convention No. 140** (*Chile, Guyana, Mexico, Netherlands: Aruba, Nicaragua, Poland, San Marino, Slovakia, Slovenia, Sweden, United Republic of Tanzania, United Kingdom: Anguilla, Venezuela*); **Convention No. 142** (*Argentina, Azerbaijan, France, France: French Guiana, France: French Polynesia, France: Guadeloupe, France: Martinique, France: New Caledonia, France: Réunion, France: St. Pierre and Miquelon, Georgia, Guinea, Guyana, Japan, Kenya, Mexico, Nicaragua, Niger, Slovenia, Tajikistan, Venezuela*).

Vocational Guidance and Training

Algeria

Convention No. 142: Human Resources Development, 1975 (ratification: 1984)

In a report received in November 2003, the Government briefly describes the action taken by the public authorities in the field of the development of human resources. It refers in this respect to the launching of a medium-term plan (2001-05) for the training and further training of educational personnel. It adds that, in the context of measures for specific categories, an average of 1,000 internships for persons with disabilities are provided every year in vocational training establishments. Furthermore, 931 recipients of benefits from the National Unemployment Insurance Fund were provided with training in 2002. The Committee requests the Government to refer to the observation that it is making this year on the application of Convention No. 122. It also refers to the comment it made in 2002 on the application of Convention No. 142, relating to the diverse and tragic situations experienced by young persons from underprivileged backgrounds, such as the failure of a proportion of children of school age to attend school, with some dropping out of school during the first and second basic education cycles. In view of the persistence of the particularly critical situation in terms of vocational training and employment, the Committee trusts that the Government will adopt and develop comprehensive and coordinated policies and programmes of vocational guidance and vocational training through the establishment, particularly by means of public employment services, of close links between vocational guidance and training and employment (*Article 1, paragraph 1, of the Convention*). It hopes that the Government will also indicate in its next report the manner in which the cooperation is secured of employers' and workers' organizations in the formulation and implementation of these policies and programmes (*Article 5*).

The Committee requests the Government to provide information in its next report on any measures adopted to improve the development of human resources, within the meaning of the Convention.

[The Government is asked to report in detail in 2005.]

El Salvador

Convention No. 142: Human Resources Development, 1975 (ratification: 1995)

With reference to its direct request of 1998, the Committee notes the information provided by the Government in its report received in May 2003. In this report, the Government considered it appropriate to include certain information also contained in the report due in 2003 in accordance with article 19 of the Constitution of the ILO. The Committee once again refers to the comments that it has been making on the Employment Service Convention, 1948 (No. 88), and particularly the observation of 2003 relating to the Employment Policy Convention, 1964 (No. 122), the application of which is closely related to that of Convention No. 142.

1. *Articles 1, 2 and 4 of the Convention.* The Government indicates that El Salvador's population is extremely young, for which reason special vocational training and integration programmes are principally carried out for poor young persons, and efforts are made to develop effective and modern employment mediation services, with support for local employment and self-employment initiatives. The employment mediation project has been coordinated with private enterprises. Taking into account the difficulties experienced by young persons entering the labour market and by the underemployed in finding productive employment, the Committee trusts that the Government will continue to indicate in future reports the manner in which it ensures effective coordination and links between policies and programmes of vocational guidance and vocational training, on the one hand, and employment and public employment services, on the other. The Committee would be grateful if the Government would also provide up-to-date information in its next report on systems of general, technical and vocational education, educational and vocational guidance and vocational training.

2. *Article 3.* The Committee trusts that the Government will provide data on any extension of the vocational guidance system which has been undertaken during the period covered by the next report. Please also include the information requested in the report form in relation to paragraphs 2 and 3 of this Article of the Convention.

3. *Article 5.* Please continue providing information on the cooperation of employers' and workers' organizations and other interested bodies (such as non-governmental organizations or other intergovernmental organizations) in the formulation and implementation of vocational guidance and vocational training policies and programmes.

4. The Government refers to the activities of INSAFORP, and particularly the Employment Mediation System (SIE), a project financed jointly with the Inter-American Development Bank (IDB), and implemented by the Foundation for Integral Education of El Salvador (FEDISAL). This project commenced in October 2002, has the objective of contributing to improving the functioning of the labour market and covers the whole country. The Committee would be grateful if the Government would provide information in its next report, including extracts from reports, studies and surveys, including statistics on the results achieved by the SIE and other programmes which have been implemented.

Guinea

Convention No. 140: Paid Educational Leave, 1974 (ratification: 1976)

The Committee notes with regret that the Government's report has not been received. It hopes that a report will be supplied for examination by the Committee at its next session and that it will contain full information on the matters raised in its previous 1998 direct request, which read as follows:

The Committee requests the Government to provide the text of Ordinance No. 91/026 of 11 March 1991 and to specify the provisions taken to ensure the granting of paid educational leave to public servants.

The Committee refers to the comments that it has been making for several years and is compelled to note that the information provided does not enable it to fully evaluate the effect given to the Convention. The Committee requests the Government to provide full information in its next report in response to each of the questions of the report form. The Committee hopes that the information provided will indicate that real progress has been made in the application of the Convention.

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

Switzerland

Convention No. 142: Human Resources Development, 1975 (ratification: 1977)

1. The Committee notes the Government's report for the period 1998-2003, which essentially includes the response of the Federal Council, of 9 April 2003, to a question from a parliamentarian, on 20 March 1996, with a view to the introduction of a right to further training for workers in Switzerland. The Swiss Federation of Trade Unions (USS), in its opinion on the Government's report concerning the application of Convention No. 142, observes that it is the view of the Government that it is not necessary to introduce a right to further training in federal legislation, considering that further training is a matter for individuals and not the community. The Committee notes that, according to the statistics contained in the response of the Federal Council relating to further training in labour law, training continued to stagnate during the 1990s. According to the Federal Statistical Office, four criteria are characteristic of persons who undertake most further training for professional purposes: they are persons with a high level of training; they are active persons in employment; they are of Swiss German origin; and are men rather than women. Moreover, it is principally persons who already have good training and high skills levels who benefit the most from further training. This selective policy by enterprises appears to have particularly negative effects on women workers, who are over-represented in the lowest occupational categories. The Committee also notes that collective labour agreements, whether or not they have been extended, cover only 50 per cent of employees in Switzerland and that a significant proportion of workers are probably not covered by any applicable legal arrangements relating to their right to further training and the arrangements for exercising that right, as these arrangements may be determined in individual employment contracts.

2. The Committee recalls that *Article 1 of the Convention* requires the adoption and development of "comprehensive and coordinated policies and programmes of vocational guidance and vocational training, closely linked with employment, in particular through public employment services". The Committee also notes the Government's statement that it is aware of the importance of further training in the implementation of a "lifelong learning" strategy, as well as the problems related to inequality of access to further training for vocational purposes. The Committee therefore requests the Government to indicate the manner in which it develops comprehensive and coordinated policies and programmes of vocational guidance and vocational training: the manner in which effective dialogue is ensured in this context; and the manner in which these programmes are linked with employment and public employment services (*Article 1, paragraphs 1 to 4*). It also requests the Government to indicate the manner in which it is ensured that employers' and workers' organizations cooperate in the formulation and implementation of policies and programmes of vocational guidance and vocational training (*Article 5*).

3. In particular, the Committee would be grateful if the Government would indicate the manner in which these policies and programmes 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 (account being taken of the needs of society) (*Article 1, paragraph 5*).

4. Finally, the Committee hopes that the Government will indicate the measures adopted to extend vocational training systems to cover areas of economic activity which are not yet covered and with a view to ensuring that such systems remain adapted to the needs of individuals throughout their lives (*Article 4*).

[The Government is asked to reply in detail to the present comments in 2004.]

United Republic of Tanzania

Convention No. 142: Human Resources Development, 1975 (ratification: 1983)

The Committee notes the brief information provided by the Government in relation to its 2000 direct request which indicates that in the revised National Employment Policy draft, the expansion of vocational training institutions and the enhancement of their capacity in coordinating vocational education, training, vocational guidance and counselling, as well

as other interventions such as start-up capital and social protection is emphasized as a precondition for creating an enabling environment for employment creation. The Committee understands that in the framework of the Poverty Reduction Strategy, as indicated in the Second Progress Report 2001/02 (published in March 2003), the United Republic of Tanzania has reached a significant performance in the education sector attributed to the implementation of the Primary Education Development Programme (PEDP). The challenge is now to further improve the quality of education, the learning environment, eliminate gender inequality at all levels, and improve health and other services. The Committee also understands that the Government is conducting a demand-driven skills training programme for employment promotion in 19 districts. It therefore requests the Government to indicate in its next report whether any particular difficulties have been encountered in achieving the employment and training objectives established in its Poverty Reduction Strategy and the manner in which the cooperation of workers' and employers' organizations has been ensured, in accordance with the provisions of *Articles 1 and 5 of the Convention*. In this respect, the Committee would appreciate receiving in the Government's next report disaggregated statistics on education and training participation and on placement rates.

Tunisia

Convention No. 142: Human Resources Development, 1975 (ratification: 1989)

With regard to the direct request of 1999, the Committee notes the information provided by the Government in a report received in August 2003. The Government mentions the establishment, in May 2002, of a Higher Council for Human Resources Development. Referring to its observation on the application of the Employment Policy Convention, 1964 (No. 122), the Committee would be grateful if the Government would specify in its next report the results achieved by the various programmes implemented by the new body with respect to human resources development (*Article 1 of the Convention*). It hopes that the Government will also provide information on any expansion of the system of vocational guidance during the period covered by the next report (*Article 3*), including any extracts of reports, studies, surveys or statistical data which make it possible to assess the application of the Convention in practice.

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States with regard to **Convention No. 140** (*Chile, Guyana, Mexico, Netherlands: Aruba, Nicaragua, Poland, San Marino, Slovakia, Slovenia, Spain, Sweden, United Republic of Tanzania, United Kingdom: Anguilla, Venezuela*); **Convention No. 142** (*Argentina, Azerbaijan, France, France: French Guiana, France: French Polynesia, France: Guadeloupe, France: Martinique, France: New Caledonia, France: Réunion, France: St. Pierre and Miquelon, Georgia, Guinea, Guyana, Japan, Kenya, Mexico, Nicaragua, Niger, Slovenia, Tajikistan, Venezuela*).

The Committee noted information supplied by *Spain* in an answer to a direct request with regard to **Convention No. 140**.

Employment security

Direct requests

Requests regarding certain points are being addressed directly to the following States with regard to: **Convention No. 158** (*Bosnia and Herzegovina, Uganda*).

Wages

Albania

Convention No. 26: Minimum Wage-Fixing Machinery, 1928 (ratification: 2001)

The Committee notes with interest the Government's first report, received in September 2003. It also notes the comments supplied by the Confederation of Trade Unions. The Committee will examine the Government's report and the comments of the organization in detail at its next session and welcomes any additional information that the Government may wish to provide.

Angola

Convention No. 26: Minimum Wage-Fixing Machinery, 1928 (ratification: 1976)

The Committee takes note of the information provided by the Government in its report and the attached documentation.

Article 3, paragraph 2(2), of the Convention. Further to its previous comments referring to the absence of an institutionalized framework to ensure effective consultations with employers' and workers' organizations in determining the national minimum wage, the Committee notes with interest the information concerning the National Council of Social Dialogue and the proposals of its Working Party on the adjustment of the national minimum wage. According to the Government's report, in November 2002, the Working Party concluded its study regarding the determination of a national minimum wage and suggested that a single national guaranteed minimum wage of an amount equivalent to US\$50 per month should be fixed and that this amount should be regularly readjusted to reflect the evolution of the inflation rate in the country. The Committee requests the Government to provide in its next report additional information concerning the composition and terms of reference of the National Council of Social Dialogue and to specify the legal text by which this advisory body was established. It also asks the Government to keep it informed of any future developments in this regard, particularly as regards the equal representation of the employers and workers concerned in the operation of the minimum wage fixing machinery.

Article 3, paragraph 2(3). The Committee notes with interest the Government's statement that the national minimum wage has been fixed at an amount in Angolan kwanzas equivalent to US\$50 following the recommendation of the National Council of Social Dialogue. The Committee requests the Government to specify the statutory instrument establishing the minimum wage at its current level and to transmit a copy of that instrument.

Article 4. Further to its previous requests for detailed information on the system of supervision and sanctions ensuring the observance of the national legislation in respect of minimum wages, the Committee notes with interest the adoption by the Council of Ministers of Decree No. 11/03 of 11 March 2003 which prescribes the penalties for infringements of the provisions of the General Labour Law. The Committee notes, however, that this Decree does not provide for any specific sanctions in the case of offences relating to the binding force of the minimum wage. The Government is therefore requested to indicate whether according to the general labour legislation paying wages at less than the national minimum wage rate is a punishable offence, and if so, to specify the relevant provision(s) and forward copies of any text(s) which may not have been previously communicated. The Committee recalls, in this connection, that the Convention not only spells out the principle that minimum wages, once fixed, have the force of law and may not be subject to abatement, but requires also measures to ensure the recovery by judicial means of any amount by which workers may have been underpaid. The Committee asks the Government to keep it informed of any developments in this regard.

Article 5 of the Convention and Part V of the report form. The Committee notes that the Government has not provided in recent years any information on the practical application of the Convention. The Committee trusts that the Government will make an effort to collect and communicate in its next report concrete information on the effect given to the Convention in practice, including for instance extracts from official reports or studies related to minimum wage fixing, statistics on the number of workers covered by relevant legislation, data on inspection visits and the results obtained in matters covered by the Convention, as well as any other particulars which would enable the Committee to better appreciate the progress achieved or the difficulties encountered in fulfilling the commitments made by ratifying the Convention.

Bolivia

Convention No. 131: Minimum Wage Fixing, 1970 (ratification: 1977)

The Committee notes the information supplied by the Government in its report in response to the Committee's previous comments.

Article 1, paragraphs 2 and 3, of the Convention. The Committee notes with regret that the Government has secured no changes regarding the categories of workers excluded from the coverage of the provisions on minimum wages. The Committee recalls that one of the purposes of the Convention is to protect groups of wage earners whose terms of employment or vulnerability are such as to make the application of minimum wages necessary as a protection. The Committee points out that, in principle, any determination of categories of workers to be excluded from minimum wage coverage should occur after the representative organizations of workers and employers have been fully consulted, and that these organizations should also be consulted prior to periodic reviews to determine whether such exclusions should be maintained. The Committee requests the Government to report on any developments regarding the groups of workers excluded from the coverage of minimum wage provisions, and to provide additional information on the reasons for the exclusions and on the number of workers affected and their conditions of work.

Article 3. The Committee also notes with regret that the Government's response to its previous comments concerning the manner in which workers' "basic subsistence needs" are assessed for the purpose of fixing minimum wage rates, is simply to say that the minimum a worker would need in order to live decently is 2,000 bolivianos per month, an amount five times the current minimum wage. The Committee recalls that the minimum wage becomes meaningless when it fails to provide workers with an income that affords them a decent standard of living and is sufficient to cover the vital necessities of food, clothing, housing, education and rest for both workers and their families. The Committee requests the Government to indicate the relation of the current minimum wage to workers' purchasing power in terms of a basket of basic goods, and to provide information on the evolution of minimum wage rates in comparison with the evolution of inflation.

Article 4, paragraph 2. The Committee is bound to note with regret that, despite the Committee's repeated requests, the Government has still not sent information on full consultations held with the social partners in order to fix and adjust minimum wages, as required by the provisions of the Convention. The Committee again recalls that one of the central requirements of the minimum wage instruments is that the minimum wage-fixing machinery must be set up and operated in consultation with organizations of employers and workers, whose participation should be effective and should take place on an equal footing, if possible on a regular basis and within an institutionalized framework. The Committee urges the Government to take the necessary steps without delay to bring national law and practice into line with the requirements of the Convention, particularly as regards consultation of the social partners.

Article 5 and Part V of the report form. The Committee notes that Supreme Decree No. 26547 of 20 April 2000 establishes a national minimum wage of 430 bolivianos for the public sector and the private sector as from 1 January 2002. The Committee also notes the information supplied by the Government on the inspection system and the penalties established by law with a view to enforcing minimum wage provisions. The Committee requests the Government to continue to provide information on the practical effect given to the Convention, including statistical information on the results of inspections for minimum wage purposes (contraventions reported, penalties imposed, etc.) and the approximate number of workers covered by minimum wage rates together with any other relevant information on the application of the provisions of the Convention.

[The Government is asked to report in detail in 2004.]

Brazil

Convention No. 131: Minimum Wage Fixing, 1970 (ratification: 1983)

The Committee notes the Government's report in reply to its previous comments.

Article 4, paragraphs 2 and 3, of the Convention. The Committee recalls its previous observation in which it requested the Government to specify the organizations of employers and workers which were consulted prior to the last adjustment of the minimum wage and also to elaborate on the outcome of these consultations. In its response to the Committee's previous comments, the Government indicates that, for the purpose of determining minimum wage levels, consultations are held with the principal workers' and employers' representative organizations, namely the Brazilian Trade Union Federations (the Single Confederation of Workers (CUT), Força Sindical, the General Workers Confederation (CGT) and the Social Democratic Union (SDS)) as well as the chief employers' confederations (the National Confederation of Industry (CNI), the National Confederation of Commerce (CNC) and the National Confederation of Agriculture (CAN)). It is still not clear from the Government's reply, however, whether the above organizations were consulted before any decision was taken and also whether the consultations took place within a formally established institutional framework such as a permanent or an ad hoc consultative body. In an earlier report, the Government had made reference to consultations through various forums and tripartite councils but never provided detailed particulars on these meetings. The Committee wishes to emphasize once again the fundamental character of the principle of full consultation of the social partners at all stages of the minimum wage-fixing procedure. According to the letter and the spirit of the Convention, the process of consultation must precede any decision-making and must be effective, that is to say it should afford the social partners a genuine opportunity to express their views and have some influence on the decisions pertaining to the matters that are the subject of consultation. While recalling that "consultation" should be kept distinct from "co-determination" or mere "information", the Committee considers that the Government is under the obligation to create and maintain conditions permitting the full consultation and direct participation of the social

partners in all circumstances, and therefore invites the Government to take appropriate action to ensure that the requirement for meaningful consultations set forth in this Article of the Convention is effectively applied, preferably in a well-defined, commonly agreed and institutionalized form.

Burundi

Convention No. 94: Labour Clauses (Public Contracts), 1949 (ratification: 1963)

The Committee notes that the Government's report contains no reply to previous comments. It must therefore repeat its previous observation which read as follows:

The Committee notes the adoption of Decrees Nos. 1/015 of 19 May 1990 and 100/120 of 18 August 1990 on public contracts. In this connection, the Committee wishes to draw attention to the following points.

Article 2 of the Convention. Further to its previous comments, the Committee is bound to recall that, under *Article 2, paragraphs 1 and 2*, of the Convention, the workers employed in public contracts are entitled to wages and labour conditions at least as good as those normally observed for the kind of work in question, whether determined by collective agreements, arbitration or legislation. The reason the Convention refers to collective agreements first is that collective agreements, or agreements reached through some kind of negotiation or arbitration, normally prescribe more favourable conditions than the conditions flowing from legislation. The insertion therefore of labour clauses in public contracts seeks to guarantee that the workers concerned enjoy labour conditions not less favourable than whichever is the most favourable of the three alternatives provided for in the Convention, i.e. collective negotiation, arbitration or legislation. Therefore, while noting the Government's indication that collective agreements by sectors have not as yet been concluded, the Committee asks the Government to indicate the measures taken or envisaged to ensure that section 2 of Presidential Decree No. 100/49 of 11 July 1986 is applied in practice in a manner consistent with the requirements of the Convention.

In addition, the Committee notes the Government's statement that no specific measures have been taken to ensure that persons tendering for contracts are aware of the terms of the labour clauses. In fact, section 26 of Decree No. 100/120 of 18 August 1990 concerning the specifications of public contracts does not expressly provide that invitations to tender should contain information on the labour clauses. The Committee therefore requests the Government to take all appropriate measures to ensure that the terms of the labour clauses are brought to the notice of tenderers in accordance with *Article 2, paragraph 4*, of the Convention.

Part V of the report form. The Committee notes the statistical information contained in the Government's report regarding the number of public contracts awarded in 1999 and 2000 as well as the number of workers engaged in the execution of some of those contracts. It requests the Government to continue to provide, in accordance with *Article 6* of the Convention and *Part V of the report form*, all available information on the practical application of the Convention, including, for instance, copies of public contracts containing labour clauses, extracts from official reports, information concerning the number of contracts awarded during the reporting period and the number of workers covered by relevant legislation, statistics from inspection services on the supervision and enforcement of relevant legislation and any other information bearing on the practical implementation of the requirements of the Convention.

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

Central African Republic

Convention No. 95: Protection of Wages, 1949 (ratification: 1960)

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

The Committee notes the observations from the Christian Confederation of Workers of Central Africa (CCTC) concerning the application of *Article 12 of the Convention*. The Committee notes that the Office brought the above observations to the Government's attention on 18 October 2002 and that, so far, the Government's comments on them have not been received. The Committee hopes that the Government will send its comments as soon as possible so that the Committee may examine them together with the observations by the CCTC.

The Committee recalls that in its previous observation it requested the Government to provide full and up-to-date information on: (i) the actual size of the outstanding debts due to wage earners (number of workers affected, length of delay in payment and total amount of sums owed, number and nature of establishments concerned); (ii) the specific measures taken to improve the situation including measures to ensure effective supervision, strict application of penalties and adequate compensation of workers' losses from the delay in payment; (iii) the results obtained.

In its report the Government indicates that at 30 August 2002 there were wage arrears only in the public sector and that they covered 20 months, from December 2000 to July 2002.

The Committee expresses its concern at the non-payment of wages in the public sector. It notes that this problem has lasted for nearly two years and expresses regrets that the Government's report does not provide the information requested previously on the number of workers concerned, the total amount due and the number and nature of the establishments concerned by the problem of wage arrears. Nor does the Government's report refer to any measures taken to improve the situation, in particular by means of effective supervision, strict application of sanctions and adequate compensation for the losses sustained by workers as a result of the delays. The Committee therefore urges the Government to take appropriate measures without delay to settle the arrears affecting public sector workers and their families.

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

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

Chad

Convention No. 26: Minimum Wage-Fixing Machinery, 1928 (ratification: 1960)

The Committee regrets that the Government's report responds only partially to its previous comments. It therefore draws the Government's attention once again to the following points.

Article 3 of the Convention. The Committee recalls its previous observations in which it requested the Government to indicate any measures taken with a view to updating the guaranteed interoccupational minimum wage (SMIG) and the guaranteed minimum agricultural wage (SMAG) which were last revised in 1995. The Committee notes that the Government is still not in a position to report any progress in this respect and recalls that the fundamental objective of the Convention, which is to ensure to workers a minimum wage that guarantees a decent standard of living for them and their families, cannot be meaningfully attained unless minimum wages are periodically reviewed to take account of changes in the cost of living and other economic conditions. Moreover, the Committee has been requesting additional information as regards the equal representation of the employers and workers concerned in the operation of the minimum wage fixing machinery. In its reply, the Government states that the Trade Union Confederation of Chad (CST) is now among the social partners consulted by the Government and that the said organization is represented in joint committees. The Committee takes this opportunity to emphasize once again the fundamental character of the principle of full consultation of the social partners at all stages of the minimum wage-fixing procedure. According to the letter and the spirit of the Convention, the process of consultation must precede any decision-making and must be effective, that is to say it should afford the social partners a genuine opportunity to express their views and have some influence on the decisions pertaining to the matters that are the subject of consultation.

Article 4. The Committee has been requesting the Government to take the necessary steps to enforce the minimum wage rates fixed in the public sector. According to the Government's report, although the application of the SMIG in the public sector continues to be a problem, a protocol of agreement has been concluded in 2003 between the Government and the trade union centres for the establishment of a joint committee to determine the wage scales applicable to workers in the public sector. The Committee requests the Government to supply a copy of this protocol of agreement and to keep it informed of the new wage rates for public employees as soon as these are fixed. The Committee would also be interested in receiving additional information on the functioning of the new joint committee, including for instance its composition or the criteria used in fixing minimum wage rates.

Colombia

Convention No. 95: Protection of Wages, 1949 (ratification: 1963)

The Committee notes the Government's comments, received on 27 October 2003, relating to the new observations made by the Union of Maritime and River Transport Workers (UNIMAR), dated 18 March and 23 May 2003. The Committee also notes the other comments on the application of the Convention made by the Colombian Association of Airline Pilots (ACDAC), dated 31 March and 27 May 2003; the Workers' Union of *Administradora de Seguridad Limitada* (SINTRACONSEGURIDAD), dated 25 March 2003; and the Confederation of Pensioners of Colombia (CPC), dated 22 May 2003. The Committee notes that all of these comments once again concern problems related to the preferential treatment of workers' claims in the event of the bankruptcy of the employer and the payment of wages at regular intervals.

I. Preferential treatment of workers' claims

The Committee notes the comments of UNIMAR complaining that the Superintendence of Companies (a public body established by Act No. 222 of 1995 with responsibility for carrying out inspection, supervision and control over commercial enterprises), by ruling No. 440-020886, of 12 December 2002, authorized the implementation of the Payment Plan of the Merchant Navy Investment Company, S.A. (formerly the Grancolombian Merchant Navy, S.A.) and by means of ruling No. 440-002498, of 14 February 2003, it rejected the application for review and the appeal. According to this organization, these rulings ordered the non-payment of the wages owed to the workers for the period between 23 September 1997 and 31 July 2000, and no provision was made for the payment of the cases of the seafarers dismissed in 1997. The organization adds that the Ministry of Social Protection, by decision No. 000804, refused the application of the enterprise for the deposit of cautions or guarantees for wage claims, especially for retirement pensions, in view of the application of the enterprise for closure.

The Government, in its reply, contends that the Payment Plan of 12 December 2002, in its provisions not only complies with the guidelines set forth in Act No. 222 of 1995, but also preserves the preferential ranking of pensioners' claims as set out in the Constitution in the priorities for the payment of its obligations, in accordance with ruling SU 1023 of 2001 of the Constitutional Court. According to the Government, the fact that all the persons concerned by the actuarial calculations are not covered by the Payment Plan is due to the fact that the latter have not complied with all the requirements to be recognized as having retirement pension claims. The Government adds that the Superintendence of Companies is not empowered to reject workers' claims and that these subjects have to be dealt with by the competent labour authorities. Finally, the Government adds that the workers with claims that are covered by the declaration

identifying the various components which constitute the enterprise (*Declaratoria de Unidad de Empresa*) have to have the consequences of this ruling upheld through legal action that is separate from the application for administration.

On the basis of the information provided, the Committee understands that the procedure for the liquidation of the assets of the Merchant Navy Investment Company S.A. (formerly the Grancolombian Merchant Navy, S.A.) has been set in motion and is following its course. The Committee notes in particular that the Payment Plan, established on 6 December 2002 by the liquidator and approved on 12 December 2002 by the Superintendence of Companies provides for the distribution of the proceeds from the liquidation of the bankrupt assets according to the order of priority of the privileged claims established by the Civil Code and that workers' claims are given first rank.

The Committee requests the Government to keep it informed of developments in the process of the liquidation of the above enterprise, and on any other related legal action, and to provide precise information on the number of employees who have received the amounts due, the amounts paid and the envisaged schedule for final settlement of all debts. The Committee considers it necessary to refer to paragraphs 353 and 505 of its General Survey of 2003 on the protection of wages, in which it considers that the designation of employees' wages and entitlements as a preferential debt is a keystone of labour legislation in practically every nation and it therefore indicates that the need for enhanced protection of workers' earnings is more pressing than ever and that, in this respect, the significance of Convention No. 173, which provides for the protection of wage claims through a guarantee fund, can hardly be overemphasized.

The Committee also recalls that in its previous observation it requested the Government to provide its comments on the allegations that had been made at that time by SINTRACONSEGURIDAD concerning the non-payment of workers' wages due to the closure of the enterprise, but that it has not received the Government's comments up to now. The latter trade union organization indicates, in a further communication dated 25 March 2003, that the problem of the payment of the wages due to the workers has still not been resolved. The Committee, therefore, requests the Government to provide its comments as soon as possible on the allegations of the SINTRACONSEGURIDAD and, in any case, to take the necessary measures to guarantee the payment of the wages due to the workers, in accordance with *Article 11 of the Convention*.

II. Payment of wages at regular intervals

The Committee notes the comments of the ACDAC alleging that for seven two-weekly periods the wages and other social benefits of employees in the Intercontinental Aviation Company have not been paid. According to this organization, workers are on the verge of economic collapse and cannot cope with their basic subsistence needs and those of their families, such as food, education, housing, transport and health, all of which is giving rise to a situation of stress among the workers, thereby endangering aviation security.

The Committee also notes the observations made by the CPC, denouncing the failure by the Government to pay pensions and health-care benefits to former workers, retirees and pensioners. The latter organization adds that it has been calling upon the Government and the Congress of the Republic to ensure the payment of these pensions for over four years without obtaining a solution to the problem. However, the Committee is bound to note that the CPC's allegation does not come under wage protection in its strict sense, as defined in *Article 1* of the Convention.

The Committee takes this opportunity to recall, as emphasized in paragraphs 355 and 398 of the abovementioned General Survey, that the underlying rationale of the protection of wages is to guarantee a regular payment allowing workers to organize their everyday life with a reasonable degree of certainty and security. In contrast, delays in the payment of wages and the accumulation of wage debts constitute a clear violation of the letter and spirit of the Convention and render most of its other provisions inapplicable. Furthermore, the full application of the principle of the payment of wages at regular intervals not only requires the regular payment of wages, but also compliance with the complementary obligation to settle swiftly and in full all outstanding payments upon the termination of the contract of employment. The Committee requests the Government to provide detailed information on the allegations referred to above and to take the necessary measures to ensure that workers' wages, in both the public and private sectors, are paid in accordance with the provisions of *Article 12* of the Convention.

[The Government is asked to report in detail in 2004.]

Convention No. 95: Protection of Wages, 1949 (ratification: 1960)

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

With respect to the situation concerning the ongoing irregular payment of the wages of state employees, the Committee notes the Government's statement to the effect that the country strives to recover from a destructive war, and, therefore, the question of the settlement of wage arrears depends on the outcome of the post-conflict plan elaborated with the assistance of international financial institutions. The Committee can only hope that the Government will not fail to take appropriate action in the very near future to ensure the timely payment of wages of public officials and the prompt settlement of wage debts already outstanding, including the wages due for the period between 1992 and 1996 in the public service as well as the sums due to the former workers of the Ogoúé Mining Company (COMILOG).

The Committee urges the Government to adopt all necessary measures to give full effect to the recommendations of the committees set up to examine the representations made under article 24 of the Constitution by the Trade Union Confederation of Congo Workers (CSTC) and the International Organization of Energy and Mines (OIEM) in 1995 and 1994 respectively (GB.268/14/6 and GB.265/12/6). It requests the Government to provide information on any progress achieved in this respect.

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

Côte d'Ivoire

Convention No. 95: Protection of Wages, 1949 (ratification: 1960)

The Committee recalls its previous comments in which it requested the Government to indicate the measures taken to ensure the application of the Convention as regards final settlements upon termination of work contracts (*Article 12, paragraph 2*), especially in the light of the situation denounced by the Trade Unions International of Chemical, Oil and Allied Workers in an earlier observation concerning outstanding wage claims of offshore workers who were dismissed owing to the “ivorization of jobs”. The Committee regrets that the Government does not specify in its report whether the court decision handed down on the above case has been executed or whether there have been any other judicial decisions on this matter. The Committee takes this opportunity to refer to paragraph 398 of its General Survey of 2003 on the protection of wages in which it emphasized that the principle of the regular payment of wages finds its full expression not only in the periodicity of wage payments, as may be regulated by national laws and regulations or collective agreements, but also in the complementary obligation to settle speedily and in full all outstanding payments upon the termination of the contract of employment. It asks therefore the Government to provide additional information on the manner in which situations similar to that of the offshore workers are handled, especially in the current context which according to the Government’s report is marked by the precariousness of employment and the abolition of benefits. In addition, the Committee would appreciate receiving concrete information on any problems of wage arrears that may be experienced in the public and semi-public sectors of employment, in light of the Committee’s comments contained in paragraphs 23, 360 and 412 of the abovementioned General Survey concerning the widespread phenomenon of non-payment or delayed payment of salaries in certain parts of Africa.

Democratic Republic of the Congo

Convention No. 94: Labour Clauses (Public Contracts), 1949 (ratification: 1960)

The Committee notes the Government’s brief reply to its previous comment in which it indicates that it has made efforts to harmonize its legislation with the provisions of the Convention by establishing a follow-up committee for the agreements ratified by the Ministry of Human Rights. The Committee notes with regret that, despite the observations that it has been making on this matter since 1991, legislation has still not been adopted to give full effect to the Convention.

The Committee recalls in this respect that the essential purpose of the Convention is to ensure that, through the insertion of appropriate labour clauses in public contracts, the workers employed by a contractor and paid indirectly out of public funds enjoy wages and conditions of labour which are at least as satisfactory as the wages and conditions of labour normally established for the type of work concerned, whether they are established by collective agreement or otherwise. Such protection is deemed to be necessary because this category of workers may not be covered by collective agreements and other measures regulating wages, and is often more exposed than others because of the competition between firms tendering for public contracts. Furthermore, the Committee deems it important to emphasize that the protection provided through labour clauses in public contracts cannot normally be ensured through the application of the general labour legislation only. This is due first of all to the fact that there are many countries in which the minimum standards fixed by law are improved upon by means of collective bargaining or otherwise. Thus, even where fairly extensive labour legislation exists and is properly applied, the inclusion of labour clauses in public contracts can serve a very useful purpose in ensuring fair wages and conditions of labour for the workers concerned. Secondly, it is due to the fact that the provision of penalties, such as the withholding of contracts, as envisaged in the Convention, makes it possible to impose sanctions in case of violations of the labour clauses in the public contracts which may be more directly effective than those applicable for infringements of the general labour legislation.

The Committee therefore urges the Government to take all the necessary measures to bring the national legislation into conformity with the provisions of the Convention and reminds it of the possibility of seeking the technical assistance of the International Labour Office for this purpose.

Djibouti

Convention No. 95: Protection of Wages, 1949 (ratification: 1978)

Article 8, paragraph 1, of the Convention. The Committee has been requesting the Government for the last ten years to clarify the meaning of section 107 of the Labour Code under which deductions may be made for deposits (*consignations*) prescribed by individual contracts of employment. In view of the fact that the Convention permits deductions from wages only under the conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitral awards, the above provision would need to be revised and therefore the Committee ventures to suggest that the words “and the individual labour contract” (*et les contrats individuels du travail*) should be deleted while the expression “compulsory levies” (*prélèvements obligatoires*) should be defined by reference to specific

provisions of the Labour Code authorizing such levies. The Committee hopes that the Government will take the necessary steps at the first suitable opportunity so as to bring the national legislation into conformity with this Article of the Convention on which it has been commenting for some years.

Article 12, paragraph 1, of the Convention and Part V of the report form. The Committee recalls its previous observations in which it requested the Government to provide concrete information on the nature and scale of the persistent problem of wage arrears in the public sector (e.g. number of workers affected, amount of accumulated wage debt, length of delay in payment, branches of economic activity concerned) and any measures taken to improve the current situation. The Committee regrets the absence of any response from the Government on this point. It notes with concern that, according to certain sources the wage arrears to teachers, security forces and civil servants vary at present from three to nine months' pay, while recent World Bank figures indicate that the total amount of arrears in the public service (i.e. unpaid wages, unpaid contributions to pension funds and debts to private suppliers) represents more than 23 per cent of the GDP. The Committee refers in this connection to paragraphs 23, 360 and 411 to 412 of the General Survey of 2003 on the protection of wages in which attention was drawn to the ongoing wage crises in several African countries and invites the Government to send its observations on the issues raised in the present comments.

Ecuador

Convention No. 131: Minimum Wage Fixing, 1970 (ratification: 1970)

The Committee notes the Government's report and the attached documentation, in particular Ministerial Order No. 59 of 30 May 2000, which establishes the rules for the operation of the National Wage Council (CONADES) and sectoral committees. The Committee wishes to draw the Government's attention on the following points.

Article 1, paragraph 1, and Article 4, paragraph 1, of the Convention. The Committee notes the list of 120 sectoral committees for the fixing of minimum wages by region, which was communicated by the Government in reply to its previous comments. In this respect, the Committee requests the Government to indicate the minimum wage rates currently in force for each category of worker and to transmit a copy of the legislative text setting these rates. The Committee also requests the Government to provide statistics on the number of workers covered by the minimum wage legislation and the evolution of minimum wage rates by occupational category of workers in recent years.

Article 2, paragraph 1. The Committee recalls its previous observations, in which it requested the Government to indicate the measures taken to guarantee that payment of remuneration below the minimum wage to persons covered by apprenticeship contracts, by virtue of section 168 of the Labour Code, is allowed only in cases of actual training. The Committee regrets to observe that the Government has not provided any substantive reply on this point, which had been raised by the Ecuadorian Confederation of Free Trade Unions (CEOSL), and it is bound once again to request information on the measures taken or envisaged to ensure that apprentices in the industrial sector paid less than this minimum rate receive vocational training at the workplace. The Committee also requests the Government to indicate whether it consulted employers' and workers' organizations prior to establishing the minimum wage provisions applicable to apprentices in the industrial sector.

The Committee notes that, by virtue of section 90 of the Children's and Adolescent's Code adopted on 23 December 2002, the remuneration of young apprentices shall be no less than 80 per cent of adult remuneration for the same type of work. The Committee takes this opportunity to once again recall that the adoption of lower minimum wage rates for groups of workers on account of their age should be regularly re-examined in the light of the principle of equal remuneration for work of equal value. The Committee considers that wage rates should be based on the quality and quantity of work and that special attention should be given to the equitable remuneration of young persons.

Article 5 and Part V of the report form. The Committee notes the statistics on the number of enterprises inspected in 1997 by the Department of Labour Protection to monitor the compliance with minimum wages provisions. Noting the Government's statements that until now the information on labour inspections has not been analysed in a systematic manner, the Committee hopes that the Government will make every effort to collect and provide in its next report detailed information on the application of the Convention in practice and, in particular, statistics on the results of inspections carried out (for example, number of violations reported, types of sanctions imposed, etc.).

Moreover, the Committee notes the Government's statement in its report that a system for the inspection of child labour is being organized, one of the duties of which will be to supervise the work of young apprentices. The Committee requests the Government to keep it informed of any progress in relation to this inspection procedure.

Egypt

Convention No. 94: Labour Clauses (Public Contracts), 1949 (ratification: 1960)

The Committee recalls its previous observations concerning the Government's continued failure to provide for the insertion of labour clauses in public contracts in accordance with the provisions of the Convention. In its last report, the Government refers to the recently promulgated – but not yet entered into force – Labour Code No. 12 of 2003, section 79 of which provides that, if an employer entrusts another employer with one of his tasks or part thereof in the area of

employment, the latter is under the obligation to treat equally his employees and the workers employed by the original employer. In the view of the Government, the new labour legislation is, by virtue of this provision alone, in conformity with the requirements of the Convention. While taking note of the Government's statement, the Committee regrets that, despite its repeated comments, no real progress has been made in the application of the Convention. The provision of section 79 of the new Labour Code, which parenthetically is identical to that of section 57 of the current Labour Code No. 137 of 1981, bears little relevance to the obligation arising from *Article 2 of the Convention* for the insertion of standard labour clauses in those public contracts meeting the conditions specified in *Article 1* of the Convention. The Committee has pointed out on several occasions that section 57 of the Labour Code concerns the equality of treatment between a subcontractor's own workers and those of the main contractor but cannot guarantee to the workers concerned wages and labour conditions at least as good as those normally observed for the kind of work in question, whether determined by collective agreement or otherwise. In this situation the Committee once again asks the Government to take all necessary measures without further delay to bring its national law and practice into conformity with the clear terms and objectives of the Convention.

[The Government is asked to report in detail in 2004.]

Ghana

Convention No. 94: Labour Clauses (Public Contracts), 1949 (ratification: 1961)

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

Further to its previous observations, the Committee notes with regret that the Government is still unable to report any progress concerning the application of the Convention. The Committee recalls that for the last ten years the Government has been indicating that a tripartite advisory body has been reviewing national labour laws with a view to harmonizing them with ratified Conventions. The Committee can only hope that measures will be taken in the very near future to ensure that labour clauses are included in public contracts and that adequate sanctions are applied in conformity with *Articles 2 and 5 of the Convention*.

The Committee again strongly suggests that the Government takes the necessary steps without delay to ensure that full effect is given to the provisions of the Convention and suggests that the Government may wish to consider the possibility of requesting ILO assistance to review the rules on public contracts in order to bring them into conformity with the requirements of the Convention.

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

Guatemala

Convention No. 94: Labour Clauses (Public Contracts), 1949 (ratification: 1952)

The Committee takes note of the Government's report and of the observations by the Trade Union Federation of Public Employees of Guatemala (FENASTEG) and the Trade Union of Workers of Guatemala (UNSITRAGUA). The Committee notes that, although the above organizations mention Convention No. 94, among others, their observations provide no information enabling the Committee to ascertain whether there have been any breaches of its provisions.

The Committee observes that the Government's report provides information on public administration personnel but does not reply to its previous comments. The Committee points out that the Convention applies to public contracts involving the employment of workers by the other party to the contract (*Article 1, paragraph (1)(b)(ii), of the Convention*), and that labour contracts between the public authority and its employees are outside the scope of the Convention. The Committee further points out that the purpose of including labour clauses in public contracts is to ensure compliance with socially acceptable standards in work done on the public sector's behalf and to combat the intense competition involved in the bidding for such contracts, which may be an incentive for employers to economize on labour costs.

The Committee again requests the Government to provide, in accordance with *Article 6 and Part V of the report form*, all available information on the practical effect given to the Convention, such as: (i) copies of public contracts containing labour clauses; (ii) the measures adopted to ensure that persons tendering for public contracts are aware of the terms of the labour clauses; (iii) statistical information on the number of contracts and the workers covered by the legislation; (iv) the work of the bodies responsible for supervising labour clauses (infringements recorded, sanctions imposed, etc.); and any other information relevant to the application of the provisions of the Convention.

Guinea

Convention No. 26: Minimum Wage-Fixing Machinery, 1928 (ratification: 1959)

The Committee notes the Government's report. It regrets that despite its repeated comments made in the past ten years, the Government has not as yet been in a position to issue the decree fixing the minimum hourly wage rate as referred to in section 211 of the Labour Code. The Committee has been requesting for some time past additional

information particularly as regards the full consultation and equal participation of employers' and workers' organizations in the operation of the minimum wage fixing machinery provided for in the Labour Code. In its reply, the Government merely states that there is no guaranteed interoccupational minimum wage (SMIG) and that the statutory instrument in the implementation of section 211 of the Labour Code is still under examination. The Committee notes therefore with concern that the provisions of the Convention are no longer given effect in practice as the Government fails to determine minimum wage rates for the workers employed in those trades in which no arrangements exist for the effective regulation of wages by collective agreement and wages are exceptionally low. It urges once again the Government to take the necessary action to fulfil its obligations arising out of the ratification of this Convention and to communicate information on the measures taken to this end. Finally, the Committee reminds the Government that it may have recourse to the technical assistance of the Office on these matters.

[The Government is asked to report in detail in 2004.]

Convention No. 99: Minimum Wage Fixing Machinery (Agriculture), 1951
(ratification: 1966)

See under Convention No. 26.

Islamic Republic of Iran

Convention No. 95: Protection of Wages, 1949 (ratification: 1972)

With reference to its previous comments, the Committee recalls the observations made by the International Confederation of Free Trade Unions and the World Confederation of Labour concerning the application of the Convention which were transmitted to the Government on 12 November and 12 December 2002 respectively. The Committee urges the Government to provide a full reply so as to enable the Committee to examine the points raised in these observations in detail at its next session.

[The Government is asked to report in detail in 2004.]

Kyrgyzstan

Convention No. 95: Protection of Wages, 1949 (ratification: 1992)

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

The Committee notes the detailed information supplied by the Government in its report, including texts of relevant legislation and descriptions of the application of the Convention in practice. The Government refers in particular to difficulties in applying *Articles 4* (regulation of wage payment in kind), *7* (works stores and services), *8* (deductions from wages), *10* (attachment and assignment of wages) and *12* (regular payment of wages and the final settlement) of the Convention. The Committee notes this information with concern and hopes that the Government will take all possible measures to overcome these difficulties.

The Committee, however, appreciates the Government's attitude about providing information on the problems it is faced with and suggests that the Government request technical assistance of the Office. It would be grateful if the Government would continue to communicate information on the measures taken or envisaged in this regard as well as on any improvement in the situation.

The Committee asks the Government to provide information on particular points raised in the request which it is addressing directly to the Government.

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

Libyan Arab Jamahiriya

Convention No. 131: Minimum Wage Fixing, 1970 (ratification: 1971)

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

The Committee notes that Act No. 31 of 1994 respecting the public service, employment and the labour force, permitting recruitment under an employment contract in the public service and the private sector, was repealed in 1999 and that all the parties engaged in work are therefore governed by the provisions of the Wages Act No. 15 of 1981. The Government states in its report that this Act applies to all national workers, whether they are employed in the public service or in public companies and enterprises and that the minimum wages increase in accordance with the provisions of the above Act.

Article 3 of the Convention. Section 1 of Act No. 15 of 1981 provides that the wage system for national workers "shall establish the principle of equal wages for equal work and equal responsibilities, while being designed to respond to the fundamental needs of workers covered by the system and to grant an annual increase according to the level of output and production. The wage shall be a function of the established output rates, all of which shall be in conformity with the general principles and rules which shall be determined in the regulations issued under the present Act". In view of this provision, the Committee has been requesting the Government for many years to provide information on the elements taken into consideration

to determine the level of minimum wages applicable to the workers covered by Act No. 15 of 1981. It therefore requests the Government to provide this information and copies of any regulations adopted under section 1 of the above Act.

Article 4. With regard to the determination of minimum wages, the Committee notes that section 4 of Act No. 15 of 1981 provides that the “wages of all national workers in bodies governed by the provisions of this Act are established in Schedule 1, supplemented by any increments, benefits and other financial emoluments due by virtue of the present Act and the regulations and orders issued under this Act”. In section 7, the Act provides that “without prejudice to the provisions of section 4, the People’s General Committee shall issue regulations and decisions respecting wages and schedules determining these wages for workers in bodies, institutions, services, societies, public establishments and similar units covered by the provisions of the present Act”. The Committee has also been requesting the Government for several years to indicate whether the machinery for the determination of minimum wages which is in force provides for a method for the adjustment of wages from time to time and the participation in this machinery of the representative organizations of workers and employers. The Committee therefore hopes that the Government will provide information on the frequency with which minimum wage rates are adjusted and on the participation of organizations of employers and workers in wage-fixing machinery.

Article 5 and Part V of the report form. The Committee notes that the technical commission will transmit the executive decisions respecting the new administrative structure, in accordance with the decision of the People’s General Congress, which were adopted in March 2000. In addition to this information, the Committee hopes that the Government will provide information concerning the adoption of the necessary measures to ensure observance of the provisions of the Convention, with an indication of the minimum wage rates in force and extracts of the reports of the inspection services on the application and observance of minimum wage rates.

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

Mauritius

Convention No. 94: Labour Clauses (Public Contracts), 1949 (ratification: 1969)

The Committee notes with regret that the Government’s report is essentially a repetition of information already submitted in previous years that confirms the continued failure of the Government to bring the national legislation into conformity with the requirements of the Convention. The Government merely indicates that discussions on the draft employment bill continue at the level of the Labour Advisory Board and that the provisions of the Convention have been duly taken into account in the course of the revision exercise. Recalling that the specific legislation enacted with a view to giving effect to the provisions of the Convention was repealed more than 25 years ago and that the Government has been announcing ever since its intention to amend the Labour Act of 1975 in order to apply again the Convention, the Committee urges the Government to take without further delay all necessary steps to ensure legislative conformity with the terms of the Convention.

In addition, the Committee notes the extract of the tender document for works, which was supplied by the Government and which contains a detailed clause on recruitment, rates of wages and hours and conditions of work in respect of the workers involved in the execution of a public contract. In this connection, the Government reports that measures will be taken by the Central Tenders Board to ensure that all tender documents contain specifications in line with the provisions of the Convention. The Committee is bound to recall, however, that a labour clause has to constitute an integral part of the actual contract signed by the selected contractor and that the insertion of labour clauses in the specifications or general conditions of tender documents, even though required under the terms of *Article 2, paragraph 4, of the Convention*, does not suffice to give effect to the basic requirement of the Convention as set out in *Article 2, paragraph 1*. The Committee takes this opportunity to recall that measures to ensure the inclusion of appropriate labour clauses in all the public contracts covered by the Convention do not necessarily call for enactment of legislation, but could also take the form of administrative instructions or circulars.

Myanmar

Convention No. 26: Minimum Wage-Fixing Machinery, 1928 (ratification: 1954)

The Committee notes the information supplied in the Government’s reports.

Articles 1, paragraph 1, and 3, paragraph 2(2), of the Convention. The Government has been reporting for some time past that it is considering extending the coverage of minimum wage legislation to industries other than the rice milling industry and the cigar and cheroots rolling industries in respect of which minimum wages councils have long been in operation. The Government has also been stating that wages fixed by minimum wages orders have little relevance to the actual wages in the labour market and that it therefore intends to adopt new procedures for the revision of those wage rates. The Committee requests the Government to indicate in its next report any progress made in this respect specifying in particular the measures taken to ensure that the employers and workers concerned are associated in equal numbers and on equal terms in determining or adjusting minimum wage levels. Furthermore, in the absence of any reply to its previous comments relating to the point raised in paragraphs 473 to 475 and 512 of the report of the Commission of Inquiry appointed under article 26 of the Constitution of the ILO to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29), the Committee is bound to renew its request for explanations concerning the manner in which minimum wage rates are established and applied to local people called up for labour or services in various construction

projects and agricultural works. Finally, the Committee asks the Government to keep it informed of any developments with regard to the enactment of the new labour law to which reference was made in an earlier report.

Netherlands

Aruba

Convention No. 94: Labour Clauses (Public Contracts), 1949

The Committee has been requesting the Government for many years to take the necessary measures to give effect to the requirements of the Convention, especially with regard to the insertion of express labour clauses in all public contracts ensuring to the workers concerned, wages, hours of work and other conditions of labour not less favourable than those established for work of the same character in the trade or industry concerned in the same district. In its reply to the Committee's previous observation, the Government reiterates that, the general labour legislation being applicable to all public contracts, there is no need for additional terms to be included in those contracts. It also refers to the Uniform General Instructions (UAV) which regulate all agreements concluded between the Government and a contractor, and which explicitly provide for the application of Aruban law to those agreements. The Government further indicates that it has no authority to dictate how much contractors pay their workers, and that if the contractor abides by the laws and pays at least the minimum wage, the contractor is operating within lawful parameters.

In the absence of any concrete indication on the part of the Government that steps are being taken to ensure compliance with the Convention, the Committee is obliged to recall that the mere fact of the national legislation being applicable to all workers does not release a ratifying State from its obligation to take the necessary measures to ensure that public contracts contain the labour clauses specified in *Article 2 of the Convention*. The Committee once again points out that in circumstances where the conditions of employment of workers are fixed not only by national legislation but also by collective agreements or arbitration awards, and where the provisions of the national legislation respecting wages, hours of work and other conditions of employment provide merely for minimum standards which may be exceeded by collective agreements, the insertion of labour clauses can serve a very useful purpose in ensuring that the workers concerned are entitled to wages and labour conditions at least as good as those normally observed for the kind of work in question, whether determined by collective agreements or otherwise. The Committee urges therefore the Government to take appropriate measures to bring its legislation into conformity with the provisions of *Article 2(1)* (insertion of labour clauses), *Article 2(3)* (consultation with employers' and workers' organizations on the terms of the labour clauses), *Article 2(4)* (measures to inform persons tendering for contracts of the terms of the clauses), *Article 4* (posting of notices and maintenance of records) and *Article 5* (sanctions for failure to observe the provisions of labour clauses). The Committee asks the Government to provide information in its next report on progress made in this regard.

Poland

Convention No. 95: Protection of Wages, 1949 (ratification: 1954)

The Committee notes the observations communicated by the Polish Trade Union of Nurses and Midwives (OZZPiP) on 27 January 2003 concerning the application of the Convention and the Government's response dated 1 October 2003.

1. According to the OZZPiP, the nursing personnel experience poor working conditions as evidenced by the periodic non-payment of wages, pay cuts and denial of statutory salary increases. The OZZPiP states that this situation persists despite the protests of health care employees and the numerous letters addressed to government authorities. In support of its complaints, the organization has transmitted copies of various communications sent to the Prime Minister, the Minister of Labour and Social Policy, the Minister of Health, the Ombudsman and the Labour Inspector General drawing their attention to increasing problems of non-payment or delayed payment of wages and inviting them to take remedial action. Among the practices denounced by the OZZPiP as gross violations of the labour legislation are the failure of health care institutions to pay wages on a timely basis (the situation seems to be particularly serious in Lower Silecia where the delay in the payment of wages is of several months), the payment of wages in instalments, the non-payment of wage increases, annual bonuses, inflation compensation, compensation for work on Sundays and public holidays and other wage supplements, unjustified deductions from wages and the lowering of the basic wage of nurses and midwives decided by several independent health-care institutions. The OZZPiP stresses the dramatic situation of the professional community of nurses and midwives and refers to violent incidents of public unrest, and even to the case of the suicide of an unpaid nurse in despair, to denote the long period of deep discontent of health-care employees and the lack of hope for any improvement in their situation.

2. The Committee notes that the non-payment of wages at regular intervals, which is a violation of the principle set out in *Article 12, paragraph 1, of the Convention*, is confirmed by official statistical information supplied by the National Labour Inspection Service (PIP). In her letter of 6 February 2003, which was annexed to the comments of the OZZPiP, the Labour Inspector General confirmed the reports of failure to pay wages and other benefits in full and on time, and

noted that delays range from several days to several months. According to the same communication, the labour inspectors requested the payment of the amount of PLN22.2 million (approximately US\$5.6 million) but only PLN3.3 million (approximately US\$832,500) had actually been paid. The Labour Inspector General further indicated that the accumulation of wage arrears keeps growing and that the situation is due to rising amounts of unpaid wages, unimplemented wage increases the employees are entitled to since January 2001 and January 2002 under article 4(a) of the Act on the negotiation-based setting of average pay increases by entrepreneurs and on amendments to certain other acts and the Health Care Provider (ZOZ) Act, and the increase of unpaid amounts due to employees by way of annual bonuses. The statistics brought to the knowledge of the Committee show an equally worrying accumulation of arrears in respect of employers' compulsory contributions to social security institutions. In other cases nurses are not paid termination benefits following their dismissal or the judicial liquidation of the health-care establishment which is in conflict with the requirement of the Convention for prompt settlement of all outstanding payments upon the termination of the employment contract (*Article 12, paragraph 2*).

3. In its reply, the Government emphasizes that the Ministry of Health does not have the authority to intervene in actions of health-care providers as employers, that it lacks also the authority to order the managers of health-care service providing entities to pay their employees remuneration in the amount or at the time intervals stipulated in the employment contracts, and that consequently the nursing personnel affected by wage arrears should seek to recover any unpaid wages by judicial means. In this connection, the Committee feels obliged to recall that the Government bears the overall responsibility for ensuring the effective application of the Convention and for preventing and punishing infringements by using the legal means at its disposal in order to compel defaulting employers to comply with the legislation in force.

4. While noting the Government's indication that law suits alleging violations of the workers' right to remuneration are examined by the courts in a special non-formalized and cost-free procedure, the Committee asks the Government to specify the amount of wage arrears which have so far been recovered by court action and also to indicate any additional measures to ensure the expeditious settlement of wage-related proceedings. Moreover, the Committee requests the Government to transmit copies of any court decisions involving questions of principle relating to the application of the Convention.

5. The Committee notes that, as regards the payment of annual wage increases to employees of health-care establishments under the provisions of the Act on the negotiation-based setting of average pay increases, the Government refers to the ruling of the Constitutional Court of 18 December 2002, by which these increases were found to be in conformity with the Constitution and must therefore be implemented. The Government adds, however, that the application of article 4(a) of the Act on the negotiation-based setting of average pay increases by independent public-owned health-care providers gives rise to great difficulties and that an ad hoc team established through the good offices of the Minister of Health is currently examining possible solutions to the problem of implementation of the statutory pay increases for nursing personnel. The Committee hopes that rapid progress could be made in this regard since any delay may render the repayment of the amounts due for past years even more difficult. It therefore asks the Government to provide information on all future developments.

6. The Committee notes that the Government refers at length to initiatives such as the programme of restructuring and protective measures in health care launched in 1999, the inter-ministerial drafting team for the rehabilitation and settlement procedure for the independent public-owned health-care providers appointed by the Prime Minister in December 2002 or the round table programming conference called in April 2003 by the Minister of Health, but provides little information on specific measures taken for the elimination of wage debts in the health-care sector. The Committee is mindful of the dire economic situation of most health-care establishments and the drastic reforms and restructuring pursued in the health-care system but insists on the need to undertake priority action for the reimbursement of mounting wage arrears to nursing employees. The Committee considers it appropriate to refer in this connection to paragraph 412 of its General Survey of 2003 on the protection of wages in which it stressed that none of the reasons normally advanced by way of excuse, such as the implementation of structural adjustments or "rationalization" plans, falling profit margins or the adverse economic situation, can be accepted as valid pretexts for the failure to ensure the timely and full payment to workers of the wages due for work already performed or services already rendered, as required under the Convention. The financial straits of a private enterprise or a public administration may be addressed in many ways, but that is not an excuse for deferred payment or non-payment of the outstanding wages due to workers. The Committee asks therefore the Government to indicate the specific measures, legislative, administrative or others, designed to stop the further aggravation of the situation and accelerate the payment of wage debts to health-care employees.

7. The Committee observes that the Government does not refer to the wage crisis in the nursing services sector in concrete terms and does not provide any statistics showing the nature and scale of the problem, or its evolution in the last few years. The Committee considers that the absence of any up-to-date statistics is all the more regrettable as the Government transmitted its response some ten months after the filing of the comments of the OZZPiP. As the Committee has been pointing out on numerous occasions, a proper assessment of the problem is only possible through the systematic collection of statistical data emanating from credible sources. It therefore asks the Government to supply in its next report detailed information on the number of workers affected, the number of health-care establishments experiencing difficulties in the payment of wages, the average amount of delay in the payment of wages, the amount of arrears settled and the outstanding amount of arrears, the number of inspections made and the penalties imposed, and any negotiated

time schedule for the payment of the sums remaining due. The Committee would also appreciate receiving detailed information on any other occupational category or branch of economic activity which may experience similar problems on a large scale.

8. The Committee recalls that for the past six years it has been commenting extensively on problems related to the deferred payment of wages mostly in transition economies drawing attention to three essential elements in so far as the application of the Convention is concerned: (i) efficient control and supervision basically implying the strengthening of labour inspection services; (ii) truly dissuasive and strictly enforced sanctions against those who take advantage of the economic situation to commit abuses; and (iii) the means to redress the injury caused, including not only the full repayment of the amounts due but also fair compensation for the losses incurred by the delayed payment. In this respect, the Committee wishes to refer to paragraphs 356 to 374 of the abovementioned General Survey in which it reviews the recent record of the Organization's supervisory organs with regard to the obligations arising out of *Article 12, paragraph 1*, of the Convention.

9. Finally, the Committee emphasizes that the phenomenon of wage arrears is self-propagating and that unless urgent action is taken to contain it before it reaches significant proportions, it may spill over to other sectors of the national economy turning into a vicious circle with disastrous social and financial consequences. The Committee accordingly requests the Government to intensify its efforts and exhaust all available means in order to comply with the requirements of the Convention.

[The Government is asked to report in detail in 2004.]

Rwanda

Convention No. 26: Minimum Wage-Fixing Machinery, 1928 (ratification: 1962)

The Committee notes the report provided by the Government in reply to its previous observation. It notes the adoption and entry into force of Act No. 51/2001 of 30 December 2001 issuing the Labour Code and requests the Government to provide information on the following points.

Article 3, paragraphs 1 and 2, of the Convention. The Committee requests the Government to provide full particulars on the minimum wage fixing machinery adopted under section 83 of the newly enacted Labour Code, as well as the procedures for its application, with an indication of the arrangements made, prior to the application of the above machinery, for the consultation of representatives of employers and workers and the manner and arrangements under which employers and workers have subsequently participated in equal numbers and on equal terms in the operation of minimum wage fixing machinery.

Articles 4, paragraph 1, and 3, paragraph 2(3). With reference to its previous comment, the Committee notes that the new Labour Code still does not provide for sanctions against those responsible for violations of the national regulations respecting the guaranteed minimum interoccupational wage (SMIG). Recalling that *Article 4, paragraph 1*, of the Convention sets forth the obligation to establish a system of supervision and sanctions, the Committee is of the opinion that the provisions on minimum wages in the new Labour Code cannot really be an effective application of the provisions of this Article unless they are combined with a supervisory system and sanctions. In this respect, the Committee considers that the draft ministerial order issuing a model employer's register, a copy of which was attached to the Government's report, is only marginally relevant in this respect. The Committee therefore requests the Government to take all the necessary measures without further ado to ensure the effective application of the Convention in practice based on supervision carried out by the labour inspection services and resulting, where appropriate, in sanctions being imposed and enforced where the wages actually paid are lower than the rate of the SMIG. In this connection, the Committee requests the Government to provide information on the measures taken to guarantee effectively the compulsory nature of the minimum wage rate, through sanctions among other measures, and to give a general appreciation of the manner in which the Convention is applied including, for example extracts of the reports of the inspection services, particularly where they have had occasion to report offences.

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

Sudan

Convention No. 26: Minimum Wage-Fixing Machinery, 1928 (ratification: 1957)

The Committee notes the Government's report.

Article 3, paragraph 2(2), of the Convention. The Committee recalls that for many years it has been drawing the Government's attention to section 4 of the Wages and Conditions of Employment Committees Act of 1976, which should be amended to ensure the participation, in equal numbers and on an equal footing, of the employers and workers concerned in the operation of the minimum wage fixing machinery. In this respect, the Government's reports have been announcing for over 20 years the establishment of a tripartite commission to bring the national legislation into conformity with the Convention. The Committee notes with regret that, despite the commitments that it has made in this respect on many occasions, the Government has still not been able to make the amendments necessary to bring the national

legislation into conformity with the Convention. Recalling both the spirit and the letter of the Convention and to paragraph 425 of its General Survey of 1992 on minimum wages, in which it strongly urges governments to take the necessary action to ensure that the participation of the social partners in the operation of minimum wage machinery is useful and effective and on an equal footing, the Committee requests the Government to take all the necessary measures without further ado to bring the national legislation fully into conformity with the Convention. It expresses the firm hope that the Government will be in a position to indicate in its next report the progress achieved with a view to ensuring the effective participation of employers' and workers' organizations, in equal numbers and on an equal footing, in the national minimum wage fixing machinery.

Article 5 of the Convention and Part V of the report form. While noting the information provided by the Government in its last reports, and particularly the decision of 2000 adjusting minimum wages on the basis on the Minimum Wage Act of 1974, the Committee would be grateful if the Government would specify in its next report all the minimum wage rates applicable both under the Minimum Wage Act and the Act on Wages and Conditions of Employment Committees of 1976. It would also be grateful to be provided with any other relevant information enabling it to assess the manner in which the Convention is applied in practice, including extracts from the reports of the inspection services concerning compliance with minimum wages and, where appropriate, the measures taken when violations have been found and the number of workers actually covered by the minimum wage regulations.

Syrian Arab Republic

Convention No. 95: Protection of Wages, 1949 (ratification: 1957)

Articles 8(1) and 11(1) of the Convention. Further to its previous comments, the Committee notes with satisfaction the adoption of the Law No. 24 of 10 December 2000 which amends section 88(a) of the Labour Code of 1959 in order to extend the protection afforded by sections 45 to 52, 54, 66, 85 and 87 of the Labour Code to casual and temporary workers. Moreover, the Committee notes the Government's indication that by letter dated 2 June 2001 the President of the Council of Ministers has approved the submission of the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173) to the National Assembly for ratification. The Committee requests the Government to keep it informed of any developments in this regard.

Turkey

Convention No. 95: Protection of Wages, 1949 (ratification: 1961)

The Committee takes note of the information contained in the Government's report, received in October 2003, which included comments supplied by the Turkish Confederation of Employers' Associations (TISK) and the Confederation of Turkish Public Employees Trade Unions (KAMU-SEN). The Committee will examine the Government's report and the comments of the organizations in detail at its next session and welcomes any additional information that the Government may wish to provide.

Ukraine

Convention No. 95: Protection of Wages, 1949 (ratification: 1961)

The Committee notes the discussion of the Conference Committee which took place during the 91st Session of the Conference (June 2003). It also notes the information provided in the Government's report and the observations communicated by the Workers' Union of the Coalmine Nikanor-Novaya.

According to the allegations of the Workers' Union of the Coalmine Nikanor-Novaya, the workers of the state-owned coalmine in Nikanor-Novaya are not paid on a regular basis and as a result the accumulated payroll debt of the enterprise amounts to some 5 million grivnas. It is also alleged that the wage rates applied at the enterprise are much lower than the minimum pay rates provided for in the national legislation depriving the entire population of the town of Zorinsk of an acceptable level of living. The organization further indicates that the entire working team of the enterprise has decided to halt and suspend all works at the mine until the repayment of all wage debts and the introduction of new pay rates and salary scales. The Committee asks the Government to provide detailed information on the above observations and to indicate the measures it intends to take for the prompt settlement of any outstanding wage debts in the Nikanor-Novaya coalmine.

The present situation with respect to wage arrears

1. According to the latest information provided by the Government, as compared to May 2001, the total amount of wage arrears was reduced by 48.1 per cent to 2.3 billion grivnas, i.e. half the average national monthly wage bill. In 2001, this figure was nearly 4.6 billion grivnas, or one-and-a-half times the monthly wage bill. The number of workers concerned decreased by 3.3 million persons, or 58 per cent. At present, they number 2.1 million persons, or 17.9 per cent of the total workforce, compared to 5.4 million or 41.8 per cent of the workforce in April 2001. Half of these workers are

owed less than three months' wages. By way of comparison, at the end of 2001 the number of workers who were not paid their wages on time was over 30 per cent of the workforce.

2. Moreover, the Government indicates that wage arrears were reduced in virtually all types of economic and industrial activity, and in all territorial units. The most marked changes took place in the state budget-financed sector where arrears were reduced by two-thirds and now amount to 1.5 per cent of the total amount of arrears (35.8 million grivnas). In the non-state sector, the most substantial reductions in arrears were registered in agriculture where they were cut by 71.3 per cent and now total 423.2 million grivnas. As regards the payment of wages in kind, the Government states that the amount of wages paid in kind from January to March 2003 was reduced by 59.5 per cent compared to the figure for the same period in 2001 and now represents 11 million grivnas. The proportion of the total wage bill paid in kind amounted to 2.3 per cent in the first quarter of this year, compared to 5.2 per cent in the same period of 2001.

3. The Committee takes note of the latest statistical data which show a clear improvement of the situation both in respect of accumulated wage arrears and the amount of wages paid in kind. It also notes, however, that the decrease of wage arrears has been much slower in certain sectors such as coalmining while half of the workers affected by wage arrears continue to suffer delays in the payment of wages of more than three months. Under the circumstances, the Committee can only echo the observations of the Conference Committee emphasizing that the payment of wages in full and at regular intervals is a fundamental right of workers and an absolute prerequisite for healthy employment relations, economic progress and social welfare. The Committee therefore urges the Government to continue to mobilize its assets and energy in the ongoing endeavour to resolve the wage crisis and to report fully and objectively on the evolution of the situation.

