

International Labour Conference
91st Session 2003

Report III
(Part 1A)

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

**Report of the Committee of Experts
on the Application
of Conventions and Recommendations**
(articles 19, 22 and 35 of the Constitution)

General Report
and observations concerning particular countries

International Labour Office Geneva

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This part of the report is published in a separate volume as Report III (Part 1B).

PART ONE

General Report

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 73rd Session in Geneva from 28 November to 13 December 2002. 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),

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. Prafullachandra Natvarlal BHAGWATI (India),

Former Chief Justice of India; former Chief Justice of the High Court of Gujarat; former Chairman, Legal Aid Committee and Judicial Reforms Committee, Government of Gujarat; former Chairman, Committee on Juridicare, Government of India; former Chairman of the Committee appointed by the Government of India for implementing legal aid schemes in the country; member of the International Committee on Human Rights of the International Law Association; member of the Editorial Committee of Reports of the Commonwealth; Chairman of the Advisory Board of the Centre for Independence of Judges and Lawyers, Geneva; Vice-President of "El Taller"; 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.

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, and Chairperson of the Bar Council Sex Discrimination Committee (1995-1999) and Equal Opportunities Committee (1999-2002); Benchers 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.

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 M, Barrister-at-Law; Director, National Rail Corporation; Chairperson of the Human Rights Committee of the Law Society of South Australia; former Commissioner on 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; former Judge and Deputy President of the South Australian Industrial Court and Commission; former Deputy President of the Federal Administrative Appeals Tribunal.

Ms. Ewa LETOWSKA (Poland),

Professor of Civil Law (Institute of Legal Studies of the Polish Academy of Sciences); former parliamentary ombudsman; former Justice, Highest Administrative Court; Justice, Constitutional Tribunal; member of the Helsinki Committee; member of the International Commission of Jurists; member of the Polish Academy of Arts and Sciences; member of the Academy of Comparative Law, Paris.

Mr. Pierre LYON-CAEN (France),

Advocate-General, Court of Cassation (Social Division); President, Journalists Arbitration Commission; 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); Vice-President of the International Society of Labour Law and Social Security and President of the German Section of the Society.

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); member of the Standing Committee on Social Rights, the advisory body to the Ministry of Labour; titular member of the “Academia Iberoamericana de Derecho del Trabajo y de la Seguridad Social” (based in Madrid).

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); 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; Judge of the Constitutional Court.

Mr. Boon Chiang TAN (Singapore),

BB M(L), PP A, LL B (London), Dip. Arts; Barrister-at-Law and Solicitor, Singapore; former President of the Industrial Arbitration Court of Singapore; former member of the Court and Council of the University of Singapore; former

Vice-President (Asia) of the International Society of Labour Law and Social Security.

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. Toshio YAMAGUCHI (Japan),

Honorary Professor of Law at the University of Tokyo; former Chairman of the Central Labour Relations Commission of Japan; former member of the Executive Committee of the International Society of Labour Law and Social Security; full member of the International Academy of Comparative Law.

3. The Committee elected Ms. Robyn Layton, QC, as Chairperson and Mr. Edilbert Razafindralambo as Reporter.¹

Working methods

4. In pursuance of its terms of reference, as revised by the Governing Body at its 103rd Session (Geneva, 1947), the Committee was 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.

5. The Committee, after an examination and evaluation of the above reports and information, drew up its present report, consisting of the following three parts:

- (a) Part One is the General Report in which the Committee reviews general questions concerning international labour standards and related international instruments and their implementation;
- (b) Part Two contains observations concerning particular countries on the application of ratified Conventions (see section I and paragraphs 83 to 118 below), on the application of Conventions in non-metropolitan territories (see section II and

¹ Erratum: In paragraph 9 of last year's report, the Committee drew up an alphabetical list of all of its members on the occasion of the 75th anniversary since its establishment. It was indicated that Mr. José María Ruda (Argentina), former President of the International Court of Justice, had been a member of the Committee. He was also the Chairperson of the Committee.

paragraphs 83 to 118 below), and on the obligation to submit instruments to the competent authorities (see section III and paragraphs 119 to 133 below);

- (c) Part Three, which is published in a separate volume (Report III (Part 1B)), consists of a General Survey on the Protection of Wages Convention, 1949 (No. 95) and Recommendation (No. 85), on which governments were requested to submit reports under article 19 of the ILO Constitution.

6. The Committee's task consists of indicating the extent to which the law and practice in each State appears to be in conformity with ratified Conventions and the obligations undertaken by that State by virtue of the ILO Constitution. To accomplish this task, the Committee follows the principles of independence, objectivity and impartiality as described in its previous reports. It also continues to apply the working methods recalled in its 1987 report.²

Subcommittee on working methods

7. Furthermore, since 1999, the Committee has undertaken a thorough examination of its working methods. In 2001, the Committee paid particular attention to drafting its report in a manner to make it more accessible and to draw the attention of a larger readership to the importance of the provisions of Conventions and their practical application. Last year, in order to guide its reflections on this matter in both an efficient and thorough 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.³

8. At this session, the Committee of Experts considered the 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. There was, firstly, unanimous endorsement of the need for the Committee to maintain its independence, impartiality and objectivity in carrying out its work, and of the overall importance of these features of the ILO supervisory mechanisms. Secondly, with a view to promoting the visibility and influence of the Committee and its work, members expressed an interest, where appropriate, in participating in field missions and in contributing to international conferences or to seminars providing training in areas relevant to their work. Thirdly, the Committee agreed on a number of significant changes relating to its working methods, all of which have the following aims:

- (a) furthering the Committee's diversity;
- (b) increasing the synergy between experts and in particular between those experts working on linked groups of Convention;
- (c) ensuring the most effective working methods during particular high-pressure periods of work;

² International Labour Conference, 73rd Session, 1987, Report III(4A), pp. 17-19, paras. 37-49.

³ This subcommittee is composed of a core group and is open to any member of the Committee wishing to participate in it.

- (d) implementing further changes to its annual report, making it more accessible to those who read it; and
- (e) continuing to foster cooperation and good relations between the Committee of Experts and the Committee on the Application of Standards.

It was further agreed that, from now on, the subcommittee should continue to meet annually, as and when necessary, to monitor these reforms, to report to the Committee on their implementation and to recommend any further changes which may be necessary in the future.

9. 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 72nd Session as an observer in the general discussion of the Committee on the Application of Standards of the 90th Session of the International Labour Conference (June 2002). It noted the request by the abovementioned Committee for the Director-General to renew this invitation for the 91st Session of the International Labour Conference (June 2003). The Committee accepted the invitation.

10. The Chairperson of the Committee of Experts invited the Employer and Worker Vice-Chairpersons of the Committee on the Application of Standards of the 90th Session of the International Labour Conference to pay a joint visit to this Committee at its present session. Both accepted this invitation and discussed various matters with the Committee in a special session.

II. General information on international labour standards

Recent developments

A. Membership of the Organization

11. Since the Committee's last session, the number of member States of the ILO has remained unchanged at 175.

B. New standards adopted by the Conference at its 90th Session and the coming into force of Conventions

12. The Committee notes that, at its 90th Session (June 2002), the International Labour Conference adopted 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.

13. No Conventions entered into force in 2002.

*C. Withdrawal of Recommendations decided by the
Conference at its 90th Session*

14. The Committee notes that, pursuant to article 45bis of its Standing Orders adopted in June 1997, the Conference has withdrawn 20 outdated Recommendations. They cover the following subjects: employment policy (Recommendations Nos. 1, 11, 45, 50, 51 and 73); employment services and agencies (Recommendations Nos. 42 and 72); vocational guidance and training (Recommendations Nos. 15 and 56); labour inspection (Recommendations Nos. 5, 54 and 59); and hours of work (Recommendations Nos. 37, 38, 39, 63, 64, 65 and 66). The Committee recalls that the Governing Body decided by consensus to regard these instruments as outdated on the basis of the analysis and recommendations of the Working Party on Policy regarding the Revision of Standards.

D. Policy on standards

15. The Committee notes that, in the course of the ongoing discussion on possible improvements in ILO standards-related activities, at its 283rd Session (March 2002), the Governing Body pursued its examination of modifications to the standards-related reporting system. Following its sessions of November 2001 and March 2002,⁴ the Governing Body approved a new arrangement for grouping Conventions by subject for reporting purposes. The Governing Body also noted that Conventions could be grouped, under the new arrangement, into two-year and five-year reporting cycles. The Office was invited to proceed with the arrangements for grouping Conventions as from 2003, and to report to the Committee on Legal Issues and International Labour Standards (LILS) after five years.⁵

16. The Committee also notes that in March 2002, the Governing Body conducted an overview of the discussions and decisions on ILO standards-related activities that have taken place since the beginning of the current process of review.⁶ It was thus able to take stock of results obtained and define its future work programme. In accordance with that programme, in November 2002 the Governing Body dealt with the question of technical assistance and promotional activities related to international labour standards.⁷ It is to complete its consideration of that question in November 2003. The other subjects which it will examine in forthcoming sessions are:

- issues related to the content, drafting and preparation of Conventions and Recommendations (at the 286th (March 2003) Session of the Governing Body);
- in-depth review on the procedures and products under article 19 of the Constitution, paragraphs 5(e), 6(d), 7(b)(iv) and 7(b)(v) (at a later session of the Governing Body in 2003 or 2004);

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

⁵ Documents GB.282/LILS/5, GB.282/8/2, paras. 1-47, GB.283/LILS/6, Annexes II and III, and GB.283/10/2, paras. 21-39.

⁶ Document GB.283/4.

⁷ Documents GB.285/LILS/5 and GB.285/11/2.

- in-depth review of article 24 procedures (at a later session of the Governing Body in 2003 or 2004).

17. The Committee notes that at the same session the Governing Body decided to place on the agenda of the 92nd Session (2004) of the International Labour Conference the question of migrant workers with a view to a general discussion based on an integrated approach.

18. The Committee notes that March 2002 also marked the end of the work of the Working Party on Policy regarding the Revision of Standards of the Committee on Legal Issues and International Labour Standards which had been established seven years previously.⁸ The Committee wishes to stress the importance of follow-up measures to this work, particularly with regard to the promotion of standards which are up to date. In the context of follow-up measures, the Committee notes that the 1997 amendment to the Constitution to allow withdrawal of outdated Conventions in the interests of a more modern and strengthened body of standards, has to date⁹ been ratified or accepted by 74 member States, and commends the campaign launched by the Director-General to secure ratification.

E. Ratifications and denunciations

Ratifications

19. The list of ratifications by Convention and by country¹⁰ indicates a total of 7,000 ratifications as at 31 December 2001. From 1 January 2002 to the end of the Committee's session on 13 December 2002, 84 ratifications had been received from 42 countries.

Denunciations

20. Since the Committee's last session, the Director-General has registered the following denunciations:

Table 1:

| <i>State</i> | <i>Denounced Conventions</i> |
|------------------|---|
| Australia | C.15 Minimum Age (Trimmers and Stokers) Convention, 1921 C.21 Inspection of Emigrants Convention, 1926 |
| Mexico | C.23 Repatriation of Seamen Convention, 1926 |
| Norway | C.96 Fee-Charging Employment Agencies Convention (Revised), 1949 |
| Paraguay | C.60 Minimum Age (Non-Industrial Employment) Convention (Revised), 1937 |
| Slovakia | C.89 Night Work (Women) Convention (Revised), 1948 |

⁸ Documents GB.282/LILS/WP/PRS/1/2 and GB.283/10/2.

⁹ 3 December 2002.

¹⁰ International Labour Conference, 90th Session, Geneva, 2002, Report III (Part 2).

Table 2: *Denunciations resulting from the ratification of a revising Convention*¹¹

| <i>State</i> | <i>Conventions denounced</i> | <i>Conventions ratified</i> |
|-------------------|--|---|
| Brazil | C.107 Indigenous and Tribal Populations Convention, 1957 | C.169 Indigenous and Tribal Peoples Convention, 1989 |
| Mali | C.5 Minimum Age (Industry) Convention, 1919 C.33 Minimum Age (Non-Industrial Employment) Convention, 1932 | C.138 Minimum Age Convention, 1973 |
| Mauritania | C.5 Minimum Age (Industry) Convention, 1919 | C.138 Minimum Age Convention, 1973 |
| Nigeria | C.15 Minimum Age (Trimmers and Stokers) Convention, 1921 C.58 Minimum Age (Sea) Convention (Revised), 1936 C.59 Minimum Age (Industry) Convention (Revised), 1937 | C.138 Minimum Age Convention, 1973 |
| Portugal | C.96 Fee-Charging Employment Agencies Convention (Revised), 1949 | C.181 Private Employment Agencies Convention, 1997 |
| Swaziland | C.5 Minimum Age (Industry) Convention, 1919 C.59 Minimum Age (Industry) Convention (Revised), 1937 | C.138 Minimum Age Convention, 1973 |
| Ukraine | C.52 Holidays with Pay Convention, 1936 | C.132 Holidays with Pay Convention (Revised), 1970 |

Declaration

21. The **Netherlands** made declarations on behalf of the Netherlands Antilles and Aruba, terminating the acceptance of the obligations of the Night Work (Women) Convention (Revised), 1948 (No. 89), and of the Labour Inspection (Agriculture) Convention, 1969 (No. 129), respectively.

Notifications

22. The Director-General has registered notifications from **China** concerning the application without modification of the Worst Forms of Child Labour Convention, 1999

¹¹ If a Convention is adopted which specifies that it revises an earlier Convention, in most cases its ratification will entail the automatic denunciation of the earlier Convention.

(No. 182), to the Special Administrative Region of Hong Kong and to the Special Administrative Region of Macau.

Constitutional and other procedures

23. The Committee had been informed of the decisions taken since its last session by the Governing Body in cases where the Governing Body had recourse to the constitutional procedures in respect of complaints, representations and other procedures.

*A. Measures taken under article 33 of the ILO Constitution:
The question of the observance by the Government of Myanmar of the
Forced Labour Convention, 1930 (No. 29)*

24. The Committee notes the latest developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29).

25. The Committee notes that in the wake of an ILO technical cooperation mission, the Government of Myanmar entered into an understanding with the International Labour Office. Under this understanding, the Director-General decided to appoint an ILO Liaison Officer to Myanmar. This Liaison Officer is responsible for conducting all activities relevant to the prompt and effective elimination of forced labour. At its 283rd Session (March 2002), the Governing Body endorsed this understanding, underlining that it was only a first step towards full and effective ILO representation. First, the Interim Liaison Officer's activities were described in the Interim Liaison Officer's Report to the Conference Committee on the Application of Standards in June 2002. Subsequently, on 4 September 2002, Ms. Hồng-Trang Perret-Nguyen was appointed Liaison Officer and reported to the Governing Body at its November 2002 session.

26. The Committee further notes that at its 285th Session (November 2002), the Governing Body expressed a desire to see concrete action regarding the abolition of forced labour in Myanmar before serious consideration could be given to the removal of the 1999 ILC resolution under article 33 of the Constitution. The Governing Body expressed satisfaction that the Government of Myanmar would welcome the visit of an ILO mission to follow up on the previous discussion between the Office and the authorities regarding a possible programme of action. The Governing Body also noted that such a mission should take into account the ideas and suggestions made by the High-Level Team that went to Myanmar in 2001. However, the Governing Body noted that it would remain up to the Office to judge when the Liaison Officer's preparatory work in Myanmar was sufficiently advanced for a mission to be fruitful. The Committee notes that in conclusion, the Governing Body reiterated that the Government of Myanmar committed itself to, with the Office's assistance, converting its words into concrete action so that visible progress regarding the forced labour situation would be made.

27. The Committee notes that pursuant to the resolution adopted by the Conference at its 88th Session, the Conference Committee on the Application of Standards held a special session devoted to the issue of the application by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29). The

Committee notes the conclusions of the Conference Committee. In particular, the Conference Committee noted with satisfaction the cooperation of the Government with the High-Level Team and the appointment of the Interim Liaison Officer. On the other hand, the Conference Committee emphasized the urgent need for real progress, both procedural and substantive and noted the Government's failure to give practical effect to proposals of the High-Level Team regarding murder victims in Shan State and regarding the establishment of independent mediation as a means of recourse for future victims of forced labour. Finally, the Conference Committee noted that the Government would have to supply a detailed report to the Committee of Experts at its present session (November-December 2002) describing all the measures adopted to ensure compliance with the Convention in law and practice.

28. While noting the conclusions of the Governing Body, the Committee also refers to its observation concerning the application by Myanmar of the Forced Labour Convention, 1930 (No. 29), in Part Two of this report.

B. Representations submitted under article 24 of the ILO Constitution

29. Since the last meeting of the Committee of Experts, two representations have been received from a number of different workers' organizations alleging non-observance by Mexico of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), adding to the two other representations already declared receivable.

| Member State | Complainant organization | Convention | Status of representation |
|---------------------|---|---|---|
| Guatemala | Popular Labour Action Unity (UASP) and the Trade Union of Workers of Guatemala (UNSITRAGUA) | Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) | Representation declared receivable 282nd Session of the Governing Body |
| Mexico | Various Mexican workers' organizations | Indigenous and Tribal Peoples Convention, 1989 (No. 169) | Representation declared receivable 283rd and 285th Sessions of the Governing Body |

C. Complaints submitted under article 26 of the ILO Constitution

Complaint against Colombia

30. Since the last meeting of the Committee of Experts, three reports on the Special Technical Cooperation Programme for Colombia have been submitted to the Governing Body. At its March, June and November 2002 sessions, the Committee on Freedom of Association submitted to the Governing Body reports which included the

examination of Colombian cases (see the 327th, 328th and 329th Reports of the Committee on Freedom of Association).¹²

D. Special procedures concerning freedom of association

31. At each of its last meetings (March, June and November 2002), the Committee on Freedom of Association had before it an average of some 150 cases concerning around 60 countries from all parts of the world, for which it presented interim or final conclusions, or for which the examination was adjourned pending the arrival of information from governments (327th, 328th and 329th Reports). Many of these cases have been before the Committee on several occasions. Moreover, since the last meeting of the Committee of Experts, over 60 new cases have been submitted to the Committee on Freedom of Association. Missions concerning certain cases pending before the Committee on Freedom of Association visited the **Republic of Korea, Paraguay, Romania and Venezuela**.

32. The Committee on Freedom of Association drew the attention of the Committee of Experts to the legislative aspects of the following cases: Nos. 2140 (**Bosnia and Herzegovina**), 2145 (**Canada**), 2141 (**Chile**), 2068 (**Colombia**), 2138 (**Ecuador**), 2100 (**Honduras**), 2114, 2177 and 2183 (**Japan**), 2078 (**Lithuania**), 2133 (**The former Yugoslav Republic of Macedonia**), 2126 (**Turkey**) and 2087 (**Uruguay**).

33. In addition, the Committee noted that the Committee on Freedom of Association, at its meeting of March 2002, had held an in-depth discussion of its procedures and had formulated a series of proposals to improve its working methods, which were in turn approved by the Governing Body.

**Collaboration with other international organizations and functions
relating to other international instruments**

*A. Cooperation in the field of standards with the
United Nations and the specialized agencies*

34. 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 Radiation Protection Convention, 1960 (No. 115), to the International Atomic Energy Agency (IAEA);
- the Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117), to the United Nations Food and Agriculture Organization (FAO), the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the United

¹² Documents GB.283/8, GB.284/8 and GB.285/9.

Nations, with a copy to the Office of the High Commissioner of the United Nations for Human Rights;

- 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 and the United Nations, with a copy to the Office of the High Commissioner of the United Nations for Human Rights;
- the Human Resources Development Convention, 1975 (No. 142), to UNESCO;
- the Nursing Personnel Convention, 1977 (No. 149), to the World Health Organization (WHO);
- the Indigenous and Tribal Peoples Convention, 1989 (No. 169), to FAO, UNESCO, the United Nations and WHO, with copies to the Inter-American Indian Institute of the Organization of American States and the Office of the High Commissioner of the United Nations for Human Rights.

35. In accordance with the established practice, representatives of these organizations were invited to attend the sittings of the Committee of Experts in which the application of these Conventions was discussed.

B. United Nations treaties concerning human rights

36. 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, the following activities have been undertaken:

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

37. 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.

38. The Office was also represented at the 14th Meeting (June 2002) of Chairpersons of the United Nations Treaty Bodies to discuss closer cooperation between the UN 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 Ninth 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

39. 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 17 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.

40. In addition, representatives of the ILO took part in the meeting of the Committee of Experts on Standard-Setting Instruments in the field of social security, in the capacity of technical counsellors held in Strasbourg (France) in September 2002, to examine the application of these instruments on the basis of the conclusions of this Committee. The Committee of Experts on Standard-Setting Instruments endorsed the conclusions of the Committee of Experts.

European Social Charter

41. In the context of its collaboration with the Council of Europe, a representative of the ILO participated in the course of 2002, in an advisory capacity, in accordance with article 26 of the European Social Charter, in sessions of the European Committee of Social Rights. Since the Committee's last meeting, **Latvia** ratified the European Social Charter. **Albania**, **Finland** and **Poland** ratified the European Social Charter (revised) and **Iceland** ratified the Protocol amending the European Social Charter.

D. Matters relating to human rights

42. 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.

43. The Committee will recall 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 175 member States, 83 countries (18 more than a year ago), have ratified the eight

fundamental Conventions, 37 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 132 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.

44. 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).

Questions concerning the application of Conventions

A. Fiftieth anniversary of the Social Security (Minimum Standards) Convention, 1952 (No. 102)

45. Fifty years ago, in June 1952, the International Labour Conference adopted the Social Security (Minimum Standards) Convention, 1952 (No. 102). For the first time in the history of international law, this Convention laid the basis for a system of social security unified by common principles of organization and intended to guarantee a minimum level of protection sufficient to maintain the beneficiary and his family in health and decency.

46. The ILO's standard-setting activities in the field of social security go back to the origins of the Organization. From its creation, social security has been a priority for the ILO, with the preamble to the Constitution setting forth as from 1919 the need to improve conditions of labour in respect, for example, to the "prevention of unemployment" and the "protection of the worker against sickness, disease and injury arising out of his employment".

47. The adoption of the ILO's series of social security standards (31 Conventions and 15 Recommendations) corresponds to three generations based on different approaches. In the *first generation*, the standards are inspired principally by the concept of social insurance, applicable to certain categories of workers and covering a specific contingency and sector of activity (industry, agriculture, etc.). After the Second World War, the international community recognized the need to extend social protection to the population as a whole; the *second generation* standards therefore reflect a more general concept of social security. The Declaration of Philadelphia, adopted in 1944, re-defined ILO objectives by including the extension of social security measures to provide basic income to all in need of such protection, and comprehensive medical care. This conception also inspired the Conference when it adopted the Social Security (Minimum Standards) Convention, 1952 (No. 102). As indicated by its title, this Convention provides for a minimum level of benefits in each of the nine branches of social security that it covers. The instruments adopted subsequently, in the *third generation*, while drawing upon the model of Convention No. 102, offer a higher level of protection in terms of the population covered and the level of benefits.

48. Convention No. 102 covers the nine principle branches of social security, namely: medical care; sickness benefit; unemployment benefit; old-age benefit; employment injury benefit; family benefit; maternity benefit; invalidity benefit; and survivors' benefit. A State which ratifies Convention No. 102 has to accept the obligations under at least three of these branches for which minimum standards are set out with regard to the scope of protection and benefits and the level of benefits. The Convention embodies the idea of a general level of social security which must gradually be achieved everywhere, in view of the fact that the system can be adapted to the prevailing socio-economic conditions of any country, irrespective of its level of development. In contrast with the earlier instruments, Convention No. 102 establishes targets to be achieved rather than describing the applicable techniques.