4. As regards the situation at the Voltex plant in Lutsk, the Government states that in January 2003 bankruptcy proceedings were initiated against the Voltex enterprise and that the register of creditors' claims includes wage arrears owed to employees totalling 2.2 million grivnas. The Government further indicates that following the decision of the creditors' committee to reorganize the company under a restructuring plan approved by the Volyn Regional Economic Council in April 2003, the wage arrears owed to Voltex employees are expected to be settled according to the reorganization plan. The Committee requests the Government to specify the exact conditions under which the settlement of wage arrears is intended to proceed according to the reorganization plan and to continue to provide detailed particulars on the situation until the total repayment of the wages due to the workers of the Voltex company.

Enforcing the legislation relating to the payment of wages

5. With respect to supervision and punishment of offences relating to the payment of wages, the Government indicates that, in 2002, 1,044 managers of enterprises in arrears in their wage payments were subjected to disciplinary proceedings initiated by the state labour inspectors, including 278 whose employment contracts were terminated, or a 36 per cent increase compared to the 2001 figure of the total number of managers sanctioned. In addition, in 2002, administrative proceedings were brought by state labour inspectors against 19,629 managers of enterprises, accounting for 77.8 per cent of the enterprises in arrears which were inspected. Finally, in 2002, criminal proceedings were instituted against 485 managers of enterprises in arrears, which is over two-and-a-half times higher than the figure for the same period last year. While noting these largely positive inspection results, the Committee requests the Government to maintain its tight scrutiny over any practices which might be violating the workers' wage rights and to continue to communicate detailed statistical information in this regard.

Legislative developments

6. The Committee notes with interest the Government's indication that a number of draft laws has been prepared with a view to facilitating the settlement of wage arrears by giving them priority over other payments and considering them as privileged debts in the event of judicial liquidation of an enterprise. The Government adds that the creation of a wage guarantee institution, in accordance with the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173) is also under consideration, while the transformation of the labour inspection system has allowed the introduction to the Supreme Council of Ukraine of draft laws on the ratification of the Labour Inspection Convention, 1947 (No. 81) and the Labour Inspection (Agriculture) Convention, 1969 (No. 129).

7. In this connection, the Committee finds particularly encouraging the letter of the Minister of Labour and Social Policy, dated 4 August 2003, by which the Government requested the technical assistance of the Office principally for the purpose of drafting legislation to give priority to the payment of wages over other mandatory payments, studying other countries' experience in setting up wage guarantee funds for the payment of wages in the event of insolvency, and counselling on measures to increase the effectiveness of labour inspection in supervising the timely payment of wages. The Committee firmly trusts that the Government will not fail to draw on the Office's technical support and expert advice and that it will soon be in a position to report concrete progress in enacting new legislation in these matters.

[The Government is asked to report in detail in 2004.]

Uruguay

Convention No. 94: Labour Clauses (Public Contracts), 1949 (ratification: 1954)

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

The Committee notes the comments made by the Inter-Trade Union Assembly – National Workers' Convention (PIT-CNT) regarding the application of the Convention.

I. Application of the Convention in respect of public construction contracts

1. The Committee notes the Government's statement, in response to its previous comments, to the effect that section 34 of the Decree of 1990 should be read in its entirety, i.e. including the second sentence, according to which public works contractors are required in any contracts with subcontractors to include a clause requiring the latter to comply with all labour law provisions in force. This, according to the Government, covers any relevant laws and regulations in force, including acts, legislative and other decrees, executive decisions, international labour Conventions, collective agreements and arbitration awards. The Government also states that the adoption of Executive Decree No. 13/001 extends the collective wages agreement of 11 December 2000 to the entire construction sector. The Government notes in this regard that, since this instrument was enacted after Decree No. 8/990 of 24 January 1990 setting out the general conditions for public works tenders, it supersedes the latter.

2. The Committee recalls that it had noted in its previous observation that section 34 of Decree No. 8/990 required only that the contractor comply with "legal and regulatory provisions in force in labour matters", thus limiting the provisions of the previous Decree No. 114/982, given that section 1 of the latter required that "labour clauses should be included in the relevant contracts so that the contracting parties are obliged to comply with the provisions of arbitration awards and collective agreements in force for the branch of activities". The Committee concurs with the Government that, in the construction sector, the collective agreement that has been extended to cover the entire sector makes it possible to guarantee to workers in the sector to which it applies wages that are not less favourable than those of other workers in the same occupation. However, the Committee notes that the collective agreement in question concerns only wages in the construction sector; *Article 2, paragraph 1, of the Convention*, on the other hand, is broader in scope and concerns, apart from wages (including allowances), other conditions of work including working hours. The Committee therefore considers that extending the collective agreement to the entire construction sector, including for public contracts, only partially meets the concerns expressed in its previous observation. Furthermore, the collective agreement concerns only the construction sector in those areas to which, in accordance with *Article 1(c)(ii) and (iii)*, the Convention applies – the manufacture, assembly, handling or shipment of materials, supplies or equipment, or the performance or supply of services. The PIT-CNT, referring to this question, recalls the decisions adopted by the Government to subcontract certain services in the public administration. The purpose of this, according to the PIT-CNT, is to level wages downwards and avoid the need to respect trade union activities. While taking due note of these observations, the Committee considers that they are not strictly relevant to the provisions of the Convention or its application.

3. In the light of the preceding comments, the Committee is bound to regret that the necessary measures are not being taken to ensure that section 34 of Decree No. 8/990 reproduces the text of section 1 of Decree No. 114/982, which gives full effect to the provisions of *Article 2* of the Convention. The Committee accordingly requests the Government once again to take the necessary steps to do this.

II. Application of the Convention to other contracts provided for under Article 1

4. The Government states that it is increasingly resorting to the method of awarding concessions in cases where concluding a public contract would entail investment on a scale which the state budget cannot accommodate because it would add an excessive burden to the country's foreign debt. The Government also states that as regards the other types of contract involving smaller sums of money, it retains responsibility for concluding contracts.

5. The Committee recalls and emphasizes that, according to *Article 1, paragraph 1*, of the Convention, the latter applies to contracts that are awarded by a public authority and which involve the expenditure of funds by a public authority for the construction, alteration, repair or demolition of public works, the manufacture, assembly, handling or shipment of materials, supplies or equipment, or the performance or supply of services. When a public authority concludes a contract to which the Convention is applicable, the contract must, under the terms of *Article 2, paragraph 1*, of the Convention include clauses ensuring to the workers concerned wages (including allowances), hours of work and other conditions of labour which are not less favourable than those established for work of the same character in the trade or industry concerned in the district where the work is carried on, by collective agreement, by arbitration award or by national laws or regulations. The Committee requests the Government to indicate the manner in which it ensures that public contracts under the terms of *Article 1* of the Convention contain clauses ensuring to the workers concerned conditions of labour which are not less favourable than those established for work of the same character in the trade or industry concerned in the district where the work is carried on, by collective agreement, by arbitration award or by national laws or regulations. The Committee requests the Government to provide the International Labour Office with copies of the legislation giving effect to the Convention.

6. In addition, the Committee states that the central and regional authorities have carried out consultations regarding the conditions of work of public employees. The Committee recalls, however, that the Convention does not directly concern contracts of employment between a state official or agent and a public authority or institution. Nor does the Convention apply to the subcontracting of services ("*servicios tercerizados*") between the public administration and individuals for the provision of services which the State has decided to "privatize". The Committee thus considers that the documents supplied with the Government's reports, which directly concern conditions of service in the public administration, are not relevant. The comments made by the PIT-CNT referring among other things to the measures adopted by the Government with a view to subcontracting public services ("*tercerización de servicios*") are not pertinent to the application of this Convention.

III. Consultations with organizations of employers and workers

7. The Committee indicated in its previous observations that, under the terms of *Article 2, paragraph 3*, of the Convention, the Government must consult organizations of employers and workers with a view to determining the terms of the clauses to be included in contracts and any variations thereof, in accordance with national conditions.

8. The Committee takes notes of the explanations provided by the Government, in particular the information on administrative law. However, the Committee wishes to point out that the consultations envisaged under this Article of the Convention concern clauses in public contracts concluded by the public authorities, not the conditions of service of state officials or agents. Consequently, the Committee requests the Government to provide clarifications in its next report with regard to the public contracts to which the Convention applies.

IV. Practical application of the Convention

9. *Article 4(a)(iii)*. The Committee notes the statement of the Government to the effect that it is possible, within the public authorities, to obtain information on conditions of work from human resources departments, and that notices for display are made available to the trade union organizations within the same authorities. The Committee notes in this regard that the information for workers on their conditions of work by means of notices, as required by the Convention, does not concern the public administrations but the other party or parties to the public contract to which the Convention is applicable.

10. The Committee takes note of the detailed terminological explanations regarding the word “*avisos*” (“notices”). The Committee accepts the Government’s conclusion that the word should be interpreted to mean “the means by which the interested parties can be made aware of information”. Consequently, the Committee requests the Government to indicate whether, in addition to providing for the means indicated in the report – the “trade union notices” (“*carteleras gremiales*”) regarding conditions of work – the law giving effect to the Convention requires also that such notices be displayed clearly in establishments and other places of work with a view to informing workers of their conditions of work.

11. *Article 3, together with Article 4(b)(ii)*. Noting the observations of the PIT-CNT, to the effect that the problems arising from the application of this Convention and the national legislation that would give effect to it are due to inadequate monitoring by the labour inspectorate, the Committee requests the Government to supply information on the inspection system which it has established to ensure effective application of these provisions. It also requests the Government to indicate how the general labour and social security inspection authorities monitor the conditions of work of workers employed under public contracts to which the Convention is applicable.

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

Convention No. 131: Minimum Wage Fixing, 1970 (ratification: 1977)

The Committee notes the Government’s report and the observations made by the Inter-Union Assembly of Workers – National Convention of Workers (PIT-CNT) in communications dated 28 May and 5 September 2003. The Committee also notes the discussion in the Conference Committee on the Application of Standards during the 91st Session of the International Labour Conference in June 2003. The Conference Committee indicated in its conclusions that the requirement of meaningful consultations with the social partners in determining minimum wage levels, due regard being taken of the basic needs of workers and their families, is the quintessence of the Convention and that no Government could be relieved of its obligations for reasons of economic policy or expediency. It also expressed concern at the absence of concrete progress in determining minimum wage levels in line with the economic and social realities of the country and also in consulting the social partners for this purpose in an institutionalized form and on a regular basis.

I. Adjustment of minimum wage rates as a function of criteria related to the needs of workers and their families (Article 3 of the Convention)

The Committee refers to its previous comments in which it expressed concern that the minimum wage currently in force does not reflect the needs of workers and their families. The Committee notes the Government’s report in which it states that, while the literal wording of *Article 3* of the Convention would make it possible for ratifying States to deviate from the application of the parameters set out therein, it is not the Government’s intention to stray from those criteria. The Committee also notes the comments of the PIT-CNT, according to which the minimum wage is currently equivalent to US\$36 a month, while the basket of basic products for a family of three members is equivalent to US\$824, which would indicate a total failure to take into consideration the needs of workers and their families in determining the minimum wage.

The Committee has emphasized repeatedly that social criteria cannot be considered in isolation, but have to be assessed in relation to the country’s level of economic and social development, which involves a delicate evaluation process. Nevertheless, without overlooking the economic situation and the specific political conditions of the country, it is essential not to overlook the real objective of the minimum wage system, which is to contribute to the eradication of poverty and ensure a decent living standard for workers and their families. The Committee requests the Government to indicate the manner in which it is ensured that the increases in the minimum wage reflect the basic needs of workers and their families, for example by guaranteeing the maintenance of their purchasing power in relation to a series of specific basic products. The Committee also requests the Government to provide statistical information on the evolution of minimum wage rates in relation to fluctuations in the inflation rate and the consumer price index over recent years.

II. *Obligation of full consultation with the social partners for the determination of the minimum wage (Article 4, paragraph 2)*

The Committee, while once again reiterating its previous observations that the minimum wage should not be determined without prior consultations with the representative organizations of employers and workers, notes the Government's explanations that the country is experiencing one of the worst crises in its history, which has caused the closure of enterprises, an increase in poverty and a rise in unemployment and has obliged the Government to implement food assistance plans.

The Committee also notes the Government's additional comments that the country has a long tradition of consulting employers and workers and that it currently has at least eight tripartite consultative bodies. In this respect, the Committee notes the observations of PIT-CNT that none of the tripartite commissions referred to by the Government have the function of analyzing the determination of minimum wages.

The Committee once again recalls that the obligation to consult the social partners is intended to ensure their real and effective participation in the establishment and modification of minimum wage-fixing machinery and should not be considered a mere formality. The Committee notes that, even in countries in which the organization of employers and workers is in embryonic form or non-existent, Governments should act in such a way that the consultation and participation of the representatives of employers and workers takes place on an equal footing. The Committee requests the Government to indicate the measures that it intends to adopt to give effect to the fundamental principle of the consultation of the social partners in relation to the determination of the minimum wage and to keep it informed of any developments in this respect.

The Committee notes the copy of the Decree provided by the Government dated 27 May 2003, fixing the national minimum wage at 1,170 pesos a month as from 1 May 2003, except for domestic workers, rural workers and sheep-shearers. The Committee regrets that it is bound to note that the Government provided no information in its last report on the determination of the minimum wage applicable to agricultural workers and domestic workers, despite the lengthy comments contained in its last observation. The Committee hopes that the Government will provide precise replies on this point in its next report.

Finally, the Committee notes with interest the Government's willingness to receive ILO technical assistance and hopes that in this manner the Government will be able to provide indications of progress in the near future in bringing its national law and practice into conformity with the provisions of the Convention.

[The Government is asked to report in detail in 2004.]

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States with regard to: **Convention No. 26** (Argentina, Austria, Bahamas, Barbados, Belarus, Belgium, Belize, Benin, Bulgaria, Burundi, Canada, Chad, China, China - Macau Special Administrative Region, Colombia, Congo, Côte d'Ivoire, Czech Republic, Democratic Republic of the Congo, Djibouti, Dominican Republic, Gabon, Germany, Ghana, Grenada, Guinea-Bissau, Hungary, Ireland, Italy, Jamaica, Republic of Korea, Lesotho, Madagascar, Malawi, Mali, Mauritania, Mauritius, Myanmar, Nigeria, Norway, Panama, Papua New Guinea, Paraguay, Peru, Rwanda, Saint Lucia, Saint Vincent and the Grenadines, Senegal, Seychelles, Sierra Leone, Slovakia, Solomon Islands, Switzerland, Togo, Tunisia, Uganda, United Kingdom: Anguilla, United Kingdom: British Virgin Islands, United Kingdom: Montserrat, Venezuela, Zimbabwe); **Convention No. 94** (Algeria, Antigua and Barbuda, Belize, Costa Rica, Jamaica, Malaysia - Sabah, Mauritius, Netherlands: Aruba, Nigeria, Norway, Saint Lucia, Saint Vincent and the Grenadines, United Republic of Tanzania, Uganda, United Kingdom: Anguilla); **Convention No. 95** (Afghanistan, Albania, Central African Republic, Chad, Côte d'Ivoire, Democratic Republic of the Congo, France: New Caledonia, Gabon, Guatemala, Kyrgyzstan, Nigeria, Saint Lucia, Sierra Leone, Solomon Islands, Syrian Arab Republic, Tajikistan, United Republic of Tanzania, United Kingdom: Montserrat); **Convention No. 99** (Algeria, Australia, Austria, Belgium, Belize, Central African Republic, Colombia, Côte d'Ivoire, Czech Republic, Djibouti, El Salvador, Gabon, Germany, Hungary, Ireland, Italy, Kenya, Malawi, Mauritius, Morocco, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Senegal, Seychelles, Sierra Leone, Slovakia, Tunisia, United Kingdom: Anguilla, United Kingdom: Isle of Man, United Kingdom: Jersey, Zimbabwe); **Convention No. 131** (Australia, Australia: Norfolk Island, Azerbaijan, Brazil, Burkina Faso, Cameroon, Chile, Costa Rica, Cuba, El Salvador, France, France: French Guiana, France: French Polynesia, France: Guadeloupe, France: Martinique, France: New Caledonia, France: Réunion, France: St. Pierre and Miquelon, Guatemala, Guyana, Japan, Kenya, Republic of Korea, Latvia, Lebanon, Lithuania, Malta, Mexico, Republic of Moldova, Nepal, Netherlands, Netherlands: Aruba, Nicaragua, Romania, Slovenia, Spain, Swaziland, Syrian Arab Republic, United Republic of Tanzania); **Convention No. 173** (Australia, Austria, Botswana, Burkina Faso, Finland, Lithuania, Madagascar, Slovakia, Switzerland, Zambia).

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States with regard to: **Convention No. 26** (Argentina, Austria, Bahamas, Barbados, Belarus, Belgium, Belize, Benin, Bulgaria, Burundi, Canada, Chad, China, China - Macau Special Administrative Region, Colombia, Congo, Côte d'Ivoire, Czech Republic, Democratic Republic of the Congo, Djibouti, Dominican Republic, Gabon, Germany, Ghana, Grenada, Guinea-Bissau, Hungary, Ireland, Italy, Jamaica, Republic of Korea, Lesotho, Madagascar, Malawi, Mali, Mauritania, Mauritius, Myanmar, Nigeria, Norway, Panama, Papua New Guinea, Paraguay, Peru, Rwanda, Saint Lucia, Saint Vincent and the Grenadines, Senegal, Seychelles, Sierra Leone, Slovakia, Solomon Islands, Switzerland, Togo, Tunisia, Uganda, United Kingdom: Anguilla, United Kingdom: British Virgin Islands, United Kingdom: Montserrat, Venezuela, Zimbabwe); **Convention No. 94** (Algeria, Antigua and Barbuda, Belize, Costa Rica, Jamaica, Malaysia - Sabah, Mauritius, Netherlands: Aruba, Nigeria, Norway, Saint Lucia, Saint Vincent and the Grenadines, United Republic of Tanzania, Uganda, United Kingdom: Anguilla); **Convention No. 95** (Afghanistan, Albania, Central African Republic, Chad, Côte d'Ivoire, Democratic Republic of the Congo, France: New Caledonia, Gabon, Guatemala, Kyrgyzstan, Nigeria, Saint Lucia, Sierra Leone, Solomon Islands, Syrian Arab Republic, Tajikistan, United Republic of Tanzania, United Kingdom: Montserrat); **Convention No. 99** (Algeria, Australia, Austria, Belgium, Belize, Central African Republic, Colombia, Côte d'Ivoire, Czech Republic, Djibouti, El Salvador, Gabon, Germany, Hungary, Ireland, Italy, Kenya, Malawi, Mauritius, Morocco, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Senegal, Seychelles, Sierra Leone, Slovakia, Tunisia, United Kingdom: Anguilla, United Kingdom: Isle of Man, United Kingdom: Jersey, Zimbabwe); **Convention No. 131** (Australia, Australia: Norfolk Island, Azerbaijan, Brazil, Burkina Faso, Cameroon, Chile, Costa Rica, Cuba, El Salvador, France, France: French Guiana, France: French Polynesia, France: Guadeloupe, France: Martinique, France: New Caledonia, France: Réunion, France: St. Pierre and Miquelon, Guatemala, Guyana, Japan, Kenya, Republic of Korea, Latvia, Lebanon, Lithuania, Malta, Mexico, Republic of Moldova, Nepal, Netherlands, Netherlands: Aruba, Nicaragua, Romania, Slovenia, Spain, Swaziland, Syrian Arab Republic, United Republic of Tanzania); **Convention No. 173** (Australia, Austria, Botswana, Burkina Faso, Finland, Lithuania, Madagascar, Slovakia, Switzerland, Zambia).

Working Time

Belarus

Convention No. 52: Holidays with Pay, 1936 (ratification: 1956)

Article 2, paragraphs 1 and 4, of the Convention. Further to its previous comments, the Committee notes with satisfaction that, according to section 170(3) of the Labour Code 1999, the postponement of holidays to the year following the year in which the entitlement arises is only permitted under the condition that a part of not less than seven days shall be granted during the current working year.

Article 4. Section 174(3) of the Labour Code permits any unused part of an interrupted holiday to be added to the holidays of the working year following the interruption, or to be compensated in a monetary form. Under *Article 4*, however, any agreement to forego the right to an annual holiday with pay shall be void. Therefore, monetary compensation of an unused part of an interrupted holiday would run counter to this provision of the Convention. The Committee requests the Government to ensure that in practice every worker takes the holiday that is due to him and to take the necessary steps to bring the legislation in line with the Convention on this point. It requests the Government to keep it informed on the measures taken or envisaged.

Belgium

Convention No. 1: Hours of Work (Industry), 1919 (ratification: 1926)

The Committee notes the Government's intention to retain the Act of 17 March 1987, which permits the averaging of weekly working hours over a period of up to one year with the sole restriction that daily working hours do not exceed 12 hours. The Government indicates in its previous report that these regulations were set in agreement with the social partners and constitute a means of making working hours flexible, made necessary by the economic context. The Government amplifies that it does not consider denunciation of the Convention to be a constructive step and restates its suggestion to revise it.

The Committee has maintained in its previous comments that *Article 5 of the Convention* allows recourse to an averaging of working hours only in exceptional circumstances. It sees itself obliged to reiterate that this provision of the Convention, which permits the possibility of establishing the daily hours of work over a period longer than a week, is restricted to exceptional cases where it is recognised that the provisions of *Article 2* cannot be applied. It hopes that the Government will be in a position to reconsider its approach and to bring its legislation in line with the requirements of the Convention.

Benin

Convention No. 41: Night Work (Women) (Revised), 1934 (ratification: 1960)

Further to its previous observation, the Committee notes the Government's statement that the national legislation no longer prohibits the night work of women while special attention is given to situations, such as pregnancy, calling for particular protection of female workers. Recalling that, in accordance with its *Article 12, paragraph 2*, Convention No. 41 will again be open to denunciation from 22 November 2006 to 22 November 2007, the Committee wishes to refer to paragraph 194 of its 2001 General Survey on the night work of women in industry in which it concluded that Convention No. 41 is poorly ratified and its relevance is diminishing. The Committee also recalls that, based on these conclusions and the proposals of the Working Party on Policy regarding the Revision of Standards, the ILO Governing Body has decided to shelve Convention No. 41 considering that it no longer corresponds to current needs and has become obsolete. Shelving further implies that ratification of this instrument is no longer encouraged and that detailed reports on its application will no longer be requested on a regular basis (see GB.283/LILS/WP/PRS/1/2, paras. 31-32).

However, the Committee draws the Government's attention to the fact that night work is generally considered to have harmful effects for all workers and calls for an appropriate legal framework. The Committee recalls, in this connection, paragraphs 195 and 202 of the abovementioned General Survey in which it has cautioned against the risk of a complete deregulation of night work as a result of the removal of all protective measures for women and the failure to replace them with a legislation offering appropriate protection to all night workers. In the light of the preceding observations, and also considering the Government's earlier statement that the new Labour Code reflects the spirit of the Night Work Convention, 1990 (No. 171), the Committee would invite the Government to give favourable consideration to the ratification of this latter Convention, which shifts the emphasis from a specific category of workers and sector of economic activity to the safety and health protection of night workers irrespective of gender in nearly all branches and occupations. The Committee requests the Government to keep the Office informed of all developments in this regard.

Bolivia

Convention No. 1: Hours of Work (Industry), 1919 (ratification: 1973)

The Government indicates the difficulties, which have continued to prevent it from revising the General Labour Code of 1942 in line with the Committee's previous comments. The Committee, nevertheless, cannot but regret once again that the Government has not retained the General Labour Bill, drawn up with ILO technical assistance.

The Committee has for a considerable number of years been commenting on section 50 of the above Act, which provides that the labour inspectorate may authorize up to two additional hours of work per day under any circumstances. It reiterates that this provision is inconsistent with *Article 6, paragraphs 1(b) and 2, of the Convention*, which only admits temporary exceptions to the normal working day in the event of abnormal pressure of work and on condition that the maximum of additional hours which may be authorized is determined in each case in regulations made by public authority.

The Committee notes the Government's renewed request for technical assistance to be provided to a tripartite committee in charge of the revision of the relevant national law. It again expresses the hope that any results achieved will be translated into action very soon.

[The Government is asked to report in detail in 2005.]

Convention No. 20: Night Work (Bakeries), 1925 (ratification: 1973)

The Committee notes with regret that despite the observations it has made many times, the Government has not taken the necessary measures to bring its labour law into conformity with the obligations deriving from *Article 2 of the Convention*, with regard to the period during which work is forbidden.

The Committee takes this opportunity to recall that the ILO Governing Body, on the basis of the conclusions of the Working Party on Policy regarding the Revision of Standards, decided to shelve certain Conventions, including Convention No. 20, on the grounds that they were not suited to current needs and had become obsolete. The decision to shelve a Convention means that ratification of the instrument is no longer encouraged and that detailed reports on its application are no longer requested on a regular basis (see document GB.283/LILS/WP/PRS/1/2, paragraphs 31 and 32). The Committee also recalls that in accordance with its *Article 11*, Convention No. 20 may be denounced at any time as long as there has been full consultation of the representative organizations of employers and workers.

Consequently, the Committee invites the Government to consider denouncing Convention No. 20 and ratifying the Night Work Convention, 1990 (No. 171), the scope of which is more extensive and includes workers of both sexes, as well as nearly all branches of activity and all occupations. Unlike traditional definitions of night work, which refer to a specific period of hours during the night, the new standards focus on workers who perform a substantial number of hours of night work. In addition, Convention No. 171 broadens the range of measures needed to improve the quality of life at work of night workers. The Committee requests the Government to keep it informed of any developments in this respect.

Convention No. 30: Hours of Work (Commerce and Offices), 1930 (ratification: 1973)

The Government indicates the difficulties which have continued to prevent it from revising the General Labour Code of 1942 in line with the Committee's previous comments. The Committee, nevertheless, cannot but regret once again that the Government has not retained the General Labour Bill drawn up with ILO technical assistance.

The Committee has for a considerable number of years been referring to section 50 of the above Act which provides that the labour inspectorate may authorize up to two additional hours of work per day under any circumstances, whereas under the provisions of *Article 7 of the Convention* temporary exceptions to the normal working day may only be granted in the event of abnormal pressures of work determined under *paragraph 2(b), (c) and (d)*, and *paragraph 3* of the same Article provides that a maximum number of additional hours of work which may be allowed in the day and in the year must be determined.

The Committee notes the Government's renewed request for technical assistance to be provided to a tripartite committee in charge of the revision of the relevant national law. It again expresses the hope that any results achieved will be translated into action very soon.

[The Government is asked to report in detail in 2005.]

Brazil

Convention No. 89: Night Work (Women) (Revised), 1948 (ratification: 1957)

The Committee notes with particular interest the ratification of the Night Work Convention, 1990 (No. 171). It also notes the Government's explanations on the constitutional and legal provisions which have rendered ineffective earlier legislation banning the night work of women. However, the Committee notes the Government's statement that Convention No. 89 should be considered tacitly denounced as from 18 December 2003, the date on which Convention No. 171 comes into force for Brazil. In this respect, the Committee draws the Government's attention to the fact that

Convention No. 171 does not revise in whole or in part Convention No. 89, and therefore the ratification of the former does not *ipso jure* involve the immediate denunciation of the latter. Moreover, according to *Article 15, paragraph 2, of the Convention*, denunciation is possible every ten years but only during an interval of one year, the last such interval having expired on 27 February 2002. The Committee recalls in this connection paragraph 93 of its General Survey of 2001 on the night work of women in industry in which it noted that it is not sufficient for member States to invoke the principle of equality of treatment and non-discrimination in employment or occupation in order to divest themselves of the obligations arising from ratified Conventions which they may have come to regard as contradictory to these fundamental principles. Under the circumstances, the Committee is obliged to conclude that the Government remains bound by Convention No. 89 although this instrument is manifestly no longer applied in either law or practice. It hopes that the Government will not fail to take in due course the necessary action in order to terminate its obligations under the Convention according to established procedures.

Cameroon

Convention No. 132: Holidays with Pay (Revised), 1970 (ratification: 1973)

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

The Committee notes the Government's last report covering the period from January to September 2001 and the information provided by the Government in answer to the Committee's previous direct requests. The Government once again indicates that measures to improve the legislative provisions on which the Committee has been commenting for many years, in particular section 92(2) of the Labour Code, have still not been taken. The National Labour Advisory Committee has, however, resumed its activities after an interruption of six years with its first meeting in August 2001. The Committee further notes that one of the National Labour Advisory Committee's tasks is the preparation of projects to bring national legislation into line with the ILO Conventions ratified by Cameroon. It hopes that the Government's next report will indicate that progress has been made, in particular with regard to the following points.

Article 2 of the Convention. The Government's report states that only seafarers are excluded from the scope of the Convention. As indicated in earlier reports, section 1(3) of the Labour Code excludes further categories of employed persons, such as those employed in the public service, to whom special rules and regulations apply. Please indicate the manner in which the organizations of the employers and workers concerned were consulted with respect to these exclusions and provide the latest legislative or other texts applicable to them.

Article 5, paragraphs 1 and 2. Section 92(1) of the Labour Code states that the right to holidays is acquired after a period of actual service equal to one year and under section 92(2), collective agreements and individual contracts with provisions concerning holidays exceeding the length fixed under section 89(1) of the Labour Code may provide for a qualifying period of service of up to two years. The Committee recalls that *Article 5, paragraph 1*, of the Convention is an optional clause and that, if use is made of this clause, under *Article 5, paragraph 2*, of the Convention, the minimum period of service for entitlement to an annual holiday must in no case exceed six months. The Committee requests the Government to indicate the measures taken or envisaged to bring the length of the minimum period of qualifying service into conformity with the Convention.

Article 9. The Committee notes that section 1(3) of Decree No. 75-28 of 10 January 1975 authorizes leave to be deferred for a period of up to two years. Since 1980 the Committee has noted that such provisions are not in conformity with the Convention which prescribes that at least two weeks of the leave must be granted within one year, and the remainder of the leave no later than 18 months, from the end of the year which entitles to the holiday (see *Articles 8(2) and 9(1)* of the Convention). The Government is again requested to bring the legislation into conformity with this provision of the Convention and to report on the measures taken to this end.

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

Central African Republic

Convention No. 41: Night Work (Women) (Revised), 1934 (ratification: 1960)

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

For more than 30 years, the Committee has been requesting the Government to bring national legislation into conformity with the requirements of the Convention by amending section 3 of Order No. 3759 of 25 November 1954, which authorizes exemptions from the prohibition of night work for women in circumstances which are not permitted by the Convention. The Committee regrets that the Government is still not in a position to report any progress in this regard other than merely indicating that the Order in question will be amended following the adoption of the new draft Labour Code. The Committee can only hope that the adoption of the new Labour Code and, subsequently, the repeal of the Order will not be excessively delayed.

In addition, the Committee ventures to draw the Government's attention to paragraph 194 of this year's General Survey on the night work of women in industry in which the Committee concluded that "not only is Convention No. 41 poorly ratified and its relevance is diminishing, but also that it would be in the interest of those member States which are still parties to this Convention to ratify instead the revising Convention No. 89 and its Protocol which allow for greater flexibility and are more easily adaptable to changing circumstances and needs". Recalling that the Government in some of its earlier reports had indicated that it was considering the ratification of Convention No. 89, the Committee hopes that appropriate action will be taken shortly and asks the Government to report on any decisions taken in this matter.

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

Convention No. 52: Holidays with Pay, 1936 (ratification: 1964)

The Committee notes with regret that the Government's report contains no new information in reply to its previous comments. It must therefore repeat its previous observation which read as follows:

For many years the Committee has observed that article 129, paragraph 2, of the Labour Code provides that the right to paid holiday is not obtained before a period of service of 24, sometimes 30 months, whereas *Article 2, paragraph 1, of the Convention* sets the period at one year. In spite of the preparation of a modification of this provision in 1980 and 1988, with technical assistance from the ILO, and a statement from the Government at the Conference Committee in 1992 confirming that the procedure of modification had been undertaken to bring this into conformity with the Convention, the Committee once again notes that the Government's most recent report only mentions that it has taken into consideration this concern by the Committee of Experts with regard to the preparation of a new Labour Code. The Committee recalls that within the scope of the Convention, the right to an annual holiday with pay of at least six working days is an entitlement after one year of continuous service. The Committee expresses its firm hope that the Government will make every effort to take the necessary measures in the very near future.

Article 8 of the Convention. The Government indicates in its report that there is no sanction in the Labour Code for employers who do not respect the provisions of the Convention. The Committee recalls that any Member which has ratified the Convention is required to have a system of sanctions to ensure its application as well as to provide reports with information on the organization and functioning of the inspection service. It hopes that here as well the Government will take adequate measures to bring its legislation into conformity with the Convention.

Chile

Convention No. 20: Night Work (Bakeries), 1925 (ratification: 1933)

The Committee notes the Government's report and particularly the statement that the Tripartite Committee for Convention No. 144 which, since 1998, has been considering the possibility of denouncing Convention No. 20 and ratifying the Night Work Convention, 1990 (No. 171) has still not come to a final decision.

The Committee recalls in this connection that, according to *Article 11 of Convention No. 20*, the latter may be denounced at any time provided that there have been full consultations with representative organizations of employers and workers. The Committee further recalls that the ILO Governing Body, on the basis of the conclusions of the Working Party on Policy regarding the Revision of Standards, decided to shelve certain Conventions, including Convention No. 20, because they no longer met current needs and had become obsolete. The decision to shelve a Convention implies that ratification of the instrument is no longer encouraged by the Office and that detailed reports on its application are no longer requested on a regular basis (see document GB.283/LILS/WP/PRS/1/2, paragraphs 31 and 32).

The Committee recalls that in its previous report, the Government stated that there was no specific legislation on night work since the former legislation was repealed by the regime that governed the country between 1973 and 1990. The Committee points out that it is important that labour legislation should protect persons carrying out night work, and invites the Government to give positive consideration to the matter of ratifying Convention No. 171, which focuses on the protection of the health and safety of night workers of both sexes in all branches of activity and all occupations rather than focusing on a specific category of workers and a specific sector of economic activity. The Committee requests the Government to keep it informed in this respect.

Costa Rica

Convention No. 1: Hours of Work (Industry), 1919 (ratification: 1982)

The Committee notes the Government's request for technical assistance. It hopes that, with the Office's advice to the Ministry of Labour and Social Security on the measures necessary to bring the national legislation into conformity with the provisions of *Article 2(b) and Article 6(1) of the Convention*, the Government will be able to harmonize its legislation with these provisions of the Convention. The Committee asks the Government to supply details on the progress achieved in its next report.

Côte d'Ivoire

Convention No. 41: Night Work (Women) (Revised), 1934 (ratification: 1960)

The Committee notes that the Government's report does not reply to the points raised in the previous comment but simply reaffirms that the current labour legislation no longer gives effect to the provisions of the Convention. The Committee wishes to recall, in this connection, the conclusions of the 2001 General Survey on the night work of women in industry, according to which Convention No. 4 is manifestly of historical importance only and no longer makes a useful contribution to attaining the objectives of the Organization, while Convention No. 41 is little relevant to present-day realities and therefore member States parties to this Convention should be invited to ratify instead the revising Convention No. 89 and its Protocol. The Committee also recalls that in line with the views expressed in the General Survey and following the proposals of the Working Party on Policy regarding the Revision of Standards, the ILO Governing Body has decided to shelve both Conventions No. 4 and No. 41 considering that they no longer correspond to current needs and have become obsolete. Shelving further implies that ratification of these instruments is no longer

encouraged and that detailed reports on their application will no longer be requested on a regular basis (see GB.283/LILS/WP/PRS/1/2, paras. 31-32). Hoping that the Government will not fail to take appropriate action to remove the inconsistency between the national law and practice and its obligations arising from the ratification of these two Conventions, the Committee recalls that whereas Convention No. 4 may be denounced at any time, Convention No. 41 will again be open to denunciation, in accordance with its *Article 12, paragraph 2*, from 22 November 2006 to 22 November 2007. However, the Committee considers that the process of eliminating legal restrictions on women's employment during the night should not result in a legal vacuum with night workers being deprived of any regulatory safeguards. In view, therefore, of the newly enacted legislation on night work, the Committee invites once again the Government to give favourable consideration to the ratification of the Night Work Convention, 1990 (No. 171), which is designed to apply to both genders and to nearly all occupations focusing mainly on the occupational safety and health dimension of night work. The Committee requests the Government to keep the Office informed of all developments in this regard.

Convention No. 52: Holidays with Pay, 1936 (ratification: 1961)

The Committee notes with satisfaction the progress that has been achieved by the adoption of the Labour Code, Law No. 95-15 of 12 January 1995. In particular, it notes that sections 25.1-25.12 of the Labour Code concerning holidays with pay give effect to most of the provisions of the Convention and that section 108(2) of the Labour Code of 1964 requiring a qualifying period between one year and 30 months of actual service for entitlement to holiday was repealed.

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

Cuba

Convention No. 1: Hours of Work (Industry), 1919 (ratification: 1934)

The Committee notes that proposals for new regulations on working hours in the construction industry are under consideration to replace the current system applying to the construction brigades with a working day of up to ten and 12 hours, which was the subject of comments by the Committee for a number of years. The Committee trusts that the new regulations will be adopted in the very near future in line with the provisions of the Convention and requests the Government to inform it on any progress made.

The Committee raises further points in a request addressed directly to the Government.

Ecuador

Convention No. 153: Hours of Work and Rest Periods (Road Transport), 1979 (ratification: 1988)

The Committee notes the information provided with the Government's report, including the reply to its previous comments. With reference to these comments and the discussion which took place in the Committee on the Application of Standards at the 91st Session of the International Labour Conference in 2003, it observes that technical assistance to bring national legislation on hours of work and rest periods in road transport into conformity with the Convention has been requested once again. While it notes that previously granted assistance had remained without substantial results, the Committee reiterates its hope that, with renewed assistance from the Office, the Government will undertake every effort to make progress in adapting its legislation to the Convention on the matters referred to in its previous observations. It requests the Government to provide information in this respect in its next report.

[The Government is requested to report in detail in 2005.]

Egypt

Convention No. 106: Weekly Rest (Commerce and Offices), 1957 (ratification: 1958)

Article 8, paragraph 3, of the Convention. The Committee notes with satisfaction that the new Labour Code, promulgated by Law No. 12 of 2003, under section 85, paragraph 3, implements an obligatory compensatory rest period for work performed on a weekly rest day, regardless of any monetary remuneration, a point which the Committee has commented on for many years.

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

Equatorial Guinea

Convention No. 1: Hours of Work (Industry), 1919 (ratification: 1985)

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

The Committee would be grateful if the Government would provide the text of the regulations implementing section 49 of Act No. 2/1990, which are to be made after consultation with employers' and workers' organizations. It notes in this connection the Government's statement that Act No. 12/1992 of 1 October 1992, respecting trade unions and collective labour relations, opens up prospects for the formation of workers' and employers' organizations which will have a role to play in making regulations and fixing working conditions.

More generally, the Committee asks the Government to provide information on the way in which the Convention is applied, including, for example, extracts of labour inspection reports or statistics, as requested in the report form (*Part V*).

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

Convention No. 30: Hours of Work (Commerce and Offices), 1930 (ratification: 1985)

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

The Committee observes that a new Law No. 12/1992 of 1 October 1992 on trade unions and labour relations has been promulgated. The Committee notes the Government's statement that the detailed rules applying in certain situations and referred to in section 49 of the Labour Law of 1990 have not yet been adopted. The Government endeavours to adopt such rules and expects the representative organizations to help in the drafting.

The Committee asks the Government to communicate the rules adopted in compliance with the Convention after having consulted the employers' and workers' organizations concerned.

The Committee also asks the Government to provide information on the practical application of the Convention, including for instance, extracts from the reports of the inspection services and all relevant information, as requested under *Part V of the report form*.

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

Ethiopia

Convention No. 14: Weekly Rest (Industry), 1921 (ratification: 1991)

The Committee notes with regret that the information provided by the Government contains no new elements in respect of the matters raised in its previous comments over a number of years. It urges the Government to envisage amending its legislation so as to bring it into full conformity with the Convention in line with the following remarks.

Article 1, paragraph 1(d), of the Convention. The Committee requests the Government to ensure by its legislation, administrative regulations or other measures that the application of the Convention is guaranteed in the establishments of the transport sector, as defined under section 72(2) of the Labour Proclamation No. 42 of 1993.

Article 2, paragraph 1, and Articles 4 and 5. The Committee reiterates that despite the prevailing national practice of granting weekly rest to persons holding managerial positions, in accordance with the management regulations of each enterprise, it still remains necessary to amend any legislation which contravenes this practice. The Labour Proclamation, therefore, needs to be amended in a manner that it no longer excludes managerial staff from its scope and, as a consequence, from its provisions on weekly rest. The Committee asks the Government to take the appropriate steps to ensure that for the persons concerned effect is given to *Article 2, paragraph 1*, by law or at least without any legal restrictions to the prevailing practice. If the Government considers the exemption of this category of persons from the scope of the Labour Proclamation as an exception made in virtue of *Article 4*, the Committee requests the Government to make provision for compensatory periods of rest for any suspensions and diminutions made, in conformity with *Article 5*.

Article 7(a) and (b). The purpose of this Article is to facilitate the proper administration of weekly rest arrangements, thus complementing the supervision by labour inspection. The Committee requests the Government to provide in its legislation or otherwise the obligation of employers to make known collective rest to workers by means of notices posted at the workplace and workers subject to a special system of rest by means of rosters, in order to give full effect to the Convention in this respect.

Ghana

Convention No. 30: Hours of Work (Commerce and Offices), 1930 (ratification: 1973)

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

The Committee notes the Government's latest report, on the period ending June 1999. It recalls that for many years its comments have related to the need to give effect to *Articles 5 and 7 of the Convention* by amending sections 50 and 53 of Labour Decree No. 342 of 3 April 1969. Already in 1989, the Committee noted in a direct request that the Labour Advisory Committee had proposed to the Government an amendment of the 1969 Decree to this effect. The Committee regrets that no progress has been made since then and that the Government has merely indicated in its successive reports that the review procedure is proceeding. The Committee trusts that the draft codification of national labour legislation mentioned in the Government's latest report will be adopted very shortly and that copies of the texts relating to application of the Convention will be transmitted to the ILO as soon as possible.

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

Convention No. 89: Night Work (Women) (Revised), 1948 (ratification: 1959)

The Committee notes that the Government's report contains no reply to its previous comments. It must therefore repeat its previous observation, which read as follows:

In its previous comments, the Committee had noted the need to amend section 41(1a) of the Labour Decree of 1967 which, contrary to the provisions of the Convention, permits the suspension of the prohibition of women's night work when work is interrupted by reason of a strike.

The Committee notes with regret that no progress was made in this respect. The Government reiterates in its report that the National Advisory Committee on Labour has addressed the issue and has recommended the deletion of the word "strike" in the above-cited section of the Labour Decree.

The Committee also notes the Government's statement that the new Labour Code, which is now under consideration with a view to synchronizing the provisions of labour laws with international labour standards, is expected to reflect the suggested amendment. However, the Committee notes that according to article 78(1a) of the draft Labour Act, 2000, the general prohibition of night work for women would appear to have been lifted, except for pregnant women workers who may not be assigned to night work without their consent between 10 p.m. and 7 a.m.

The Committee hopes that the necessary measures will be adopted without further delay to ensure that the discrepancy to which the Committee has been drawing attention for 30 years is eliminated. It requests the Government to provide information in its next report on the progress achieved in this regard.

The Committee takes this opportunity to invite the Government to give favourable consideration to the ratification of either the Night Work Convention, 1990 (No. 171), or the Protocol of 1990 to Convention No. 89.

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

Guatemala

Convention No. 1: Hours of Work (Industry), 1919 (ratification: 1988)

1. Referring to the Government's report and the information provided in reply to its previous comments, the Committee observes with regret continued failure to comply with the requirements of *Article 6 of the Convention* in that the Labour Code, section 122 of which provides that a working day including overtime must not exceed 12 hours, still does not determine the circumstances in which overtime may be worked and the maximum number of overtime hours which may be authorized in each instance. The Committee expresses the hope that the various committees consulted on the matter will soon be in the position to present their conclusions, and it urges the Government to make every effort to take the appropriate steps in the very near future.

2. The Committee notes the observation made by the Trade Union of Workers of Guatemala (UNSI TRAGUA) in August 2003 and transmitted to the Government on 8 October 2003, maintaining that, although a number of undertakings fix production targets, which can only be reached by overtime work sometimes exceeding 12 hours per day, they pay the minimum wage or wages calculated on the basis of piece-work, as provided for under section 88(b) of the Labour Code. The Union further observes that in guarding and security services of industrial undertakings shifts of 24 hours alternate with rests of 24 hours and that the Labour Ministry authorizes collective agreements containing working conditions as described before.

The Committee invites the Government to comment on the observations communicated by UNSI TRAGUA.

Convention No. 14: Weekly Rest (Industry), 1921 (ratification: 1988)

1. *Articles 4 and 5 of the Convention.* The Committee requests the Government to indicate any regulations or determinations made by the Labour Inspectorate on the circumstances in which work on the weekly rest day may be authorized, in accordance with section 128 of the Labour Code. Please also indicate any provisions made for compensatory periods of rest for the suspensions and diminutions made in virtue of *Article 4* of the Convention, or any agreements or customs, which already provide for such periods.

The Committee further asks the Government to provide information on any decrees issued by the Minister of Labour, according to sections 169 and 190 of the Labour Code, on special working conditions in the transport sector, as defined under *Article 1, paragraph 1(d)*, of the Convention, and on individual arrangements, agreed according to section 189 of the Labour Code, on weekly rest for workers engaged in transport on inland waterways.

2. Furthermore, the Committee takes note of the observation communicated by the Trade Union of Workers of Guatemala (UNSI TRAGUA) in August 2003, transmitted to the Government on 8 October 2003, observing that some private employers withhold payment for the day of weekly rest from workers who do not work six consecutive days in the week.

The Government is invited to comment on the observations of UNSI TRAGUA.

Convention No. 30: Hours of Work (Commerce and Offices), 1930
(ratification: 1961)

1. The Government indicates that the Tripartite Subcommittee on Pending Legal Reforms will discuss a change of section 122 of the Labour Code with the aim of establishing the circumstances in which recourse may be made to up to four additional working hours per day. It, further, states that Government Decision No. 6-80 of 9 May 1980 limits the annual maximum of additional hours to 160, while section 122 of the Labour Code fixes the daily limit at 12 hours.

The Committee notes with concern that the harmonization of section 122 of the Labour Code with the requirements for exceptions, as provided for by the Convention, has been under consideration for many years without achieving any progress. It urges the Government to make every effort to bring its legislation into conformity with the Convention in this respect, and requests it to include in its next report information on the steps taken, including with regard to any administrative regulations which might permit even to exceed the 12-hour maximum.

2. Furthermore, the Committee refers to the observation of the Trade Union of Workers of Guatemala (UNSI TRAGUA) of October 2002, stating that, according to Order No. 31-2000 of the Supreme Court, based on the Law of Civil Servants in the Judicial System (which is provided for under section 210 of the Constitution and section 193 of the Labour Code), certain categories of judges and auxiliary staff of law courts may be forced to perform shift work after a normal working day up to 24 hours per day without any compensation for overtime in time or in cash.

The Committee draws the attention to *Article 1(1)(b) of the Convention*. This provision extends the scope of the Convention to public establishments and administrative services in which the persons employed are mainly engaged in office work. Auxiliary staff, as far as engaged in the administration of justice, appear to be covered by the Convention, whereas judges rather seem to be not included. They might, however, also be exempted from the application of the Convention in case that, under national law, they are considered to be engaged in connection with the administration of public authority (*Article 1(3)(b) of the Convention*).

The Committee asks the Government to indicate the categories of staff of the judicial system, which it exempts from the application of the Convention. It, further, requests the Government to inform it on any measures appropriate to ensure that the requirements of the Convention are complied with also with regard to those persons of the staff who are covered by the Convention.

The Committee further takes note of a second observation made by UNSI TRAGUA in August 2003 transmitted to the Government on 8 October 2003, which, in addition to the comments of October 2002, draws the attention to cases of unpaid overtime work, mainly occurring in bank offices, and to a special category of public employees, mainly engaged in office work, who, according to UNSI TRAGUA's observation, are deprived of their right to limited working hours because the State disregards their status as employees.

The Committee invites the Government to comment also on these latter observations of UNSI TRAGUA.

Convention No. 101: Holidays with Pay (Agriculture), 1952 (ratification: 1961)

The Committee notes the observation communicated by the Trade Union of Workers of Guatemala (UNSI TRAGUA) in August 2003, transmitted to the Government on 8 October 2003, maintaining, among others, that: (a) the statutory annual holiday with pay of 15 working days in practice is not granted at all or granted in such a way that working as well as non-working days are calculated as holidays; (b) reimbursement provided for under Decree No. 37-2001 is not included in holiday pay.

The Committee invites the Government to indicate its position on these observations.

Convention No. 106: Weekly Rest (Commerce and Offices), 1957
(ratification: 1959)

Article 7, paragraphs 1, 2 and 4, and Article 11(a), of the Convention. The Committee asks the Government to indicate in its next report any regulations issued under section 128 of the Labour Code or practical measures concerning special weekly rest schemes to be applied to specific categories of persons or types of establishments. Please also indicate the measures, which ensure to persons subject to such schemes, a period of weekly rest of at least 24 hours in respect of each period of seven days, and the methods adopted for the consultation of the representative employers' and workers' organizations.

Article 8, paragraphs 1 and 3, and Article 11(b). The Committee requests the Government to provide information on the circumstances in which temporary exemptions may be authorized. It recalls that, under *Article 8, paragraph 3*, compensatory rest of a total duration of at least 24 hours must be ensured to persons concerned, regardless of monetary compensation. The Committee invites the Government to indicate the measures taken or envisaged to give effect to the

Convention in this respect. Please also provide information on the methods adopted for the consultation of the representative employers' and workers' organizations, as required by *Article 8, paragraph 2*.

The Committee takes note of the observations communicated by the Trade Union of Workers of Guatemala (UNSI TRAGUA) in August and September 2003, transmitted to the Government on 8 October 2003, maintaining that it is the practice in parts of the judicial system to compel judges and auxiliary staff at law courts to work up to 24 hours a day, in shifts following the normal working day. According to the Union's comments, this procedure implies that the persons concerned are deprived of their right to paid weekly rest, embodied in section 126 of the Labour Code, similarly as in cases where workers are employed without their legal status of workers being respected as such. Extensive parts of the observation are related to methods for the calculation of wages, which in the view of UNSI TRAGUA are not justified, including discrimination by retaining the payment for the weekly rest day, where workers do not work six consecutive days in the week.

The Government is invited to comment on the observations of UNSI TRAGUA.

Haiti

Convention No. 14: Weekly Rest (Industry), 1921 (ratification: 1952)

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

The Committee refers to its previous direct requests, in which it pointed to an inconsistency of section 107 of the Decree of 24 February 1984 to revise the Labour Code, as published in *Le Moniteur* (No. 18-A, Monday 5 March 1984), providing for a weekly period of rest comprising at the most 24 consecutive hours, whereas *Article 2 of the Convention* provides for at least 24 consecutive hours.

It notes an observation of the "Haitian Trade Union Coordination" (Coordination Syndicale Haïtienne – CSH), pointing to a continuing discrepancy between the national legislation and the requirements of *Article 2* of the Convention, while acknowledging that in practice weekly rest of at least 24 hours is granted to workers. The Committee hopes that the Government will be able to correct this error in the near future and requests to be kept informed of any progress made.

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

Convention No. 106: Weekly Rest (Commerce and Offices), 1957 (ratification: 1958)

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

The Committee notes with regret that the Government's report has not been received. It hopes that a report will be supplied for examination by the Committee at its next session and that it will contain full information on the matters raised in its previous direct request, which read as follows:

Article 6 of the Convention. See the comments under Convention No. 14.

The Committee, furthermore, notes an observation of the "Haitian Trade Union Coordination" (Coordination Syndicale Haïtienne – CSH) pointing to the continuing discrepancy between the national legislation and the requirements of *Article 6* of the Convention, while acknowledging that in practice weekly rest of at least 24 hours is granted to workers. The Committee hopes that the Government will be able to correct this error in the near future and requests to be kept informed of any progress made.

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

Indonesia

Convention No. 106: Weekly Rest (Commerce and Offices), 1957 (ratification: 1972)

The Committee takes note of the new Act on manpower (Act No. 13 of 2003).

Article 8, paragraph 3, of the Convention. The Committee notes with regret that the provisions of Act No. 13 of 2003 concerning working hours and weekly rest (sections 77-79) do not provide compensatory rest for work carried out on a weekly rest day, although the Government has repeatedly declared its intention of bringing the national law into conformity with the Convention in this respect. In addition, Manpower Ministerial Regulation No. PER-03/MEN/1987 appears still to be in force unchanged, providing payment of wages for work performed on an official holiday effective on a weekly rest day. The Committee reiterates that under *Article 8, paragraph 3*, compensatory rest of a total duration of at least 24 hours must be granted, without prejudice to any monetary compensation, in all cases where temporary exemptions are made in respect of weekly rest. It further recalls that since 1975 it has been commenting on the need to amend the relevant national laws and regulations to this effect.

Furthermore, the report contains no reply to the matter raised under paragraph 2 of the Committee's previous comment. It must therefore repeat this part of its previous observation, which read as follows:

The Committee further notes the Government's indication that employers are encouraged to include a compensatory rest provision in their company regulation or collective labour agreement. It requests the Government to supply copies of any company regulation and collective agreements so far adopted which reflect this practice.

The Committee has addressed a request for additional information directly to the Government.

Jordan

Convention No. 106: Weekly Rest (Commerce and Offices), 1957 (ratification: 1979)

The Committee notes the Government's report in reply to its observation.

Articles 6 and 7 of the Convention. According to section 60, paragraph 2, of the Labour Code of 1996, a worker may, with the approval of his employer, accumulate his weekly rest days to use them all together as leave, for a period not exceeding one month. The purpose of this provision is to grant persons employed in distant or isolated regions the possibility of visiting their families. The Government indicates further that employees spend the weekly rest days at their workplaces without any work effectively done.

The Committee reiterates that *Article 6*, which entitles an employee to an uninterrupted weekly rest period comprising not less than 24 hours in the course of each period of seven days, is obligatory and cannot be altered by individual agreement, even if the employee so wishes.

Nevertheless, the Convention allows in *Article 7* exceptions from the general standard. *Article 7, paragraphs 1 and 4*, stipulates that where the nature of the work, the nature of the service performed by the establishments, the size of the population to be served, or the number of persons is such that the provisions of *Article 6* cannot be applied, measures may be taken by the competent authority, after consultation with the employers' and workers' organizations concerned, to apply special weekly rest schemes, where appropriate, to specified categories of persons or specified types of establishment covered by the Convention, special regard being paid to all proper social and economic considerations.

Employees employed in distant or isolated regions may have an interest in accumulating their weekly rest and to be the subject of a special weekly rest scheme. The Committee acknowledged in its 1984 General Survey that the distance of the place of work from any large urban centre may be grounds for accumulating and postponing the rest day (*paragraph 164*), whereas Paragraph 3(a) of Recommendation No. 103 of 1957 restricts the period without a weekly rest period to three weeks.

Section 60, paragraph 2, of the Labour Code of 1996, however, is not restricted to specified circumstances as stipulated under *Article 7*. It applies to all employees without limitation whatsoever and is therefore possibly open to abuses.

Article 8, paragraph 3. The Committee has to repeat its previous comments that sections 59 and 60 of the Labour Code of 1996 do not provide for compensatory rest for work done on a weekly rest period in accordance with *Article 8, paragraph 3*, irrespective of any higher remuneration.

The Government is therefore once again requested to take all necessary action to ensure that section 60, paragraph 2, of the Labour Code of 1996 will be amended in the very near future to specified circumstances in line with *Article 7, paragraph 1*, and furthermore, to grant a compensatory rest period irrespective of any monetary compensation in accordance with *Article 8, paragraph 3*, and to inform the Committee on all success achieved.

Kuwait

Convention No. 1: Hours of Work (Industry), 1919 (ratification: 1961)

Articles 1 and 2 of the Convention. In its reply to the Committee's previous observation, the Government does not indicate how conformity with the provisions of the Convention is ensured with respect to workers who are excluded from the application of the Labour Code (section 2 of Law No. 38 of 1964), i.e., domestic workers and workers who are provided for by other laws. The Committee therefore asks the Government again to provide detailed information on this issue and copies of any relevant legal texts.

Article 6, paragraph 1(b). The Government still endeavours to determine the conditions in which recourse to overtime is permitted and to fix a reasonable annual limit to the number of additional hours of work in the public industrial sector, similarly to Order No. 104/94 concerning private industrial undertakings. The Committee regrets that the Government has not been able to achieve progress in this field and it expresses once again the hope that the Government will take the necessary action in the near future to render its legislation compatible with the requirements of the Convention. Please keep the ILO informed of any relevant developments in the matter.

Recalling the Government's commitment to extending the application of the forthcoming Labour Law in the private sector to all categories of workers, the Committee urges the Government to make every effort to adopt the new law, whose draft has been under consideration for many years, very soon.

Convention No. 30: Hours of Work (Commerce and Offices), 1930 (ratification: 1961)

See comments made under the observation on Convention No. 1.

Convention No. 106: Weekly Rest (Commerce and Offices), 1957 (ratification: 1961)

Article 2 of the Convention. The Committee recalls that for many years, it has been drawing the Government's attention to the need to amend section 2 of the Labour Code of 1964, to include temporary workers employed for a period of not more than six months and workers at enterprises employing less than five people within the scope of the Labour Code, in order to grant them a weekly rest period of 24 consecutive hours during the course of each seven-day period. While on several occasions, the Government has given assurances in this respect, no progress has been made with the adoption of the draft Labour Code in the private sector. The Committee once again expresses the hope that the Government will take the necessary measures and requests the Government to inform it on any progress achieved.

With reference to Law No. 2 of 1997 to amend section 2 of the Labour Code of 1964, the Committee requests the Government again to specify the workers "who are provided for by other laws" which are excluded under this provision, and to indicate to the Committee the purpose of this amendment.

Malaysia

Sarawak

Convention No. 14: Weekly Rest (Industry), 1921 (ratification: 1964)

Since 1967, the Committee has been addressing comments to the Government, expressing its hope that the Government will consider amending the Labour Ordinance Sarawak (Cap. 76) of 1952 (as amended by Ordinance 11 of 1958) in accordance with the Convention. First, the Labour Ordinance Sarawak (Cap. 76) excludes in its section 2 non-manual workers from its scope of application, which is not in line with *Article 2 of the Convention*. That Article provides that "the whole of the staff employed in any industrial undertaking" shall enjoy the weekly rest period. Secondly, section 105 of the Labour Ordinance Sarawak (Cap. 76) stipulates that the weekly rest period is subject to variation by individual contracts of employment. Thirdly, the Labour Ordinance Sarawak (Cap. 76) does not provide a compensatory rest as provided for under *Article 5* of the Convention.

Since 1970, the Government has indicated the possibility of modifying the Labour Ordinance Sarawak (Cap. 76) in order to give effect to the provisions of the Convention. No legislative change has so far taken place. In its last report, the Government states that the Labour Ordinance Sarawak (Cap. 76) is in the final stage of amendment, a statement which is being made since 1992.

Furthermore, since 1975, the Government has indicated that steps have been taken to standardize the labour legislation in Federal Malaysia and to extend the Employment Act of Malaysia of 1955 (as amended 1981) to Sarawak, with appropriate modifications. Currently, this Act applies to West Malaysia only. In 1987, the Committee was informed by the Government that the extension process is in an advanced stage and should soon be formalized. So far, the Government has not forwarded to the Committee any document extending the Employment Act of Malaysia of 1955 to Sarawak.

The Committee urges the Government to overcome the obstacles in the modification of the Labour Ordinance Sarawak (Cap. 76) and to keep it informed on all progress achieved. In addition, the Committee would like to be informed on any changes with regard to the standardization of the labour law in Federal Malaysia. The Committee requests the Government to explain the relationship between the Labour Ordinance Sarawak (Cap. 76) and the Employment Act of Malaysia of 1955 after the extension of the Employment Act to Sarawak.

Morocco

Convention No. 4: Night Work (Women), 1919 (ratification: 1956)

Further to its previous observation, the Committee wishes to recall the conclusions of the 2001 General Survey on the night work of women in industry, according to which Convention No. 4 is manifestly of historical importance only and no longer makes a useful contribution to attaining the objectives of the Organization, while the relevance of Convention No. 41 is diminishing and therefore member States parties to this Convention would have an interest to ratify instead the revising Convention No. 89 and its Protocol which allow for greater flexibility. The Committee also recalls that in line with the views expressed in the General Survey and following the proposals of the Working Party on Policy regarding the Revision of Standards, the ILO Governing Body has decided to shelve Conventions Nos. 4 and 41 considering that they no longer correspond to current needs and have become obsolete. Shelving further implies that ratification of these instruments is no longer encouraged and that detailed reports on their application will no longer be requested on a regular basis (see GB.283/LILS/WP/PRS/1/2, paras. 31-32). In the light of the preceding observations, the

Committee invites the Government to give favourable consideration to the ratification of either the Night Work (Women) Convention (Revised), 1948 (No. 89) and its Protocol of 1990, or the Night Work Convention, 1990 (No. 171), and to keep it informed of any decisions taken in this regard.

Myanmar

Convention No. 52: Holidays with Pay, 1936 (ratification: 1954)

The Committee notes that the Government has not provided new information in reply to its previous comments. The Government simply repeats that draft texts revising the 1951 Acts on factories, shops and undertakings and on holidays and public holidays are still under consideration by the legislative supervisory body. The Committee must therefore insist that the Government take appropriate action with regard to its previous observations.

Article 1 of the Convention. In addition to its previous observations concerning the scope of the Convention, the Committee points out that, according to *Article 1(1)(f)* of the Convention, persons engaged mainly in clerical work in public administrative services are also covered by the Convention. In so far, section 2(4)(e) of the Leave and Holidays Act, 1951, is not consistent with the Convention.

Article 2, paragraph 2. Every person under 16 years of age should be entitled to an annual holiday with pay of at least 12 working days after one year of continuous service. Section 4(1) of the Leave and Holidays Act, which allows workers between 15 and 16 years only ten days, is not in conformity with the Convention.

Article 4. Any agreement to forego or relinquish the right to the minimum annual holiday with pay laid down in the Convention (six working days or, in the case of persons under 16 years of age, 12 working days) shall be void, whereas section 4(3) of the same Act allows agreements permitting the accumulation of earned leave.

The Committee urges the Government to take the steps necessary for the adoption of the revised texts very soon and once again expresses its hope that the Government will be able to give an account in its next report of progress made in the application of the Convention.

Netherlands

Netherlands Antilles

Convention No. 89: Night Work (Women) (Revised), 1948

The Committee notes the Government's act of denunciation of the acceptance of the obligations of the Convention on behalf of the Netherlands Antilles and the reasons invoked for this decision.

The Committee wishes to refer, in this connection, to the conclusions of its 2001 General Survey regarding the evolution and current relevance of ILO standards on women's night work, in particular paragraph 202 in which it cautioned against the risk of a complete deregulation of night work and emphasized that the abolition of all protective restrictions on night work for women in industry should be accompanied by the enactment of new legislation offering appropriate protection to all night workers irrespective of gender in all branches and occupations. Considering that the provisions of the Night Work Convention, 1990 (No. 171), while keeping in line with fundamental principles such as gender equality and non-discrimination in employment, reflect the changing perceptions as to the hazards of night work in general, the Committee once again invites the Government to give favourable consideration to the ratification of this instrument and to keep the Office informed of any decisions taken in this regard.

New Zealand

Convention No. 14: Weekly Rest (Industry), 1921 (ratification: 1938)

The Committee notes the comments made by the New Zealand Council of Trade Unions (NZCTU), as well as the comments made by Business New Zealand on the Government's report concerning the lack of legislative provisions requiring a minimum 24-hour weekly rest period.

The Government explains that, under the Health and Safety in Employment Amendment Act of 2002, every employer has the obligation to prevent harm arising from excessive working hours or insufficient rest periods, thereby implicitly regulating weekly rest periods. The Committee hopes that the Health and Safety in Employment Amendment Act of 2002 will contribute to reinforce weekly rest periods. A consecutive weekly rest period is necessary to avoid workers' fatigue, but also to grant workers time in which they can develop their personality and take time and care for their families and social activities. This Act, however, does not give a worker the right to claim an uninterrupted rest period of 24 hours. Furthermore, the Employment Relations Act of 2000, with its good faith provisions, fosters individual and collective bargaining, but does not guarantee a weekly rest period. The Committee concurs with the NZCTU's comments that the "workers' ability to negotiate hours and rest periods with employers is not, in itself, a strong enough provision to ensure that workers are able to enjoy a good work-life balance with adequate rest breaks".

With reference to its previous direct requests, the Committee wishes to stress once again that the workers to whom this Convention applies are entitled, subject to the exceptions provided for in *Article 4 of the Convention*, to an uninterrupted weekly rest period of not less than 24 consecutive hours. Weekly rest of workers was already included in the general principles set out in article 427 of the Treaty of Versailles, and, as the Committee pointed out in its General Survey of 1984 on working time, because its origins go so far back, weekly rest is generally speaking one of the aspects of the organization of work which is most scrupulously observed; in many countries, it is looked upon as a fundamental right that is embodied in the Constitution. The Committee trusts that the Government will take in the very near future all steps necessary to ensure that workers in New Zealand are also guaranteed a weekly rest period and requests the Government to keep it informed on all progress achieved.

Convention No. 47: Forty-Hour Week, 1935 (ratification: 1938)

In reply to the Committee's previous comments, the Government indicates that it is committed to assisting workers to achieve balance between their work and their life and is therefore currently considering a specific work programme on this topic. The Government further points out that the good faith provisions of the Employment Relations Act require the negotiating parties to communicate with each other openly and honestly and to consider each other's view, including in the field of weekly rest. Furthermore, the Government refers to the Health and Safety in Employment Act, inasmuch as it requires employers to prevent harm occurring to employees while at work, including harm arising from excessive working hours or insufficient rest periods.

The observations of Business New Zealand, communicated with the Government's report, support the view taken by the Government that the changes of the employment relations framework to promote the role of collective bargaining and unions are likely to assist the entrenchment of the principle of a 40-hour week.

Referring to the 40-hour week principle, provided for, with the possibility of making exceptions, under section 11 B of the Minimum Wage Act, the New Zealand Council of Trade Unions (NZTU), however, indicates that it is aware of widespread abuse of this principle in practice. Thus, according to the 2001 census, 34 per cent of the workers surveyed were working over 40 hours, 21 per cent more than 50 hours and 9 per cent over 60 hours per week. NZTU further indicates that a trend towards a steady increase in hours worked is apparent. According to NZTU, the problem similarly exists in the public service, for managerial as well as for support staff. In reply to these observations, the Government announces the appointment of a steering group to develop, within the frame of the designated work-life balance programme, policy options aiming at a better access of workers to work-life balance.

The statistical data supplied by the Government, too, show that appeals to the good will of the contracting parties are not sufficient to secure the 40-hour principle. According to these figures, 34 per cent of collective agreements covering 37 per cent of employees have a weekly span of Monday to Sunday. The same number of employees are working an average of more than 40 hours per week. Even though the statistics provided appear not to give a coherent overview on the categories and numbers of workers concerned (an independent research indicates that 77 per cent of collective employment agreements provide for ordinary working time of 40 or less hours per week; and, according to data collected by the Labour Department, out of 2,161 agreements analysed covering 226,021 employees, 84 per cent of these agreements covering 83 per cent of employees provide for the 40-hour week as a standard), the Committee draws the Government's attention to the fact that averaging implies the possibility of working in excess of 40 hours in the week. In order to ensure compliance with the letter and spirit of the Convention, which aim at safeguarding the health and well-being of workers and protecting them against abuses, provision should be made to set at least reasonable time limits to averaging, for example by restricting it to a certain period within one given month. Where hours of work are calculated as an average, it is evident that the longer the reference period, the greater the risk of abuses. Moreover, hours worked on a regular basis in excess of the 40-hour week should only be permitted for certain categories of workers or types of work. In principle, such work should be determined and paid as overtime. With reference to Paragraph 12 of Recommendation No. 116 concerning reduction of hours of work and its 1967 General Survey, the Committee recalls that the calculation of normal hours of work as an average over a period longer than a week should be exceptional and limited to certain sectors in which technical needs justify it (paragraph 142).

The Committee requests the Government to continue to indicate in its next report any measures it has taken or contemplated in line with the aforementioned comments to ensure full application of the principle of a 40-hour week embodied in the Convention. Please also indicate to what class of employment this principle is applied and the extent to which hours may be worked in excess of the 40-hour week either on a regular basis, or as overtime and, in this latter case, with particulars of the rate of pay for overtime.

Philippines

Convention No. 89: Night Work (Women) (Revised), 1948 (ratification: 1953)

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

In its previous comments, the Committee noted that section 130 of the Labor Code prohibits the employment of women in industrial undertakings between 10 p.m. and 6 a.m., representing a period of only eight hours while, under *Article 2 of the Convention*, the prohibition of night work shall cover a period of at least 11 consecutive hours.

The Committee previously noted that, under section 131(e) of the Labor Code and section 5(e), Rule XI, Book III of the Rules to implement the Labor Code, the prohibition of night work by women does not apply: (i) where the manual skill and dexterity required for the work is an attribute of female workers and where this work cannot be carried out with the same efficiency by male workers; and (ii) where the employment of women constitutes an already established practice in the enterprises concerned at the date when these Rules under the Labor Code came into force. These exceptions are not authorized by the Convention.

The Committee notes from the Government's report that, under a Labor Code Review Project undertaken by the Department of Labor and Employment, a proposal to amend section 130 of the Labour Code so as to cover a period of at least 11 consecutive hours has been submitted to bring it into conformity with *Article 2* of the Convention. It further notes that corresponding amendments of the rules implementing the Code to delete the above exceptions will also be undertaken. It asks the Government to report any progress made in these proposed amendments and to supply copies of relevant provisions when adopted. Noting also that the ratification of the Protocol of 1999 to the Convention was proposed by the Department, the Committee requests the Government to provide information on any development in this regard.

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

Sierra Leone

Convention No. 101: Holidays with Pay (Agriculture), 1952 (ratification: 1961)

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

The Committee notes the declaration in the Government's report that its previous comments would be brought to the attention of the Agricultural Negotiating Trade Group Council so that they might be taken into consideration in the next round of negotiations over terms and conditions of employment. In its previous comments, the Committee referred to section 12(a) of Government Notice No. 888 of 5 December 1980, which permits the deferral of annual leave for a period of up to two years or for longer with the employee's and the union's consent. It recalls that *Article 1 of the Convention* provides that workers covered by the Convention should be granted an annual holiday with pay and that, under *Article 8*, any agreement to relinquish the right to annual holiday with pay, or to forgo such a holiday, must be void. The Committee hopes that the necessary measures will be taken in the very near future to bring section 12(a) of Government Notice No. 888 into conformity with the Convention and requests the Government to indicate the progress made in this regard in its next report.

While taking note of the national situation, the Committee hopes that appropriate measures will be taken to ensure application of the ratified Conventions as soon as circumstances so permit.

Venezuela

Convention No. 41: Night Work (Women) (Revised), 1934 (ratification: 1944)

With reference to its previous comments, the Committee considers it appropriate to recall the conclusions of the 2001 General Survey on the night work of women in industry, according to which not only is Convention No. 41 poorly ratified and its relevance is diminishing, but it would also be in the interest of the States parties to this Convention to ratify instead the revising Convention No. 89 and its Protocol which allow for greater flexibility and are more easily adaptable to changing circumstances and needs. The Committee also recalls that in line with the views expressed in the General Survey and following the proposals of the Working Party on Policy regarding the Revision of Standards, the ILO Governing Body has decided to shelve Convention No. 41 considering that it no longer corresponds to current needs and has become obsolete. Shelving further implies that ratification of this instrument is no longer encouraged and that detailed reports on its application will no longer be requested on a regular basis (see GB.283/LILS/WP/PRS/1/2, paras. 31-32). In the light of the preceding observations, the Committee invites the Government to take appropriate action with respect to Convention No. 41 while giving favourable consideration to the ratification of either the Night Work (Women) Convention (Revised), 1948 (No. 89) and its Protocol of 1990, or the Night Work Convention, 1990 (No. 171), and to keep it informed of any decisions taken in this regard. Finally, the Committee trusts that, in pursuing the revision of the Organic Labour Act and of the corresponding Regulations, the Government will not fail to take into account the Committee's comments regarding the present trend to move away from a blanket prohibition on women's night work and to provide adequate protection to all nightworkers, irrespective of gender, occupational category or sector of economic activity.

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States with regard to: **Convention No. 1** (Bulgaria, Colombia, Cuba, Djibouti, Malta, Paraguay, Romania, Slovakia, United Arab Emirates, Uruguay); **Convention No. 4** (Cambodia, Colombia, Cuba, Lao People's Democratic Republic, Lithuania, Nicaragua, Spain); **Convention No. 14** (Antigua and Barbuda, Argentina, Azerbaijan, Bahamas, Bangladesh, Benin, Bulgaria, Burundi, Cameroon, Canada, Chile, China, Côte d'Ivoire, Croatia, Czech Republic, Denmark: Greenland, Egypt, Estonia, Finland, France, France: French Guiana, France: St. Pierre and Miquelon, Gabon, Guinea-Bissau, Islamic Republic of Iran, Ireland, Kyrgyzstan, Latvia, Lebanon, Lithuania, Mali, Malta, Mauritius, Morocco, Netherlands, Netherlands: Aruba, Niger, Poland, Romania, Russian Federation, Rwanda, Slovakia, Slovenia, Solomon Islands,

Tajikistan, Turkey, Zimbabwe); **Convention No. 30** (Bulgaria, Colombia, Morocco, Paraguay, Uruguay); **Convention No. 41** (Afghanistan, Chad, Estonia, Gabon, Madagascar, Suriname); **Convention No. 47** (Finland, Lithuania, Tajikistan); **Convention No. 52** (Argentina, Azerbaijan, Bulgaria, Burundi, Comoros, Côte d'Ivoire, Denmark, France, Gabon, Kyrgyzstan, Lebanon, Libyan Arab Jamahiriya, Mali, Morocco, New Zealand, Paraguay, Slovakia, Tajikistan); **Convention No. 89** (Bahrain, Belize, Burundi, Cameroon, Egypt, France: French Guiana, France: Guadeloupe, France: Martinique, France: New Caledonia, France: Réunion, France: St. Pierre and Miquelon, Guatemala, Guinea, Malawi, Paraguay, Romania, Rwanda, Senegal, Slovakia, South Africa, Swaziland); **Convention No. 101** (Antigua and Barbuda, Burundi, Costa Rica, France: French Guiana, Netherlands, New Zealand); **Convention No. 106** (Azerbaijan, Bangladesh, Bulgaria, Cameroon, Cyprus, Denmark, Denmark: Greenland, Djibouti, Egypt, Ethiopia, France, France: French Guiana, France: French Polynesia, France: New Caledonia, France: St. Pierre and Miquelon, Gabon, Guinea-Bissau, Indonesia, Islamic Republic of Iran, Latvia, Lebanon, Malta, Morocco, Netherlands: Aruba, Netherlands: Netherlands Antilles, Russian Federation, Saudi Arabia, Slovenia); **Convention No. 132** (Burkina Faso, Croatia, Czech Republic, Finland, Germany, Guinea, Ireland, Italy, Madagascar, Malta, Rwanda, Slovenia, Switzerland, Yemen); **Convention No. 171** (Cyprus); **Convention No. 175** (Cyprus, Finland, Guyana, Italy, Netherlands).

The Committee noted information supplied by the following States in an answer to a direct request with regard to: **Convention No. 14** (Belgium); **Convention No. 106** (Greece); **Convention No. 132** (Latvia); **Convention No. 153** (Switzerland).

Occupational Safety and Health

Algeria

Convention No. 120: Hygiene (Commerce and Offices), 1964 (ratification: 1969)

The Committee notes the Government's report. Noting the Government's brief replies to its previous comments, the Committee wishes to draw attention to the following points, on which it would appreciate further information.

1. *Article 14 of the Convention.* The Committee notes the information supplied by the Government on the requisite dimensions of the seats to be made available for workers. It reminds the Government that this Article of the Convention provides that sufficient and suitable seats shall be supplied for workers and that workers shall be given reasonable opportunities of using them. The Committee points out that requirements as to the dimension of the seats do not give effect to *Article 14* of the Convention. Noting, moreover, that according to the Government no new regulations have been adopted, the Committee again recalls that Executive Decree No. 91/05 of 19 January 1991, currently in force, establishing general requirements for protection in the area of occupational safety and health, which lays down arrangements for the application of Act No. 88/07 of 26 January 1998, section 19 of which requires seats to be made available only in changing rooms, does not give effect to *Article 14* of the Convention. The Committee accordingly trusts that the Government will take appropriate steps to ensure that sufficient and suitable seats shall be supplied for all workers covered by the Convention and that the workers shall be given reasonable opportunities of using them.

2. *Article 18.* Further to its previous comments on the application of this Article of the Convention, the Committee notes the general information supplied by the Government to the effect that ear protectors are provided in workplaces where it is difficult to reduce noise at source. The Committee notes that section 16 of Executive Decree No. 91/05 of 19 January 1991 states that, where it is acknowledged that the collective measures of protection against noise provided for in section 15 are impossible to implement, suitable individual protection equipment must be made available to the workers. The Committee further notes that ear muffs are to be provided for this purpose. It requests the Government to indicate which provision requires the workers concerned to be provided with ear muffs. The Committee points out to the Government that *Article 18* of the Convention requires the adoption not only of measures to reduce the harmful effects of noise but also measures to reduce vibrations likely to have harmful effects on workers. It accordingly requests the Government to provide additional information on the measures taken or envisaged to reduce vibrations likely to have harmful effects on workers.

The Committee expresses the hope that the Government will adopt the necessary measures as soon as possible to give full effect to the provisions of the Convention.

Convention No. 127: Maximum Weight, 1967 (ratification: 1969)

Noting the information provided by the Government in its brief replies to its previous comments, the Committee wishes to draw the Government's attention to the following points.

1. *Article 7, paragraphs 1 and 2, of the Convention.* In its previous comments, the Committee noted that section 26 of Executive Decree No. 91-05 of 19 January 1991 concerning the general provisions protecting health and safety in the workplace sets the maximum weight of loads that may be transported manually by women and young workers at 25 kg. It pointed out in this connection that the ILO publication *Maximum weights in load lifting and carrying* (Occupational Safety and Health Series, No. 59, Geneva, 1988) recommends for ergonomic reasons a limit of 15 kg for the admissible load for occasional lifting and carrying for women between 19 and 45 years of age. The Committee once again requests the Government to indicate the measures taken or envisaged to further limit, to the extent possible, the manual transport of light loads by women workers to loads of less than 15 kg.

2. *Article 6.* The Committee notes that, according to the Government's statements in its report, manual transport is increasingly rare in practice and that a survey carried out in August 2000 by the General Labour Inspectorate confirmed that operations in many enterprises had been thoroughly mechanized so as to reduce fatigue and risks. While noting this information, the Committee once again requests the Government to provide information on the kind of technologies implemented specifically to reduce and facilitate the manual transport of loads.

Brazil

Convention No. 115: Radiation Protection, 1960 (ratification: 1966)

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

With regard to its previous observation, the Committee notes the information provided in the Government's report.

Article 3, paragraph 1, and Article 6, paragraph 2, of the Convention. The Committee notes the Government's information indicating that the subject of ionizing radiation comes within the competence of the National Committee on Nuclear Energy (CNEN). The Ministry of Labour has sole competence for the development of labour standards. The Standing Joint

Tripartite Committee (CTPP) is the competent body for dealing with issues connected with occupational safety and health. According to the Government, the CNEN is launching the procedure for revising CNEN Standard NE 3.01 – Basic Guidelines concerning Radiation Protection. While noting the above information, the Committee is nevertheless bound to express its concern at the situation described in the present report in connection with the information provided in the previous reports. The Government indeed had indicated in previous reports that the body responsible for dealing with issues concerning ionizing radiation was the Coordinating Committee for Protection concerning the Brazilian Nuclear Programme (COPRON). According to the said information, a proposed legislative amendment had been sent to this body. The proposal would take into consideration the 1990 Recommendations of the International Commission on Radiological Protection (ICRP), reflected in the International Basic Safety Standards for Protection against Ionizing Radiation, published in 1994. The Committee would be grateful if the Government would indicate in its next report which national body is actually responsible for regulating the issues mentioned and indicate whether the procedure for revision of national legislation on protection against ionizing radiation has actually been initiated. The Committee would be grateful if the Government could find the appropriate solution to the problems of competence which appears to occur between the national bodies responsible for revision of legislation on protection against ionizing radiation and consequently proceed with the said revision, taking into account the 1990 ICRP Recommendations, reflected in the International Basic Safety Standards for Protection against Ionizing Radiation, published in 1994. The Committee hopes that the Government will be able to provide information in its next report on the progress made in this regard.

The Committee recalls that in its previous observation reference had been made to the comments made by the National Commission of Workers in Nuclear Energy (CONTREN) concerning working conditions in the nuclear industry. Noting the Government's observations on this matter, the Committee had requested the Government to provide information on data registered within the framework of the actions taken to assess the situation in the nuclear industry and the changes that need to be made. The Committee also asked the Government to indicate whether collective agreements which would establish new conditions of work in the nuclear energy industry had been concluded and, if so, to send copies to the Office. Given that the Government has not communicated any of the information requested, the Committee repeats its request and hopes that the Government will communicate the said information with its next report.

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

[The Government is asked to reply in detail to the present comments in 2004.]

Bulgaria

Convention No. 120: Hygiene (Commerce and Offices), 1964 (ratification: 1965)

With reference to its previous comments, the Committee notes with satisfaction the adoption of Ordinance No. 7 of 23 September 1999 on minimum requirements for healthy and safe working conditions in workplaces and in the use of working equipment, issued in application of article 7, paragraph 2, of the Act on Safety and Health of 1997. It notes in particular, with satisfaction, that section 21 in conjunction with section 229; section 221, subsection 1; sections 230, 231 and 237; and section 242 in conjunction with section 243 of the above Ordinance, gives effect to the general principles embodied in *Articles 7, 12, 13, 15 and 19 of the Convention*.

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

Central African Republic

Convention No. 62: Safety Provisions (Building), 1937 (ratification: 1964)

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

The Committee notes the information that the Government has taken due note of the comments of the Committee and that the necessary measures will be taken within the overall revision of the legislative and regulatory texts on labour envisaged by the Department of Labour and that the technical assistance of the ILO's multidisciplinary advisory team for Central Africa will be requested. The Committee trusts this overall revision will be accomplished soon and that the Government will not fail to address the Committee's previous comments as set out below.

Introduction into national legislation of the standards set forth in ratified Conventions

In its previous comments, the Committee drew the Government's attention to the need to adopt measures in laws and regulations to give effect to the provisions contained in the Convention even if, as stated by the Government, under the Constitution of 4 January 1995, international agreements, treaties and Conventions that are duly ratified by the Republic have the force of national law.

The Committee recalls that the incorporation into national legislation of the provisions of ratified Conventions, from the mere fact of their ratification, is not sufficient to give effect to them at the national level in all cases in which the provisions are not *self-executing*, that is where they require special measures for their application, which is the case, at least, for *Part I of the Convention*. Furthermore, special measures are also needed to establish penalties for non-observance of the standards set forth in the instrument, which is the case of *Article 3(c)* of the Convention.

The Committee once again draws the Government's attention to *Article 1, paragraph 1*, of the Convention, in accordance with which each Member which ratifies the Convention undertakes to maintain in force, laws or regulations which ensure the application of the General Rules set forth in *Parts II to IV* of the Convention. In this respect, the Committee recalls that draft texts were prepared following the direct contacts which took place in 1978 and 1980 with the responsible government services. The Committee is bound to express the firm hope that the relevant texts will be adopted in the very near future.

Statistics of accidents (Article 6 of the Convention)

For a number of years, the Committee has been noting the absence, in the Government's reports, of statistical information relating to the number and classification of accidents occurring in the building sector. In its last report, the Government states that the Labour Department does not currently have at its disposal reliable statistics in this field.

The Committee recalls that, under this Article of the Convention, each Member which ratifies the Convention undertakes to communicate the latest statistical information indicating the number and classification of accidents in an enterprise or sector. The Committee once again hopes that the Government will soon be in a position to indicate the measures which have been taken to give effect to the Convention on this point and to supply the appropriate statistical information.

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

Convention No. 119: Guarding of Machinery, 1963 (ratification: 1964)

The Committee notes that the Government's latest report has contained no reply to its previous comments. It must therefore repeat its previous observation which read as follows:

Further to the comments which it has made for many years on the application of *Article 2, paragraphs 3 and 4, of the Convention*, the Committee notes that the implementing regulations provided for in section 37(3) of General Order No. 3758 of 25 November 1954 with a view to designating machinery or dangerous parts thereof have still not been adopted. The Committee again notes the Government's statement that the Bill is being prepared by the competent authorities.

The Committee hopes that the future implementing regulations will also give effect to *Article 10, paragraph 1*, of the Convention establishing the obligation of an employer to take steps to bring national laws or regulations relating to the guarding of machinery and to the dangers arising and the precautions to be observed in the use of the machinery to the notice of workers, as well as to its *Article 11* which provides that workers shall not use machinery without the guards provided being in position, nor make such guards inoperative, while guaranteeing that, irrespective of the circumstances, workers shall not be required to use machinery when the guards provided are not in position or when they are inoperative.

The Committee recalls that, should it consider it to be appropriate, the Government may seek the assistance of the International Labour Office in the preparation of this text.

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

China**Hong Kong Special Administrative Region****Convention No. 115: Radiation Protection, 1960 (notification: 1997)**

The Committee notes the Government's comprehensive reports and the information supplied in response to its previous comments. It notes with satisfaction the provisions of Regulation 10 of the Radiation (Control of Radioactive Substances) Regulations, 1965, as amended referring to Regulations 2 and 14 of the Radiation (Control of Irradiating Apparatus) Regulations, as amended and the Legal Notice L.N. 154 of 1995 providing for dose limits of workers' exposure which are in conformity with the 1990 International Commission on Radiological Protections (ICRP) Recommendations and thus apply *Article 3, paragraph 1, and Article 6, paragraph 2, of the Convention*. It further notes with satisfaction Regulation 14(b) of the Radiation (Control of Radioactive Substances) Regulations giving effect to *Article 8* of the Convention.

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

Croatia**Convention No. 162: Asbestos, 1986 (ratification: 1991)**

The Committee takes note of the Government's report in response to its previous comments and concerning the observations made by the Association of Workers Affected by Asbestosis – Vranjic, on the application of the Convention, as well as the discussion held in the Conference Committee on the Application of Standards at the 91st Session of the International Labour Conference in June 2003. The Committee notes the Government's indication, contained in its report, that no changes to the legislation have been introduced yet. In this respect, the Committee however notes the declaration of the Government representative in the Conference Committee on the Application of Standards at the 91st Session of the International Labour Conference in 2003 that in October 2000, the Ministry of Health has set up a multidisciplinary working group composed of the representatives of different ministries, institutes and trade unions to deal with the issue of workers who were professionally exposed to asbestos fibres and contracted occupational diseases. Between August 2001 and January 2002 a number of meetings of this working group took place, referring in particular to problems of diagnosis, treatment and claims for damages with asbestosis and related diseases. The Government representative further indicated that the respective legislation is under review and that the adoption of new regulations is envisaged, due to the fact that the Croatian Government, having signed the Stabilization and Association Agreement with the European Union (EU), is obliged to harmonize its legislation with the legislation of the EU as from 1 January 2002, including the EU Directive related to asbestosis. The Committee while noting the inspection report of the State Inspectorate, Industrial Safety

Section, of 14 November 2002, which confirms the allegations made by the Association of Workers Affected by Asbestosis – Vranjic, urges the Government to take the necessary legislative action in the near future to adopt laws or regulations concerning the use of asbestos, which prescribe the specific measures to be taken for the prevention, control of and protection of workers against health hazards due to occupational exposure to asbestos, in order to give full effect to the provision of the Convention. The Committee draws the Government's attention to the fact that the Office would be ready to provide technical assistance, in particular with a view to the elaboration of legislation on asbestos, in order to overcome the problems incurred in relation to the application of the Convention.

The Committee is addressing a request directly to the Government concerning certain matters.

Djibouti

Convention No. 120: Hygiene (Commerce and Offices), 1964 (ratification: 1978)

With reference to the comments it has been making for many years, the Committee notes the Government's statement that the necessary measures will be taken in the general context of the next revision of labour laws and regulations which it wishes to undertake with ILO assistance as soon as conditions allow the organization of tripartite consultations, in order to give effect to the Convention. The Committee hopes that the Government will undertake as soon as possible the necessary measures to comply fully with *Articles 10, 11, 13, 14, 15, 16, 18 and 19 of the Convention*. It requests the Government to provide detailed information on any progress made in this respect.

Egypt

Convention No. 139: Occupational Cancer, 1974 (ratification: 1982)

The Committee notes the information provided by the Government in response to its previous comments. It draws the Government's attention to the following points.

1. *Article 1 of the Convention*. The Committee notes the Government's indication that the new Labour Code No. 12 of 2003 has been promulgated and that the procedures for its implementation are under preparation, including the amendment of Order No. 55 of 1983 on the protective measures to ensure safety and health in the workplace and the level of exposure to pollutants, taking into consideration the technological development and the extent of exposure to pollutants. The Committee takes due note of this information and requests the Government to supply a copy of the 2003 Labour Code for further examinations. It hopes that the revision work of Order No. 55 of 1983, which has been announced since 1988, will be completed in the near future. The Committee requests the Government to communicate a copy of the amended order once it has been adopted for in-depth examination. The Committee further requests the Government to indicate whether codes of practice or guides exist which are used to determine carcinogenic substances and agents to which occupational exposure shall be prohibited or made subject to authorization or control.

2. *Article 2, paragraph 2*. With regard to the reduction of the number of workers exposed to carcinogenic substances or agents as well as the reduction of the duration and degree of such exposure, the Committee notes the Government's indication that all orders designed to give effect to the provisions of the new Labour Code are currently being amended. The Committee hopes that the amendments to the respective orders will be adopted soon, in order to give effect to this provision of the Convention on which the Committee had made comments for a number of years.

3. *Article 4*. With regard to the information to be provided to workers on the dangers inherent in the exposure to carcinogenic substances or agents and on the measures to be taken, the Government indicates that the orders to implement the provisions of the new Labour Code, 2003, are presently being prepared, and that a document on safety on the utilization of dangerous products shall be included in the amendments being envisaged. The Committee accordingly hopes that the amendments to the orders will be adopted soon to ensure that the workers concerned are informed in a complete and comprehensive manner about the dangers involved in their exposure to carcinogenic substances or agents and on the measures to be taken.

4. *Article 5*. The Committee notes the Government's indication that section 219 of the new Labour Code, 2003, obliges all undertakings to provide medical examinations to all their workers. The Committee, although it was not in a position to examine the new Labour Code of 2003, would consider that section 219 of the Labour Code, 2003, is drafted in too general terms to give full effect to this Article of the Convention. It recalls that under this Article of the Convention, measures must be taken to ensure that workers, both during and after the period of their employment, are provided with the medical or biological examinations or other tests or investigations needed to evaluate their level of exposure and monitor their state of health with regard to the occupational hazards, in response to the common situation in which cancer is diagnosed only after the worker concerned has left the employment in which he or she suffered exposure. The Committee therefore requests the Government to review the respective provisions of the Labour Code 2003 in the light of these explanations, and to take the appropriate measures, if necessary.

5. *Part IV of the report form*. In the absence of any information contained in the Government's report, the Committee again requests the Government to provide detailed information on the manner in which the Convention is applied in the country, including extracts from inspection reports and, if such statistics are available, information

concerning the number of workers covered by the legislation or other measures which give effect to the Convention, the number and nature of the contraventions reported, the number, nature and cause of diseases, etc.

France

Convention No. 115: Radiation Protection, 1960 (ratification: 1971)

The Committee notes the information provided by the Government in its report. It notes with interest the information on the measures relating to emergency situations. The Committee notes with satisfaction the adoption of Decree No. 2003-296 of 31 March 2003 respecting the protection of workers against the dangers of ionizing radiation, which gives effect to the provisions of *Articles 3, paragraph 1, 6, paragraph 2, and 7, paragraph 1, of the Convention*.

It wishes to draw the Government's attention to the following points.

1. *Article 8.* The Committee notes the Government's indication in its report in 2001 concerning the draft Decree to strengthen the protection of workers against the dangers of ionizing radiation in the context of the transposition of European Directive Euratom 96/29 of 13 May 1996 into the national legislation. This Decree will result, among other measures, in a lowering of exposure limit values taking into account the recommendations of the ICRP of 1990 and in accordance with the Directive. With regard to the dose limit for workers not directly engaged in radiation work, the Government indicates that it is its intention to set the limit value, *de lege ferenda*, at 1 mSv, which is the limit value for the population. The Committee notes that sections R.231-75 to R.231-77 of Decree No. 2003-296 of 31 March 2003 on the protection of workers against the dangers of ionizing radiation determines exposure limit values for the various categories of workers. However, Decree No. 2003-296 does not appear to indicate the permissible levels of exposure for workers not directly engaged in radiation work. In this respect, the Government indicates that the current regulations set out a limit value of 5 mSv for workers not engaged in radiation work, which exceeds the limit value of 1 mSv recommended by the ICRP. The Committee therefore requests the Government to indicate the measures adopted or envisaged to lower the limit value for workers not engaged in radiation work to 1 mSv.

2. *Article 14. Provision of alternative employment.* The Committee notes with interest section R.231-96 of the Decree of 31 March 2003 respecting the protection of workers against the dangers of ionizing radiation, which provides that a worker directly engaged in radiation work may not be assigned to work exposing him or her to ionizing radiation, except in the event of a situation of radiological emergency, where one of the limits determined in sections R.231-76 and R.231-77 has been exceeded. The Committee understands that this provision implies the obligation to provide alternative employment to a worker who has been subject to an accumulated exposure beyond which she or he would incur and unacceptable risk to her or his health. It therefore requests the Government to confirm that this provision in practice imposes such an obligation.

French Guiana

Convention No. 115: Radiation Protection, 1960

The Committee invites the Government to refer to the comments made in its observation on the application of Convention No. 115 by France.

Guadeloupe

Convention No. 115: Radiation Protection, 1960

The Committee invites the Government to refer to the comments made in its observation on the application of Convention No. 115 by France.

Martinique

Convention No. 115: Radiation Protection, 1960

The Committee invites the Government to refer to the comments made in its observation on the application of Convention No. 115 by France.

New Caledonia

Convention No. 127: Maximum Weight, 1967

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

The Committee notes the Government's report and its reply to its previous comment. It notes that the provisions of the Labour Code of 1926, and particularly sections R.231-72, establish limits in the merchant marine sector for loads for which the manual transport is inevitable. The Committee also notes the Government's announcement that a draft order prepared by the

Medical Labour Inspector will be submitted to the Government with a view to improving the regulations in force along the lines indicated by the Committee. In this respect, the Committee notes that the only regulation currently in force concerning the manual transportation of loads by workers is Order No. 1211 T of 19 March 1993, which gives effect to section 5 of Order No. 34/CP of 23 February 1989, which itself only establishes minimum safety and health requirements for the manual transport of loads which constitute a risk for workers, and particularly to their backs and lumbar regions. The Committee recalls that, in its previous comment, it noted the information provided by the Government, and particularly the findings of a survey of occupational physicians.

Articles 3 and 7 of the Convention. The Committee noted the finding of this survey that in general heavy loads are only handled occasionally, except in the case of certain activities, and particularly removals and the unloading of containers loaded with imported products. Furthermore, in practice, the average weight of loads is lower than 55 kg, except in the case of the lifting of sick persons and their transport on stretchers. With regard to the criteria applied by occupational physicians to conclude that a worker is fit for the manual transport of loads over 55 kg, account is taken of Order No. 1211-T of 19 March 1993, giving effect to section 5 of Order No. 34/CP of 23 February 1989, respecting minimum safety and health requirements for the manual transport of loads which constitute a risk for workers, and particularly to their backs and lumbar regions. In this respect, the Committee noted that section 3 above remained unchanged. The absolute limit is set at 105 kg, and a worker may even be permitted to carry regularly loads heavier than 55 kg if he has been found fit by the occupational physician. While noting the findings of the above survey, the Committee therefore requested the Government to indicate the measures which had been taken or were envisaged to ensure that workers could not be required to engage in the manual transport of a load heavier than 55 kg. Once again, the Committee referred to the ILO publication *Maximum weight in lifting and carrying* (Occupational Safety and Health Series, No. 59, Geneva, 1988), in which it is indicated that 55 kg is the limit recommended from the ergonomic point of view for the admissible weight of loads to be transported occasionally by a male worker between 19 and 45 years of age. Similarly, it states that 15 kg is the limit recommended from an ergonomic point of view for the admissible weight of loads to be transported *occasionally* by adult women. The Committee emphasizes that it has been raising this matter for many years. It therefore hopes that the Government will take the necessary measures to give effect to the provisions of the Convention.

Articles 4 and 6. The Committee had noted the technical devices (trolleys, lifts, fixed or travelling cranes) used by workers depending on the financial means of the enterprise to limit or facilitate the manual transport of loads. The Committee requests the Government to continue providing information on the application of this Article in practice.

Part V of the report form. The Committee notes the information provided concerning occupational accidents. The rate of occupational accidents related to the manual handling and transport of loads has remained relatively stable since 1995. In this respect, the Committee notes that 3 per cent of occupational accidents involved absence from work for over 24 hours and that the number of days for which benefits are paid by the CAFAT for this type of occupational accident remains stable but high, since they account for around 30 per cent of the total number of days for which benefits are paid in respect of occupational accidents. The Committee therefore requests the Government to continue providing information on the effect given in practice to the provisions respecting the maximum weight of loads which may be transported manually and, in particular, on the action taken to prevent this type of occupational accident.

The Committee therefore hopes that the Government will take the necessary measures as soon as possible for the adoption of the above draft order and to ensure that this text reflects the points raised by the Committee in its comments and to provide effective protection for workers called upon to lift and transport loads manually.

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

Réunion

Convention No. 115: Radiation Protection, 1960

The Committee invites the Government to refer to the comments made in its observation on the application of Convention No. 115 by France.

Greece

Convention No. 115: Radiation Protection, 1960 (ratification: 1982)

The Committee notes the information provided by the Government in its report. It notes with interest Ministerial Decision No. 1014/94 (*Official Gazette*, No. 216) of 6 March 2001, governing the regulations on radiation protection, which were issued by the Ministers of National Economy, Labour, Health, Welfare and Development, to transpose into national legislation European Directive 96/29/Euratom of 13 May 1996, laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionizing radiation, which reflects the dose limits set forth by the International Commission on Radiological Protection (ICRP) in its 1990 Recommendations and Directive 97/43/Euratom of 30 June 1997 on the health protection of individuals against the dangers of ionizing radiation in relation to medical exposure. It further notes that Ministerial Decision No. 1014/94 repeals Ministerial Decision No. 14632/(FOR)1416 of 1989.

In view of the new regulations, the Committee would draw the Government's attention to the following point.

Article 8 of the Convention. The Committee notes the dose limits set forth by sections 1.3 and 1.3.1 of Ministerial Decision No. 1014/94 for exposure to ionizing radiations of the different categories of workers. Section 1.3.2 establishes a dose limit of 1 mSv for the general public. The Committee observes that its scope does not seem to include workers who are not directly engaged in radiation work. The Committee, while emphasizing that this provision of the Convention raises a particular concern for workers who, while not directly engaged in radiation work and thus not necessarily benefiting from monitoring programmes, special medical examination etc., may remain in, or pass through, areas where

they may be exposed to ionizing radiations, recalls the Government's obligation under *Article 8* of the Convention to establish appropriate annual dose limits for exposure of workers who are not directly engaged in radiation work. With regard to the determination of the annual dose limits for non-radiation workers in the light of the knowledge available at the time, the Committee draws again the Government's attention to section 5.4.5 of the ILO code of practice of 1986, according to which workers not directly involved in radiation work shall be protected as if they were members of the general public. For the general public, the ICRP, in its 1990 recommendations, spells out an annual effective dose limit of 1 mSv, averaged over five years. The Committee hopes that the Government will soon take the necessary measures, in the light of the above explanations, to establish appropriate dose limits for exposure to ionizing radiation of workers who are not directly engaged in radiation work, in order to fulfil its obligations under *Article 8* of the Convention.

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

Guinea

Convention No. 120: Hygiene (Commerce and Offices), 1964 (ratification: 1966)

The Committee notes that the Government's report contains no response to its previous comments. It must therefore repeat its previous observation which read as follows:

1. The Committee notes that the Government, in implementation of section 171 of the Labour Code, will be submitting draft decrees concerning sanitary facilities in workplaces and concerning the provision of drinking-water and non-alcoholic drinks in enterprises and establishments. The Committee also notes the draft decree establishing Committees on Hygiene, Safety and Working Conditions (CHSCT).

2. The Committee recalls that, since 1989, it has been asking the Government to adopt ministerial orders, in accordance with section 171 of the Labour Code, in the following areas: ventilation (*Article 8 of the Convention*); lighting (*Article 9*); drinking water (*Article 12*); seats for all workers (*Article 14*); and noise and vibrations (*Article 18*), in order to give effect to these provisions of the Convention. The Committee hopes that such decrees will be adopted after consultation with the representative organizations of employers and workers, in accordance with *Article 5* of the Convention.

3. *Article 1* of the Convention. Lastly, the Committee recalls its previous observation in which it drew attention to the fact that all workers who are mainly engaged in office work, including workers in the public services, are covered by the Convention. The Committee hopes that the Government will take the necessary measures in the near future to ensure full application of the Convention to the public services and requests the Government to indicate the progress made in this regard.

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

Guyana

Convention No. 139: Occupational Cancer, 1974 (ratification: 1983)

The Committee notes the Government's report. It notes the Government's indication that the draft regulations on the safe use of chemicals at work, to be issued in application of section 75 of the Occupational Safety and Health Act, 1997, which contain preventive and proactive measures to protect workers against the risks of exposure to carcinogenic substances and agents is currently being drafted by an ILO consultant and discussed with the stakeholders. The Committee hopes that the above regulations will be adopted in the near future and that they will give effect to the Convention and in particular to the following articles of the Convention.

1. *Article 1, paragraphs 1 and 2, of the Convention.* In its previous comments, the Committee had noted that pursuant to section 59 of the Occupational Safety and Health Act, 1997, the use or intended use of chemical, biological or physical agents may be prohibited, limited or restricted or made subject to conditions, if their use, in the opinion of the Occupational Safety and Health Authority, is likely to endanger the health of workers. However, the Government had indicated that neither a regulatory mechanism existed to prohibit or grant certifications specifying the conditions under which reasonable exposure of carcinogenic substances can be met, nor did the Occupational Safety and Health Department determine specific exposure levels for chemical substances proven to be carcinogenic. The Committee, recalling the provision of *Article 1* of the Convention, had requested the Government to indicate the measures taken or contemplated to establish a mechanism ensuring that the substances or agents to which occupational exposure is prohibited or subject to authorization and control are determined periodically, so that it is not left to the discretion of the Occupational Safety and Health Authority to determine case by case whether a substance or agent endangers the health of the worker. In this respect, the Government merely indicates in its report that the country does not dispose of a formal list determining carcinogenic substances and agents, but that Guyana is guided by research done by the American Conference of Government Industrial Hygienists (ACGIH). The Committee accordingly requests the Government to explain the framework in which such guidance takes place and to indicate the results of this guidance with regard to the application of this Article of the Convention.

2. *Article 2.* With regard to the replacement of carcinogenic substances and agents to which workers may be exposed in the course of their work by non-carcinogenic or less harmful substances, the Committee notes the Government's indication to the effect that the National Agriculture Research Institute (NARI) does the necessary research and that it gives advice to importers to import chemicals that are not carcinogenic. In addition, farmers and their

organizations are educated on the need to use less carcinogenic chemicals. The Committee understands from the Government's indications that the final decision concerning the possible substitution of carcinogenic substances and agents by non- or less harmful substances and agents is left to the discretion of the importers and users, like farmers. It accordingly hopes that the draft regulations on the safe use of chemicals at work will contain a regulation providing for the obligation to substitute carcinogenic substances and agents whenever possible. The Committee further hopes that the above regulations will also provide for the reduction of the number of workers as well as the duration and degree of exposure to carcinogenic substances and agents to the minimum compatible with safety, in order to give full effect to this Article of the Convention.

3. *Article 3.* Referring to its previous comments and with regard to the establishment of permissible exposure limits in the framework of measures to be taken pursuant to *Article 3* of the Convention to protect the workers against the risks of exposure, the Committee notes the Government's indication that Guyana is guided by research done by the ACGIH. The Committee, noting that one of the main activities of the ACGIH is the establishment of threshold limit values for chemical substances and physical agents, requests the Government to indicate whether the threshold limits set forth by the ACGIH have a binding character and are in deed observed in the country. As to the establishment of an appropriate system of records of exposure of workers at risk, the Committee recalls again that the provision of section 61 of the Occupational Safety and Health Act, 1997, does not give full effect to *Article 3* of the Convention, since it obliges only the employer to establish and maintain an inventory of all hazardous chemicals and physical agents present at the workplace. The Committee therefore draws the Government's attention to Paragraph 15, subparagraphs 1 and 2, of the Occupational Cancer Recommendation, 1974 (No. 147), recommending the establishment and maintenance of a system of records by the competent authority in association with individual employers. Moreover, it is indicated in the ILO publication *Occupational cancer: Prevention and control*, Occupational Safety and Health Series No. 39, that the purpose of a register containing the names of exposed persons, the result of technical monitoring, special medical examinations and laboratory tests performed on these workers is to permit the competent authority "to keep a close watch on the magnitude of the problem of occupational cancer in the country, the level of risk involved in the various types of exposure, the dose-response relationship and the effectiveness of preventive action. In this way, increased knowledge of the various aspects of occupational epidemiology can be gained". The Committee accordingly requests the Government to take the necessary measures to establish an appropriate system of records on national level in order to evaluate the different aspects of occupational cancer.

4. *Article 5.* The Committee notes the Government's indication that there is currently no regulation providing for medical examinations of workers during the period of employment and thereafter, but that this requirement will be addressed in the proposed draft regulations on chemicals which is being drafted by an ILO consultant. The Committee therefore hopes that the above draft regulations will be adopted in the near future to ensure that workers will be provided with, *inter alia*, medical examinations during the period of employment and thereafter, to give effect to this Article of the Convention.

5. *Article 6(a).* The Committee notes the Government's indication that the existing legislation applicable, namely the Occupational Safety and Health Act, 1997, will soon be supplemented by regulations in order to give full effect to the provisions of the Convention. The Committee requests the Government to keep it informed on every progress accomplished with regard to the elaboration of the regulations on chemicals.

Italy

Convention No. 115: Radiation Protection, 1960 (ratification: 1971)

The Committee takes note of the Government's report. It notes with interest the legislation adopted, in particular Legislative Decree No. 230 of 17 March 1995 transposing the European Council Directives 80/836, 84/467, 84/466, 89/618 and 92/3/Euratom into domestic law, and Legislative Decree No. 241 of 26 March 2000 transposing the European Council Directive 96/29/Euratom laying down basic safety standards for the protection of the health of the workers and the general public against the dangers arising from ionising radiation into national law. The Committee notes with satisfaction that the dose limits contained in Annex III to Legislative Decree No. 230 of 17 March 1995 reflect the dose limits recommended by the International Commission on Radiological Protection (ICRP) for the various categories of workers and the general public, and thus gives effect to *Article 3, paragraph 1, and Article 6, paragraph 2, of the Convention.*

Madagascar

Convention No. 119: Guarding of Machinery, 1963 (ratification: 1964)

The Committee notes that, according to the Government's report, the technical advisory committee, the organization and operation of which were established by Decree No. 99-130 of 17 February 1999, will be responsible for the formulation of texts specifically relating to the various branches of activity and will not fail, at the same time, to examine the effect that is given to the provisions of the Convention. The Committee hopes that the above texts will contain provisions giving effect to *Articles 2 and 4 of the Convention*, which provide that the sale, hire, transfer in any

other manner and exhibition of machinery, of which the dangerous parts specified in *paragraphs 3 and 4 of Article 2* are without appropriate guards, shall be prohibited, and specifying that the obligation to ensure compliance with these provisions shall rest on the vendor, the person letting out on hire or transferring the machinery in any other manner, the exhibitor or the manufacturer when he sells the machinery, lets it out on hire, transfers it in any other manner or exhibits it (*Article 4*).

The Committee hopes that the Government will make every effort to ensure that the above texts are adopted in the very near future and requests the Government to keep it informed in this respect and to provide a copy of the texts once they are adopted.

Convention No. 120: Hygiene (Commerce and Offices), 1964 (ratification: 1966)

The Committee takes note of the Government's report. It notes that the legislative amendments to give effect to the Convention, announced by the Government in its last report, have not taken place. It notes, however, that two draft decrees, one on "the organization and operation of occupational medicine in Madagascar", and the other, "establishing general prescriptions on occupational health, safety, hygiene and the working environment", have been drawn up and are to be submitted to the Advisory Technical Committee for approval and thereafter to the Government Council. Meanwhile, Order No. 889 of 20 May 1960 establishing general occupational safety and health prescriptions remains in force. The Committee hopes that the abovementioned decrees will be approved by the Advisory Technical Committee and adopted by the Government Council in the near future so that effect may be given to the following Articles of the Convention to which the Committee has drawn the Government's attention for many years.

Article 14 of the Convention. The requirement in section 16 of Order No. 889 of 20 May 1960 that an appropriate seat, chair, bench or stool must be made available, applies only to women staff. The Committee once again notes the Government's statement that it will study the possibility of extending the scope of this provision to all workers without distinction as to sex when the texts are updated. The Committee hopes that the draft decree establishing general prescriptions for occupational health, hygiene and safety and the working environment will provide that suitable seats shall be supplied for all workers without distinction as to sex, as provided in *Article 14* of the Convention.

Article 18. The Committee notes that, according to the Government, no regulatory provisions have as yet been adopted to apply this Article of the Convention, but that relevant provisions have been included in the abovementioned draft decrees. The Committee hopes that the draft decrees will be adopted in the near future in order to ensure that noise and vibrations likely to have harmful effects on workers shall be reduced as far as possible, as required by *Article 18* of the Convention.

Further to its previous comments, the Committee notes that the case law digest containing decisions by the courts of law on issues of principle in the application of the Convention is not yet available. The Committee again requests the Government to provide information on any progress made in this regard and to provide a copy of the digest as soon as it has been published.

Morocco

Convention No. 136: Benzene, 1971 (ratification: 1974)

The Committee notes the Government's brief report.

It notes with interest the Government's indication that the draft decree on benzene designed to give effect to the provisions of the Convention was approved by the Government Council on 30 October 2003. The Committee will examine this decree during its next session in 2004.

Norway

Convention No. 115: Radiation Protection, 1960 (ratification: 1961)

The Committee notes the information provided by the Government in response to its previous comments. It notes with interest the adoption of the new Act No. 36 of 12 May 2000 on Radiation Protection and the Use of Radiation, effective since 1 July 2000, repealing Act No. 1 of 18 June 1938 relating to the use of X-rays and radium, as well as the adoption of the Regulations of 14 June 1985 on ionizing radiation, as revised on 1 February 2001, which came into effect on 1 July 2001. The Committee notes that the Act on Radiation Protection and the Use of Radiation, 2000, lays down the general lines on radiation protection and empowers the ministry responsible to issue supplementary regulations prescribing the detailed measures to be taken to implement the respective provisions of the Act. In this respect, the Government indicates in its report that a set of regulations to be adopted under the Act on Radiation Protection and the Use of Radiation, 2000, are now in process and it is planned to put them into force on 1 January 2004. The content of the regulations is based to a large extent on the 1990 Recommendations of the International Commission on Radiological Protection (ICRP) and on Council Directive 96/29/Euratom of 13 May 1996. In the light of this and with reference to its previous comments, the Committee draws the Government's attention to the following points.

1. *Article 13 of the Convention. Emergency exposure situations.* The Committee notes with interest that Chapter IV, sections 15-17 of the Act on Radiation Protection and the Use of Radiation, 2000, refers to the “Planning of incident and accident management. Emergency preparedness”. It notes, in particular, section 15 empowering the ministry to impose, by way of regulations or individual decisions, on undertakings covered by the Act, the duty to establish plans for the handling of incidents and accidents and requirements with regard to exercises. Section 17 authorizes the King to issue regulations prescribing exception from dose limits and other requirements established under this Act in situations “... where implementing a rescue or civil emergency operation makes it necessary”. In this regard, the Government indicates that the regulations to be adopted on this issue will replace the “non-legislative emergency planning documents”, which previously addressed the issue of emergency situations. The Committee, while hoping that the new regulations will be adopted in the near future, requests the Government to supply a copy of the regulations as soon as they are adopted for in-depth examination to determine the extent to which they would give effect to *Article 13* of the Convention.

2. *Article 14.* The Committee notes section 8, subsection 1, of the Act on Radiation Protection and the Use of Radiation, 2000, according to which persons, who because of young age, pregnancy or other reasons are particularly sensitive to radiation, shall either be assigned to tasks that do not involve exposure to radiation, or be protected by other appropriate measures. The Committee would like the Government to indicate whether section 8 of the above Act provides for the worker’s right to alternative employment possibilities, in the event that continued employment involving exposure to ionizing radiation is contraindicated for health reasons. If this is not the case, the Committee hopes that the Government will take the necessary measures to this effect. In this context, the Committee wishes to point out that the need to find alternative employment for the workers concerned is a general principle of occupational health, which appears in Paragraph 17 of the Occupational Health Services Recommendation, 1985 (No. 171), as well as in Paragraph 27 of the Radiation Protection Recommendation, 1960 (No. 114). Similarly, under Article 11, paragraph 3, of the Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148), every effort must be made to provide the workers concerned with suitable alternative employment or to maintain their income through social security measures or otherwise, where continued assignment to work involving exposure is found to be medically inadvisable. Moreover, effective protection of workers as regards health and safety against ionizing radiations, spelt out in *Article 3, paragraph 1*, of this Convention may require, inter alia, an offer of suitable alternative employment opportunities.

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

Convention No. 170: Chemicals, 1990 (ratification: 1993)

The Committee takes note of the comments made by the Confederation of Norwegian Business and Industry (NHO) on the Government’s report and received by the ILO in March 2003. The Committee requests the Government to provide its comments thereon.

Paraguay

Convention No. 120: Hygiene (Commerce and Offices), 1964 (ratification: 1967)

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

1. *Article 6 and Part IV of the report form.* The Committee notes with interest the Government’s indication that one of the inspection measures is the measurement of the temperature and the level of noise at the workplace. Depending on the results of these measurements, the inspector makes proposals and gives recommendations in order to improve the conditions prevailing at the workplace. The subsequent controls are carried out in intervals of 2, 7, 15, 30, 45, etc. days depending on the particular risk found during the inspection. The Committee, taking due note of this information, invites the Government to continue to supply information on the manner in which effect is given to the provisions of the Convention in practice.

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

Sierra Leone

Convention No. 119: Guarding of Machinery, 1963 (ratification: 1964)

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

For a number of years, the Committee has drawn the attention of the Government to the fact that 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 abovementioned 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 hopes that the Government will make every effort to take the necessary action in the very near future.

Spain

Convention No. 136: Benzene, 1971 (ratification: 1973)

The Committee takes note of the Government's last report and the information provided in response to its comments. It draws the Government's attention to the following points.

1. *Article 4, paragraph 2, of the Convention.* The Committee notes the adoption of Royal Decree 374/2001 on the protection of workers' health and safety against risks related to chemical agents at work. It notes with interest section 8 in conjunction with Annex III of this Decree prohibiting the production, fabrication and use of benzidine, a derivative of benzene, which is used as a solvent for dyes in many industries such as the shoe leather industry. The Committee further notes paragraph 2 of section 8 enumerating the possible derogations from this general prohibition. For the cases of derogation, paragraph 3(b) stipulates that benzidine is always to be processed in an enclosed system. With regard to the work with benzene and with products containing benzene other than benzidine, the Committee notes again section 5 of resolution No. 6248 of 15 February 1977 on work with benzene and with products containing benzene prescribing that the work with benzene and with products containing benzene is to be carried out in an enclosed system whenever possible and, in the absence of an enclosed system, other safety measures must be assured. Pursuant to section 2, paragraph 2, of the resolution, it is strictly prohibited to carry out any work with products containing benzene outside of those workplaces where the implementation of the instructions contained in this resolution can be adequately and permanently monitored. In this context, the Committee refers to the Government's indications provided to the Conference Committee in 1992 according to which the petroleum refinery industry apparently represents the main domain where benzene was produced. In view of this fact, the Committee requests the Government to indicate whether it is envisaged to prohibit the use, fabrication and production of other forms of benzene like the Royal Decree prescribes for benzidine. In addition, it asks the Government to supply information on the domains where benzene is still used in whatever form in order to enable the Committee to appreciate the extent to which problems would occur as a result of using benzene. The Committee further requests the Government to communicate a copy of the report issued on the outcome of the labour inspectorate's action plan, devoted to the supervision of the relevant legislation related to benzene, which has already been carried out already several years ago.

2. *Article 11, paragraph 2.* With regard to the special protection requirements for pregnant women and nursing mothers, the Committee notes that the Government again refers to section 26 of the Law on the Prevention of Occupational Risks 31/1995 obliging the employer to carry out a risk assessment and, depending on the result of this risk assessment, to adopt the necessary measures to protect effectively the safety and health of e.g. pregnant women and nursing mothers against the specific risks detected. The Committee refers to its previous comments where it had noted that both the Government and the CC.OO. had made reference to black market enterprises involving the use of benzene in work processes in which certain provisions of the Convention were not adequately complied with, such as, in particular, the employment of pregnant women and nursing mothers in such work processes, contrary to *Article 11, paragraph 1*, of the Convention. Hence, it appears that the problem is not a legal one, but related to the supervision of the practical application of the relevant legislation. In the absence of any indications contained in the Government's report in this respect, the Committee therefore requests the Government to indicate the action taken or envisaged in particular at inspection level in order to ensure the application of the relevant legislation in all enterprises using benzene or products containing benzene.

3. *Part IV of the report form.* The Committee notes the statistical data supplied with the Government's report on the inspection activities carried out by the Labour Inspection and Social Security Inspectorate in relation to benzene. The Committee invites the Government to continue to provide statistical data reflecting the manner in which effect is given in practice to the Convention in the country.

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

Ukraine

Convention No. 119: Guarding of Machinery, 1963 (ratification: 1970)

The Committee refers to its previous comments and to the communication sent by the International Labour Office to the Government on 26 September 2002 with a view to receiving the Government's comments on the observation made by the Federation of Trade Unions of Ukraine (FTUU) concerning the application of this Convention. The Committee notes that no answer has been provided by the Government to this letter.

The Committee takes note of the information from the Government's latest report received after the termination of its 73rd Session (November-December 2002).

The Committee recalls that in its comments the Federation of Trade Unions of Ukraine (FTUU), while acknowledging that the requirements of the provisions of the Convention were contained in the workers' protection laws and that they were generally respected, stated that unfortunately, due to the difficult financial situation, many enterprises in Ukraine currently use more than 800 machines, mechanisms and equipment which were not in conformity with the technical safety requirements mainly due to the absence of protective devices or features, which indeed constitute a potential danger to those working in these enterprises.

In its previous comments, the Committee noted that the national legislation within the occupational safety and health area gave only partial effect to the Convention. Indeed, the Workers' Protection Act of 14 October 1992 contains certain provisions giving too general effect to *Article 2, paragraphs 3 and 4, Articles 7 and 9, Article 10, paragraph 1, Article 11 and Article 15, paragraph 2, of the Convention*. The Committee refers to the information provided by the Government in its earlier report concerning the adoption of some regulations and texts of Ukrainian state standards relating to machinery as well as the elaboration of the Industrial Production Safety Bill which had been submitted for consideration to the Council of Ministers.

The Committee requests the Government to supply information concerning any progress made with respect to the application of the Convention and copies of laws and regulations, as well as state standards, codes of practice, technical guidelines and instructions, in order to make possible the examination of the conformity of the legislation and practice in Ukraine with the requirements of all provisions of the Convention.

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States with regard to: **Convention No. 13** (*Afghanistan, Cambodia, Lao People's Democratic Republic, Slovenia*); **Convention No. 62** (*Guinea*); **Convention No. 115** (*Belarus, Brazil, Chile, China - Hong Kong Special Administrative Region, France: St. Pierre and Miquelon, Greece, Italy, Norway, Portugal, Slovakia, Spain, Tajikistan, Ukraine, United Kingdom: Bermuda, United Kingdom: Guernsey, United Kingdom: Jersey, Uruguay*); **Convention No. 119** (*Azerbaijan, Denmark, Malta, Paraguay*); **Convention No. 120** (*Azerbaijan, Belarus, Belgium, Bolivia, Brazil, Bulgaria, China - Macau Special Administrative Region, Czech Republic, Denmark, Guatemala, Japan, Lebanon, Mexico, Portugal, Spain, Sweden, Tunisia, United Kingdom, Uruguay, Viet Nam*); **Convention No. 136** (*Colombia, Guinea, Spain*); **Convention No. 139** (*Afghanistan, Belgium, Denmark, Ecuador, Guinea, Portugal, Slovenia*); **Convention No. 148** (*Kyrgyzstan*); **Convention No. 162** (*Brazil, Croatia, Ecuador, Uganda*).

Social Security

Barbados

Convention No. 118: Equality of Treatment (Social Security), 1962 (ratification: 1974)

In its previous comments, which it has been making for a number of years, the Committee pointed out that section 49 (in conjunction with section 48) of the National Insurance and Social Security (Benefits) Regulations of 1967 and section 25 of the Employment Injury (Benefits) Regulations of 1970, which deprive a beneficiary, when residing abroad, of his right to ask for his benefit to be paid directly to him at his place of residence, are contrary to the provisions of *Article 5 of the Convention*. In its reply, the Government stated that approval has been given for direct payment of the benefits to the claimant in the country where he is currently residing, and that corresponding amendments of the National Insurance and Social Security Act have been approved by the Government to bring it in accordance with *Article 5* of the Convention, and that the procedural steps have been taken to submit these amendments to Parliament for enactment. The Committee notes this information with interest and would like the Government to provide a copy of the new provisions as soon as they are adopted. It would also appreciate receiving statistical information on the number and nationality of the beneficiaries to whom benefits are transferred abroad.

[The Government is asked to reply in detail to the present comments in 2004.]

Bolivia

Convention No. 121: Employment Injury Benefits, 1964 [Schedule amended in 1980] (ratification: 1977)

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

The Committee has taken note of the information given in the Government's most recent report, and recalls that in its previous comments it had expressed the wish for more detailed information on the effects of the occupational injuries provisions of the new Pensions Act No. 1732 of 29 November 1996 and its Regulations (Supreme Decree No. 24469 of 1997), which have completely changed the long-term benefits system. Responsibility for the administration of the social security system with regard to these benefits, including benefits payable in cases of occupational injuries, has been handed over to the "pension management companies" (AFPs), which are now responsible for registering insured persons and collecting contributions. These AFPs manage different accounts for different long-term contingencies, in particular a collective fund for occupational risks, which is financed by premiums paid by employers. The rate is set initially at 2 per cent but depends on the particular risks at each enterprise (section 49 of the Regulations). The collective occupational risks account, like the common risks account, is initially being managed by the AFPs but such risks will subsequently be covered by private insurance companies.

In order to be fully able to assess the manner in which the new pensions legislation gives effect to the Convention, the Committee considers it necessary to have some additional information, including statistical information, some of which was requested previously. The Committee also requests the Government to supply with its next report a detailed reply to certain questions raised by the Committee concerning the old social security legislation, in particular the Social Security Code, as amended by Legislative Decree No. 13214 of 1975, which remains in force in matters relating to medical treatment and temporary incapacity benefits.

Article 5 of the Convention. The Committee recalls that, when the Convention was ratified, the Government stated its intention to avail itself of the temporary exception allowed under *Article 5*. Under the terms of this provision, the application of national legislation concerning employment injury benefits may be limited to prescribed categories of employees, which shall total in number not less than 75 per cent of all employees in industrial undertakings. In its report, the Government refers, as regards the number of workers protected, to an annex which the ILO has not received. Furthermore, the Government indicates that the number of workers in industrial establishments is not known. The Committee recalls, as it has already had occasion to do several times before, that in order to be in a position to assess whether the requirements set out in this provision of the Convention are fulfilled, it must know the number of employees who belong to the new pensions scheme and the number of employees covered by the old social security legislation (as regards medical treatment and temporary incapacity benefits), on the one hand, and the total number of employees in industrial establishments, on the other. The Committee hopes that the Government will do all in its power to supply this information with its next report. If statistics on the number of workers employed in industrial enterprises are still not available, the Committee requests the Government in the meantime to supply statistics on the total number of employees (whatever the nature of the enterprise in which they work), so as to allow it to have an idea of the scope of protection in practice.

Article 9, paragraph 2. The Committee notes that according to section 10(6) of the Pensions Act of 1996 and section 48 of its Regulations, entitlement to benefits begins at the start of the employment relationship and elapses six months after the employment relationship has ended, if the member has not entered into a new employment. The Committee recalls that certain occupational diseases may remain latent for long periods, and that in certain cases, often the most serious ones, symptoms appear only many years later. The Committee therefore hopes that the Government will be able to re-examine the effect of section 10(6) of the Pensions Act (and section 48 of the Regulations) on compensation for occupational diseases, and that it will be able to indicate in its next report the measures taken or envisaged to ensure that diseases which should be recognized as occupational in origin, in accordance with the table in Schedule I of the Convention, give rise to compensation even if they manifest themselves after the six-month period.

Article 9, paragraph 3. Section 10 of the 1996 Pensions Act and section 71 of its Regulations provide that the invalidity pension in the event of occupational invalidity is paid until the member reaches the age of 65 years. A similar provision is contained in section 75 of the Regulations. The Committee requests the Government to indicate the measures taken or envisaged to ensure that, in accordance with *Article 9, paragraph 3*, of the Convention, disability and survivors' benefits payable in cases of personal injury at a level prescribed by the Convention are paid for the full duration of the contingency.

Article 14, paragraph 1. The Committee has taken note of the provisions in the Pensions Act and its Regulations concerning pension entitlements in cases of occupational invalidity. The Committee requests the Government once again to indicate the measures taken or envisaged to ensure that invalidity pensions are paid from the end of the period during which temporary disability benefits are payable (according to section 29 of Legislative Decree No. 13214 of 1975, temporary disability benefits are restricted to 26 weeks, with the possibility of extension to 52 weeks).

Article 19 (in conjunction with Articles 13, 14 and 18 of the Convention). In reply to the Committee's previous comments, the Government indicates in its report that it has not applied the provisions of *Article 19* or *Article 20* to calculate industrial injury benefits. The Committee recalls that, while States are free to adopt their own rules and methods for calculating benefits, the amount must nevertheless be determined in such a way as to be not less than the amount prescribed in *Articles 19* or *20* of the Convention (read in conjunction with the table in Schedule II of the instrument). The calculation methods provided for by these provisions, and the parameters used, are established solely for the purpose of allowing comparisons between a given national situation and the requirements of the Convention. Given that according to section 10 of the 1996 Pensions Act (read in conjunction with section 5), as well as sections 59, 70, 72, 76, 77 and following sections of the Regulations, invalidity and survivors' pensions payable in cases of occupational injuries are calculated in relation to the worker's basic wages, *Article 19* of the Convention is applicable for the purpose of ascertaining whether the level of invalidity and survivors' benefits prescribed by the Convention has been reached. This also applies in the case of temporary invalidity benefits which, according to section 28 of Legislative Decree No. 13214 of 1975, are equivalent to 75 per cent of pensionable wages. Since a maximum limit is prescribed, as authorized by *Article 19, paragraph 3*, of the Convention, both for the basic pay used to calculate invalidity and survivors' pensions (60 per cent of the national minimum wage, according to section 5 of the Act) and for the pensionable wages (section 58 of Legislative Decree No. 13214 of 1975, as amended), the Committee trusts that the Government will not fail to provide any statistics requested in the report form under *Article 19* of the Convention (sections I and IV), in particular as regards the wages of male workers (chosen according to *Article 19, paragraph 6* or *7*) and the benefits paid to a standard beneficiary whose previous earnings, or whose breadwinner's earnings, were equivalent to the wages of a skilled male worker.

The Committee has also noted that, according to information supplied by the Government in its report on Convention No. 128, family allowances are not paid during employment or during the period of the contingency. The Government therefore does not need to provide the information requested in the report form.

Article 21. In reply to the Committee's comments, the Government indicates that the invalidity and survivors' benefits are not periodically reviewed. The Committee feels bound to recall the importance which it attaches to *Article 21* of the Convention, according to which the rates of cash benefits currently payable must be reviewed following substantial changes in the general level of earnings where these result from substantial changes in the cost of living. The Committee hopes that the Government will re-examine the question, and indicate in its next report the measures taken or envisaged to ensure the full implementation of this provision of the Convention, as regards both pensions paid under the old and the new system. In this regard, the Committee recalls that sections 2, 4 and 320 of the Regulations provide for a procedure for adjusting existing or future pensions in the light of the devaluation of the national currency in relation to the United States dollar. The Government is also asked to provide any statistical information requested in the report form under this Article of the Convention, point B, and to supply a copy of the scale of annual increases, as established by the executive authority, for existing or future pensions under the old system, in accordance with section 57 of Act No. 1732, as amended by Act No. 2197 of 9 May 2001.

Article 22. The Committee notes that, according to section 51 of the Regulations implementing the 1996 Pensions Act, the member must, in the case of a work accident, notify his employer either directly or through a third party and fill out an accident report form. This must be signed by the member or his representative and by the employer. It must then be sent to the AFP within ten days of the accident, and it would appear from section 51(3) of the Regulations that the invalidity and survivors' pension payable in cases of work injury is refused if the AFP does not receive the form within the prescribed period. If the failure to present the form is due to the employer, the member or his representative can inform the Superintendence of Pensions within ten days of the accident, and this will result in benefits being paid. The Committee recalls that, according to *Article 22, paragraph 1(f)*, payment of a benefit may be suspended if the person concerned fails to comply with rules prescribed for verifying the occurrence or continuance of the contingency. At the same time, the Committee considers that those rules should not be such as to make it difficult or impossible to recognize an entitlement to benefits. In this regard, the time limit of ten days under section 51 for notification of an accident appears to be very short, especially if the accident is a serious one or leads to the death of the worker. The Committee therefore hopes that the Government will re-examine the situation and indicate the measures taken or envisaged to ensure that failure to observe the period of ten days established by section 51 of the Regulations does not entail loss of entitlement to invalidity benefits, particularly in cases where the worker is unable to deal with the notification himself. The Committee also considers that where notification is not made because of the employer, the latter should be liable to sanctions and the worker's pension entitlements should not be affected. In addition, the Committee requests the Government to indicate whether use is made of the other provisions of *Article 22, paragraph 1*. If that is the case, the Government is asked to indicate the applicable legislation.

Article 24, paragraph 1. The Committee has taken note of the Government's statement to the effect that the protected persons do not participate in the management of the new system. Given that according to *Article 24, paragraph 1*, of the Convention, persons protected *shall* participate in the management of the scheme, the Committee trusts that the Government will wish to re-examine the question and indicate in its next report the measures taken or envisaged to give effect to this fundamental provision of the Convention.

Article 24, paragraph 2, and Article 25. The Committee has taken note of the information communicated by the Government referring in particular to the Superintendence of Pensions and the General Directorate of Pensions, which administers the old distribution-based pensions system. The Committee hopes that the Government's next report will contain detailed information on the measures taken in this regard by these institutions, and also asks the Government to indicate whether the actuarial studies and calculations required concerning the financial balance of the new pensions system are carried out regularly, and to communicate the result of those studies and calculations.

Article 26, paragraph 2. The Committee requests the Government to supply with its next report statistics on the frequency and severity of industrial accidents in accordance with this provision of the Convention.

* * *

In addition, the Committee would like detailed information from the Government on the application in practice of sections 58, 81, 315 and 317 of the Regulations implementing the Pensions Act (No. 1732 of 1996), indicating in particular whether and how invalidity and survivors' benefits payable in cases of occupational injury under the old distribution-based pensions system continue to be paid in full. The Committee trusts that the Government will take all the necessary measures to review these pensions in a manner that reflects changes in the cost of living and the general level of earnings, in accordance with *Article 21* of the Convention.

Convention No. 128: Invalidity, Old-Age and Survivors' Benefits, 1967
(ratification: 1977)

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

In its previous comments, the Committee examined the provisions of Act No. 1732 of 29 November 1996 and its implementing regulations (Supreme Decree No. 24469 of 1997) (hereinafter "the Regulations"). This legislation establishes a system based on individual funding through the insured person's accumulated capital managed by private bodies (*Administradoras de Pensiones – AFP*), which replaces the former system of pensions based on a pay-as-you-go system and administered by a public body, the Bolivian Social Security Institute. The Committee also noted the observations made by the Bolivian Central of Workers (COB). In view of the fundamental changes introduced by the new system (*Seguro Social Obligatorio de Largo Plazo*), and in the absence of a report from the Government, the Committee had urged the Government to provide a detailed report permitting it to determine whether the new pensions system continued to give effect to the Convention.

In its report, the Government provides certain information on the contents of the new system for the management of pension funds and states that it has recently started to manage funds but has not yet granted benefits. It adds that the statistics contained in its report on the level of benefits relate to those paid by the former pensions system. The Committee notes this statement. However, it recalls that the new pensions system entered into force on 1 May 1997 and that it should normally have begun providing benefits in view of the qualifying periods established by Act No. 1732 of 1996 and its Regulations. Indeed, under this legislation, the persons covered by the legislation, or the breadwinner for dependants of the first rank, are entitled to invalidity and survivors' benefit in the event of the contingency where they have, firstly, made 16 monthly contributions to the new pension system or the former pay-as-you-go system and, secondly, paid at least 18 monthly contributions over the past 36 months for common risks coverage (see sections 8, 9, 14 and 15 of the Act and section 2 of the Regulations). Special provisions also exist for persons who do not fulfil the above contribution requirement.

With regard more particularly to old-age benefit, the Committee also notes, from the information provided by the Government, that employees applying for benefits after 31 December 2001 are covered by the new pensions system. The Committee recalls that the Government ratified the Convention in 1977 and that as a consequence it is bound to give effect to its provisions in respect of all persons within its scope, irrespective of the nature of the various systems by which they may be covered during their occupational career. It therefore hopes that the next report will contain detailed information on the implementation in practice of the new pensions system and its relationship with the former system, and particularly on the following points.

1. *Scope.* In reply to the Committee's comments concerning the scope of the new pensions system, the Government indicates that the relevant statistics are not yet available. In this respect, the Committee however notes that the Internet site of the Superintendence of Pensions, Shares and Insurance (SPVA) provides certain statistics relating to the number of persons registered with the new pensions system. The Committee therefore hopes that the Government's next report will not fail to include all the statistical information requested by the report form under *Articles 9, 16 and 22 of the Convention*. In so far as the Government availed itself at the time of the ratification of the Convention of the temporary derogations set out in *paragraph 2 of Articles 9, 16 and 22 of the Convention*, the Government may wish to refer to questions 3D or E in the report form under these provisions of the Convention, which relate to the number of employees protected and not the number of beneficiaries of a pension.