49. The basic principles of Convention No. 102 are founded on common rules of administration and organization, as well as principles such as the distribution of risks, collective financing and the responsibility of the State for the sound administration of social security systems. The Committee has pointed out in this respect that these organizational principles "must be complemented by the no less fundamental principles of governance: the system shall be supervised by the public authorities or administered jointly by employers and workers whose contributions represent the largest share of social security revenues; representatives of the persons protected, which include social groups outside wage employment, shall participate in management if the administration is not entrusted to a public institution; and the State must accept general responsibility for the due provision of benefits and for the proper administration of the institutions and services concerned."¹³

50. The regular examination carried out by the Committee of Experts of the application of the principles set out in Convention No. 102 is based on a practical approach. With a view to assessing the extent to which the benefits attain, in all cases and irrespective of the type of system, the level prescribed by the Convention, the Committee bases itself, in addition to the relevant legislative texts, on information on its application in practice (statistics, actuarial studies, inspection reports, data provided by the employers' and workers' organizations, etc.), which take on particular importance for technical standards such as Convention No. 102.

51. Convention No. 102, in the same way as the later instruments, militates against the idea of rigidity that is often held of Conventions. Convention No. 102 offers a range of options and flexibility clauses making it possible to attain gradually the objective of universal coverage in harmony with the rate of national economic development. Each country may apply the Conventions through a combination of contributory and non-contributory benefits, different methods for the administration of benefits, general and occupational schemes, compulsory and voluntary insurance, and public and private participation, all intended to secure an overall level of protection which best responds to its needs.

52. The flexibility contained in its provisions has permitted Convention No. 102 to pass the test of time, and to encompass the new model of social security that is emerging, in which that part of responsibility that is renounced by the State is taken up

¹³ Report of the Committee of Experts on the Application of Conventions and Recommendations, ILC, 89th Session, 2001, Report III (Part IA) (Part One, II), para. 155.

by private insurance schemes, enterprises and insured persons themselves. Faithful to its underlying principle of objectivity, the Committee of Experts has indicated in this respect that the coexistence of a dual social security system, both public and private, as is the case in various Latin American countries, is not in itself incompatible with Convention No. 102, which allows for the attainment of a minimum level of social protection through different methods. However, the Convention sets forth certain principles of general application relating to the administration, financing and functioning of social security schemes. What is of interest to the Committee, in the last resort, is to ascertain that, irrespective of the nature of such schemes, the main principles are observed and the level of benefits prescribed by the Convention is attained in full.

53. In its 50 years of existence, Convention No. 102 has had a substantial influence on the development of social security in the various regions of the world, and is therefore deemed to embody an internationally accepted definition of the very principle of social security.

- Up to now, 40 countries have ratified Convention No. 102 and have therefore incorporated its provisions into their internal legal systems and, in many cases, their national practice.
- Social security schemes exist in nearly all the industrialized countries covering the nine branches to which Convention No. 102 applies.
- Many developing countries, inspired by Convention No. 102, have embarked upon the road to social security, even though nearly all of their systems are more modest in scope and, in general, do not yet encompass unemployment or family benefit.
- Most of the social security schemes in Latin America, which have their origins in the era of social insurance, were greatly influenced by international labour standards and, in particular, by Convention No. 102.
- Convention No. 102 served as a model for the adoption of the European Code of Social Security, adopted under the aegis of the Council of Europe, which relied for its formulation on the participation of the International Labour Office.
- The European Social Charter provides that the Contracting parties undertake to maintain a level of protection at least equal to that required by the ratification of Convention No. 102.

54. In June 2001, the Conference held a general discussion with the objective of enabling the ILO to define a concept of social security at the threshold of the twenty-first century. It concluded that the ILO's activities in the field of social security should be anchored on the Declaration of Philadelphia, the concept of decent work and the relevant standards in this field. In parallel, the Governing Body undertook an evaluation between 1995 and 2002 of all the ILO's standards. In the context of this evaluation, it concluded that Convention No. 102, along with the Conventions and Recommendations on social security adopted subsequently, are up to date and are therefore relevant. Nevertheless, and in particular in view of the complexity of the provisions of these instruments, the Governing Body also considered that the Office should provide technical assistance in this field to member States, including the dissemination of information.

55. The Committee notes with satisfaction that, in September 2002, the Committee of Experts on Standard-Setting Instruments in the Field of Social Security, of the Council of Europe, on the occasion of the 50th anniversary of Convention No. 102,

emphasized the current pertinence of this instrument, in the same way as of the European Code of Social Security. The Committee of Experts on Standard-Setting Instruments expressed gratitude to the ILO for its essential work in the field of social security standards, which had served as a basis for the European Code of Social Security, and for the excellent cooperation between the two organizations over the years.

56. Convention No. 102 is inspired by the idea that there is no perfect model for social security: each model develops and is transformed. Each society has to develop the best means of guaranteeing a minimum level of protection. The method selected must reflect the social and cultural values, history, institutions and level of economic development of each concerned. The Convention does not therefore require a specific approach by member States; instead, the Convention sets out an integrated series of objectives based on commonly accepted principles establishing a minimum social threshold for all member States. The Committee therefore hopes that, in developing their national strategies for the development of social security for everyone, the member States of the ILO will take into account the provisions of Convention No. 102 and consider its ratification.

B. Application of the Employment Policy Convention, 1964 (No. 122)

57. In examining the application of the Employment Policy Convention, 1964 (No. 122) this year, the Committee notes a continuation of the trend of moving from passive to active labour market policies. In the context of globalization, this implies open economies and the integration of markets. The central issue is still the creation of employment, and in decent conditions, to fight poverty and to obtain sustainable development. The Committee emphasizes that the pursuance of an active policy designed to promote full, productive and freely-chosen employment is at the heart of economic and social policies, at both international and national levels. The policies represented by this Convention and its accompanying Recommendation are at the heart of the ILO's Decent Work strategy. In order to attain some of the Millennium Development Goals – such as eradicating extreme poverty and hunger, eliminating gender disparity in primary and secondary education or providing decent and productive work for young people – governments, along with international organizations able to influence national policies, must strongly encourage active measures to ensure that the poor have access to productive and freely-chosen employment as a means of overcoming poverty, that there is no discrimination against women or minorities in access to education and training, and that there is decent work available for young people enabling them to enter into and remain in employment.

58. The Committee observes that while more ratifying States are declaring and promoting active labour market policies, less attention has been paid to evaluating the impact of measures taken in pursuance of these policies. The Committee notes that if outcomes are not measured, funds invested in job-creation activities may not be wisely spent. In this regard, the Committee recalls that in some member States employment promotion programmes were initiated on a pilot basis, and were only implemented on a national basis when the pilot programme was determined to be successful (as shown by the information contained in the reports of **New Zealand** and the **United Kingdom**).

59. The Committee notes that any evaluation of the impact of employment promotion policies requires, as an essential step, that accurate statistical data regarding

the labour market be available. The Committee recognizes that in some member States the technical capability for producing such data needs to be developed, and in this regard, welcomes efforts to develop labour market information systems (**China**). This is especially important where a poverty reduction strategy is being implemented (**Paraguay, Senegal**). The Committee is encouraged by the action taken by member States who are benefiting from debt alleviation as part of the Enhanced Initiative for Highly Indebted Poor Countries of the International Monetary Fund (IMF) and the World Bank to transfer some funds into programmes designed to promote employment (**Bolivia, Cameroon**).

60. The Committee in examining the reports received, paid particular attention to those that included observations from employers' and workers' organizations (**Finland, Italy, New Zealand, Peru, Portugal, Ukraine, United Kingdom**). The Convention itself requires consultation of representatives of employers and workers so that their views may be taken into account in the formulation of an active employment policy. It is a source of great satisfaction to the Committee that the social partners have also expressed their views in the report preparation process, as their opinions are a most helpful supplement to the information sent by governments.

61. The Committee notes with deep concern the very grave impact of HIV/AIDS in some member States. Not only does this cause immense suffering to the individuals and their families, but the number of deaths of those in the prime working age category is devastating the productive capacity of certain countries and making it extremely difficult to make progress in reducing poverty (**Zambia**). The Committee urges governments, and workers' and employers' organizations to join together in drawing upon the assistance of the ILO and all international agencies in the fight against HIV/AIDS. It also recalls that the ILO has developed a code of practice on HIV/AIDS and the world of work, which contains fundamental principles for policy development and practical guidelines from which concrete responses can be developed at enterprise, community and national levels to mitigate the impact of the epidemic on employment.

62. The Committee observes that some member States are dealing with the employment effects of privatization and industrial restructuring (**China, the Republic of Moldova, Peru and Ukraine**) which can entail worker redundancy and increased unemployment. The Committee has already had the occasion to express its concern at the conditions in which some processes of economic adjustment take place and recalls the importance that must be attached to the instruments on termination of employment adopted by the Conference in 1982 which aim to achieve a balance between the protection of the workers affected in the event of collective dismissals and the necessary flexibility of the labour market, as noted in the 1995 General Survey on this subject.

63. The Committee also recalls the interrelationship between employment and social protection, in particular, an interrelationship that is most acutely felt by those hardest hit by volatility in financial, commodity and other markets. The Committee once again stresses that adequate safety nets fulfil a crucial social function. The Committee urges governments to follow an integrated approach to social protection and employment promotion. It appreciates those reports in which this issue is explicitly discussed (**Thailand**) and it encourages governments to include in their reports information on the measures taken in order to implement security nets as a complement to their employment policy measures.

64. The Committee detects growing awareness of the problems faced by unemployed older workers, such as the lack of access to retraining programmes (**Portugal**), which can lead to their either being subjected to long-term unemployment or to their leaving the labour force. The Committee notes interest in increasing the labour force participation rate of older workers (**Finland, Netherlands**). The Committee would welcome more information on the employability of older workers.

65. The Committee welcomes the adoption by the International Labour Conference at its 90th Session (June 2002) of new instruments which are closely related to the Convention, such as the Promotion of Cooperatives Recommendation, 2002 (No. 193) and the Conclusions of the general discussion in the Conference on decent work and the informal economy. The Committee recalls the important role that cooperatives play in many countries, both developing and developed, in promoting employment. It is estimated that cooperatives employ more than 100 million people and have more than 800 million members worldwide. They also have the proven potential to serve as a bridge between the informal and the formal economies, helping to ensure decent work for all. The Committee invites governments to consider incorporating the guidelines adopted in Recommendation No. 193 in their employment policies and programmes, and to include representatives of organizations of cooperatives in their consultations on the formulation, implementation and review of employment policies and programmes. The Committee also draws attention to the Conclusions on decent work and the informal economy, which urge governments to give priority to investing in people, particularly the most vulnerable, through education, training and lifelong learning, and to encourage entrepreneurship.

66. The Conclusions also echo the Committee's past appeals to governments to include in their Poverty Reduction Strategy Papers a strong focus on promoting employment as a key to reducing poverty while fostering sustainable economic growth. The Committee observes that Poverty Reduction Strategy Papers afford a unique opportunity to convey employment as an essential instrument of social integration and inclusion. Several of the reports examined this year (**Bolivia, Cameroon, Honduras, India, Jordan, Paraguay, Senegal, Thailand, Zambia**) contain specific information on the manner in which employment objectives have been incorporated in poverty reduction strategies. In most cases, these strategies are accompanied by specific measures to increase awareness of how the labour market operates, to strengthen labour administration and employment services, to promote micro-, small and medium enterprises, and by general measures to encourage educational policies that are adapted to employment opportunities. In the case of **Honduras**, the technical assistance of the Office has helped the Government to broadening the approach to poverty reduction by promoting social dialogue in tripartite bodies, thus enabling consultation of the social partners on employment promotion issues. The Committee notes with particular interest the China Employment Forum, which the Office is to organize in 2003. It hopes that additional initiatives of this kind will likewise contribute to promoting the Convention.

67. As the Committee is aware, for the objectives of the Convention to be attained there must be public policies that not only encourage economic growth but also encourage enterprises to create jobs. That is why the information requested in the report form for the Convention covers overall and sectoral development policies, labour market policies and education policies. It also explains why so much is expected of its General Survey of 2003, for which the Committee will examine Convention No. 122 and its

accompanying Recommendation of 1984, together with the Human Resources Development Convention, 1975 (No. 142), and the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189), in so far as all these instruments relate to the promotion of full, productive and freely chosen employment. The Committee trusts that the 2003 General Survey will provide a new opportunity to develop an integrated approach providing member States and the Organization with a strategy to enhance the application of international labour standards on employment promotion and human resources development and to further their promotion. It strongly encourages governments and also employers' and workers' organizations to contribute to this General Survey.

C. Application of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)

68. The Committee notes that at its 90th Session (June 2002), the Conference adopted a resolution concerning tripartism and social dialogue in which it emphasized, inter alia, that social dialogue and tripartism have proved to be valuable and democratic means to address social concerns, build consensus, help elaborate international labour standards and examine a wide range of labour issues on which social partners play a direct, legitimate and irreplaceable role.

69. The Committee welcomes the launch by the Office in November 2002 of the promotion and ratification campaign for the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), and the circulation of a brochure published for this purpose. The Committee notes that 107 ratifications have already been registered for the Convention, which is one of the priority Conventions for which detailed reports are requested every two years under the regular supervisory mechanism. This effort constitutes a closer cooperation between the sectors of the Office responsible for international labour standards and social dialogue, and is welcomed by the Committee. In its 2000 General Survey on the subject,¹⁴ the Committee recalled the importance of tripartite dialogue in carrying out all the work of the ILO. It emphasized that the consultations required by the Convention themselves facilitate the development of social dialogue by providing an opportunity for the introduction of regular procedures for the exchange of views between the government and the social partners. It hoped for an increased effort to promote the ratification of the Convention with a view to its universal application in the not too distant future. The Committee notes with satisfaction that 14 new ratifications have been registered since its General Survey on tripartite consultation two years ago, and strongly hopes that the promotion and ratification campaign will encourage other Members to consider the ratification of Convention No. 144 in the near future.

¹⁴ Tripartite Consultation, ILC, 88th Session, 2000, Report III (Part 1B).

Technical assistance in the field of standards

A. Direct contacts

70. Direct contacts missions in respect of freedom of association visited **Paraguay** and **Venezuela** during the past year.

B. Promotional activities

71. Seminars on freedom of association were organized in **Chile** (April 2002), **Brazil** for the port sector (September 2002), **Niger** on the representativeness of trade unions (September 2002) and **Mexico** for export processing zones (October 2002). A lecture was given in Washington for labour attachés of United States embassies, and in Montreal (**Canada**) in July 2002.

72. Advisory missions on freedom of association visited **Romania** (January 2002), **Morocco** (April 2002), **Republic of Korea** (September 2002) and the **Islamic Republic of Iran** (October 2002).

73. Concerning equality and non-discrimination, the following seminars were held: three national seminars on equal remuneration (**Estonia**, January 2002, **Thailand**, April 2002 and **Cyprus**, September 2002); Workshop on Discrimination and HIV/AIDS (**southern Africa**, February 2002); National Equality Forum on Promotion of the Ratification of Convention No. 111 (Tokyo, **Japan**, July 2002); two national seminars on Convention No. 111 (Beijing, Shanghai, **China**); within **Japan**, four regional workshops/forums on equality action (July 2002).

74. A follow-up technical advisory mission was undertaken to the **Islamic Republic of Iran** in May 2002 in relation to Convention No. 111

75. In addition, in the context of a regional technical cooperation project carried out jointly with the Asian Development Bank (ADB), there were ILO/ADB National Workshops on Strengthening the Role of Labour Standards concerning gender equality, child labour and occupational safety and health (**Philippines**, **Thailand**, **Bangladesh** and **Nepal** (March 2002)), ILO/ADB Regional Asian Meeting on Strengthening the Role of Labour Standards (Manila, **Philippines**, September 2002).

76. Promotion of standards in the area of social protection and conditions of work was achieved in a number of events, including: a workshop on labour principles and fundamental rights, and particularly on Conventions Nos. 138 and 182 (**Bahrain**, May 2002); three seminars on maritime standards (**Panama**, February 2002; **Seychelles**, August 2002; **Mauritius**, September 2002); a seminar on maritime inspection (**Singapore**, July 2002); a seminar on wages policy and wage guarantee funds (**Bulgaria**, May 2002); participation in the meeting of Andean Pact countries for the adoption of a common standard on occupational safety and health (**Ecuador**, February 2002); participation in a seminar for the Portuguese-speaking countries of Africa (PALOP), which was also devoted to the preparation of a promotional instrument intended to serve as a basis for the adoption of national laws in the area in question; participation in the Regional Maritime Conference in the Asian-Pacific Region (July 2002); and in the American Regional Meeting. Other promotional activities (participation in various meetings, advisory services, technical assistance, etc.) were

provided for the following countries: **China, Luxembourg, Mauritius, Panama and Seychelles.**

77. The specific events listed above form part of a larger body of promotional activities on standards carried out by the International Labour Standards Department, the International Training Centre in Turin (Italy) and the external offices of the ILO. In addition to these events the Department participated in training activities in Turin, gave lectures to graduate law students of the Raoul Wallenberg Institute of Human Rights and Humanitarian Law (in Lund, **Sweden** and in Wuhan, **China**). Presentations were also organized for numerous groups of students, trade unions, ministries and others visiting the ILO in Geneva.

78. Each year, the International Labour Standards Department organizes a training course for government officials responsible for reporting on international labour standards. This course is held at the International Training Centre in Turin for two weeks (one week is held in Turin) before the June session of the International Labour Conference. This practice enables some participants to stay in Geneva to take part in the work of the Conference Committee on the Application of Standards. This year, the course was attended by 22 participants from 21 countries. Furthermore, the Centre has continued its training activities on international labour standards through its international labour standards and human rights programme. These activities include several courses for jurists, magistrates and legal educators, as well as courses on the rights of women workers and on international labour standards and globalization.

79. The International Labour Standards Department has continued to develop its legal information system consisting of ILOLEX, a database on international labour standards (<http://www.ilo.org/ilolex/English/index.htm>), and NATLEX a database on national labour and social security legislation (<http://natlex.ilo.org>). During the course of 2002, ILOLEX was developed to highlight cases of progress noted by the Committee of Experts, to search through the Seventh Survey on the effect given to the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, and to find information on the decisions adopted by the Governing Body regarding the revision of standards. With regard to NATLEX, more than 2,000 new laws were entered into the database, including more than 50 full texts of laws. Both databases respond to a monthly average of 80,000 user queries. The Department also released the 2002 version of the International Labour Standards Electronic Library (ILSE) CD-ROM, which this year contained the preliminary version of the publication *International labour standards: A global approach*. Launched in 2001, this CD has proved to be very popular and more than 6,000 copies have been distributed on demand so far. The Department also provides regular training on the use of this database to visitors to the Office, to seminars organized by the International Training Centre in Turin, and through missions to the field.

C. Multidisciplinary advisory teams

80. The Committee notes that specialists in international labour standards are provided for in the multidisciplinary advisory teams located in the following cities: Addis Ababa (post to be filled), Bangkok, Beirut, Dakar (post to be filled), Harare, Lima, Manila, Moscow, New Delhi, Port-of-Spain, San José, Santiago (Chile) and Yaoundé. Additionally, the MDT in Abidjan covers a range of standards-related activities through

the official who is the focal point for the ILO Declaration on Fundamental Principles and Rights at Work.

81. The Committee wishes to draw attention to the essential role that these international labour standards specialists play in supervising obligations deriving from Conventions and Recommendations as well as in promoting these standards. Their work in the areas of promoting Conventions, providing technical assistance, fostering social dialogue, and helping competent authorities draft labour legislation is of paramount importance to the ILO's standards-related activities. In particular, the Committee notes the accomplishments of International Labour Standards specialists outlined in the document submitted to the Governing Body at its 285th Session entitled, "Review of the activities of multidisciplinary teams in relation to standards".¹⁵ The Committee thus notes that the ILS specialists continue to play a crucial role in raising awareness about the whole range of ILO standards and procedures both in respect of the ratification of Conventions as well as the application of Conventions and Recommendations. Their activities have extended to a range of topics including occupational safety and health, child labour, and equal opportunity and non-discrimination. The ILS specialists continue to provide individual assistance to help member States meet their constitutional obligations with regard to reporting on the standards. In that respect, the Committee notes that the ILS specialists have integrated into their activities the new reporting arrangements approved by the Governing Body at its 282nd Session. The Committee also notes that these specialists will play an important role in the implementation of its new programme of country-by-country assistance, which was also approved by the Governing Body at its 282nd Session and will be aimed at helping a selected number of countries to resolve as many of the standards-related problems indicated by the supervisory bodies as possible. Finally the Committee notes that ILS specialists continued to organize activities with the social partners to promote the application of international labour standards and to stimulate social dialogue, and to assist governments in drafting domestic legislation, regulations and other instruments to ensure their consistency with international labour standards.

82. The Committee notes that the International Labour Standards Department (NORMES) has assisted by supplying the necessary technical backup to the standards specialists, in particular by facilitating missions to headquarters for consultations and enabling headquarters officials to undertake missions.

¹⁵ GB.285/LILS/6.

III. Respect for obligations

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

A. Supply of reports

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

84. In accordance with the decision to modify the regular supervisory procedures, adopted by the Governing Body at its 258th Session (November 1993), reports were requested this year from all ratifying States on 37 Conventions.¹⁶ These reports cover the period ending 1 September 2002. Furthermore, detailed reports were also requested from certain governments on other Conventions, in accordance with the criteria approved by the Governing Body concerning the obligation to send reports more frequently.¹⁷ The procedures which are followed and established practice with regard to the obligations relating to international labour standards are found in the *Handbook of procedures relating to international labour Conventions and Recommendations*.

Reports requested and received

85. A total of 2,368 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, 1,529 of these reports had been received by the Office. This figure corresponds to 64.57 per cent of the reports requested, compared with 65.38 per cent last year.

86. In addition, 351 reports were requested on Conventions declared applicable with or without modifications to non-metropolitan territories (article 35 of the Constitution). Of these, 243 reports, or 69.23 per cent, had been received by the end of the Committee's session, in comparison with 60.87 per cent last year.

87. 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.

88. 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.

¹⁶ Conventions Nos. 3, 7, 9, 26, 29, 58, 68, 84, 87, 91, 92, 99, 100, 103, 110, 112, 119, 120, 122, 126, 129, 131, 133, 135, 137, 138, 141, 146, 153, 163, 164, 165, 166, 170, 172, 173, 174.

¹⁷ GB.258/LILS/6/1 (Nov. 1993), para.12(c).

Compliance with reporting obligations

89. 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 13 countries: **Afghanistan, Armenia, Denmark** (Faeroe Islands), **Equatorial Guinea, Kyrgyzstan, Liberia, Mongolia, Sierra Leone, Solomon Islands, United Republic of Tanzania (Tanganyika), The former Yugoslav Republic of Macedonia, Turkmenistan, Uzbekistan.** In addition, all or the majority of the reports due this year have not been received from the following 38 countries: **Angola, Azerbaijan, Barbados, Belize, Bosnia and Herzegovina, Cambodia, Cape Verde, Chad, Chile, Comoros, Congo, Cyprus, Denmark** (Greenland), **Djibouti, Gambia, Georgia, Guinea, Haiti, Iraq, Kazakhstan, Republic of Korea, Lao People's Democratic Republic, Latvia, Libyan Arab Jamahiriya, Luxembourg, Madagascar, Niger, Pakistan, Papua New Guinea, Saint Kitts and Nevis, Somalia, Tajikistan, United Republic of Tanzania, Tunisia, Uganda, United Kingdom** (British Virgin Islands, Gibraltar, St. Helena), **Viet Nam, Zambia.**

90. 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 multidisciplinary advisory teams, could enable the government to overcome its difficulties.

Late reports

91. 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 were to be sent to the Office between 1 June and 1 September 2002. 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.

92. 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.

93. 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 2002, the proportion of reports received was only 25.34 per cent. This percentage is slightly lower than for its previous session (26 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.

94. 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.

95. Furthermore, the Committee notes that a number of countries sent some or all of the reports due on ratified Conventions during the period between the end of the Committee's December 2001 session, and the beginning of the June 2002 session of the International Labour Conference, or even during the Conference.¹⁸ The Committee emphasizes that this practice disturbs the regular operation of the supervisory system and makes it more burdensome. It wished to provide the following list of those countries which followed this practice in 2001-02, as requested by the Conference Committee on the Application of Standards: **Algeria** (Conventions Nos. 62, 97, 98, 138), **Antigua and Barbuda** (Conventions Nos. 11, 12, 14, 19, 29, 81, 94, 98, 101, 105, 108, 111, 138), **Barbados** (Conventions Nos. 102, 105, 108, 118, 128), **Belize** (Conventions Nos. 14, 22, 29, 81, 87, 88, 94, 95, 97, 98, 100, 101, 105, 111, 115), **Bolivia** (Conventions Nos. 19, 20, 81, 95, 98, 105, 111, 117, 118, 121, 122, 123, 124, 128, 131, 136, 160), **Bosnia and Herzegovina** (Conventions Nos. 81, 87, 111, 158), **Botswana** (Convention No. 19), **Chile** (Convention No. 144), **Costa Rica** (Conventions Nos. 81, 102), **Côte d'Ivoire** (Convention No. 95), **Cyprus** (Conventions Nos. 23, 111, 147), **Czech Republic** (Conventions Nos. 19, 102, 105, 111, 139), **Democratic Republic of the Congo** (Conventions Nos. 89, 94, 95, 98, 100, 102, 117, 118, 119, 120, 121, 150, 158), **Denmark** (Conventions Nos. 105, 111, 134, 169), **Greenland** (Conventions Nos. 14, 106), **Ethiopia** (Conventions Nos. 100, 105, 111, 138), **France**: French Guiana (Convention No. 115), **Georgia** (Conventions Nos. 87, 98), **Iraq** (Conventions Nos. 13, 19, 98, 105, 111, 118), **Israel** (Convention No. 147), **Jamaica** (Conventions Nos. 19, 100, 122, 149), **Kazakhstan** (Conventions Nos. 111, 122), **Republic of Korea** (Convention No. 160), **Luxembourg** (Convention No. 98), **Myanmar** (Conventions Nos. 16, 22, 27, 87), **Netherlands**: Aruba (Conventions Nos. 11, 90, 105, 113, 129, 142), Netherlands Antilles (Conventions Nos. 10, 33, 69, 74, 81, 105, 118, 172), **Niger** (Conventions Nos. 100, 156), **Nigeria** (Conventions Nos. 29, 87, 95, 100), **Paraguay** (Conventions Nos. 87, 98, 105, 123), **Russian Federation** (Conventions Nos. 16, 73, 113), **Saint Lucia** (Conventions Nos. 8, 11, 12, 14, 16, 26, 97, 101, 108, 111), **Sao Tome and Principe** (Conventions Nos. 17, 18, 81, 88, 98, 111), **Slovakia** (Conventions Nos. 14, 77, 78, 89, 102, 111), **Slovenia** (Conventions Nos. 13, 16, 32, 53, 69, 73, 74, 81, 98, 105, 111, 113, 139), **South Africa** (Convention No. 98), **Sudan** (Convention No. 105), **Swaziland** (Convention No. 105), **Sweden** (Conventions Nos. 98, 111), **United**

¹⁸ 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. 28, 90th Session, ILC, 2002).

Republic of Tanzania (Conventions Nos. 16, 17, 63, 140), **United Republic of Tanzania**: Zanzibar (Conventions Nos. 58, 97), **Thailand** (Convention No. 100), **Trinidad and Tobago** (Conventions Nos. 147, 159), **Tunisia** (Conventions Nos. 19, 81, 111, 118, 127), **United Kingdom**: Anguilla (Conventions Nos. 14, 23, 29, 97, 101, 140), Gibraltar (Convention No. 81), Isle of Man (Conventions Nos. 10, 81), Jersey (Conventions Nos. 10, 16, 19, 22, 24, 25, 29, 32, 56, 69, 74, 81, 87, 97, 98, 115, 140), Montserrat (Convention No. 19), **Uruguay** (Convention No. 19).

Supply of first reports

96. A total of 159 of the 277 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 115 out of the 198 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 16 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), **Mongolia** (Convention No. 135), **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 2000 – **Chad** (Convention No. 151), **Fiji** (Conventions Nos. 144, 169), **Mongolia** (Conventions Nos. 144, 155, 159); and since 2001 – **Armenia** (Convention No. 176), **Belize** (Conventions Nos. 135, 140, 141, 151, 154, 155, 156), **Cambodia** (Conventions Nos. 100, 105, 111, 150), **Cape Verde** (Convention No. 87), **Congo** (Conventions Nos. 81, 98, 100, 105, 111, 138, 144), **Kyrgyzstan** (Convention No. 105), **Slovenia** (Convention No. 147), **Tajikistan** (Convention No. 105), **Zambia** (Convention No. 176).

97. 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 of particular importance 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

98. Governments are requested to reply in their reports to the observations and direct requests of 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 45 governments to which such letters were sent, only nine have provided the information requested.

99. 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.

100. In all there were 379 cases of no response (concerning 42 countries).¹⁹ There were 437 such cases (concerning 45 countries) last year. It is bound to repeat the observations or direct requests already made on the Conventions in question.

101. 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

102. 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

¹⁹ **Afghanistan** (Conventions Nos. 105, 111, 137, 140, 141), **Angola** (Conventions Nos. 26, 29, 91, 98, 100), **Azerbaijan** (Conventions Nos. 29, 87, 92, 100, 103, 119, 120, 122, 126, 131, 133, 138), **Cambodia** (Conventions Nos. 13, 122), **Cape Verde** (Conventions Nos. 19, 100, 118), **Chad** (Conventions Nos. 26, 29, 87, 100, 111, 135, 144), **Chile** (Conventions Nos. 9, 87, 100, 103, 122, 135), **Comoros** (Conventions Nos. 26, 29, 98, 99, 100, 101, 122), **Congo** (Conventions Nos. 26, 29, 87, 95, 152), **Cyprus** (Conventions Nos. 29, 87, 92, 100, 114, 172), **Denmark** (Conventions Nos. 87, 98, 100, 102, 119, 120, 129, 139), Faeroe Islands (Conventions Nos. 9, 16, 92), **Djibouti** (Conventions Nos. 9, 19, 26, 29, 69, 73, 81, 87, 95, 99, 100, 120, 122), **Equatorial Guinea** (Conventions Nos. 1, 30, 138), **Ethiopia** (Conventions Nos. 98, 111), **France**: New Caledonia (Conventions Nos. 95, 100, 127, 129, 131, 144), **Guinea** (Conventions Nos. 3, 10, 16, 26, 29, 33, 62, 81, 87, 94, 95, 98, 99, 100, 105, 111, 113, 118, 119, 120, 121, 122, 133, 139, 140, 144, 149, 152, 159), **Haiti** (Conventions Nos. 14, 24, 25, 29, 81, 87, 98, 100, 106, 111), **Iraq** (Conventions Nos. 19, 29, 81, 92, 98, 100, 111, 120, 131, 135, 138, 139, 144, 146, 152, 153), **Republic of Korea** (Conventions Nos. 100, 122), **Kyrgyzstan** (Conventions Nos. 14, 29, 52, 77, 78, 79, 87, 95, 98, 100, 122, 124, 148, 149, 159, 160), **Latvia** (Conventions Nos. 3, 9, 87, 100, 122, 131, 149, 158), **Liberia** (Conventions Nos. 22, 29, 53, 55, 58, 87, 92, 98, 105, 111, 112, 113, 114, 133, 147), **Libyan Arab Jamahiriya** (Conventions Nos. 95, 122, 131, 138), **Luxembourg** (Conventions Nos. 13, 26, 87, 92, 100, 138), **Madagascar** (Conventions Nos. 26, 29, 87, 88, 100, 120, 122, 129, 159, 173), **Malaysia** (Conventions Nos. 29, 100), **Mongolia** (Conventions Nos. 87, 100, 103, 111, 122, 123), **Netherlands**: Aruba (Conventions Nos. 29, 81, 87, 94, 101, 121, 137, 140, 144, 145), **Niger** (Conventions Nos. 29, 87, 95, 131), **Pakistan** (Conventions Nos. 16, 22, 29, 87, 98), **Papua New Guinea** (Conventions Nos. 26, 29, 99, 122), **Paraguay** (Conventions Nos. 79, 81, 87, 90, 98, 111, 120), **Sao Tome and Principe** (Conventions Nos. 18, 19, 87, 100, 144, 159), **Sierra Leone** (Conventions Nos. 8, 17, 26, 29, 59, 81, 88, 95, 98, 99, 100, 101, 105, 111, 119, 125, 126, 144), **Solomon Islands** (Conventions Nos. 8, 14, 16, 26, 29, 81, 95), **Tajikistan** (Conventions Nos. 14, 29, 52, 77, 78, 87, 95, 98, 100, 103, 111, 115, 122, 124, 126, 138, 160), **United Republic of Tanzania** (Conventions Nos. 94, 95, 131, 134, 137, 144, 149), **Tunisia** (Conventions Nos. 26, 87, 99, 100, 120, 122, 138), **Uganda** (Conventions Nos. 17, 26, 29, 81, 94, 98, 105, 122, 123, 143, 144, 154, 158, 162), **United Kingdom**: British Virgin Islands (Conventions Nos. 10, 26), Gibraltar (Conventions Nos. 29, 100, 135), Montserrat (Conventions Nos. 26, 29, 95), St. Helena (Conventions Nos. 17, 29), **Viet Nam** (Conventions Nos. 100, 120), **Zambia** (Conventions Nos. 29, 87, 95, 100, 103, 131, 138, 173).

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

103. 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.²⁰

104. 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.²¹ Under the present reporting cycle,²² 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

²⁰ 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.

²¹ Convention No. 17: **Antigua and Barbuda**; Convention No. 18: **Central African Republic**; Convention No. 22: **New Zealand**; Convention No. 24: **Haiti, Peru**; Convention No. 25: **Haiti**; Convention No. 27: **Angola**; Convention No. 29: **India, Mexico, Myanmar, United Republic of Tanzania**; Convention No. 32: **Algeria**; Convention No. 44: **Peru**; Convention No. 53: **Mauritania**; Convention No. 55: **Peru**; Convention No. 56: **Peru**; Convention No. 62: **Algeria**; Convention No. 71: **Peru**; Convention No. 77: **Bolivia, Ecuador, Nicaragua**; Convention No. 78: **Bolivia, Ecuador**; Convention No. 87: **Myanmar, Pakistan, Venezuela, Yemen**; Convention No. 88: **Argentina**; Convention No. 92: **Algeria**; Convention No. 94: **Uruguay**; Convention No. 95: **Central African Republic, Congo, Costa Rica, Cyprus, Djibouti, Greece, Libyan Arab Jamahiriya, Mauritania, Republic of Moldova, Niger, Sudan, Turkey, Zambia**; Convention No. 97: **Malaysia: Sabah**; Convention No. 98: **Venezuela**; Convention No. 102: **Libyan Arab Jamahiriya, Mauritania, Peru**; Convention No. 103: **Chile**; Convention No. 106: **Bolivia, Colombia**; Convention No. 108: **Poland**; Convention No. 115: **Brazil**; Convention No. 118: **Libyan Arab Jamahiriya, Mauritania**; Convention No. 119: **Morocco**; Convention No. 121: **Bolivia, Libyan Arab Jamahiriya, Senegal**; Convention No. 128: **Bolivia, Libyan Arab Jamahiriya**; Convention No. 130: **Libyan Arab Jamahiriya**; Convention No. 131: **Uruguay**; Convention No. 134: **France, United Republic of Tanzania**; Convention No. 136: **Morocco**; Convention No. 137: **Netherlands, Uruguay**; Convention No. 148: **Brazil, Ecuador**; Convention No. 153: **Ecuador**; Convention No. 156: **Japan**; Convention No. 158: **Gabon**; Convention No. 162: **Croatia**; Convention No. 169: **Bolivia, Honduras**.

²² After the first report, subsequent reports are requested every two years for the priority Conventions and every five years for other Conventions.

has also requested the government to supply full particulars to the Conference at its next session in June 2003. In addition, in certain cases the Committee has requested governments to furnish detailed reports when simplified reports would otherwise be due.

105. 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

106. 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 65 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

107. 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 30 instances in which measures of this kind have been taken in 24 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> | <i>State</i> | <i>Conventions Nos.</i> |
| Angola | 105 | Panama | 107 |
| Belize | 98 | Romania | 29 |
| Bulgaria | 81, 111 | Russian Federation | 87 |
| Fiji | 98 | Rwanda | 12, 87 |
| Finland | 139 | Slovenia | 138 |
| France | 102, 118, 156 | Spain | 55 |
| Germany | 138 | Sri Lanka | 135 |
| Lebanon | 81 | Syrian Arab Republic | 1, 106 |
| Republic of Moldova | 95 | United Republic of Tanzania | 29 |
| Namibia | 87 | Thailand | 105 |
| Netherlands | 135 | Turkey | 95, 99 |
| Nicaragua | 115 | United Kingdom | 102 |

108. 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 2,342 since the Committee began listing them in its reports in 1964.

109. In addition, there have been 143 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 143 instances in which measures of this kind have been taken concerning 84 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> | <i>State</i> | <i>Conventions Nos.</i> |
| Albania | 29, 87 | Ecuador | 169 |
| Argentina | 3, 81, 87, 139 | Eritrea | 87 |
| Australia | 87, 111 | Ethiopia | 87 |
| Austria | 111 | Finland | 119, 139 |
| Bahamas | 81 | France | 106, 111, 118, 156 |
| Belgium | 29 | Gabon | 87 |
| Bosnia and Herzegovina | 87 | Georgia | 87 |
| Botswana | 87 | Germany | 111, 138 |
| Brazil | 81, 107 | Greece | 105, 111 |
| Burundi | 87 | Guatemala | 81, 87, 119 |
| Cambodia | 87 | Guinea-Bissau | 106 |
| Canada | 111 | Hungary | 111, 115, 139 |
| Central African Republic | 81 | Iceland | 111, 139 |
| Chile | 111 | India | 26, 29 |
| Comoros | 14 | Iran, Islamic Rep. of | 111 |
| Costa Rica | 87, 135 | Italy | 102, 111 |
| Croatia | 87 | Japan | 156 |
| Cuba | 81 | Jordan | 29, 111, 119, 138 |
| Cyprus | 111, 162 | Kenya | 81, 134, 138 |
| Czech Republic | 111 | Kuwait | 1, 81 |
| Denmark | 111, 148 | Lesotho | 87 |
| Dominican Republic | 111 | Libyan Arab Jamahiriya | 87 |

| 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> | <i>State</i> | <i>Conventions Nos.</i> |
| Luxembourg | 53 | Rwanda | 87, 111 |
| Madagascar | 81, 111 | Saint Lucia | 111 |
| Mali | 14 | Sao Tome and Principe | 81 |
| Malta | 111 | Senegal | 81, 102, 111 |
| Mauritania | 81, 87, 111 | Slovakia | 105, 111 |
| Mauritius | 81 | Slovenia | 111, 138 |
| Mexico | 102 | Spain | 111, 129 |
| Moldova, Rep. of | 81, 95, 105, 129 | Sri Lanka | 131 |
| Mozambique | 111 | Sweden | 111, 139, 162, 164 |
| Netherlands | 102 | Switzerland | 102, 111 |
| New Zealand | 26, 111 | Syrian Arab Republic | 81 |
| Nicaragua | 13, 115 | Tanzania, United Rep. of | 105 |
| Niger | 14 | Turkey | 81, 87, 118 |
| Nigeria | 105 | Ukraine | 87 |
| Norway | 87, 111, 139 | United States | 182 |
| Panama | 30, 32, 81, 107 | Venezuela | 111 |
| Peru | 55 | Viet Nam | 81 |
| Poland | 87, 111 | Yemen | 111 |
| Portugal | 87, 111, 131 | Yugoslavia | 87, 102, 121 |
| Romania | 87, 111 | | |
| <i>Non-metropolitan territories</i> | | | |
| United Kingdom: Isle of Man | 81 | | |

110. 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

111. 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.

112. In accordance with established practice, in March 2002 the Office sent 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 were invited to reply in their reports.

Observations made by employers' and workers' organizations

113. Since its last session, the Committee has received 400 observations (compared to 195 last year), 73 of which were communicated by employers' organizations and 327 by workers' organizations. While welcoming this increase, the Committee 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.

114. The majority of observations received (384) relate to the application of ratified Conventions (see Appendix III). Sixteen observations relate to the reports provided by governments under article 19 of the Constitution of the ILO relating to the Protection of Wages Convention (No. 95) and Recommendation (No. 85), 1949.²³

115. The Committee notes that, of the observations received this year, 256 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 144 cases the governments transmitted the observations with their reports, sometimes adding their own comments.

116. 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.

117. 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.

²³ See the report in Part III (1B) regarding the General Survey.

118. 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)

119. 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 maternity protection (Convention No. 183 and Recommendation No. 191), adopted by the Conference at its 88th Session (May-June 2000);
- (b) 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);
- (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 88th Session (May-June 2000) (Conventions Nos. 87 to 183, Recommendations Nos. 83 to 191 and the Protocols);
- (d) replies to the observations and direct requests made by the Committee at its previous session (November-December 2001).

120. 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 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 and the date of submission of the instruments adopted by the Conference at its 88th and 89th Sessions (May-June 2000 and June 2001).

A. 88th Session

121. The instruments on maternity protection adopted at the 88th Session (May-June 2000) of the Conference were to be submitted to the competent authorities within one year or, under exceptional circumstances, within 18 months of the close of the session, the final dates for submission being 15 June 2001 and 15 December 2001 respectively. The Committee notes with interest the information on submission to the competent authorities provided by the following 61 States in addition to those mentioned in the last report: **Albania, Antigua and Barbuda, Bahamas, Bahrain, Barbados, Belarus, Benin, Botswana, Bulgaria, Canada, China, Costa Rica, Czech Republic, Ecuador, Egypt, Estonia, Finland, Germany, Greece, Israel, Italy, Japan, Jordan,**

Kenya, Republic of Korea, Kuwait, Latvia, Lebanon, Lithuania, Malaysia, Malta, Mauritius, Mexico, Republic of Moldova, Morocco, Myanmar, Namibia, Netherlands, New Zealand, Nicaragua, Norway, Oman, Philippines, Poland, Romania, Russian Federation, Rwanda, Saudi Arabia, Seychelles, Singapore, Slovakia, Sudan, Switzerland, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukraine, United Arab Emirates, United Kingdom, Viet Nam. The Committee notes that Convention No. 183, which came into force 2 February 2002, has been ratified by four countries (**Bulgaria, Italy, Romania and Slovakia**).

B. 89th Session

122. 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, under exceptional circumstances, within 18 months of the close of the session, the final dates for submission being 21 June 2002 and 21 December 2002 respectively. The following 58 governments have sent information on the steps taken with a view to the submission of the Safety and Health in Agriculture Convention, 2001 (No. 184), and Safety and Health in Agriculture Recommendation, 2001 (No. 192), to the authorities which they consider competent: **Argentina, Australia, Belarus, Bulgaria, China, Costa Rica, Czech Republic, Denmark, Dominica, Egypt, El Salvador, Eritrea, Ethiopia, Finland, Germany, Greece, Guatemala, Indonesia, Islamic Republic of Iran, Israel, Italy, Japan, Kenya, Republic of Korea, Kuwait, Lebanon, Lithuania, Malta, Mauritania, Mauritius, Republic of Moldova, Morocco, Netherlands, Nicaragua, Norway, Oman, Philippines, Poland, Qatar, Romania, San Marino, Singapore, Slovakia, Sudan, Suriname, Switzerland, The former Yugoslav Republic of Macedonia, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States, Venezuela, Viet Nam, Yemen, Zimbabwe.** The Committee notes that the first two ratifications (**Slovakia and Republic of Moldova**) having been registered, Convention No. 184 will come into force on 20 September 2003.

C. 31st to 87th Sessions

123. The Committee welcomes the special efforts made, particularly by the Governments of **Burkina Faso, Costa Rica, Eritrea and Mauritania**, for the submission to the competent authorities of the instruments adopted by the Conference over several sessions.

D. General aspects

124. The Committee again refers to the general considerations it formulated in November-December 1998 on the manner in which constitutional obligations relating to the submission to the competent authorities of the instruments adopted by the Conference are being met. At the 90th Session of the Conference (June 2002), the Committee on the Application of Standards expressed its concern at instances of delayed submission or failure to submit, compliance with this constitutional obligation being essential if the Organization's standard-setting activities are to be effective.

125. The Committee emphasizes that the specific aim of submission – to acquaint parliamentary bodies with the instruments in question – in no way affects the freedom of decision of the competent state body regarding ratification of a Convention. Whether the decision is for or against ratification, the procedures that submission entails afford the national authorities and the social partners an opportunity to examine thoroughly the instruments adopted by the Conference.

126. The Committee again recalls that discussion in a parliamentary body, or failing that, information of consultative or deliberative bodies can be an important factor in a possible improvement of measures taken at national level to give effect to the instruments adopted by the Conference. Furthermore, fulfilment of the obligation to submit enables the Conventions and Recommendations to be brought to the attention of the public through their referral to a parliamentary body. The Committee hopes that those governments which submit the instruments adopted by the Conference to a government authority will likewise be able to report on their submission to bodies of a parliamentary nature, in accordance with the ILO Constitution.

127. Lastly, under the terms of article 23, paragraph 2, of the Constitution, member States must send to the representative organizations of employers and workers copies of any communications addressed to the ILO concerning the submission to the competent authorities of instruments adopted by the Conference. This provision is designed to enable employers' and workers' organizations to formulate their own observations on the action that has been taken or needs to be taken with regard to the instruments in question.

E. Comments of the Committee and replies from governments

128. As in its previous reports, the Committee makes individual observations in section III of Part Two of this report on the points that it considers should be brought to the special attention of governments. In addition, requests with a view to obtaining supplementary information on other points have been addressed directly to a number of countries, which are listed at the end of section III.

129. The Committee wishes to emphasize once again the importance of the communication by governments of the information called for in *points I and II of the questionnaire* at the end of the *Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities*, adopted by the Governing Body in 1980. The Committee should be able to examine a summary or a copy of the document by which the instruments have been submitted to the parliamentary bodies and the proposals made as to the effect to be given to the instruments adopted by the Conference. The Committee stresses that the obligation to submit is not fully met until the instruments adopted by the Conference have been submitted to Parliament and a decision has been taken with respect to them. This decision and the information on the submission must be notified to the Office. The Committee trusts that the governments concerned will take suitable measures, as proposed in the observations and direct requests addressed to them.

F. Special problems

130. The Committee notes with regret that the governments of the following 18 countries have not provided information indicating that the instruments adopted by the Conference at the last seven sessions at least (from the 82nd to the 88th Sessions) have in fact been submitted to the competent authorities: **Afghanistan, Armenia, Cambodia, Comoros, Grenada, Haiti, Kazakhstan, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Sao Tome and Principe, Sierra Leone, Solomon Islands, Somalia, Suriname, Syrian Arab Republic, Turkmenistan, Uzbekistan.**

131. In response to a call by the Director-General for highest priority to be given to the ratification of the Worst Forms of Child Labour Convention, 1999 (No. 182), some governments have been particularly prompt in sending information on steps taken with a view to the submission of this instrument, adopted by the Conference on 17 June 1999 at its 87th Session. Thanks to the timely submission of instruments as prescribed by the ILO Constitution and the initiatives taken by the Director-General and the Office to promote its ratification, this fundamental Convention has received a very large number of ratifications, which constitutes a contribution to promoting fundamental rights at work. The Committee recalls, however, that some States which have ratified Convention No. 182 and which were mentioned in earlier reports (**Angola, Belize, Bolivia, Bosnia and Herzegovina, Cameroon, Central African Republic, Colombia, Congo, Dominica, Madagascar, Mali, Pakistan, Saint Lucia, Senegal**) still have instruments to submit from over seven sessions of the Conference.