2. *Level of benefits.* (a) *Invalidity and survivors' benefits (Articles 10 and 23 in relation to Article 26 of the Convention).* In its report, the Government indicates that, to calculate the amount of the benefit, the national legislation does not take into account the requirements of *Articles 26 or 27 of the Convention*. In this respect, the Committee recalls that while States remain free to adopt their own rules and methods of calculation to determine the amount of benefits, this amount must however be determined in such a manner that it is at least equal to the amount prescribed by *Articles 26, 27 or 28 of the Convention*, in conjunction with the Schedule appended to Part V (Standards to be complied with by periodical payments). The methods of calculation envisaged by these provisions and the parameters that they use are established solely to permit comparison between national situations and the requirements of the Convention. In view of the fact that, in accordance with sections 8 and 9 of Act No. 1732 and section 41(c) of the Regulations, invalidity and survivors' benefits are calculated in relation to the basic wage of the insured person, *Article 26* is applicable to assess whether the level of invalidity and survivors' benefit prescribed by the Convention has been attained. In view of the fact that, as authorized by *paragraph 3 of Article 26*, a ceiling has been set for the basic wage used for the calculation of the above benefits (60 times the national minimum wage in force in accordance with section 5 of the Act), the Committee trusts that the Government will not fail to provide all the statistical information requested in the report form under *Article 26 of the Convention (Titles I, II and IV)*, and particularly the wage of a skilled manual male employee (selected according to *paragraph 4 or 5 of Article 26*) and the amount of the benefit provided to a standard beneficiary whose previous wages, or those of the family breadwinner, were equal to the wage of the skilled manual male employee.

Furthermore, the Committee notes, from the information provided by the Government, that family allowances were paid neither during employment nor during the contingency. The Government has not therefore to provide the information requested in this respect by the report form.

(b) *Old-age benefit (Article 17 in relation to Articles 26 or 27 of the Convention).* (i) The Committee recalls that, in accordance with section 7 of Act No. 1732 of 1996 on pensions, the amount of the old-age pension depends on the capital accumulated in the worker's individual account. In addition, pursuant to section 17 of the Act and sections 18 and 19 of the Regulations, the pension may take two different forms according to the type of contract selected. Where the insured person chooses a life annuity contract, the amount of the pension will be determined and will correspond to at least 70 per cent of the minimum wage in force; where the insured person chooses a variable monthly annuity contract, the amount of the *first* pension

payment will also correspond to at least 70 per cent of the minimum wage in force; subsequently, the amount of the pension will vary as a function of the mortality of the group of pensioners who have selected this pension system, as well as the return on the variable monthly annuity account. In order to be able to ascertain whether the amount of the old-age pension paid by virtue of the new Act on pensions attains at least to the minimum prescribed by the Convention (45 per cent of the reference wage when the insured person has completed 30 years of contribution or employment), the Committee would be grateful if the Government would provide all the statistical information requested in the report form under *Article 26* of the Convention, Titles I and III, for each of the types of pension selected. In view of the fact that the new pensions scheme has not yet reached maturity, the Government may perhaps wish to take into consideration the rights acquired or in the course of acquisition under the former system.

(ii) In so far as a minimum old-age pension equal to 70 per cent of the minimum wage is guaranteed for all pensioners aged 65 years, irrespective of the type of pension selected, the Government may also wish to refer to *Article 27* of the Convention and to provide the information requested in the report form under Titles I and III. Please also confirm that insured persons, who select a variable monthly annuity contract at the age of 65 years, benefit from a pension that is at least equal to 70 per cent of the minimum wage in force throughout the duration of its provision, and not only for the *first* pension payment.

3. *Reduced old-age benefits (Article 18 in relation to Article 19 of the Convention)*. In reply to the Committee's previous comments, the Government provides certain information on the possibility for persons covered by the former system to receive their benefits before the statutory pensionable age in return for a lower level of benefit. The Committee recalls in this respect that its comments concerned the new pensions system. Indeed, pursuant to section 13 of the Regulations, where the old-age pension resulting from the accumulated capital is lower than 70 per cent of the minimum wage in force, the insured person may withdraw from the account, from the age of 65 onwards, monthly amounts equivalent to 70 per cent of the said minimum wage until the capital accumulated in the account is exhausted. The Committee recalls that, in accordance with *Article 18, paragraph 2(a)*, of the Convention, a reduced old-age benefit must be secured at least to a person protected who has completed, prior to the contingency, a qualifying period of 15 years of contribution or employment and that this reduced benefit must be granted throughout the contingency, in accordance with *Article 19* of the Convention. The Committee therefore hopes that the Government will be able to indicate in its next report the measures which have been taken or are envisaged to ensure that effect is given to the Convention on this point in relation to the persons covered by the new pensions system introduced by Act No. 1732 of 1996.

4. *Duration of benefits (Articles 12, 19 and 25)*. The Committee notes the information provided by the Government in reply to its previous comments. It requests the Government to confirm that the old-age, invalidity and survivors' benefits paid under the new pension system are granted throughout the contingency, even where the capital accumulated in the worker's individual account is exhausted. It also refers to point 3(b)(ii) above with regard to variable monthly annuity contracts.

5. *Age of eligibility for an old-age pension (Article 15)*. In its report, the Government states that no draft amendments to the new Act on pensions are planned with regard to the age of eligibility for a pension, which is set at 65 years. The Committee notes this information. It recalls that under the previous legislation the pensionable age was fixed at 50 years for women and 55 years for men. It requests the Government to indicate, with the support of statistics, the demographic, economic and social criteria justifying the determination of the age of eligibility to a pension at 65 years since, in view of the observations made previously by the Bolivian Central of Workers (COB), the average life expectancy is well below this age (61.86 years for men and 67.1 for women according to the *World Factbook 2002*; moreover, according to the same source, persons aged 65 years and over only represent 4.5 per cent of the population).

Furthermore, the Committee once again draws the Government's attention to the fact that, in accordance with *Article 15, paragraph 3*, of the Convention, the age for entitlement to a pension shall be less than 65 years in respect of persons who have been engaged in occupations that are deemed to be arduous or unhealthy. It trusts that the Government will be able to indicate in its next report the measures which have been taken or are envisaged to give full effect to this provision of the Convention.

6. *Revision of benefits (Article 29)*. In reply to the Committee's comments, the Government states that the only procedure for adjustment to which recourse is made consists of the adjustment of the national minimum wage and that the latter does not take into account the devaluation of the national currency in relation to the United States dollar, but is based on the price indices of a household basket, which are much lower. It adds that pensions have not been increased taking into account these parameters. The Committee is bound to recall that, in accordance with *Article 29* of the Convention, the rates of invalidity, old-age and survivors' pensions shall be reviewed periodically following substantial changes in the general level of earnings or substantial changes in the cost of living. The Committee hopes that the Government will be able to re-examine the matter and that it will indicate in its next report the measures taken to give full effect to this provision of the Convention with regard to the pensions paid under both the former system and the new system. In this respect, it recalls that sections 2, 4 and 320 of the Regulations provide for a procedure for the adjustment of current pensions and pensions in the course of acquisition based on the devaluation of the national currency in relation to the United States dollar. Please also provide all the statistical data requested by the report form under this Article of the Convention with regard to current pensions. Please also provide copies of the scale determined with a view to the annual increase in the periodical payments acquired or in the course of acquisition under the former pensions system, as determined by the executive authority in accordance with section 57 of Act No. 1732, as amended by Act No. 2197 of 9 May 2001.

7. *Maintenance of rights in course of acquisition (Article 30)*. In reply to the Committee's comments concerning the maintenance of rights in course of acquisition of persons insured under the former pay-as-you-go system, the Government provides the following information. All insured persons who apply for their entitlement up to 31 December 2001 and fulfil the age conditions and the qualifying period set out in the former legislation can claim the benefits envisaged by the former pensions system. Under section 27 of the Benefit Manual, insured persons who have reached the age of 55 years for men and 50 years for women, and who have paid fewer than 180 but more than 24 monthly contributions, are also entitled to such benefits as a lump-sum payment (*pago global*), although six of the contributions must have been paid during the 12 months prior to attaining the age of eligibility for the pension. Furthermore, under section 1 of administrative resolution No. 012/97, insured persons who have not attained the age of eligibility for the pension set out by the former legislation, but who have paid at least 180 monthly contributions, can receive the benefits envisaged by the former system with a reduction of 8 per cent in their periodical payments for each missing year, provided that they have reached the age of 50 for men and 45 for women.

The Government also refers to section 322 of the Regulations, under which persons who have not been able to take their retirement under the pay-as-you-go pensions system and who had paid at least 60 monthly contributions before 1 May 1997 are entitled to compensation for their contributions in the form of an annuity paid by an AFP. Insured persons who had paid fewer

than 60 contributions as of 1 May 1997 are entitled to a lump-sum payment provided to them directly by the General Directorate of Pensions.

The Committee notes this information. It recalls that the persons covered by the Convention must receive benefits in accordance with its provisions, irrespective of the fact that they may have been covered during their occupational careers by various pensions schemes, and irrespective of the concepts and principles upon which the latter are based. It therefore hopes that the Government will be able to re-examine the matter and indicate the measures, which have been taken or are envisaged, to ensure that better effect is given to the provisions respecting the maintenance of rights in course of acquisition, particularly with regard to the considerable number of persons who, according to the information provided by the Government, have not accepted the actuarial reduction of 8 per cent in their periodical payments. Noting that this matter is currently the subject of negotiation, the Committee requests the Government to provide detailed information on the measures, which have been adopted or are envisaged in this respect.

The Committee also requests the Government to indicate whether the various compensation measures for the contributions paid take into account not only the contributions paid by insured persons, but also those paid by employers and by the State.

Furthermore, the Committee recalls that, in accordance with the information provided by the Government, section 27 of the Benefit Manual provides for a lump-sum payment (*pago global*) for persons insured under the former pensions system who have attained the age of eligibility for a pension and who have paid fewer than 180 contributions but more than 24. However, it notes that section 322(a) of the Regulations provides for *monthly* compensation for contributions in the case of insured persons who have paid at least 60 contributions under the former system. It would be grateful if the Government would provide detailed information on the application in practice of section 27 of the Manual with regard to insured persons who have paid at least 60 contributions.

The Committee would, in addition, be grateful if the Government would provide copies of administrative resolutions Nos. 012/1997 and 001/1998, and of the Benefit Manual referred to by the Government in its report.

8. *General responsibility for the provision of benefits and the proper administration of the system (Article 35)*. The Government indicates that it takes responsibility for the provision of benefits through the Pensions Superintendence and the General Directorate of Pensions, which administers the old distribution-based pensions system. The Committee hopes that the Government's next report will contain detailed information on the measures taken in this respect by the above institutions. It also requests the Government to indicate whether the necessary actuarial studies and calculations concerning the financial equilibrium of the new pensions system are made periodically and to provide the results of these studies and calculations.

9. *Participation in the administration of schemes (Article 36)*. The Committee notes the Government's statement that the persons responsible for the management of the new pensions system do not accept interference by the persons protected. In view of the fact that *Article 36* of the Convention provides that representatives of the persons protected shall participate in the management of the schemes, the Committee trusts that the Government will re-examine the matter and that it will indicate in its next report the measures which have been taken or are envisaged to give effect to this essential provision of the Convention.

* * *

The Committee would be grateful if the Government would provide copies of the various types of contracts concluded between insured persons and the AFPs or insurance companies, whether they are life annuity contracts or variable monthly annuity contracts. Please also indicate the manner in which the mortality tables of the groups of pensioners who have selected variable monthly annuity contracts are established, with an indication of whether the rates differ for men and women.

The Committee also requests the Government to indicate whether the Manual providing for standards of evaluation and qualification of the degree of invalidity mentioned in section 24 of the Regulations has been adopted and, if so, to provide a copy of it.

Finally, the Committee hopes that the Government will indicate, for each of the contingencies contemplated in the Convention, the number, nature and amount of the pensions granted under the new system of administration of pension funds.

Convention No. 130: Medical Care and Sickness Benefits, 1969 (*ratification: 1977*)

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

In reply to the comments that the Committee has been making for a number of years, the Government cites section 10 of the new Act on Pensions No. 1732 of 1996, covering benefits for invalidity as a result of occupational accidents, stating that all provisions contrary to this Act have been repealed. The Committee draws the Government's attention to the fact that benefits for employment injury and occupational diseases are considered under the Employment Injury Benefits Convention, 1964 (No. 121), and that the matters raised by the Committee in connection with Convention No. 130 relate solely to medical treatment and medical benefits of ordinary origin. In this regard, the Committee requests the Government to confirm that the legal provisions applicable to these branches of social security to which it referred in its previous reports (Legislative Decree No. 10173 of 1972, No. 13214 of 1975 and No. 14643 of 1977) are still in force. In addition, it trusts once again that the Government's next report will contain detailed information on the following matters raised in the Committee's previous comments.

1. *Part II (Medical care), Article 16, paragraph 1, of the Convention*. The Committee once again requests the Government to adopt the necessary measures to ensure that medical care is provided throughout the contingency, in accordance with this provision of the Convention.

Article 16, paragraph 3. The Committee recalls that, under section 23 of Legislative Decree No. 13214 of 1975, in the event of sickness certified by the responsible physician before the insured person is given sick leave, entitlement to the corresponding medical care for this sickness shall not be interrupted and may continue up to the legal limit of 26 weeks, or less if the medical treatment is terminated. The Committee trusts that the Government will indicate in its next report the measures that have been adopted to extend, in the case of beneficiaries who lose their status as insured persons, the duration of medical care for prescribed diseases recognized as entailing prolonged care, as required by this provision of the Convention.

2. *Part III (Sickness benefit), Article 21, in conjunction with Article 22*. The Committee once again draws the Government's attention to the fact that, in accordance with *Articles 21 to 23*, the rate of the sickness benefit shall be such as to

attain a minimum level (60 per cent) for a standard beneficiary (a man with a wife and two children). *Articles 22 to 24* offer the Government various formulae that can be adapted to national practice for the determination of this minimum level. The formula envisaged in *Article 22* is intended to take into account systems of protection which, as is the case of the Bolivian social security system, provide benefits calculated on the basis of the beneficiary's former earnings. The Committee recalls in this respect that, in view of the fact that Legislative Decree No. 13214 of 1975, and section 81 of the Social Security Code, as amended, envisage a maximum amount for the rate of benefit and for the earnings taken into account for its calculation, the percentage of 60 per cent provided for in the Convention must be calculated with reference to a standard beneficiary whose earnings are equal to the wage of a skilled manual male employee (*Article 22, paragraph 3*). The information requested under the terms of *Article 22* of the Convention and, in particular, relating to the wage of a skilled manual male employee, is merely intended to permit comparison of the rate of benefit paid under the national legislation with the minimum rate established by the Convention. In these conditions, the Committee once again hopes that the Government will be able to take the necessary measures to provide the information required in the report form adopted by the Governing Body on Convention No. 130, and particularly the information on the wage of a skilled manual male employee, determined in accordance with *paragraph 6 or 7 of Article 22*, the amount of the sickness benefit paid to such a skilled worker, and the maximum level of wages subject to contributions.

3. *Article 26, paragraph 1*. The Government states in its report that sickness insurance benefit is provided for 52 weeks and, for chronic illnesses, this period may be extended by the Ministry of Health. With regard to cash benefit, the subsidy for temporary incapacity is provided for 52 weeks at a rate that is equivalent to 75 per cent of the wage that is subject to contributions. The Committee once again emphasizes that section 30 of Legislative Decree No. 13214, of 1975, establishes that the common sickness subsidy commences from the fourth day of incapacity, with a maximum duration of 26 weeks, which can be extended for another 26 weeks if by doing so it is possible to avoid the status of invalidity. The Committee recalls that this requirement is not authorized by *Article 26* of the Convention, which provides that sickness benefit shall be granted throughout the contingency, provided that the grant of benefit may be limited to not less than 52 weeks in each case of incapacity. In these conditions, the Committee once again reminds the Government of the need to harmonize the provisions of the legislation that is in force with those of the Convention.

4. In previous comments, the Committee had referred to the possibility of having recourse to the technical assistance of the Office to resolve difficulties arising out of the application of the Convention. In addition, the Government had referred to a structural reform of social security in Bolivia. As so many years have passed since these matters were first raised concerning the application of the Convention, the Committee trusts that the Government will provide a detailed report in which it will take fully into account the matters that have been raised in order to give full effect to the Convention and that it will not hesitate to have recourse to the technical assistance that can be provided by the Office to assist its efforts to apply the Convention.

Brazil

Convention No. 118: Equality of Treatment (Social Security), 1962 (ratification: 1969)

The Committee notes the information and legislation supplied by the Government in its report for the period ending June 2001, which contained a reply to its previous observation concerning *Article 5 of the Convention*.

For many years the Committee has been pointing out the need to incorporate into the Brazilian legislation a provision guaranteeing the payment of long-term benefits abroad. It recalls that section 203 of the Regulations on social security benefits, approved by Decree No. 2172 of 1997, subjects the payment of benefits abroad to the existence of bilateral agreement with the country of residence of the beneficiary concerned or, in the absence of such an agreement, to the adoption of instructions by the Ministry of Insurance and Social Assistance (MPAS). The Committee regrets to note that the Government's report does not contain any indication that the Brazilian social security benefits are being actually transferred abroad either in pursuance of any existing bilateral agreements or any instructions issued by the MPAS.

In its previous observation, the Committee identified a number of areas in which progress was essential to ensure that the payment of benefits was made directly to the beneficiaries residing abroad, and not through their substitutes residing in Brazil whose power of proxy is renewed every six months, as is the case now under section 109 of Act No. 8213 of 24 July 1991. In reply, the Government states that the system of direct payment of benefits to beneficiaries residing abroad, which is in the process of being established, is going to be adopted only for countries with which there are bilateral social security agreements. Provisions on direct payment to beneficiaries resident in the contracting State will be included in new international social security agreements signed by Brazil. As indicated in the report, Brazil has at present such agreements with Argentina, Cape Verde, Chile, Greece, Italy, Luxembourg, Portugal, Spain and Uruguay, and negotiations are continuing, not without progress, with Austria, Canada, Guatemala and the United States.

The Committee notes this information. It notes in particular a significant change in the Government's policy concerning the transfer of social security benefits abroad. In its previous report for 1998-1999, the Government indicated that the MPAS, the financial services of the National Social Insurance Institute and the Bank of Brazil, were negotiating the modification of the current contract between the social insurance system and the bank so that benefits due to beneficiaries residing abroad, whether or not they are provided under the terms of international agreements, can be paid directly to them as from 1999. Furthermore, in 1999, the MPAS required the National Social Security Institute, which is the liaison body for international agreements, and DATAPREV, the enterprise entrusted with processing the statistical data concerning social insurance, to compile reliable statistics on the level of benefits paid to beneficiaries resident abroad, whether or not an agreement had been signed with their country of residence. As the present report makes no reference to these undertakings, which were intended to cover also beneficiaries residing in countries with which Brazil had no bilateral agreements, the Committee is bound to stress once again that by accepting the obligations of the Convention for the branches covered by *Article 5*, the Government has undertaken to guarantee the payment of respective

benefits both to Brazilian nationals and to the nationals of any other state which has accepted the obligations of the Convention for the same branch, as well as to refugees and stateless persons, in case of their residence abroad, *even in the absence of bilateral social security agreements with the country of nationality or the country of residence of the beneficiary concerned* and irrespective of whether or not the new country of residence of the beneficiary is a party to the Convention. The Committee therefore hopes that, while further developing its network of bilateral agreements, Brazil will not fail to take *unilateral measures*, for example by issuing the ministerial instructions envisaged by section 203 of Decree No. 2172 of 5 March 1997, to guarantee in law and in practice the provision of benefits abroad, whatever be the place of residence of the beneficiary concerned. The Committee would also ask the Government to proceed with the compilation of reliable statistics on the number of beneficiaries resident abroad by their nationality, type of benefit paid and country of residence, and to supply these to the ILO as soon as they are available.

Colombia

Convention No. 24: Sickness Insurance (Industry), 1927 (ratification: 1933)

The Committee notes that the Colombian Association of Civil Pilots (ACDAC) has made observations on the application of the Convention and invites the Government to reply to them in its next report.

The Committee wishes to point out that this comment only covers the observations made by the above workers' organization under article 23 of the Constitution and reminds the Government that it is asked to reply in its next report to the comments made in 2002 on the application of the Convention in general.

[The Government is asked to reply in detail to these comments in 2004.]

Convention No. 25: Sickness Insurance (Agriculture), 1927 (ratification: 1933)

The Government is asked to refer to the comments made under Convention No. 24.

[The Government is asked to reply in detail to the present comments in 2004.]

Costa Rica

Convention No. 102: Social Security (Minimum Standards), 1952 (ratification: 1972)

I. The Committee notes the Government's observations of 22 April 2002 in response to a letter of the Rerum Novarum Confederation of Workers raising a number of points concerning the application of the Convention.

Rerum Novarum asserts that the Government of Costa Rica has failed to comply with *Article 29 of the Convention* by ignoring decision No. 6842-90 of 1999 in which the Constitutional Court ruled that "the Convention applies to persons having contributed for 20 years to the scheme to which they belong". The Rerum Novarum further asserts that the failure to apply that decision means that workers have to complain to the competent courts, where procedure is so slow that entitlement to retirement pension is inoperative.

In reply, the Government endorses what the Social Security Fund of Costa Rica (CCSS) said in a report of 10 January 2002, namely that Rerum Novarum's complaint "lacks any basis in law and rests on a misconstruction of *Article 29* of the Convention and a misappreciation of the Constitutional Court's decisions". According to that report, no provision of the Convention establishes that 20 years of contributions to a scheme gives entitlement to old-age pension if other requirements set by the applicable rules, such as minimum age, are not fulfilled.

The Committee notes the Government's reply to the comments by Rerum Novarum. It points out in this connection that under *Article 26, paragraphs 1 and 2*, of the Convention, a minimum age may be prescribed for entitlement to old-age benefit, but may not be more than 65 years.

In a letter of 24 June 2003, referring to article 19, paragraph 8, of the ILO Constitution, Rerum Novarum asked whether "a literal interpretation of a Convention should take precedence over a decision granting rights which are more favourable to the beneficiaries of a pension scheme". The Committee recalls in this connection that article 19, paragraph 8, of the ILO Constitution provides that: "In no case shall the adoption of any Convention or Recommendation by the Conference, or the ratification of any Convention by any Member, be deemed to affect any law, award, custom or agreement which ensures more favourable conditions to the workers concerned than those provided for in the Convention or Recommendation."

In the Committee's view, however, decision No. 6842-90 of 1999, to which Rerum Novarum refers, has no bearing on the application of the Convention since it refers to provisions (*Article 27, paragraph (c), and Article 29, paragraph (a)*) that apply to universal, non-contributory schemes and are therefore irrelevant to schemes financed by contributions, as is the case in Costa Rica.

II. The Committee notes the information supplied by the Government in its last report.

1. In its previous comments the Committee pointed out that the Regulation of 29 June 1995 on invalidity, old-age and survivors' insurance did not appear to provide, in accordance with *Part V, Article 29, paragraph 2(a)*, of the

Convention, for payment of a reduced old-age benefit to a person protected who has completed the qualifying period of 15 years of contributions. In its report the Government merely states that in its ruling on the application of the Convention the Constitutional Court, whose decisions are binding and apply *erga omnes*, took the period of contribution as a basis and applied, pursuant to Administrative Directive No. 001-2000, a period of 20 years for eligibility. The Committee takes note of this information. It points out to the Government that the purpose of *Article 29, paragraph 2(b)*, of the Convention is to ensure that where payment of a benefit is conditional upon a minimum period of contribution or employment, as is the case in Costa Rica, persons protected who have completed in accordance with prescribed rules a qualifying period of 15 years of contribution or employment are entitled to a benefit which is reduced in relation to the pension calculated pursuant to *Article 29, paragraph 1*, of the Convention. The Committee requests the Government to indicate the measures it is planning to adopt in order to ensure, in accordance with *Article 29, paragraph 2(a)*, of the Convention, that a reduced old-age pension is paid to a person protected who has completed 15 years of contribution.

2. In its previous comments the Committee requested information on the impact of the Workers' Protection Act, adopted on 24 January 2000, on the application of the Convention. The Committee notes that little specific information is available because the Act was passed only recently. It notes, however, that regulations to implement the Act came into force on 24 April 2001. It also notes the information on the number of members of each of the pension funds. It asks the Government to continue to provide information on the operation of the pension funds, including statistics on commissions, profits and the number of members.

III. Further to its previous comments, the Committee notes that the Government's report contains no reply to most of the questions raised. It is therefore bound to raise these matters again:

1. With reference to its previous comments the Committee notes once again that the Government's report does not contain the information required by the report form under *Title VI, Article 65*, of the Convention. So that it can assess the real incidence of pension increases on changes in the general level of earnings or the cost of living index, the Committee again asks the Government to indicate whether the pensions have been revalued, and, if so, to provide information on the cost of living index, earnings and benefits in respect of a single period.

2. *Part VI (Employment injury and occupational illness benefit), Articles 34, 36 and 38 of the Convention (in conjunction with Article 69)*. In its previous comments the Committee requested the Government to take the necessary steps to amend sections 218, 228 to 232, and sections 237 to 239 and 243 of the Occupational Risks Act, No. 6727 of 1982, so as to bring all these provisions into line with the Convention with regard to: (a) the nature of medical care, which must correspond to the provisions of *Article 34* of the Convention and be provided free of charge throughout the contingency (i.e. until recovery or the stabilization of the person's invalidity); (b) the grant of cash benefits, also throughout the contingency, in the event of minor or partial permanent disability and in the event of death. In both cases these benefits are paid under the abovementioned provisions of Act No. 6727 for a period of five or ten years, depending on the circumstances, whereas the Convention stipulates that they must be provided to the disabled person for life and to dependents for as long as they fulfil the conditions prescribed under national laws.

The Government supplied in this connection a draft amendment to Title IV of Act No. 6727, published on Monday, 18 December 2000 in the *Diario Oficial La Gaceta* No. 242. The Committee notes with regret, however, that as regards to the abovementioned provisions of Act No. 6727 of 1982, the draft makes no amendment in respect of the matters to which the Committee has been drawing attention for several years. It therefore hopes that the Government will take the necessary steps in the near future to bring the legislation into line with *Articles 34, 36 and 38* of the Convention.

The Committee would also be grateful if the Government would supply detailed information on the questions raised in a direct request.

Djibouti

Convention No. 19: Equality of Treatment (Accident Compensation), 1925 (ratification: 1978)

The Committee notes with regret that for many years the Government has been referring in its reports to various draft legislative texts intended to bring the national laws and regulations into full conformity with the Convention. It notes that, since 1993, the Government has been indicating that a new draft Labour Code is being formulated and that it will be transmitted to the ILO as soon as it has been adopted. The Committee expresses the firm hope that the above draft legislative reform will provide the opportunity to take into account the comments that it has made on many occasions on the need to eliminate the residence condition so that, in accordance with *Article 1, paragraph 2, of the Convention*, nationals of any other Members that have ratified the Convention, and their dependants, benefit from equality of treatment with nationals of Djibouti in respect of employment injury benefit irrespective of their residence. It trusts that the Government will be able to provide information in its next report on the progress made in this matter.

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

France

French Polynesia

Convention No. 19: Equality of Treatment (Accident Compensation), 1925

Article 1, paragraph 2, of the Convention. For many years the Committee has been drawing the Government's attention to the need to amend section 29 of Decree No. 57-245 of 24 February 1957 on the compensation for industrial accidents and occupational diseases. According to this provision, foreign nationals who are victims of an industrial accident, and their dependants, who no longer reside in a country or territory dependent on the Republic of France or in Cameroon, receive as compensation only a lump sum equal to three times the amount of the annuity they have been granted, while nationals continue to receive their regular benefits. Furthermore, foreign dependants of foreign workers receive no compensation at all if, at the time of the accident, they were not resident in a country or territory dependent on the Republic of France.

In reply to these comments, the Government indicated in its last report that the responsibility for amending the law in this matter lies with the Territorial Assembly, at the request of the territorial government. Since 1999, the Government has been requested five times to amend the text, either by the state representative on the territory, or by the labour inspection service, with no result so far. The Government nevertheless indicates that the health and accident insurance service of the Social Insurance Fund of French Polynesia has not applied section 29 of the abovementioned Decree No. 57-245 of 24 February 1957. Furthermore, the Government had sent a copy of a letter from the Vice-President of the Government of French Polynesia informing the President of the Executive Council of the Social Insurance Fund that a draft amendment to Decree No. 57-245 had been included in the agenda of the permanent Committee of the Assembly of French Polynesia and would soon be adopted. According to this draft, the provisions of section 29 of Decree No. 57-245 "do not apply to nationals of States that have ratified the above Convention No. 19 of the International Labour Organization, who enjoy the same benefits as French insured nationals, without any condition as to residence".

The Committee notes this information. However, it notes with regret that, despite the assurances given by the Government for more than 15 years in this respect, section 29 of Decree No. 57-245 has still not been amended. The Committee trusts that the draft amendment of this Decree, mentioned by the Vice-President of the French Polynesian Government in his letter to the President of the governing council of the Social Insurance Fund, will be adopted as soon as possible and will ensure that the nationals of a member State that has ratified the Convention, and their dependants, are granted the same benefits as nationals, without any condition as to residence, in accordance with *Article 1, paragraph 2*, of the Convention. The Committee requests the Government to send a copy of any text adopted to this effect.

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

Guinea

Convention No. 118: Equality of Treatment (Social Security), 1962 (ratification: 1967)

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

With reference to its earlier comments, the Committee notes the information provided by the Government in its report and has examined Act L/94/006/CTRN of 14 February 1994 establishing the new Social Security Code.

Article 5 of the Convention. The Committee recalls that the Government, in its earlier reports, indicated that the new Social Security Code, when adopted, would give full effect to *Article 5* of the Convention under which the provision of old age benefits, survivors benefits and death grants, and employment injury pensions must be guaranteed in the case of residence abroad, irrespective of the country of residence and even in the absence of agreements with such country, both to nationals of Guinea and to nationals of any other State which has accepted the obligations of the Convention for the corresponding branch. However, in its last report, the Government indicates that the new Social Security Code does not entirely fulfil the requirements of the provisions of *Article 5* of the Convention, in that it does not provide for maintenance of payment of the various benefits in case of change of residence, and that this restriction is a constant feature of the legislation governing the field in the States in the subregion. However, the Government hopes that further negotiation of bilateral agreements with other States will make good this weakness in the Social Security Code.

In this connection, the Committee notes that under section 91, paragraphs 1 and 2, of the new Code, benefits are cancelled when the beneficiary definitively leaves the territory of the Republic of Guinea, or are suspended while she or he is not resident on national territory. It notes however that, under the last paragraph of that section, these provisions "are not applicable in the case of nationals of countries which have subscribed to the obligations of the international Conventions of the International Labour Office regarding social security ratified by the Republic of Guinea, or where there are reciprocal agreements or multilateral or bilateral social security agreements on the provision of benefits abroad". Since, by virtue of this exception, the nationals of any State which has accepted the obligations of Convention No. 118 for the corresponding branch, may in principle now claim benefits in case of residence abroad, the Committee requests the Government to indicate whether this is in fact the case and, if so, whether a procedure for the transfer of benefits abroad has been established by the national social security fund, to meet the possible demands for such foreign transfer. In addition, the Committee requests the Government to state whether the exception provided in the last paragraph of the abovementioned section 91 is also applicable to Guinean nationals in the event of

their transferring their residence abroad, in accordance with the principle of equal treatment established under *Article 5* of the Convention as regards the payment of benefits abroad.

Article 6. With reference to the comments it has been formulating for many years regarding the provision of family allowances in respect of children residing abroad, the Committee notes that, under section 94, paragraph 2, of the new Code, to obtain the right to family allowances, dependent children “must reside in the Republic of Guinea, subject to the special provisions of the international Conventions on social security of the International Labour Office, reciprocal agreements or bilateral or multilateral agreements”. With respect to reciprocal agreements or bilateral or multilateral agreements, the Committee recalls that to date, Guinea has concluded no agreement of this sort for the payment of family allowances in respect of children residing abroad. Regarding the special provisions of the ILO Conventions, it recalls that under *Article 6* of Convention No. 118 any State which has accepted the obligations of the Convention for *branch (i)* (family benefit) must guarantee payment of family allowances both to its own nationals and to the nationals of any other member which has accepted the obligations of this Convention for that branch, as well as for refugees and stateless persons, in respect of children who reside on the territory of any such State, under conditions and within limits to be agreed upon by the States concerned. In this connection, the Government states in its report that “the payment of family benefits is guaranteed to families of whom the breadwinner has been regularly insured by the social security system, and is in order regarding the payment of his own contributions, and those of his successive employers”. The Committee therefore hopes that the Government will be able to confirm formally in its next report that the payment of family allowances will also be extended to cover insured persons up-to-date with their contributions, whether they are nationals, refugees, stateless persons or nationals of any other States which have accepted the obligations of the Convention for *branch (i)*, whose children reside on the territory of one of these States and not in Guinea. The Committee would also like to know in these cases how the condition of residence is dispensed with for the application of section 99, paragraph 2, of the new Code, which only recognizes as dependent those children “that live with the insured person”, and also for section 101, which makes payment of family allowances subject to an annual medical examination of the child, up to the age where she or he comes under the school medical service, and the regular medical care for beneficiaries of school age attending courses in educational or vocational training establishments.

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

Convention No. 121: Employment Injury Benefits, 1964 [Schedule I amended in 1980] (ratification: 1967)

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

1. *Article 8 of the Convention.* The Committee notes with interest the Government’s statement that in 1992 the National Social Security Fund together with the National Occupational Medicine Service revised the list of occupational diseases, increasing it from 13 to 29 items, thus aligning it with the list appended to Schedule 1 of the Convention, as amended in 1980. The Committee asks the Government to provide a copy of the list, indicating whether it is now in force.

2. *Article 15(1).* In answer to the Committee’s previous comments, the Government indicates that, in accordance with the provisions of section 111 of the Social Security Code, periodical payments for employment injury are converted into a lump sum when the permanent incapacity is at most equal to 10 per cent. The Committee recalls, however, that its comments concerned the possibility of converting the benefit granted in the event of employment injury in the circumstances provided for in sections 114 (conversion after expiry of a five-year period) and 115 of the Social Security Code (conversion into a lump sum of part of the periodical payment at the request of the person concerned). The Committee again expresses the hope that the necessary measures will be taken to ensure that in all these cases periodical payments may be converted into a lump sum only in exceptional cases and with the consent of the victim where the competent authority has reason to believe that the lump sum will be utilized in a manner which is particularly advantageous for the injured person.

3. *Articles 19 and 20.* The Committee notes the Government’s reply. It notes however that the Government’s report does not contain the statistical information requested which the Committee needs so that it can determine whether the amount of benefits paid in the event of temporary incapacity, permanent incapacity and death of the breadwinner, reaches the level prescribed by the Convention. In these circumstances the Committee once again asks the Government to indicate whether it avails itself of *Article 19* or of *Article 20* of the Convention in establishing that the percentages required by Schedule 2 of this instrument have been reached, and to provide the statistical information required by the report form adopted by the Governing Body under *Article 19* or *20*, depending on the Government’s choice.

4. *Article 21.* In answer to the Committee’s comments, the Government states that it has increased the benefits so as to ensure better coverage for victims of occupational accidents; furthermore, studies are under way with a view to a further increase in order to take fuller account of the economic context. The Committee notes this information. In view of the importance it attaches to this provision of the Convention which establishes that the rates of employment injury benefits must be reviewed to take account of trends in the cost of living and the general level of earnings, the Committee hopes that the Government’s next report will contain information on the amount of the increases already established and that it will not fail to provide all the statistics required by the report form under this Article of the Convention.

5. *Article 22(2).* The Committee once again expresses the hope that the Government will be able to take the necessary measures to ensure that, in all cases where employment injury benefits are suspended and particularly in the cases provided for in sections 121 and 129 of the Social Security Code, part of these benefits will be paid to the dependants of the person concerned in accordance with the provisions of this Article of the Convention.

6. The Committee notes the Government’s statement that the provisions of the Conditions of Service of the Public Service give public servants and their families full satisfaction as regards social coverage. It once again asks the Government to provide the text of the provisions of the above Conditions of Service dealing with compensation for employment injury with its next report.

7. Lastly, the Committee asks the Government in its future reports to provide information on any progress made in the revision of the Social Security Code, to which the Government referred previously.

Haiti

Convention No. 24: Sickness Insurance (Industry), 1927 (ratification: 1955)

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

The Committee notes the comments on the application of the Convention communicated by the Trade Union Federation of Haiti, which were forwarded to the Government in October 2002. These observations concern the operational difficulties of the Insurance Office for Occupational Injury, Sickness and Maternity (OFATMA). It hopes that a report will be provided for examination at its next session and that it will include information on the measures which have been taken or are envisaged with a view to the progressive establishment of a general sickness insurance system fulfilling the requirements of the Convention. In this respect, the Committee reminds the Government of the possibility of having recourse to the technical assistance of the International Labour Office.

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

[The Government is asked to report in detail in 2004.]

Convention No. 25: Sickness Insurance (Agriculture), 1927 (ratification: 1955)

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

The Committee notes the observations on the application of the Convention sent by the Trade Union Federation of Haiti alleging that agricultural workers have no medical coverage. These observations were sent to the Government in October 2002. It hopes that a report will be sent for examination at its next session and that it will contain information on the measures taken or envisaged gradually to establish a compulsory sickness insurance scheme for agricultural workers which will enable effect to be given to the Convention. It reminds the Government in this connection that it may seek technical assistance from the International Labour Office.

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

[The Government is asked to report in detail in 2004.]

Libyan Arab Jamahiriya

Convention No. 121: Employment Injury Benefits, 1964 [Schedule I amended in 1980] (ratification: 1975)

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

With reference to the comments that it has been making for several years on Conventions Nos. 102, 118, 121, 128 and 130, ratified by the Libyan Arab Jamahiriya, the Committee draws the Government's attention to Part I of its observation concerning Convention No. 102.

With regard to Convention No. 121, the Committee regrets to note once again that the information provided by the technical committee responsible for preparing the necessary responses to the comments of the Committee of Experts, in the same way as the information provided by the Government in 1992, only gives partial responses and does not contain the statistical data required by the report form adopted by the Governing Body. The Committee is therefore bound to raise these matters once again in a new direct request in the hope that the Government will not fail to provide the information requested for examination at its next session.

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

Convention No. 128: Invalidity, Old-Age and Survivors' Benefits, 1967 (ratification: 1975)

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

With reference to the comments it has been making for many years on Conventions Nos. 102, 118, 121 and 130, ratified by the Libyan Arab Jamahiriya, the Committee draws the Government's attention to Part I of its observation on Convention No. 102.

As regards Convention No. 128, the Committee notes with regret once again that the information supplied by the technical committee responsible for preparing the necessary replies to the observations of the Committee of Experts, like the information supplied in 1992, gives only partial responses and does not contain the statistical data called for in the report form adopted by the Governing Body. Consequently, the Committee is bound to revert to these matters in a new direct request in the hope that the Government will not fail to send the information requested for examination at its next session.

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

Convention No. 130: Medical Care and Sickness Benefits, 1969

(ratification: 1975)

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

Referring to the comments it has been making for many years on Conventions Nos. 102, 118, 121 and 130, the Committee draws the Government's attention to Part I of its observation on Convention No. 102.

Regarding Convention No. 130, the Committee notes with regret yet again that the information supplied by the technical committee in charge of preparing the necessary replies to the Committee of Experts' observations, like the information sent by the Government in 1992, replies only in part to the Committee's comments and does not contain the statistical information called for in the report form adopted by the Governing Body. The Committee is therefore bound to revert to these matters in a new direct request in the hope that the Government will not fail to provide the information requested for examination by the Committee at its next session.

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

Malaysia

Peninsular Malaysia

Convention No. 19: Equality of Treatment (Accident Compensation), 1925

(ratification: 1957)

In its previous comments, the Committee requested the Government to provide information on the measures taken to ensure that foreign workers (and their dependants) who are nationals of countries that have ratified the Convention receive the same compensation as that granted to national workers in the event of occupational accidents. The Government indicates in its report that studies reveal that the Workmen's Compensation Scheme has features that are superior and not available under the social security schemes. An example of such coverage is the provision for transport cost for injured workers to be sent back to their country of origin as well as transport costs for the body of a worker who dies. The lump sum paid to injured workers or to the dependants of workers who die is also significantly higher than the accumulated average pension paid under the social security schemes to the national workers. After comparing the two schemes, the Government has concluded that in general terms there is equity in the protection provided. Moreover, the Workmen's Compensation Scheme is more relevant to the requirements of foreign workers. The Committee pointed out in its previous observations that in some other respects the employees' social security scheme was superior to the Workmen's Compensation Scheme in the benefits granted. The Committee must consequently remind the Government that *Article 1, paragraphs 1 and 2, of the Convention* requires each Member which ratifies the Convention to grant, without any condition as to residence, to the nationals of any other Member which has ratified the Convention who have suffered employment injury on its territory, or their dependants, *the same treatment* as that granted to its own nationals in respect of workers' compensation. In these circumstances, the Committee considers that national laws which establish, in the event of employment injury, the principle of differing treatment between foreign workers – who receive a lump sum – and nationals – who receive a pension – are not consistent with this provision of the Convention. Under the Convention, States parties must undertake to establish the principle of equal treatment in respect of workmen's compensation between their own nationals and foreign workers, and must enable foreign workers or their dependants who have returned to their countries of origin to receive the payments abroad under special arrangements. The Committee accordingly hopes that the Government will be able to provide information in its next report on measures taken or envisaged to bring national laws and regulations into conformity with the Convention.

Sarawak

Convention No. 19: Equality of Treatment (Accident Compensation), 1925

(ratification: 1964)

In its previous comments, the Committee requested the Government to provide information on the measures taken to ensure that foreign workers (and their dependants) who are nationals of countries that have ratified the Convention receive the same compensation as that granted to national workers in the event of occupational accidents. The Government indicates in its report that studies reveal that the Workmen's Compensation Scheme has features that are superior and not available under the social security schemes. An example of such coverage is the provision for transport cost for injured workers to be sent back to their country of origin as well as transport costs for the body of a worker who dies. The lump sum paid to injured workers or to the dependants of workers who die is also significantly higher than the accumulated average pension paid under the social security schemes to the national workers. After comparing the two schemes, the Government has concluded that in general terms there is equity in the protection provided. Moreover, the Workmen's Compensation Scheme is more relevant to the requirements of foreign workers. The Committee pointed out in its previous observations that in some other respects the employees' social security scheme was superior to the

Workmen's Compensation Scheme in the benefits granted. The Committee must consequently remind the Government that *Article 1, paragraphs 1 and 2, of the Convention* requires each Member which ratifies the Convention to grant, without any condition as to residence, to the nationals of any other Member which has ratified the Convention who have suffered employment injury on its territory, or their dependants, *the same treatment* as that granted to its own nationals in respect of workers' compensation. In these circumstances, the Committee considers that national laws which establish, in the event of employment injury, the principle of differing treatment between foreign workers – who receive a lump sum – and nationals – who receive a pension – are not consistent with this provision of the Convention. Under the Convention, States parties must undertake to establish the principle of equal treatment in respect of workmen's compensation between their own nationals and foreign workers, and must enable foreign workers or their dependants who have returned to their countries of origin to receive the payments abroad under special arrangements. The Committee accordingly hopes that the Government will be able to provide information in its next report on measures taken or envisaged to bring national laws and regulations into conformity with the Convention.

Mauritania

Convention No. 102: Social Security (Minimum Standards), 1952 (ratification: 1968)

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

The Committee notes the Government's report of 2001, which contained partial replies to its previous comments. However, it notes that this report was not a detailed report on the Convention. The Committee therefore hopes that a detailed report will be provided for examination at its next session and that it will contain all the information required by the report form adopted by the Governing Body for the calculation of the level of benefits (under *Articles 44 and 65 or 66 of the Convention*), the review of long-term benefits (under Title VI of *Article 65*: fluctuations in the cost-of-living index, the index of earnings and the amount of benefit for the same period), and the scope of the various social security schemes (under Title I of *Article 76*: number of employees actually protected as a percentage of the total number of employees in the country). The Committee ventures to draw the Government's attention to the possibility of having recourse, particularly in the fields of social security and labour statistics, to the technical assistance of the International Labour Office.

Netherlands

Convention No. 118: Equality of Treatment (Social Security), 1962 (ratification: 1964)

In the Note Verbale, dated 22 May 2003, the Government of the Netherlands has communicated a statement made under *Article 2, paragraph 6, of the Convention*, in which it considers benefits provided under the Disablement Assistance Act for Handicapped Young Persons of 24 April 1997 and benefits provided under the Supplementary Benefits Act of 6 November 1986 to be with effect from 1 January 1998 and 1 January 2000, respectively, benefits of the type as referred to in *paragraph 6(a) of Article 2* of the Convention, because the grant of these benefits does not depend either on direct financial participation by the persons protected or their employer, or on a qualifying period of occupational activity. The above statement was registered by the Office on 23 May 2003, the date of receipt of the Note Verbale. It was notified to all Members of the Organization and communicated to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations.

The Committee notes this information. It recalls that, according to *paragraphs 6 and 7 of Article 2* of the Convention, the purpose of such a statement is to oblige a Member, which has accepted the obligations thereof, to provide information on the nature of its social security benefits, as well as to subject these benefits to the examination by the supervisory bodies for the purposes of the application of the Convention. To set in motion the supervisory mechanism as soon as possible, *paragraph 7 of Article 2* requires Members to make this statement at the time of ratification or, as regards any legislation adopted subsequently, within three months of the date of the adoption of such legislation. The Committee observes that the Government has not respected the time limit fixed by the Convention, since the legislation it refers to dates back to 1997 and 1986 respectively. It considers however that the failure to respect the time limit prescribed does not invalidate the information contained in the Government's statement. On the other hand, it has delayed proper supervision of the Convention by the Committee and the timely information to all the Members of the ILO and the Secretary-General of the United Nations in accordance with the established procedures, as well as to persons protected by the Convention. Taking into account that the notification procedure established in *paragraphs 6 and 7 of Article 2* does not envisage its retroactive application, the Committee points out that, for the purposes of the Convention, the statement made by the Netherlands takes effect as from the date of its registration by the Office, that is 23 May 2003.

The Committee also notes the explanation given by the Government concerning its statement, in which it refers to the Export Restrictions on Benefits Act of 27 May 1999, which has modified the Supplementary Benefits Act. As of 1 January 2000, a person who does not reside in the Netherlands is no longer entitled to a supplement under this Act. The Government states that, in its view, non-contributory benefits cannot be exported. This export restriction is based on the fact that (1) the supplement is income tested; (2) the amount of the supplement is related to the minimum guaranteed

income in the Netherlands; and (3) the supplement is financed from taxation. The Government further indicates that it “feels obliged to send this statement” in view of the decision of the Central Court of Appeal in Utrecht, in which the Court has ruled that supplements should be exported under *Article 5, paragraph 1*, of Convention No. 118. The Government adds that, to avoid the Central Court of Appeal in Utrecht giving a similar ruling as regards the export of benefits provided by the Disablement Assistance Act for Handicapped Young Persons, this Act is also included in the statement of the Netherlands Government made under Article 2(6) of the Convention.

The Committee wishes to point out that the question of whether the relevant provisions of the Convention pertaining to the benefits at issue, including their “exportability”, are applicable is an objective one. It does not depend upon any prior notification being sent by the Government to the ILO, nor is the mere fact of having made such notification sufficient in itself to ensure automatic applicability of the permissive provisions of the Convention to these benefits. What is essential in this respect is for a Member to have “in effective operation legislation covering its own nationals within its own territory” (*Article 2(1)* of the Convention), on the basis of which it has accepted the obligations of the Convention in respect of the corresponding branch of social security, including an obligation (with permitted exceptions) to “export” the benefits provided by this branch. As a reading of *paragraphs 6 and 7 of Article 2* shows, the requirement to notify the ILO concerns the type of benefits provided under the legislation and not the question of their “exportability” abroad. It is only after scrutinizing the legislation referred to by the Government that the Committee can come to a view as to the contributory or non-contributory nature of the benefits in question and the consequent applicability to them of the permissive provisions of the Convention.

As the legislation mentioned by the Government was not attached to its statement, the Office requested the Government to supply the English translation of these texts, which was received on 12 October 2003. The Committee notes however that this legislation further refers to numerous other social security laws, as well as to the Aliens Act 2000. In particular, the Supplementary Benefits Act refers to benefits provided under the Unemployment Insurance Act, the Sickness Benefit Act, the General Disablement Pensions Act, the Occupational Disability Insurance Act, the Occupational Disability Insurance for the Self-Employed Act, and the Military Personnel Invalidity Insurance Act. In addition to these legislative Acts, the Export Restrictions on Benefits Act concerns also the General Old-Age Pension Act, the General Child Benefit Act, and the General Surviving Dependents Act. The Committee recalls that, as defined in *Article 1(b)* of the Convention, the term “benefits” refers to all social security benefits, grants and pensions, including any supplements or increments, irrespective of their contributory or non-contributory nature, sources of financing or means testing. Consequently, the legislation on the supplementary benefits mentioned in the Government’s statement cannot be examined independently of the legislation on the basic benefits, which they supplement, and independently of the export restrictions applied to these benefits. In the absence of various elements of this legislation, particularly of the updated versions, as amended by the Export Restrictions on Benefits Act, the Committee is unable to conduct the necessary analysis as to the nature of the benefits in question. In order to be able to proceed with the examination of all the elements of the legislation, the Committee would like the Government to provide the consolidated texts of the abovementioned legislation together, if possible, with the English translation of the provisions in question. It would also like the Government to supply the text of any new decisions, which might have been taken by the courts in this regard, as well as the general statistics as to the number of persons, by nationality, affected by the Export Restrictions on Benefits Act, including in particular those who would have otherwise been entitled to disability benefit and its supplement.

* * *

Finally, the Committee notes that in a communication dated 18 June 2003, the Confederation of Turkish Trade Unions (TÜRK-İŞ) made a representation to the International Labour Office under article 24 of the Constitution of the International Labour Organization alleging that the Government of the Netherlands has not complied with the provisions of the Convention. It notes in this regard that at its 228th Session of November 2003, the Governing Body decided that the representation was receivable and proposed to establish the committee to examine it at the March 2004 session of the Governing Body.

[The Government is asked to report in detail in 2004.]

Sierra Leone

Convention No. 17: Workmen’s Compensation (Accidents), 1925 (ratification: 1961)

The Committee notes with regret that for the fifth consecutive year the Government’s report has not been received. It must therefore repeat its observation of 1995 which read as follows:

Article 5 of the Convention. For many years the Committee has been drawing the Government’s attention to the fact that sections 6, 7 and 8 of the Workmen’s Compensation Ordinance 1954, as amended in 1969, provide for periodic payments for injury benefit, which, although equivalent to the full amount of wages received prior to the accident, are paid only for a limited number of months, whereas under *Article 5* of the Convention, payment shall be made throughout the contingency.

The Government states in its report that the final draft of the New Labour Legislation, which will provide for periodic payment of benefit in cases of work injury throughout the period of disability, is expected to be completed shortly. The Committee notes this information. It hopes that the process of enactment will be completed soon, and that the Government will supply a copy of the legislation once it is enacted.

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

Syrian Arab Republic

Convention No. 19: Equality of Treatment (Accident Compensation), 1925 (ratification: 1960)

Article 1, paragraph 2, of the Convention. The Committee notes the adoption of Law No. 78 of 31 December 2001, which amends certain provisions of the Social Insurance Code (Law No. 92 of 1959), in particular section 94, which had been the subject of previous comments. The Committee also notes with satisfaction that, in its new version, section 94 ensures payment of employment accident benefits abroad to the nationals of any State which has ratified the Convention under the same conditions as to nationals of the Syrian Arab Republic.

Convention No. 118: Equality of Treatment (Social Security), 1962 (ratification: 1963)

Article 5 of the Convention. The Committee notes with satisfaction that, as a result of its long-standing comments on the need to resolve conflict between *Article 5 of the Convention* and section 94 of the Social Insurance Code (Act No. 92 of 1959), the latter has been amended by section XXIV of Act No. 78 published in the *Official Gazette* (Part I), Issue 3, of 16 October 2002, so as to enable the beneficiaries who leave the territory of the Syrian Arab Republic to request the transfer of the pensions due to them, to their country of residence, on condition of equal treatment. It further notes that for the application of this provision, the Minister of Social Affairs and Labour shall issue appropriate instructions and orders on the proposal of the Board of Directors of the General Authority for Social Security. The Committee trusts that the necessary instructions and orders will be adopted in the very near future so as to give effect to this provision in practice, and that the Government will not fail to supply the relevant texts as soon as they are adopted.

Article 10, paragraph 1. In reply to the Committee's previous comments on the need to explicitly include refugees and stateless persons within the field of application of the Social Insurance Code, the Government repeats that the Code implicitly covers these persons on the basis of the general rule of law that unrestricted provisions have general application so far as no exceptions are made. The Government states that as refugees and stateless persons are not expressly excluded from the scope of the Code, they remain beneficiaries of social security by virtue of this law. The Committee wishes to point out that, as far as the application of a provision of an international Convention in the national legislation is concerned, implicit application by reference to the general rule of law would not be sufficient to give effect to an explicit provision establishing a specific rule of law, such as that contained in *Article 10(1)* of the Convention. However, in the Syrian legal system, as explained by the Government in its report, a provision of a ratified Convention will not only have the force of national law, but will gain precedence over existing national law. Consequently, and taking into account the repeated statements of the Government that these persons are not excluded from the social security legislation, the Committee trusts that the Government would not have any difficulty in explicitly including refugees and stateless persons in the scope of the Social Insurance Code, in order to remove any ambiguity in the national law.

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

Uganda

Convention No. 17: Workmen's Compensation (Accidents), 1925 (ratification: 1963)

The Committee notes with regret that for the third consecutive year the Government's report has not been received. It must therefore repeat its observation of 1999, which read as follows:

Article 5 of the Convention. The Committee notes the information provided by the Government in its last report that the Bill to revise the legislation on workers' compensation has received its first reading in Parliament. It trusts that the Government will take all the necessary measures for the adoption of this Bill so as to give full effect to *Article 5* of the Convention, on which the Committee has been commenting since 1966. The Committee recalls that, under this provision of the Convention, the compensation payable in the event of accidents which result in permanent incapacity or death shall be paid in the form of periodical payments throughout the contingency, although these payments may be paid in the form of a lump sum if the competent authority is satisfied that it will be properly utilized. It requests the Government to provide a copy of the new Act as soon as it has been adopted.

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

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States with regard to: **Convention No. 12** (*United Republic of Tanzania*); **Convention No. 17** (*United Kingdom: St. Helena*); **Convention No. 18** (*Pakistan*); **Convention No. 19** (*Angola, Bulgaria, Cape Verde, Djibouti, Indonesia, Kenya, Sao Tome and*

Principe, Senegal); **Convention No. 24** (Algeria); **Convention No. 42** (Australia: Norfolk Island, Honduras); **Convention No. 102** (Barbados, Costa Rica, Democratic Republic of the Congo, Serbia and Montenegro, Slovakia); **Convention No. 118** (Cape Verde, Guinea); **Convention No. 121** (Bolivia, Libyan Arab Jamahiriya, Serbia and Montenegro); **Convention No. 128** (Barbados, Libyan Arab Jamahiriya); **Convention No. 130** (Costa Rica, Libyan Arab Jamahiriya).

The Committee noted information supplied by *Denmark* in an answer to a direct request with regard to **Convention No. 102**.

Maternity Protection

Austria

Convention No. 103: Maternity Protection (Revised), 1952 (ratification: 1969)

Article 6 of the Convention. The Committee notes the information provided by the Government. It notes that, despite certain guarantees offered by the case law in terms of the protection of pregnant women against dismissal, no amendments have been made to the national legislation and sections 10 and 12 of the Federal Maternity Protection Act and section 103 of the Federal Agricultural Labour Act still authorize, under certain circumstances, the dismissal of women who are pregnant and following confinement, subject to the consent of the judicial authorities. The Committee also notes the Government's indication that women who are dismissed during their maternity leave under the above provisions of the Maternity Protection Act and the Agricultural Labour Act may nevertheless benefit from the maternity benefits guaranteed by the Convention. The Committee must point out that *Article 6* of the Convention prohibits the employer from giving a woman notice of dismissal during her absence on maternity leave or at such time that the notice would expire during such absence. Further, it does not permit her to be dismissed or to be given notice of dismissal under any exceptional circumstances for a reason that the national legislation might consider to be legitimate. In this respect, with reference to its previous observation, the Committee recalls that the objective of this provision is to provide women with employment security and prevent any discriminatory dismissal. *Article 6* is intended to extend the statutory length of notice to a maximum by an additional period that is equivalent to the time necessary to complete the period of protection in respect of maternity leave. Consequently, while awaiting the adoption of measures to give fuller effect to *Article 6* of the Convention, the Committee would be grateful if the Government would continue to provide information in future reports on the implementation in practice of the dismissal procedure established by national legislation. Please also indicate whether women in the situation covered by *Article 6* of the Convention have been dismissed under this procedure during the period covered by the report.

The Committee also notes with interest the Government's indication that it is currently examining the possibility of ratifying the Maternity Protection Convention, 2000 (No. 183), which revises the present Convention, and contains more flexible provisions in this respect.

Bolivia

Convention No. 103: Maternity Protection (Revised), 1952 (ratification: 1973)

Article 1 of the Convention. 1. The Committee notes the information provided by the Government concerning the adoption on 9 April 2003 of Act No. 2450 regulating salaried domestic work. It notes with interest that this Act, at least to a certain extent, secures the application to women domestic workers of certain provisions of the Convention, including *Article 3* (maternity leave) and *Article 6* (protection against dismissal). However, the Committee notes that the implementing text concerning the affiliation of women domestic workers to the National Social Security Fund, as envisaged in section 24 of Act No. 2450, is still in draft form. The Committee therefore hopes that the necessary texts will be adopted in the near future to secure for this category of women workers in both law and practice the protection envisaged by the social security legislation, not only with regard to medical care, but also cash maternity benefits, under the conditions set forth in *Article 4* of the Convention.

The Committee also considers it necessary to supplement Act No. 2450 of 2003 on a number of points that it is raising in a request addressed directly to the Government.

2. In the absence of a reply by the Government to its previous comments concerning the protection of women agricultural workers, the Committee is bound once again to express the firm hope that the necessary measures will be adopted in the near future to ensure that all of these women workers benefit in law and practice from the maternity protection afforded by the national legislation (General Labour Act and Social Security Code).

3. Furthermore, the Committee requests the Government to provide detailed information with its next report, including statistics, on the application in practice of the social security scheme (the regions and municipalities covered, the number of employees covered in practice by the protection envisaged by the social security system in relation to the total number of employees) with regard to maternity care and maternity cash benefits.

Article 3, paragraph 2. The Government indicates in its report that it intends to promote the adoption in the near future of the necessary measures to prevent any contradiction between the various provisions of the legislation applicable in relation to maternity leave. The Committee therefore hopes that the relevant provisions of the labour legislation (section 61 of the General Labour Act and Supreme Decree No. 2291 respecting women workers in the public administration) will be aligned in the very near future with those respecting social security (section 31 of Decree No. 13214 of 24 December 1975) so as to establish explicitly and without ambiguity the right to maternity leave of at least 12 weeks, in accordance with the Convention. It considers the adoption of these measures all the more necessary as the social security legislation still does not apply to all the women workers covered by the Convention.

Article 3, paragraph 4. In its reply, the Government states once again that it intends to take measures in the near future to incorporate the Committee's recommendations into the national legislation. The Committee trusts that the Government will be in a position to provide information in its next report on the measures taken in practice to include in the General Labour Act, the Social Security Code and the legislation respecting the public administration a provision explicitly providing for the possibility of extending prenatal leave where confinement takes place later than the presumed date, without any reduction in the minimum period of postnatal leave of six weeks prescribed by the Convention.

Article 4, paragraphs 1 and 3. The Committee notes the information contained in the Government's report concerning the development of a new national health policy and the adoption of the Act respecting universal health insurance for mothers and children (*Seguro Universal Materno Infantil – SUMI*) on 22 November 2002. It notes in this respect that the principal objectives of the new health policy include the improvement of health services and the proclamation of a right to health guaranteed by the State; with health no longer being considered an exclusive function of the health authorities, but as requiring the involvement of local authorities for the purposes of achieving broader participation by the population and better knowledge of its rights, while refusing the commercialization of the right to health. With regard to the SUMI, which forms part of the first phase of the reform process, the Committee notes that its primary objective is the rapid reduction of maternal and child mortality through the provision, throughout the territory and for all pathologies, of free and full medical care, including surgical care, medical examinations and medicine at all levels, to pregnant women during their pregnancy and up to six months after confinement, and to children under 5 years of age, with specific attention to the particular needs of the rural population. According to the Government's report, the SUMI therefore constitutes one of the elements for securing the provision of health services that are constantly more accessible and leading up to the establishment of an integral and universal social security scheme, instead of the current situation in which only 24 per cent of the population are covered by the network of health funds of the social security system. The Committee requests the Government to provide information on the implementation in practice of the SUMI, with the provision of statistics on the number of women workers in relation to the total number of employees and the number of women workers who have received care from the health services in the context of the SUMI, with an indication of the nature of the care received. Please also provide copies of the implementing regulations envisaged in section 10 of the Act of 22 November 2002. The Committee would also be grateful if the Government would provide information with its next report on the results achieved and the difficulties encountered in the implementation of the new national health policy.

Article 4, paragraphs 4, 5 and 8. The Committee once again requests the Government to indicate the measures adopted or envisaged to ensure the provision of maternity benefits: (i) by means of public funds for women who are not yet covered by the social security scheme; and (ii) in the context of public assistance for those who fail to meet the qualifying conditions prescribed by the Social Security Code.

Article 5. The Committee notes that the Government's report does not contain a reply to its previous comments. In these conditions, it is bound to request the Government once again to indicate in its next report the measures adopted or envisaged to supplement the legislation respecting conditions of employment in the public administration with a provision explicitly granting entitlement to nursing breaks for women workers in this sector.

Brazil

Convention No. 103: Maternity Protection (Revised), 1952 (ratification: 1965)

Article 6 of the Convention. The Committee previously noted with satisfaction the decision of the Higher Labour Court of 2 September 1996 declaring that maternity leave is a guaranteed constitutional right which may not be renounced or waived by agreement as its objective is to protect employment. It also requested the Government to continue to provide with its report any court rulings concerning the application of Article 7-XVIII (read in conjunction with Article 10 (II.6) of the transitional constitutional provisions) of the Federal Constitution which guarantees the protection of the employee's job during her maternity leave. In this respect, it emerges from the Government's report that, in practice, where dismissal takes place during the period protected under the national legislation, certain courts revoke the dismissal and order the reinstatement of the worker, whereas others grant the worker financial compensation equivalent to the amount of the remuneration due to the worker until the end of the protected period. The Committee notes this information. It would be grateful if the Government would specify in its next report whether the above case law is confined to cases of arbitrary dismissal or dismissal without just cause or whether it also applies to women workers dismissed during their absence from work on maternity leave or at such a time that the notice of dismissal would expire during such absence, irrespective of the grounds for dismissal.

Chile

Convention No. 103: Maternity Protection (Revised), 1952 (ratification: 1994)

The Committee notes that the Government's report contains no reply to previous comments. It must therefore repeat its previous observation which read as follows:

The Committee hopes that in its next report the Government will provide information on the application of *Article 4, paragraphs 3 and 5, of the Convention* and it requests it in this respect to refer to the observation that it made in 1997.

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

[The Government is asked to reply in detail to the present comments in 2004.]

Cuba

Convention No. 103: Maternity Protection (Revised), 1952 (ratification: 1954)

The Committee notes the Government's report in reply to its previous comments. In this respect, it notes with interest the Government's statement that the question of bringing the national legislation into conformity with the provisions of *Article 5 of the Convention* is being examined in the context of the current revision of the Labour Code and the formulation of a new legislative decree respecting maternity. The Committee therefore hopes that the necessary measures will soon be taken to ensure, in both law and practice, the right of women workers nursing their children to interrupt their work for this purpose at a time or times that are counted as working hours and remunerated accordingly, in accordance with *paragraphs 1 and 2, of Article 5*. It is for the national legislation to determine the number and duration of nursing breaks duly taking into account the needs of both mother and child. The Committee requests the Government to inform it of the progress made in this respect.

Ecuador

Convention No. 103: Maternity Protection (Revised), 1952 (ratification: 1962)

The Committee notes the information provided by the Government in its last report. It also notes the entry into force, on 30 November 2001, of Social Security Act No. 2001-55. In view of the fact that the report does not refer to any measures taken to give effect to the comments that it has made on several occasions, the Committee is bound to draw the Government's attention once again to the points it has raised previously.

1. *Article 3, paragraph 4, of the Convention*. The Committee expresses the firm hope that the Government will take all the necessary measures to bring the national legislation into conformity with this provision of the Convention by including in the Labour Code a provision explicitly providing that in the event of a late confinement, the leave before the presumed date of confinement will be extended until the actual date of confinement and the period of compulsory leave to be taken after confinement will not be reduced on that account.

2. *Article 5, paragraphs 1 and 2*. The Government indicates in its report that the Committee's comments relating to this provision are taken into account by section 155 of the Labour Code. However, the Committee notes that this section no longer explicitly provides, since it was amended by Act No. 133 of 1991, for the right of women workers employed in enterprises with over 50 workers, which are under the obligation to provide a crèche by virtue of subsection 1 of section 155, to interrupt their work to nurse their children, in accordance with the provisions of the Convention. The Committee therefore once again draws the Government's attention to the need to introduce into the legislation a provision explicitly guaranteeing to all women working in enterprises to which the Convention is applicable interruptions of work for the purpose of nursing which are to be counted as working hours and remunerated accordingly, in accordance with *Article 5, paragraphs 1 and 2, of the Convention*. It trusts that the Government will take the necessary measures for this purpose in the near future and that, when it does so, the duration of interruptions of work for nursing a child will be determined so as to take into account the real needs of mothers and children.

The Committee also hopes that, in the case of women workers employed in enterprises which do not have a crèche, the necessary measures will be taken to supplement subsection 3 of section 155 of the Labour Code, under which women who are nursing their child shall benefit from a working day of six hours, by specifying that this reduced working day shall be counted as a full working day and remunerated accordingly.

3. The Committee notes from the Government's report that the statistics requested previously on the number of women workers employed in industrial enterprises and in non-industrial and agricultural work who are covered by the compulsory insurance system or by the rural workers' social insurance scheme as a proportion of the total number of women workers (including women wage earners working at home) are still not available, but should be forthcoming soon. It trusts that the Government will be in a position to provide the requested statistics with its next report.

Ghana

Convention No. 103: Maternity Protection (Revised), 1952 (ratification: 1986)

The Committee notes the information supplied by the Government in its report on the application of the Convention. Referring to the Committee's previous observations, the Government states that the points raised therein have been well noted and appropriate amendments included in the new Labour Code, which is currently before the National Parliament for enactment into law, after having been prepared by a technical tripartite committee. The Committee therefore expresses the hope that the new Labour Code will be adopted in the very near future and will ensure that the national legislation gives full effect to *Article 1, paragraph 3(h)* (application of the Convention to women

engaged in domestic work for wages in private households), *Article 3, paragraph 4* (extension of the prenatal leave when confinement takes place after the presumed date), *Article 3, paragraphs 5 and 6* (additional leave before and after confinement in case of illness, medically certified arising out of pregnancy or confinement), *Article 4, paragraphs 1 and 3* (entitlement to medical benefits while absent from work on maternity leave) and *Article 4, paragraphs 4-8* (provision of cash and medical benefits by means of compulsory social insurance or from public funds, prohibition to hold the employer individually liable for the cost of such benefits). The Committee requests the Government to supply a copy of the new legislation once it has been adopted, so that it may examine its conformity with the Convention.

[The Government is asked to report in detail in 2004.]