132. It is a source of deep concern to the Committee that these countries, as most of the situations referred to in the observations in Part Three of this report illustrate, have accumulated such a long backlog. 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.

133. The nature and scope of the obligation to submit instruments have been recalled in individual observations made to certain States, taking into account the explanations provided by them in their reports. The Committee expresses the firm hope, as did the Conference Committee, that the governments concerned will act promptly to submit the instruments adopted at the sessions concerned and that it will be able to note progress in this respect in its next report. Lastly, the Committee recalls the possibility available to governments to call on the Office for the technical assistance that it is able to provide in order to endeavour to resolve this type of problem, particularly through the multidisciplinary advisory teams.

**Instruments chosen for reports under
article 19 of the Constitution**

134. 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 Protection of Wages Convention (No. 95) and Recommendation (No. 85), 1949.

135. A total of 255 reports were requested and 141 received.²⁴ This represents 55.29 per cent of the reports requested.

136. The Committee notes with regret that, for the past five years, none of the reports on unratified Conventions and Recommendations requested under article 19 of the ILO Constitution has been received from the following 25 countries: **Afghanistan, Bahamas, Bosnia and Herzegovina, Democratic Republic of the Congo, Equatorial Guinea, Fiji, Georgia, Grenada, Guinea, Iraq, Lao People's Democratic Republic, Liberia, Mongolia, Nigeria, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Sao Tome and Principe, Sierra Leone, Solomon Islands, United Republic of Tanzania, The former Yugoslav Republic of Macedonia, Turkmenistan, Uganda, Uzbekistan.**

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

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

* * *

139. 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, 13 December 2002.

(Signed) Robyn Layton, QC,
Chairperson.

E. Razafindralambo,
Reporter.

²⁴ ILO: Report III (Part 1B), ILC, 91st Session, 2003.

PART TWO

Observations concerning particular countries

OBSERVATIONS CONCERNING PARTICULAR COUNTRIES

I. Observations concerning reports on ratified Conventions (article 22 of the Constitution)

A. General observations

Afghanistan

The Committee notes with regret that, for the sixth year in succession, 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 the circumstances so permit.

Armenia

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

Belize

The Committee notes that the first reports due since 2001 on Conventions Nos. 135, 140, 141, 151, 154, 155 and 156 have 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.

Bosnia and Herzegovina

The Committee notes that most of the reports due have not been received. It 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.

Cambodia

The Committee notes that the first reports due since 2001 on Conventions Nos. 100, 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 reports on the application of ratified Conventions, in accordance with its constitutional obligations and, if necessary, requesting appropriate assistance from the Office.

Cape Verde

The Committee notes that the first report due since 2001 on Convention No. 87 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.

Chad

The Committee notes with regret that the first report due since 2000 on Convention No. 151 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.

Congo

The Committee notes 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 reports on the application of ratified Conventions, 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 fifth 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.

Fiji

The Committee notes with regret that the first reports due since 2000 on Conventions Nos. 144 and 169 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.

Haiti

The Committee notes that the reports due have not been received. It trusts that the Government will in future 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.

Kyrgyzstan

The Committee notes with regret that, for the fourth 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. 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.

Liberia

The Committee notes with regret that 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 report due on the application of this Convention, in accordance with its constitutional obligations and, if necessary, requesting appropriate assistance from the Office.

Mongolia

The Committee notes with regret that the reports due have not been received. The Committee notes with regret that the first report due since 1998 on Convention No. 135 has not been received, nor have the first reports due since 2000 on Conventions Nos. 144, 155 and 159. 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.

Sierra Leone

The Committee notes with regret that, for the eighth year in succession, 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.

Slovenia

The Committee notes that the first report due since 2001 on Convention No. 147 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.

Solomon Islands

The Committee notes with regret that, for the fifth 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 reports 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 that the reports due have not been received. It also notes 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 reports on the application of ratified Conventions, in accordance with its constitutional obligations and, if necessary, requesting appropriate assistance from the Office.

United Republic of Tanzania

The Committee notes with regret that most of the reports due have not been received. It trusts that the Government will in future discharge its obligation to supply reports on the application of ratified Conventions.

Tanganyika

The Committee notes with regret that the reports due have not been received. It trusts that the Government will in future 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.

The former Yugoslav Republic of Macedonia

The Committee notes with regret that, for the fifth 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 reports on the application of ratified Conventions, in accordance with its constitutional obligations and, if necessary, requesting appropriate assistance from the Office.

Turkmenistan

The Committee notes with regret that, for the fourth year in succession, the reports due have not been received. It also notes with regret that the first 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 reports 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 seventh 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.

Zambia

The Committee notes that the first report due since 2001 on Convention No. 176 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.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Angola, Azerbaijan, Barbados, Belize, Bolivia, Cambodia, Cape Verde, Chad, Chile, Comoros, Congo, Cyprus, Djibouti, Gambia, Georgia, Guinea, Iraq, Kazakhstan, Republic of Korea, Lao People's Democratic Republic, Latvia, Libyan Arab Jamahiriya, Luxembourg, Madagascar, Niger, Pakistan, Papua New Guinea, Russian Federation, Rwanda, Saint Kitts and Nevis, Sao Tome and Principe, Tunisia, Uganda, Viet Nam, Zambia.*

B. Individual observations

Convention No. 1: Hours of Work (Industry), 1919

Equatorial Guinea (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:

Further to its previous comments concerning *Article 6 of the Convention*, the Committee notes with satisfaction the provisions of Act No. 2/1990, issuing the general labour regulations, which set out the permanent and temporary exceptions to normal working time that are authorized (section 49). It also notes the provisions of the same Act concerning the exceptions to be allowed in case of accident, actual or threatened, or in case of urgent work, or in case of force majeure, in accordance with *Article 3*.

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.

Kuwait (ratification: 1961)

The Committee notes the Government's reply to its previous observation.

Articles 1 and 2 of the Convention. The Committee takes note of the amendment of section 2 of the Labour Code (Law No. 38 of 1964 on work in the private sector). Under this provision of the Labour Code, domestic workers and other workers covered by other specific laws are excluded from its scope. It further notes the Government's statement that temporary workers employed for a period of not more than six months and workers at enterprises employing less than five people figure under the categories of workers exempted from the application of the Convention. The Committee requests the Government to indicate in its next report all the categories of workers thus excluded and how conformity with the provisions of the Convention is ensured with respect to these workers. Please also supply copies of the relevant legal texts.

Article 6, paragraphs 1(b) and 2

Private sector

With reference to its previous comments, the Committee notes with interest from the Government's indication the amendment of section 1, paragraph 3, of the Order No. 105/94, which allows that employers may ask their employees to work overtime hours within the limits prescribed by law, i.e. by Order No. 104/94, in accordance with the provisions of this Article.

Public sector

The Government's report contains no information on whether progress has been achieved by amending sections 3 and 4 of Ministerial Order No. 34/77. This order does not define in a sufficiently precise manner the conditions and limits within which exceptions to normal working hours may be authorized. Recalling the text of *Article 2*, which stipulates that the provisions of the Convention are applicable both to public and private industrial undertakings, the Committee again asks the Government to take the necessary steps 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 public industrial undertakings similar to Order No. 104/94.

The Committee also asks the Government to keep it informed of any developments with regard to the adoption of the draft Labour Code for the private sector. It trusts that the new Code will be adopted in the near future and ensure the protection afforded by this Convention (see also comments related to Convention No. 106).

Syrian Arab Republic (ratification: 1960)

The Committee notes with satisfaction the progress that has been achieved by amending section 117 of the Labour Code (Law No. 92 of 5 April 1959) through Decree No. 24 of 10 December 2000. The Committee also notes that this amendment complies with *Article 2 of the Convention* inasmuch as it no longer requires the presence of the worker at the workplace beyond the limits of eight legal working hours per day, in accordance with section 114 of the Labour Code.

In addition, the Committee has raised some further points in respect of sections 117, 120 and 121 of the Labour Code in a separate direct request.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Djibouti, Syrian Arab Republic*.

Convention No. 2: Unemployment, 1919

A request regarding certain points is being addressed directly to *Myanmar*.

Convention No. 3: Maternity Protection, 1919

Argentina (ratification: 1933)

The Committee notes the communication from the Internal Trade Union Committee of *Telefónica de Argentina* alleging misuse of internships (*pasantías*) in the company's call centres. The above trade union objects to the precarious working conditions of female students employed under such arrangements, and points out that their contracts bar them, inter alia, from the maternity benefits prescribed by the labour legislation. The Committee notes that in its report the Government provides no information in reply to the above communication, which was sent to it on 15 November 2001. It hopes that in its next report the Government will provide detailed information on the status of these women workers, in the light of the protection laid down by this Convention.

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

Bulgaria (ratification: 1922)

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

Article 4 of the Convention. In reply to the Committee's previous comments, the Government states that it has submitted to the National Assembly a draft amendment to the Labour Code to introduce a new paragraph into section 333. Under the terms of this new

paragraph, it will be prohibited to dismiss a woman during her maternity leave for any reason, except for that set out in section 328, paragraph 1(1) of the Labour Code (closure of the enterprise). The Committee notes this information with interest. It hopes that the proposed amendment to section 333 of the Labour Code will be adopted in the very near future, thereby ensuring that the national legislation gives full effect to *Article 4* of the Convention, under the terms of which it is prohibited for the employer to dismiss a woman during her maternity leave or at such time that the notice would expire during such absence. The Committee requests the Government to provide a copy of the amendment 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.

Colombia (ratification: 1933)

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:

1. *Article 3(a) of the Convention.* With reference to its previous comments, the Committee notes the adoption of Decree No. 936 of 1996 respecting section 236(1) of the Labour Code. The Committee notes with satisfaction that, in accordance with this provision of the Convention, at least six weeks of the worker's paid maternity leave must be taken after confinement, even if the worker chooses to give one week of her maternity leave to her spouse.

2. With reference to its previous comments concerning the extension of the territorial coverage of the social security scheme, the Committee notes with interest the adoption of Decree No. 1298 of 22 June 1994 establishing the social security system. The Committee notes in particular that under section 39 of this Decree, from the year 2000 onwards all persons will be required to join the General Social Security System in Health on a contributory or subsidized basis, and shall thus become entitled to all the benefits provided by the Compulsory Health Plan, including maternity benefits.

The Committee takes note of this information and hopes that the implementation of the General Social Security System will allow coverage of all the women employees covered by the Convention in the near future. The Committee would be grateful if the Government would provide detailed information on the extension in practice of the coverage of the General Social Security System in Health to the entire country, and statistics on the number of women workers covered by the Convention who are entitled to maternity benefits guaranteed under the Compulsory Health Plan, as a proportion of all the women employees in industrial or commercial establishments, whether public or private, as defined in *Article 1* of the Convention, read in conjunction with *Article 3*.

3. The Committee also draws the Government's attention to certain points which it is raising in a direct request.

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

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In addition, requests regarding certain points are being addressed directly to the following States: *Argentina, Colombia, Guinea, Latvia*.

Convention No. 6: Night Work of Young Persons (Industry), 1919*Burkina Faso* (ratification: 1960)

The Committee takes note of the Government's report. It notes also the Government's commitment to take into account the comments of the Committee of Experts regarding Order No. 539 of 29 July 1954 on child labour, the rereading of the Labour Code to which the Government had referred in its previous reports being still in progress.

Article 2, paragraphs 1 and 2, of the Convention. In the comments it has been making for more than 40 years, the Committee draws the Government's attention to the fact that section 3 of Order No. 539 of 29 July 1954 on child labour limits the prohibition on night work to children under 18 years old who are labourers and apprentices, whereas *Article 2, paragraph 1*, concerns all young persons under 18 years of age. The Committee also referred to section 7 of Order No. 539 which allows derogation from the prohibition of night work for young male persons aged from 16 to 18 years in all factories which work continuously. In this respect, the Committee recalls that *Article 2, paragraph 2*, of the Convention concerns only five specific industrial sectors: manufacture of iron and steel processes in which reverberatory or regenerative furnaces are used, and galvanizing of sheet metal or wire (except the pickling process); glass works; manufacture of paper; manufacture of raw sugar; and gold mining reduction work. Consequently, the derogations under section 7 of Order No. 539 could be wider than those authorized by the Convention. The Committee urges the Government to take the necessary measures to bring its legislation into conformity with the Convention.

Article 4. The Committee notes the information supplied by the Government to the effect that section 5 of Order No. 539 of 29 July 1954 provides for temporary derogation for young male persons aged over 16 years in cases where the industry uses materials subject to very rapid alteration. The Committee notes that section 5 of Order No. 539 of 29 July 1954 allows this derogation with a view to averting imminent accidents or to repair damage from accidents that have occurred. It emphasizes, moreover, that section 5 of Order No. 539 of 29 July 1954 has a wider scope than that laid down in *Article 4* of the Convention, which allows derogation in the event of emergency. The Committee therefore requests the Government to take the necessary measures to bring section 5 of Order No. 539 of 29 July 1954 into conformity with the Convention.

Senegal (ratification: 1960)

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

Article 2 of the Convention. In the comments that it has been making for more than 30 years, the Committee has noted that sections 3 and 7 of Local Order No. 3724/IT of 22 June 1954 on child labour, which allow exceptions to the prohibition of night work by young persons under 18 years of age, are not in conformity with *Article 2* of the Convention. In its report in 2000, the Government acknowledged the non-conformity of these sections and undertook to bring its regulations into accord with international instruments. The Committee notes the information provided by the Government in its report to the effect that, following seminars, draft texts to implement the new Labour

Code have been prepared, including a draft Order establishing specific conditions for work by young persons, which was attached to the report.

The Committee notes that under the terms of section 3(2) of the draft Order, young persons cannot be employed in any night work as defined by section L.140 of the Labour Code, namely between 10 o'clock in the evening and 5 o'clock in the morning. Under section 1 of the draft Order, the term *child* means any person under 18 years of age. The Committee notes that, as it is worded, section 3 of the draft Order gives effect to the provisions of *Article 2, paragraph 1*, of the Convention.

However, it notes with regret that section 7 of the draft Order takes up in their entirety the provisions of section 7 of Local Order No. 3724/IT of 22 June 1954, which permits exceptions from the prohibition of night work by young persons which are broader than those authorized by *Article 2, paragraph 2*, of the Convention. In its report, the Government states that it has to submit the draft Order to the National Advisory Council of Labour and Social Security for its opinion before the definitive texts receive the signature of the competent authorities. The Committee trusts that the Government will take the necessary measures to bring section 7 of the draft Order into conformity with *Article 2, paragraph 2*, of the Convention by providing that the derogation from the prohibition of night work for young persons of 16 years and over concerns only the industrial workplaces in which processes are carried on continuously as enumerated in this provision, namely: manufacture of iron and steel; processes in which reverberatory or regenerative furnaces are used, and galvanizing of sheet metal or wire (except the pickling process); glass work; manufacture of paper; manufacture of raw sugar; and gold mining reduction work.

The Committee requests the Government to keep it informed of any developments relating to the entry into force of the draft Order establishing specific conditions for work by young persons.

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In addition, requests regarding certain points are being addressed directly to the following States: *Central African Republic, Congo, Estonia, Madagascar, Mali, Myanmar*.

Convention No. 7: Minimum Age (Sea), 1920

Requests regarding certain points are being addressed directly to the following States: *Estonia, Saint Lucia, Saint Vincent and the Grenadines*.

Convention No. 8: Unemployment Indemnity (Shipwreck), 1920

Seychelles (ratification: 1978)

Article 2, paragraph 1, of the Convention. In its previous comments, the Committee noted that the restriction provided under section 9(1) of the Merchant Shipping (Masters and Seamen) Regulations, 1995, is not compatible with the Convention. The entitlement of the seaman to receive wages in the event of shipwreck, provided for under section 10 of the same Regulations, is barred where it can be proved that the seaman has not exerted himself to the utmost to save the ship, cargo and stores.

The Government states in this connection in its report that this question has been referred to the competent ministry so that appropriate measures can be taken. It adds that it will do its utmost to fulfil its obligations under the ILO Constitution and that it undertakes to communicate with all stakeholders concerned to achieve this objective. The Committee notes this information. It trusts that the Government will be able to provide information in its next report on the adoption of measures to bring the national legislation into line with *Article 2, paragraph 1*, of the Convention, which provides for the payment to seamen of an unemployment indemnity during a period of at least two months in the event of shipwreck, without restriction. The Committee requests the Government to supply a copy of any text adopted to this effect.

Sierra Leone (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:

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 (ratification: 1985)

The Committee notes with regret that for the ninth 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 that the Government will make every effort to take the necessary action in the very near future.

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In addition, requests regarding certain points are being addressed directly to the following States: *Latvia, Nigeria, Poland, Saint Lucia, Seychelles*.

Convention No. 9: Placing of Seamen, 1920

Argentina (ratification: 1933)

1. In reply to the observation of 2001, the Government states that maritime unions nationwide have a so-called "labour exchange" to replace or serve as an alternative to

employment offices for seafarers. It would appear that seafarers' employment offices are provided for in collective agreements deriving from the agreements between seafarers' unions and shipowners. The Committee recalls that, in earlier comments, mention was made of obstacles to compliance with collective agreements in the maritime sector. It hopes that the Government will take appropriate steps to organize and maintain an efficient and adequate system of free employment offices for seafarers, in accordance with *Article 4 of the Convention*. In this connection, the Committee would be grateful if in its next report the Government would provide information on the number of job applications received and vacancies notified, the number of persons placed in employment by seafarers' employment offices, and on any measures taken to coordinate the various national seafarers' employment agencies, as well as statistical information on unemployment among seafarers (*Article 10*).

2. *Article 5*. The Committee again notes that the Government's report does not contain the information requested on the constitution of committees consisting of an equal number of representatives of shipowners and seafarers, as laid down in *Article 5*. It hopes that measures will be taken to establish the consultative committees required by this provision of the Convention, that information will be provided in the next report on the progress made in this respect and that copies of the texts governing their composition and operation will be supplied.

3. The Committee again points out that the Governing Body has invited States parties to Convention No. 9 to consider ratifying the Recruitment and Placement of Seafarers' Convention, 1996 (No. 179), which would mean immediate denunciation of Convention No. 9 (see paragraphs 47-51 of document GB.273/LILS/4(Rev.1), November 1998). The Committee would be grateful if in its next report the Government would provide information on any consultations held for this purpose.

Cameroon (ratification: 1970)

The Committee notes the Government's report for the period ending September 2002, in which it expresses its regret for the delay incurred in establishing the representative committee of seafarers and shipowners in the port of Douala. It indicates that this delay is due to the problem of identifying the most representative trade unions for the committee. A team will once again visit the port to determine the representativeness of potential members and the procedures for the establishment of the committee. The Committee of Experts hopes that the Government will pursue its efforts for the establishment of committees consisting of an equal number of representatives of shipowners and seafarers to advise on any matters relating to the operation of employment offices for seafarers, as required by *Article 5 of the Convention*.

Article 10. The Government indicates in its report that it would be prepared to accept the cooperation of the ILO in this respect. The Committee trusts that the respective units of the ILO will be able to provide the desired technical assistance and that the Government will be able to provide information on unemployment among seafarers and the work of employment agencies for seafarers, and particularly the data available on the activities of employment offices in the ports which are of interest to seafarers.

The Committee recalls that the Governing Body has invited States parties to Convention No. 9 to examine the possibility of ratifying the Recruitment and Placement

of Seafarers' Convention, 1996 (No. 179), which would automatically result in the denunciation of Convention No. 9 (see paragraphs 47-51 of document GB.273/LILS/4(Rev.1) of November 1998). The Committee requests the Government to provide information in its next report on any consultations held on this matter.

Chile (ratification: 1935)

1. The Committee notes that the Government's report has not been received. It must therefore repeat its 1995 observation, which read as follows:

In its previous comments, the Committee pointed out that *Article 4, paragraph 1, of the Convention* required the Government to organize and maintain an efficient and adequate system of public employment offices "for seamen" without charge. The work of employment offices must be administered by "persons having practical maritime experience" (paragraph 2).

The Committee notes the placement activities undertaken by the National Vocational Education and Employment Service, through municipal employment offices, and private employment agencies [Presidential Decree No. 146, of December 1989, to approve the regulations issued under Legislative Decree No. 1, of 1989 respecting training and employment]. Private employment agencies have to register with the National Service and may be established by a workers' union or a trade union organization. The Government considers that it is an efficient and adequate system not only "for seamen", but also for the other workers in the country. In practice, the representative associations of shipowners and the trade unions of seamen maintain constant relations which promote the speedy placement of staff to the satisfaction of both parties. All these operations, according to the Government, are administered by persons with broad practical maritime experience.

The report form adopted by the Governing Body requests data on the number of applications for employment received, the number of vacancies notified and the number of seamen placed in employment. The Government states that there are no special statistics for seamen.

The Committee is bound to emphasize that data on the organization of the system of offices for finding employment for seamen without charge (see also *Article 10, paragraph 1*) contribute to ensuring that full effect has been given to the above provisions of the Convention. The Committee therefore trusts that in the near future the Government will be in a position to supply the above data on the placement of seamen in order to ensure the full effectiveness of "an efficient and adequate system of employment offices for finding employment for seamen without charge".

Article 5. In its previous comments, the Committee noted that this provision requires committees consisting of "an equal number of representatives of shipowners and seamen" to be constituted. In its report, the Government states that there are no special committees consisting of shipowners and seafarers constituted to monitor the efficient and adequate operation of the offices for finding employment for seamen without charge.

The Committee is bound to express once again the hope that the Government will provide further information on cases in which committees consisting of an equal number of representatives of shipowners and seamen have been consulted in all the aspects of the operation of the offices for finding employment for seamen without charge.

2. The Committee recalls that the Governing Body has invited States that have ratified Convention No. 9 to consider the possibility of ratifying the Recruitment and Placement of Seafarers Convention, 1996 (No. 179), which would result in the automatic denunciation of Convention No. 9 (see paragraphs 47-51 of document GB.273/LILS/4(Rev.1), November 1998). The Committee would appreciate if the

Government would provide in its next report any information concerning any consultations held on this matter.

Mexico (ratification: 1939)

1. The Committee notes the Government's report for the period ending June 2002. With regard to *Article 4 of the Convention*, the Government states that there has been no change with regard to the matters raised in its 1998 observation. The Committee hopes that the Government will ensure the organization and maintenance of an efficient and adequate system of public employment offices for finding employment for seafarers without charge, in accordance with *Article 4* of the Convention. In this respect, the Committee would be grateful if the Government would provide information in its next report on the number of applications for work received, the number of vacancies notified and seafarers placed in employment by the employment offices for seafarers, the measures which may have been taken to secure the coordination of employment services for seafarers at the national level, and statistical information on unemployment among seafarers (*Article 10*).

2. The Government recalls in its report the general provisions of the Federal Labour Act under which advisory committees for the placement of workers are established. The Committee once again notes that *Article 5* of the Convention requires the establishment of a consultation procedure through committees consisting of an equal number of representatives of shipowners and seafarers and it hopes that the Government will take the necessary measures to give effect to this provision of the Convention.

3. The Committee recalls that the Governing Body has invited States parties to Convention No. 9 to envisage the possibility of ratifying the Recruitment and Placement of Seafarers Convention, 1996 (No. 179), the ratification of which would involve the immediate denunciation of Convention No. 9 (please see paragraphs 47-51 of document GB.273/LILS/4(Rev.1), November 1998). The Committee would be grateful if the Government would provide information in its next report on any consultations held on this matter.

New Zealand (ratification: 1938)

The Committee notes the Government's report for the period ending 31 May 2002 which includes observations made by the New Zealand Council of Trade Unions (NZCTU) and Business NZ. The Government states that section 27 of the Maritime Transport Act, 1994, complies with the terms of the Convention. The Maritime Safety Authority (MSA) continues to provide office space when needed for the engagement of seafarers at any of the port offices of the MSA, but in practice this is not utilized. The NZCTU states that it has been informed by the relevant union that seafarers are not made aware of these services and the MSA does nothing to advise them of such a service. It also appears that the Ministry of Transport has not played an active role in protecting seafarers' employment. In this respect, the Committee refers to *Article 10, paragraph 1, of the Convention* and asks the Government to communicate available information, statistical or otherwise, concerning unemployment among seamen and concerning the work of its seafarers' employment agencies.

The Committee recalls that the Governing Body has invited States that have ratified Convention No. 9 to consider the possibility of ratifying the Recruitment and Placement of Seafarers Convention, 1996 (No. 179), which would result in the automatic denunciation of Convention No. 9 (see paragraphs 47-51 of document GB.273/LILS/4(Rev.1), November 1998). The Committee would be grateful if the Government would provide information in its next report on consultations which have been held on this matter.

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In addition, requests regarding certain points are being addressed directly to the following States: *Belgium, Cuba, Djibouti, Egypt, France, Japan, Latvia, Netherlands, Panama, Slovenia, Spain, Uruguay, Yugoslavia.*

Convention No. 10: Minimum Age (Agriculture), 1921

Requests regarding certain points are being addressed directly to the following States: *Gabon, Guinea, Senegal.*

Information supplied by *Cameroon* and *New Zealand* in answer to a direct request has been noted by the Committee.

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

Requests regarding certain points are being addressed directly to the following States: *Saint Vincent and the Grenadines, Swaziland.*

Convention No. 12: Workmen's Compensation (Agriculture), 1921

Rwanda (ratification: 1962)

The Committee notes the information provided by the Government in its last report, and particularly on the adoption of the new Labour Code (Act No. 51/2001 of 30 December 2001). It notes with satisfaction that, in contrast with the Labour Code of 1967, the new Labour Code does not exclude agricultural workers from its scope. The latter can therefore henceforth be covered by the social security scheme, in accordance with section 2(a) of the Legislative Decree of 22 August 1974 organizing the social security scheme, which provides benefits in the event of employment accidents and occupational diseases.

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

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In addition, a request regarding certain points is being addressed directly to *Rwanda.*

Convention No. 13: White Lead (Painting), 1921*Iraq* (ratification: 1966)

Article 7 of the Convention. The Committee notes the Government's indication to the effect that it does not dispose of any statistics concerning the lead poisoning among working painters for the period ending 30 June 1999. For a number of years, the Committee has been recalling to the Government that *Article 7* of the Convention requires the establishment of statistics on lead poisoning among working painters. In this respect, the Committee once again refers to section 8(a) of the Instructions for the Prevention of Lead Poisoning among Painting Workers, according to which cases of lead poisoning shall be reported and statistics kept. The Committee notes the Government's indication that cases of lead poisoning must be notified to the Labour Inspectorate, and the Ministry of Health is the competent authority responsible for keeping statistics concerning the morbidity and the mortality of working painters due to lead poisoning. The Committee, taking note of this information supplied by the Government in its report, requests the Government to indicate the measures taken or envisaged to establish statistics on lead poisoning of working painters, as required under section 8(a) of the Instructions for the Prevention of Lead Poisoning among Painting Workers.

The Committee trusts that the Government will do its utmost to take the necessary action to this end, in order to give effect to *Article 7* of the Convention.

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In addition, requests regarding certain points are being addressed directly to the following States: *Afghanistan, Cambodia, Central African Republic, Côte d'Ivoire, Lao People's Democratic Republic, Luxembourg, Nicaragua.*

Convention No. 14: Weekly Rest (Industry), 1921*Haiti* (ratification: 1952)

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.

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In addition, requests regarding certain points are being addressed directly to the following States: *Antigua and Barbuda, Belize, Benin, Burundi, Cameroon, Comoros, Ethiopia, France, Honduras, Kyrgyzstan, Mali, Mauritania, Niger, Peru, Rwanda, Solomon Islands, Tajikistan.*

Convention No. 16: Medical Examination of Young Persons (Sea), 1921

Requests regarding certain points are being addressed directly to the following States: *Argentina, Belarus, China* (Hong Kong Special Administrative Region), *Colombia, Guatemala, Guinea, Hungary, Jamaica, Japan, Mexico, Myanmar, Nicaragua, Pakistan, Russian Federation, Solomon Islands, Spain, Ukraine, Uruguay.*

Convention No. 17: Workmen's Compensation (Accidents), 1925

Antigua and Barbuda (ratification: 1983)

For many years the Committee has been drawing the Government's attention to the fact that the national legislation (Workmen's Compensation Ordinance, No. 24 of 1956, as amended) on compensation for occupational accidents does not allow full effect to be given to the Convention. In its last report, the Government indicates that there has been no change in the legislation, and that the latter is adequate for Antigua and Barbuda. In these circumstances the Committee must once again express the hope that the Government will be able to re-examine the matter and that it will take the necessary steps to bring national law and practice into full conformity with the Convention, as follows.

Article 5 of the Convention. Section 8 of the Workmen's Compensation Ordinance, No. 24 of 1956, should be amended so as to ensure that the compensation due in the event of accidents causing permanent incapacity shall be paid in the form of periodical payments, provided that it may be paid wholly or partially in a lump sum, if the competent authority is satisfied that it will be properly utilized.

Article 7. This provision of the Convention provides for additional compensation for victims of injuries who need the assistance of a third person. However, section 9 of the above Ordinance provides for additional compensation only in the event of temporary incapacity.

Article 9. According to section 6(3) of the above Ordinance, the employer is responsible for paying the "expenses and reasonable cost" of medical treatment undergone by a worker as a result of an occupational accident up to a prescribed amount, whereas the Convention does not prescribe any limits in such cases. Furthermore, the legislation does not appear to make express provision for surgical and pharmaceutical costs, contrary to this Article of the Convention. The Committee therefore asks the Government to take the necessary steps to give full effect to this provision of the Convention.

Article 10. The Committee notes that the legislation does not ensure the provision of surgical appliances and artificial limbs in general. Section 10 of the abovementioned Ordinance provides for the supply of artificial limbs only when this is likely to improve the earning capacity. The Committee recalls that this provision of the Convention requires surgical appliances and artificial limbs to be supplied in all cases in which they are recognized as necessary, and not only with a view to improving the earning capacity. The Committee therefore asks the Government to take the necessary measures to bring its legislation into full conformity with this Article of the Convention.

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

Myanmar (ratification: 1956)

1. In reply to the Committee's previous comments, the Government again indicates that the relevant labour laws have been examined and amended by the Labour Laws Reviewing Committee of the Ministry of Labour and are still under scrutiny by the Laws Scrutiny Central Body. The Government adds that the provisions of the 1923 Workmen's Compensation Act will thus be brought into conformity with the Convention. The Committee takes note of this information and observes that no progress has been made. It recalls that it has been commenting on the application of the Convention since 1959, and that the Government has referred several times since 1967 to the review of the Workmen's Compensation Act. In these circumstances, the Committee trusts that in its next report the Government will be able to inform it that an amended version of the above Act has been adopted and will ensure that:

- (a) In accordance with *Article 5 of the Convention*, the compensation payable where permanent incapacity or death results from injury is paid to the worker or his dependants in the form of periodical payments, provided that it may be wholly or partially paid in a lump sum, if the competent authority is satisfied that it will be properly used.
- (b) In accordance with *Article 10*, no ceiling is imposed for the supply or renewal of artificial limbs and surgical appliances recognized to be necessary.

2. The Committee notes the information supplied by the Government concerning the application of *Article 11* of the Convention. It would be grateful if the Government would indicate whether there have been any cases of injured persons or their dependants having been denied their entitlement to compensation due to the insolvency of an employer which has not taken out an insurance policy.

3. The Committee notes the statistics sent by the Government on the number of workers protected and the amount of compensation paid under the Workmen's Compensation Act and the Social Security Act. It requests the Government to continue to provide such statistics in relation to the total number of employees working in industrial and commercial undertakings, in accordance with *Part V of the report form*.

Saint Lucia (ratification: 1980)

The Committee notes the information provided by the Government in its last report, and particularly the adoption of the National Insurance Corporation Act, No. 18 of 2000, which repeals the National Insurance Act of 1978. It notes that the regulations applying the latter Act remain in force (National Insurance Regulation No. 37 of 1984). However, the Government indicates in this respect in its report that the Corporation is in the process of drafting new regulations. The Committee hopes that the Government will not fail to take advantage of this occasion to adopt the necessary measures to bring the national legislation into conformity with the following provisions of the Convention.

Article 7 of the Convention. The Committee notes that, contrary to this provision of the Convention, neither the National Insurance Corporation Act of 2000 nor the 1984 Regulations referred to above contain provisions guaranteeing additional compensation for injured workers whose incapacities are of such a nature that they must have the constant help of another person.

Articles 9 and 10. In reply to the Committee's previous comments, the Government confirms that medical benefits, which include medical, surgical and pharmaceutical aid, as well as the provision of surgical appliances, remain subject to a maximum amount. It adds that the legislation does not provide for additional funding to renew or purchase artificial limbs. The Committee hopes that the Government will be able to re-examine this matter and requests it to indicate the measures adopted with a view to the provision to injured workers, in accordance with *Articles 9 and 10* of the Convention, of medical, surgical and pharmaceutical aid, including the supply and renewal of artificial limbs and surgical appliances as are recognized to be necessary, without the application of any ceiling to the amount of this aid.

Sierra Leone (ratification: 1961)

The Committee notes with regret that for the fourth 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.

United Republic of Tanzania (ratification: 1962)

Article 5 of the Convention. Ever since the entry into force of the Convention for the United Republic of Tanzania, the Committee has been drawing the Government's attention to the need to amend the Workmen's Compensation Ordinance (chapter 263), which provides for payment in the form of a lump sum in the event of death or permanent incapacity. This is not in conformity with *Article 5* of the Convention, under which the compensation must be paid in the form of periodical payments. It is only as an exception that this Article of the Convention authorizes the conversion of the periodical payments into a lump sum, where the competent authority is satisfied that it will be properly utilized. In its last report, the Government once again indicates that a legislative reform is being undertaken and that the Workmen's Compensation Ordinance is one of the laws which will be examined. The Committee notes this information. It trusts that, in the context of the process of revising the labour legislation, the Government will not fail to take all the necessary measures to amend the Workmen's Compensation Ordinance so as to ensure that effect is given to this provision of the Convention. Please provide a copy of any text adopted to this effect.

The Committee also requests the Government to supply general information on the manner in which the Convention is applied in practice including, in so far as statistical information is available, particulars on the numbers of persons covered by the legislation, the amount of the benefits paid and the number of accidents reported, in accordance with *Part V of the report form*.

Uganda (ratification: 1963)

The Committee notes with regret that 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.

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In addition, requests regarding certain points are being addressed directly to the following States: *Sao Tome and Principe, United Republic of Tanzania*.

**Convention No. 18: Workmen's Compensation
(Occupational Diseases), 1925**

Central African Republic (ratification: 1964)

Since the Convention came into force for the Central African Republic, the Committee has been noting that the schedule of occupational diseases annexed to Ordinance No. 59/60 of 20 April 1959 does not give effect to the Convention. It has therefore drawn the Government's attention to the need to amend the above schedule, firstly by eliminating the limitative nature of the list of pathological manifestations which may be caused by lead and mercury poisoning and, secondly, by adding, among the kinds of work which may lead to anthrax infection, the operations of "loading and unloading or transport of merchandise" in general, in accordance with *Article 2 of the Convention*. The Committee notes that, already in its 1980 report, the Government referred to the adoption of a draft decree prepared following a direct contacts mission between a representative of the Director-General of the ILO and the competent national services with a view to bringing the legislation into conformity with the Convention. It recalls, in this respect, that the Conference Committee indicated its concern in 1981 and 1983 at the absence of progress in the adoption of the above draft decree.

In its last report, the Government indicates that, as the occupational disease branch is not taken into account in the Central African Republic, the legislation covering this field is not applicable. This information leaves the Committee surprised and concerned. It recalls that the Convention has been in force for the Central African Republic for nearly 40 years and that, in the successive reports that it has provided on its application, the Government has always indicated that the legislation giving effect to the Convention is Act No. 65/66 of 24 June 1965 establishing the scheme for the compensation and prevention of employment accidents and occupational diseases and, in the absence of a decree under section 41 of the Act, Ordinance No. 59/60 of 20 April 1959 referred to above. The Committee recalls that, by ratifying the Convention, the Government undertook, firstly, to ensure that compensation shall be payable to workmen incapacitated by occupational diseases or to their dependants in accordance with the general principles of the national legislation relating to compensation for industrial accidents, in accordance with *Article 1* of the Convention and, secondly, to consider as occupational diseases those diseases and poisonings produced by the substances set forth in the Schedule appended to the Convention, in accordance with *Article 2*. In these conditions, the Committee trusts that the Government will not fail to clarify this situation by indicating the manner in which the protection afforded by this Convention is ensured in practice.

With regard to the question of bringing the legislation previously declared applicable into conformity with the Convention, the Committee is bound to urge the Government once again to take the necessary measures to amend the schedule of occupational diseases appended to Ordinance No. 59/60, taking into account the comments made above.

[The Government is asked to reply in detail to the present comments in 2003.]

Sao Tome and Principe (ratification: 1982)

Ever since the Convention came into force for Sao Tome and Principe, the Committee has been noting that the relevant national legislation on employment injury compensation, Act No. 1/90 on social security, does not contain a schedule of occupational diseases. The situation appears to be of particular concern since, while section 87(2) of Act No. 1/90 provides that the diagnosis of occupational diseases is made by the health services on the basis of technical standards issued for that purpose, according to the information provided by the Government, no technical standard appears to have been issued since the adoption of the Act, nor any occupational disease diagnosed or compensated.

In its last report, the Government reproduces a schedule setting out the diseases identified by the Convention (poisoning by lead, poisoning by mercury and anthrax infection), certain of the corresponding industries and processes and the names of national enterprises. However, the Government provides no indication of the significance and legal status of the schedule that it reproduces. The Committee therefore requests the Government to provide information on this point in a detailed report which replies to all the questions raised in the report form adopted by the Governing Body. It trusts that the Government will be able to indicate in its next report that a schedule of occupational diseases, including at least those enumerated in the Schedule annexed to *Article 2 of the Convention*, has been adopted. The Committee recalls that, in accordance

with this Article of the Convention, these diseases and poisonings must be recognized as occupational diseases when they affect workers engaged in the corresponding trades or industries in the said Schedule.

Convention No. 19: Equality of Treatment (Accident Compensation), 1925

Iraq (ratification: 1940)

The Committee notes with regret that in place of the detailed report requested, the Government has once again limited itself to present a report identical to those already communicated in 1994, 1997, 1998 and 2000. In these circumstances, the Committee trusts that the Government will not fail to supply a detailed report for examination at its next session, which will contain detailed answers to its previous observation, which read as follows:

The Committee notes that the Government refers mainly to certain provisions of the Workers' Pension and Social Security Law, No. 39 of 1971, without supplying detailed information on the points previously raised which dealt in particular with the follow-up of the conclusions and recommendations, approved by the Governing Body at its 250th (May-June 1991) Session, of the Committee set up to consider the representation made by the Federation of Egyptian Trade Unions under article 24 of the ILO Constitution alleging non-observance by Iraq of a number of Conventions. In this situation the Committee hopes that the Government will not fail to supply in its next report detailed information on the following points:

1. (a) The Government is requested to indicate any other provisions (apart from Decision No. 603 of 1987) or contractual conditions which may affect the right of foreign workers engaged in state enterprises, such as arms factories, to receive compensation for industrial accidents both in Iraq and in the country of their new residence.

(b) As regards the situation of temporary workers, to whom Decision No. 603 applies, please indicate which provisions of the legislation ensure the right of such workers to receive compensation in the case of industrial accidents, particularly in cases where they terminate their service before the expiration of the fixed period of employment or the completion of the work for which they were engaged (see also under point 2 below).

2. (a) In its previous comments, the Committee observed that under section 38(b)(ii) of Law No. 39 of 1971, which provides for the payment of compensation abroad to an Arab citizen if he has "returned to *his* country at the *end* of his insured period of service", Arab workers who leave Iraq *before* their contract period has expired or who settle in a country *other* than their country of origin, may be refused payment of compensation due to them. On the other hand, under the same provisions no such restrictions are applied in respect of Iraqi workers. The Committee recalls in this respect that in its previous report the Government stated that Instruction No. 2 of 1978 regarding payment of social security pensions to insured persons leaving Iraq was being studied by the Government with a view to its revision. The Committee, therefore, once again expresses the hope that the Government will not fail to indicate the legislative measures taken or contemplated to ensure equality of treatment between nationals of Iraq and Arab workers in respect of compensation for industrial accidents, particularly in the case of their residence abroad, including the modifications to Instruction No. 2 of 1978. Please supply a copy of the text of such legislative measures, when adopted.

(b) As regards nationals of States bound by the Convention other than Arab countries, the Committee recalls that under section 38(b)(iii) of Law No. 39 of 1971, no payment of

benefits is made outside Iraq except under reciprocity agreements or international labour Conventions and subject to the necessary authorization under Instruction No. 2 of 1978. Please indicate measures taken or contemplated at the level of the Iraqi Institute of Social Security to ensure, without any restrictions, that in all cases compensation benefits are paid to all workers who are nationals of a country bound by the Convention, in their new country of residence.

3. The Committee notes, from the information supplied by the Government representative in the discussion in the Conference Committee in 1994 on the application of Convention No. 118 by Iraq, that the Government intends to pay benefits due to foreign workers, including Egyptian workers, who left Iraq in 1990, once the economic embargo imposed on Iraq is lifted, and after the release of Iraq's frozen assets in foreign banks and the improvement of the national economic situation. The Committee would like the Government to continue to provide information on any measures taken or contemplated with a view to resuming payment of compensation for industrial accidents to beneficiaries residing abroad, accompanied by the relevant statistical data. Please also indicate whether workers who left Iraq at the time of the war and who had no opportunity to present their requests for payment of the compensation due to them, may do so from their new place of residence abroad and, if so, in what way.

Malaysia

Peninsular Malaysia (ratification: 1957)

The Committee notes with regret that the Government's report does not contain a reply to its previous comments. It hopes that a report will be received for examination at its next session and that it will contain full particulars on the following points.

Article 1, paragraph 1, of the Convention. In its previous comments, the Committee drew the Government's attention to the fact that, since 1 April 1993, the coverage of foreign workers employed in the private sector in terms of compensation for employment accidents had been transferred from the Employees' Social Security Scheme (governed by the Employees' Social Security Act, 1969) to the Workmen's Compensation Scheme (governed by the Workmen's Compensation Act 1952 and its implementing legislation). A review of these two schemes shows that the benefits provided are of a different nature and that, in general terms, the Employees' Social Security Scheme offers a higher level of protection. For example, under the Employees' Social Security Scheme, a permanently injured worker is entitled to a pension (periodical payments corresponding to a certain percentage of the previous wage), whereas under the Workmen's Compensation Scheme a permanently injured worker is entitled to a lump-sum payment. The same applies to the survivors' benefits due in the event of the death of the worker as a result of an employment accident. The Committee recalls that *Article 1, paragraph 1*, provides that each Member which ratifies the Convention undertakes to grant to the nationals of any other Member which has ratified the Convention, or to their dependants, the same treatment in respect of compensation for employment accidents as it grants to its own nationals. In these conditions, the transfer of foreign workers employed in the private sector from the Employees' Social Security Scheme to the Workmen's Compensation Scheme is not in conformity with this provision of the Convention. The Committee hopes that the Government will be in a position to provide information in its next report on the measures taken to guarantee to foreign workers the same compensation that is granted to national workers in case of

employment injury. In this respect, the Committee recalls that in its report provided in 1998, the Government indicated that it envisaged the possibility of returning foreign workers to the Employees' Social Security Scheme and had proposed amendments to the legislation to this effect.

Sarawak (ratification: 1964)

The Committee notes with regret that the Government's report has not been received. It hopes that a report will be received for examination at its next session and that it will contain detailed information on the following points:

Article 1, paragraph 1, of the Convention. In its previous comments, the Committee drew the Government's attention to the fact that, since 1 April 1993, the coverage of foreign workers employed in the private sector in terms of compensation for employment accidents had been transferred from the Employees' Social Security Scheme (governed by the Employees' Social Security Act, 1969) to the Workmen's Compensation Scheme (governed by the Workmen's Compensation Act 1952 and its implementing legislation). A review of these two schemes shows that the benefits provided are of a different nature and that, in general terms, the Employees' Social Security Scheme offers a higher level of protection. For example, under the Employees' Social Security Scheme, a permanently injured worker is entitled to a pension (periodical payments corresponding to a certain percentage of the previous wage), whereas under the Workmen's Compensation Scheme a permanently injured worker is entitled to a lump-sum payment. The same applies in the case of survivors' benefit due in the event of the death of the worker as a result of an occupational accident. The Committee recalls that *Article 1, paragraph 1*, provides that each Member which ratifies the Convention undertakes to grant to the nationals of any other Member which has ratified the Convention, or to their dependants, the same treatment in respect of workers' compensation as it grants to its own nationals. In these conditions, the transfer of foreign workers employed in the private sector from the Employees' Social Security Scheme to the Workmen's Compensation Scheme is not in conformity with this provision of the Convention. The Committee accordingly hopes that in its next report, the Government will provide information on measures taken to ensure that foreign workers receive the same compensation as that paid to national workers in the event of occupational accident. In this respect, the Committee recalls that in the report it submitted in 1998, the Government stated that it was considering the possibility of returning foreign workers to the Employees' Social Security Scheme and had proposed amendments to the legislation to this effect.

Mauritius (ratification: 1969)

Article 1 of the Convention. For many years, the Committee has been drawing the Government's attention to section 3 of the National Pensions (Non-Citizens and Absent Persons) Order, 1978, as amended (issued under the National Pensions Act), under which foreign nationals may not be affiliated to the insurance scheme unless they have resided in Mauritius for a continuous period of not less than two years. Foreign workers who do not meet this residence condition are covered by the Workmen's Compensation Act. However, this Act does not provide for a level of protection that is equivalent to that guaranteed under the national pensions scheme in the event of employment injury. In its

last report, the Government states that section 3 of the above Order of 1978 has not yet been amended, but that the observations made by the Committee of Experts will be taken into account in the ongoing revision of the National Pensions Act and its subsidiary legislation.

The Committee notes this information. It recalls that, under the terms of *Article 1, paragraph 2*, of the Convention, equality of treatment in respect of workmen's compensation shall be guaranteed without any condition as to residence to the nationals of any other Member which has ratified the Convention and who are the victims of employment injury. The Committee trusts that the Government will not fail to take the opportunity on the occasion of the revision of the legislation respecting the national pensions scheme to amend section 3 of the above Order of 1978, so as to bring its legislation fully into conformity with the Convention.