Guatemala

Convention No. 103: Maternity Protection (Revised), 1952 (ratification: 1989)

Article 1 of the Convention. In reply to the Committee's comments, the Government indicates in its report for the period ending 1 September 2002 that the Guatemalan Social Security Institute (IGSS) has completed the actuarial studies so that it can decide upon the extension of social security to three new departments which did not have health and maternity services. It adds that it hopes that by the end of 2003 these services will be available in all departments. The Committee notes this information with interest. It requests the Government to provide detailed information in its next report on the progress achieved in the extension of the coverage of the sickness and maternity schemes, both in geographical terms to the various departments and regions of the country, and to the various categories of women workers and enterprises. The Committee recalls that, in accordance with *Article 1*, the Convention applies to women employed in industrial enterprises and in non-industrial and agricultural occupations, including women wage earners working at home, in both the public and the private sectors and irrespective of the size of the enterprise. The Committee would also be grateful if the Government would provide copies of the relevant decisions of the IGSS relating to this extension, with an indication of the departments covered and those which, as the case may be, are not yet covered. Finally, the Committee trusts that the Government will not fail to provide detailed statistics on the number of women workers actually covered by the sickness and maternity scheme of the IGSS in relation to the total number of women employed in the various departments of the country.

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

Libyan Arab Jamahiriya

Convention No. 103: Maternity Protection (Revised), 1952 (ratification: 1975)

Article 1 of the Convention. Scope of application. The Committee notes the Government's indication in its report that, as Act No. 13 of 1980 is applicable to all categories of workers, it considers that *Article 1* of the Convention is applied. However, the Committee wishes to emphasize once again that for many years its comments concerning *Article 1* of the Convention are not related to Act No. 13 mentioned above, but to section 1 of the Labour Code, which excludes from its scope, and therefore from the provisions of the Labour Code on maternity protection, the following categories of women workers who are nevertheless covered by the Convention: domestic workers and persons in similar categories, women engaged in stock-raising and agriculture (except those who work in enterprises processing agricultural products or repairing machinery necessary for agriculture) and permanent or temporary public officials working in state administrations and public bodies. The Committee also noted that some of these categories of women workers will be covered by special regulations. Noting that the Government's report does not provide the information requested on this matter, the Committee expresses the firm hope that the Government will adopt all the necessary measures as soon as possible to be able to respond to the Committee's concerns relating to the individual scope of application of the Convention, and that it will provide copies of the above regulations with an indication, in detail, of the manner in which the categories of women workers excluded from the scope of application of the Labour Code benefit from the protection envisaged by the Convention in relation to *Article 3* (maternity leave), *Article 5* (nursing breaks) and *Article 6* (prohibition of dismissal).

Article 2. The Committee notes that the Government's report does not contain the information requested in its previous observations. It had noted that, under the terms of section 5 of the Regulations respecting registration, contributions and inspection of 1982, the registration under the social security system of non-Libyan officials is on a voluntary basis, unless an agreement has been concluded with the countries of which these workers are nationals. The Committee therefore once again requests the Government to indicate the number of non-Libyan officials who are women and, where appropriate, the number of such women who are covered by the social security system.

Article 3, paragraphs 2, 3 and 4. Duration of maternity leave. The Committee notes the Government's statement in its report in 2000 to the effect that the incompatibility between Act No. 13 of 1980 respecting social security and the Labour Code of 1970 has been eliminated in the new draft text of the Labour and Employment Code that is to be submitted to the General People's Congress for examination and enactment. The Committee notes that section 67 of the above draft text provides for maternity leave of 90 days, of which one part, taken following confinement and not exceeding six weeks, shall be compulsory; this leave may be extended to 100 days in cases where the woman gives birth

to more than one child. However, it notes that, in its last report submitted in 2001, the Government no longer refers to the draft text of the new Labour and Employment Code and does not therefore indicate the progress made with its examination and enactment. In these conditions, the Committee is bound to reiterate that the statutory law still consists of the Labour Code of 1970 and it is therefore bound to recall that section 43 of the Labour Code, which provides for the granting of pre- and postnatal maternity leave of a total duration of 50 days, is not in conformity with *Article 3* of the Convention, which provides for the granting of maternity leave of a minimum duration of 12 weeks, which shall include a period of six weeks compulsory leave after confinement.

Furthermore, noting that the Government's report has still not provided the information requested on the other matters raised in its previous observations, the Committee is bound to request the Government once again to reply to the following points:

- (a) The Committee recalls that section 43 of the Labour Code makes the granting of maternity leave conditional upon the completion of a qualifying period of six consecutive months of service with an employer, which is contrary to the Convention. The Government had indicated previously that, under the terms of section 25 of the Social Security Act, the implementing regulations fix a qualifying period of four months' contributions for entitlement to maternity cash benefits. It adds that such a qualifying period is necessary to avoid abuse and that it is in conformity with *Article 4, paragraph 4*, of the Convention. While noting this information, the Committee wishes to emphasize that its comments did not concern the contribution requirements for entitlement to maternity benefit determined by the Social Security Act, but the six months' qualifying period provided for in section 43 of the Labour Code for the granting of maternity leave. Since the Convention does not authorize any such requirement for entitlement to leave, the Committee hopes that this requirement will be eliminated in the near future when section 43 of the Labour Code is amended.
- (b) The Committee once again recalls that section 43 of the Labour Code does not provide, as does *Article 3, paragraph 4*, of the Convention, that where confinement occurs after the presumed date, prenatal leave must in all cases be extended until the actual date of confinement, and that the period of compulsory leave to be taken after confinement shall not be reduced on that account. The Committee once again expresses the hope that it will be possible to supplement section 43 of the Labour Code by including a provision to this effect.

Article 4, paragraphs 1, 4 and 8. Cash benefits. The Committee notes that, despite the observations that it has been making for many years, the information contained in the Government's reports indicate that the employer shall pay the cash benefits to women workers who are entitled to them and who are covered by the social security system. It also notes that the social security fund may guarantee the payment of these benefits where the employer is unable to pay them. The Committee recalls in this connection that the Convention, in *Article 4, paragraphs 4 and 8*, provides that maternity benefits shall be provided either by means of compulsory social insurance or by means of public funds, and that in no event shall the employer be individually liable for the cost of such benefits due to women employed by him. The Committee therefore hopes that the Government will not fail to take all the necessary measures to bring section 25 of the Social Security Act, No. 13 of 1980, into conformity with the above provisions of the Convention by organizing the provision of cash benefits in a manner that is in accordance with the Convention and by ensuring that in no case shall the employer be individually liable for the cost of such benefits due to women employed by him either directly, by paying at his cost the benefits to which they are entitled, or indirectly by acting in place of the social security fund.

Furthermore, as section 25 of the Social Security Act, No. 13 of 1980, does not contain provisions on the subject, the Committee requests the Government to indicate whether the regulations implementing this Act have been adopted and, if so, to provide a copy. If they have not been adopted, the Committee expresses the firm hope that the regulations implementing the Social Security Act will be adopted in the very near future and will explicitly provide that, in the event of the extension of the length of maternity leave in the circumstances envisaged in *Article 3, paragraph 4*, of the Convention (error in the presumed date of confinement), the period during which the maternity benefit is provided will be extended for an equivalent period.

Part V of the report form. The Committee requests the Government to provide detailed information on the manner in which the Convention is applied in practice, including, for instance, the total number of women in employment to which the legislation respecting maternity protection is applicable, the number of women workers who have benefited from such protection during the reference period, and relevant extracts from the reports of the inspection services and information on the number and nature of the contraventions reported.

The Committee hopes that the Government will make every effort to take the necessary measures to give full effect to the Convention in the very near future.

[The Government is asked to report in detail in 2004.]

Netherlands

Convention No. 103: Maternity Protection (Revised), 1952 (ratification: 1981)

The Committee notes the Government's report. It also notes the comments submitted by the Netherlands Trade Union Confederation (FNV) on the application of the Convention and the Government's reply thereto.

Article 1, paragraphs 1 to 3, of the Convention (in conjunction with Article 4, paragraphs 3 and 4). In response to the Committee's previous comments, the Government states in its report that it does not subscribe to the Committee's opinion that voluntary recourse to private insurance, even if certain safeguards are provided by the law to guarantee access to health insurance for people who request it, is not in itself sufficient to ensure the full application of *Article 4, paragraph 4*, of the Convention. The Government further states that in principle all employees with annual earnings below a certain level, set at 30,700 euros for 2002, are subject to compulsory insurance under the Sickness Benefits Act (ZFW). Beneficiaries of the social security system and recipients of social assistance are also entitled to medical care through the compulsory insurance scheme under the terms of the ZFW. In the Government's view, the national legislation thus fully complies with the provisions of *Article 4, paragraph 4*, of the Convention. The Government also refers once again to *paragraph 5 of Article 4*, which provides that women who fail to qualify for benefits provided as a matter of right should in principle be entitled to benefits out of social assistance funds, subject to a means test. The Government is of the view that this provision should be read in conjunction with *paragraph 4*. The Government further indicates that women who are excluded from the ZFW and who are not entitled to social assistance because their income exceeds the ceiling, have to take out private medical insurance. However, women who have not taken out private insurance or whose insurance is not adequate and who cannot afford the cost of the medical care out of their own means, are entitled to this care out of social assistance funds.

The FNV recalls in this connection that women workers earning one-and-a-half times the average wage or more are denied medical benefits under compulsory insurance. Furthermore, all women civil servants and most women teachers, i.e. 15 to 20 per cent of all women workers, are denied these benefits regardless of their income. The FNV states that it is currently exploring possibilities to take legal action to convince the Government of the need to comply with *Articles 1 and 4* of Convention No. 103. In its latest response in September 2003, the Government recalls that nobody is denied medical care in the Netherlands, regardless of whether he or she has medical insurance. It points out that there is a safety net for people who have no form of insurance.

The Committee takes notes of this information. It recalls that under *Article 1, paragraphs 1 to 3*, of the Convention, read in conjunction with *Article 4, paragraph 4*, women workers covered by the Convention shall be entitled to the benefits, including health care, provided for by the Convention, either by means of compulsory social insurance or by means of public funds. With reference to *paragraph 5 of Article 4*, the Committee wishes to point out it applies to women who, although covered by compulsory insurance, "fail to qualify for benefits provided as a matter of right", for example where they fail to meet a specified qualifying period of contribution, employment or residence. The intent is not to replace benefits provided as a matter of right under compulsory insurance or out of social assistance funds by means-tested social assistance. Consequently, *paragraph 5* may not be applied to women workers who, although covered by the Convention, may be *permanently* excluded from the system of compulsory insurance laid down in the legislation owing to the level of their remuneration, for example. Furthermore, to exclude from compulsory insurance women whose income exceeds a given ceiling while leaving them free to take out private insurance, amounts in practice to organizing the medical maternity benefits of such women under a *voluntary insurance* scheme, whereas the Convention requires these benefits to be provided under *compulsory insurance* or *out of social assistance funds* pursuant to *paragraph 7*, inter alia. The Committee accordingly requests the Government to reconsider this matter once more and trusts that it will be in a position to indicate in its next report the measures taken or envisaged to bring the legislation into conformity with the provisions of the Convention. It would be grateful if the Government would also provide statistical information on the proportion of women workers who are excluded from compulsory insurance owing to the amount of their remuneration or on other grounds.

Nicaragua

Convention No. 3: Maternity Protection, 1919 (ratification: 1934)

Article 3(c) of the Convention. (a). With reference to its previous comments, the Committee notes the report sent by the Government and the statistical information appended thereto. It notes in particular that at the end of 2000, the National Social Security Institute had 308,531 direct members and 894,740 dependants, i.e. a total of 1,203,271 persons covered. The Committee also notes a significant increase in the number of confinements covered by sickness and maternity insurance under the integrated scheme during the period from 1998 to 2000, and the increase, equally significant, in the number of insured persons who received maternity benefit. The Committee observes, however, that although it covers 76 per cent of workers the integrated social security scheme, which includes maternity protection, continues to apply to only part of the country. The Committee is therefore bound once again to point out that in the regions to which application of the integrated scheme has not yet been extended, the employer continues to bear directly the cost of cash maternity benefits, whereas the Convention requires these benefits to be provided either out of public funds or guaranteed by an insurance system. The Committee therefore hopes that the Government will continue to do its utmost to extend the provision of maternity benefits by the social security scheme to the whole country in order to cover all the women workers protected by the Convention. It trusts that the Government will be in a position to indicate progress in this respect in its next report.

(b). The Committee notes from the information in the Government's report that since 1999 six new medical establishments have been created to provide preventive and remedial care to women who belong to the integrated social security scheme, bringing the total number of such establishments in the country to 47. It also notes that according to the statistics sent by the Government, medical insurance establishments had 195,228 members in 2000, i.e. an increase of 9.6 per cent over the previous year, although these persons did not account for the total membership of the integrated insurance scheme. The Committee also notes the information supplied by the Government on the various types of care dispensed to pregnant women in 2000 by medical insurance establishments, showing a clear increase in the number of consultations and confinements as compared to previous years. According to the statistics sent by the Government, the medical insurance establishments covered 9,023 confinements in 2000, which appears to be a relatively small number in view of Nicaragua's population and birth rate. In these circumstances, the Committee hopes that the Government's next report will contain information on the measures taken or envisaged to develop the medical infrastructure so that, in practice, all women workers covered by the Convention receive the free care prescribed by its provisions.

The Committee also requests the Government to continue to provide information on the practical implementation of the social security scheme in respect of maternity benefits both in cash and in kind, including statistics on the regions covered and the number of employed persons covered by the scheme as compared to the total number of employed persons.

Panama

Convention No. 3: Maternity Protection, 1919 (ratification: 1958)

In reply to the Committee's previous comments, the Government confirms that the national legislation, in particular the Labour Code and the social insurance legislation, also applies to women workers employed in export processing zones. The Government's report also contains statistical information on the number of inspections carried out in the country and the cost of maternity benefits. Nevertheless, the Committee recalls that its previous observation concerned more specifically the manner in which the provisions relating to maternity protection (maternity leave, nursing breaks and protection against dismissal) contained in the Labour Code, as well as those relating to maternity benefits in the Organic Act Social Security Fund and its regulations, are applied in practice to women employed in export processing zones; it requested the Government to provide, for example, extracts of inspection reports or other official documents, statistics on the number of inspections carried out in export processing zones and the violations reported in the above zones. The Committee therefore trusts that the Government's next report will not fail to include this information and the statistics requested on the number of women employed in export processing zones who have received maternity benefits during the period covered by the report and the amount of such benefits.

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

Portugal

Convention No. 103: Maternity Protection (Revised), 1952 (ratification: 1985)

The Committee notes the information contained in the Government's report and the attached texts of laws and regulations. It also notes the comments made by the General Union of Workers concerning the application of the Convention and the Government's reply. With reference to *Article 3, paragraphs 2 and 3, of the Convention*, in particular, which was the subject of its previous comments, the Committee notes with satisfaction that section 10(6) of Act No. 4/84 of 5 April 1984, as amended, provides for a compulsory period of leave of six weeks after confinement in accordance with these provisions of the Convention. It also notes with interest that the total duration of maternity leave was extended in 1998 from 98 days to 120 days.

The Committee is also drawing the Government's attention to certain points in a request addressed directly to the Government.

Spain

Convention No. 103: Maternity Protection (Revised), 1952 (ratification: 1965)

The Committee notes the reports provided by the Government in reply to its previous comments and the observations made in 2002 by the Trade Union Confederation of Workers' Commissions (CC.OO.). It also notes with interest the adoption of various legislative texts and regulations that can reinforce maternity protection, and particularly Act No. 39/1999 to promote the reconciliation of working and family life, which extends, inter alia, the duration of maternity leave to 18 weeks.

The Committee wishes to draw the Government's attention to the following points.

1. *Protection against dismissal (Article 6 of the Convention)*. In reply to the Committee's previous comments, the Government refers to the improvements made to the maternity protection system by Act No. 39/1999, which amends the Workers' Statute on a number of points, including with regard to dismissal. Henceforth, the termination of the

employment contract for objective reasons and dismissal for disciplinary reasons shall be considered null and void during the period of the suspension of the contract of employment, among other reasons, for maternity, risks related to pregnancy and in the event of adoption, as well as with regard to pregnant workers from the date of the beginning of pregnancy until the beginning of the period of the suspension of the contract (sections 52(4) and 55(5), in conjunction with section 45 of the Workers' Statute). According to the Government, this protection would also apply in cases of collective redundancies, even though the relevant provisions have not been explicitly amended in this respect, in view of the procedural guarantees covering this type of dismissal. The Committee notes these changes with interest as they represent progress in relation to the previous legislation as pregnancy and maternity are now explicitly taken into account. However, the Committee notes that the new provisions of Act No. 39/1999 do not apply where the termination of the contract or the dismissal for disciplinary reasons are on grounds that are unrelated with pregnancy or leave entitlement. It recalls in this respect that, in accordance with *Article 6* of the Convention, while a woman is absent from work on the maternity leave provided for in accordance with the Convention, it shall not be lawful for her employer to give her notice of dismissal during such absence, nor to give her notice of dismissal at such time that the notice would expire during such absence. In these conditions, the Committee hopes that the Government will continue to examine the matter and that it will be able to indicate in its next report any new measures adopted or envisaged to give fuller effect to *Article 6* of the Convention.

Furthermore, the Committee ventures to suggest to the Government that it might examine the possibility of ratifying the Maternity Protection Convention, 2000 (No. 183), which, in *Article 8, paragraph 1*, contains more flexible provisions relating to protection against dismissal, while extending the duration of the period of protection.

2. *Domestic workers (Articles, 3, 4, 5 and 6)*. In its previous comments, the Committee drew the Government's attention to the legal provisions applicable to domestic workers allowing the employer to end a contract of employment of a domestic worker before the expiry of the agreed term of service by having recourse to the "renunciation" procedure. The Committee noted that, in certain cases, this procedure can allow employers to avoid the rules respecting the maternity protection envisaged by the Convention, as they can use the "renunciation" procedure as soon as they learn of the pregnancy of the employee, thereby denying her any protection, including protection against dismissal, and it therefore requested the Government to re-examine the matter. In its reports, the Government states that the legal provisions applicable to the employment relationship binding a domestic employee to her employer are of a special nature in view of the location in which the contractual obligations are effected and the relation of trust which has to exist between the parties to the contract. It adds that these specific circumstances, as acknowledged by the courts, justify the non-application of the rules respecting protection set out in the Workers' Statute. In this regard, without disregarding the importance of trust as a characteristic element of the specificity of the employment relationship in domestic work, the CC.OO. considers that the fundamental rights of workers, and in this case the right of women not to be subjected to discrimination by reason of maternity, nevertheless have to be respected.

The Committee notes this information. It recalls that, in accordance with *Article 1, paragraph 3(h)*, of the Convention, domestic work for wages in private households is included in the definition of the term "non-industrial occupations" and therefore lies within the scope of application of the Convention. While agreeing with the Government concerning the special nature of this type of employment relationship, the Committee nevertheless wishes to reiterate that the guarantees and protection afforded by the Convention are fully applicable to domestic work. The Committee therefore hopes that the Government will be in a position to provide information in future reports on any progress achieved in reinforcing supervision with regard to any abuses to which the "renunciation" procedure may give rise, thereby ensuring, in the context of maternity protection, real equality of treatment both between men and women and between women employed in domestic work and those engaged in other types of waged employment, in accordance with the provisions of the Convention.

Sri Lanka

Convention No. 103: Maternity Protection (Revised), 1952 (ratification: 1993)

The Committee notes the information supplied by the Government in its report. It also notes the comments made by the Lanka Jathika Estate Workers' Union (LJEWU) and the Employers' Federation of Ceylon (EFC) on the application of the Convention.

1. In reply to the Committee's previous comments, the Government indicates that the study carried out by the Department of Labour to analyse the issue of payment of alternative maternity benefits has revealed that most of the estate hospitals do not provide alternative maternity benefits as specified by Maternity Benefits Ordinance No. 32 of 1939. It also specifies that this matter is being taken into consideration in order to amend the abovementioned legislation. In its comments, the Employers' Federation of Ceylon refers to a collective agreement signed by this organization and representative unions in the plantation sector and providing for the payment of full maternity benefits without deductions. The EFC further states that much investment has been made to upgrade the quality of medical services in the plantation sector. The Lanka Jathika Estate Workers' Union indicates in this respect that besides the state-owned plantations managed by private companies covered by this collective agreement, there is a state plantation sector and a private plantation sector to which it does not apply.

The Committee notes this information. Referring to its previous comments, it recalls that, while the collective agreement signed with several trade unions and 21 plantation management companies covers 585 estates and guarantees that, as of 1 January 1997, female workers are paid the maternity benefits laid down in the Maternity Benefits Ordinance without reduction, a certain number of plantations are not bound by this collective agreement. Thus, workers not covered by this collective agreement are still subject to the provisions of the regulations published under the Maternity Benefits Ordinance by virtue of which cash benefits amount to four-sevenths or six-sevenths of their previous wages, which is less than 49 per cent of their previous earnings, whereas under *Article 4, paragraph 6, of the Convention*, where cash benefits are based on previous earnings, they shall be at a rate of not less than two-thirds of these earnings. The Committee therefore hopes that the Government will be able to take all the necessary and appropriate measures in order to make all women estate workers benefit from medical *and* cash benefits in conformity with the requirements of the Convention and report very shortly on any cases of progress made to this end.

2. *Article 3, paragraphs 2 and 3.* With reference to its previous comments establishing the need for the Government to carry out legislative amendments in order to ensure full application of this provision of the Convention to all female workers covered by the instrument, *irrespective of the number of their children*, the Committee notes that, although there have not been any legislative changes so far, the Government reassures that these concerns are being taken into consideration and declares it will report any progress made in this regard. Recalling that one of the main objectives of the Convention is to protect women workers' health before, during and after confinement, the Committee deeply hopes that the Government will, as soon as possible, be in a position to undertake the necessary steps in guaranteeing the application of the legislation on maternity protection to all women workers regardless of the number of their children. In this respect, the Committee recalls that at present national legislation still provides for maternity leave not to exceed six weeks when the female worker gives birth to a third or subsequent child while under *Article 3, paragraphs 2 and 3*, of the Convention, the period of maternity leave shall be at least 12 weeks, which shall include a minimum period of six weeks' compulsory leave after confinement.

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

[The Government is asked to report in detail in 2004.]

Uruguay

Convention No. 103: Maternity Protection (Revised), 1952 (ratification: 1954)

The Committee notes the information provided by the Government in its reports in reply to its previous comments. It also notes that the Inter-Union Assembly of Workers-National Convention of Workers (PIT-CNT) has made new comments on the application of the Convention. In particular, according to this organization, certain categories of workers were deprived of maternity protection as a result of the adoption of legislation in 2002. The comments of the PIT-CNT were received by the Office on 6 October 2003 and transmitted to the Government on 20 October 2003. As the Government states that it intends to inform the Committee in the near future of the impact of the above new legislation on the rights of these categories of workers to maternity benefits, the Committee has decided to postpone its examination of all the pending issues until its next session.

[The Government is asked to reply in detail to the present comments in 2004.]

Venezuela

Convention No. 3: Maternity Protection, 1919 (ratification: 1944)

Articles 1 and 3(c) of the Convention. The Committee notes the report provided by the Government and the adoption on 6 December 2002 of the Organic Act on the social security system. With reference to the comments it has been making for many years on the scope of the social security system in practice, the Committee notes that section 4 of the new Act guarantees social security to all Venezuelan nationals living on the national territory as well as foreign nationals lawfully residing in the country. The Committee notes, however, that the Social Insurance Act remains applicable until the end of the transition period set for the entry into force of the new Organic Act (section 130 of the Organic Act) and that many regions of the country are still not covered by the social security system. Under these circumstances, it is bound once again to recall the need to take all the measures necessary as soon as possible to extend in practice the social security system in matters of maternity benefits, with regard to both medical care and cash benefits, throughout the national territory to ensure that all women workers employed in industrial or commercial enterprises, whether public or private, covered by the scope of application of the Convention, benefit from the protection afforded by this instrument.

Furthermore, the Committee requests the Government to provide statistics on the regions covered by the social security system and those which are still excluded with regard to maternity benefits. It also requests the Government to provide statistical information on the number of women workers employed in both public and private industrial and commercial enterprises who are covered by the full social security system in relation to the total number of such women workers.

Finally, the Committee would be grateful if the Government would provide detailed information in its next report on the application in practice of the Organic Act on the social security system adopted in 2002, and if it would provide a copy of all the legislative texts and regulations adopted to give effect to it.

[The Government is asked to reply in detail to the present comments in 2006.]

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States with regard to: **Convention No. 3** (*Argentina, Australia: Norfolk Island, Burkina Faso, Cameroon, China - Hong Kong Special Administrative Region, Côte d'Ivoire, Gabon, Guinea, Latvia, Mauritania, Nicaragua, Panama, Venezuela*); **Convention No. 103** (*Azerbaijan, Belarus, Bolivia, Ecuador, Guatemala, Republic of Moldova, Mongolia, Netherlands, Portugal, Russian Federation, San Marino, Slovenia, Spain, Sri Lanka, Tajikistan, Ukraine, Zambia*); **Convention No. 183** (*Bulgaria, Slovakia*).

The Committee noted information supplied by *Croatia* in an answer to a direct request with regard to **Convention No. 103**.

Social Policy

United Kingdom

Bermuda

Convention No. 82: Social Policy (Non-Metropolitan Territories), 1947

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

In reply to the Committee's previous observation, the Government indicates that the Minister responsible for labour in the new Government elected in November 1998 has determined that the voluntary system which was based on the Code of Good Industrial Relations Practice and the Guide to Good Employment Practice had not been effective. Consequently, the Government intends to adopt new employment legislation and is currently preparing a draft Bill which will be circulated to the members of the tripartite Labour Advisory Council before it is tabled before the House of Parliament. While noting the Government's statement that the new legislation is expected to address a number of labour standards, including the protection of wages as prescribed by *Articles 15 and 16 of the Convention*, the Committee hopes that the draft Bill currently under preparation will be adopted in the very near future and recalls that the Government may avail itself of the technical assistance of the ILO in this regard. It asks the Government to communicate in its next report any progress made in this matter on which the Committee has been commenting for many years.

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

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States with regard to: **Convention No. 117** (*Central African Republic, Georgia, Ghana, Guatemala, Guinea, Israel, Republic of Moldova, Paraguay, Sudan*).

Migrant Workers

China

Hong Kong Special Administrative Region

Convention No. 97: Migration for Employment (Revised), 1949

(notification: 1997)

1. The Committee notes that at its 288th Session (November 2003), the Governing Body of the ILO approved the report of the tripartite committee set up to examine the representation alleging non-observance by China of Convention No. 97 with respect to the Special Administrative Region (SAR) of Hong Kong, made under article 24 of the ILO Constitution by the Trade Union Congress of the Philippines (TUCP). The complaint concerned allegations that the Hong Kong administration approved certain measures that were harmful for Filipino workers and in violation of *Article 6 of the Convention* which provides for equality of treatment between migrant workers and nationals as regards remuneration, social security, employment taxes and access to legal proceedings. The specific measures included: (a) the reduction of the Minimum Allowance Wage (MAW) of foreign domestic workers by HK\$400, effective April 2003; (b) the introduction of an employees' retraining levy by HK\$400 imposed on employers of these workers, effective 1 October 2003; and (c) the possible exclusion of foreign domestic workers, who have not resided in Hong Kong SAR for at least seven years, from subsidized public health care services (see GB. 288/17/2). The Committee also notes the joint communication by the Indonesian Migrant Workers Union (IMWU), and the Asian Domestic Workers Union (ADWU) dated 15 January 2003, concerning the application of the Convention in Hong Kong SAR, which was sent to the Government of China on 27 February 2003 for its comments thereon, and which it will address in points 5 and 6 below.

2. The Committee notes that the Governing Body concluded that with regard to the proposed measure to exclude in future foreign domestic helpers, who had not resided for at least seven years in Hong Kong SAR, from public health care services, the residence requirement of seven years would be too long and the automatic exclusion of these workers from all public health care benefits would contravene *Article 6(1)(b)* of the Convention. It urged the Government not to take this particular measure and to take all necessary steps to ensure that the social security provisions of the standard employment contract are strictly enforced.

3. The Governing Body further determined that insufficient information was provided by both the complainant organization and the Government to permit it to reach any definite conclusions as to whether the measures to reduce the MAW of foreign helpers and to impose an employees' retraining levy on the employers of these workers contravened *Article 6(1)(a)* of the Convention. Nevertheless, the Governing Body believed that the imposition of the same levy on the employers of all imported workers, including domestic workers whose wages are already the lowest amongst migrant workers, while at the same time reducing the MAW wage of these workers with the same amount, would not be equitable. It urged the Government to review the above-described levy and minimum wage policies on imported workers, especially foreign domestic workers, taking into account the requirement of *Article 6* of the Convention that non-nationals shall not be treated less favourably than nationals, and the principles of equity and proportionality. It also invited the Government to include detailed information on the wages paid to local domestic workers and any other comparable categories of local employees that would allow comparisons to be made, and to provide updated information on the number of underpayment complaints made by domestic workers, as well as the impact of the measures taken by the Government to encourage these workers to forward such complaints, since the entry into force of the abovementioned measures. The Governing Body asked that the Committee of Experts on the Application of Conventions and Recommendations to continue to examine this matter (GB/288/17/2, paragraph 45).

4. The Committee follows the Governing Body in its conclusions as regards the abovementioned measures taken by the Hong Kong Administration concerning foreign domestic workers. It requests the Government to provide full information in its next report on: (a) the access to public health care services of foreign domestic helpers who have not resided for at least seven years in Hong Kong SAR; (b) the enforcement of the social security provisions of the standard employment contract; (c) any ongoing or planned review of the above-described levy and minimum wage policies on imported workers, especially foreign domestic workers, taking into account the Committee's conclusions and recommendations as to the requirements of *Article 6* of the Convention that non-nationals shall not be treated less favourably than nationals, and the principles of equity and proportionality; and (d) the wages paid to local domestic workers and any other comparable categories of local employees, as well as information on the number of underpayment complaints made by foreign domestic helpers and on the impact of the measures taken by the Government to encourage these workers to forward such complaints.

5. With regard to the comments made by the IMWU and the ADWU, the Committee notes the allegations that foreign domestic workers are particularly vulnerable to abuse and violations of their employment contracts and are facing problems such as payment of excessive fees, long working hours, denial of rest days, and physical, mental and sexual

abuse and the underpayment of wages, the latter being particularly problematic for Indian, Indonesian and Sri Lankan domestic workers. The IMWU and the ADWU also allege that certain proposed or existing government policies discriminate against foreign domestic workers, such as the policy restricting employment of migrant workers in domestic work, the rule according to which foreign domestic helpers have to leave Hong Kong within two weeks after the termination of their contract, the proposals to set a quota for foreign domestic workers, the ban on live-out arrangements and the recent tax imposed on the employment of foreign domestic helpers. The Committee notes that the allegations made by the IMWU and AMWU on the underpayment of wages and the imposition on employers of foreign domestic workers of an employees' retraining tax, concern allegations that are related to those made by the TUCP, and which were addressed in points 1, 3 and 4 of the present observation.

6. With regard to the point raised by the AMWU and the IMWU on the rule according to which foreign domestic helpers have to leave Hong Kong within two weeks after the termination of their contract ("two-week rule"), the Committee refers to its previous comment in which it noted the information in the Government's report that the purpose of the "two-week rule" was to deter foreign domestic helpers from overstaying and taking up unauthorized work. It noted that the rule was exercised with flexibility and that in some cases (financial difficulties of, or abuse by, the employer) foreign domestic helpers may be allowed to change employers without returning to their home country. It also noted that foreign domestic helpers were allowed to apply for an extension of stay in Hong Kong (SAR) from the Immigration Department, to facilitate their pursuing claims at the Labour Department or attending civil proceedings in court. The Committee asks the Government to supply further information regarding the practical application of this possibility, including the number of applications for extension and the reasons for refusal by the Immigration Department. It also asks the Government to provide detailed information on the other allegations made by the IMWU and the ADWU concerning violations of the employment contract of foreign domestic workers and physical, sexual and mental abuse of these workers, as well as the abovementioned existing or proposed policies that are alleged to be discriminatory against foreign domestic workers.

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

[The Government is asked to report in detail in 2004.]

Malaysia

Sabah

Convention No. 97: Migration for Employment (Revised), 1949

(ratification: 1964)

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

Article 6, paragraph 1(b). For a number of years the Committee has drawn the attention of the Government to the fact that the transfer of foreign workers working in the private sector from the Employees' Social Security Scheme (ESS) to the Workmen's Compensation Scheme was not in conformity with *Article 6, paragraph 1(b), of the Convention*. One of the principal differences was that, under the new scheme, foreign workers were provided with a lump sum and no longer with a monthly payment. A review of the two schemes had in fact shown that the level of benefits in case of industrial accident, provided under the ESS, was substantially higher than that provided under the Workmen's Compensation Scheme. Even though the Workmen's Compensation Scheme was amended in 1996 this merely resulted in an increase in the ceiling on lump-sum benefits and did not transform the benefit into a periodic payment equivalent to that provided to nationals under the ESS. In 1998 the Government had indicated that it was contemplating a review of the situation regarding the coverage of foreign workers under the ESS and that it was proposing amendments to the Social Security Act of 1969 in this regard.

In its last report, the Government reiterates once again its main arguments for introducing the lump-sum system of payment, without giving elements of scientific comparison of the benefits which would be awarded according to each system in identical circumstances. In this regard, the Committee again draws the Government's attention to the fact that the lump sum referred to should correspond to the actuarial equivalent of the periodical payments involved.

The Committee therefore hopes that the Government will make every effort to provide detailed information and take the necessary action in order to ascertain that migrant workers do not receive treatment which is less favourable than that applied to nationals.

Please also refer to the comments made under Convention No. 19.

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

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States with regard to: **Convention No. 97 (China - Hong Kong Special Administrative Region); Convention No. 143 (Uganda).**

Seafarers

Argentina

Convention No. 68: Food and Catering (Ships' Crews), 1946 (ratification: 1956)

Article 5 of the Convention. In its previous comments the Committee asked the Government to take all necessary measures in order to bring national legislation in conformity with the Convention, which requires a ratifying Member to maintain in force laws or regulations concerning food supply and catering arrangements designed to secure the health and well-being of the crews of seagoing vessels, whether publicly or privately owned, which are engaged in the transport of cargo or passengers for the purpose of trade and which are registered in its territory. It notes the indication in the Government's report that under section 131(1) of Law on Navigation, of 15 January 1973, No. 20.094, the captain has the duty of supervising the observance of legal and regulatory provisions related to the accommodation and food of the crew and passengers and over sanitary and hygienic conditions of vessel. It further notes that the quantity and quality of food on board vessels is prescribed in the collective agreements.

The Committee recalls that under *Article 5, paragraph 2* of the Convention, the laws or regulations maintained in force by a ratifying Member shall require the provision of food and water supplies, which, having regard to the size of the crew and the duration and nature of voyage, are suitable in respect of quantity, nutritive value, quality and variety; and the arrangement and equipment of the catering department in every vessel in such a manner as to permit the service of proper meals to the members of the crew. It wishes once again to draw the Government's attention to that fact that all these matters shall be dealt with by laws or regulations, and not exclusively by collective agreements.

The Committee hopes that the Government will take all necessary measures in order to give effect to *Article 5* of the Convention, and asks it to report any progress made in this respect. The Committee also asks the Government to transmit copies of the annual report published pursuant to *Article 10*.

Barbados

Convention No. 108: Seafarers' Identity Documents, 1958 (ratification: 1967)

The Committee notes with regret from the Government's report that the seafarers' identity document required under the Convention does not exist for national seafarers in Barbados, and that foreign seafarers holding identity documents issued pursuant to the Convention are not accorded the facilities provided for in that instrument.

It further notes from the Government's report that the Immigration Department has no objections to accepting the responsibility for issuing the seafarers' identity document provided for in the Convention, although it has never been charged to do so. The report refers to two possible solutions: amending the Immigration Act; or enacting new legislation to empower the Immigration Department to issue such documents.

The Committee urges the Government to take the necessary steps to ensure that its obligations under the Convention are fully respected and to inform it of measures taken in this regard.

Egypt

Convention No. 92: Accommodation of Crews (Revised), 1949

(ratification: 1982)

Articles 6 to 13, and 15 of the Convention. In its previous observation the Committee asked the Government to provide information on the legislation giving effect to these provisions of the Convention. It notes that in its latest report the Government refers to Law No. 158 of 1959 on maritime labour contracts, Law No. 8 of 1990 on maritime trade, Law No. 232 of 1989 on ship safety, and Order No. 143 of the Minister of Transport on ship safety of 1990, as the legislation applying the provisions of the Convention. The Government has also reiterated that Egyptian shipyards took due account of the requirements adopted by international bodies responsible for maritime supervision with respect to accommodation of crews as regards space, height, type of flooring, ventilation, keeping away from sources of heating etc.

The Committee notes that while acts referred to by the Government prescribe general requirements with respect to ships' safety, they do not specifically deal with the subject matter of the above provisions of the Convention. It recalls that under *Article 3, paragraph 1*, of the Convention, each Member for which this Convention is in force undertakes to maintain in force laws or regulations which ensure the application of the provisions of Parts II, III and IV of this Convention. The Committee urges the Government to take the necessary action to adopt laws or regulations giving effect to each specific requirement prescribed by *Articles 6 to 13 and 15* of the Convention and to provide information on any progress made in this regard.

Liberia

Convention No. 22: Seamen's Articles of Agreement, 1926 (ratification: 1977)

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

The Committee notes the Government's statement in its report that the Committee's comments have been referred to the Bureau of Maritime Affairs with instructions that the commission should review the provisions of the maritime laws and regulations with the aim of having them conform with the provisions of the Convention. The Committee hopes that the necessary measures will be taken to apply the Convention in law and in practice and that the Government will provide full particulars on any progress achieved, taking into consideration the Committee's comments since 1995 on *Article 3, paragraph 4, Article 9, paragraph 2, Article 13 and Article 14, paragraph 2, of the Convention*.

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

Convention No. 55: Shipowners' Liability (Sick and Injured Seamen), 1936 (ratification: 1960)

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

Article 1, paragraph 2, of the Convention. In reply to the Committee's previous comments, the Government refers to the provisions of section 51 of the Maritime Law concerning vessels which can be registered under Liberian law. In this regard, the Committee wishes to draw the Government's attention to the fact that its comments concerned section 290-2 of the law, which provides that persons employed on vessels of less than 75 net tons are not covered by the provisions of Chapter 10 of the law relating specifically to the obligations of the shipowner in the event of seafarers' sickness or accident.

Article 2, paragraph 1. The Committee noted that section 336-1 of the Maritime Law provides for payment of the wages, maintenance and medical care of the seaman in cases of sickness or accident while he is off the vessel provided that he is "off the vessel pursuant to an actual mission assigned to him by, or by the authority of, the master". The Committee recalls that under this provision of the Convention the shipowner is liable in all cases of sickness and injury occurring between the date specified in the articles of agreement for reporting for duty and the termination of the engagement.

Article 6, paragraph 2. The Committee noted that, contrary to this provision of the Convention, the approval of the competent authority is not required when a sick or injured seaman has to be repatriated to a port other than the port at which he was engaged, or the port at which the journey commenced, or a port in his own country or the country to which he belongs. Under section 342-1(b) of the Maritime Law, agreement between the seafarer and the master or shipowner suffices. The Government states that if there is agreement between the parties, administrative authorization is not necessary but that, in the event of disagreement, the parties may submit the matter to the Commissioner of Maritime Affairs by virtue of section 359 of the law. The Committee notes this information. It wishes to draw the Government's attention to the need to include provisions in its legislation making it compulsory to seek the approval of the competent authority when the parties agree to a port of repatriation other than those laid down in *Article 6, paragraph 2(a), (b) or (c)*, of the Convention. In fact, the provisions of this Article of the Convention are designed to protect a sick or injured seafarer by preventing the master or the shipowner imposing on him a port of repatriation other than the port at which he was engaged, the home port of the vessel or a port in his own country or the country to which he belongs, without the approval of the competent authority; in the event of disagreement between the parties, an appeal to a conciliation authority is not sufficient in itself.

The Committee hopes, while taking note of the national situation, that the Government will make every effort to take the necessary action, as soon as the circumstances so permit.

Convention No. 58: Minimum Age (Sea) (Revised), 1936 (ratification: 1960)

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

In its previous comments the Committee noted that section 326(1) of the Maritime Law, as amended, set 15 years as the minimum age for admission to employment or work on Liberian vessels registered in accordance with section 51 of the Maritime Law. Noting however that section 326(3) permits persons under the age of 15 to occasionally take part in the activities on board such vessels, the Committee has requested the Government in comments repeated since 1995 to indicate how such special employment is limited to persons of not less than 14 years of age, taking into account all the conditions set forth in *Article 2, paragraph 2, of the Convention*.

Noting that the Government has submitted the matter to the Commissioner of the Bureau of Maritime Affairs with the instruction that the necessary steps be taken to make the required information available, the Committee hopes that such information will soon be provided.

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

Convention No. 92: Accommodation of Crews (Revised), 1949 (ratification: 1977)

Please refer to the comment made under the Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133).

Convention No. 133: Accommodation of Crews (Supplementary Provisions), 1970 (ratification: 1978)

The Committee notes once again with regret that the Government's first report has not been received. In the 89th Session of the International Labour Conference in June 2001 a Government representative indicated that the first report would be submitted to the Committee in the near future. In agreement with the findings of the Conference Committee on the Application of Standards during that Session of the International Labour Conference, the Committee reiterates the crucial importance of submitting first reports on the application of ratified Conventions and urges the Government to submit the report for the attention of the Committee at its next session.

The Committee notes the Government's response to the comments made by the Norwegian Union of Marine Engineers (NUME) that alleges non-observance by Liberia of Convention No. 92 and Convention No. 133. The Committee notes, in particular, the Government's indication that the ship "Sea Launch Commander" serves as the command ship, i.e. "mission control", for the launching of rockets from the seagoing launch platform M/S Odyssey. The rockets are assembled in the assembly bay of the "Sea Launch Commander" while the ship is in port moored to a dock and then transferred to M/S Odyssey. The Government points out that the "Sea Launch Commander" neither transports cargo or passengers for the purpose of trade nor does it engage in other traditional commercial activity while seagoing. According to the Government, the primary functions of the "Sea Launch Commander" are to serve as the assembly facility for the rockets when the ship is moored to the dock in port and to serve as command ship for the launching of rockets from the M/S Odyssey when the ships are at sea.

The Government considers that, based on the nature of its operations, the "Sea Launch Commander" is not a seagoing vessel for the purpose of trade or commercial activity in the sense envisioned by the relevant ILO Conventions. Therefore, it is the Republic of Liberia's determination that the aforementioned ILO Conventions do not apply to this ship and that the NUME complaint is neither appropriate nor applicable to the "Sea Launch Commander", and its "statement of claim" to the ILO is, therefore, without merit.

The Committee recalls that Convention No. 133 applies to every seagoing ship, whether publicly or privately owned, which is engaged in the transport of cargo or passengers for the purpose of trade or is employed for any other commercial purpose, which is registered in a territory for which this Convention is in force (*Article 1, paragraph 1*, of the Convention). National laws or regulations shall determine when ships are to be regarded as seagoing ships for the purpose of this Convention (*Article 1, paragraph 2*). The Committee wishes to point out that under *Article 1, paragraph 1*, the Convention applies "to every seagoing ship ... employed for any other commercial purpose" and does not distinguish between traditional and non-traditional commercial activities.

Referring also to its 2002 observation, the Committee asks the Government to clarify: (i) whether the ship "Sea Launch Commander" under national laws or regulations is regarded as a "seagoing ship"; (ii) whether national laws or regulations contain the definition of the term "commercial activity"; and (iii) whether the launching of rockets from the seagoing launch platform M/S Odyssey is carried out for a commercial purpose.

[The Government is asked to report in detail in 2004.]

Mauritius

Convention No. 108: Seafarers' Identity Documents, 1958 (ratification: 1969)

The Committee notes from the Government's report, that the Merchant Shipping Act is currently under review and that subsequent amendments, to be enacted by means of regulations, will provide for the reintroduction of a seafarers' identity document in accordance with the requirements of the Convention.

As the Government has noted, the issuance of travel documents for Commonwealth citizens and certificates of identity for non-Commonwealth citizens is not specific to seafarers and, therefore, these documents, as well as passports, are unrelated to the essential purpose of the Convention which is to provide a special document for seafarers to facilitate their professional movements. Moreover, the Committee must restate that the issuance of an identity document in conformity with the provisions of the Convention is an entitlement for nationals who are seafarers, and the issuance of a passport does not normally fulfil this requirement.

The Committee requests the Government to report on the advancement of the review of the Merchant Shipping Act and to advise as to when the regulations reinstating the seafarers' identity document can be expected.

Mexico

Convention No. 22: Seamen's Articles of Agreement, 1926 (ratification: 1934)

Articles 5 and 14 of the Convention. In its previous comments the Committee asked the Government to take the necessary measures to give effect to these provisions of the Convention. It notes that the maritime book (*Libreta de Mar*) transmitted by the Government in 2000 does not provide any space for entries that the seaman has been discharged. The Committee recalls that an intention behind the inclusion of *Article 14* into the text of the Convention was that an entry

should be made in the document referred to in *Article 5 of the Convention* as well as in the list of crew, stating merely the fact that the seaman had been discharged and not the ground for such discharge (ILC, 9th Session, Record of Proceedings, ILO, Geneva, 1926, p. 524). The Committee asks the Government to take all measures to give full effect to this provision of the Convention and to report on any progress made in this regard.

Article 9. For more than 30 years the Committee has been asking the Government to amend section 209(III) of the Federal Labour Act, according to which it is unlawful to terminate the employment relation when the vessel is in foreign waters, in places where there are no towns, or unpopulated places, or in port (in the latter case, if the vessel is exposed to some risk on account of bad weather or other circumstances). Under *Article 9 of the Convention*, however, an agreement for an indefinite period may be terminated by either party in any port where the vessel loads or unloads, provided that the notice specified in the agreement shall be given, which shall not be less than 24 hours. Notice shall be given in writing; national law shall provide such manner of giving notice as is best calculated to preclude any subsequent dispute between the parties on this point. National law shall determine the exceptional circumstances in which notice even when duly given shall not terminate the agreement.

The Committee notes that in spite of its repeated requests, section 209(III) of the Federal Labour Act still has not been brought into conformity with the requirements of the Convention. To the extent that in Mexico under article 130 of the Constitution international Conventions form part of the national legislation and are the supreme law, on the one hand, and, on the other hand, the jurisprudence recognizes the duality of the system and applies, at the same time, international Conventions, the Committee considers that the Government has the possibility and the duty to bring section 209(III) of the Federal Labour Act into conformity with *Article 9* of the Convention. The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Netherlands

Aruba

Convention No. 145: Continuity of Employment (Seafarers), 1976

1. In reply to the comments made since December 1995, the Government of Aruba indicates in the report received in January 2003 that it envisages denouncing the acceptance of the obligations of the Convention on behalf of Aruba. The authorities of Aruba explain in the report that the applicable laws are those inherited from the Netherlands which have been considered applicable to Aruba since 1986. However, it is not possible to give effect to these laws as the profession of seafarer does not exist in Aruba. The authorities of Aruba indicate that they will make efforts to consult the employers' and workers' organizations on the question of denunciation.

2. The Committee refers to its observation of 2002 on the application in Aruba of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), in which it expressed the hope that in future the items listed in Article 5, paragraph 1, of Convention No. 144 would be covered by "effective consultations", in particular in Aruba's tripartite committee on matters regarding ILO activities. It hopes that the authorities will ensure compliance with the provisions of Conventions that are in force and that they will keep the Committee of Experts and the Office informed of the consultations held and of any new developments relating to the denunciation of the acceptance of the obligations of Convention No. 145 on behalf of Aruba.

Portugal

Convention No. 146: Seafarers' Annual Leave with Pay, 1976 (ratification: 1984)

The Committee notes the Government's indication that the questions raised by the Committee relate to matters that would be regulated by the new legal regime on individual contracts of employment that will replace Decree-Law No. 74/73. It hopes that the Government will take all necessary measures to ensure full application of the provisions of the Convention in law and in practice in the very near future. The Committee refers to its previous comments, which related to the application of the following provisions of the Convention:

Article 3, paragraph 3, of the Convention. Section 50 of the RJ (Legislative Decree No. 74/73 of 1.3.1973) allows a minimum annual leave of only 24 days (including public holidays) for seafarers not exempt from a working timetable. The Committee hopes that the revision of the legislation will ensure that the protection envisaged by the Convention is guaranteed in all cases, bearing in mind, among other things, the requirements of *Article 5, paragraphs 2 and 3*, of the Convention.

Article 4, and Article 7, paragraph 3. The Committee hopes that the draft legislation will apply these Articles of the Convention by ensuring leave with pay proportionate to the length of actual service in a given year, including cases where the seafarer leaves service or is discharged.

Article 5. In contrast with the more favourable provisions in collective agreements, the RJ does not appear to provide for service of articles (*paragraph 2* of this Article) and absence from work to attend an approved maritime vocational training course (*paragraph 3*) to be counted as part of the period of service. Whilst section 61 of the RJ deals

with absences due to, among other reasons, illness or occupational injury, the provisions in section 28 of the RJ seem to restrict the extent to which attendance at a maritime vocational training course is counted as part of the period of service. The Committee asks the Government to re-examine section 28 of the RJ in the ongoing review of the legislation, with a view to ensuring full application of the Convention on this point.

Article 6. In section 50 of the RJ and the relevant provisions of the collective agreements, Sundays and public and customary holidays are included in the periods of leave laid down. It is, therefore, difficult to evaluate how long the actual leave entitlement is for purposes of *Article 3* of the Convention. Furthermore, when weekends and public holidays are spent on board ship and they give the right to compensatory leave under the collective agreements, under *clause (d)* of this Article, compensatory leave should not be counted as part of the minimum annual leave with pay. Thirdly, it appears that the circumstances referred to by the Government as falling under section 61 of the RJ do not amount to temporary shore leave as contemplated in *clause (c)* of this Article. The Committee hopes that in the ongoing reconsideration of the legislation the Government will endeavour to bring the provisions of sections 50 and 61 of the RJ in line with the terms of the Convention.

The Committee also asks the Government to take all necessary measures to ensure full application of *Article 3, paragraph 3; Article 4; Article 5; Article 6; and Article 7, paragraph 3* of the Convention.

Sierra Leone

Convention No. 8: Unemployment Indemnity (Shipwreck), 1920 (ratification: 1961)

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

Article 2 of the Convention. The Committee notes from the information supplied by the Government in its report that the legislation necessary to give effect to the Convention has not yet been adopted. In view of the scant progress made in this regard despite the comments it has been making for many years, the Committee stresses once again that legislative measures should be taken to amend the Merchant Shipping Legislation so as to eliminate the bar to receipt of unemployment indemnity in case of shipwreck where it is proved that a seaman did not exert himself to the utmost to save the ship. The Committee trusts that in its next report the Government will be able to state that the necessary legislation has been adopted to ensure that full effect is given to the Convention.

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

Solomon Islands

Convention No. 8: Unemployment Indemnity (Shipwreck), 1920 (ratification: 1985)

The Committee notes with regret that for the tenth consecutive year the Government's report has not been received. It hopes that a report will be supplied for examination by the Committee at its next session, together with the text of the Labour (Seamen) Rules adopted in 1985, which, according to the Government's previous statement, provides for indemnity against unemployment in case of loss or foundering of a ship, without any qualification, in conformity with this provision of the Convention.

The Committee hopes, while taking note of the national situation, that the Government will make every effort to take the necessary action, as soon as the circumstances so permit.

Spain

Convention No. 53: Officers' Competency Certificates, 1936 (ratification: 1971)

Article 3 of the Convention. With reference to the procedure which enables the use of uncertificated replacement officers in a number of cases under Spanish legislation, the Committee has previously asked the Government to indicate whether their use was possible and continuing in practice and, if so, to indicate the measures adopted or envisaged to limit the replacement of officers to cases of force majeure. It notes the Government's indication that it will take measures necessary for ensuring compliance with the requirements of the Convention. The Committee asks the Government to provide information on any progress made in this respect.

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States with regard to: **Convention No. 9** (Colombia, Croatia, Denmark: Faeroe Islands, Estonia, Germany, Slovenia, Sweden); **Convention No. 16** (Denmark: Faeroe Islands, Guinea, Pakistan, Solomon Islands); **Convention No. 22** (Myanmar, United Kingdom: Jersey); **Convention No. 23** (Philippines); **Convention No. 53** (Djibouti, Liberia, Mexico); **Convention**

No. 58 (*France: French Southern and Antarctic Territories, Guatemala, Mexico, Peru, Tanzania, Zanzibar*); **Convention No. 68** (*Greece, Italy, Norway, Panama, Poland, Portugal*); **Convention No. 69** (*Djibouti*); **Convention No. 73** (*Djibouti*); **Convention No. 74** (*Lebanon*); **Convention No. 91** (*Croatia, Djibouti, Poland*); **Convention No. 92** (*Denmark: Faeroe Islands, Greece, Panama, Poland, Portugal*); **Convention No. 108** (*Saint Vincent and the Grenadines*); **Convention No. 133** (*Brazil, Greece, Nigeria, Poland, Uruguay*); **Convention No. 146** (*Netherlands: Aruba*); **Convention No. 147** (*Liberia, Netherlands: Aruba*); **Convention No. 163** (*Hungary, Switzerland*); **Convention No. 164** (*Brazil, Hungary*); **Convention No. 165** (*Hungary*); **Convention No. 166** (*Guyana, Hungary, Luxembourg*).

The Committee noted information supplied by the following States in an answer to a direct request with regard to: **Convention No. 146** (*Finland*); **Convention No. 163** (*Spain*).

Fishermen

Liberia

Convention No. 112: Minimum Age (Fishermen), 1959 (ratification: 1960)

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

Further to its previous comments, the Committee notes that under section 291 of the Liberian Maritime Law – Title II of the Liberian Code of Laws – a vessel means any vessel registered under Title II and a fishing vessel means a vessel used for catching fish, whales, seals, walrus and other living creatures at sea. Under section 326(1) of the Maritime Law the minimum age for admission to employment or work on Liberian vessels is 15 years.

The Committee notes that vessels eligible to be documented include by virtue of section 51 of the Maritime Law, *inter alia*, vessels of 20 net tons and over engaged in coastwise trade between ports of Liberia or between those of Liberia and other West African nations; and seagoing vessels of more than 1,600 tons engaged in foreign trade. The Committee recalls in this connection that the Convention applies to fishing vessels which under the terms of *Article 1 of the Convention* include all ships and boats, of any nature whatsoever, whether publicly or privately owned which are engaged in maritime fishing in salt waters. The Committee hopes that the Government will provide information on measures taken or envisaged to apply the Convention to all fishing vessels coming under the purview of *Article 1* of the Convention.

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

Convention No. 113: Medical Examination (Fishermen), 1959 (ratification: 1960)

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

For many years the Committee has asked the Government to indicate whether certain provisions applicable to merchant vessels, i.e. Requirements for Merchant Marine Personnel (RLM-118) and Maritime Regulation No. 10.325(ii) also apply to fishing vessels. The Committee again expresses the hope that the Government will provide full explanations regarding the applicability of the Liberian Maritime Laws and Regulations to the medical examination of fishermen. The Government is requested to indicate whether consultations with the fishing-boat owners' and fishermen's organizations concerned, if they exist, had taken place prior to the adoption of the applicable laws and regulations on the nature of the medical examination and the particulars to be included in the medical certificate as required by *Article 3, paragraph 1*, and to provide particulars on how the age of the person to be examined and the nature of the duties to be performed are taken into account in prescribing the nature of the examination as required by *Article 3, paragraph 2*.

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

Convention No. 114: Fishermen's Articles of Agreement, 1959 (ratification: 1960)

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

The Committee notes the Government's indication that the Committee's comments have been submitted to the Commissioner of the Bureau of Maritime Affairs for immediate action. Referring to its previous comments the Committee requests the Government to provide information on any reaction by the Commissioner. It also urges the Government to provide full information on each of the provisions of the Convention and each question in the report form approved by the Governing Body.

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

Sierra Leone

Convention No. 125: Fishermen's Competency Certificates, 1966 (ratification: 1967)

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

In earlier comments the Committee had noted that there existed no laws or regulations to give effect to the Convention. In its latest report (1995) the Government indicated that it had formulated new regulations for the fishing industry which would incorporate the Committee's comments. The Committee hopes that the Government will provide information on the measures adopted to apply the provisions of the Convention.

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

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States with regard to: **Convention No. 112** (*Ecuador, Mexico, Peru*); **Convention No. 113** (*Costa Rica, Guinea, Panama, Peru*); **Convention No. 114** (*Costa Rica, Cyprus, Ecuador, Panama, Spain*); **Convention No. 125** (*Djibouti, Senegal*); **Convention No. 126** (*Azerbaijan, Brazil, Sierra Leone, Tajikistan*).

Dockworkers

Brazil

Convention No. 137: Dock Work, 1973 (ratification: 1994)

1. With reference to its previous comments, the Committee notes the Government's detailed report received in November 2002. The Government indicates that the Manpower Management Agency (OGMO) has registered around 30,000 dockworkers (17,000 workers registered and 13,000 workers inscribed in the *cadastro*), most of whom are concentrated in the port of Santos (11,000 workers). The Government has maintained the functions of the Special Group for the Roving Supervision of Dock Labour (GEFMPT) and the Special Unit of the Labour Inspectorate for Ports and Waterways with a view to ensuring compliance with the applicable national legislation (and particularly Acts Nos. 8630 of 1993 and 9719 of 1978). A permanent core of 60 labour inspectors has been created in 17 ports for the inspection of the conditions of work, safety and health of dockworkers. The Committee notes with interest the efforts made by means of dialogue between the Government and the social partners to improve the application of the Convention.

2. *Articles 2 and 5 of the Convention.* With reference to its 1999 observation, the Government indicates in its report that the principal obstacle to ensuring that all dockworkers are assured minimum periods of employment or a minimum income is the surplus labour supply existing in ports. The Committee notes with interest that a solution to the problem is being negotiated in a national tripartite commission established as a result of the Southern Cone Project, an ILO technical assistance project for the countries of the Southern Cone of Latin America in the context of the programme for the follow-up of the 1998 Declaration on Fundamental Principles and Rights at Work and its Follow-up, in relation to freedom of association. The objective of the project was to improve industrial relations in the port sector by implementing a national tripartite plan of action (see paragraph 89 of the 2002 General Survey). The Committee notes the reports of the tripartite meetings of 20 February and 19 March 2002 and requests the Government to continue providing information on the results achieved in a tripartite context to give effect to the Convention.

3. The Government also indicates that the social partners have encountered difficulties in making progress in the negotiations. For the employers, a reduction of teams with a view to lowering costs is an essential condition for making progress in the negotiations. The workers' organizations are subject to pressure in view of the great surplus of labour supply. In this context, the Government refers in its report to Bill PL-6021/2001, submitted in December 2001, intended to establish general standards for the creation in organized ports of programmes to promote the retirement and abolish the registration or inscription (*cadastro*) of occasional port workers (*trabalhadores portuários avulsos*). The Committee understands that the Executive Authority withdrew the above Bill in December 2002. The Committee therefore hopes that the Government will continue providing detailed information in its next report on the tripartite efforts made to overcome the difficulties that are being experienced in the port sector, including information on the progress achieved within the framework of the Integrated Programme for the Modernization of National Ports (PIMOP) (*Part V of the report form*).

Sweden

Convention No. 152: Occupational Safety and Health (Dock Work), 1979 (ratification: 1980)

The Committee takes note of the Swedish Transport Workers Union's (STWU) comments, received by the ILO in April 2002, on the Government's latest report. The Government is requested to send its comments thereon.

United Republic of Tanzania

Convention No. 137: Dock Work, 1973 (ratification: 1983)

The Committee notes with regret that no report has been received from the Government since 1992 on the situation of dockworkers. This is of particular concern as the Government had earlier indicated that the number of dockworkers was likely to be affected by the introduction of high-technology facilities. The Committee hopes that a report will be supplied for examination at its next session and that it will contain full information on the matters raised in its direct request of 1993, which read as follows:

Article 3, paragraphs 2 and 3, of the Convention. The Committee notes, in particular, statistical information concerning occupational categories of registered dockworkers. The Committee would be grateful if the Government would indicate, in its next report, the manner in which registered dockworkers are assured priority of engagement for dock work and are required to make themselves available for work. It also asks the Government to continue to provide particulars of the numbers of dockworkers (including those in Zanzibar) on the registers maintained in accordance with this Article and of variations in their numbers during the period covered by the report, in accordance with *Part V of the report form*.

Article 4. The Government indicates that the number of dockworkers will be undoubtedly affected as a result of the introduction of high technology facilities. It states that the review of the registers is conducted in such a way that the needs of the

ports are met and detrimental effects on dockworkers through redundancies, lay-offs, etc., are minimized. Please describe in more detail the measures instituted to prevent or minimize detrimental effects on dockworkers of a reduction in the strength of registers, and the criteria and procedures laid down for the implementation of these measures.

Article 5. The Committee takes note of the information in the Government's report concerning cooperation between employers and workers through high-level meetings (e.g. the Master Workers' Council). Please state whether any measures have been taken to encourage further cooperation between employers or their organizations, on the one hand, and workers' organizations, on the other hand, in improving the efficiency of work in ports.

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

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States with regard to: **Convention No. 137** (*France, Italy, Kenya, Netherlands: Aruba, Norway*); **Convention No. 152** (*Congo, Guinea*).

Indigenous and Tribal Peoples

Bolivia

Convention No. 169: Indigenous and Tribal Peoples, 1989 (ratification: 1991)

The Committee regrets to note that the Government's report has not been received. It is therefore forced to repeat its previous observation, which read as follows:

1. The Committee notes the Government's last report received in 1998, the analysis of which was postponed due to the examination of a representation. The Committee notes that this report does not contain replies to the matters raised by the Committee in its last direct request in 1995, nor information on the application of the Convention in practice. The Committee also notes that the Government has not yet provided information on the effect given to the recommendations made by a tripartite committee set up to examine a representation made by the Bolivian Central of Workers (COB) alleging non-compliance by the Government of Bolivia, with some provisions of the Convention, which were adopted by the Governing Body in March 1999 (document GB.274/16/7).

2. The allegations made by the COB referred principally to the administrative decisions of the National Forestry Superintendency granting 27 forestry concessions for a duration of 40 years, which can be renewed, and which overlap with six traditional indigenous territories, without any prior consultation. These areas are undergoing a process of review in order to determine the rights of third parties in their respect.

3. The tripartite committee concluded that, in view of the fact that the review of claimed land, of expropriations and of concessions for the exploitation of resources may directly affect the viability and interests of the indigenous peoples concerned, *Article 15 of the Convention* should be read in conjunction with *Articles 6 and 7*, and by ratifying the Convention, governments undertake to ensure that the indigenous communities concerned are consulted promptly and adequately on the extent and implications of exploration and exploitation activities, whether these are mining, oil or forestry activities.

4. It added that, as the lands for which the forestry concessions overlap have not yet been designated as community-held lands, it had not received any evidence indicating that such consultations, whether under *Article 6(a)* or *Article 15, paragraph 2*, of the Convention, had been carried out or whether provision had been made for the peoples concerned to participate wherever possible in the benefits of such activities.

5. The Governing Body accordingly requested the Government: (a) to supply detailed information to the Committee of Experts on the measures taken or envisaged to give effect to the provisions of the Convention referred to in the foregoing paragraphs; (b) to apply fully the provisions of *Article 15* of the Convention and consider engaging in consultations in each particular case, especially when large tracts of land such as those referred to in the representation are affected, as well as environmental, cultural, social and spiritual impact studies, jointly with the peoples concerned, before authorizing the exploration and exploitation of natural resources in areas traditionally occupied by indigenous peoples; (c) to inform it of the process of reviewing title under way in the community-held lands and on the establishment or maintenance of the appropriate consultation procedures which must be carried out before undertaking any programme for the exploration or exploitation of natural resources, as provided by the Convention; (d) to inform it of the progress made in practice with regard to consultations with the peoples concerned, their participation wherever possible in the benefits of the concessions and their receipt of fair compensation for any damages which they may sustain as a result of this exploitation; and to pay special attention in its report to the specific situation of indigenous communities which would sustain a greater impact from the effects of forestry concessions in their territories; and (e) to request the complainants to inform the Committee of Experts whether they have availed themselves of the right to appeal to the Supreme Court of Justice and, if so, to inform it of the outcome, and concerning the appeal filed with the System for the Regulation of Renewable Natural Resources (SIRENARE).

6. The Committee hopes that the Government will provide in its next report the information indicated in the previous paragraph and that it will indicate in particular: (1) the measures adopted or envisaged to resolve the situations which gave rise to the representation, taking into account the need to establish an effective mechanism for prior consultation with the peoples concerned, as required by *Articles 6 and 15* of the Convention, before undertaking any programme of exploration or exploitation of the resources pertaining to their land; (2) the progress achieved in practice with regard to the consultations held with the peoples located in the area in which the 27 forestry concessions overlap with the community-held lands, including information on the participation of these peoples in the use, management and conservation of these resources and in the benefits of forestry activities, as well as the granting to them of fair compensation for any damages which they may sustain as a result of the exploration and exploitation in the area; (3) the progress made in the process of reviewing and granting ownership title to the peoples concerned who inhabit the areas affected by the overlapping forestry concessions; and (4) the specific situation of indigenous groups inhabiting the area covered by the concessions. Please also provide information on any appeals lodged and any judicial or administrative decisions issued in such cases which are related to the problem examined in the representation. The Committee hopes that the Government will provide detailed information on these matters in its next report.

[The Government is asked to report in detail in 2004.]

Colombia

Convention No. 169: Indigenous and Tribal Peoples, 1989 (ratification: 1991)

1. The Committee notes the information provided in the Government's reports received in October 2002 and September 2003, respectively, and their annexes.

2. The Committee notes with interest the adoption of Act No. 685 of 2001 issuing the Mining Code, recognizing extensive rights to indigenous communities to control the exploration and exploitation of the minerals in their lands. This issue is addressed in greater detail in a request addressed directly to the Government.

3. The Committee notes the information provided by the Government in its reports indicating that the Council of State, in a decision of 20 May 1999, confirmed that Decree No. 1320 of 1998 was in force before the representation referred to below had been examined. The Government indicated that the Decree sets forth the concept contained in article 330 of the Constitution concerning the participation of the representatives of indigenous peoples without any restrictions and that its regulation by means of a Decree was consonant with the duty and function entrusted to the Government by the Constitution. The Committee reminds the Government that the tripartite committee which examined the representation under article 24 of the ILO Constitution in 2001 indicated that the process of prior consultation, as provided for in Decree No. 1320, is not consistent with *Articles 2, 6, 7 and 15 of the Convention*, and that effective consultation requires that sufficient time be given to allow the country's indigenous peoples to engage in their own decision-making processes and to participate effectively in decisions taken in a manner consistent with their cultural and social traditions, since if this is not done it will be impossible to meet the fundamental requirements of prior consultation and participation (document GB.282/14/3, paragraph 79). The Committee trusts that, as consultation and participation are central to this instrument, the Government will consider amending its legislation to bring it into conformity with *Articles 2, 6, 7 and 15* of the Convention. As the above Decree is still being re-examined in the light of the Governing Body's recommendations concerning the representation, the Committee trusts that the Government will take fully into account the explanations provided in the report of the Governing Body on the requirements of these Articles of the Convention. In this respect, the Committee notes the extensive consultations with indigenous communities referred to by the Government in relation to various projects.