Sao Tome and Principe (ratification: 1982)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its observation of 1997, which read as follows:

In its previous comments, the Committee drew the Government's attention to the fact that section 12 of Act No. 1/90 on social security, which provides that the general system covers foreign workers working on the national territory only in so far as a Convention or an agreement concluded with the country of origin of the person concerned so provides, was contrary to *Article 1, paragraph 1, of the Convention*. In fact, the Convention makes it incumbent on any State which has ratified the instrument to grant to the nationals of any other State which has ratified the Convention the same treatment in respect of compensation for industrial accidents as it grants to its own nationals, as a matter of law and regardless of the conclusion of reciprocal agreements. In its report, the Government indicates that under existing provisions workers from African Portuguese-speaking countries, and specifically Cape Verde, Angola and Mozambique, who were working in Sao Tome before independence are covered by the social security system. It adds that, in accordance with the Committee's comments, it will make amendments to Act No. 1/90 with technical assistance from the Office. The Committee notes this information. It hopes that the Government will be able to take the necessary measures to amend the provisions of section 12 of Act No. 1/90, and thus guarantee to all foreign workers who are nationals of a country that has ratified the Convention the benefit of legislation concerning compensation for occupational accidents on the same conditions as for national workers. The Committee hopes that the Government's next report will contain information on progress made in this respect.

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

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In addition, requests regarding certain points are being addressed directly to the following States: *Bolivia, Cape Verde, China, Colombia, Cyprus, Djibouti, Dominica, Egypt, Estonia, Guyana, Indonesia, Japan, Lebanon, Malawi, Morocco, Nigeria, Philippines, Saint Lucia, Sao Tome and Principe, Trinidad and Tobago, Tunisia*.

Information supplied by the *Czech Republic* and *Saint Vincent and the Grenadines* in answer to a direct request has been noted by the Committee.

Convention No. 22: Seamen's Articles of Agreement, 1926*Chile* (ratification: 1935)

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

Articles 13 and 14 of the Convention. The Committee recalls that article 159(2) of the Labour Code requiring 30 days' notice to terminate the employment contract does not meet the requirement of the Convention allowing the seafarer to claim his discharge under the conditions set forth in these articles. It further recalls that *Article 12* of the Convention requires national law to determine the conditions under which a seaman may demand his immediate discharge and *Article 15* of the Convention requires that national law shall provide the measures to ensure compliance with the terms of the Convention.

It requests the Government to indicate the measures taken to bring its legislation into conformity with the provisions of the Convention and to provide the Office with copies of texts, as appropriate.

Liberia (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.

New Zealand (ratification: 1938)

The Committee notes the information in the Government's report and the comments provided by Business New Zealand and the New Zealand Council of Trade Unions.

*Circumstances giving rise to the seafarer's immediate discharge
(Articles 11 and 12 of the Convention)*

The Committee notes the comments relating to the Employment Relations Act – a text of general application for all sectors – according to which employees who believe they have been unjustifiably dismissed have the right to file a “personal grievance” against the employer for unjustified dismissal.

Recalling the specificity of maritime employment, the Committee refers to the drafting of *Articles 11 and 12* of the Convention, which place a positive and unequivocal obligation on the State to *determine* – that is, to establish precisely – the circumstances

under which a seafarer can be immediately discharged. The requirement is that national law shall make this determination, not that it shall cause this to be determined or that it shall provide a mechanism which the seafarer activates for this determination to be made.

The exact nature of the employment relation between the shipowner and the seafarer is that of a maritime employment contract. Discharge is the unilateral rupture of the contractual relationship, and the relevant Articles of the Convention require that the circumstances giving rise to this action must be articulated in the national law. In the maritime context, such decisions must be taken expeditiously when the ship is in port. Practical problems concerning repatriation, payment of wages and availability of redress frequently arise and the greatest degree of legal clarity is needed. Moreover, in the absence of provisions setting forth the requisite circumstances, the seafarer or his adviser may be unable to determine whether a cause of action exists at law.

The Committee further notes in the Government's report that, in the context of the personal grievance procedure under the Employment Relations Act, the "reasons for dismissal must be demonstrated on a case-by-case basis as a determination or decision on a claim will depend on the facts of a particular case". While the Committee recognizes that each case must be decided individually and on its merits, setting forth the lawful grounds for taking an action does not in any manner preclude the examination of the facts of a particular case, indeed it should facilitate it.

The Committee, therefore, considers that the articulation in national law of the circumstances under which the seafarer can be discharged, as expressly required under *Articles 11 and 12* of the Convention, is the only means of fulfilling this obligation. It requests the Government to take the necessary steps to bring its law and practice into conformity with its obligations under the Convention.

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

Pakistan (ratification: 1932)

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 in the Government's report and that the Merchant Shipping Bill 1998 (now Ordinance 2000) is presently with the Law and Justice Division.

The Committee recalls the terms of its previous substantive observation in 1997 concerning the application of various provisions of the Convention, in particular *Articles 1, 5 and 14(2)*, and notes the statement in the Government's current report that the revised draft of this instrument would take into account the provisions of the Convention.

The Committee requests the Government to keep it informed of the progress of this text and to forward a final copy when it is enacted.

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

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In addition, requests regarding certain points are being addressed directly to the following States: *China, China* (Hong Kong Special Administrative Region), *Spain*.

Convention No. 23: Repatriation of Seamen, 1926

Requests regarding certain points are being addressed directly to the following States: *China* (Hong Kong Special Administrative Region), *Ukraine*.

Convention No. 24: Sickness Insurance (Industry), 1927

Haiti (ratification: 1955)

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). The Committee also notes with regret that the Government's report has not been received. 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 Government is asked to report in detail in 2003.]

Peru (ratification: 1945)

With reference to its previous comments, the Committee notes the detailed information sent by the Government in its report. It notes in particular the information on the application of *Article 6, paragraph 1, of the Convention*, and the copies of the resolutions issuing authorization to operate whereby the health-care providers (EPS) obtain recognition, the copies of the reports of the EPS supervising authority, and the samples of contracts concluded with EPS.

Article 2 of the Convention. The Committee notes the Annual Report 2000 of the Social Health Insurance Scheme (ESSALUD) and the statistical tables of the monthly reports of affiliation to the EPS covering the period from April 2001 to April 2002. It also notes the information on the strength of the work force in Peru and the number of persons insured and covered by ESSALUD and by EPS. It notes in this connection that according to the Annual Report 2000, 32.6 per cent of the population of Peru (i.e. 8,361,425 out of a total of 25,661,690) has health coverage. The Committee also notes that in November 2001, the EPS system had 333,058 insured persons in all on register, which amounts to growth of 2.73 per cent as compared to November 2000. The Committee asks the Government to provide the following information: (a) the number of wage earners covered by health insurance: (i) under the general scheme; (ii) under

special schemes; (b) total number of wage earners; (c) the number of wage earners protected as a percentage of total wage earners.

As to geographic coverage under the new health scheme, the Committee notes that the EPS system has nationwide coverage, there being no statutory restrictions or exclusions. The Committee observes that in four departments (Amazonas, Huancavelica, Madre de Dios, Moquegua) there is no coverage of any type of service and that in three others (Apurímac, Huanuco, Pasco) there is coverage only for outpatient services. The Committee would be grateful if the Government would supply information on the number of wage earners protected by ESSALUD, and on the types of services that the latter provides in these regions.

Article 6, paragraph 2. In reply the Committee's comments, the Government again states in its report on Convention No. 102 that participation by the persons concerned in the administration of the health system is not compulsory, the SEPS being a public body established by law for the purpose of authorizing, regulating and supervising the operation of the EPS and monitoring proper use of the funds administered by EPS. The SEPS' policy is to publicize the rights of the regular affiliates and to consider the views of the various players. The Committee takes note of this information. It agrees with the Government that, in the case of SEPS, participation by the persons concerned is not compulsory. It nevertheless observes that the EPS are independent of SEPS and that, as the Government itself points out, the legislation does not provide for participation by the persons concerned in the administration of the EPS. This was borne out by the Peruvian worker delegate in June 2002, at the Conference Committee on the Application of Standards. In view of the fact that, according to the legislation (sections 15 and 16 of Act No. 26790), enterprises providing health care, either through the EPS or their own care services, are entitled to credit on workers' contributions amounting, in principle, to 25 per cent of the contributions, the Committee asks the Government to indicate the measures it plans to adopt to allow participation by the persons protected in the administration of the EPS and the enterprises' own care services, which, according to 2001 Report evaluating institutional management, amounted at 31 December 2001 to 529 enterprises and bodies providing health services.

[The Government is asked to reply in detail to the present comments in 2003.]

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Colombia, Netherlands*.

Convention No. 25: Sickness Insurance (Agriculture), 1927

Haiti (ratification: 1955)

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. The Committee notes with regret that the Government's report has not been received. 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 Government is asked to report in detail in 2003.]

Peru (ratification: 1960)

See under Convention No. 24.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Colombia, Netherlands*.

Convention No. 26: Minimum Wage-Fixing Machinery, 1928

Angola (ratification: 1976)

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

The Committee notes the information provided in the Government's report, in particular the adoption of the new General Labour Law, Act No. 2/00 of 11 February 2000.

Article 3, paragraph 2(2), of the Convention. The Committee notes that under section 168(1), (2) of the new General Labour Law, the national minimum wage is fixed periodically by decree of the Council of Ministers based upon a proposal of the Ministers of Labour and Finance and after consultation with the most representative organizations of workers and employers. The Committee also notes the Government's statement that negotiations are currently under way between the social partners in connection with the national minimum wage. Recalling that as it has indicated in the 1992 General Survey on minimum wages, consultation has a different connotation from mere "information" and from "co-determination", the Committee urges the Government to take all necessary measures to effectively put into practice, if possible within an institutionalized framework, the consultation procedure referred to in section 168(2) of the General Labour Law. Moreover, the Committee requests the Government to adopt such necessary legislative or regulatory provisions to guarantee the participation in equal number and equal terms of the employers' and workers' representatives in the operation of the minimum wage fixing machinery, as set forth under this Article of the Convention.

Articles 3, paragraph 2(3), and 4. In the absence of reply on this point, the Committee is bound to reiterate its request for a copy of the latest decree fixing the national minimum wage, and detailed information on the system of supervision and sanctions which ensures the observance of such minimum wage.

Article 5 of the Convention and Part V of the report form. The Committee asks the Government to provide detailed information on the practical application of the Convention, including any available statistics on the number and different categories of workers subject to laws and regulations on minimum wage rates, inspection results indicating the number and nature of infringements observed and penalties imposed and any other information bearing on the practical functioning of the minimum wage fixing machinery in accordance 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.

Chad (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:

Further to its previous comments, the Committee notes the information supplied by the Government in its report. It also notes the discussion that took place at the 87th Session of the International Labour Conference (June 1999).

Article 3 of the Convention. The Committee recalls that the Government shelved its plan to increase minimum wages as part of the structural adjustment plan imposed by the International Monetary Fund and the World Bank. Recalling the principles set forth in its General Survey of 1992 on minimum wages, the Committee requested the Government to report on progress in updating minimum wage rates. The Government was also asked to provide information on measures adopted to ensure the participation of the representatives of employers' and workers' organizations in wage-fixing decisions. It referred in particular to the case of the Trade Union Confederation of Chad (CST). The Government indicated during the discussion at the Conference that, in 1995, despite the structural adjustment measures imposed and the original decision to freeze minimum wages, it did fix and enforce the guaranteed inter-occupational minimum wage (SMIG) which had been established previously in order to preserve social peace. It also stated that the SMIG was discussed by the Central Committee for Work and Social Security.

With regard to the CST's participation in the abovementioned negotiations, the Government recalled that at the time of the negotiations the CST had not been created. However, the Government later included the CST in the draft decree appointing the new members of the Central Committee for Work and Social Security.

The Committee recalls that in its previous comments it emphasized that, in setting minimum wages, it should be borne in mind that they must ensure a satisfactory standard of living for workers and their families, as the Committee stated in its General Survey of 1992 (paragraphs 428 and 429).

Article 4. The Committee recalls that in its previous comment it pointed out that States ratifying this Convention undertake to adopt the necessary measures to ensure that the wages paid are not lower than the applicable minimum rate. The Committee notes the statements made by the Government before the Conference and the information contained in its report. It notes that the labour inspectorate is engaged in measures to ensure observance of minimum wage rates. It hopes that the Government will continue to make the necessary effort to ensure that the rates fixed continue to be applied in the private sector. The Committee notes with concern, however, the Government's statement that in the public sector application of the SMIG continues to be a problem because the State has for some time been struggling with enormous budgetary and financial difficulties due to the structural adjustment measures imposed on it. The Committee urges the Government to take the necessary steps to enforce the minimum wage rates fixed in the public sector.

Article 5 in conjunction with Part V of the report form. The Committee notes the information supplied by the Government in its report, and urges the Government to continue supplying information on the practical application of the provisions of the Convention, and particularly to provide statistics on the number of workers covered by the minimum wage, extracts from inspection reports indicating the sanctions applied for breach of the fixed minimum wages, etc.

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

Colombia (ratification: 1933)

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:

Application of the Convention in the agriculture and food sector

The National Union of Food Industry Workers (SINALTRAINAL) has provided an observation concerning the refusal by certain enterprises in the agriculture and food sector to apply the 19.5 per cent adjustment of the minimum wage for all Colombian workers decided upon by the Government as from 1 January 1996. Noting the absence of a response from the Government, the Committee requested it to indicate the measures taken or envisaged to ensure that the minimum wage rates fixed are binding, in accordance with *Article 3, paragraph 2, of the Convention*, and are effectively applied, in accordance with *Article 4*.

The Committee notes the very detailed information provided by the Government on the procedure initiated by SINALTRAINAL. In this regard, the Government considers that the Minister of Labour and Social Security has observed all existing positive law procedures.

The Committee observes, however, that the Government's report does not contain any information on the outcome of the procedure. Consequently, it requests the Government to provide information on the results of the procedures in respect of the application of the increases in minimum wages in the agriculture and food sector.

Application of the Convention to teachers

In the previous comments relating to the wage rules for teachers in the public sector, the Committee requests the Government to provide copies of the texts in force concerning the minimum wage rates applicable, in accordance with the statutory minimum wage for the national territory, to indicate whether these rates apply to all regions, including the Department of Santander which was expressly referred to in the observations made previously by the General Confederation of Workers (CGT), and finally to indicate the measures taken or envisaged to ensure the application at local level of the minimum wage rates in question.

The Committee notes that the Government has provided information on the decentralization and financing of the education system but does not provide an initial response to the points raised by the Committee. Consequently, the Committee again requests the Government to provide copies of the texts in force concerning the minimum wage rates applicable to teachers, to indicate whether these rates apply to all regions, including the Department of Santander which was expressly referred to in the observations made previously by the General Confederation of Workers (CGT), and finally to indicate the measures taken or envisaged to ensure the application at local level of the minimum wage rates in question.

Furthermore, the Committee notes the statement by the Government that section 197 of Act No. 115 of 8 February 1984 provides that the minimum wage for teachers in the private sector should not be below 80 per cent of that which is applicable to the corresponding category in the public sector. The Constitutional Court in case No. C-252/95 of 7 July 1995 dismissed the application of this provision; accordingly the ratio of teachers' wages in the private sector to the wages of the corresponding category in the public sector must now be one to one.

The Committee requests the Government to indicate the measures taken or envisaged to amend section 197 of Act No. 115 of 8 February 1984 and, where necessary, to provide a copy of the new text.

The Committee hopes that the Government will not fail to take the necessary measures in the near future.

Comoros (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 information supplied by the Government in its reports. It also notes the comments sent by the Autonomous Trade Union of Comorian Workers (USATC) and the Government's reply to them.

Article 3, paragraph 2(2), of the Convention. In reply to the Committee's previous comments, the Government states that, despite the adoption of Decree No. 94-047/PM of 3 August 1994 on the organization and operation of the Higher Labour and Employment Council (CSTE), the latter was unable to perform its duties because the Government of the time was unable to supply the material and technical resources needed to organize meetings, the CSTE being composed of members from various islands. In its comments, the USATC states that the CSTE never met and never took any decision on the minimum wage; and that the agreement concluded in 1994 with the Government concerning the principle of tripartite consultations on minimum wages remained a dead letter. It further states that, since 1994, the trade unions have been calling for a minimum wage adjustment nationwide. The Government indicates in this connection that the Minister of Labour tabled proposals for a minimum wage review in 1980, 1982 and 1996 but that the Council of Ministers took no decision owing to the difficult economic circumstances.

The Committee also notes that, by virtue of a ministerial order, new members have been appointed recently to the CSTE to deal with a number of labour and employment issues. It also notes that the Government would be grateful to receive technical assistance from the ILO, particularly in the context of the regional programme to promote social dialogue in French-speaking Africa (PRODIAF), to ensure that the CSTE is actually set up and operates on a regular basis and that its members receive training.

The Committee hopes that the Office will be in a position to provide the requisite assistance very shortly and that the Government will take the necessary steps as soon as possible to reactivate the CSTE so that minimum wages can be fixed or adjusted in accordance with the Convention. It asks the Government to provide detailed information on progress made in this respect.

Article 5 of the Convention and Part V of the report form. The Committee notes that the Government acknowledges in its report that the minimum wage set by regulation in 1973 at 24 Comorian francs (CF) per hour has still not been reviewed and that no text to update the minimum wage has been drafted for the private sector. The Government nonetheless stresses its intention of relaunching the CSTE tripartite consultations on minimum wages with technical support from the ILO. The Government further states that three categories of regional monthly minimum wages were fixed at Anjouan in 1993-94: CF17,500 for unskilled workers, CF22,500 for skilled workers and management and CF30,000 for higher management. In its comments the USATC deplores the fact that enterprises pay wages of anywhere between CF3,000 and 7,200 per month as they see fit, and some establishments pay wages of CF20 per hour. The USATC also states that the minimum wage is nothing less than "taboo" as far as the authorities are concerned and that there are wages of CF17,000 in the public sector despite a decree of 1987 establishing the minimum wage at CF22,000.

The Committee asks the Government to continue to supply detailed information on developments regarding the rates of minimum wages applied in the country and hopes that the Government will be in a position in the very near future, with technical assistance from the Office, to report that the minimum wage fixing machinery is operating soundly.

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

Guinea (ratification: 1959)

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

In its previous observation, the Committee noted the comments of the General Union of Workers of Guinea (UGTG) to the effect that, in its view, the wage scales for public sector employees were not sufficient to cover the living costs of a worker's family of five members and that the new Labour Code of 1988 was applied without any subsequent text having been issued. The Committee also noted that, under the terms of section 211 of the Labour Code, the minimum hourly wage rate is fixed by decree. It also noted the Government's indication that it intends to promote free wage bargaining in enterprises and to take account of the results of such bargaining in fixing a guaranteed inter-occupational minimum wage. The Committee therefore asked the Government to provide detailed information on the application of the minimum wage fixing machinery provided for in the new Code, particularly as regards consultation and participation of employers' and workers' organizations in equal numbers and on equal terms (*Article 3, paragraph 2, of the Convention*). It also asked the Government to provide information on the results of the application of this machinery in accordance with *Article 5*, and in particular copies of decrees issued under section 211 of the Labour Code.

The Government, in reply to these comments, notes that, contrary to the claims of the UGTG, the public sector is still covered by the Public Service Regulations and as such is in a different category from the private and mixed sectors, which are governed by the Labour Code. The wage scales are applied to public servants, but not to the occupational branches in the private sector, where completely free wage bargaining between employers and employees prevails. In the interests of promoting free wage bargaining in enterprises, the Government has proceeded to set up machinery for the various sectors. Collective agreements and accords have thus been concluded (public works, buildings, agricultural engineering and the like; mining, quarries and chemical industries; banking and insurance) or are under discussion (hotels and similar establishments). With regard to the public servants and contract staff employed by the Government, salaries are based on a single grade-related scale in which the value of each salary step is fixed by decree following negotiations between the Government and public service unions.

The Committee notes this information. It asks the Government once again to provide detailed information on the application of the minimum wage fixing machinery provided for in the Labour Code, particularly as regards consultation and participation of employers' and workers' organizations in equal numbers and on equal terms (*Article 3, paragraph 2, of the Convention*). It also asks the Government to provide information on the results of the application of this machinery in accordance with *Article 5*, and in particular copies of decrees issued under section 211 of the Labour Code.

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

India (ratification: 1955)

The Committee takes note of the Government's report and the observations regarding the application of the Convention that were made by the organization Hind Mazdoor Sabha and supplied with the Government's report. It also notes the Government's comments concerning the observations of the Central of Indian Trade Unions (CITU). It notes with interest the statement made by the Government in reply to previous observations by the Committee, to the effect that the protection provided by the Minimum Wages Act of 1948 has been extended to some home and informal sector workers, and that efforts have been made to bring all home workers under the protection of the Act. The Committee requests the Government to supply the legislative texts that extend the protection of the Minimum Wages Act to the workers in question and to keep the International Labour Office informed of the progress made with the draft amendments of the Minimum Wages Act referred to in its report.

I. Introduction of a national "floor-level" wage applicable to all workers

1. The Committee previously requested the Government to supply its observations on the comments of the CITU regarding the absence of a wages policy for the great majority of informal sector workers. The CITU had explained that, for the Government, the national floor-level wage corresponded to the threshold below which no minimum wage should fall, and that it should not be below the poverty threshold. The CITU considered that many qualified workers were employed in the informal sector, where the minimum wage is below the poverty threshold and workers have no bargaining power to protect themselves against exploitation by their employers. However, despite the Government's statements, the floor-level wage is, according to the CITU, below the poverty threshold. The organization considers that wages in the non-unionized sector should be above the poverty threshold.

2. The organization Hind Mazdoor Sabha indicates that, although there is no national minimum wage, the Government in 1996 arbitrarily introduced a national floor-level wage set at 35 rupees a day, which was increased to 45 rupees a day from 1999 onwards. The organization also regrets that the many minimum wage rates applied in the country's different states and territories, on the one hand, and the rates applied among different occupations within the same state, on the other, vary so widely. It also adds in this respect that the minimum wage rates vary between Rs16.75 (in the State of Karnataka and Rs143.67 (in the State of Kerale).

3. The Government states in its comments on the observations made by the CITU that it would be difficult to devise a uniform wages policy given that wage fixing depends on many factors linked to the cost of living, which varies from one state to the other and from one industry to the other. The Government states nevertheless that it has established a national floor-level wage with a view to protecting the interests of workers employed in non-scheduled employments, that is to say, those not covered by a minimum wage. The central Government has therefore instructed the state governments to fix minimum wages in scheduled employments at a level not lower than the national floor-level wage which, since 30 November 1999, has been set at 45 rupees a day. With regard to the comments made by the organization Hind Mazdoor Sabha, the Government indicates that all the minimum wage rates applicable in the State of Karnataka have been

revised except for one or two and that a request has been made to the State to know the reasons for not revising the minimum wages applicable in these employments so that they are equivalent to or more than the national floor level minimum wage rate.

4. The Committee requests the Government to supply copies of the legislation which established the national floor-level wage from 1996 onwards. The Committee is concerned by the fact that the Government's report contains no information on the comments made by the Hind Mazdoor Sabha, according to which the Government set the national floor-level wage rates arbitrarily. The Committee requests the Government to indicate whether prior consultations were actually held with the social partners before the application of the machinery for fixing the national floor-level wage, and to provide information on the participation of employers' and workers' organizations in the operation of the machinery, in accordance with *Article 3, paragraph 2(1) and (2), of the Convention*. The Committee recalls that minimum wage-fixing machinery must be determined and applied in consultation with organizations of employers and workers, who should be associated in that process on equal terms and should be able to influence any decisions. The Committee requests the Government to supply with its next report any relevant information regarding measures taken or planned with a view to meeting its obligations under these provisions of the Convention.

II. Application of the machinery for fixing and revising minimum wages applicable to scheduled employments

5. The organization Hind Mazdoor Sabha, in its observations supplied with the Government's report, states that the Central Advisory Board and the advisory committees in the different states and territories, which are supposed to advise the central Government and the state governments on matters relating to the fixing of minimum wages, has operated only irregularly. It claims that the Board met on only 14 occasions between 1948 and 1992, although there should have been 22 meetings. The organization adds that the Board's last meeting was held on 27 June 2002, ten years after the previous meeting in 1992.

6. The Government states in its report that minimum wage-fixing machinery and procedures for applying it are established under the Minimum Wages Act of 1948. Under the terms of section 5 of the Act, the central Government or state governments, as appropriate, may fix and revise minimum wages in respect of scheduled employments by using two methods: either with the aid of advisory committees set up under the terms of the Minimum Wages Act, in which employers' and workers' representatives participate; or by notification. In the latter case, the competent authority publishes its minimum wage proposals in the *Official Gazette*. The act of publication marks the beginning of a two-month period during which any persons affected by the decision have the right to present objections or proposals. Furthermore, with regard to the application of the machinery for revising minimum wages, the Government states that it accepted and has been implementing since 1998 the recommendations of the subcommittee of the Central Advisory Board regarding criteria for fixing minimum wages in respect of the scheduled employments that come under its remit (45 occupations in the central government sphere) and has recommended a readjustment of minimum wages in line with the consumer price index, to take place every six months or whenever the index goes up by five points. The Government also states that 19 states have established such a system,

which enables them to link minimum wages to the consumer price index. Furthermore, in the event that a state government fails for more than three years to fix or revise the minimum wage applicable for a given scheduled employment, the central Government states that it can fix or revise the applicable minimum wage itself after notifying the state government in question. Furthermore, with regard to the observation made by the Hind Mazdoor Sabha, the Government states that the Ministry of Labour will make efforts in the future to hold meetings of the Central Advisory Board more frequently, and that the state governments have been advised to convene regular meetings of their advisory boards.

7. The Committee takes this to mean that, even in the central government sphere, minimum wages for scheduled employments were revised by the method of notification in the *Official Gazette* in January 2002, eight years after the last adjustment. The Committee notes that the minimum wage fixing machinery can be applied either through minimum wage advisory committees, which each authority can set up to deal with occupations that come within its remit and which include government-appointed representatives of workers and employers in equal numbers, or by the method of notification. In this regard, the Committee requests the Government to specify the means by which, when using the notification method, the central Government and state and territorial governments ensure that organizations of employers and workers participate in equal numbers and on an equal basis in the operation of the minimum wage fixing machinery, in accordance with *Article 3, paragraph 2(2)*, of the Convention. Furthermore, the Committee requests the Government in its next report to supply information on the way in which it acts to ensure the operation, with the participation of employers' and workers' organizations, of the machinery for revising minimum wages in states and territories whose governments do not apply the machinery in question, and where, in some cases, as in the case of Tamil Nadu, the machinery for fixing and revising certain minimum wages has not been operated since 1977, or where the social partners have not been associated in its operation. The result of this failure has been to set the minimum monthly wage at a level equivalent to the national floor-level wage normally payable for four days' work. The Committee also requests the Government to provide information on the measures taken to ensure that state and territorial governments adhere to the established national floor-level wage rates that are applicable throughout the country, whether or not the employment in question is scheduled or non-scheduled.

III. Practical application of the Convention

8. According to the information contained in the comments supplied by the Hind Mazdoor Sabha, efforts to monitor the application of the Minimum Wages Act of 1948 are ineffective because the labour inspectors do not even have the right to carry out inspections as a result of the new regulations in force in many states. The organization also refers to cases where the competent authorities under the Labour Commissioner have promoted agreements setting a minimum wage at a level below half the minimum wage in force within a given state for a particular occupation, as has occurred e.g. in the State of West Bengal. According to the Hind Mazdoor Sabha, such practices occur because employers threaten to relocate their production units to neighbouring states with a much lower minimum wage.

9. As regards this point, the Government states in its report that the Minimum Wages Act requires employers to pay their workers a wage that is at least equivalent to the established minimum wage. Inspectors carry out regular inspections to determine whether or not there are any contraventions of the minimum wage provisions. They have the authority to initiate civil or criminal proceedings against anyone found in breach of the law, and this right has been extended to workers. Furthermore, the Government indicates that, where complaints are made that labour inspectors are being prevented from conducting inspections, the matter is taken up with the state government concerned. The Government emphasizes that such discussions must be held with the Government of West Bengal on matters raised by the Hind Mazdoor Sabha. Finally, it notes that it is envisaging certain amendments to the Minimum Wages Act with a view to making its provisions more stringent.

10. The Committee requests the Government to keep the International Labour Office informed of the outcome of the discussions with the authorities in West Bengal. It requests the Government to indicate in its next report the measures which have been taken or are envisaged to prevent such cases from reoccurring in practice. It also requests the Government to indicate any appropriate measures that have been taken, in consultation with the States of the Union, to prevent labour inspectors from being prevented from discharging their duties. The Committee also notes that the Government similarly declines to respond to the comments made on a previous occasion by the Trade Union Congress, according to which there have been cases of employers bringing complaints regarding the minimum wage before the courts, which has had the effect of suspending payment of the minimum wage to the workers concerned. The Committee recalls that under the terms of *Article 4, paragraph 1*, of the Convention, the system of supervision established under the terms of the provision must provide appropriate sanctions for any violation of the applicable minimum wage rate.

11. In this regard, the Committee recalls that it has referred on previous occasions to certain cases presented to it through the observations of trade union organizations which, according to the Government, were still pending. The Government's report refers to some of these cases, but also indicates that some of them have not been resolved. The Committee is bound to express its concern at the slowness of the judicial system intended to help workers recover the wages owed to them, and recalls that some of these cases go back to 1996. The Committee requests the Government to inform the International Labour Office of the outcome of these proceedings, and also requests the Government at the same time to take any necessary and appropriate measures to ensure that any wages owed to workers are paid promptly, given that the workers in question are paid the minimum wage and consequently highly dependent on their wages. The Committee also requests the Government to supply with its next report additional details regarding the powers of inspection of officials responsible for supervising the application of the Minimum Wages Act, both with regard to the central government sphere and that of the states and territories.

12. In addition, the Committee also observes that, according to certain information, the instructions issued by the central Government for the purpose of enforcing the national floor-level wage rate were, as of 1 October 2001, disregarded, even with regard to scheduled occupations, in 12 of the country's 33 states and territories (Andhra Pradesh, Arunachal Pradesh, Assam, Bihar, Goa, Jammu and Kashmir, Kerala,

Maharashtra, Manipur, Orissa, Tripura, Uttar Pradesh and Pondicherry). The Committee recalls that it is generally accepted that almost 92 per cent of waged workers are employed in the informal sector, many of them in jobs other than the scheduled jobs to which the minimum wages apply, and would therefore be eligible for the national floor-level wage. The Committee requests the Government to supply with its next report information, including statistical data, on the level of compliance with the national floor-level wage rate by state and territorial governments, and on the measures taken to ensure compliance, with regard to workers in both scheduled and non-scheduled employments, in accordance with *Article 3, paragraph 2(3)*, of the Convention.

13. Lastly, the Committee recalls that under *Article 3, paragraph 2(3)*, of the Convention, minimum rates of wages which have been fixed are binding on the employers and workers concerned so as not to be subject to abatement by them by individual agreement, nor, except with general or particular authorization of the competent authority, by collective agreement. The Committee requests the Government to provide further information regarding the comments made by the Hind Mazdoor Sabha to the effect that the competent authorities under the Labour Commissioner have promoted agreements setting wages at a level equivalent to less than half the minimum wage in force in the state in question, as for example in West Bengal. The Committee recalls that the Convention allows for this only in cases of collective agreements, and requests the Government to indicate whether, in the cases cited by the Hind Mazdoor Sabha, collective agreements have been concluded and how frequently use has been made of this possibility to abate minimum wage rates by general or particular authorization of the competent authorities.

New Zealand (ratification: 1938)

The Committee notes the information provided by the Government in reply to its previous observations. It also notes the discussion held in the Committee on the Application of Standards of the International Labour Conference at its 86th Session in June 1998. The Committee notes with interest the adoption in October 2000 of the Employment Relations Act, as well as the new Minimum Wage Regulations in 1999, and the draft legislation that has been introduced into Parliament to amend the Minimum Wage Act. The Committee also notes the comments made by the employers' organization "Business New Zealand" concerning the application of the Convention.

Establishment of a minimum training wage

1. The Government indicates the adoption in 1999 of the Minimum Wage (Industry Training) Regulations, replacing the Minimum Wage (Training in the Nature of Apprenticeship) Regulations, 1992. The latter permitted the exclusion from the scope of the Minimum Wage Act of persons undergoing training in certain industries that they specified. The new Minimum Wage Regulations are no longer limited to certain categories of activity, but exclude from the scope of the Minimum Wage Act any persons who have concluded a training agreement with their employer with a view to achieving at least 60 credits a year (representing approximately 600 hours of training), which entitles them to have their qualification recognized within the National Qualifications Framework.

2. The Government also indicates that it has introduced into Parliament an amendment to the Minimum Wage Act of 1983 to determine a minimum wage for persons undergoing training who are excluded by the Minimum Wage Regulations of 1999 from the scope of the Minimum Wage Act. It also indicates that the level of the minimum training wage will be set at the same level as the applicable minimum wage for young persons under 18 years of age.

3. The employers' organization "Business New Zealand" observes in its comments that the draft referred to by the Government has not yet been adopted by Parliament and that, although it is intended to set a minimum training wage, it does not give an indication of the level at which the wage is to be set. Business New Zealand expresses concern at the adverse effects of minimum wage increases, and particularly any increase in the youth minimum wage. It adds that, while minimum wages may have their place, they may also have the unintended consequence of depriving individuals of the chance to become established on the labour market or, in the case of minimum training wages, to have the opportunity to train for the occupation of their choice. Business New Zealand also questions the assumption that the introduction of a minimum training wage would be of automatic benefit to those whom it is intended to assist. Finally, it regrets the lack of statistical information available at the national level on the negative effects on the employment of young persons of lowering the age at which the adult minimum wage becomes payable from 20 to 18 years and considers that statistics showing a decline in the number of persons employed could be interpreted in this sense.

4. The Committee requests the Government to provide information with its next report on developments relating to the adoption of the draft amendment to the Minimum Wage Act. It also requests the Government to make its observations on the comments forwarded by Business New Zealand.

*Participation of the employers' and workers' organizations concerned
in the application of minimum wage fixing machinery*

5. The Committee notes the information provided by the Government in its report on the consultation of the employers and workers concerned. It notes the information supplied by the Government on this matter at the 86th Session of the International Labour Conference (June 1998) and the commitment that it made to provide a detailed report on the various points raised by the Committee in its previous observation. In its report, the Government provides a summary of the procedures which have been applicable since 2000 to the holding of consultations with organizations of employers and workers and any other interested parties. The Government states that, since that date, it has invited all the interested parties to participate in the annual adjustment of minimum wages. It emphasizes in particular that the employers' organization Business New Zealand and the New Zealand Council of Trade Unions have been associated with this process on equal terms. The Government adds that, although the consultation procedure and the submissions made are generally received in writing, it also holds meetings in which the above two organizations can put forward their views on minimum wages. These views are then incorporated into the annual report on the review of the minimum wage. The final decision on changes to minimum wages is made by the Minister of Labour.

6. The Committee however regrets to note that, despite its previous very detailed comments on the fundamental role of consultations with organizations of workers and employers on the minimum wage fixing machinery, when the Minimum Wage (Industry Training) Regulations were adopted in 1999, only the New Zealand Employers' Federation appears to have been consulted, in addition to other institutions such as the Ministry of Youth Affairs, the Ministry of Women's Affairs and Skill New Zealand (the industry training fund agency).

7. The Committee wishes in this respect to strongly reaffirm that one of the essential obligations set out in the instruments on minimum wages is that the minimum wage fixing machinery must be determined and applied in consultation with the organizations of employers and workers, who must participate on an equal footing and be able to exert a real influence on the decisions taken, as emphasized in the conclusions adopted by the Committee on the Application of Standards of the International Labour Conference during the discussion of the application of this Convention by New Zealand in 1998. It recalls in this respect the provisions of *Article 3 of the Convention*, by virtue of which representatives of the employers and workers concerned shall be consulted before the minimum wage fixing machinery is applied and during its operation. Such consultation shall in all cases be held on equal terms. The Committee therefore requests the Government to indicate the measures that it intends to adopt in order to ensure full compliance with the obligation to consult employers' and workers' organizations on equal terms in decisions relating to minimum wages.

The minimum wage for young workers

8. The Committee notes the changes which have occurred since its previous comments and following the discussion held by the Committee on the Application of Standards of the International Labour Conference at its 86th Session in June 1998 in relation to the establishment of different minimum wage rates depending on the age of the workers. It notes that since 2000 the Government has adopted measures related to the minimum wage of young workers. It has also extended the adult minimum wage to young persons of 18 and 19 years of age and has reviewed the rate of the minimum wage applicable to young workers. Since then, this usage has been set at 80 per cent of the adult minimum wage, compared with 60 per cent before. The minimum wages currently applicable to young persons and to adults are respectively: 6.40 dollars an hour, 51.20 dollars for a working day of eight hours and 256 dollars for a working week of 40 hours for the former; and 8 dollars an hour, 64 dollars for a working day of eight hours and 320 dollars for a working week of 40 hours for the latter. These hourly rates are also applicable to additional hours worked over 40 hours a week. While noting these favourable developments, the Committee is bound to reiterate its previous comments on this subject and to refer once again to paragraphs 169-181 of its 1992 General Survey on minimum wages, where it indicated that, even though minimum wage instruments contain no provisions providing for the fixing of different minimum wage rates on the basis of such criteria as sex, age or disability, the general principles laid down in other instruments have to be observed in order to prevent any discrimination, inter alia, on grounds of age, and particularly the principles contained in the Preamble to the Constitution of the ILO, which specifically refers to the application of the principle of "equal remuneration for work of equal value". With regard to age, paragraph 171 of the

above General Survey specifies that the quantity and quality of work carried out should be the decisive factor in determining the wage paid. The Committee therefore recalls that, as indicated by the Conference Committee on the Application of Standards, even though the minimum wage Conventions do not forbid the determination of lower minimum wage rates for young workers, the measures in this respect should be taken in good faith and should incorporate the principle of equal remuneration for work of equal value. The reasons that prompted the adoption of lower minimum wage rates for groups of workers on account of their age and disabilities should be regularly re-examined in the light of this principle. The Committee therefore requests the Government to provide information in future reports on any developments relating to the issue of the difference in minimum wage rates based on age and strongly hopes that the Government will be in a position to inform the International Labour Office in the near future of the progress achieved with a view to the full application of the principle of “equal remuneration for work of equal value”.

Application of the Minimum Wage Act

9. The Committee notes the explanations provided during the discussion of this subject in the Committee on the Application of Standards of the International Labour Conference at its 86th Session (June 1998) and the changes in the national regulations respecting the supervisory system and penalties for the enforcement of the national minimum wage provisions, and particularly the new procedures established by the Employment Relations Act, which entered into force on 2 October 2000 and which enable, in accordance with the requirements of *Article 4, paragraph 2*, of the Convention, a worker to whom the minimum rates are applicable and who has been paid wages less than these rates to recover, by judicial or other legalized proceedings, the amount by which he or she has been underpaid, subject to such limitation of time as may be determined by national laws or regulations. The Committee notes in particular section 131(2) of the above Act, by virtue of which employees may recover the difference between the wage actually paid and the minimum wage, notwithstanding the fact that they have accepted by any expressed or implied agreement a lower rate.

10. With regard to the communication of information to employers and workers on the minimum rates of wages in force and the organization of a system of supervision and sanctions to ensure that wages are not paid at less than the applicable minimum rates, the Government indicates that the adoption of the Employment Relations Act has established a new procedure applicable in the event of violations of the regulations on minimum wages. In the context of this new procedure, following a complaint by an employee, the labour inspection services may, in the event of the failure of a demand notice addressed directly to the employer, commence an action on behalf of an employee before the Employment Relations Authority to recover wages due and against any employer who does not abide by the obligation to pay the minimum wages due in their totality. Under the new legislation, workers are also entitled to go directly to the above authority and may also decide, in common agreement with the employer, to have recourse to mediation by the authority free of charge. The Government states that the Department of Labour focuses on prevention by organizing information campaigns intended to ensure compliance with the national legislation on minimum wages through increased awareness of it. It adds that 20 labour inspectors, supported by 19 staff in the

Employment Relations Service of the Department of Labour, provide assistance in the field of minimum wages through a free telephone line or by electronic mail. The Government adds that any complaint received by the Labour Inspection Services from a person other than a worker gives rise to an investigation, where appropriate, leading to action. The Government also states that the Employment Relations Act gives entitlement to paid leave for employment relations training for members of trade unions, thereby allowing them to increase their knowledge in this field. The Committee also notes the establishment of the Employment Relations Education Contestable Fund, financed by the State and intended to allow members of a trade union and other workers and employers to improve their knowledge of the subject. According to the Government, this approach is compatible with the objectives of the Employment Relations Act, namely to ensure productive and cooperative employment relationships based on the principle of good faith and to resolve employment problems at an early stage by providing information and mediation services, which consequently reduce the need for sanctions. It is from this perspective that, according to the Government, the power of inspectors should be viewed to issue demand notices to employers, the intention of which is to recover the sums due to workers, rather than engaging in legal recovery procedures and imposing penalties. The primary focus in such investigations and compliance actions is, according to the Government's report, to recover any underpayment of the minimum wage.

11. The Government also provides statistical information on the estimated number of workers receiving the statutory minimum wage, as well as information on the number of requests for information concerning minimum wages through the free telephone service (an average of 14,000 a year since 1998), the number of complaints to the labour inspectorate for violations of the legislation on the adult minimum wage (which rose from 93 in 1998 to 222 in 2002), the number of complaints to the labour inspectorate for violations of the legislation on the youth minimum wage (an average of 15 a year since 1998) and the number of compliance actions brought to the Employment Relations Authority and the Employment Tribunal (actions under the Employment Contracts Act), which have averaged eight a year since 1998.

12. In this respect, Business New Zealand emphasizes that minimum wage infringements are rare in New Zealand and that where they are suspected both employees and unions have access to wage records and enforcement mechanisms. It adds that all the industrial relations legislation, including the minimum wage legislation, applies to every enterprise of whatever size.

13. While noting the information provided on the number of complaints lodged with the labour inspectorate, the number of requests for information and the actions of the labour inspectorate, the Committee requests the Government to continue making all the necessary efforts to ensure the appropriate application of the provisions of the Convention and to continue supplying information to the International Labour Office so that the Committee can assess the extent to which the Convention is applied.

South Africa (ratification: 1932)

The Committee notes that the Government's report only contains information which partially replies to its previous comments. It must therefore repeat its previous observation which read as follows:

The Committee notes the information supplied in the Government's report in reply to its previous comments, including the text of the Main Agreement for the Iron, Steel, Engineering and Metallurgical Industry, as consolidated in 1996. It further notes the Government's statement that: (i) labour legislation in South Africa is currently undergoing a complete revision, and certain regulating measures are currently still in operation as part of the transition phase; (ii) the Labour Relations Act, 1956, has been repealed and replaced by Labour Relations Act No. 66 of 1995, as amended by the Labour Relations No. 42 of 1996.

The Committee hopes that these ongoing changes will take into account the Committee's comments concerning this Convention. It requests the Government to continue to provide information on any developments in this regard.

Effective fixing of minimum wages

Article 1 of the Convention. The Committee notes the Main Agreement for the Iron, Steel, Engineering and Metallurgical Industry, as consolidated in 1996. It notes that this agreement does not provide for minimum wages in this sector. It also notes the Government's indication that there are no specific measures taken or envisaged for the regulation of minimum wages during the period for which there is no collective agreement in force. In principle, however, the minimum wage would continue to be acceptable in the industry and the employer would not unilaterally be able to reduce the norm in the absence of the agreement without opening the business, enterprise or industry to an allegation of an unfair practice.

The Committee recalls the explanations provided in paragraph 62 of its 1992 General Survey on minimum wages, according to which the creation and maintenance of methods for fixing minimum wages is not enough to comply with the obligations arising from the Convention, but it is also necessary to use these methods for the effective fixing of minimum wages. The Committee hopes that, in the near future, the Government will take measures to ensure the fixing of minimum wages during the period for which there is no collective agreement in force.

Binding force of minimum wages

Article 3, paragraph 2(3). In its previous comments, the Committee referred to the Temporary Removal of Restrictions on Economic Activities Act of 1986, under which the State President may, by proclamation, suspend, or grant exemption from, the provisions of any enactment having force of law. It requested the Government to indicate measures taken to ensure that the application of the provisions of the Convention is not affected by proclamation made under the Act of 1986.

The Committee recalled that *Article 3, paragraph 2(3), of the Convention* requires minimum rates of wages to be binding on the employers and workers concerned and does not allow abatement except by collective agreement with the general or particular authorization of the competent authority. It also noted that section 2 (concerning consultation) of the 1986 Act provides only for optional consultation, inter alia, with persons representing the class of persons concerned.

The Committee notes with regret that the Government's report does not contain any indications with respect to the above request. It hopes that the Government will indicate any measures taken or contemplated to ensure the application of the provisions of the Convention, and in particular of *Article 3, paragraph 2(3)*, with regard to the proclamation made under the 1986 Act. It also hopes that the Government will provide information on any

proclamation made under this Act that involves suspension of or exemption from enactments concerning the minimum rates of wages.

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

Turkey (ratification: 1975)

The Committee notes the report provided by the Government, and the comments made by the Turkish Confederation of Employer Associations (TISK), the Confederation of Progressive Trade Unions of Turkey (DISK) and the Confederation of Turkish Trade Unions (TÜRK-İŞ).

I. Application of minimum wage fixing machinery to home-based industries

1. With regard to the question of home work, TISK considers, in its comments provided in 2001 and 2002, that regulations in this field must take into account the differences in conditions and practices in each region, sector and enterprise. According to TISK, any form of standardization in the field of home work would affect the competitiveness of enterprises and would to a large extent eliminate the function fulfilled by this flexible form of employment. There is also a risk, if home work is subjected to regulations that are too strict, that jobs in the sector would shift to the informal sector of the economy. TISK considers, in this respect, that regulations in this field could not be based on the Labour Act No. 1475, since home work cannot be qualified as an employment relationship in the absence of the element of dependence by workers on the employer. TISK believes that it is unclear whether homeworkers can be considered as “employees”, or rather as being “self-employed”. Moreover, as home work is generally paid on the basis of piece-work, the establishment of a minimum wage would be impossible in view of the disparate nature of the work performed. TISK considers that, for all these reasons, an amendment of the national regulations on minimum wages with a view to including home work is not appropriate.

2. The Committee notes that the Government indicates in its report, with regard to home work, that the preparation of legal provisions respecting minimum wages in non-standard forms of work has not progressed adequately during the Seventh Five-Year Development Plan. For this reason, the Eighth Five-Year Plan, covering the period from 2001 to 2005, continues to have the objective of limiting unregistered employment, which continues to have an adverse effect on industrial relations and enterprises. The Government indicates in this respect that home work and domestic work are the two main fields in which the preparation of legislative texts is envisaged. However, it adds that difficulties have been encountered in defining the terms “worker”, “employer” and “workplace”. The Government also indicates that this issue has been the subject of reflection by the Supreme Court of Appeal, which found in a decision issued in June 2000 that, where the work is carried out under the instructions of an employer, it could constitute work performed under a contract of employment, even though it is paid at piece-rates.

3. The Committee recalls that, by virtue of *Article 1 of the Convention*, machinery must be created whereby minimum rates of wages can be fixed for workers employed in

trades in which no arrangements exist for the effective regulation of wages by collective agreement or otherwise and wages are exceptionally low, and particularly in trades or parts of trades carried on at home. The Committee regrets that, despite the commitments made in this respect on several occasions, the Government has still not succeeded in adopting laws or regulations extending the scope of the minimum wage to the above industries. It firmly hopes that the Government will make every effort to ensure that these categories of particularly vulnerable workers benefit, as soon as possible, from the provisions of the national legislation relating to minimum wages.