4. With reference to its comments on the oil exploitation activities in the *Resguardo Unido U'wa*, the Committee notes the information provided by the Government indicating that in the event of the cession of rights, exploration for hydrocarbons will be entrusted to a Colombian state enterprise (Ecopetrol) with the objective of balancing public finances and achieving the well-being of all Colombian citizens, and that this situation is being explained to the communities concerned. The Government also indicated that a social action plan has been established covering 51 communities in the area of influence of the project for the promotion of social investment, the employment of unskilled and semi-skilled workers, community participation and support for community organization and training in entrepreneurship for the provision of services to the oil project. The Government added that in March 2003 the Ministry of the Environment undertook a first follow-up visit and that on 17 March 2003 a meeting was held with ten representatives of the U'wa people through the Association of Traditional U'wa Authorities (ASOU'WA) to inform them of all the technical, environmental and social aspects of an exploration project to be undertaken in the *resguardo*, and a proposal was made for the joint development of a working methodology with Ecopetrol with a view to the active, broad and full participation of the U'wa people in this process. The Committee also notes the Government's indication concerning the establishment of an inter-institutional team with the participation of the Ministries of the Interior and Justice, the Environment, Housing and Territorial Development, Mines and Energy, Agriculture, External Affairs, as well as the National Parks Unit and the Colombian Agrarian Reform Institute. This team is to provide leadership for all the action required so that the process of prospecting for hydrocarbons in the U'wa territory is in accordance with international agreements, the constitutional provisions and laws that are in force and is based on the optimum existing technological developments. The objective is to ensure that the oil project, rather than being a threat, constitutes an opportunity for resuscitating, strengthening and maintaining the millennial culture of the U'wa, while guaranteeing the environmental and ecological balance of the territory and at the same time giving rise to peace and sustainable development, thereby contributing to generating prosperity and ensuring the survival of the U'wa people. The Committee would be grateful if the Government would keep it informed of any developments in its next report and trusts that it will adopt all the necessary measures to guarantee that the U'wa people benefit from all the rights afforded by the Convention.

5. The Committee notes the information provided by the Government in its reports concerning negotiations with the representatives of the Embera-Katio people concerning the construction of the Urrá hydroelectric dam. The Committee notes with interest the payment of the amount granted as compensation for the exploitation of water resources, which was negotiated with the Alliance of Smaller Town Councils of the Esmeralda River and the Sinú River Areas, which will be used to purchase lands to extend the *resguardo*. It also notes with interest that, as a result of a decision by the Ministry of the Environment, the enterprise Urrá S.A. purchased 9,994 hectares for the Embera Katio del Alto Sinú people. The Government indicates that it has granted a subsistence and transport subsidy to the members of the five communities constituting this Alliance and that a court ruling is still awaited on the granting of other entitlements of the Major Town Councils of the Río Verde and Río Sinú (Iwagadó). The Government indicates that meetings have been held by two follow-up committees to analyse the status of the entitlements acquired, but that there are difficulties in holding further meetings and in the implementation of new projects in view of a crisis within the indigenous organizations. The Committee trusts that the Government will continue to provide information on the progress achieved in this respect in its next report.

6. The Committee notes that the Government has not provided information on the measures adopted or envisaged to investigate the acts referred to in the report of the tripartite committee which formulated the recommendations adopted by the Governing Body at its 282nd Session (November 2001) concerning the use of force against the U'wa people. The Committee requests the Government to provide information in its next report.

7. The Committee once again regrets the lack of information in the reports on the measures adopted or envisaged to prevent acts of intimidation and violence against members of the Embera-Katio people and on the progress made with the investigations of the alleged murders, kidnappings and threats perpetrated against the spokespersons of the community, including Alonso Domicó Jarupia, Alirio Pedro Domicó, Lucindo Domicó Cabrera and Kimy Domicó Pernía.

8. Reiterating its previous comments, the Committee requests the Government to indicate the progress made in the investigations of the allegations of human rights violations, including the killing of indigenous persons in the communities of the Sierra Nevada de Santa Marta and to specify the institutions which are carrying them out, such as the Public Prosecutor's Office, the Office of the Attorney-General or the Office of the Ombudsman.

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

Costa Rica

Convention No. 169: Indigenous and Tribal Peoples, 1989 (ratification: 1993)

1. The Committee notes the detailed information provided in the Government's report, including statistical data and judicial rulings, as well as the various annexes.

2. *Article 7 of the Convention (development plans)*. The Committee regrets to note that Bill No. 12032 on the autonomous development of indigenous peoples has been shelved. The Committee requests the Government to consider other alternatives of an administrative or legislative nature to permit the economic, social and cultural development of indigenous peoples with the direct participation of the indigenous groups concerned in the formulation, implementation and evaluation of the corresponding policies. The Committee requests the Government to keep it informed in its next report of any progress achieved.

3. *Articles 14 and 18 (land)*. The Committee notes the Government's indication that of the total indigenous population in Costa Rica (63,876 persons), 42 per cent live in indigenous lands, 18 per cent live on the periphery of these lands and 40 per cent in the rest of the country. In its previous comments, the Committee noted the Government's indication of the existence of large areas of indigenous lands in the possession of non-indigenous persons and it requested the Government to indicate the progress achieved in returning these lands to their indigenous owners, and on the procedures that currently exist within the national legal system so that indigenous peoples can reclaim land which they have lost, or of which the possession or status as "reservations" has still not yet been determined.

4. The Committee notes the Government's indication in its report that the National Commission for Indigenous Affairs commenced transferring lands within its responsibility to the indigenous reservations of Boruca, Térraba and Curré and that it will continue doing so for other communities. It also notes the information provided by the Government on the various procedures through which indigenous peoples can reclaim land. The Committee trusts that the Government will continue providing information on the recovery of indigenous lands in the possession of non-indigenous persons, particularly in reservations in which the indigenous population is in the minority, and on the measures taken for the establishment of new reservations.

5. The Committee reiterates its previous comment in which it requested the Government to provide information on the amount of indigenous lands which are still in the possession of non-indigenous persons.

6. *Article 15 (natural resources)*. The Committee notes the Government's indication in reply to its previous direct request that indigenous peoples have the rights over the use and management of the natural resources existing in their lands. It notes in particular Decree No. 27800 of 16 March 1999 (supervision of forest resources) and the training of indigenous persons as inspectors and guards in reservations. It also notes the content of Communiqué No. DM-1426-2003, dated 14 July 2003, of the Ministry of the Environment and Energy, specifying that Act No. 7788 respecting biodiversity envisages the participation of indigenous persons in all matters relating to the conservation of biodiversity and the sustainable use of natural resources. The Committee hopes that the Government will provide additional information in its next report on the application of this legislation in practice.

7. *Article 16 (relocation)*. In its previous observation, the Committee referred to the Government's indication that the Electricity Institute of Costa Rica (ICE) is investigating the possibility of displacing indigenous populations in order to construct a hydroelectric dam. The Committee requested the Government to provide information on the proposed project and the persons affected, with an indication of their number, the size of their territories and how much of these lands the ICE wished to appropriate. It also requested information from the Government on the procedures existing for consultations with the peoples affected and for their effective representation in any relocation processes that are under consideration. The Committee notes the ICE's information referred to in the Government's report that the future energy needs of the country make it necessary to construct a new hydroelectric plant in Boruca. The ICE adds that studies have been undertaken for this purpose for 30 years to evaluate the technical, economic, environmental and social perspectives. The ICE emphasizes that the investment will promote the development and well-being of Costa Rican society and refers to the need to reach an understanding with the Brunca, Teribe, Cabécar and Bribri peoples which inhabit the area through dialogue, understanding and compliance with the legislation and the Convention. The ICE adds that those principally affected will be 3,000 members of the indigenous Teribe and Brunca peoples as a result of the flooding of 14.7 per cent of the total 332.8 km² belonging to Indian reservations. The ICE states that it will be necessary to remove approximately 500

indigenous persons and that negotiations will be held in accordance with the provisions of the Convention. The Committee trusts that the Government will provide detailed information on the nature of the information, participation, consultation and negotiation processes engaged in with the representatives of the indigenous communities affected directly or indirectly by this project.

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

Denmark

Convention No. 169: Indigenous and Tribal Peoples, 1989 (ratification: 1996)

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

1. The Committee notes the second report of the Government, and is raising some points in a request addressed directly to the Government.

2. It also notes that a representation was filed in November 1999 by the Greenlandic trade union Sulinermik Inuusutissarsiuqartut Kattuffiat (SIK) concerning the application of the Convention by Denmark. Its examination was concluded by the Governing Body at its 280th Session (March 2001) (document GB.280/18/5). In its report it concluded that, in general "the Committee concludes that the measures taken in this respect since 1997 (when the Convention entered into force for Denmark) by the Government are consistent with the Convention. Noting the spirit of consultation and participation that is the hallmark of this instrument, however, it urges the Government and the groups most directly affected, to continue their common search for solutions".

3. The Governing Body requested the Government to provide information to the Committee of Experts on a certain number of points arising under the representation:

- the decision of the Danish Supreme Court on the appeal taken from the 20 August 1999 decision of the High Court of the eastern district of Denmark in the case arising out of the 1953 relocation of the population of the Uummannaq community in the Thule district of Greenland;
- any further measures taken or envisaged to compensate the persons relocated from the Uummannaq community for losses incurred as a result of the relocation;
- any consultations as prescribed by sections 12(1) and (2) of the Home Rule Act which are being held or may be held with the Home Rule authorities regarding future use of the land occupied by the Thule Air Base or the use of any other land in the Thule district;
- the measures which have been taken or are contemplated to ensure that no Greenlanders are relocated in the future without their free and informed consent or, if this is not possible, only after appropriate procedures in accordance with *Article 16 of the Convention*.

4. The Committee looks forward to receiving this information in the Government's next report.

Ecuador

Convention No. 169: Indigenous and Tribal Peoples, 1989 (ratification: 1998)

1. The Committee notes the information provided by the Government in its report and the attached texts.

2. In its previous comments, the Committee referred to the recommendations of the Governing Body in relation to the representation made by the Ecuadorian Confederation of Free Trade Union Organizations (CEOSL). This workers' organization alleged the failure to hold consultations through appropriate procedures, particularly with regard to the Shuar people, in relation to the granting of contracts by which the State delegated to individual contractors the right to carry out oil exploration and exploitation activities. In accordance with the recommendations of the tripartite committee set up to examine the representation, the Committee of Experts requested the Government to report in detail on the effect given to the recommendations of the tripartite committee, and in particular on: the establishment of an effective mechanism for prior consultations; the progress achieved in practice in respect of consultations for the peoples situated in the zone of "Block 24", including information on the participation of these peoples in the use, management and conservation of these resources and in the benefits from oil-producing activities, as well as their receipt of fair compensation for any damage caused by exploration and exploitation in the zone. The Committee notes the information provided by the Government in its last report indicating that the Governing Body's recommendations were forwarded to the Ministry of Energy and Mines and it trusts that the Government will provide a detailed reply in its next report on the action taken.

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

[The Government is asked to report in detail in 2005.]

Guatemala

Convention No. 169: Indigenous and Tribal Peoples, 1989 (ratification: 1996)

1. The Committee notes the information provided in the Government's report received in the Office on 31 August 2002, the report dated 1 September 2003 and the communication transmitted to the Office on 9 June 2003. It also notes the information provided by the Government in its report on the application of the Recruiting of Indigenous Workers

Convention, 1936 (No. 50), and the annexes to the above report. The Committee also notes the report provided by the Government to the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, and the content of the report prepared by the Special Rapporteur for the 59th Session of the United Nations Commission on Human Rights, held in February 2003. The Committee further notes the legislative texts provided by the Government with its reports, and particularly Government Agreement No. 258-2003 establishing the National Compensation Programme.

2. The Committee also notes the detailed report on the application of the Convention sent by the Trade Union of Workers of Guatemala (UNSTRAGUA) in September 2003, and requests the Government to provide its comments thereon with its next report.

3. *Article 2 of the Convention.* The Committee notes the intense legislative activity, particularly over the past two years, on the rights of indigenous peoples and their development. The Committee notes with interest the reform of the Penal Code (Decree No. 57-2002) penalizing discrimination on grounds, among others, of race and ethnic group; the adoption of the Act promoting educational activities against discrimination (Decree No. 81-2002) implementing non-discrimination programmes in teaching and the activities of the Ministry of Culture and Sport; and the adoption of the Act respecting national languages (Decree No. 19-2003) guaranteeing and protecting the languages of the Maya, Garífuna and Xinka peoples. It also notes the reforms to the Municipal Code by Decree No. 12-2000, particularly with regard to the recognition of indigenous authorities and their customary laws. The Committee would be grateful if the Government would provide information on the manner in which the new legislative structure relating to indigenous peoples will be made known to the public in general. It also requests the Government to provide a general evaluation, in so far as possible, on the impact of the new legislation on the application of the provisions of the Convention.

4. The Committee notes with interest the information provided by the Government concerning the establishment of an Indigenous Affairs Commission in the Supreme Court and the creation of the Presidential Commission on Discrimination and Racism against Indigenous Peoples in Guatemala (Government Agreement No. 390-2002). It also notes the restructuring of the Guatemalan Indigenous Fund (FODIGUA), as well as the adoption of Ministerial Agreement No. 525-2002 of the Ministry of Culture respecting sacred sites. The Committee would be grateful if the Government would provide a copy of this Agreement with its next report and provide information that is as detailed as possible on the activities of the above commissions and the Fund for the achievement of their respective objectives.

5. The Committee takes special note of the information provided by the Government in its report to the effect that the measures adopted have not yet been sufficient to eliminate the inequality, marginalization and exclusion of indigenous peoples. It also notes the Government's indication that, although the authorities justify the measures taken against racism and exclusion on the basis of the principle of equality, this principle is not given effect in law or practice. The Committee welcomes the attitude shown by the Government when it charges racists of failing to recognize that a people that has been subjected for 300 years requires effective mechanisms to strengthen it and create the conditions for its development in a manner which gives effect to the principle of equality. While recognizing that, despite the efforts made, these ideals cannot be achieved easily and in the short term, the Committee encourages the Government to continue its efforts to convert these aspirations into reality, based on the strict application of the programmes adopted and their follow-up as necessary.

6. The Committee notes the information provided in the report of the Special Rapporteur indicating that the measures adopted by the Government have had little effect in combating the political, economic, social, occupational, educational and cultural discrimination suffered by indigenous communities. The same opinion was expressed previously in the report of the United Nations Verification Mission in Guatemala (MINUGUA) in 2001, which was examined in detail in the Committee's previous observation. The Committee expresses the very firm hope that the Government will be in a position to provide information in its next report on the positive impact of the legislative measures and various initiatives it has taken to promote tolerance in civil society and to provide a basis for the effective participation of indigenous peoples in the adoption of decisions in the areas referred to by the various parts of the Convention, as well as for the implementation of the Peace Agreements, and particularly the Agreement on the Identity and Rights of Indigenous Peoples (AIDPI) and in relation to the socio-economic and agrarian situation.

7. *Article 6.* The Committee takes due note of the information contained in the Government's report indicating that, although an ideal mechanism has not been established for consultation with indigenous peoples, the Government's policies are not prejudicial to these peoples. The Committee notes in this respect the information provided by the Government indicating that the representation of the Government and indigenous peoples has been increased in the Joint Reform and Participation Commission to strengthen its plurality and increase the participation of women. It also notes that the Commission is currently formulating draft legislation on consultation mechanisms with indigenous peoples. The Committee trusts that the Government will be in a position to report the adoption of this legislation in its next report and to provide details of the degree of representativeness achieved, taking into account the existence of the numerous indigenous communities. With reference to the information provided in the Government's last report, the Committee would be grateful if it would provide information in its next report on the progress achieved in the establishment of a consultative body for the Mayan people.

8. The Committee notes with interest that, through the Joint Reform and Participation Commission, proposals made by the representatives of indigenous peoples have been incorporated into the Decentralization Act, the Act respecting

urban and rural development councils and the Municipal Code. The Committee requests the Government to provide information in its next report on the number and nature of the consultations held with indigenous peoples under section 26 of Decree No. 11-2002, which amended the Act respecting urban and rural development councils.

9. *Article 20.* The Committee notes the information provided by the Government in its report on the application of the Recruiting of Indigenous Workers Convention, 1936 (No. 50), which it is examining in the context of the present Convention. It notes that a special recruitment contract has been developed to guarantee the rights of indigenous workers in relation to labour recruiters. It also notes the information concerning the forms used by the Association of Employment Advisers to prevent abusive practices in the hiring of temporary Guatemalan migrant workers. The Committee requests the Government to continue providing information on the measures adopted or envisaged to control abusive practices in the recruitment of indigenous workers for agricultural activities which occur, according to the Government, both in Guatemala and in the south of Mexico and Belize. Please also indicate any measures to prevent chiefs and other indigenous authorities acting as recruiting agents or exerting any pressure on workers who may be recruited, or who receive pay or any other special consideration for assisting in recruitment. The Committee notes that comments on the application of Convention No. 50 were included in the communication by UNSITRAGUA.

10. A more detailed request is also being addressed to the Government on certain points.

[The Government is asked to report in detail in 2005.]

Honduras

Convention No. 169: Indigenous and Tribal Peoples, 1989 (ratification: 1995)

1. The Committee notes the detailed information provided in the Government's report, and the numerous annexes attached.

2. The Committee notes with interest the large volume of legislative measures and regulations in relation to indigenous peoples adopted since the last report. Despite the lack of specific legislation governing indigenous peoples, the Committee notes the allocation of responsibilities for indigenous affairs and the proposal to establish the National Commission on the Affairs of Indigenous and Black Peoples (CONAIN). Please indicate whether this body has now been established, and provide information on its activities.

3. The Committee notes the Government's indication that the draft amendment of article 107 of the Constitution, which would have allowed private individuals to acquire lands along the coast, to the detriment of the land claims of indigenous peoples, is not being pursued.

4. The Committee notes with interest that the Government ratified the International Convention on the Elimination of All Forms of Racial Discrimination by means of Decree No. 61-2002, which came into force on 6 July 2002.

5. *Article 14 (land rights).* The Committee notes with interest the adoption of Executive Agreement No. 035-2001 establishing the Intersectoral Commission for the Adjudication, Extension, Validation and Protection of the Ownership of Garifuna and Misquita Lands, the principal objectives of which include contributing to the provision of effective guarantees of the ownership rights of the lands possessed by these peoples and which constitute their normal habitat. The Committee also notes the process of the regularization of land titles for the Garifuna, Lenca, Tolupán, Chorti and Pech communities. The Committee trusts that the Government will provide information in its next report on the outcome of the process of regularizing the land titles of the Misquita and Tawahaka and other communities. It also requests the Government to continue providing information on the action taken under the Land Title Programme.

6. The Committee notes the information provided by the Government in its report on the proceedings relating to land claims by indigenous populations. The Committee also notes the indications provided by the Government concerning the existence of conflicts relating to land tenure between members of the Tolupán population and owners of sawmills and coffee growers who have appropriated their traditional forests and lands, whether or not through legal means. The Committee trusts that the Government will continue to provide information on this matter in its next report.

7. The Committee is addressing a more detailed request directly to the Government on certain points.

India

Convention No. 107: Indigenous and Tribal Populations, 1957 (ratification: 1958)

1. The Committee notes that the Government has submitted a very brief report in reply to the previous direct request, and that in several respects has indicated that gathering the information requested would take some time and that the information would be submitted when available. The Committee recalls that at its previous session it requested a detailed report for the present session, and hopes the Government will provide such a report for its next session. It is therefore repeating the previous direct request.

2. In addition, the Government has provided no comments on the observations communicated by the Chemical Mazdoor Sabha, a workers' organization, on the situation of tribal people in Narmada Valley, which was sent to the

Government on 11 June 2003. The Committee requests the Government to make any comments it may have on this communication, in time for the next session.

[The Government is asked to report in detail in 2004.]

Norway

Convention No. 169: Indigenous and Tribal Peoples, 1989 (ratification: 1990)

1. The Committee notes the extensive documentation and comments communicated both by the Government and by the Norwegian Sami Parliament, which, in accordance with the wishes stated by the Government on ratification, plays a direct role in the dialogue associated with supervision of the application of the Convention.

2. *Articles 6, 7 and 13 to 19 of the Convention.* The main point at issue is related to the proposed Finnmark Act. As indicated in the Government's report, on 4 April 2003 it introduced "a bill to regulate legal relationships and administration of land and natural resources in the county of Finnmark." As the Government's report states, while Sami predominate in inner Norway, Sami and other Norwegians "live side by side in Finnmark County. Sami interests therefore need to be balanced against the interests of the remainder of the population in the county if the regime is to come across as just and unifying". While the facts are not in dispute, being a matter of public record, the Sami Parliament and the Government disagree about the conformity with the Convention of both the process leading to proposal of the bill (*Articles 6 and 7*), and the impact on the land rights of the Sami people if the bill is made law (*Articles 13 to 19*).

3. The Committee notes that as this comment is being considered the proposed bill has not yet been enacted, but that work is under way for its enactment. A decision on whether or not to adopt it may have been taken by the time the Committee's report is published.

4. *Process leading to the proposal.* Article 6 of the Convention provides:

1. In applying the provisions of this Convention, governments shall:
 - (a) consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly; ...
2. The consultations carried out in application of this Convention shall be carried out, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.

5. Consultations between the Sami representatives, the Finnmark government and the national government have gone on for over 20 years on this subject. As indicated in the preamble to the bill, the basis of the proposal is the work of the Sami Rights Commission (SRC) on clarifying and securing the legal position of the Sami people in Norway. The SRC was established in 1980; its first report formed the basis for the Sami Act of 1987 and for section 110a of the Norwegian Constitution relating to the Sami people in 1988. The first election of the Sami Parliament was held in 1989. In 1997 the SRC adopted a report on legal relations and land use in Finnmark, which has been the subject of consultations ever since.

6. The accounts of the consultations between the Government and the Sami Parliament on land rights differ. The Sami Parliament report indicates that problems in dialogue arose in 2001 and 2002, when:

... suddenly the openness in discussing concrete solutions was gone, and only ... pieces were communicated to the Sami Parliament, and not even in writing. ... The frustration in the Sami Parliament due to the lack of openness in the process led to a breach in confidence between the parties and to a halt in the contact between the Sami Parliament and the Government. The Sami Parliament stated in June 2002 that in order to continue the process, a complete text had to be put forward and that the minimum principal basis for the text had to be that it was built on the original proposals and that it was in compliance with international law. No formal response came from the Government to that request, but the minimum information strategy continued until the actual bill was presented The proposed Finnmark Act is a unilateral proposal from the Norwegian Government alleged to bring a solution and end to the lengthy debate of Sami rights to lands and waters in Norway.

7. The Sami Parliament report goes on to quote the 1998 report of the SRC subcommittee of experts on international law, discussing a possible solution similar to the one contained in the bill now in question (the substance is examined below), and stating that: "Given that indigenous peoples may be allowed to transmit their rights in this respect to peoples outside the indigenous community, a system of this type, involving joint land management in Finnmark, could be acceptable, provided the Sami Parliament consented to the arrangement, but otherwise not."

8. Finally, the Sami Parliament objects to being "regarded as just one of all the other so-called 'interested parties' in matters heavily affecting the Sami people such as the land rights issue".

9. The Government has indicated in its reply to the Sami Parliament's comments that the Sami Rights Commission's report was only one of the elements being considered by the Government, which also took into account the extensive material gathered during hearings. The bill is, however, based on the basic principles of the majority proposal made by the SRC, but some different choices have been made than those proposed by the SRC. The Government states that dialogue has continued in the same way as under previous governments, and reports the meetings held since 2001. The Committee notes that whereas the Sami Parliament characterizes these meetings as not having been true negotiating sessions, the Government position is that these were real negotiations, even if agreement could not be achieved. The Government recalls that *Article 6* does not require that agreement be reached, but rather that the negotiations be carried out in good faith.

10. Addressing the allegations that these procedures leading to the proposals for the Finnmark Act were contrary to *Articles 6 and 7* of the Convention, the Government states that it has tried to achieve agreement or consent from the Sami Parliament to the extent possible by presenting and discussing possible models for a Finnmark Act at the meetings which have been arranged with the Sami Parliament and the Finnmark City Council. Unfortunately, states the Government, it has not been possible to achieve such an agreement or consent as desired. The Government concludes that the obligation to consult refers to the entire process of adopting legislation, and not only to the preparations for the submission and the readings in Parliament. "The total process cannot be evaluated until the conclusion of the case, but the intention of achieving as much agreement as possible with the Sami Parliament has been the aim throughout the entire process." The Government indicates that the Storting's (Parliament) Law Committee has asked for a legal opinion on the Finnmark Act's proposal based on international law, which was to have been completed by the end of October 2003. The Committee has not received a copy of that opinion.

11. *Substance of the proposal.* In Finnmark County, which, as indicated above, is inhabited jointly by Sami and other Norwegians, the extent of land rights and access to land have been in dispute for many years. The Government acknowledges that "parts or all of Inner Finnmark consist of land which the Sami people traditionally occupy ... However, the SRC has not provided any basis for the Government to identify precisely which lands the Sami people traditionally occupy within the county".

12. The Government states that the proposed new arrangement is designed to protect Sami interests, and will provide security and predictability in terms of protecting the natural resources underlying Sami culture and the use of outlying land. The Act "builds on a future administrative arrangement for Finnmark based on the principle that there should be no differences in rights for the inhabitants of Finnmark based on ethnicity". The Finnmark proposal would create the Finnmark Estate and transfer to it the State's title to the 95 per cent of Finnmark County that the State now holds. The Estate would own and administer land and natural resources in Finnmark on behalf of all the inhabitants of Finnmark, both Sami and other Norwegians. It would be managed by a Board that would consist of three members selected by the Sami Parliament and three elected by the Finnmark County Council, with a non-voting member to be appointed by the State. The non-voting member would have the right to refer any decisions on which there was not a majority to the Government for decision. The Government states that this solution is intended to give both the Sami people and the remainder of the population in Finnmark greater influence over the county's development, based on the obligation to protect the natural resource base for Sami culture.

13. The proposal would open up resource use in the region to all Norwegians, under the rules to be laid down by the Board. Resource exploitation in traditional areas is reserved to the Sami at present.

14. *Compliance with the Convention.* The Committee recognizes the very difficult issues raised by mixed Sami and non-Sami occupation of Finnmark County, and the uncertainty over the rights that Sami and other Norwegians should enjoy there. It has been the subject of long and difficult negotiations until recently.

15. The process of consultation has been going on in good faith for many years, but it is apparent that frustration over the failure to reach agreement led to a breakdown in the communications. Whether or not the Government considered that it was still negotiating in good faith as of 2001, the Sami Parliament did not feel that true consultations were still going on. In light of the differing interpretations of what was occurring, the Committee cannot be sure whether the consultations at this time remained open to the Sami Parliament being able to influence their outcome; it is apparent that there was a breakdown in confidence between the two sides, though sporadic consultations were still being held in a different form from previously.

16. As concerns the substance of the proposal for the Finnmark Estate, it appears to go beyond what is permitted under *Article 14* of the Convention, though under the proper circumstances it could be in conformity with *Article 15*.

17. The proposal would transfer state ownership of 95 per cent of the land in the county to the Estate. It appears that this would include areas that Sami claim as their land by right of long occupation, and to which the Government acknowledges in principle that the Sami do have rights, though the extent of these lands and the content of the rights have not yet been identified as required in *Article 14* of the Convention. It would give the Sami a significant role in the management and use of a larger area than that to which they now have rights, and the Government indicates that they would have more benefits from the management of the larger area than under the present situation. However, the proposal would replace the rights of ownership and possession recognized by the Convention with a right to a large share in administration of the region.

18. On the other hand, the proposals for the Estate would appear to be closer to compliance with *Article 15*, which recognizes that the right to natural resources on indigenous lands is often retained by the State, and that if this is so indigenous and tribal peoples on whose lands these resources lie must be able "to participate in the use, management and conservation of these resources" (*Article 15(1)* of the Convention).

19. The process and the substance are inextricably intertwined in the requirements of the Convention, and in the present conflict. It appears to the Committee that if the Sami Parliament, as the acknowledged representative of the Sami people of Norway, were to agree to the proposal, they could accept this solution as a resolution of the claims of land rights which have long been the subject of negotiation between the Sami and the Government. The adoption of the

Finnmark Estate without such agreement amounts, however, to an expropriation of rights recognized in judicial decisions in Norway and under the Convention.

20. The Government states in its reply to the submission made by the Sami Parliament to the Committee that although the Sami Parliament has levelled criticism and has called for changes to the Act, it should be noted that the Sami Parliament has not rejected the Act.

21. The Committee notes the need to guarantee the land rights of both the Sami and non-Sami populations of the region, and recognizes that the solution must be fair, and perceived as fair, for both parts of the population. The Convention recognizes special rights for indigenous and tribal peoples in view of the vulnerability of their traditional way of life to the loss of land rights on which it is based, and the long occupancy that they often have practiced. The Convention does not, however, contemplate depriving other parts of the national population of the rights they have also acquired through long usage. In areas of Norway in which the Sami are the sole, or principal, inhabitants the implementation of this principle is much simpler than in Finnmark.

22. In these circumstances, the Committee urges the Government and the Sami Parliament to renew discussions on the disposition of land rights in Finnmark, in the spirit of dialogue and consultation embodied in *Articles 6 and 7* of Convention No. 169. It once again draws attention to the provision in *Article 14(1)* that “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”.

Paraguay

Convention No. 169: Indigenous and Tribal Peoples, 1989 (ratification: 1993)

1. The Committee notes with regret that no report has been communicated following the detailed observation made in 2002 and the long discussion of this case that took place in the Conference Committee on the Application of Standards in June 2003.

2. The Committee recalls that the available information indicates serious problems in the application of the Convention in Paraguay, as outlined in the previous comments, and that communication between the Office and the Government on this situation has been restricted. The Committee notes from the information communicated by the Government during the discussion in the Conference Committee that some measures are being taken, but that a great deal remains to be done.

3. The Committee once again draws attention to the allegations of forced labour being practised against indigenous peoples received from the World Confederation of Labour in 1997, and regrets that the Government also has not provided a report on the application of the Forced Labour Convention, 1930 (No. 29).

4. The Committee also notes that during the Conference Committee discussion the Government requested the Office’s technical assistance, which the Office had not yet found it possible to provide by the time of the Committee’s session; it hopes that efforts will continue in this respect, and will shortly show positive results.

5. The Committee is therefore repeating its previous direct request, and hopes to receive a detailed report from the Government for its next session.

[The Government is asked to report in detail in 2004.]

Peru

Convention No. 169: Indigenous and Tribal Peoples, 1989 (ratification: 1994)

The Committee notes that the Government’s report arrived during its present session. It will therefore address it in its next session, together with the Government’s replies to the Committee’s observation and direct request made in 2002.

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States with regard to: **Convention No. 107** (*Angola, India, Malawi, Pakistan, Syrian Arab Republic*); **Convention No. 169** (*Colombia, Costa Rica, Denmark, Ecuador, Fiji, Guatemala, Honduras, Paraguay*).

Specific Categories of Workers

Poland

Convention No. 149: Nursing Personnel, 1977 (ratification: 1980)

The Committee notes the information supplied in the Government's report and the attached documentation. It also notes the observations communicated by the Polish Trade Union of Nurses and Midwives on 27 January 2003 concerning the application of the Convention and the Government's reply dated 1 October 2003.

Article 2, paragraph 2(a), of the Convention. The Committee recalls its previous observation in which it requested the Government to supply additional information on the new educational and training programmes introduced for the nursing profession and also to indicate whether the ongoing reforms and restructuring policy in the field of health care have been formulated in consultation with the employers and workers concerned, as required under *Article 2, paragraph 3*, of the Convention. In its reply, the Government reports that the new system of nurses' and midwives' education consists of higher vocational studies organized by medical academies and higher vocational schools and that at present 29 centres, including 11 medical academies and 18 higher vocational schools, provide such education. The Government also indicates that, under the 2001 Act regarding the nursing profession, the National Accreditation Board of Medical Schooling was set up for the purpose of monitoring the education standards of the faculties offering nursing and midwifery studies. As regards social dialogue in the health-care sector, the Government refers to the first meeting of a "round table" conference held in April 2003 which brought together representatives of more than 90 organizations such as autonomous governments and territories, medical academies, employers' organizations, the pharmaceutical industry and trade unions, including representatives of nurses and midwives, to discuss the problems in the health-care system which require legislative changes. The Committee stresses the importance of open and continuous dialogue with the social partners since negotiated solutions have a much better chance of succeeding in a context where social consensus is the only solid basis for the continuation of painful structural reforms.

In addition, the Committee notes the Government's detailed explanations concerning the group nursing and midwifery practice which was introduced by virtue of the 1998 Act concerning the amendment of the laws on health-care establishments and medical professions. The Committee requests the Government once again to indicate whether the employers' and workers' organizations concerned were consulted in this respect.

Article 2, paragraph 2(b). Further to its previous request for detailed information with regard to the working conditions and remuneration levels of nursing personnel, the Committee notes that the Government refers to insufficient financial resources in the health-care system and the resulting necessity of ongoing adjustment of the employment level and pay conditions of nurses and midwives. The Government reiterates that the main objective of the restructuring process launched in 1999 was to adjust the level of medical personnel employment to the real needs of the health-care system and to the financial possibilities of the State. The Government indicates that in the period 1999-2002, a total number of 92,000 health-care employees were laid off and that significant public funds are allocated every year for redundancy pay, adjustment assistance, preferential loans and other rehabilitation measures in an effort to mitigate the unfavourable effects for nurses and midwives of restructuring programmes. With regard to any possible improvements in the working conditions of the active nursing personnel, the Government makes renewed reference to the Ministerial Regulation of December 1999 on the setting of minimum standards concerning the staffing of health-care establishments with nurses and midwives which prevents unjustified downsizing of employment and guarantees adequate care to patients. The Government adds, however, that in November 2002 the Minister of Health, reacting to information referring to instances of non-compliance with the said Regulation on the part of health-care provider managers called upon all entities to fully respect the nurses' and midwives' employment standards in force. The Committee invites the Government to supply more specific information on the nature and extent of those instances of non-compliance and to indicate the practical measures taken in response.

For its part, the Polish Trade Union of Nurses and Midwives (OZZPiP) denounces extensive violations of the labour legislation, mainly in the form of delayed payment of wages, non-payment of statutory pay increases, wage supplements and annual bonuses, unjustified wage deductions, and non-payment of redundancy pay or other benefits upon termination of employment. The Committee examines these allegations in an observation addressed to the Government under Convention No. 95. Suffice it to note here that the facts and practices denounced in the communication of OZZPiP – and entirely confirmed by official statistics provided by the National Labour Inspection Service (PIP) – seem to corroborate the allegation that nurses and midwives are in fact experiencing difficult working conditions, especially income insecurity.

Article 7. The Committee notes the information supplied by the Government in response to its previous direct request on this point. The Government indicates that educational activities related to HIV prevention continue within the framework of the "National Programme on preventing HIV, care of persons living with HIV and persons with AIDS for the years 1999-2003". The Government also refers to recent publications on prophylactic and diagnostic procedures in the case of HIV infection or AIDS disease which are made available to nurses free of charge throughout the country. The

Committee would be grateful if the Government would continue to provide information on future activities in matters affecting the occupational health and safety of nursing personnel.

Part V of the report form. The Committee notes the Government's statement that the main difficulties encountered in the practical application of the Convention relate to the bad financial situation of most health-care institutions and the pressing need to readjust employment and pay levels in order to ensure the financial stability of the health-care providers. The Committee asks the Government to continue to provide general information on the effect given to the Convention in practice, including relevant statistics, extracts from official reports and recent studies on the socio-economic conditions prevailing in the nursing profession and any other particulars which would enable the Committee to better evaluate the Government's policy concerning nursing services and nursing personnel.

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States with regard to: **Convention No. 110** (*Côte d'Ivoire, Cuba, Ecuador, Guatemala, Mexico, Nicaragua, Panama, Philippines, Sri Lanka, Uruguay*); **Convention No. 149** (*Congo, France: French Polynesia, France: New Caledonia, Ghana, Guatemala, Kyrgyzstan, Malawi, United Republic of Tanzania, Zambia*); **Convention No. 172** (*Austria, Barbados, Dominican Republic, Guyana, Ireland, Mexico, Spain, Switzerland, Uruguay*); **Convention No. 177** (*Finland, Ireland*).

II. Observations concerning the submission to the competent authorities of the Conventions and Recommendations adopted by the International Labour Conference (article 19 of the Constitution)

Afghanistan

The Committee trusts that, when national circumstances permit, the Government will provide information with regard to the submission to the competent authorities of the instruments adopted by the Conference since 1985.

Algeria

The Committee notes with regret that the Government has not replied to its previous comments. It hopes that the Government will soon be in a position to indicate that all instruments adopted by the Conference since 1996 (83rd, 84th, 85th, 86th, 88th, 89th and 90th Sessions) have been submitted to the People's National Assembly.

Angola

The Committee notes with interest that the Council of Ministers, at its ordinary meeting on 27 July 2003, took note of the document concerning the submission of the instruments adopted by the Conference between 1991 and 2002. This document has been submitted to the National Assembly for examination at one of its forthcoming sessions. Welcoming this progress, the Committee hopes that the Government will also be able to inform it of the nature of the decision of the National Assembly with respect to the instruments submitted.

Antigua and Barbuda

The Committee recalls the detailed information submitted by the Labour Commissioner to the Prime Minister, the Attorney-General and the Minister of Labour, Cooperatives and Public Services on the instruments on maternity protection adopted by the Conference at its 88th Session (2000). It asks the Government to forward the other information requested in the questionnaire at the end of the 1980 Memorandum concerning the submission to the Parliament of Antigua and Barbuda of the instruments adopted by the Conference since 1996 (83rd, 84th, 85th, 86th, 88th, 89th and 90th Sessions).

Armenia

1. The Committee notes with regret that the Government has not communicated information on the submission to the competent authority of the instruments adopted by the Conference since 1993 (80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 87th, 88th, 89th and 90th Sessions).

2. The Committee further notes that Armenia has been a Member of the Organization since 26 November 1992. It recalls that under article 19 of the Constitution of the International Labour Organization, every Member undertakes to bring the instruments adopted by the International Labour Conference before the authority or authorities within whose

competence the matter lies, “for the enactment of legislation or other action”. The Governing Body of the International Labour Office has adopted a Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities, asking for particulars on this subject. The Committee hopes that the Government will provide all the information required by the questionnaire at the end of the Memorandum about the competent authority, the date on which the instruments were submitted and the proposals made by the Government on the measures which might be taken with regard to the instruments that have been submitted.

3. The Committee of Experts, in the same way as the Conference Committee, urges the Government to make every effort to comply with the constitutional obligation of submission and recalls that the Office can provide assistance to overcome this serious backlog.

Bangladesh

Further to its previous comments, the Committee notes that in June 2003 the Government reported that the Tripartite Consultative Council (TTC) has recommended not to follow/ratify the Convention and Recommendation regarding maternity protection adopted by the Conference at its 88th Session (2000). The Committee recalls that the TTC had also recommended not to follow the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189), adopted by the Conference at its 86th Session (1998). The Committee recalls again that, in accordance with article 19 of the Constitution of the Organization, each Member undertakes to bring the instruments adopted by the Conference before Parliament. Even in the case that it is decided not to ratify a Convention or to apply a Recommendation, Governments have the obligation to submit the instruments to the competent authorities. Governments have complete freedom as to the nature of the proposals to be made when submitting the instruments adopted by the Conference to Parliament (please refer to Part II “Extent of the obligation to submit” of the 1980 Memorandum). The Committee reiterates its hope that the Government will soon provide information on the submission to the Parliamentary Committee of the remaining instruments adopted at the 77th Session (Convention No. 170 and Recommendation No. 177), the 79th Session (Convention No. 173 and Recommendation No. 180), the 84th Session (Convention No. 179 and Recommendations Nos. 185, 186 and 187) and the 85th Session (Recommendation No. 188), as well as all the other instruments adopted at the 81st, 82nd, 83rd, 86th, 88th, 89th and 90th Sessions.

Belize

The Committee asks again the Government to take measures in order to fulfil its constitutional obligation to submit and to supply information on the submission to the competent authorities of the instruments adopted by the Conference at 13 sessions held between 1990 and 2002 (77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th and 90th Sessions).

Bolivia

The Committee notes that the ratification of Convention No. 182 was registered on 6 June 2003. Nevertheless, the Government has not provided the information requested in the questionnaire at the end of the Memorandum of 1980 on the submission to the competent authorities of the instruments adopted by the Conference since 1990 (77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th and 90th Sessions of the Conference). The Committee urges again the Government to make every effort to comply with the constitutional obligation of submission and recalls that the Office is available to provide the necessary technical assistance to give effect to this essential obligation.

Bosnia and Herzegovina

The Committee recalls that the long period of failure to submit reports to the competent authorities was due to the consequences of the war and the desperate economic and social situation of the country. It also recalls that the Government has not supplied information on the submission to the competent authorities of the instruments adopted by the Conference since 1990 (80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th and 90th Sessions). In the light of these historical circumstances, the Committee again invites the Government, together with the Office, to study ways in which the above instruments could be submitted to the competent authorities in the near future so as to ensure compliance with this essential constitutional obligation.

Brazil

The Committee asks the Government to provide information on the consultations held and the measures taken for the submission to the National Congress of Conventions Nos. 128 to 130, 149 to 151, 156 and 157, as well as the other instruments adopted at the 52nd, 78th, 79th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th and 90th Sessions of the Conference.

Burundi

1. The Committee refers to its previous observations and asks the Government to provide the information required by the Memorandum of 1980 concerning the submission to the National Assembly of the instruments adopted by the Conference since 1993 (82nd, 83rd, 84th, 85th, 86th, 88th, 89th and 90th Sessions).
2. The Government may deem it useful to consider appropriate forms of ILO assistance in this area.

Cambodia

1. The Committee notes the statement by the Government representative at the Conference Committee (June 2003) indicating that his Government would speed up the process of submission of the instruments adopted by the Conference to the competent authorities. It also requested technical assistance from the Office in order to accomplish this task.
2. The Committee further notes the information provided by the Government in October 2003 indicating that the instruments adopted by the Conference at its 90th Session were submitted to the Council of Ministers. It refers to its previous comments and recalls that the instruments adopted by the Conference at its following sessions have not been submitted to the competent authorities: 55th (Maritime) Session (October 1970), and at the sessions held from June 1973 to June 1994 (58th – Convention No. 137 and Recommendation No. 145; 59th to 63rd; 64th – Convention No. 151 and Recommendation No. 159; and 65th to 81st Sessions). It reiterates its hope that the Government will soon also be in a position to transmit the information required by the questionnaire at the end of the 1980 Memorandum regarding the submission to the National Assembly of the instruments adopted from the 82nd to the 90th Sessions of the Conference, held from 1995 to 2002.

Cameroon

The Committee refers to its previous observations and once again requests the Government to make every effort to fulfil the constitutional requirement of submission and it hopes that the technical assistance of the Office will help the Government to provide all the information required concerning the submission to the National Assembly of the instruments adopted by the Conference from 1983 to 2002, that is at its 69th, 70th, 71st, 72nd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th and 90th Sessions.

Cape Verde

The Committee notes with regret that the Government has provided no information on the submission to the competent authorities of the instruments adopted by the Conference since 1995 (82nd, 83rd, 84th, 85th, 86th, 88th, 89th and 90th Sessions). It reminds the Government that it may seek assistance from the Office in order to fulfil this essential constitutional obligation.

Central African Republic

The Committee notes that the instruments adopted by the Conference at 15 sessions, particularly since 1988 (75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th and 90th Sessions) have not been submitted to the competent authorities. It hopes that the Government will take appropriate steps to overcome this important backlog with a view to the submission to the National Assembly of instruments adopted by the Conference.

Chad

1. The Committee asks the Government to communicate the required information on the submission to the National Assembly of the instruments adopted at the sessions of the Conference held between 1993 and 2002 (80th, 81st, 82nd, 83rd, 88th, 89th and 90th Sessions).
2. The Committee recalls that the Government indicated previously that the instruments adopted by the Conference at its 84th, 85th and 86th Sessions were submitted at the same time as those adopted at the 87th Session. It again asks the Government to provide the other information required by the Memorandum of 1980 on the proposals made by the Government, any decision taken by the National Assembly and the representative organizations of employers and workers to which the information sent to the Director-General has been communicated, in respect of the instruments adopted at the 84th, 85th and 86th Sessions (*points II(b) and (c), III and V of the questionnaire* at the end of the Memorandum of 1980).

Chile

The Committee refers to the comments it has been making since 1998 and asks the Government to indicate whether the Protocol of 1995 to the Labour Inspection Convention, 1947, adopted at the 82nd Session of the Conference, has been submitted to the National Congress, and to provide the required information by the 1980 Memorandum on the submission

to the National Congress of the instruments adopted at the 84th, 85th, 86th, 88th, 89th and 90th Sessions of the Conference.

Colombia

The Committee recalls that the ratification of Convention No. 182 was approved by Act No. 704 of 21 November 2001. Nevertheless, the Government has not provided information on the steps taken to submit to the legislature the instruments adopted at the 75th (Convention No. 168), 79th (Convention No. 173), 81st (Recommendation No. 182), 82nd, 83rd, 84th, 85th, 86th, 88th, 89th and 90th Sessions of the Conference. The Committee trusts that the Government will shortly provide the information requested in the questionnaire at the end of the Memorandum of 1980 concerning the submission to the National Congress of the instruments adopted at the above sessions of the Conference.

Comoros

In its 2001 observation, the Committee noted the steps taken by the Government, with the Office's support, for the ratification of the fundamental Conventions. It once again hopes, in the same way as the Conference Committee, that the Government will soon provide the information requested in the Memorandum of 1980 on the submission to the legislative body of all the instruments adopted by the Conference since 1992 (79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 87th, 88th, 89th and 90th Sessions).

Congo

1. The Committee refers to its previous observations and once again hopes that the Government will be in a position to provide information on the submission to the competent authorities of the instruments adopted at the 54th (Recommendations Nos. 135 and 136), 55th (Recommendations Nos. 137, 138, 139, 140, 141 and 142), 58th (Convention No. 137 and Recommendation No. 145), 60th (Conventions Nos. 141 and 143, Recommendations Nos. 149, 150 and 151), 61st (Recommendation No. 152), 62nd, 63rd (Recommendation No. 156), 67th (Recommendations Nos. 163, 164 and 165), 68th (Convention No. 157 and Recommendations Nos. 167 and 168), 69th, 70th, 71st (Recommendations Nos. 170 and 171), 72nd, 74th, 75th (Recommendations Nos. 175 and 176) Sessions, and between 1990 and 2002 (77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th and 90th Sessions of the Conference).

2. In the same way as the Conference Committee, the Committee urges the Government to make every effort to discharge the constitutional obligation of submission and recalls that the ILO is in a position to provide the necessary technical assistance to give effect to this essential obligation.

Côte d'Ivoire

The Committee trusts that, when the national circumstances permit, the Government will provide information on the submission to the National Assembly of the instruments adopted at the 83rd, 86th, 88th, 89th and 90th Sessions of the Conference. It also requests the Government to provide the other information and documents required by the questionnaire at the end of the Memorandum of 1980, particularly on the date of submission, the Government's proposals, the document whereby the instruments were submitted and the decision taken by the competent authorities in relation to the instruments adopted by the Conference at its 84th and 85th Sessions.

Democratic Republic of the Congo

In its 2002 observation, the Committee noted that the Ministry of Labour and Social Insurance forwarded a detailed report in June 2002 to the President of the Republic on the submission to the Constituent and Legislative Assembly of the instruments adopted by the Conference at its 83rd, 84th, 85th, 86th and 88th Sessions. It once again requests the Government to provide the other information requested in the questionnaire at the end of the Memorandum of 1980 on the date of submission to the Transitional Parliament of the above instruments, and on any decisions that it may have taken concerning the instruments adopted at the 83rd, 84th, 85th, 86th, 88th, 89th and 90th Sessions of the Conference.

Djibouti

In its 2001 observation, the Committee noted a draft communication of 21 January 2001 from the Ministry of Employment and National Solidarity to the Council of Ministers concerning the submission to the National Assembly of the remaining instruments and the ratification of a number of Conventions. However, the Committee has received no confirmation that the instruments outstanding have actually been submitted. Furthermore, it reminds the Government that information on the obligation to submit is still pending in respect of the instruments adopted at the 66th, 68th, 69th, 70th, 71st, 72nd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 84th, 85th, 86th, 87th, 88th, 89th and 90th Sessions of the Conference. The Committee hopes that the Government will send the information required by the questionnaire at the end of the Memorandum of 1980 on the submission to the National Assembly of the above instruments.

Dominica

The Committee recalls the information provided by the Government in June 2002 indicating that it had advised against the ratification of Convention No. 184. It refers to its previous observations and recalls that, in accordance with article 19, paragraphs 5 and 6, of the Constitution of the Organization, each Member undertakes to bring the instruments adopted by the Conference before Parliament. Even in the case when it is decided not to ratify a Convention or not to apply a Recommendation, governments have the obligation to submit the instruments to Parliament. Governments have complete freedom as to the nature of the proposals to be made when submitting the instruments adopted by the Conference to Parliament, as explained in Part II of the 1980 Memorandum. It reiterates its hope that the Government will announce soon that the instruments adopted by the Conference since 1993 (80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th and 90th Sessions) have been submitted to the National Assembly.

El Salvador

In a communication received in May 2003, the Government stated that the instruments that had not yet been submitted to the Legislative Assembly of El Salvador were undergoing a preliminary legal examination and that personnel had been hired for this task. The Committee recalls that, for many years, it has been referring to the failure to submit to the Congress of the Republic of the instruments adopted at the 62nd, 65th, 66th, 68th, 70th, 82nd, 83rd, 84th, 85th, 86th, 88th and 89th Sessions of the Conference, as well as the remaining instruments from the 63rd (Convention No. 148 and Recommendations Nos. 156 and 157), 64th (Convention No. 151 and Recommendations Nos. 158 and 159), 67th (Convention No. 154 and Recommendation No. 163) and 69th (Recommendation No. 167) Sessions. The Committee once again hopes that the Government will be in a position in the near future to report on the submission to the Congress of the Republic of all the remaining instruments, including those adopted at the 90th Session of the Conference (2002).

Equatorial Guinea

The Committee notes with regret that the Government has not replied to its previous observations. It asks the Government to provide information on the submission to the competent authorities of the instruments adopted by the Conference at its 80th, 81st, 82nd, 83rd, 85th, 86th, 88th, 89th and 90th Sessions.

Fiji

The Committee once again asks the Government to provide the information concerning the submission to the competent authorities of the instruments adopted by the Conference at its 83rd, 84th, 85th, 86th, 88th, 89th and 90th Sessions, as required by the questionnaire at the end of the 1980 Memorandum.

Gabon

In its 2002 observation, the Committee noted the Government's statement indicating that every effort will be made to submit all the instruments adopted by the Conference to Parliament before the end of the current legislature. It once again hopes that the Government will soon provide the information requested in the Memorandum of 1980 concerning the submission to Parliament of the instruments adopted at the 74th, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th and 90th Sessions of the Conference.

Gambia

1. The Committee recalls that Gambia has been a Member of the Organization since 29 May 1995. It also recalls that, under article 19 of the Constitution of the Organization, each Member undertakes that it will bring the instruments adopted by the International Labour Conference before the authority or authorities within whose competence the matter lies, "for the enactment of legislation or other action". The Governing Body of the International Labour Office has adopted a Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities, asking for particulars on this subject. The Committee hopes that the Government will soon provide all the information requested by the questionnaire at the end of the Memorandum about the submission to the National Assembly of the instruments adopted by the Conference since 1995 (82nd, 83rd, 84th, 85th, 86th, 88th, 89th and 90th Sessions).

2. The Government may deem it useful to consider appropriate forms of ILO assistance in this area.

Georgia

1. The Committee asks the Government to indicate whether the instruments adopted by the Conference at its 80th, 81st, 82nd, 83rd, 84th, 88th, 89th and 90th Sessions have been submitted to Parliament.

2. The Committee refers to its previous observation and requests the Government to provide the information requested under *points I and II(a) of the questionnaire* at the end of the Memorandum of 1980 regarding the nature of the competent authorities to which Recommendation No. 189 (86th Session) was submitted.

Grenada

The Committee notes with interest that Convention No. 182 has been ratified and that Conventions Nos. 176, 177 and 178 were submitted to the Parliament of Grenada on 31 March 2003. It further notes the intention of the Government to bring the pending submissions before the Parliament of Grenada. The Committee welcomes the steps taken by the Government, in consultation with the social partners through the Labour Advisory Board and hopes it will soon report on the submission to the Parliament of Grenada of the remaining instruments adopted by the Conference since 1994 at its 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th and 90th Sessions.

Guatemala

The Committee notes that in June 2003 the instruments adopted at the 90th Session of the Conference were forwarded to the President of the Republic so that he would submit them to the Congress of the Republic, as well as other remaining instruments. The Committee trusts that the Government will be in a position to provide the missing information on the submission to the Congress of the Republic of the instruments adopted at the 74th (Maritime) Session (October 1987), the two instruments adopted at the 75th Session (1988) (Convention No. 168 and Recommendation No. 176), 77th Session (1990) (Conventions Nos. 170 and 171, Recommendations Nos. 177 and 178, and the Protocol of 1990), 78th Session (1991) (Convention No. 172), 80th Session (1993) (Convention No. 174), 81st Session (1994) (Convention No. 175), 84th (Maritime) Session (October 1996) (Conventions Nos. 178 and 180, Recommendations Nos. 185, 186 and 187, and the Protocol of 1996), 85th Session (1997) (Recommendation No. 188), 86th Session (1998) (Recommendation No. 189) and 90th Session (2002) of the Conference.

Guinea

The Committee notes with regret that the Government has not replied to its previous comments. It asks the Government to provide the information required by the Memorandum of 1980 in respect of the submission to the National Assembly of the instruments adopted at the 84th, 85th, 86th, 88th, 89th and 90th Sessions of the Conference.

Guinea-Bissau

1. The Committee notes the Government's communication of November 2003 indicating that the instruments that were due to be submitted to the National People's Assembly were not submitted due to its dissolution. The Government indicates that it continues to have difficulties in obtaining a Portuguese translation of the instruments to be submitted and hopes that technical assistance will be provided for this purpose. The Government indicates that the submission to the National People's Assembly will only be possible following the next legislative elections.

2. The Committee refers to its previous comments and hopes that the Government will receive the technical assistance necessary to obtain the Portuguese versions of the instruments to be submitted to the National People's Assembly.

3. The Committee trusts that, when national circumstances allow, the Government will be in a position to announce that the instruments due to be submitted to the National People's Assembly have been submitted (79th to 83rd, 85th Sessions: Recommendations Nos. 180 to 184, 189 and 191, Protocol of 1995), as well as all the instruments adopted at the 84th, 86th, 88th, 89th and 90th Sessions of the Conference.

Haiti

1. The Committee notes with regret that the Government has not provided information on the submission to the competent authorities of the instruments adopted by the Conference. It recalls that the instruments in respect of which the Government has not provided information on the submission to the competent authorities are the following:

- (a) the remaining instruments from the 67th Session (Conventions Nos. 154 and 155 and Recommendations Nos. 163 and 164);
- (b) the instruments adopted at the 68th Session;
- (c) the remaining instruments adopted at the 75th Session (Convention No. 168 and Recommendations Nos. 175 and 176); and
- (d) all the instruments adopted from 1989 to 2002 (76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 87th, 88th, 89th and 90th Sessions of the Conference).

2. The Committee once again recalls, in the same way as the Conference Committee, that the Office is in a position to provide the necessary technical assistance so that this essential constitutional obligation can be fulfilled.

India

The Committee notes with interest the detailed information supplied by the Government on the submission on 2 and 5 December 2002 to the Upper and Lower Houses of Parliament of the Conventions and Recommendations adopted by the Conference at its 78th, 79th, 80th, 81st, 82nd, 85th, 87th, 88th and 89th Sessions. The Committee welcomes the progress achieved by the Government in complying with the constitutional obligation of submission.

The Committee further notes the information provided by the Government in September 2003 indicating that the formalities to place the Recommendations and Protocol adopted by the Conference at its 90th Session (2002) before the Upper and Lower Houses of Parliament have been completed, but due to certain procedural problems the documents could not be tabled. The Committee trusts that the Government will indicate soon that the Protocol to the Labour Inspection Convention, 1947, adopted by the Conference at its 82nd Session (1995) and the instruments adopted at the 90th Session (2002) have also been submitted to Parliament.

Kazakhstan

1. The Committee notes with interest that the ratification of Convention No. 182 was registered on 26 February 2003. It further notes that the Government has not communicated information on the submission to the competent authorities of the instruments adopted by the Conference since 1993 (80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th and 90th Sessions).

2. The Committee notes that the Republic of Kazakhstan has been a Member of the Organization since 31 May 1993. It recalls that under article 19 of the Constitution of the International Labour Organization, every Member undertakes to bring the instruments adopted by the International Labour Conference before the authority or authorities within whose competence the matter lies “for the enactment of legislation or other action”. The Governing Body of the International Labour Office adopted a Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities, asking for particulars on this subject. The Committee hopes that the Government will provide all the information requested by the questionnaire at the end of the Memorandum about the competent authority, the date on which the instruments were submitted and any proposals made by the Government on measures to be taken with regard to the instruments that have been submitted.

3. The Committee of Experts, in the same way as the Conference Committee, urges the Government to make every effort to comply with the constitutional obligation of submission and recalls that the Office can provide technical assistance to overcome this serious backlog.

Kyrgyzstan

1. The Committee notes with regret that the Government has not communicated information on the submission to the competent authorities of the instruments adopted by the Conference since 1992 (79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 87th, 88th, 89th and 90th Sessions).

2. The Committee recalls that Kyrgyzstan has been a Member of the Organization since 31 March 1992. It recalls that under article 19 of the Constitution of the International Labour Organization, every Member undertakes to bring the instruments adopted by the International Labour Conference before the authority or authorities within whose competence the matter lies “for the enactment of legislation or other action”. The Governing Body of the International Labour Office has adopted a Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities, asking for particulars on this subject. The Committee hopes that the Government will provide all the information requested by the questionnaire at the end of the Memorandum about the competent authority, the date on which the instruments were submitted and any proposals made by the Government on measures to be taken with regard to the instruments that have been submitted.

3. The Committee of Experts, in the same way as the Conference Committee, urges the Government to make every effort to comply with the constitutional obligation of submission and recalls that the Office can provide technical assistance to overcome this serious delay.

Lao People’s Democratic Republic

The Committee notes with regret that the Government has not replied to its previous comments. It hopes that the Government will indicate shortly that the instruments adopted since 1995 (82nd, 83rd, 84th, 85th, 86th, 87th, 88th, 89th and 90th Sessions of the Conference) have been submitted to the competent authorities.

Latvia

The Committee notes the statement made by the Government representative at the Conference Committee (June 2003) indicating that the National Tripartite Cooperation Council supported the ratification of ILO Conventions Nos. 29, 138, 182 and 183. These Conventions were not submitted to Parliament because they had not been translated into Latvian.

The Government expected that translation of ILO Conventions and Recommendations – with the assistance of the ILO Regional Office – would help in fulfilling its commitment under article 19 of the ILO Constitution. The Committee hopes that the Government will soon be in a position to communicate the information required in the Memorandum of 1980 regarding the submission to Parliament (*Saeima*) of the instruments adopted by the Conference since 1992 (79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 87th, 88th, 89th and 90th Sessions).

Libyan Arab Jamahiriya

The Committee recalls that, according to the information provided previously by the Government, all the Conventions adopted at the 83rd, 84th, 85th and 86th Sessions of the Conference had been submitted to the respective sectors. The Committee hopes that the Government will soon be in a position to provide the other information requested in the Memorandum of 1980 concerning the submission to the competent authorities of all the instruments (Conventions, Recommendations and Protocols) adopted at the 83rd, 84th, 85th, 86th, 88th, 89th and 90th Sessions of the Conference.

Madagascar

Referring to its previous observation, the Committee notes that the Governing Council approved, at its meeting on 4 March 2003, the communication by the Minister of Labour and Labour Legislation on the submission to the competent authorities of the instruments adopted at the 55th, 69th (Recommendation No. 167), 71st, 72nd, 74th, 75th, 76th, 77th, 78th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th and 89th Sessions of the Conference. The Committee also notes that the Government benefited from technical assistance from the Office for the reproduction of the instruments. Noting that the approval by the Governing Council is an important step towards implementing the constitutional obligation of submission, the Committee hopes that the Government will soon be in a position to provide detailed information on the submission of the above instruments to the National Assembly and of the instruments adopted at the 90th Session (2002) of the Conference.

Malawi

The Committee refers to its 2002 observation and asks the Government to report on the submission to the National Assembly of the instruments adopted by the Conference at its 82nd, 83rd, 84th, 85th, 86th, 88th, 89th and 90th Sessions.

Mali

The Committee notes the information provided by the Government indicating that the instruments adopted by the Conference at its 74th, 82nd, 83rd, 84th and 88th Sessions were submitted on 13 October 2003 to the National Assembly. It refers to its previous comments and requests the Government to provide the information requested in the Memorandum of 1980 with regard to the submission to the National Assembly of the Protocol of 1996, adopted at the 84th (Maritime) Session (October 1996), and the instruments adopted at the 79th, 80th, 81st, 85th, 86th, 89th and 90th Sessions of the Conference.

Mongolia

The Committee asks the Government to communicate all the information requested on the submission to the competent authorities of the instruments adopted by the Conference between 1995 and 2002 (82nd, 83rd, 84th, 85th, 86th, 88th, 89th and 90th Sessions).

Mozambique

The Committee notes that in June 2003 the Office registered the ratification of Conventions Nos. 29, 138 and 182. In response to its direct request of 2002, the Government also indicates that the instruments adopted at the 83rd, 84th, 85th, 86th, 88th and 89th Sessions of the Conference have not yet been submitted to the Assembly of the Republic due to its heavy workload. The Committee hopes that the Government will soon be in a position to provide the information requested in the questionnaire at the end of the 1980 Memorandum concerning the submission to the Assembly of the Republic of the instruments adopted at the 83rd, 84th, 85th, 86th, 88th, 89th and 90th Sessions of the Conference.

Nepal

The Committee asks the Government to indicate whether the instruments adopted at the 82nd, 84th, 86th, 88th, 89th and 90th Sessions of the Conference have been submitted to the House of Representatives.

Niger

1. The Committee notes with interest that the National Assembly adopted on 30 October 2003 the Bill authorizing ratification of Convention No. 183. It recalls that on 28 May 2002 the Ministry of the Public Service and Labour transmitted to the Ministry of Foreign Affairs, Cooperation and African Integration the reports on the submission of Conventions Nos. 177, 181 and 183 proposing their ratification. The Government envisages ratifying Convention No. 183. It would be grateful if the Government would indicate the date of submission to the National Assembly of the instruments adopted at the 83rd, 84th, 85th and 86th Sessions of the Conference.

2. The Committee asks the Government to indicate whether the instruments adopted at the 89th and 90th Sessions of the Conference have been submitted to the National Assembly.

Nigeria

1. The Committee notes the information provided by the Government indicating that the Conventions, Recommendations and Protocols adopted by the Conference since 1993 were noted by the Federal Executive Council of the Federal Republic of Nigeria at its 45th Meeting held on 20 November 2002. In a communication of September 2003, the Government adds that the Federal Executive Council is the competent authority and notes and approves (where necessary) the ratification of Conventions, which are subsequently forwarded to the National Assembly.

2. The Committee recalls that, in accordance with article 19, paragraphs 5, 6 and 7, of the Constitution of the Organization, each Member undertakes to bring the instruments adopted by the Conference before Parliament. Even in the case that it is decided not to ratify a Convention or to apply a Recommendation, governments have the obligation to submit the instruments adopted by the Conference to Parliament. However, governments have complete freedom as to the nature of the proposals to be made when submitting the instruments adopted by the Conference to Parliament (please refer to Part II "Extent of the obligation to submit" of the Memorandum of 1980).

3. In the case of Nigeria, the proposals to be made to the National Assembly in connection with the submission of the instruments adopted by the Conference should also be the subject of the consultations required under Article 5, paragraph 1(b), of Convention No. 144, ratified by Nigeria.

4. The Committee trusts that the Government will soon report on the measures taken to ensure full compliance with the obligation to submit and will be able to indicate in the near future that the instruments adopted by the Conference since 1993 (80th, 83rd, 84th, 85th, 86th, 88th, 89th and 90th Sessions) have also been submitted to the National Assembly.

5. The Committee refers to its 2002 observation, in which reference was made to the assistance provided by the Office, and hopes that the Government will not hesitate to take advantage of the Office's advice in order to comply fully with this essential constitutional obligation.

Pakistan

1. The Committee notes the information provided by the Government in October 2003 indicating that the instruments adopted at the 90th Session of the Conference were circulated among the agencies concerned. The All Pakistan Federation of Trade Unions (APFTU) has agreed to the Protocol and Recommendations adopted by the Conference in June 2002 and requested the Government to bring the law and practices of the country into conformity with the Recommendations adopted by the ILO in the interest of the workers. The Government stated that it will do its utmost to bring the laws of the country into conformity with ILO Recommendations and will take all measures to protect workers' interests.

2. In its previous observations, the Committee had already noted the various actions taken by the Government to examine the instruments adopted by the Conference.

3. The Committee recalls that the obligation of governments to submit instruments to the competent authorities does not imply any obligation to propose the ratification or acceptance of the instruments in question. Governments have complete freedom as to the nature of the proposals to be made when submitting Conventions, Protocols and Recommendations to the competent authorities.

4. Nevertheless, the Committee notes that, as required by article 19 of the Constitution of the Organization, the instruments adopted by the Conference should be submitted to the "competent authorities". This expression is intended to refer to a legislature, that is, in the case of Pakistan, the Majlis-e-Shoora (Parliament).

5. The Committee refers again to its previous observations and trusts that the Government will report on the measures taken to ensure full compliance with the obligation to submit and will be able to indicate in the near future that the instruments adopted by the Conference since 1994 (81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th and 90th Sessions) have also been submitted to Parliament.

Paraguay

1. The Committee asks the Government to state whether the instruments adopted at the 85th, 86th, 88th, 89th and 90th Sessions of the Conference have been submitted to the National Congress and provide, in respect of those instruments, the information required by the questionnaire at the end of the Memorandum of 1980.

2. The Committee recalls its previous comments and would be grateful if the Government would send copies or provide information on the content of the document or documents whereby the instruments adopted at the 82nd, 83rd and 84th Sessions of the Conference were submitted to the National Congress, together with the texts of any proposals that may have been made (*point II(c) of the questionnaire* at the end of the Memorandum of 1980). Please state whether the National Congress has reached a decision on the above instruments (*point III*) and indicate the representative employers' and workers' organizations to which the information sent to the Director-General has been forwarded (*point V*).

Rwanda

The Committee notes the Government's statement of 27 August 2003 that, following its observations, the instruments adopted at the 80th, 82nd, 83rd, 84th, 85th, 86th, 88th and 89th Sessions of the Conference will be brought to the knowledge of the National Assembly of the Republic of Rwanda. At the request of the Government, the Office transmitted the texts of the Conventions, Recommendations and Protocols concerned. The Committee hopes that the Government will soon be able to indicate that it has complied in full with the obligation of submission set out in article 19 of the Constitution of the Organization, and that it will be in a position to provide the information requested in the questionnaire at the end of the 1980 Memorandum concerning the submission to the National Assembly of the instruments (Conventions, Recommendations and Protocols) adopted at the 80th, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th and 90th Sessions of the Conference.

Saint Lucia

The Committee refers to its previous observations and recalls that, in accordance with article 19, paragraphs 5 and 6, of the Constitution of the Organization, Saint Lucia as a Member of the Organization has the obligation to submit to Parliament all the remaining Conventions, Recommendations and Protocols adopted by the Conference from 1980 to 2002 (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 and 90th Sessions). The Committee again requests the Government to take the necessary measures to ensure full compliance with the constitutional obligation of submission.

Saint Vincent and the Grenadines

1. The Committee refers to its previous comments and asks the Government to report on the submission to the competent authorities of the instruments adopted by the Conference at its 82nd, 83rd, 84th, 85th, 88th, 89th and 90th Sessions.

2. Please also provide the other information on the competent authorities, the date of submission of Recommendation No. 189 and the representative organizations of employers and workers to which the information has been communicated, as requested in *points I, II(a), III and V of the questionnaire* at the end of the Memorandum of 1980.

Sao Tome and Principe

The Committee notes with regret that the Government has not provided the information requested in the questionnaire at the end of the Memorandum of 1980 on the submission to the competent authorities of the instruments adopted by the Conference since 1990 (77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 87th, 88th, 89th and 90th Sessions of the Conference). The Committee, in the same way as the Conference Committee, urges the Government to make every effort to fulfil the constitutional obligation of submission and recalls that the Office is available to provide the necessary technical assistance to give effect to this essential obligation.

Senegal

The Committee notes that the Government has not provided the information it has been requesting for several years. It hopes that the Government will be able to indicate the date on which the instruments adopted by the Conference at the nine sessions mentioned in its previous observations (79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th and 88th Sessions) were actually submitted to Parliament. Please indicate whether the instruments adopted by the Conference at its 89th and 90th Sessions were submitted to Parliament.

Sierra Leone

The Committee understands that the Government has taken the necessary steps to ratify Conventions Nos. 138 and 182. It trusts that, when the national circumstances permit, the Government will also report on the submission to Parliament of the instruments adopted by the Conference since October 1976 (Convention No. 146 and Recommendation No. 154 adopted at the 62nd Session and all the sessions between 1977 and 2002).

Solomon Islands

The Committee notes with regret that the Government has not supplied information on the submission to the competent authorities of the instruments adopted by the Conference since 1984 (70th, 71st, 72nd, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 87th, 88th, 89th and 90th Sessions). The Committee urges the Government, in the same way as the Conference Committee, to make every effort to comply with the constitutional obligation of submission, and recalls that the Office is in a position to provide the necessary technical assistance so that this essential obligation can be fulfilled.

Somalia

The Committee trusts that, when the national circumstances permit, the Government will provide information on the submission to the competent authorities with regard to the instruments adopted by the Conference since October 1976.

South Africa

1. The Committee notes with interest the information provided by the Government in September 2003 indicating that the Conventions and Recommendations adopted by the Conference at its 83rd, 84th and 85th Sessions have been submitted to Parliament for noting. The Government also indicates that Conventions Nos. 183 and 184, Recommendations Nos. 189, 191 and 193, as well as the Protocol of 2002, are in the process of being tabled in Parliament.

2. The Committee would be grateful if the Government would provide information about the date of submission, the decision taken by Parliament and the communication to the representative organizations of employers and workers of the documents concerning the Conventions and Recommendations already submitted, as requested in *points II(a), III and V of the questionnaire* at the end of the 1980 Memorandum.

3. The Committee would also be grateful to receive information on the submission to Parliament of the Protocol of 1996 to the Merchant Shipping (Minimum Standards) Convention, 1976 (84th – Maritime – Session, October 1996) and all the instruments adopted by the Conference at its 86th, 88th, 89th and 90th Sessions.

Spain

1. The Committee notes a communication from the Government dated 29 July 2003 indicating that the competent authorities have decided to authorize the ratification of Convention No. 180 and provide for its referral to the *Cortes Generales*, to take note of Recommendation No. 193 and the Protocol of 2002 and to defer the submission of Convention No. 184 and Recommendation No. 192. The Government further specified, in a communication dated 22 September 2003, that through the procedure of the Council of Ministers “taking note” it understands that it has complied with the obligation under article 19 of the Constitution of the ILO. The Council of Ministers is empowered to propose the ratification of international standards and to submit draft legislation to the *Cortes Generales* of Spain.

2. The Committee notes that, by virtue of the relevant provisions of article 19, paragraphs 5, 6 and 7, of the Constitution, the Members of the Organization have undertaken to submit the instruments adopted by the Conference to the authority or authorities within whose competence the matter lies for the enactment of legislation or other action. In the Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities, adopted in 1980, the Governing Body indicated that the competent authority is the authority which, under the Constitution of each State, has the power to legislate or to take other action in order to implement Conventions and Recommendations. The competent national authority should normally be the legislature. Even in the case of instruments not requiring action in the form of legislation, it would be desirable – to ensure that the purpose of submission, which is also to bring Conventions and Recommendations to the knowledge of the public, is fully met – to submit these instruments also to the parliamentary body.

3. The Committee also notes that for many years the Government has provided information on the submission of the instruments adopted by the Conference to the *Cortes Generales* after the Council of Ministers has taken note of them. Submission to the *Cortes Generales* does not imply any obligation for the Government to propose the ratification of a Convention or Protocol, or the application of a Recommendation. Governments have complete freedom as to the nature of the proposals to be made when submitting instruments to the competent authorities.

4. Furthermore, the proposals to be made to the competent authority or authorities in connection with submission have to be the subject of consultation in accordance with the procedures envisaged in Article 5, paragraph 1(b), of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), which has been ratified by Spain.

5. The Committee therefore hopes that the Government will be in a position in the near future to provide all the information requested in the questionnaire at the end of the Memorandum of 1980 and also to indicate whether certain Conventions and Recommendations adopted by the Conference at its 63rd (Convention No. 149 and Recommendation No. 157) and 75th (Convention No. 168 and Recommendation No. 176) Sessions, as well as all the instruments adopted at the 80th, 81st, 83rd, 84th, 86th, 88th, 89th and 90th Sessions, have been submitted to the *Cortes Generales*.

Sudan

The Committee notes with interest that the ratification of Conventions Nos. 138 and 182 was registered on 7 March 2003. It also notes the information provided by the Government in October 2003 indicating that the Council of Ministers endorsed the resolution to ratify Convention No. 184. The Committee hopes that, when national circumstances so permit, the Government will indicate that the instruments adopted by the Conference between 1994 and 2002 (81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th and 90th Sessions) have also been submitted to the National Assembly (*Majlis Watani*).

Suriname

The Committee notes the detailed information provided by the Government to the Conference Committee (2003) on the submission to the National Assembly, on 27 May 2003, of the instruments adopted by the Conference at the sessions held between 1994 and 2001 (81st to 89th Sessions). The Government has also indicated that the Protocol of 2002 is scheduled to be placed on the agenda of the Labour Advisory Board at its next session. The Committee congratulates the Government on the efforts made to achieve full compliance with this constitutional obligation, and trusts that it will also be able to report the submission to the National Assembly of all the instruments adopted by the Conference at its 90th Session (2002).

Swaziland

The Committee refers to its previous observation and asks the Government to provide the information requested by the Memorandum of 1980 on the submission to Parliament of the Protocol of 1995 to the Labour Inspection Convention, 1947, adopted at the 82nd Session, and of the instruments adopted at the 84th, 85th, 86th, 89th and 90th Sessions of the Conference.

Syrian Arab Republic

The Committee notes with interest the information provided by the Government to the Conference Committee indicating that the instruments adopted by the Conference at its 88th and 89th Sessions were submitted to the Presidency of the People's Council (*Majlis al-Chaab*) on 29 May 2003. It further notes that the ratification of Convention No. 182 was registered on 22 May 2003. In reply to its previous observations, the Government further indicated in August 2003 that with regard the other instruments adopted by the Conference, consultations are ongoing between the Ministry of Social Affairs and Labour and the Committee for Consultation and Dialogue of the Social Partners with a view to their gradual submission to the competent authorities. The Committee refers again to the comments that it has been making for several years, and hopes that the Government will be in a position to indicate in the near future that the instruments adopted by the Conference at the 66th and 69th Sessions (Recommendations Nos. 167 and 168), and since 1984 (70th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th and 90th Sessions), have actually been submitted to the People's Council (*Majlis al-Chaab*) and that it will provide in this respect the information requested in the questionnaire at the end of the Memorandum of 1980.

Tajikistan

In its previous comments, the Committee noted the information provided by the Government according to which the ratification of Convention No. 182 was approved by the Parliament of the Republic of Tajikistan. It looks forward to receiving the information concerning the submission to the competent authority, within the meaning of article 19 of the Constitution of the Organization, of the instruments adopted at the 84th, 85th, 88th, 89th and 90th Sessions of the Conference.

United Republic of Tanzania

1. The Committee once again observes that the Government has not provided information on the submission to the competent authorities of the remaining instruments adopted by the Conference from 1980 to 2002 (66th, 67th, 68th, 72nd, 74th, 75th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th and 90th Sessions).

2. The Committee also recalls that in previous observations it asked the Government to indicate the date on which the instruments adopted from the 54th to the 65th Sessions were submitted to Parliament.

3. The Committee urges the Government to make every effort to comply with the constitutional obligation of submission and recalls that the Office can provide technical assistance to overcome this serious backlog.

Thailand

The Committee notes with regret that the Government has not provided information in relation to the submission to the National Assembly (*Rathasapha*) of the instruments adopted by the Conference since 1996 (83rd, 84th, 85th, 86th, 88th, 89th and 90th Sessions).

The former Yugoslav Republic of Macedonia

The Committee notes with regret that the Government has not provided the information concerning the submission to the Assembly of the Republic of the instruments adopted by the Conference since 1996 (83rd, 84th, 85th, 86th, 88th, 89th and 90th Sessions).

Turkmenistan

1. The Committee notes with regret that the Government has not provided information on the submission to the competent authorities of the instruments adopted by the Conference since 1994 (81st, 82nd, 83rd, 84th, 85th, 86th, 87th, 88th, 89th and 90th Sessions).

2. The Committee further notes that Turkmenistan has been a Member of the Organization since 24 September 1993. It recalls that under article 19 of the Constitution of the International Labour Organization, every Member undertakes to bring the instruments adopted by the International Labour Conference before the authority or authorities within whose competence the matter lies “for the enactment of legislation or other action”. The Governing Body of the International Labour Office adopted a Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities, asking for particulars on this subject. The Committee hopes that the Government will provide all the information requested by the questionnaire at the end of the Memorandum about the competent authority, the date on which the instruments were submitted and any proposals made by the Government on the measures to be taken with regard to the instruments that have been submitted.

3. The Committee of Experts, in the same way as the Conference Committee, urges the Government to make every effort to comply with the constitutional obligation of submission and recalls that the Office can provide technical assistance to overcome this serious delay.

Uganda

The Committee recalls its previous observations and asks the Government to provide the indications requested by the questionnaire at the end of the 1980 Memorandum on the submission to Parliament of the instruments adopted by the Conference at its 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th and 90th Sessions.

Uruguay

The Committee notes with regret that the Government has not provided additional information on the submission of Convention No. 176 and Recommendation No. 183, adopted at the 82nd Session of the Conference (1995), and on the submission to the General Assembly of the instruments adopted at the 80th, 83rd, 85th, 86th, 88th, 89th and 90th Sessions of the Conference.

Uzbekistan

1. The Committee notes with regret that the Government has not provided information on the submission to the competent authorities of the instruments adopted by the Conference since 1993 (80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 87th, 88th, 89th and 90th Sessions).

2. The Committee further notes that Uzbekistan has been a Member of the Organization since 31 July 1992. It recalls that under article 19 of the Constitution of the International Labour Organization, every Member undertakes to bring the instruments adopted by the International Labour Conference before the authority or authorities within whose competence the matter lies “for the enactment of legislation or other action”. The Governing Body of the International Labour Office has adopted a Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities, asking for particulars on this subject. The Committee hopes that the Government will provide all the information requested by the questionnaire at the end of the Memorandum about the competent authority, the date on which the instruments were submitted and any proposals made by the Government on measures to be taken with regard to the instruments that have been submitted.

3. The Committee of Experts, in the same way as the Conference Committee, urges the Government to make every effort to comply with the constitutional obligation of submission and recalls that the Office can provide technical assistance to overcome this serious backlog.

Venezuela

1. The Committee notes with interest the information provided by the Government in August 2003 indicating that Convention No. 182 had been submitted to the National Assembly with the recommendation that it be ratified. Conventions Nos. 159, 161 and 183 have also been submitted to the National Assembly for consideration, together with their corresponding Recommendations.

2. The Committee refers to the comments it has been making for many years and would be grateful if the Government would continue making efforts to submit to the National Assembly the remaining instruments adopted at the 74th (Conventions Nos. 163, 164, 165 and 166, and Recommendation No. 174), 75th (Convention No. 168 and Recommendation No. 176), 77th (Convention No. 171 and Recommendation No. 178, the Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948), 78th (Convention No. 172), 79th, 81st, 82nd (Protocol of 1995 to the Labour Inspection Convention, 1947), 83rd, 84th, 85th, 86th, 89th and 90th Sessions of the Conference.

Zambia

The Committee notes the information provided by the Government indicating that the Ministry of Labour is currently being restructured and that, when this has been completed, it will initiate the procedure for the ratification of Convention No. 184. The Committee hopes the Government will soon be in a position to provide the information requested in the questionnaire at the end of the 1980 Memorandum concerning the submission to the National Assembly of the instruments adopted by the Conference at its 83rd, 84th, 85th, 86th, 88th, 89th and 90th Sessions.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Albania, Angola, Argentina, Austria, Azerbaijan, Bahamas, Bahrain, Barbados, Belgium, Botswana, Burkina Faso, Croatia, Cuba, Cyprus, Denmark, Ecuador, Eritrea, Ethiopia, France, Germany, Ghana, Greece, Guyana, Hungary, Iceland, Indonesia, Islamic Republic of Iran, Ireland, Israel, Jamaica, Jordan, Kenya, Kiribati, Republic of Korea, Kuwait, Lesotho, Liberia, Luxembourg, Malta, Mauritania, Mexico, Republic of Moldova, Morocco, Namibia, New Zealand, Oman, Panama, Papua New Guinea, Peru, Portugal, Qatar, Russian Federation, Saint Kitts and Nevis, San Marino, Saudi Arabia, Serbia and Montenegro, Seychelles, Slovenia, Sri Lanka, Sweden, Switzerland, Togo, Tunisia, Yemen.*



Appendices

Appendix I. Table of reports received on ratified Conventions as of 12 December 2003 (articles 22 and 35 of the Constitution)

Article 22 of the Constitution of the International Labour Organization provides that “each of the Members agrees to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of the Conventions to which it is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request”. Article 23 of the Constitution provides that the Director-General shall lay before the next meeting of the Conference a summary of the reports communicated to him by Members in pursuance of article 22, and that each Member shall communicate copies of these reports to the representative organizations of employers and workers.

At its 204th (November 1977) Session, the Governing Body approved the following arrangements for the presentation by the Director-General to the Conference of summaries of reports submitted by governments under articles 22 and 35 of the Constitution:

- (a) the practice of tabular classification of reports, without summary of their contents, which has been followed for several years in respect of reports subsequent to first reports after ratification, should be applied to all reports, including first reports;
- (b) the Director-General should make available, for consultation at the Conference, the original texts of all reports received on ratified Conventions; in addition, photocopies of the reports should be supplied on request to members of delegations.

At its 267th (November 1996) Session, the Governing Body approved new measures for rationalization and simplification.

Reports received under articles 22 and 35 of the Constitution appear in simplified form in a table annexed to the report of the Committee of Experts on the Application of Conventions and Recommendations; first reports are indicated in parentheses.

Requests for consultation or copies of reports may be addressed to the secretariat of the Committee on the Application of Standards.

Afghanistan	14 reports requested
· No reports received: Conventions Nos. 13, 14, 41, 45, 95, 100, 105, 106, 111, 137, 139, 140, 141, 142	
Albania	11 reports requested
· 7 reports received: Conventions Nos. (26), 52, 87, (95), 98, 100, 144	
· 4 reports not received: Conventions Nos. 29, 105, 111, (182)	
Algeria	18 reports requested
· 15 reports received: Conventions Nos. 3, 14, 17, 29, 32, 78, 87, 89, 98, 100, 101, 111, 120, 142, (182)	
· 3 reports not received: Conventions Nos. 96, 122, 144	
Angola	20 reports requested
· 17 reports received: Conventions Nos. 1, 14, 19, 26, 29, 68, 73, 74, (87), 89, 91, 92, 98, 100, 111, (138), (182)	
· 3 reports not received: Conventions Nos. 69, 106, 107	
Antigua and Barbuda	6 reports requested
· No reports received: Conventions Nos. 14, 81, 87, 98, 101, 111	
Argentina	14 reports requested
· 13 reports received: Conventions Nos. 1, 3, 14, 30, 52, 87, 98, 100, 111, 142, 144, 169, (182)	
· 1 report not received: Convention No. 88	
Armenia	7 reports requested
· No reports received: Conventions Nos. (100), (111), (122), (135), (151), (174), (176)	
Australia	8 reports requested
· All reports received: Conventions Nos. 47, 87, 98, 100, 111, 122, 142, 144	
<i>Norfolk Island</i>	8 reports requested
· 1 report received: Convention No. 3	
· 7 reports not received: Conventions Nos. 42, 47, 87, 98, 100, 122, 142	
Austria	11 reports requested
· All reports received: Conventions Nos. 87, 98, 100, 101, 103, 111, 122, 142, 144, 172, (182)	
Azerbaijan	26 reports requested
· 21 reports received: Conventions Nos. 14, 29, 47, 52, 87, 92, 98, 100, 103, (105), 106, 111, 119, 120, 131, 133, 135, 138, 140, 144, 149	
· 5 reports not received: Conventions Nos. (81), 122, 126, (129), 142	
Bahamas	11 reports requested
· 9 reports received: Conventions Nos. 14, (87), 98, (100), (103), (111), 117, (138), (182)	
· 2 reports not received: Conventions Nos. 144, (147)	
Bahrain	4 reports requested
· All reports received: Conventions Nos. 14, 89, 111, (182)	
Bangladesh	12 reports requested
· All reports received: Conventions Nos. 1, 14, 87, 89, 98, 100, 106, 107, 111, 144, 149, (182)	
Barbados	15 reports requested
· 10 reports received: Conventions Nos. 19, 26, 74, 87, 100, 122, 135, (138), 172, (182)	
· 5 reports not received: Conventions Nos. 29, 98, 101, 111, 144	
Belarus	14 reports requested
· All reports received: Conventions Nos. 14, 47, 52, 87, 98, 100, 103, 106, 111, 122, 142, 144, 149, (167)	
Belgium	14 reports requested
· All reports received: Conventions Nos. 1, 14, 82, 87, 98, 100, 101, 107, 111, 122, 140, 144, 149, 171	

Belize	25 reports requested
· All reports received: Conventions Nos. 14, 16, 19, 26, 58, 87, 89, 97, 98, 99, 100, 101, (103), 111, (135), (138), (140), (141), (144), (150), (151), (154), (155), (156), (182)	
Benin	12 reports requested
· All reports received: Conventions Nos. 14, 41, (81), 87, 98, 100, 111, (135), (138), (144), (150), (182)	
Bolivia	22 reports requested
· 18 reports received: Conventions Nos. 1, 14, 30, 77, 78, 87, 88, 89, 98, 100, 102, 103, 106, 111, 117, 122, 156, 159	
· 4 reports not received: Conventions Nos. 121, 128, 130, 169	
Bosnia and Herzegovina	58 reports requested
· 5 reports received: Conventions Nos. 8, 88, 89, 100, 122	
· 53 reports not received: Conventions Nos. 9, 11, 12, 13, 14, 16, 19, 22, 23, 24, 25, 27, 29, 32, 45, 53, 56, 69, 73, 74, 87, 90, 91, 92, 97, 98, 102, 103, (105), 106, 111, 113, 114, 119, 121, 126, 129, 131, 132, 135, 136, 138, 139, 140, 142, 143, 148, 155, 156, 159, 161, 162, (182)	
Botswana	7 reports requested
· 2 reports received: Conventions Nos. 29, 100	
· 5 reports not received: Conventions Nos. 14, 87, 98, 111, 144	
Brazil	18 reports requested
· 17 reports received: Conventions Nos. 14, 89, 98, 100, 103, 106, 111, 117, 122, 131, 132, (138), 140, 142, 144, 148, (174)	
· 1 report not received: Convention No. 115	
Bulgaria	12 reports requested
· All reports received: Conventions Nos. 1, 3, 14, 30, 52, 87, 98, 100, 106, 111, 144, (183)	
Burkina Faso	11 reports requested
· All reports received: Conventions Nos. 3, 14, 87, 98, 100, 111, 129, 132, 135, (144), (182)	
Burundi	11 reports requested
· 9 reports received: Conventions Nos. 1, 14, 52, 87, 89, 94, 98, 111, 144	
· 2 reports not received: Conventions Nos. 100, 101	
Cambodia	10 reports requested
· 1 report received: Convention No. (100)	
· 9 reports not received: Conventions Nos. 4, 13, 29, 87, 98, (105), (111), 122, (150)	
Cameroon	12 reports requested
· 1 report received: Convention No. 3	
· 11 reports not received: Conventions Nos. 14, 78, 87, 89, 98, 100, 106, 111, 122, 132, (138)	
Canada	6 reports requested
· All reports received: Conventions Nos. 1, 14, 87, 100, 111, 122	
Cape Verde	9 reports requested
· All reports received: Conventions Nos. 19, 29, (87), 98, 100, 111, 118, (155), (182)	
Central African Republic	17 reports requested
· 9 reports received: Conventions Nos. 3, 18, 26, 52, 87, 94, 100, 111, 118	
· 8 reports not received: Conventions Nos. 14, 41, 62, 95, 98, 101, 117, 119	
Chad	14 reports requested
· 11 reports received: Conventions Nos. 14, 26, 41, 87, 98, 100, 111, 135, 144, (151), (173)	
· 3 reports not received: Conventions Nos. 29, (132), (182)	
Chile	20 reports requested
· 18 reports received: Conventions Nos. 1, 9, 14, 20, 29, 30, 87, 98, 100, 103, 111, 122, 131, 135, 138, 144, (151), (182)	
· 2 reports not received: Conventions Nos. 115, 140	

China	6 reports requested
· All reports received: Conventions Nos. 14, 22, 100, 122, 144, 170	
Hong Kong Special Administrative Region	8 reports requested
· All reports received: Conventions Nos. 3, 14, 87, 98, 101, 122, 142, 144	
Macau Special Administrative Region	9 reports requested
· All reports received: Conventions Nos. 1, 14, 87, 98, 100, 106, 111, 122, 144	
Colombia	18 reports requested
· All reports received: Conventions Nos. 1, 3, 4, 14, 26, 30, 52, 87, 98, 100, 101, 106, 111, (138), 144, (161), (162), 169	
Comoros	18 reports requested
· 10 reports received: Conventions Nos. 1, 14, 26, 29, 98, 99, 100, 101, 105, 122	
· 8 reports not received: Conventions Nos. 5, 10, 11, 12, 52, 87, 89, 106	
Congo	17 reports requested
· No reports received: Conventions Nos. 13, 14, 26, 29, (81), 87, 89, 95, (98), (100), (105), (111), 119, (138), (144), 149, 152	
Costa Rica	17 reports requested
· All reports received: Conventions Nos. 1, 14, 87, 89, 95, 98, 100, 101, 106, 111, 117, 122, 134, 144, (160), 169, (182)	
Côte d'Ivoire	18 reports requested
· All reports received: Conventions Nos. 3, 6, 13, 14, 19, 26, 29, 33, 41, 52, 81, 87, 98, 100, 110, 111, 135, 144	
Croatia	12 reports requested
· All reports received: Conventions Nos. 14, 74, 87, 98, 100, 103, 106, 111, 122, 132, 162, (182)	
Cuba	18 reports requested
· All reports received: Conventions Nos. 1, 4, 14, 30, 52, 87, 92, 98, 100, 101, 103, 106, 107, 110, 111, 122, 140, 142	
Cyprus	17 reports requested
· 12 reports received: Conventions Nos. 87, 92, 95, 98, 100, 106, 114, 122, 138, 144, 172, 175	
· 5 reports not received: Conventions Nos. 29, 111, 142, 171, (182)	
Czech Republic	13 reports requested
· All reports received: Conventions Nos. 1, 14, 87, 98, 100, 111, 122, 132, 140, 142, 144, 171, (182)	
Democratic Republic of the Congo	15 reports requested
· No reports received: Conventions Nos. 14, (87), 89, 98, 100, 102, (105), (111), 117, 121, (135), (138), (144), 150, (182)	
Denmark	21 reports requested
· 10 reports received: Conventions Nos. 9, 14, 29, 87, 98, 100, 102, 106, 118, (182)	
· 11 reports not received: Conventions Nos. 52, 111, 119, 120, 122, 129, 139, 142, 144, 149, 169	
<i>Faeroe Islands</i>	21 reports requested
· No reports received: Conventions Nos. 5, 6, 7, 8, 9, 11, 12, 14, 16, 18, 19, 27, 29, 52, 53, 87, 92, 98, 105, 106, 126	
<i>Greenland</i>	7 reports requested
· No reports received: Conventions Nos. 7, 14, 29, 87, 106, 122, 126	
Djibouti	41 reports requested
· 11 reports received: Conventions Nos. 1, 9, 19, 26, 29, 87, 95, 99, 100, 120, 122	
· 30 reports not received: Conventions Nos. 5, 10, 11, 12, 13, 14, 16, 17, 18, 33, 44, 45, 52, 53, 58, 69, 73, 77, 78, 81, 89, 91, 98, 101, 105, 106, 123, 124, 125, 126	
Dominica	7 reports requested
· 5 reports received: Conventions Nos. 26, 87, 98, 100, 111	
· 2 reports not received: Conventions Nos. 14, (182)	
Dominican Republic	13 reports requested
· All reports received: Conventions Nos. 1, 52, 87, 98, 100, 106, 107, 111, (122), 144, 171, 172, (182)	

Ecuador	17 reports requested
· All reports received: Conventions Nos. 87, 98, 100, 101, 103, 106, 110, 111, 117, 122, 142, 144, 148, 149, 152, 153, 169	
Egypt	18 reports requested
· All reports received: Conventions Nos. 1, 14, 30, 52, 87, 89, 94, 98, 100, 101, 106, 107, 111, 118, 139, 142, 144, 149	
El Salvador	7 reports requested
· All reports received: Conventions Nos. 100, 107, 111, 122, 142, 144, (150)	
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
· No reports received: Conventions Nos. 87, 98, 100, 111	
Estonia	7 reports requested
· All reports received: Conventions Nos. 14, 41, 87, 98, 100, 144, (182)	
Ethiopia	6 reports requested
· All reports received: Conventions Nos. 14, 87, 98, 100, 106, 111	
Fiji	8 reports requested
· 6 reports received: Conventions Nos. 26, 58, 84, 85, (144), (169)	
· 2 reports not received: Conventions Nos. 29, 98	
Finland	14 reports requested
· All reports received: Conventions Nos. 14, 47, 87, 98, 100, 111, 122, 132, 140, 142, 144, 149, 175, 177	
France	20 reports requested
· 18 reports received: Conventions Nos. 3, 14, 29, 52, 87, 98, 100, 101, 106, 111, 122, 134, 140, 144, 145, 149, 152, (182)	
· 2 reports not received: Conventions Nos. 82, 142	
<i>French Guiana</i>	22 reports requested
· 16 reports received: Conventions Nos. 3, 14, 52, 87, 89, 98, 100, 101, 106, 111, 120, 135, 141, 142, 144, 149	
· 6 reports not received: Conventions Nos. 58, 69, 74, 112, 113, 125	
<i>French Polynesia</i>	15 reports requested
· 14 reports received: Conventions Nos. 3, 14, 52, 82, 87, 89, 98, 100, 101, 106, 111, 122, 142, 144	
· 1 report not received: Convention No. 149	
<i>French Southern and Antarctic Territories</i>	6 reports requested
· No reports received: Conventions Nos. 58, 69, 74, 87, 98, 111	
<i>Guadeloupe</i>	19 reports requested
· 13 reports received: Conventions Nos. 3, 14, 52, 87, 89, 98, 100, 101, 106, 111, 142, 144, 149	
· 6 reports not received: Conventions Nos. 58, 69, 74, 112, 113, 125	
<i>Martinique</i>	19 reports requested
· 13 reports received: Conventions Nos. 3, 14, 52, 87, 89, 98, 100, 101, 106, 111, 142, 144, 149	
· 6 reports not received: Conventions Nos. 58, 69, 74, 112, 113, 125	
<i>New Caledonia</i>	22 reports requested
· 4 reports received: Conventions Nos. 3, 14, 106, 122	
· 18 reports not received: Conventions Nos. 29, 52, 82, 87, 89, 95, 98, 100, 101, 111, 120, 127, 129, 131, 141, 142, 144, 149	
<i>Réunion</i>	19 reports requested
· 13 reports received: Conventions Nos. 3, 14, 52, 87, 89, 98, 100, 101, 106, 111, 142, 144, 149	
· 6 reports not received: Conventions Nos. 58, 69, 74, 112, 113, 125	
<i>St. Pierre and Miquelon</i>	19 reports requested
· 16 reports received: Conventions Nos. 3, 14, 52, 82, 87, 89, 98, 100, 101, 106, 111, 122, 142, 144, 146, 149	
· 3 reports not received: Conventions Nos. 58, 69, 125	

Gabon	12 reports requested
· All reports received: Conventions Nos. 3, 14, 41, 52, 87, 98, 100, 101, 106, 111, 144, (182)	
Gambia	8 reports requested
· 4 reports received: Conventions Nos. (87), (98), (100), (111)	
· 4 reports not received: Conventions Nos. (29), (105), (138), (182)	
Georgia	10 reports requested
· No reports received: Conventions Nos. 29, 52, 87, 98, 100, 111, 117, 122, 138, 142	
Germany	10 reports requested
· All reports received: Conventions Nos. 3, 87, 98, 100, 111, 122, 132, 140, 142, 144	
Ghana	14 reports requested
· 1 report received: Convention No. 103	
· 13 reports not received: Conventions Nos. 1, 14, 30, 87, 89, 94, 98, 100, 106, 107, 111, 117, 149	
Greece	15 reports requested
· All reports received: Conventions Nos. 1, 14, 52, 87, 95, 98, 100, 103, 106, 111, 122, 142, 144, 149, (182)	
Grenada	6 reports requested
· No reports received: Conventions Nos. 14, 81, 87, 98, 100, 144	
Guatemala	20 reports requested
· All reports received: Conventions Nos. 1, 14, 30, 50, 64, 87, 89, 98, 100, 101, 103, 106, 110, 111, 117, 122, 144, 149, 169, (182)	
Guinea	38 reports requested
· 23 reports received: Conventions Nos. 3, 13, 26, 29, 81, 87, 89, 94, 95, 98, 99, 100, 105, 111, 112, 119, 120, 122, 132, 133, 135, 144, 149	
· 15 reports not received: Conventions Nos. 10, 14, 16, 33, 62, 113, 117, 118, 121, 134, 139, 140, 142, 152, 159	
Guinea-Bissau	8 reports requested
· All reports received: Conventions Nos. 1, 14, 89, 98, 100, 106, 107, 111	
Guyana	12 reports requested
· All reports received: Conventions Nos. 87, 98, 100, 111, 139, 140, 142, 144, 149, 172, 175, (182)	
Haiti	18 reports requested
· No reports received: Conventions Nos. 1, 14, 19, 24, 25, 29, 30, 77, 78, 81, 87, 90, 98, 100, 105, 106, 107, 111	
Honduras	9 reports requested
· All reports received: Conventions Nos. 14, 87, 98, 100, 106, 111, 122, 169, (182)	
Hungary	12 reports requested
· 11 reports received: Conventions Nos. 14, 87, 98, 100, 103, 111, 122, 132, 140, 142, 144	
· 1 report not received: Convention No. 165	
Iceland	6 reports requested
· 5 reports received: Conventions Nos. 87, 98, 100, 122, 144	
· 1 report not received: Convention No. 111	
India	9 reports requested
· All reports received: Conventions Nos. 1, 14, 29, 89, 100, 107, 111, 122, 144	
Indonesia	9 reports requested
· All reports received: Conventions Nos. 19, 69, 87, 98, 100, 106, 111, 138, 144	
Islamic Republic of Iran	6 reports requested
· All reports received: Conventions Nos. 14, 100, 105, 106, 111, 122	

Iraq	38 reports requested
· No reports received: Conventions Nos. 1, 11, 14, 16, 19, 29, 30, 77, 78, 81, 89, 92, 98, 100, 106, 107, 111, 118, 119, 120, 122, 131, 132, 135, 137, 138, 139, 140, 142, 144, 145, 146, 148, 149, 152, 153, (172), (182)	
Ireland	12 reports requested
· All reports received: Conventions Nos. 14, 23, 87, 98, 100, 111, 122, 132, 142, 144, 172, 177	
Israel	13 reports requested
· 6 reports received: Conventions Nos. 1, 14, 30, 52, 101, 106 · 7 reports not received: Conventions Nos. 87, 98, 100, 111, 117, 122, 142	
Italy	16 reports requested
· All reports received: Conventions Nos. 3, 14, 74, 87, 98, 100, 106, 111, 117, 122, 132, 142, 144, 149, 175, (183)	
Jamaica	9 reports requested
· All reports received: Conventions Nos. 87, 98, 100, 105, 111, 117, 122, 144, 149	
Japan	7 reports requested
· All reports received: Conventions Nos. 87, 98, 100, 122, 142, 156, (182)	
Jordan	7 reports requested
· All reports received: Conventions Nos. 98, 100, 106, 111, 117, 122, 142	
Kazakhstan	11 reports requested
· 7 reports received: Conventions Nos. (81), (87), (88), (98), (129), (135), (144) · 4 reports not received: Conventions Nos. (29), (100), (105), (138)	
Kenya	15 reports requested
· 14 reports received: Conventions Nos. 14, 19, 29, 81, (100), 105, (111), 129, 132, 138, 140, 142, 149, (182) · 1 report not received: Convention No. 89	
Kiribati	2 reports requested
· No reports received: Conventions Nos. (29), (105)	
Republic of Korea	12 reports requested
· All reports received: Conventions Nos. (19), (26), 81, (88), 100, 122, (131), (135), 138, 142, (156), (182)	
Kuwait	11 reports requested
· All reports received: Conventions Nos. 1, 29, 30, 52, 81, 89, 105, 106, 117, 138, (182)	
Kyrgyzstan	43 reports requested
· No reports received: Conventions Nos. 11, 14, 16, 23, 27, 29, 32, 45, 47, 52, 69, 73, 77, 78, 79, (81), 87, 90, 92, 95, 98, 100, 103, (105), 106, 108, 111, 113, 115, 119, 120, 122, 124, 126, (133), 134, 138, 142, 147, 148, 149, 159, 160	
Lao People's Democratic Republic	3 reports requested
· All reports received: Conventions Nos. 4, 13, 29	
Latvia	20 reports requested
· All reports received: Conventions Nos. 3, 7, 9, 14, 81, 87, 100, 105, 106, 108, 119, 120, 122, 129, 131, 132, 135, 142, 149, 158	
Lebanon	12 reports requested
· All reports received: Conventions Nos. 1, 14, 29, 30, 52, 81, 89, 105, 106, 142, 172, (182)	
Lesotho	9 reports requested
· 6 reports received: Conventions Nos. 14, 29, (81), (138), (158), (182) · 3 reports not received: Conventions Nos. (105), (150), (155)	
Liberia	17 reports requested
· No reports received: Conventions Nos. 22, 23, 29, 53, 55, 58, 87, 92, 98, 105, 108, 111, 112, 113, 114, (133), 147	

Libyan Arab Jamahiriya	19 reports requested
<ul style="list-style-type: none"> · 7 reports received: Conventions Nos. 29, 81, 95, 102, 103, 118, (182) · 12 reports not received: Conventions Nos. 1, 14, 52, 89, 96, 105, 121, 122, 128, 130, 131, 138 	
Lithuania	10 reports requested
<ul style="list-style-type: none"> · All reports received: Conventions Nos. 1, 4, 14, 29, 47, 81, 105, 138, 142, 171 	
Luxembourg	28 reports requested
<ul style="list-style-type: none"> · 27 reports received: Conventions Nos. 1, 9, 13, 14, 19, 26, 29, 30, 68, 81, 87, 92, 100, 103, 105, (111), 132, 138, (142), (150), (151), (155), (158), (159), 166, (175), (182) · 1 report not received: Convention No. 135 	
Madagascar	19 reports requested
<ul style="list-style-type: none"> · 14 reports received: Conventions Nos. 14, 26, 29, 41, 87, 88, 100, 119, 120, 122, 132, (138), 159, 173 · 5 reports not received: Conventions Nos. 81, (97), 117, 129, (182) 	
Malawi	9 reports requested
<ul style="list-style-type: none"> · No reports received: Conventions Nos. 29, 81, 89, 105, 107, 129, 138, 149, 182 	
Malaysia	5 reports requested
<ul style="list-style-type: none"> · All reports received: Conventions Nos. 29, 81, 100, 138, 182 	
Peninsular Malaysia	1 report requested
<ul style="list-style-type: none"> · All reports received: Convention No. 19 	
Sabah	1 report requested
<ul style="list-style-type: none"> · All reports received: Convention No. 97 	
Sarawak	1 report requested
<ul style="list-style-type: none"> · All reports received: Convention No. 14 	
Mali	9 reports requested
<ul style="list-style-type: none"> · 7 reports received: Conventions Nos. 14, 18, 29, 52, 81, 105, 182 · 2 reports not received: Conventions Nos. 19, 159 	
Malta	12 reports requested
<ul style="list-style-type: none"> · All reports received: Conventions Nos. 1, 14, 29, 81, 105, 106, 117, 129, 132, 138, 149, (182) 	
Mauritania	15 reports requested
<ul style="list-style-type: none"> · 13 reports received: Conventions Nos. 3, 14, 29, 52, 53, 81, 89, (98), 101, 105, 118, (138), (182) · 2 reports not received: Conventions Nos. (100), 102 	
Mauritius	8 reports requested
<ul style="list-style-type: none"> · All reports received: Conventions Nos. 14, 29, 81, 94, 105, 138, 175, 182 	
Mexico	15 reports requested
<ul style="list-style-type: none"> · 14 reports received: Conventions Nos. 14, 22, 29, 30, 52, 105, 106, 110, 140, 142, 153, (159), 172, 182 · 1 report not received: Convention No. 169 	
Republic of Moldova	13 reports requested
<ul style="list-style-type: none"> · All reports received: Conventions Nos. 29, 47, 81, 95, 103, 105, (108), 117, 129, 132, 138, (142), (181) 	
Mongolia	13 reports requested
<ul style="list-style-type: none"> · 9 reports received: Conventions Nos. 59, 87, 111, 122, (135), (144), (155), (159), (182) · 4 reports not received: Conventions Nos. 98, 100, 103, 123 	
Morocco	15 reports requested
<ul style="list-style-type: none"> · All reports received: Conventions Nos. 4, 14, 29, 30, 52, 81, 101, 105, 106, (108), 119, 129, 136, 138, (182) 	
Mozambique	5 reports requested
<ul style="list-style-type: none"> · All reports received: Conventions Nos. 1, 14, 30, 81, 105 	

Myanmar	5 reports requested
· All reports received: Conventions Nos. 1, 14, 29, 52, 87	
Namibia	5 reports requested
· All reports received: Conventions Nos. 29, 105, (111), 138, 182	
Nepal	3 reports requested
· All reports received: Conventions Nos. 14, 100, 138	
Netherlands	14 reports requested
· All reports received: Conventions Nos. 14, 29, 81, 101, 103, 105, (106), 128, 129, 138, 140, 142, 169, (175)	
<i>Aruba</i>	21 reports requested
· All reports received: Conventions Nos. 9, 14, 29, 81, 87, 89, 94, 101, 105, (106), 114, 118, 121, 137, 138, 140, 142, 144, 145, 146, 147	
<i>Netherlands Antilles</i>	9 reports requested
· 4 reports received: Conventions Nos. 9, 58, 81, 105	
· 5 reports not received: Conventions Nos. 14, 29, 101, 106, 172	
New Zealand	10 reports requested
· 9 reports received: Conventions Nos. 14, 29, 47, 52, 81, 101, 105, (160), (182)	
· 1 report not received: Convention No. 82	
<i>Tokelau</i>	3 reports requested
· All reports received: Conventions Nos. 29, 82, 105	
Nicaragua	13 reports requested
· All reports received: Conventions Nos. 1, 3, 4, 14, 29, 30, 105, 110, 117, 138, 140, 142, 182	
Niger	16 reports requested
· 10 reports received: Conventions Nos. 29, 81, 87, 95, 105, 117, 119, 131, 138, (182)	
· 6 reports not received: Conventions Nos. 6, 13, 14, 102, 135, 142	
Nigeria	6 reports requested
· All reports received: Conventions Nos. 29, 81, 95, 105, 133, 134	
Norway	14 reports requested
· All reports received: Conventions Nos. 14, 29, 30, 47, 81, 105, 115, 129, 132, 138, 142, 149, 169, 182	
Oman	2 reports requested
· All reports received: Conventions Nos. 29, (182)	
Pakistan	14 reports requested
· 4 reports received: Conventions Nos. 16, 22, 29, 87	
· 10 reports not received: Conventions Nos. 1, 14, 81, 89, 98, (100), 105, 106, 107, (182)	
Panama	12 reports requested
· All reports received: Conventions Nos. 3, 29, 30, 52, 81, 89, 105, 107, 110, 117, 138, (182)	
Papua New Guinea	12 reports requested
· 6 reports received: Conventions Nos. 26, 29, (87), 99, (100), 122	
· 6 reports not received: Conventions Nos. (103), 105, (111), (138), (158), (182)	
Paraguay	21 reports requested
· No reports received: Conventions Nos. 1, 14, 29, 30, 52, 79, 81, 87, 89, 90, 98, 101, 105, 106, 111, 117, 119, 120, 122, 169, (182)	
Peru	16 reports requested
· 13 reports received: Conventions Nos. 1, 14, 24, 52, 55, 56, 67, 68, 71, 101, 102, 106, 169	
· 3 reports not received: Conventions Nos. 29, 81, 105	

Philippines	7 reports requested
<ul style="list-style-type: none"> · 5 reports received: Conventions Nos. 87, 105, 138, 149, 182 · 2 reports not received: Conventions Nos. 89, 110 	
Poland	13 reports requested
<ul style="list-style-type: none"> · All reports received: Conventions Nos. 14, 29, 81, 101, 103, 105, 108, 129, 138, 140, 142, 149, (176) 	
Portugal	18 reports requested
<ul style="list-style-type: none"> · All reports received: Conventions Nos. 1, 14, 22, 29, 69, 81, 103, 105, 106, 107, 117, 129, 132, 138, 142, 149, 171, 182 	
Qatar	3 reports requested
<ul style="list-style-type: none"> · All reports received: Conventions Nos. 29, 81, 182 	
Romania	12 reports requested
<ul style="list-style-type: none"> · All reports received: Conventions Nos. 1, 3, 14, 29, 81, 89, 105, 117, 129, 138, (147), 182 	
Russian Federation	13 reports requested
<ul style="list-style-type: none"> · 12 reports received: Conventions Nos. 14, 29, 47, 52, 81, 103, 106, 126, 138, 142, 149, (179) · 1 report not received: Convention No. 105 	
Rwanda	8 reports requested
<ul style="list-style-type: none"> · All reports received: Conventions Nos. 14, (29), 81, 89, 105, 132, 138, 182 	
Saint Kitts and Nevis	8 reports requested
<ul style="list-style-type: none"> · 1 report received: Convention No. (182) · 7 reports not received: Conventions Nos. (29), (87), (98), (100), (105), (111), (144) 	
Saint Lucia	10 reports requested
<ul style="list-style-type: none"> · 3 reports received: Conventions Nos. 7, 29, 87 · 7 reports not received: Conventions Nos. 14, 100, 101, 105, (154), (158), (182) 	
Saint Vincent and the Grenadines	10 reports requested
<ul style="list-style-type: none"> · 9 reports received: Conventions Nos. 11, 29, 81, (87), 94, (100), 105, (111), (182) · 1 report not received: Convention No. 101 	
San Marino	8 reports requested
<ul style="list-style-type: none"> · 2 reports received: Conventions Nos. 87, 103 · 6 reports not received: Conventions Nos. 29, 105, 138, 140, 142, 182 	
Sao Tome and Principe	8 reports requested
<ul style="list-style-type: none"> · 7 reports received: Conventions Nos. 18, 19, 81, 87, 100, 144, 159 · 1 report not received: Convention No. 106 	
Saudi Arabia	10 reports requested
<ul style="list-style-type: none"> · All reports received: Conventions Nos. 1, 14, 29, 30, 81, 89, 105, 106, (174), (182) 	
Senegal	11 reports requested
<ul style="list-style-type: none"> · All reports received: Conventions Nos. 14, 19, 29, 52, 81, 89, 101, 105, 117, 138, 182 	
Serbia and Montenegro	26 reports requested
<ul style="list-style-type: none"> · 1 report received: Convention No. 103 · 25 reports not received: Conventions Nos. (12), (14), (19), (24), (25), (27), 29, (32), (81), (89), (90), (97), (102), (106), (113), (114), (121), 129, (132), 138, (140), (142), (143), (156), (158) 	
Seychelles	5 reports requested
<ul style="list-style-type: none"> · All reports received: Conventions Nos. 29, 105, 138, 149, 182 	
Sierra Leone	26 reports requested
<ul style="list-style-type: none"> · No reports received: Conventions Nos. 8, 16, 17, 19, 22, 26, 29, 32, 45, 58, 59, 81, 87, 88, 94, 95, 98, 99, 100, 101, 105, 111, 119, 125, 126, 144 	

Singapore	3 reports requested
· All reports received: Conventions Nos. 29, 81, (182)	
Slovakia	19 reports requested
· 11 reports received: Conventions Nos. 1, 14, 52, 128, 130, 138, 140, 142, 144, 182, (183)	
· 8 reports not received: Conventions Nos. 13, 29, 102, 105, 115, 120, 139, 173	
Slovenia	24 reports requested
· 18 reports received: Conventions Nos. 9, 14, 29, 81, 89, 91, 92, 100, 103, 105, 106, 119, 122, 126, 129, 132, 135, (147)	
· 6 reports not received: Conventions Nos. 138, 140, 142, (173), (175), (182)	
Solomon Islands	15 reports requested
· No reports received: Conventions Nos. 8, 11, 12, 14, 16, 19, 26, 29, 42, 45, 81, 84, 94, 95, 108	
Somalia	3 reports requested
· No reports received: Conventions Nos. 29, 84, 105	
South Africa	6 reports requested
· All reports received: Conventions Nos. 26, 29, 89, 105, 138, 182	
Spain	20 reports requested
· All reports received: Conventions Nos. 1, 4, 14, 29, 30, 81, 101, 103, 105, 106, 117, 129, 132, 138, 140, 142, 153, 166, 172, (182)	
Sri Lanka	7 reports requested
· All reports received: Conventions Nos. 29, 81, 103, 106, 110, 138, (182)	
Sudan	6 reports requested
· 4 reports received: Conventions Nos. 29, 81, 105, 117	
· 2 reports not received: Conventions Nos. 19, 122	
Suriname	7 reports requested
· All reports received: Conventions Nos. 14, 29, 41, 81, 101, 105, 106	
Swaziland	9 reports requested
· No reports received: Conventions Nos. 11, 14, 29, 81, 89, 96, 101, 105, 131	
Sweden	12 reports requested
· All reports received: Conventions Nos. 14, 29, 47, 81, 105, 129, 132, 138, 140, 142, 149, (182)	
Switzerland	10 reports requested
· All reports received: Conventions Nos. 14, 29, 81, 105, 132, 138, 142, 153, 172, 182	
Syrian Arab Republic	14 reports requested
· All reports received: Conventions Nos. 1, 14, 29, 30, 52, 81, 89, 101, 105, 106, 107, 117, 129, (138)	
Tajikistan	36 reports requested
· No reports received: Conventions Nos. 14, 16, 23, 29, 32, 47, 52, 69, 73, 77, 78, 79, 87, 90, 92, 95, 98, 100, 103, (105), 106, 111, 113, 115, 119, 120, 122, 124, 126, 133, 134, 138, 142, 148, 149, 160	
United Republic of Tanzania	19 reports requested
· 13 reports received: Conventions Nos. 11, 12, 29, (87), 95, 105, 131, 134, 138, 140, 142, 170, (182)	
· 6 reports not received: Conventions Nos. 19, 94, 135, 137, 144, 149	
Tanganyika	3 reports requested
· 1 report received: Convention No. 81	
· 2 reports not received: Conventions Nos. 45, 101	
Zanzibar	2 reports requested
· No reports received: Conventions Nos. 58, 85	

Thailand	4 reports requested
<ul style="list-style-type: none"> · 3 reports received: Conventions Nos. 14, 29, 105 · 1 report not received: Convention No. (182) 	
The former Yugoslav Republic of Macedonia	58 reports requested
<ul style="list-style-type: none"> · No reports received: Conventions Nos. 8, 9, 11, 12, 13, 14, 16, 19, 22, 23, 24, 25, 27, 29, 32, 45, 53, 56, 69, 73, 74, 81, 87, 88, 89, 90, 91, 92, 97, 98, 100, 102, 103, 106, 111, 113, 114, 119, 121, 122, 126, 129, 131, 132, 135, 136, 138, 139, 140, 142, 143, 148, 155, 156, 158, 159, 161, 162 	
Togo	5 reports requested
<ul style="list-style-type: none"> · All reports received: Conventions Nos. 14, 29, 105, 138, 182 	
Trinidad and Tobago	3 reports requested
<ul style="list-style-type: none"> · 1 report received: Convention No. 87 · 2 reports not received: Conventions Nos. 29, 105 	
Tunisia	20 reports requested
<ul style="list-style-type: none"> · All reports received: Conventions Nos. 14, 26, 29, 52, 81, 87, 89, 91, 99, 100, 105, 106, 107, 117, 119, 120, 122, 138, 142, (182) 	
Turkey	8 reports requested
<ul style="list-style-type: none"> · All reports received: Conventions Nos. 14, 29, 81, 95, 105, 138, 142, (182) 	
Turkmenistan	6 reports requested
<ul style="list-style-type: none"> · No reports received: Conventions Nos. (29), (87), (98), (100), (105), (111) 	
Uganda	16 reports requested
<ul style="list-style-type: none"> · No reports received: Conventions Nos. 17, 19, 26, 29, 81, 94, 98, 105, 122, 123, 143, 144, 154, 158, 162, (182) 	
Ukraine	16 reports requested
<ul style="list-style-type: none"> · All reports received: Conventions Nos. 14, 23, 29, 32, 47, 69, 73, 103, 105, 106, 119, (132), 138, 142, 149, 182 	
United Arab Emirates	8 reports requested
<ul style="list-style-type: none"> · 6 reports received: Conventions Nos. 29, 81, 89, (111), 138, (182) · 2 reports not received: Conventions Nos. 1, 105 	
United Kingdom	8 reports requested
<ul style="list-style-type: none"> · All reports received: Conventions Nos. 29, 81, 82, 105, 138, 140, 142, 182 	
<i>Anguilla</i>	7 reports requested
<ul style="list-style-type: none"> · No reports received: Conventions Nos. 14, 29, 58, 82, 101, 105, 140 	
<i>Bermuda</i>	3 reports requested
<ul style="list-style-type: none"> · No reports received: Conventions Nos. 29, 82, 105 	
<i>British Virgin Islands</i>	8 reports requested
<ul style="list-style-type: none"> · All reports received: Conventions Nos. 10, 14, 26, 29, 58, 82, 87, 105 	
<i>Falkland Islands (Malvinas)</i>	4 reports requested
<ul style="list-style-type: none"> · No reports received: Conventions Nos. 14, 29, 82, 105 	
<i>Gibraltar</i>	10 reports requested
<ul style="list-style-type: none"> · All reports received: Conventions Nos. 29, 58, 81, 82, 87, 100, 105, 133, 135, 142 	
<i>Guernsey</i>	5 reports requested
<ul style="list-style-type: none"> · All reports received: Conventions Nos. 29, 81, 105, 142, (182) 	
<i>Isle of Man</i>	4 reports requested
<ul style="list-style-type: none"> · All reports received: Conventions Nos. 29, 81, 101, 105 	
<i>Jersey</i>	4 reports requested
<ul style="list-style-type: none"> · All reports received: Conventions Nos. 29, 81, 105, 140 	
<i>Montserrat</i>	6 reports requested
<ul style="list-style-type: none"> · No reports received: Conventions Nos. 14, 26, 29, 82, 95, 105 	

<i>St. Helena</i>	7 reports requested
· All reports received: Conventions Nos. 14, 17, 29, 58, 82, 87, 105	
United States	3 reports requested
· All reports received: Conventions Nos. 105, (176), 182	
Uruguay	18 reports requested
· 17 reports received: Conventions Nos. 1, 14, 29, 30, 81, 103, 105, 106, 110, 129, 131, 132, 138, 149, 153, 172, (182)	
· 1 report not received: Convention No. 94	
Uzbekistan	11 reports requested
· No reports received: Conventions Nos. (29), (47), (52), (98), (100), (103), (105), (111), (122), (135), (154)	
Venezuela	15 reports requested
· All reports received: Conventions Nos. 1, 3, 14, 29, 41, 81, 87, 98, 105, 117, 138, 140, 142, 149, 153	
Viet Nam	5 reports requested
· All reports received: Conventions Nos. 14, 81, 100, 120, (182)	
Yemen	9 reports requested
· 3 reports received: Conventions Nos. 81, 87, 105	
· 6 reports not received: Conventions Nos. 14, 29, 131, 132, 138, (182)	
Zambia	16 reports requested
· 10 reports received: Conventions Nos. 29, 87, 95, 100, 103, 122, 131, 135, 138, (176)	
· 6 reports not received: Conventions Nos. 105, 117, 141, 149, 173, (182)	
Zimbabwe	10 reports requested
· All reports received: Conventions Nos. 14, 29, 81, 98, 100, 105, 129, 138, 140, 182	

Grand Total

A total of 2,344 reports (article 22) were requested,
of which 1,544 reports (65.87 per cent) were received.

A total of 266 reports (article 35) were requested,
of which 156 reports (58.65 per cent) were received.

Appendix II. Statistical table of reports received on ratified Conventions as of 12 December 2003
(article 22 of the Constitution)

Conference year	Reports requested	Reports received at the date requested		Reports received in time for the session of the Committee of Experts		Reports received in time for the session of the Conference	
1932	447	-		406	90.8%	423	94.6%
1933	522	-		435	83.3%	453	86.7%
1934	601	-		508	84.5%	544	90.5%
1935	630	-		584	92.7%	620	98.4%
1936	662	-		577	87.2%	604	91.2%
1937	702	-		580	82.6%	634	90.3%
1938	748	-		616	82.4%	635	84.9%
1939	766	-		588	76.8%	-	
1944	583	-		251	43.1%	314	53.9%
1945	725	-		351	48.4%	523	72.2%
1946	731	-		370	50.6%	578	79.1%
1947	763	-		581	76.1%	666	87.3%
1948	799	-		521	65.2%	648	81.1%
1949	806	134	16.6%	666	82.6%	695	86.2%
1950	831	253	30.4%	597	71.8%	666	80.1%
1951	907	288	31.7%	507	77.7%	761	83.9%
1952	981	268	27.3%	743	75.7%	826	84.2%
1953	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%
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.							

Conference year	Reports requested	Reports received at the date requested	Reports received in time for the session of the Committee of Experts	Reports received in time for the session of the Conference
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 are henceforth requested, according to certain criteria, at yearly, two-yearly or five-yearly intervals.				
1996	1806	362 20.5%	1145 63.3%	1413 78.2%
1997	1927	553 28.7%	1211 62.8%	1438 74.6%
1998	2036	463 22.7%	1264 62.1%	1455 71.4%
1999	2288	520 22.7%	1406 61.4%	1641 71.7%
2000	2550	740 29.0%	1798 70.5%	1952 76.6%
2001	2313	598 25.9%	1513 65.4%	1672 72.2%
2002	2368	600 25.3%	1529 64.5%	1701 71.8%
2003	2344	568 24.2%	1544 65.9%	

Appendix III. List of observations made by employers' and workers' organizations

Bosnia and Herzegovina	on Convention No.
• Association of Employers of the Federation of Bosnia and Herzegovina	88
Bulgaria	on Conventions Nos.
• Confederation of Independant Trade Unions of Bulgaria (CITUB)	1, 87, 98, 100, 111, 183
Burundi	on Conventions Nos.
• International Confederation of Free Trade Unions (ICFTU)	29, 87, 98, 100, 105, 111, 138, 182
Canada	on Conventions Nos.
• International Confederation of Free Trade Unions (ICFTU)	87, 100, 105, 111, 182
Chile	on Conventions Nos.
• National Confederation of Municipal Employees of Chile (ASEMUCH)	87, 98, 151
China - Hong Kong Special Administrative Region	on Conventions Nos.
• Hong Kong Confederation of Trade Unions (HKCTU)	87, 98
• Indonesian Migrant Workers' Union (IMWU)	97
• International Confederation of Free Trade Unions (ICFTU)	29, 87, 98, 105, 182
Colombia	on Conventions Nos.
• ANTHOC-Seccional Huila	1, 18
• Colombian Association of Airline Pilots (ACDAC)	24, 25, 95
• Confederation of pensioners of Colombia	19, 24, 26
• Union of Maritime and Inland Water Transport Industry Workers (UNIMAR)	95
• World Confederation of Labour (WCL)	87, 95, 98, 99, 151, 154
Costa Rica	on Conventions Nos.
• National Association of Labour Inspectors (ANIT)	81, 129
Cuba	on Convention No.
• World Confederation of Labour (WCL)	87
Cyprus	on Convention No.
• Mahabubnagar District Palamoori Contract Labour Union	97
Czech Republic	on Conventions Nos.
• Czech-Moravian Confederation of Trade Unions (CM KOS)	1, 132, 140
Democratic Republic of the Congo	on Conventions Nos.
• Confederation of Trade Unions of Congo (CSC)	144
• Conscience of Workers and Peasants of Congo (CTPC)	87, 98, 144
• World Confederation of Labour (WCL)	87
Denmark	on Convention No.
• Sulinermik Inuussutissarsiuqartut Kattufiat (SIK)	169
Ecuador	on Convention No.
• United Front of Workers (FUT)	98
Egypt	on Conventions Nos.
• Federation of Egyptian Trade Unions (FGTU)	30, 94, 107, 149

El Salvador

- International Confederation of Free Trade Unions (ICFTU)
- National Union for Integration of Indigenous People (INDIO)

on Conventions Nos.

29, 100, 105, 111, 138, 182
107

Finland

- Central Organization of Finnish Trade Unions (SAK)
- Commission for Local Authority Employers (KT)
- Confederation of Finnish Industry and Employers (TT)
- Finnish Confederation of Salaried Employees (STTK)
- The State Employer's Office(VTML)

on Conventions Nos.

47, 87, 111, 122
87
47, 100, 122
122
87, 100, 111, 142

France

- French Democratic Confederation of Labour (CFDT)

on Conventions Nos.

87, 182

Guatemala

- Trade Union Confederation of Guatemala (UNSI TRAGUA)
- World Confederation of Labour (WCL)

on Conventions Nos.

1, 14, 30, 50, 64, 87, 89, 95, 98,
100, 101, 106, 110, 111, 117, 122,
144, 149, 169
87, 98, 182

India

- Chemical Mazdoor Sabha
- International Confederation of Free Trade Unions (ICFTU)

on Conventions Nos.

107
29

Indonesia

- International Confederation of Free Trade Unions (ICFTU)

on Conventions Nos.

29, 87, 98, 100, 105, 111, 138, 182

Italy

- General Confederation of Industry (CONFINDUSTRIA)
- General Union of Labour (UGL)
- Italian General Confederation of Labour (CGIL), Italian Confederation of Workers' Unions (CISL), Italian Union of Labour (UIL)

on Conventions Nos.

152, 159, 181
175, 182
14

Japan

- All Japan Shipbuilding and Engineering Union (ALSEU)
- Federation of Korean Trade Unions (FKTU) and Korean Confederation of Trade Unions (KCTU)
- Japan National Hospital Workers' Union (JNHU)
- Japanese Trade Union Confederation (JTUC-RENGO)
- Staff Union of Okayama University Medical School
- Zentoitsu Workers Union

on Conventions Nos.

100
29
100, 156
29, 87, 98, 100, 142, 156
100
87, 98, 182

Republic of Korea

- Federation of Korean Trade Unions (FKTU)

on Convention No.

88

Mauritania

- Free Confederation of Mauritanian Workers (CLTM)
- World Confederation of Labour (WCL)

on Conventions Nos.

29, 87, 98, 100
29

Mauritius

- Federation of Constituent Bodies' Trade Unions (FSCC)

on Convention No.

105

Mexico

- Authentic Front of Labour (FAT)
- Confederation of Industrial Chambers of the United States of Mexico (CONCAMIN)

on Conventions Nos.

169
140, 142

Morocco

- International Confederation of Free Trade Unions (ICFTU)

on Conventions Nos.

29, 98, 100, 105, 111, 138, 182

Myanmar

- International Confederation of Free Trade Unions (ICFTU)

on Convention No.

29

Netherlands

- Netherlands Trade Union Confederation (FNV)

on Conventions Nos.

103, 128, 175

New Zealand

- Business New Zealand
- International Confederation of Free Trade Unions (ICFTU)
- New Zealand Council of Trade Unions (NZCTU)

on Conventions Nos.

47, 52, 81, 100, 101, 160, 182
182
14, 29, 47, 81, 101, 105, 111, 122,
160

Niger

- International Confederation of Free Trade Unions (ICFTU)

on Convention No.

29

Norway

- Confederation of Norwegian Business and Industry (NHO)
- Confederation of Trade Unions (LO)
- Norwegian Federation of Oil Workers' Unions (OFS)
- Sámi Parliament of Norway

on Conventions Nos.

137, 170
137
87
169

Pakistan

- All Pakistan Federation of Trade Unions (APFTU)

on Conventions Nos.

18, 81, 87, 98, 100, 105, 107, 182

Peru

- Association of Labour Inspectors of the Ministry of Labour and Social Promotion (AITMTPS)
- National Association of Former Employees of the Peruvian Institute of Social Security (ASEIPSS)

on Conventions Nos.

81
102

Philippines

- International Confederation of Free Trade Unions (ICFTU)

on Convention No.

182

Poland

- National Trade Union of All-Polish Nurses and Midwives

on Conventions Nos.

95, 149

Romania

- National Union Block (BUN)

on Conventions Nos.

1, 14, 87

San Marino

- San Marino Confederation of Work

on Conventions Nos.

87, 98, 151

Slovakia

- Confederation of Trade Unions of the Slovak Republic (KOZ SR)

on Convention No.

144

Slovenia

- Association of Free Trade Unions of Slovenia (AFTUS)

on Conventions Nos.

14, 106

Spain

- General Union of Workers (UGT)

on Conventions Nos.

1, 14, 30, 81, 103, 106, 117, 132,
142

Sri Lanka

- International Confederation of Free Trade Unions (ICFTU)

on Convention No.

182

Sudan

- International Confederation of Free Trade Unions (ICFTU)

on Convention No.

29

Switzerland

- Swiss Federation of Trade Unions (USS/SGB)
- Union of Swiss Employers (UPS)

on Conventions Nos.

29, 105, 142
132

Turkey

- Confederation of Turkish Trade Unions (TÜRK-İS)
- Turkish Confederation of Employers' Associations (TİSK)
- Turkish Confederation of Public Worker Associations (Türkiye Kamu-Sen)

on Conventions Nos.

138
14, 29, 81, 95, 105, 138, 142, 158
14, 29, 81, 87, 95, 98, 105, 138,
142

Ukraine

- Customs Employees Union of Ukraine
- Workers' Union of the Coal Mine Nikanor-Novaya

on Conventions Nos.

29, 111
95

United Arab Emirates

- International Confederation of Free Trade Unions (ICFTU)

on Conventions Nos.

29, 138, 182

Uruguay

- Inter-Union Assembly of Workers - National Convention of Workers (PIT-CNT)

on Conventions Nos.

1, 30, 81, 87, 98, 103, 131, 138,
151, 182

Venezuela

- International Confederation of Free Trade Unions (ICFTU)

on Conventions Nos.

29, 100, 105, 111, 138

**Appendix IV. Information supplied by governments
with regard to the obligation to submit
Conventions and Recommendations
to the competent authorities
(31st to 90th Sessions of the International
Labour Conference, 1948-2002)**

Note. The number of the Convention or Recommendation is given in parentheses, preceded by the letter “C” or “R” as the case may be, when only some of the texts adopted at any one session have been submitted. The Protocols are indicated by the letter “P” followed by the number of the corresponding Convention. When the ratification of a Convention was registered, that Convention and the corresponding Recommendation are considered as submitted.

Account has been taken of the date of admission or readmission of States Members to the ILO for determining the sessions of the Conference whose texts are taken into consideration.

The Conference did not adopt any Conventions or Recommendations at its 57th Session (June 1972) and 73rd Session (June 1987).

State	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
Afghanistan	31-56, 58-70	71, 72, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90
Albania	31-49, 80-81, 82 (C176; R183), 83, 84 (C178; R186), 85, 87	78, 79, 82 (P081), 84 (C179; C180; P147; R185; R187), 86, 88, 89, 90
Algeria	47-56, 58-72, 74-82, 87	83, 84, 85, 86, 88, 89, 90
Angola	61-72, 74-78, 79 (C173), 80-81, 82 (C176; R183), 83-85, 87-90	79 (R180), 82 (P081), 86
Antigua-et-Barbuda	68-72, 74-82, 87	83, 84, 85, 86, 88, 89, 90
Argentina	31-56, 58-72, 74-83, 87, 89	84, 85, 86, 88, 90
Armenia	–	80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90
Australia	31-56, 58-72, 74-89	90
Austria	31-56, 58-72, 74-89	90
Azerbaijan	79 (C173), 80-82, 85-87	79 (R180), 83, 84, 88, 89, 90
Bahamas	61-72, 74-84, 86-87	85, 88, 89, 90
Bahrain	63-72, 74-87	88, 89, 90
Bangladesh	58-72, 74-76, 77 (C171; R178), 78, 80, 84 (C178; C180; P147), 85 (C181), 87	77 (C170; P089; R177), 79, 81, 82, 83, 84 (C179; R185; R186; R187), 85 (R188), 86, 88, 89, 90
Barbados	51-56, 58-72, 74-89	90
Belarus	37-56, 58-72, 74-90	–
Belgium	31-56, 58-72, 74-88	89, 90
Belize	68-72, 74-76, 87	77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 88, 89, 90
Benin	45-56, 58-72, 74-90	–
Bolivia	31-56, 58-72, 74-79, 87	80, 81, 82, 83, 84, 85, 86, 88, 89, 90
Bosnia and Herzegovina	87	80, 81, 82, 83, 84, 85, 86, 88, 89, 90
Botswana	64-72, 74-87	88, 89, 90

State	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	31-50, 51 (C127; R128; R129; R130; R131), 53 (R133; R134), 54-56, 58-62, 63 (C148; R156; R157), 64 (R158; R159), 65-66, 67 (C154; C155; R163; R164; R165), 68 (C158; P110; R166), 69-72, 74-77, 80, 87	51 (C128), 52, 53 (C129; C130), 63 (C149), 64 (C150; C151), 67 (C156), 68 (C157), 78, 79, 81, 82, 83, 84, 85, 86, 88, 89, 90
Bulgaria	31-56, 58-72, 74-89	90
Burkina Faso	45-56, 58-72, 74-87	88, 89, 90
Burundi	47-56, 58-72, 74-77, 78 (R179), 79-81, 82 (C176; P081), 87	78 (C172), 82 (R183), 83, 84, 85, 86, 88, 89, 90
Cambodia	53-54, 56, 58 (C138; R146), 64 (C150; R158)	55, 58 (C137; R145), 59, 60, 61, 62, 63, 64 (C151; R159), 65, 66, 67, 68, 69, 70, 71, 72, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90
Cameroon	44-56, 58-68, 72, 74, 87	69, 70, 71, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 88, 89, 90
Canada	31-56, 58-72, 74-90	–
Cape Verde	65-72, 74-81, 87	82, 83, 84, 85, 86, 88, 89, 90
Central African Republic	45-56, 58-72, 74, 87	75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 88, 89, 90
Chad	45-56, 58-72, 74-79, 84-87	80, 81, 82, 83, 88, 89
Chile	31-56, 58-72, 74-82, 87	83, 84, 85, 86, 88, 89, 90
China	31-56, 58-72, 74-90	–
Colombia	31-56, 58-72, 74, 75 (C167; R175; R176), 76-78, 79 (R180), 80, 81 (C175), 87	75 (C168), 79 (C173), 81 (R182), 82, 83, 84, 85, 86, 88, 89, 90
Comoros	65-72, 74-78	79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90
Congo	45-53, 54 (C131; C132), 55 (C133; C134), 56, 58 (C138; R146), 59, 60 (C142), 61, 63 (C148; C149; R157), 64-66, 67 (C154; C155; C156), 68 (C158), 71 (C160; C161), 75 (C167; C168), 76, 87	54 (R135; R136), 55 (R137; R138; R139; R140; R141; R142), 58 (C137; R145), 60 (C141; C143; R149; R150; R151), 62, 63 (R156), 67 (R163; R164; R165), 68 (C157; P110; R166), 69, 70, 71 (R170; R171), 72, 74, 75 (R175; R176), 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 88, 89, 90
Costa Rica	31-56, 58-72, 74-90	–
Côte d'Ivoire	45-56, 58-72, 74-82, 87	83, 84, 85, 86, 88, 89, 90
Croatia	80-85, 87	86, 88, 89, 90
Cuba	31-56, 58-72, 74-88	89, 90
Cyprus	45-56, 58-72, 74-87	88, 89, 90
Czech Republic	80-89	–
Democratic Republic of the Congo	45-56, 58-72, 74-82, 87	83, 84, 85, 86, 88, 89
Denmark	31-56, 58-72, 74-88	89, 90
Djibouti	64-65, 67, 71-72, 83	66, 68, 69, 70, 74, 75, 76, 77, 78, 79, 80, 81, 82, 84, 85, 86, 87, 88, 89, 90
Dominica	68-72, 74-79, 87	80, 81, 82, 83, 84, 85, 86, 88, 89
Dominican Republic	68-72, 74-79, 87	80, 81, 82, 83, 84, 85, 86, 88, 89, 90

State	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)
Ecuador	31-56, 58-72, 74-88, 90 (P155)	89, 90 (R193; R194)
Egypt	31-56, 58-72, 74-90	–
El Salvador	31-56, 58-61, 63 (C149), 64 (C150), 67 (C155; C156; R164; R165), 69 (C159; R168), 71-72, 74-81, 87	62, 63 (C148; R156; R157), 64 (C151; R158; R159), 65, 66, 67 (C154; R163), 68, 69 (R167), 70, 82, 83, 84, 85, 86, 88, 89, 90
Equatorial Guinea	67-72, 74-79, 84, 87	80, 81, 82, 83, 85, 86, 88, 89
Eritrea	80-81, 82 (C176; R183), 83, 84 (C178; C179; C180; R185; R186; R187), 85-89	82 (P081), 84 (P147), 90
Estonia	79-90	–
Ethiopia	31-56, 58-72, 74-87, 88 (183), 89	88 (R191), 90
Fiji	59-72, 74-82, 87	83, 84, 85, 86, 88, 89, 90
Finland	31-56, 58-72, 74-90	–
France	31-56, 58-72, 74-84, 87	85, 86, 88, 89, 90
Gabon	45-56, 58-72, 75-81, 87	74, 82, 83, 84, 85, 86, 88, 89
Gambia	87	82, 83, 84, 85, 86, 88, 89
Georgia	85, 86-87	80, 81, 82, 83, 84, 88, 89, 90
Germany	34-56, 58-72, 74, 75 (C167; R175), 76, 80-90	75 (C168; R176), 77, 78, 79
Ghana	40-56, 58-72, 74-79, 83, 84 (C178; C179; C180; P147; R187), 85-87	80, 81, 82, 84 (R185; R186), 88, 89, 90
Greece	31-56, 58-72, 74-89	90
Grenada	66-72, 74-80	81, 82, 83, 84, 85, 86, 87, 88, 89, 90
Guatemala	31-56, 58-72, 75 (C167; R175), 76, 78 (R179), 79, 80 (R181), 81 (R182), 82-83, 84 (C179), 85 (C181), 87-89	74, 75 (C168; R176), 77, 78 (C172), 80 (C174), 81 (C175), 84 (C178; C180; P147; R185; R186; R187), 85 (R188), 86, 90
Guinea	43-56, 58-72, 74-83	84, 85, 86, 87, 88, 89, 90
Guinea-Bissau	63-72, 74-78, 79 (C173), 80 (C174), 81 (C175), 82 (C176), 84 (C179), 85 (C181), 87	79 (R180), 80 (R181), 81 (R182), 82 (P081; R183), 83, 84 (C178; C180; P147; R185; R186; R187), 85 (R188), 86, 88, 89, 90
Guyana	50-56, 58-72, 74-85, 87-89	86, 90
Haiti	31-56, 58-66, 67 (C156; R165), 69-72, 74, 75 (C167)	67 (C154; C155; R163; R164), 68, 75 (C168; R175; R176), 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90
Honduras	39-56, 58-72, 74-88	89, 90
Hungary	31-56, 58-72, 74-87	88, 89
Iceland	31-56, 58-72, 74-87	88, 89
India	31-56, 58-72, 74-77, 83-9	82(P081), 90
Indonesia	33-56, 58-72, 74-89	90
Islamic Republic of Iran	31-56, 58-72, 74-83, 85, 87-89	84, 86, 90
Iraq	31-56, 58-72, 74-84, 85 (C181), 86-87, 89 R192)	85 (R188), 88, 89(C184), 90
Ireland	31-56, 58-72, 74-87	88, 89, 90

State	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)
Israel	32-56, 58-72, 74-89	90
Italy	31-56, 58-72, 74-90	–
Jamaica	47-56, 58-72, 74-87	88, 89, 90
Japan	35-56, 58-72, 74-90	–
Jordan	39-56, 58-72, 74-89	90
Kazakhstan	87	80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90
Kenya	48-56, 58-72, 74-81, 82 (C176; R183), 83, 84 (C178; C179; C180; R185; R186; R187), 85-87	82 (P081), 84 (P147), 88, 89, 90
Kiribati	–	88, 89, 90
Republic of Korea	79-89	90
Kuwait	45-56, 58-72, 74-76, 78-79, 80 (C174), 81-85, 87-88, 90	77, 80 (R181), 86, 89
Kyrgyzstan	–	79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90
Lao People's Democratic Republic	48-56, 58-72, 74-81	82, 83, 84, 85, 86, 87, 88, 89, 90
Latvia	79 (C173), 80	79 (R180), 81, 82, 83, 84, 85, 86, 87, 88, 89, 90
Lebanon	31-56, 58-72, 74-90	–
Lesotho	51-53, 66-72, 74-81, 82 (C176; R183), 83-87	82 (P081), 88, 89, 90
Liberia	31-56, 58-72, 74-76, 77 (C170; C171; R177; R178), 78-81, 82 (C176; R183), 83, 84 (C178; C179; C180; R185; R186; R187), 85-87	77 (P089), 82 (P081), 84 (P147), 88, 89, 90
Libyan Arab Jamahiriya	35-56, 58-72, 74-82, 87	83, 84, 85, 86, 88, 89, 90
Lithuania	79-90	–
Luxembourg	31-56, 58-72, 74-88, 90	89
Madagascar	45-54, 56, 58-68, 69 (C159; R168), 70, 79, 87	55, 69 (R167), 71, 72, 74, 75, 76, 77, 78, 80, 81, 82, 83, 84, 85, 86, 88, 89, 90
Malawi	49-56, 58-72, 74-81, 87	82, 83, 84, 85, 86, 88, 89, 90
Malaysia	41-56, 58-72, 74-90	–
Mali	44-56, 58-72, 74-78, 82-83, 84 (C178; C179; C180; R185; R186; R187), 87-88	79, 80, 81, 84 (P147), 85, 86, 88, 89, 90
Malta	49-56, 58-72, 74-90	–
Mauritania	45-56, 58-72, 74-80, 82 (C176; R183), 83 (R184), 84 (C178; C179; C180; R185; R186; R187), 85, 87-89	81, 82 (P081), 83 (C177), 84 (P147), 86, 90
Mauritius	53-56, 58-72, 74-90	–
Mexico	31-56, 58-72, 74-89	90
Republic of Moldova	79-89	90
Mongolia	52-56, 58-72, 74-81, 87	82, 83, 84, 85, 86, 88, 90
Morocco	39-56, 58-72, 74-81, 82 (C176; R183), 83-87	82 (P081), 88, 89, 90
Mozambique	61-72, 74-82, 87	83, 84, 85, 86, 87 (R190), 88, 89, 90

State	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, 74-90	–
Namibia	78-87, 90(R194)	88, 89, 90(P155 ; R193)
Nepal	51-56, 58-72, 74-81, 83, 85, 87	82, 84, 86, 88, 89, 90
Netherlands	31-56, 58-72, 74-89	90
New Zealand	31-56, 58-72, 74-90	–
Nicaragua	40-56, 58-72, 74-90	–
Niger	45-56, 58-72, 74-82, 87-88	83, 84, 85, 86, 88, 89, 90
Nigeria	45-56, 58-72, 74-79, 81-82, 87	80, 83, 84, 85, 86, 88, 89, 90
Norway	31-56, 58-72, 74-89	90
Oman	81-90	–
Pakistan	31-56, 58-72, 74-80, 87	81, 82, 83, 84, 85, 86, 88, 89, 90
Panama	31-56, 58-72, 74-87	88, 89, 90
Papua New Guinea	61-72, 74-87	88, 89, 90
Paraguay	40-56, 58-72, 74-84, 87	85, 86, 88, 89, 90
Peru	31-56, 58-72, 74-83, 85-87	84, 88, 89, 90
Philippines	31-56, 58-72, 74-90	–
Poland	31-56, 58-72, 74-90	–
Portugal	31-56, 58-72, 74-87	88, 89, 90
Qatar	58-72, 74-89	90
Romania	39-56, 58-72, 74-90	–
Russian Federation	37-56, 58-72, 74-88	89, 90
Rwanda	47-56, 58-72, 74-79, 81, 87	80, 82, 83, 84, 85, 86, 88, 89, 90
Saint-Kitts-et-Nevis	87	83, 84, 85, 86, 88, 89, 90
Sainte Lucia	67 (C154; R163), 68 (C158; R166), 87	66, 67 (C155; C156; R164; R165), 68 (C157; P110), 69, 70, 71, 72, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 88, 89, 90
Saint Vincent and the Grenadines	86, 87	82, 83, 84, 85, 88, 89, 90
San Marino	69-72, 74-89	90
Sao Tome and Principe	68-72, 74-76	77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90
Saudi Arabia	61-72, 74-90	–
Senegal	44-56, 58-72, 74-78, 87	79, 80, 81, 82, 83, 84, 85, 86, 88, 89, 90
Serbia and Montenegro	89	90
Seychelles	63-72, 74-88	89, 90
Sierra Leone	45-56, 58-61, 62 (C145; C147; R153; R155)	62 (C146; R154), 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90
Singapore	50-56, 58-72, 74-90	–
Slovakia	80-83, 86-89	84, 85, 90

State	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	79-83, 84 (C179), 87-90	84 (C178; C180; P147; R185; R186; R187), 85, 86
Solomon Islands	74	70, 71, 72, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90
Somalia	45-56, 58-72, 74-75	76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90
South Africa	31-50, 68, 74, 81-83, 84 (C178; C179; C180; R185; R186; R187), 85, 87	84 (P147), 86, 88, 89, 90
Spain	39-56, 58-62, 63 (C148; R156), 64-72, 74, 75 (C167; R175), 76-79, 82, 85, 87	63 (C149; R157), 75 (C168; R176), 80, 81, 83, 84, 86, 88, 89, 90
Sri Lanka	31-56, 58-72, 74-87	88, 89, 90
Sudan	39-56, 58-72, 74-80, 87	81, 82, 83, 84, 85, 86, 88, 89, 90
Suriname	61-72, 74-89	90
Swaziland	60-72, 74-81, 82 (C176; R183), 83, 87	82 (P081), 84, 85, 86, 88, 89, 90
Sweden	31-56, 58-72, 74-87	88, 89, 90
Switzerland	31-56, 58-72, 74-88	89, 90
Syrian Arab Republic	31-56, 58-65, 67-69, 71-72, 74-76, 87-89	66, 70, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 90
Tajikistan	81-83, 86	84, 85, 87, 88, 89, 90
United Republic of Tanzania	46-56, 58-65, 67 (C154; R163), 69-71, 76, 77 (C170; R177), 82 (P081), 87	66, 67 (C155; C156; R164; R165), 68, 72, 74, 75, 77 (C171; P089; R178), 78, 79, 80, 81, 82 (C176; R183), 83, 84, 85, 86, 88, 89, 90
Thailand	31-56, 58-72, 74-82, 87	83, 84, 85, 86, 88, 89, 90
The former Yugoslav Republic of Macedonia	80-82, 87	83, 84, 85, 86, 88, 90
Togo	44-56, 58-72, 74-87, 89	88, 89
Trinidad and Tobago	47-56, 58-72, 74-90	–
Tunisia	39-56, 58-72, 74-90	–
Turkey	31-56, 58-72, 74-90	–
Turkmenistan	–	81, 82, 83, 84, 85, 86, 87, 88, 89, 90
Uganda	47-56, 58-72, 74-80, 87	81, 82, 83, 84, 85, 86, 88, 89, 90
Ukraine	37-56, 58-72, 74-90	–
United Arab Emirates	58-72, 74-90	–
United Kingdom	31-56, 58-72, 74-90	–
United States	31-56, 58-60, 66-72, 74-89	90
Uruguay	31-56, 58-72, 74-79, 81, 82 (P081), 84, 87	80, 82 (C176; R183), 83, 85, 86, 88, 89, 90
Uzbekistan	–	80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90
Venezuela	31-56, 58-72, 74 (R173), 75 (C167; R175), 76, 77 (C170; R177), 78 (R179), 80, 82 (C176; R183), 87-88	71 (C161), 74 (C163; C164; C165; C166; R174), 75 (C168; R176), 77 (C171; P089; R178), 78 (C172), 79, 81, 82 (P081), 83, 84, 85, 86, 87, 88, 89, 90
Viet Nam	33-56, 58-63, 80-90	–
Yemen	49-56, 58-72, 74-87, 88 (C183), 89 (C184)	88 (R191), 89 (R192), 90

State	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)
Zambia	49-56, 58-72, 74-82, 87	83, 84, 85, 86, 88, 89, 90
Zimbabwe	66-72, 74-90	-

**Appendix V. Overall position of member States
with regard to the submission to the
competent authorities of the
instruments adopted by the
Conference (as of 12 December 2003)**

Sessions of the ILC	Number of States in which, according to the information supplied by the Government			ILO Member States at the time of the session
	All the instruments have been submitted	Some of the instruments have been submitted	None of the instruments have been submitted	
<i>All the instruments adopted between the 31st and 50th Sessions have been submitted to the competent authorities by member States</i>				
51st (June 1967)	116	1		117
52nd (June 1968)	117		1	118
53rd (June 1969)	120	1		121
54th (June 1970)	119	1		120
55th (October 1970)	117	1	2	120
56th (June 1971)	120			120
58th (June 1973)	121	2		123
59th (June 1974)	124		1	125
60th (June 1975)	124	1	1	126
61st (June 1976)	130		1	131
62nd (October 1976)	127	1	3	131
63rd (June 1977)	128	4	2	134
64th (June 1978)	131	3	1	135
65th (June 1979)	134		3	137
66th (June 1980)	135		7	142
67th (June 1981)	135	6	2	143
68th (June 1982)	138	3	6	147
69th (June 1983)	139	3	6	148
70th (June 1984)	139		10	149
71st (June 1985)	140	1	8	149
72nd (June 1986)	140		9	149
74th (September 1987)	137	1	11	149
75th (June 1988)	131	7	11	149
76th (June 1989)	134		13	147
77th (June 1990)	125	4	18	147
78th (June 1991)	126	3	22	149
79th (June 1992)	127	4	26	156
80th (June 1993)	130	3	37	167
81st (June 1994)	127	3	45	171
82nd (June 1995)	111	16	51	173
83rd (June 1996)	108	2	68	174
84th (October 1996)	93	13	73	174
85th (June 1997)	100	4	73	174
86th (June 1998)	95		82	174
87th (June 1999)	157		24	174

Sessions of the ILC	Number of States in which, according to the information supplied by the Government			ILO Member States at the time of the session
	All the instruments have been submitted	Some of the instruments have been submitted	None of the instruments have been submitted	
88th (May-June 2000)	78	2	108	175
89th (June 2001)	66	2	130	175
90th (June 2002)	38	2	130	175

Appendix VI. Summary of information supplied by governments with regard to the obligation to submit the instruments adopted by the International Labour Conference to the competent authorities¹

Article 19 of the Constitution of the International Labour Organization prescribes, in paragraphs 5, 6 and 7, that Members shall bring the Conventions, Recommendations and Protocols adopted by the International Labour Conference before the competent authorities within a specified period. Under the same provisions, the governments of member States shall inform the Director-General of the International Labour Office of the measures taken to submit the instruments to the competent authorities, and also communicate particulars of the authority or authorities regarded as competent, and of the action taken by them.

In accordance with article 23 of the Constitution, a summary of the information communicated in pursuance of article 19 is submitted to the Conference.

At its 267th Session (November 1996), the Governing Body approved new measures of rationalization and simplification. In this connection, the summarized information appears in an appendix to the report of the Committee of Experts on the Application of Conventions and Recommendations.

The present summary contains information relating to the submission to the competent authorities of the instruments adopted by the Conference at its 89th (June 2001) and 90th (June 2002) Sessions. The period of 12 months provided for the submission to the competent authorities of the instruments on safety and health in agriculture adopted at the 89th Session expired on 21 June 2002, and the period of 18 months on 21 December 2002.

The period of 12 months provided for the submission to the competent authorities of the Promotion of Cooperatives Recommendation (No. 193), the List of Occupational Diseases Recommendation (No. 194) and the Protocol of 2002 to the Occupational Safety and Health Convention, 1981, adopted at the 90th Session, expired on 20 June 2003, and the period of 18 months will expire on 20 December 2003.

This summarized information consists of communications which were forwarded to the Director-General of the International Labour Office after the closure of the 91st Session of the Conference (Geneva, June 2003) and which could not therefore be laid before the Conference at that session.

Argentina. The Parliament is examining the ratification of Convention No. 184.

Australia. The instruments adopted at the 89th Session of the Conference were submitted to the House of Representatives and the Senate of the Parliament of the Commonwealth of Australia on 11 December 2002.

Austria. The instruments adopted at the 89th Session of the Conference were submitted to the National Council on 1 July 2003.

Barbados. The instruments adopted at the 90th Session of the Conference were submitted to Parliament on 25 April 2003.

Belarus. The instruments adopted at the 89th and 90th Sessions of the Conference were submitted to the National Assembly on 10 October 2002 and 4 January 2003, respectively.

Benin. The instruments adopted at the 89th and 90th Sessions of the Conference were submitted to the National Assembly on 9 December 2002 and on 1 July 2003, respectively.

Bulgaria. The instruments adopted at the 89th and 90th Sessions of the Conference were submitted to the National Assembly on 28 June 2002 and 25 May 2003, respectively.

¹ This summary relates to the instruments adopted at the following sessions of the Conference:

89th Session (2001)

Safety and Health in Agriculture Convention (No. 184);

Safety and Health in Agriculture Recommendation (No. 192).

90th Session (2002)

Promotion of Cooperatives Recommendation (No. 193);

List of Occupational Diseases Recommendation (No. 194);

Protocol of 2002 to the Occupational Safety and Health Convention, 1981.

Canada. The instruments adopted at the 89th and 90th Sessions of the Conference were submitted to the House of Commons and the Senate on 12 December 2002 and 5 November 2003, respectively.

China. The instruments adopted at the 89th and 90th Sessions of the Conference have been submitted to the State Council and the Permanent Commission of the National People's Congress.

Costa Rica. The instruments adopted at the 89th and 90th Sessions of the Conference were submitted to the Legislative Assembly on 2 October 2001 and 15 January 2003, respectively.

Czech Republic. The instruments adopted at the 89th and 90th Sessions of the Conference were submitted to Parliament on 2 July 2002 and 11 June 2003, respectively.

Dominican Republic. The instruments adopted at the 89th and 90th Sessions of the Conference were submitted to the National Congress on 27 March and 11 May 2003, respectively.

Egypt. The instruments adopted at the 89th and 90th Sessions of the Conference were submitted to the People's Assembly on 30 October 2001 and 19 January 2003, respectively.

Ecuador. The instruments adopted at the 90th Session of the Conference were submitted to the National Congress on 26 March 2003.

Eritrea. The Conventions and Recommendations adopted at the 89th Session of the Conference were submitted to the National Assembly on 10 November 2001.

Estonia. The instruments adopted by the Conference at its 89th and 90th Sessions were submitted to Parliament on 11 September 2003.

Ethiopia. The instruments adopted at the 89th Session of the Conference were submitted to the House of People's Representatives on 13 November 2002.

Finland. The ratification of Convention No. 184 was registered on 21 February 2003. The instruments adopted at the 90th Session of the Conference were submitted to Parliament on 18 September 2003.

Germany. The instruments adopted at the 89th and 90th Sessions of the Conference were submitted to the Bundestag and the Bundesrat on 28 February 2002 and 31 July 2003, respectively.

Greece. The instruments adopted at the 89th Session of the Conference were submitted to the Greek Chamber of Deputies on 8 April 2002.

Guatemala. The instruments adopted at the 89th Session of the Conference were submitted to the Congress of the Republic on 27 May 2002.

Guyana. The instruments adopted at the 89th Session of the Conference were submitted to the National Assembly on 14 April 2003.

Honduras. The instruments adopted at the 89th and 90th Sessions of the Conference were submitted to the Congress of the Republic on 8 May 2002 and 28 July 2003, respectively.

India. The instruments adopted at the 89th Session of the Conference were submitted to the House of the People and the Council of States on 2 and 5 December 2002.

Indonesia. The instruments adopted at the 89th Session of the Conference were submitted to the House of Representatives on 9 September 2002.

Israel. The instruments adopted at the 89th Session of the Conference were submitted to the Knesset on 23 June 2002.

Italy. The instruments adopted at the 89th and 90th Sessions of the Conference were submitted to the chairs of the House of Representatives and of the Senate.

Japan. The instruments adopted at the 89th and 90th Sessions of the Conference were submitted to the Diet on 14 June 2002 and 13 June 2003, respectively.

Republic of Korea. The instruments adopted at the 89th Session of the Conference have been submitted to the National Assembly.

Kuwait. The instruments adopted at the 90th Session of the Conference were submitted to the Council of Ministers and the National Assembly.

Lebanon. The instruments adopted at the 89th and 90th Sessions of the Conference were submitted to the National Assembly on 25 October 2002 and 24 October 2003, respectively.

Lithuania. The instruments adopted at the 89th and 90th Sessions of the Conference were submitted to the Seimas on 27 September 2002 and 10 September 2003, respectively.

Luxembourg. The instruments adopted at the 90th Session of the Conference were submitted to the Chamber of Deputies on 14 February 2003.

Malaysia. The instruments adopted at the 89th and 90th Sessions of the Conference were submitted to Parliament on 27 June 2002 and 6 March 2003, respectively.

Malta. The instruments adopted at the 89th and 90th Sessions of the Conference were submitted to the House of Representatives on 22 October 2001 and on 17 November 2003, respectively.

Mauritania. The instruments adopted at the 89th Session of the Conference were submitted to the National Assembly on 15 September 2002.

Mauritius. The instruments adopted at the 89th and 90th Sessions of the Conference were submitted to the National Assembly on 26 November 2002 and on 14 October 2003, respectively.

Mexico. The instruments adopted at the 89th Session of the Conference were submitted to the Senate of the Republic on 18 February 2003.

Republic of Moldova. The ratification of Convention No. 184 was registered on 20 September 2002.

Myanmar. The instruments adopted at the 89th and 90th Sessions of the Conference were submitted to a competent authority on 31 December 2002 and 2 October 2003.

Namibia. The instruments adopted at the 90th Session of the Conference have been submitted to the National Assembly.

Netherlands. The instruments adopted at the 89th and 90th Sessions of the Conference were submitted to Parliament on 11 October 2001 and 14 May 2003, respectively.

New Zealand. The instruments adopted at the 89th and 90th Sessions of the Conference were submitted to the House of Representatives on 23 December 2002 and 19 November 2003, respectively.

Nicaragua. The instruments adopted at the 89th Session of the Conference were submitted to the National Assembly in October 2001. Recommendation No. 183 and the Protocol of 2002 were submitted to the National Assembly on 5 May 2003, and Recommendation No. 194 on 9 July 2003.

Norway. The instruments adopted at the 89th and 90th Sessions of the Conference were submitted to the Storting (Parliament) on 14 June 2002 and 20 June 2003, respectively.

Oman. The instruments adopted at the 90th Session of the Conference were submitted to the Council of Ministers and notified to the Consultative Council.

Philippines. The instruments adopted at the 89th and 90th Sessions of the Conference were submitted to the House of Representatives and the Senate on 15 November 2001 and 4 December 2002, respectively.

Poland. The instruments adopted at the 89th and 90th Sessions of the Conference were submitted to the Sejm on 7 February 2002 and 13 March 2003, respectively.

Qatar. The instruments adopted at the 89th Session of the Conference have been submitted to a competent authority.

Romania. The instruments adopted at the 89th and 90th Sessions of the Conference were submitted to the House of Representatives and the Senate in February 2002 and February/March 2003, respectively.

San Marino. The instruments adopted at the 89th Session of the Conference were submitted to the Great and General Council on 10 December 2001.

Saudi Arabia. The instruments adopted at the 89th and 90th Sessions of the Conference were submitted to the Council of Ministers and to the Consultative Council on 21 January 2003 and 30 May 2003, respectively.

Singapore. The instruments adopted at the 89th and 90th Sessions of the Conference were submitted to Parliament in July 2002 and 2003, respectively.

Slovakia. The ratification of Convention No. 184 was registered on 14 June 2002. The instruments adopted at the 90th Session of the Conference were submitted to the National Council on 18 December 2002.

Slovenia. The instruments adopted at the 89th and 90th Sessions of the Conference have been submitted to the National Assembly.

Suriname. The instruments adopted by the Conference at the sessions held between 1994 and 2001 (81st to 89th Sessions) were submitted to the National Assembly on 27 May 2003.

Syrian Arab Republic. The instruments adopted at the 89th Session of the Conference were submitted to the People's Council (Majlis al-Chaab) on 29 May 2003.

Trinidad and Tobago. The instruments adopted by the Conference at its 89th and 90th Sessions were submitted to the Senate on 29 April 2003 and to the House of Representatives on 2 May 2003, respectively.

Togo. The instruments adopted at the 89th Session of the Conference have been submitted to the National Assembly.

Tunisia. The instruments adopted at the 89th and 90th Sessions of the Conference were submitted to the House of Representatives on 6 November 2001 and 27 December 2002, respectively.

Turkey. The instruments adopted at the 89th and 90th Sessions of the Conference were submitted to the Grand National Assembly on 10 December 2001 and 27 March 2003, respectively.

Ukraine. The instruments adopted at the 89th and 90th Sessions of the Conference were submitted to the Supreme Council on 9 April 2002 and in January 2003, respectively.

United Arab Emirates. The instruments adopted at the 89th and 90th Sessions of the Conference have been submitted to a competent authority.

United Kingdom. The instruments adopted at the 89th and 90th Sessions of the Conference were submitted to Parliament in December 2002 and June 2003.

United States. The instruments adopted at the 89th and 90th Sessions of the Conference were submitted to the Senate and the House of Representatives on 2 April 2002 and 20 May 2003, respectively.

Viet Nam. The instruments adopted at the 89th and 90th Sessions of the Conference were submitted to the National Assembly on 21 May 2002 and 7 April 2003, respectively.

Zimbabwe. The instruments adopted at the 89th and 90th Sessions of the Conference were submitted to Parliament on 25 October 2001 and 20 December 2002, respectively.

The Committee has deemed it necessary in certain cases to request additional information on the nature of the competent authorities to which instruments adopted by the Conference have been submitted, as well as other indications required by the Memorandum of 1980.

Appendix VII. Comments made by the Committee, by country

*The comments referred to below have been drawn up in the form of either "observations", which are reproduced in this report, or "direct requests", which are not published but are communicated directly to the governments concerned.
This table also lists acknowledgements by the Committee of responses received to direct requests.*

Afghanistan	<p>General Report, paragraphs nos. 51, 92, 98 Observations on Conventions Nos. 105, 111 <i>Direct requests on Conventions Nos. 13, 41, 95, 105, 139</i> Observation on Submission</p>
Albania	<p>General Report, paragraph no. 62 Observation on Convention No. 26 <i>Direct requests on Conventions Nos. 29, 77, 78, 87, 95, 98, 100, 105, 138</i></p>
Algeria	<p>Observations on Conventions Nos. 87, 111, 120, 122, 127, 142 <i>Direct requests on Conventions Nos. 24, 94, 99, 100, 111, 138, 144</i> Observation on Submission</p>
Angola	<p>Observation on Convention No. 26 <i>Direct requests on Conventions Nos. 19, 87, 98, 100, 107, 111</i> Observation on Submission <i>Direct request on Submission</i></p>
Antigua and Barbuda	<p>General Report, paragraphs nos. 51, 62 Observation on Convention No. 87 <i>Direct requests on Conventions Nos. 14, 81, 94, 101, 111</i> Observation on Submission</p>
Argentina	<p>Observations on Conventions Nos. 29, 68, 87, 88, 98, 111 <i>Direct requests on Conventions Nos. 3, 14, 26, 52, 100, 111, 138, 142, 144</i> <i>Direct request on Submission</i></p>
Armenia	<p>General Report, paragraphs nos. 51, 58, 92 Observation on Submission</p>
Australia Norfolk Island	<p>Observations on Conventions Nos. 29, 87, 98, 111 <i>Direct requests on Conventions Nos. 10, 87, 99, 100, 111, 122, 123, 131, 173</i> General Report, paragraph no. 51 <i>Direct requests on Conventions Nos. 3, 42, 100, 122, 131, 156</i></p>
Austria	<p>Observations on Conventions Nos. 87, 103 <i>Direct requests on Conventions Nos. 26, 99, 100, 111, 122, 172, 173</i> <i>Direct request on Submission</i></p>
Azerbaijan	<p>General Report, paragraph no. 58 Observations on Conventions Nos. 87, 138 <i>Direct requests on Conventions Nos. 14, 29, 52, 98, 100, 103, 106, 111, 119, 120, 122, 126, 131, 135, 138, 142</i> <i>Direct request on Submission</i></p>
Bahamas	<p><i>Direct requests on Conventions Nos. 14, 26, 29, 87, 98, 144</i> <i>Direct request on Submission</i></p>
Bahrain	<p><i>Direct requests on Conventions Nos. 89, 111</i> <i>Direct request on Submission</i></p>
Bangladesh	<p>Observations on Conventions Nos. 87, 98 <i>Direct requests on Conventions Nos. 14, 87, 100, 106, 144</i> Observation on Submission</p>
Barbados	<p>Observations on Conventions Nos. 87, 108, 118 <i>Direct requests on Conventions Nos. 26, 98, 100, 102, 111, 122, 128, 172</i> <i>Direct request on Submission</i></p>

Belarus	Observations on Conventions Nos. 52, 87, 98 <i>Direct requests on Conventions Nos. 26, 29, 100, 103, 115, 120, 122, 138</i>
Belgium	Observations on Conventions Nos. 1, 87, 111, 138 <i>Direct requests on Conventions Nos. 26, 99, 100, 111, 120, 138, 139</i> <i>Response received to a direct request on Convention No. 14</i> <i>Direct request on Submission</i>
Belize	General Report, paragraph no. 93 Observations on Conventions Nos. 87, 98 <i>Direct requests on Conventions Nos. 26, 89, 94, 98, 99, 100, 111, 135, 141, 144, 150, 151, 154, 156</i> Observation on Submission
Benin	Observations on Conventions Nos. 41, 87 <i>Direct requests on Conventions Nos. 14, 26, 81, 100, 111, 150, 160</i>
Bolivia	General Report, paragraph no. 93 Observations on Conventions Nos. 1, 20, 30, 77, 78, 81, 87, 98, 103, 111, 121, 128, 129, 130, 131, 169 <i>Direct requests on Conventions Nos. 81, 100, 103, 111, 120, 121, 123, 129, 156, 160</i> Observation on Submission
Bosnia and Herzegovina	General Report, paragraphs nos. 51, 58, 62, 93, 98 Observations on Conventions Nos. 81, 87, 111 <i>Direct requests on Conventions Nos. 87, 158</i> Observation on Submission
Botswana	General Report, paragraphs nos. 51, 62 <i>Direct requests on Conventions Nos. 29, 87, 98, 100, 144, 173</i> <i>Direct request on Submission</i>
Brazil	Observations on Conventions Nos. 29, 89, 98, 103, 111, 115, 118, 131, 137, 144 <i>Direct requests on Conventions Nos. 98, 100, 111, 115, 120, 126, 131, 133, 135, 162, 164</i> Observation on Submission
Bulgaria	Observations on Conventions Nos. 87, 120 <i>Direct requests on Conventions Nos. 1, 14, 19, 26, 29, 30, 52, 87, 98, 106, 120, 138, 183</i>
Burkina Faso	Observations on Conventions Nos. 87, 129 <i>Direct requests on Conventions Nos. 3, 87, 98, 100, 131, 132, 138, 173</i> <i>Direct request on Submission</i>
Burundi	Observations on Conventions Nos. 29, 87, 94 <i>Direct requests on Conventions Nos. 14, 26, 29, 52, 87, 89, 98, 100, 101, 111</i> Observation on Submission
Cambodia	General Report, paragraphs nos. 51, 58, 62, 92 <i>Direct requests on Conventions Nos. 4, 13, 87, 98, 100, 122, 138</i> Observation on Submission
Cameroon	General Report, paragraphs nos. 51, 62, 93, 98 Observations on Conventions Nos. 78, 87, 100, 132 <i>Direct requests on Conventions Nos. 3, 14, 33, 89, 100, 106, 111, 122, 131</i> Observation on Submission
Canada	Observation on Convention No. 87 <i>Direct requests on Conventions Nos. 14, 26, 100, 122</i>
Cape Verde	Observation on Convention No. 98 <i>Direct requests on Conventions Nos. 19, 29, 87, 118</i> Observation on Submission
Central African Republic	General Report, paragraphs nos. 62, 93, 98 Observations on Conventions Nos. 41, 52, 62, 87, 95, 119 <i>Direct requests on Conventions Nos. 95, 98, 99, 117, 138, 182</i> Observation on Submission

Chad	<p>General Report, paragraphs nos. 58, 62 Observations on Conventions Nos. 26, 29, 87 <i>Direct requests on Conventions Nos. 26, 29, 41, 95, 100, 151</i> <i>Response received to a direct request on Convention No. 135</i> Observation on Submission</p>
Chile	<p>Observations on Conventions Nos. 20, 103, 111 <i>Direct requests on Conventions Nos. 14, 87, 98, 100, 111, 115, 131, 135, 138, 140, 144, 151</i> Observation on Submission</p>
China	<p><i>Direct requests on Conventions Nos. 14, 26, 100, 138</i></p>
Hong Kong Special Administrative Region	<p>Observations on Conventions Nos. 87, 97, 98, 115 <i>Direct requests on Conventions Nos. 3, 97, 115, 138, 160</i> <i>Response received to a direct request on Convention No. 87</i></p>
Macau Special Administrative Region	<p><i>Direct requests on Conventions Nos. 26, 87, 98, 100, 111, 120</i></p>
Colombia	<p>Observations on Conventions Nos. 24, 25, 29, 87, 95, 98, 100, 129, 169 <i>Direct requests on Conventions Nos. 1, 4, 9, 26, 30, 99, 100, 111, 129, 136, 144, 151, 154, 160, 169</i> Observation on Submission</p>
Comoros	<p>General Report, paragraph no. 92 Observation on Convention No. 98 <i>Direct requests on Conventions Nos. 33, 52</i> Observation on Submission</p>
Congo	<p>General Report, paragraphs nos. 51, 58, 62, 93, 98 Observations on Conventions Nos. 29, 87, 95 <i>Direct requests on Conventions Nos. 26, 149, 152</i> Observation on Submission</p>
Costa Rica	<p>Observations on Conventions Nos. 1, 81, 87, 98, 102, 129, 138, 169 <i>Direct requests on Conventions Nos. 81, 94, 100, 101, 102, 111, 113, 114, 122, 129, 130, 131, 138, 169</i></p>
Côte d'Ivoire	<p>Observations on Conventions Nos. 41, 52, 81, 95, 98, 129, 144 <i>Direct requests on Conventions Nos. 3, 14, 26, 52, 95, 99, 100, 110, 111</i> Observation on Submission</p>
Croatia	<p>Observations on Conventions Nos. 87, 98, 111, 162 <i>Direct requests on Conventions Nos. 9, 14, 29, 90, 91, 100, 111, 122, 129, 132, 138, 162</i> <i>Response received to a direct request on Convention No. 103</i> <i>Direct request on Submission</i></p>
Cuba	<p>Observations on Conventions Nos. 1, 87, 98, 103 <i>Direct requests on Conventions Nos. 1, 4, 98, 100, 110, 111, 122, 131, 138</i> <i>Direct request on Submission</i></p>
Cyprus	<p>General Report, paragraph no. 58 Observations on Conventions Nos. 87, 100, 122 <i>Direct requests on Conventions Nos. 29, 90, 100, 106, 111, 114, 171, 175</i> <i>Direct request on Submission</i></p>
Czech Republic	<p>Observations on Conventions Nos. 98, 111 <i>Direct requests on Conventions Nos. 14, 26, 87, 90, 99, 105, 120, 123, 132, 144, 150, 181</i></p>
Democratic Republic of the Congo	<p>General Report, paragraphs nos. 51, 62, 98 Observations on Conventions Nos. 87, 94, 98, 144 <i>Direct requests on Conventions Nos. 26, 95, 98, 100, 102, 150</i> Observation on Submission</p>

Denmark	General Report, paragraphs nos. 51, 62 Observations on Conventions Nos. 29, 87, 98, 169 <i>Direct requests on Conventions Nos. 52, 87, 100, 106, 119, 120, 122, 129, 138, 139, 144, 169</i> <i>Response received to a direct request on Convention No. 102</i> <i>Direct request on Submission</i>
Faeroe Islands	General Report, paragraphs nos. 51, 62 <i>Direct requests on Conventions Nos. 9, 16, 92</i>
Greenland	General Report, paragraphs nos. 51, 62 <i>Direct requests on Conventions Nos. 6, 14, 106, 122</i>
Djibouti	General Report, paragraph no. 51 Observations on Conventions Nos. 19, 81, 87, 95, 120 <i>Direct requests on Conventions Nos. 1, 19, 26, 29, 53, 69, 73, 91, 99, 100, 105, 106, 125</i> Observation on Submission
Dominica	General Report, paragraph no. 93 Observations on Conventions Nos. 87, 138 <i>Direct requests on Conventions Nos. 100, 111</i> Observation on Submission
Dominican Republic	Observations on Conventions Nos. 87, 98, 100, 111, 138 <i>Direct requests on Conventions Nos. 26, 111, 138, 172</i>
Ecuador	Observations on Conventions Nos. 87, 98, 103, 111, 131, 153, 169 <i>Direct requests on Conventions Nos. 98, 100, 103, 110, 111, 112, 114, 138, 139, 162, 169, 182</i> <i>Direct request on Submission</i>
Egypt	Observations on Conventions Nos. 87, 92, 94, 98, 106, 139 <i>Direct requests on Conventions Nos. 14, 29, 87, 89, 98, 106</i>
El Salvador	Observations on Conventions Nos. 29, 111, 122, 141, 142 <i>Direct requests on Conventions Nos. 99, 100, 111, 131, 144, 150, 156</i> Observation on Submission
Equatorial Guinea	General Report, paragraphs nos. 51, 58, 62, 98 Observations on Conventions Nos. 1, 30 <i>Direct requests on Conventions Nos. 100, 138</i> Observation on Submission
Eritrea	General Report, paragraphs nos. 51, 62 Observation on Convention No. 111 <i>Direct requests on Conventions Nos. 29, 87, 98, 100, 105, 111, 138</i> <i>Direct request on Submission</i>
Estonia	<i>Direct requests on Conventions Nos. 9, 14, 29, 41, 87, 100</i>
Ethiopia	Observations on Conventions Nos. 14, 87, 98, 111 <i>Direct requests on Conventions Nos. 100, 105, 106, 111, 138, 181</i> <i>Direct request on Submission</i>
Fiji	Observation on Convention No. 98 <i>Direct requests on Conventions Nos. 29, 85, 105, 169</i> Observation on Submission
Finland	Observation on Convention No. 100 <i>Direct requests on Conventions Nos. 14, 47, 87, 98, 100, 132, 138, 173, 175, 177</i> <i>Response received to a direct request on Convention No. 146</i>
France	Observations on Conventions Nos. 81, 115, 138 <i>Direct requests on Conventions Nos. 14, 52, 87, 98, 106, 122, 131, 137, 142</i> <i>Direct request on Submission</i>
French Guiana	Observation on Convention No. 115 <i>Direct requests on Conventions Nos. 14, 89, 100, 101, 106, 111, 131, 141, 142</i>

French Polynesia	Observations on Conventions Nos. 19, 129 <i>Direct requests on Conventions Nos. 100, 106, 111, 131, 142, 149</i>
French Southern and Antarctic Territories	General Report, paragraphs nos. 51, 62 <i>Direct requests on Conventions Nos. 58, 87, 111</i>
Guadeloupe	Observations on Conventions Nos. 115, 129 <i>Direct requests on Conventions Nos. 89, 100, 111, 131, 142</i>
Martinique	Observation on Convention No. 115 <i>Direct requests on Conventions Nos. 89, 100, 111, 131, 142</i>
New Caledonia	General Report, paragraphs nos. 51, 62 Observation on Convention No. 127 <i>Direct requests on Conventions Nos. 10, 33, 89, 95, 100, 106, 129, 131, 142, 144, 149</i>
Réunion	Observation on Convention No. 115 <i>Direct requests on Conventions Nos. 89, 100, 111, 131, 142</i>
St. Pierre and Miquelon	<i>Direct requests on Conventions Nos. 14, 89, 100, 106, 111, 115, 131, 142</i>
Gabon	Observation on Convention No. 81 <i>Direct requests on Conventions Nos. 3, 14, 26, 41, 52, 87, 95, 99, 100, 106, 111, 123</i> Observation on Submission
Gambia	General Report, paragraph no. 58 <i>Direct requests on Conventions Nos. 87, 98</i> Observation on Submission
Georgia	General Report, paragraphs nos. 51, 62, 98 Observation on Convention No. 122 <i>Direct requests on Conventions Nos. 29, 87, 98, 100, 117, 138, 142</i> Observation on Submission
Germany	Observations on Conventions Nos. 29, 87, 98 <i>Direct requests on Conventions Nos. 9, 26, 99, 100, 111, 122, 132</i> <i>Direct request on Submission</i>
Ghana	General Report, paragraphs nos. 51, 62 Observations on Conventions Nos. 30, 87, 89, 94, 103 <i>Direct requests on Conventions Nos. 26, 29, 100, 117, 149</i> <i>Direct request on Submission</i>
Greece	Observations on Conventions Nos. 87, 100, 115 <i>Direct requests on Conventions Nos. 68, 92, 100, 115, 122, 133, 144</i> <i>Response received to a direct request on Convention No. 106</i> <i>Direct request on Submission</i>
Grenada	General Report, paragraphs nos. 51, 62, 93, 98 <i>Direct requests on Conventions Nos. 26, 81, 87, 100, 144</i> Observation on Submission
Guatemala	Observations on Conventions Nos. 1, 14, 29, 30, 87, 94, 98, 100, 101, 103, 106, 111, 144, 169 <i>Direct requests on Conventions Nos. 58, 87, 89, 95, 100, 103, 110, 111, 117, 120, 131, 149, 169</i> Observation on Submission
Guinea	General Report, paragraphs nos. 62, 98 Observations on Conventions Nos. 26, 81, 87, 98, 99, 105, 118, 120, 121, 122, 140, 144 <i>Direct requests on Conventions Nos. 3, 10, 16, 29, 33, 62, 89, 100, 111, 113, 117, 118, 132, 136, 139, 142, 152, 159</i> Observation on Submission
Guinea-Bissau	General Report, paragraph no. 93 <i>Direct requests on Conventions Nos. 14, 26, 29, 98, 100, 106</i> Observation on Submission
Guyana	Observations on Conventions Nos. 87, 129, 139 <i>Direct requests on Conventions Nos. 98, 100, 111, 129, 131, 138, 140, 142, 144, 166, 172, 175</i> <i>Direct request on Submission</i>

Haiti	<p>General Report, paragraphs nos. 51, 62, 92</p> <p>Observations on Conventions Nos. 14, 24, 25, 29, 81, 87, 98, 100, 106</p> <p>Direct requests on Conventions Nos. 77, 78, 81, 87, 100</p> <p>Observation on Submission</p>
Honduras	<p>Observations on Conventions Nos. 81, 87, 98, 100, 138, 169</p> <p>Direct requests on Conventions Nos. 42, 81, 100, 111, 138, 169</p>
Hungary	<p>Observation on Convention No. 98</p> <p>Direct requests on Conventions Nos. 26, 29, 99, 100, 122, 129, 163, 164, 165, 166</p> <p>Direct request on Submission</p>
Iceland	<p>Observations on Conventions Nos. 87, 98</p> <p>Direct requests on Conventions Nos. 29, 100, 122, 138, 156</p> <p>Direct request on Submission</p>
India	<p>Observations on Conventions Nos. 100, 107</p> <p>Direct requests on Conventions Nos. 100, 105, 107</p> <p>Observation on Submission</p>
Indonesia	<p>Observations on Conventions Nos. 29, 87, 98, 100, 106, 111, 138</p> <p>Direct requests on Conventions Nos. 19, 87, 98, 100, 106, 111, 138</p> <p>Direct request on Submission</p>
Islamic Republic of Iran	<p>Observations on Conventions Nos. 95, 111</p> <p>Direct requests on Conventions Nos. 14, 100, 106</p> <p>Direct request on Submission</p>
Iraq	<p>General Report, paragraphs nos. 51, 98</p>
Ireland	<p>General Report, paragraph no. 98</p> <p>Observation on Convention No. 122</p> <p>Direct requests on Conventions Nos. 14, 26, 99, 100, 111, 132, 138, 160, 172, 177</p> <p>Direct request on Submission</p>
Israel	<p>General Report, paragraphs nos. 51, 62</p> <p>Direct requests on Conventions Nos. 98, 100, 111, 117, 122, 138</p> <p>Direct request on Submission</p>
Italy	<p>Observation on Convention No. 115</p> <p>Direct requests on Conventions Nos. 26, 29, 68, 87, 99, 100, 115, 129, 132, 137, 138, 159, 175, 181</p>
Jamaica	<p>Observations on Conventions Nos. 87, 98, 105</p> <p>Direct requests on Conventions Nos. 26, 94, 100, 111, 122, 144</p> <p>Direct request on Submission</p>
Japan	<p>Observations on Conventions Nos. 29, 87, 98, 156</p> <p>Direct requests on Conventions Nos. 120, 122, 131, 142, 156, 181</p>
Jordan	<p>Observations on Conventions Nos. 98, 106, 111</p> <p>Direct requests on Conventions Nos. 100, 111</p> <p>Direct request on Submission</p>
Kazakhstan	<p>General Report, paragraph no. 93</p> <p>Direct requests on Conventions Nos. 87, 98, 122, 135</p> <p>Observation on Submission</p>
Kenya	<p>Observations on Conventions Nos. 29, 81, 98, 129, 138</p> <p>Direct requests on Conventions Nos. 19, 29, 99, 131, 137, 142</p> <p>Direct request on Submission</p>
Kiribati	<p>General Report, paragraph no. 51</p> <p>Direct request on Submission</p>
Republic of Korea	<p>Observations on Conventions Nos. 81, 160</p> <p>Direct requests on Conventions Nos. 26, 81, 100, 122, 131, 135, 160</p> <p>Direct request on Submission</p>

Kuwait	<p>Observations on Conventions Nos. 1, 30, 105, 106 <i>Direct requests on Conventions Nos. 81, 138, 144, 159, 182</i> <i>Direct request on Submission</i></p>
Kyrgyzstan	<p>General Report, paragraphs nos. 51, 58, 62, 92, 98 Observations on Conventions Nos. 87, 95, 122, 159 <i>Direct requests on Conventions Nos. 14, 29, 52, 77, 78, 79, 87, 95, 98, 100, 124, 148, 149, 160</i> Observation on Submission</p>
Lao People's Democratic Republic	<p>General Report, paragraphs nos. 62, 92 <i>Direct requests on Conventions Nos. 4, 13</i> Observation on Submission</p>
Latvia	<p>General Report, paragraph no. 92 Observation on Convention No. 100 <i>Direct requests on Conventions Nos. 3, 14, 87, 100, 106, 131, 135</i> <i>Response received to a direct request on Convention No. 132</i> Observation on Submission</p>
Lebanon	<p>Observation on Convention No. 29 <i>Direct requests on Conventions Nos. 14, 29, 52, 74, 90, 100, 106, 120, 131</i></p>
Lesotho	<p><i>Direct request on Convention No. 26</i> <i>Direct request on Submission</i></p>
Liberia	<p>General Report, paragraphs nos. 51, 58, 62, 98 Observations on Conventions Nos. 22, 29, 55, 58, 87, 92, 98, 105, 112, 113, 114, 133 <i>Direct requests on Conventions Nos. 29, 53, 111, 147</i> <i>Direct request on Submission</i></p>
Libyan Arab Jamahiriya	<p>General Report, paragraphs nos. 51, 62 Observations on Conventions Nos. 103, 121, 122, 128, 130, 131 <i>Direct requests on Conventions Nos. 52, 81, 100, 121, 128, 130, 138</i> Observation on Submission</p>
Lithuania	<p><i>Direct requests on Conventions Nos. 4, 14, 29, 47, 81, 105, 131, 138, 173</i></p>
Luxembourg	<p>Observation on Convention No. 81 <i>Direct requests on Conventions Nos. 29, 81, 87, 100, 138, 151, 166</i> <i>Direct request on Submission</i></p>
Madagascar	<p>General Report, paragraph no. 93 Observations on Conventions Nos. 87, 119, 120 <i>Direct requests on Conventions Nos. 26, 41, 81, 87, 88, 122, 123, 129, 132, 159, 173</i> Observation on Submission</p>
Malawi	<p>General Report, paragraphs nos. 51, 62 Observations on Conventions Nos. 81, 129, 138 <i>Direct requests on Conventions Nos. 26, 29, 89, 99, 105, 107, 138, 149, 182</i> Observation on Submission</p>
Malaysia	<p>Observation on Convention No. 81 <i>Direct requests on Conventions Nos. 29, 138, 182</i></p> <p> Peninsular Malaysia Sabah Sarawak</p> <p>Observation on Convention No. 19 Observation on Convention No. 97 <i>Direct request on Convention No. 94</i> Observations on Conventions Nos. 14, 19</p>
Mali	<p>General Report, paragraphs nos. 62, 93, 98 Observations on Conventions Nos. 29, 81 <i>Direct requests on Conventions Nos. 14, 26, 29, 52, 105, 159, 182</i> Observation on Submission</p>
Malta	<p><i>Direct requests on Conventions Nos. 1, 14, 81, 106, 119, 129, 131, 132, 138</i></p>

Mauritania	Observations on Conventions Nos. 29, 81, 87, 102, 122 <i>Direct requests on Conventions Nos. 3, 26, 98, 105</i> <i>Direct request on Submission</i>
Mauritius	Observations on Conventions Nos. 81, 94, 108, 138 <i>Direct requests on Conventions Nos. 14, 26, 81, 94, 99, 138, 182</i>
Mexico	Observations on Conventions Nos. 22, 29, 87 <i>Direct requests on Conventions Nos. 53, 58, 110, 112, 120, 131, 140, 142, 172</i> <i>Direct request on Submission</i>
Republic of Moldova	<i>Direct requests on Conventions Nos. 29, 81, 100, 103, 117, 129, 131, 138</i> <i>Direct request on Submission</i>
Mongolia	General Report, paragraph no. 98 <i>Direct requests on Conventions Nos. 87, 98, 100, 103, 111, 122, 123, 135, 144, 159</i> Observation on Submission
Morocco	Observations on Conventions Nos. 4, 81, 100, 111, 129, 136, 138 <i>Direct requests on Conventions Nos. 14, 30, 52, 81, 98, 99, 100, 106, 111, 122, 129, 138</i> <i>Direct request on Submission</i>
Mozambique	Observation on Convention No. 81 <i>Direct requests on Conventions Nos. 88, 105, 122</i> Observation on Submission
Myanmar	Observations on Conventions Nos. 26, 29, 52, 87 <i>Direct requests on Conventions Nos. 2, 22, 26</i>
Namibia	<i>Direct requests on Conventions Nos. 29, 105, 138, 182</i> <i>Direct request on Submission</i>
Nepal	General Report, paragraph no. 98 <i>Direct requests on Conventions Nos. 100, 131, 138</i> Observation on Submission
Netherlands	Observations on Conventions Nos. 81, 98, 103, 118 <i>Direct requests on Conventions Nos. 14, 101, 103, 131, 135, 138, 175</i>
Aruba	Observations on Conventions Nos. 87, 94, 138, 144, 145 <i>Direct requests on Conventions Nos. 14, 29, 81, 87, 88, 94, 105, 106, 122, 131, 137, 138, 140, 146, 147</i>
Netherlands Antilles	General Report, paragraph no. 51 Observation on Convention No. 89 <i>Direct requests on Conventions Nos. 33, 81, 106</i> <i>Response received to a direct request on Convention No. 10</i>
New Zealand	Observations on Conventions Nos. 14, 47, 100, 111 <i>Direct requests on Conventions Nos. 52, 81, 100, 101, 122</i> <i>Direct request on Submission</i>
Tokelau	<i>Direct request on Convention No. 29</i>
Nicaragua	Observations on Conventions Nos. 3, 122 <i>Direct requests on Conventions Nos. 3, 4, 100, 110, 131, 138, 140, 142</i>
Niger	Observations on Conventions Nos. 29, 81, 87, 98 <i>Direct requests on Conventions Nos. 14, 29, 105, 138, 142, 156</i> Observation on Submission
Nigeria	Observations on Conventions Nos. 105, 123 <i>Direct requests on Conventions Nos. 26, 29, 81, 94, 95, 133</i> Observation on Submission
Norway	Observations on Conventions Nos. 81, 115, 129, 169, 170 <i>Direct requests on Conventions Nos. 26, 68, 94, 115, 122, 137, 138</i>
Oman	<i>Direct request on Submission</i>

Pakistan	<p>General Report, paragraph no. 51 Observations on Conventions Nos. 29, 81, 87, 98, 100, 105 <i>Direct requests on Conventions Nos. 16, 18, 87, 98, 105, 107</i> Observation on Submission</p>
Panama	<p>Observations on Conventions Nos. 3, 100 <i>Direct requests on Conventions Nos. 3, 26, 68, 81, 92, 100, 110, 113, 114, 122, 138, 182</i> <i>Direct request on Submission</i></p>
Papua New Guinea	<p>General Report, paragraph no. 58 Observation on Convention No. 105 <i>Direct requests on Conventions Nos. 26, 87, 99</i> <i>Direct request on Submission</i></p>
Paraguay	<p>General Report, paragraphs nos. 51, 62 Observations on Conventions Nos. 29, 79, 81, 87, 90, 98, 111, 120, 169 <i>Direct requests on Conventions Nos. 1, 26, 30, 52, 81, 89, 99, 100, 117, 119, 122, 169</i> <i>Response received to a direct request on Convention No. 123</i> Observation on Submission</p>
Peru	<p>Observations on Conventions Nos. 29, 81, 169 <i>Direct requests on Conventions Nos. 26, 29, 58, 81, 99, 112, 113, 159</i> <i>Direct request on Submission</i></p>
Philippines	<p>Observations on Conventions Nos. 87, 89, 105 <i>Direct requests on Conventions Nos. 23, 87, 99, 110, 122, 138</i></p>
Poland	<p>Observations on Conventions Nos. 95, 129, 149 <i>Direct requests on Conventions Nos. 14, 29, 68, 91, 92, 99, 100, 122, 133, 138, 140</i> <i>Response received to a direct request on Convention No. 81</i></p>
Portugal	<p>Observations on Conventions Nos. 81, 103, 129, 146 <i>Direct requests on Conventions Nos. 68, 81, 92, 103, 115, 120, 129, 138, 139</i> <i>Direct request on Submission</i></p>
Qatar	<p><i>Direct request on Convention No. 81</i> <i>Direct request on Submission</i></p>
Romania	<p>Observations on Conventions Nos. 87, 138 <i>Direct requests on Conventions Nos. 1, 14, 29, 89, 122, 131, 182</i></p>
Russian Federation	<p>Observations on Conventions Nos. 122, 138 <i>Direct requests on Conventions Nos. 14, 98, 100, 103, 105, 106, 138, 150, 156</i> <i>Direct request on Submission</i></p>
Rwanda	<p>Observations on Conventions Nos. 26, 81, 100, 138 <i>Direct requests on Conventions Nos. 14, 26, 81, 89, 100, 132, 138, 182</i> Observation on Submission</p>
Saint Kitts and Nevis	<p>General Report, paragraphs nos. 51, 58 <i>Direct request on Submission</i></p>
Saint Lucia	<p>General Report, paragraphs nos. 51, 58, 93 Observation on Convention No. 100 <i>Direct requests on Conventions Nos. 5, 26, 29, 87, 94, 95, 100</i> Observation on Submission</p>
Saint Vincent and the Grenadines	<p>General Report, paragraph no. 98 <i>Direct requests on Conventions Nos. 5, 10, 26, 81, 87, 94, 105, 108</i> Observation on Submission</p>
San Marino	<p>General Report, paragraph no. 51 <i>Direct requests on Conventions Nos. 100, 103, 138, 140</i> <i>Direct request on Submission</i></p>

Sao Tome and Principe	<p>General Report, paragraphs nos. 92, 98 Observations on Conventions Nos. 81, 87, 144 <i>Direct requests on Conventions Nos. 19, 81, 159</i> Observation on Submission</p>
Saudi Arabia	<p>Observations on Conventions Nos. 29, 81 <i>Direct requests on Conventions Nos. 81, 105, 106</i> <i>Direct request on Submission</i></p>
Senegal	<p>General Report, paragraph no. 93 Observations on Conventions Nos. 87, 98, 100, 111 <i>Direct requests on Conventions Nos. 19, 26, 81, 89, 99, 125, 138, 182</i> Observation on Submission</p>
Serbia and Montenegro	<p>General Report, paragraphs nos. 51, 62 Observations on Conventions Nos. 87, 98 <i>Direct requests on Conventions Nos. 29, 100, 102, 121, 122, 129, 138</i> <i>Direct request on Submission</i></p>
Seychelles	<p><i>Direct requests on Conventions Nos. 26, 99, 105, 138, 150, 182</i> <i>Direct request on Submission</i></p>
Sierra Leone	<p>General Report, paragraphs nos. 51, 62, 92, 98 Observations on Conventions Nos. 8, 17, 29, 59, 81, 88, 98, 101, 105, 111, 119, 125 <i>Direct requests on Conventions Nos. 26, 29, 95, 99, 100, 111, 126, 144</i> Observation on Submission</p>
Singapore	<p><i>Response received to a direct request on Convention No. 81</i></p>
Slovakia	<p>General Report, paragraphs nos. 62, 98 Observations on Conventions Nos. 100, 122, 144 <i>Direct requests on Conventions Nos. 1, 14, 26, 29, 52, 77, 78, 89, 99, 100, 102, 105, 115, 123, 138, 140, 173, 182, 183</i> <i>Response received to a direct request on Convention No. 90</i></p>
Slovenia	<p><i>Direct requests on Conventions Nos. 9, 13, 14, 29, 81, 103, 106, 122, 131, 132, 138, 139, 140, 142</i> <i>Response received to direct requests on Conventions Nos. 90, 105</i> <i>Direct request on Submission</i></p>
Solomon Islands	<p>General Report, paragraphs nos. 51, 62, 92, 98 Observation on Convention No. 8 <i>Direct requests on Conventions Nos. 14, 16, 26, 29, 81, 95</i> Observation on Submission</p>
Somalia	<p>General Report, paragraphs nos. 51, 92 Observation on Submission</p>
South Africa	<p><i>Direct requests on Conventions Nos. 89, 100, 138, 182</i> Observation on Submission</p>
Spain	<p>Observations on Conventions Nos. 29, 53, 103, 136, 138 <i>Direct requests on Conventions Nos. 4, 81, 103, 114, 115, 120, 122, 123, 131, 136, 138, 172</i> <i>Response received to direct requests on Conventions Nos. 129, 140, 163</i> Observation on Submission</p>
Sri Lanka	<p>Observations on Conventions Nos. 29, 81, 103 <i>Direct requests on Conventions Nos. 29, 103, 110, 138</i> <i>Direct request on Submission</i></p>
Sudan	<p>Observations on Conventions Nos. 26, 29, 81 <i>Direct requests on Conventions Nos. 100, 117, 122</i> Observation on Submission</p>

Suriname	Observation on Convention No. 81 <i>Direct requests on Conventions Nos. 41, 81, 105, 122</i> Observation on Submission
Swaziland	General Report, paragraphs nos. 51, 62 Observations on Conventions Nos. 29, 81, 96 <i>Direct requests on Conventions Nos. 11, 81, 89, 100, 123, 131</i> Observation on Submission
Sweden	Observations on Conventions Nos. 100, 122, 129, 152 <i>Direct requests on Conventions Nos. 9, 100, 120, 140</i> <i>Response received to a direct request on Convention No. 138</i> <i>Direct request on Submission</i>
Switzerland	Observations on Conventions Nos. 142, 144 <i>Direct requests on Conventions Nos. 26, 132, 138, 163, 172, 173, 182</i> <i>Response received to direct requests on Conventions Nos. 81, 153</i> <i>Direct request on Submission</i>
Syrian Arab Republic	Observations on Conventions Nos. 19, 29, 81, 87, 95, 105, 118, 129 <i>Direct requests on Conventions Nos. 29, 95, 98, 107, 129, 131</i> <i>Response received to a direct request on Convention No. 123</i> Observation on Submission
Tajikistan	General Report, paragraphs nos. 51, 58, 62, 98 Observations on Conventions Nos. 87, 122, 138 <i>Direct requests on Conventions Nos. 14, 29, 47, 52, 77, 78, 95, 98, 100, 103, 115, 124, 126, 138, 142, 160</i> Observation on Submission
United Republic of Tanzania	Observations on Conventions Nos. 29, 105, 137, 142, 144 <i>Direct requests on Conventions Nos. 12, 29, 87, 94, 95, 105, 131, 138, 140, 149</i> Observation on Submission
Tanganyika	General Report, paragraph no. 51 Observation on Convention No. 81 <i>Direct request on Convention No. 81</i>
Zanzibar	General Report, paragraph no. 51 <i>Direct request on Convention No. 58</i>
Thailand	Observation on Convention No. 29 <i>Direct request on Convention No. 123</i> Observation on Submission
The former Yugoslav Republic of Macedonia	General Report, paragraphs nos. 51, 98 Observations on Conventions Nos. 87, 98 <i>Direct request on Convention No. 98</i> Observation on Submission
Togo	<i>Direct requests on Conventions Nos. 26, 138</i> <i>Direct request on Submission</i>
Trinidad and Tobago	General Report, paragraphs nos. 51, 62 Observations on Conventions Nos. 87, 100, 105 <i>Direct requests on Conventions Nos. 29, 100</i>
Tunisia	Observations on Conventions Nos. 81, 87, 122, 142 <i>Direct requests on Conventions Nos. 26, 81, 87, 99, 100, 120, 138</i> <i>Direct request on Submission</i>
Turkey	Observations on Conventions Nos. 81, 87, 95, 98, 122, 138 <i>Direct requests on Conventions Nos. 14, 123, 138, 159</i>
Turkmenistan	General Report, paragraphs nos. 51, 58, 92, 98 Observation on Submission

Uganda	<p>General Report, paragraphs nos. 51, 62, 98 Observations on Conventions Nos. 17, 29, 81, 98, 105, 122 <i>Direct requests on Conventions Nos. 26, 94, 123, 143, 144, 154, 158, 162</i> Observation on Submission</p>
Ukraine	<p>Observations on Conventions Nos. 95, 119, 138, 182 <i>Direct requests on Conventions Nos. 29, 100, 103, 105, 111, 115, 138, 156, 182</i></p>
United Arab Emirates	<p>General Report, paragraph no. 62 Observations on Conventions Nos. 29, 138 <i>Direct requests on Conventions Nos. 1, 29, 105, 138</i></p>
United Kingdom	<p>Observations on Conventions Nos. 29, 100, 105 <i>Direct requests on Conventions Nos. 29, 81, 100, 105, 120</i></p>
Anguilla	<p>General Report, paragraphs nos. 51, 62 <i>Direct requests on Conventions Nos. 26, 29, 94, 99, 140</i></p>
Bermuda	<p>General Report, paragraph no. 51 Observation on Convention No. 82 <i>Direct request on Convention No. 115</i> <i>Response received to a direct request on Convention No. 10</i></p>
British Virgin Islands	<p><i>Direct request on Convention No. 26</i> <i>Response received to a direct request on Convention No. 10</i></p>
Falkland Islands (Malvinas)	<p>General Report, paragraph no. 51 <i>Response received to a direct request on Convention No. 10</i></p>
Gibraltar	<p><i>Direct request on Convention No. 81</i></p>
Guernsey	<p><i>Direct request on Convention No. 115</i> <i>Response received to a direct request on Convention No. 81</i></p>
Isle of Man	<p><i>Direct requests on Conventions Nos. 10, 81, 99</i></p>
Jersey	<p>Observation on Convention No. 81 <i>Direct requests on Conventions Nos. 22, 81, 99, 115</i> <i>Response received to a direct request on Convention No. 10</i></p>
Montserrat	<p>General Report, paragraphs nos. 51, 62 <i>Direct requests on Conventions Nos. 26, 29, 95</i></p>
St. Helena	<p><i>Direct requests on Conventions Nos. 17, 29</i></p>
Uruguay	<p>Observations on Conventions Nos. 81, 94, 98, 103, 122, 129, 131, 138, 151 <i>Direct requests on Conventions Nos. 1, 30, 81, 110, 115, 120, 129, 133, 138, 172</i> Observation on Submission</p>
Uzbekistan	<p>General Report, paragraphs nos. 51, 58, 92, 98 Observation on Submission</p>
Venezuela	<p>Observations on Conventions Nos. 3, 29, 41, 81, 87, 98, 100, 122, 138, 144 <i>Direct requests on Conventions Nos. 3, 26, 81, 87, 98, 100, 138, 140, 142</i> Observation on Submission</p>
Viet Nam	<p><i>Direct requests on Conventions Nos. 6, 120</i> <i>Response received to a direct request on Convention No. 123</i></p>
Yemen	<p>General Report, paragraphs nos. 51, 58 Observation on Convention No. 87 <i>Direct requests on Conventions Nos. 29, 100, 122, 132, 138, 144</i> <i>Direct request on Submission</i></p>
Zambia	<p>Observations on Conventions Nos. 87, 122, 138 <i>Direct requests on Conventions Nos. 87, 103, 111, 138, 149, 173</i> Observation on Submission</p>
Zimbabwe	<p>Observation on Convention No. 98 <i>Direct requests on Conventions Nos. 14, 26, 81, 99, 100, 129, 138, 182</i></p>

Appendix VIII. List of Conventions by Subject

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

1 Freedom of Association, Collective Bargaining, and Industrial Relations

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

2 Forced Labour

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

3 Elimination of Child Labour and Protection of Children and Young Persons

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

4 Equality of Opportunity and Treatment

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

5 Tripartite Consultation

C144	<i>Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)</i>
------	--

6 Labour Administration and Inspection

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

7 Employment policy and Promotion

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

8 Vocational Guidance and Training

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

9 Employment security

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

10 Wages

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

11 Working Time

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

12 Occupational Safety and Health

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

13 Social Security

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

14 Maternity Protection

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

15 Social Policy

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

16 Migrant Workers

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

17 Seafarers

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

18 Fishermen

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

19 Dockworkers

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

20 Indigenous and Tribal Peoples

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

21 Specific Categories of Workers

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