II. Consultation and participation of employers' and workers' organizations for the determination and operation of minimum wage fixing machinery

4. The Confederation of Progressive Trade Unions of Turkey (DISK) considers, in the comments made in 2001 and 2002, that the national legislation is not in accordance with *Article 3, paragraph 2*, of the Convention. Certain trade unions, such as DISK and the Confederation of Real Trade Unions of Turkey (HAK-İŞ), are not represented on the Minimum Wage-Fixing Board, which was established under section 33 of the Labour Act and is composed of five members representing each of the parties, with employers' and workers' organizations being selected from among the most representative. In view of the fact that the decisions of this Board are adopted by majority and that the Turkish State is the largest employer in the country, in the view of DISK there is an obvious imbalance between workers' representatives, on the one hand, and employers' representatives, on the other. DISK therefore considers that consultations have not been held within the meaning of *Article 3, paragraph 2(1)*, of the Convention, and that all the organizations of employers and workers concerned have not been consulted, in accordance with *Article 3, paragraph 2(2)*.

5. The Committee notes with concern that the Government's report does not contain information on the comments made by this organization. It recalls that, under the terms of *Article 3, paragraph 2(1) and (2)*, of the Convention, all the organizations of employers and workers concerned shall be consulted for the purposes of determining the minimum wage fixing machinery and shall participate in its application. While waiting for the Government to provide its observations on the comments made by DISK, the Committee urges the Government to take all appropriate measures to ensure that the social partners participate *on an equal footing* in both the determination and operation of minimum wage fixing machinery.

III. Revision of the minimum wage fixing machinery

6. In the comments made in 2001 and 2002, TISK expresses the hope that the Government will be able to complete the amendment of the national legislation reviewing the minimum wage fixing machinery. TISK indicates that it is in favour of differentiated treatment, based on whether or not a collective agreement is applicable in the workplace. It also hopes that an amendment will be made as soon as possible allowing derogations from the minimum-wage legislation where a collective agreement is applicable by permitting the determination of minimum wages by means of collective bargaining. TISK recalls that, under the terms of *Article 1* of the Convention, minimum wage fixing machinery has to be created where no arrangements exist for the effective

regulation of wages by collective agreement. It therefore considers that, *a contrario*, where collective agreements exist, the minimum wage should not be applicable.

7. With regard to the revision of the minimum wage fixing machinery, the Government indicates that the national Constitution was amended on 3 October 2001 and that article 55 of the Constitution now provides for the determination of minimum wages on the basis of the living conditions of workers, which should enable workers to maintain their standards of living. The Government adds that its Action Plan for 2001 provided for studies to be undertaken concerning the amendment of regulations on minimum wage fixing machinery. As it was not possible to complete these studies on time, this objective was also included in its Action Plan for 2002 with the target of adopting the amendments respecting minimum wage fixing machinery before the end of 2002.

8. The Committee notes that the Government's report does not reply directly to the points raised by TISK and it therefore requests it to indicate its position on these matters in its next report. Furthermore, it recalls that under the terms of *Articles 1 and 3, paragraph 2(3)*, of the Convention, read together, where a minimum wage has been established by law as being applicable to certain trades or parts of trades, it becomes compulsory for the employers and workers concerned, who cannot lower it either by individual agreements or, unless the competent authority gives general or specific authorization, by collective agreement. Furthermore, the Committee requests the Government to keep the International Labour Office informed of any technical measures taken in future to modify the minimum wage fixing machinery and continues to hope that the Government will make every effort to achieve a consensus on the proposed amendment to the minimum wage fixing machinery, and that it will soon be in a position to announce practical improvements in this respect.

IV. Application of the Convention in practice

9. The Committee notes that TÜRK-İŞ reiterates the comments attached to the Government's previous report. According to TÜRK-İŞ, the system of home work, which includes domestic workers as well as "subcontracted" workers, is the most common form of evading the protection provided for workers by the labour legislation and the national legislation on minimum wages should also apply to these two categories of employment. Furthermore, TÜRK-İŞ considers that the system of supervision of minimum wages is ineffective and the penalties very inadequate to prevent cases of non-compliance with the legislation, particularly when account is taken of the proliferation of clandestine employment and the growing numbers of small enterprises created in the informal sector.

10. With reference to the Committee's observation in 2001 with regard to the measures taken or envisaged for the reinforcement of the supervisory and inspection machinery, especially in relation to homeworkers and workers employed in the informal sector, TISK considers that such measures are not the only means of combating in an effective manner practices which are mainly caused by economic factors. TISK considers that it is necessary to introduce greater flexibility into the national legislation and reduce the liability of employers, which adversely affects the workforce.

11. The Government indicates in this respect in its report on the Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99), that, since the entry into force on 1 August 1999 of Act No. 4421, the amount of the fines envisaged by Labour Act No. 1475 has been multiplied twelve fold. It also recalls that the Labour Inspection Department of the Ministry of Labour and Social Security has been carrying out studies with a view to modifying its inspection methods and to making labour inspection more effective. In this respect, it has targeted the implementation of sectoral inspections and inspections in small-scale enterprises. The Government adds that the recruitment of 100 new assistant labour inspectors was completed in 2001. With regard to the penalties imposed in cases of violations of the legislation on minimum wages, the Government states that it does not have detailed statistical information on the number of workers who have been the victims of such violations. However, it indicates that the work of compiling statistical data is currently under way with a view to achieving a better evaluation of the results of inspections. While awaiting the latter, the Government indicates that, of the 28,217 enterprises inspected in 2001, a total of 21 enterprises were penalized for violations of section 33 of the Labour Act respecting the minimum wage and that the total amount of the penalties imposed was around 196,000 million Turkish lira.

12. The Committee notes this information and hopes that the Government will continue to take all other appropriate measures with a view to strengthening the system of supervision and inspection. It notes that the Government does not specify whether the studies undertaken by the Labour Inspection Department, concluding that it is necessary to undertake sectoral inspections, have had the result of strengthening the supervision and inspection machinery, particularly with regard to homeworkers and workers in the informal sector. The Committee therefore requests the Government to provide more information on the means used to reinforce inspections in these fields, in which evasion of the legislation protecting workers and on minimum wages is reported to be most common.

13. Furthermore, the Committee requests the Government to provide further information on the work carried out on the machinery for determining and applying minimum wages by the Committee of Academics, which has been established to review national law with a view to bringing it into conformity with ILO standards, and which is composed of nine academicians representing the Government and the social partners on an equal footing.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Barbados, Belize, Central African Republic, Colombia, Congo, Côte d'Ivoire, Djibouti, Dominica, Fiji, Luxembourg, Madagascar, Morocco, Papua New Guinea, Sierra Leone, Solomon Islands, South Africa, Tunisia, Uganda.*

Convention No. 27: Marking of Weight (Packages Transported by Vessels), 1929

Angola (ratification: 1976)

The Committee notes the Government's last report. It notes that the General Labour Act No. 2/00 of 11 February 2000 has been adopted.

The Committee notes that this Act does not contain provisions giving effect to *Article 1, paragraph 1, of the Convention*, under the terms of which any package or object of 1,000 kg or more gross weight consigned for transport by sea or inland waterway shall have its gross weight plainly and durably marked upon it on the outside before it is loaded on a ship or vessel. The Committee therefore notes, as it has been doing for a certain number of years, the absence from the national legislation of provisions giving effect to this Article of the Convention. In this respect, the Committee notes that the Government, in its reports received in 1986 and 1987, stated its intention of taking the necessary measures to give effect to this provision of the Convention. Subsequently, the Committee noted on several occasions the Government's indication that a draft legislative text along these lines was under examination. However, in its last report the Government no longer refers to this draft text. The Committee is therefore bound to reiterate its firm hope that the Government will make every effort to ensure that a legislative text giving effect to *Article 1, paragraph 1, of the Convention* is adopted in the very near future, and that it will also give effect to *paragraph 4 of Article 1*, by indicating who is vested with the obligation to have the weight marked.

The Committee trusts that the Government's next report will contain information on the adoption of a legislative text giving full effect to the Convention.

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

Convention No. 29: Forced Labour, 1930

Algeria (ratification: 1962)

The Committee notes that the Government's report contains no reply to previous comments. It must therefore repeat its previous observation on the following matters:

1. *Civic service*. Since 1986 this Committee has drawn the Government's attention to the incompatibility with the Convention of sections 32, 33, 34 and 38 of Act No. 84-10 of 11 February 1984, as amended in 1986, which requires persons who have completed a course of higher education or training, to perform a period of civic service of between two and four years in order to obtain employment or exercise an occupation.

On this subject, the Government states in its latest report that civic service is a statutory period of work performed by persons under the authority of a public administration, body or enterprise in local communities. It represents the contribution of these persons to the economic, social and cultural development of the country. According to the Government, persons covered by civic service have the same rights and obligations as the workers governed by the legislation with regard to the general conditions of service of workers, including the right to receive remuneration at the expense of the employing body in accordance with the law. Furthermore, the years of civic service performed are taken into

account for purposes of seniority, promotion and retirement, as well as in the contract period during which the person concerned is bound to a public body by a training contract. Finally, with regard to the incompatibility noted by the Committee, the Government recalls that persons covered by civic service carry out this service exclusively in the specialized branch or discipline in which they have been trained.

The Committee takes due note of these explanations. However, it also points out that under sections 32 and 38 of the Act, refusal to perform civic service and the resignation of the person concerned without acceptable grounds results in their prohibition from exercising an activity on their own account, such as setting up as a trader, craftworker or promoter of a private economic investment, and that any violation is punishable under section 243 of the Penal Code. Similarly, under sections 33 and 34 of the Act, all private employers before engaging workers are required to satisfy themselves that applicants are not covered by civic service or can produce documentation proving that they have discharged it, and that any private employer knowingly employing a citizen who has evaded civic service is liable to imprisonment and a fine. Therefore, although the persons liable to civic service benefit from working conditions (remuneration, seniority, promotion, retirement, etc.) similar to those of regular public sector workers, they discharge this service under threat because, in the event of their refusal, they are denied access to any professional self-employed activity or to any employment in the private sector. In those circumstances the requirement to perform civic service falls within the concept of compulsory labour contained in *Article 2, paragraph 1, of the Convention*. Furthermore, since it consists of a contribution by the persons concerned to the economic development of the country, this compulsory service violates *Article 1(b) of Convention No. 105*, which has also been ratified by Algeria.

The Committee recalls that forced 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. Referring again to the explanations provided in paragraphs 55 to 62 of its 1979 General Survey on the abolition of forced labour, the Committee trusts that the necessary measures will be taken to repeal or amend the provisions in question in the light of Conventions Nos. 29 and 105 and that the Government will soon be able to report on the provisions adopted to this end.

2. *National service.* In its earlier comments since 1988, the Committee has referred to Ordinance No. 74-103 of 15 November 1974 issuing the National Service Code, under which conscripts are required to contribute to the operation of various economic and administrative sectors. It has also referred to the Order of 1 July 1987, which requires conscripts, after three months of military training, to serve in priority sectors of national activity, and particularly as teachers. The Committee notes that these are also required to perform two, three or four years of civic service (see point 1 above). The Committee recalled that, under the terms of *Article 2, paragraph 2(a)*, of the Convention, compulsory military service is excluded from the scope of the Convention only where conscripts are assigned to work of a purely military character. In the absence of information in the Government's latest report on this point, the Committee trusts that the needs of public education and other non-military sectors will be met without having recourse to compulsory labour and that the necessary measures will be taken to ensure compliance with the Convention on this matter. The Committee hopes that the Government will soon be in a position to report that the relevant provisions of the national legislation have been amended or repealed.

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

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

Burkina Faso (ratification: 1960)

The Committee notes that the Government's report contains no reply to previous comments. It must therefore repeat its previous observation on the following matters:

1. In its previous comments the Committee referred to articles 178-181 of YATU No. AN VI-008/FP/TRAV of 26 October 1988 issuing the General Public Service Regulations. It again asks the Government to provide information on the criteria for accepting or refusing the resignation of civil servants.

The Committee previously noted the Government's statement that, when the General Public Service Regulations were revised, all the relevant practices would be made formal to take account of the Committee's comments on the incompatibility with the Convention of the provisions preventing workers from terminating their employment by means of notice of reasonable length.

In its previous report, the Government indicated that the Committee's comments have been taken into account in Act No. 013/98/AN of 18 April 1998 issuing the basic statute on public service jobs and public servants.

The Committee noted with regret that the provisions of articles 178-181, on which it commented previously, had been reproduced with no amendment whatsoever as articles 158 and 160 of the new Act. Under these provisions, public servants wishing to resign must apply in writing two months before the presumed date of departure to the Minister of the Public Service, who must notify his agreement or refusal within two months. Public servants who end their employment despite a refusal by the competent authority, before the latter's express acceptance or before the date set by the authority, are dismissed on grounds of abandoning their duties.

The Committee again emphasizes that, where employment is the result of freely concluded agreement, the effect of statutory provisions preventing termination of employment by means of notice of reasonable length is to turn a contractual relationship based on the will of the parties into service by compulsion of law, which is incompatible with the Convention. The Committee again asks the Government to take the necessary steps to ensure observance of the Convention on this point.

2. *Trafficking in persons.* The Committee noted that, according to information from several different sources, a large number of women and children are exploited by traffickers for labour purposes. The aim of such trafficking is to exploit their labour in agriculture, domestic work, prostitution and begging.

According to the ILO's Global Report "Stop forced labour", children from Burkina Faso are forced to work on plantations in Côte d'Ivoire (paragraph 57). Burkina Faso is a sending, receiving and transit country, according to a study by the Ministry of Employment, Labour and Social Security (METSS) of March 2000, cited in the national report of December 2000 on the follow-up to the World Summit for Children, and which refers to the various forms of child exploitation. Most of the children from Burkina Faso sold abroad are employed in agriculture and sometimes subjected to prostitution. The intermediaries, who operate from Côte d'Ivoire, have children delivered to them by intermediaries operating in Burkina Faso (summary report of the subregional project of the International Programme on the Elimination of Child Labour (IPEC/ILO, 2001): "Combating child trafficking for labour exploitation in Western and Central Africa").

The Committee noted the establishment of a National Commission on the rights of the child and a national committee to supervise observance of the rights of the child. It also noted that a study on child trafficking in Burkina Faso was being conducted jointly by the Ministry of Employment and Labour and the International Programme on the Elimination of

Child Labour (IPEC). The Committee again asks the Government to indicate any measures taken to combat trafficking in people and to ensure protection against forced labour.

Article 25 of the Convention. According to *Article 25* of the Convention, the illegal exaction of forced or compulsory labour must be punished as a penal offence and it is an obligation on any Member ratifying the Convention to ensure that the penalties imposed by law are really adequate and strictly enforced. The Committee observed that, according to the Government's previous report, no legal proceedings had been instituted to punish those trafficking in persons for labour exploitation.

The Committee noted Act No. 43/96/ADP of 13 November 1996 issuing the Penal Code.

The Committee again asks the Government to provide information on legal proceedings instituted against persons trafficking in human beings and the penalties imposed.

It noted that sections 244 and 245 of the Penal Code establishes penalties of imprisonment for persons forcing adults or minors into begging. The Committee again asks the Government to provide information on the application of these provisions in practice, particularly the number of prosecutions and the penalties imposed.

3. The Committee noted in its previous comments that, according to the Government, in the revision of the Penal Code account would be taken of new forms of exploitation, including certain slavery-like situations such as employment of children in households without any particular status and without adequate remuneration.

It also noted the provisions of Order No. 539/ITLS/HV of 29 July 1954 concerning child labour in all establishments, whatever their nature, and in households, which contains detailed provisions to ensure the protection of children in domestic service and Order No. 545/GTL/HV of 2 August 1954, which prohibits the employment of children under the age of 14 for more than four and a half hours in all per day.

The Committee had asked the Government to provide full particulars of any measures taken to ensure that effect is given to the provisions of the abovementioned Orders. The Committee notes that the Government's report contains no information on this matter. It again asks the Government to provide on the next occasion the particulars requested.

Chad (ratification: 1960)

The Committee notes that no report has been received from the Government. It must therefore repeat its previous observation on the following matters:

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.

Comoros (ratification: 1978)

The Committee notes that no report has been received from the Government. It must therefore repeat its previous observation on the following matters:

1. *Article 1, paragraph 1, and Article 2, paragraphs 1 and 2(c), of the Convention.* In its comments over a number of years, the Committee has drawn the Government's attention to section 1 of Order No. 68-353 of 6 April 1968, under which labour is compulsory for all persons in detention. In its report the Government indicated that this Order had not been abrogated but that in practice prisoners were not under the obligation to perform any kind of labour, either inside correctional institutions or on the outside. The Committee notes the comments made by the Union of Comoros Workers' Autonomous Trade Unions (USATC), transmitted by the Government in its report, according to which judicial and prison authorities had recourse to forced labour for detainees and political detainees. The USATC indicated in 1999 that "certain workers of the Ports and Maritime Transport Company (SOCOPOTRAM) who had claimed their rights found themselves in jails of the national police and were forced to work by cleaning the area of the port". The Committee notes that in its response to the comments of the USATC, the Government condemned the fact that detained workers were forced to perform urban cleaning work. The Committee hopes that the Government will take the measures necessary to ensure that persons detained without having been convicted shall work only on a voluntary basis and at their request.

2. In its earlier comments the Committee also referred to section 7, paragraph 2, of Order No. 68-353 of 6 April 1968, according to which prisoners whose conduct is considered satisfactory can work for a private employer with a view to their moral rehabilitation or re-adaptation to normal working life. It requested the Government to provide information on the practice of private individuals or companies using prison labour. In its report the Government indicated that it envisaged the abrogation of the Order in question. The Committee hopes that the Government will soon be able to announce the abrogation of Order No. 68-353 and that it will transmit a copy of the abrogating text.

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

Congo (ratification: 1960)

The Committee notes that no report has been received from the Government. It must therefore repeat its previous observation on the following matters:

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.

Côte d'Ivoire (ratification: 1960)

The Committee notes that no report has been received from the Government. It must therefore repeat its previous observation on the following matters:

Article 1, paragraph 1, and Article 2, paragraphs 1 and 2(c), of the Convention

1. Since 1972, the Committee has been drawing the Government's attention to sections 24, 77, 81 and 82 of Decree No. 69-189 of 14 May 1969 (issued under sections 680 and 683 of the Criminal Procedure Code) which provide that prison labour may be hired to private individuals. The Committee has already recalled in numerous comments on this legislation that it is only when work is voluntarily accepted by prisoners and carried out in conditions similar to those of free employment relations (e.g. as to wages) that prison work for a private enterprise or person may be regarded as compatible with the Convention.

The Committee noted the Government's statement that draft amendments to bring the abovementioned Decree into conformity with the provisions of the Convention had not yet been completed. The Committee requested the Government to provide information on any developments and any progress achieved in this regard.

In its latest report, the Government indicates that the new Constitution which devotes a section to human rights cannot maintain outdated provisions in the legislation. The Government has therefore decided to review all the texts containing provisions contrary to the spirit of the new Constitution. The Committee notes this statement and, since it has been making comments on the matter for a number of years, it hopes that the necessary measures will be adopted shortly and that the Government will be able to report on progress made in this matter.

2. In its last observation, the Committee referred to certain allegations concerning a widespread practice of migrant labourers, including children particularly from Mali and Burkina Faso, being forced to work on plantations against their will. The Committee requested the Government to supply information on this point.

The Committee notes the Government's indications in its report that in Côte d'Ivoire undertakings are small and use family labour and sometimes migrants from neighbouring countries. These workers have ultimately established their own undertakings and, to develop them, they bring from their countries relatives and children whom they declare to be their families. This is how the recent practice of using child labour in Côte d'Ivoire has arisen, it

has been aggravated by the principle of free circulation of goods and persons in the framework of ECOWAS and the hospitality of the Côte d'Ivoire which is a country of high immigration. The Government adds that Côte d'Ivoire is suffering this development but the real recruiters are not Ivorians. It indicates that in order to combat this scandalous and inhuman practice the Government has adopted specific, vigorous measures and actions such as: strengthening border controls; establishing a legal and institutional framework to combat trafficking of children; carrying out arrests, legal processes and criminal convictions for child traffickers in the courts; identifying children victims of trafficking and repatriating to their families and countries of origin; and carrying out public awareness measures. In addition, Côte d'Ivoire signed a bilateral cooperation agreement with Mali on 1 September 2000 to combat cross-border child trafficking.

The Committee notes the consolidated subregional project report of the International Programme on the Elimination of Child Labour (ILO/IPEC, 2001) entitled "Combating Trafficking in Children for Labour Exploitation in West and Central Africa". According to this report, the children work in mines and plantations or as domestic servants. Most of those working in plantations come from Mali and Burkina Faso. The study reports on organization of trafficking, recruitment of children by intermediaries acting individually or in organized groups (the report states that in Côte d'Ivoire two employment agencies are involved in trafficking of children). According to the report, the intermediaries specialized in the domestic employment sector are Ivorian or Ghanaian while those in the mining sector are Burkinabé and Malian.

According to the report, employers in Ivorian plantations pay 50,000 FCFA (70 dollars) per child (half for transport costs and half for the child) while a mine owner pays 75,000 FCFA (105 dollars) per child (25,000 FCFA for transport costs and 50,000 for the child).

The Committee notes the information presented by Côte d'Ivoire to the Committee on the Rights of the Child (CRC/C/8/Add. 41 of 27 April 2000) which states that the exploitation of child labour takes place also in the production of both goods and services: carpentry, catering, crafts, street trading, domestic work, engineering, mining, etc. The Government cites a study by a non-governmental organization, Defence for Children International (DCI), entitled "Child Labour in the Mines of Côte d'Ivoire, illustrated by the Tortiya and Issia mines", which reveals that 1,150 children are working in the Issia gold mine and Tortiya diamond mine. This child labour involves long hours and night work in violation of both the Convention on the rights of the child and domestic legislation, in particular the Labour Code which restricts the child's working hours to eight hours a day and expressly prohibits night work (section 22.2). The situation is still worse in the case of girls, who are exploited sexually as well as economically (paragraphs 87 and 88). The report mentions the existence of child prostitution organized by networks and the fact that there are no specific legal provisions covering the sexual exploitation of children for commercial purposes.

The Committee notes the information in the December 2000 national report on monitoring the objectives of the World Summit for Children according to which 750 children work in the mines and around 15,000 children are victims of international trafficking, particularly from Mali towards Côte d'Ivoire.

The Committee notes from the various sources of information mentioned above that the Government is aware of the situation and that certain activities have been undertaken to combat child trafficking towards Côte d'Ivoire. The Committee notes that the new Constitution of 2000 lays down that forced labour is prohibited and punished by the law.

Article 25. 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 requests the Government to take the necessary action to sanction persons responsible for people trafficking for the purpose of labour exploitation and to communicate information on the number of legal procedures brought against those responsible and the sentences imposed.

The Committee requests the Government to supply a copy of the Code on the rights of the child, the report on the application of the agreement between Mali and Côte d'Ivoire, Act No. 88-686, the new Penal Code and the Penal Procedure Code.

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

Dominica (ratification: 1983)

The Committee notes that the Government's report contains no reply to previous comments. It must therefore repeat its previous observation on the following matters:

Article 2(2)(a) and (d) of the Convention. The Committee previously noted that, under sections 12 and 28 of the National Service Act, 1977, persons between the ages of 18 and 21 years, among others, are required to perform service with the National Service. It noted that servicemen are to undertake training and employment and perform such duties as may be prescribed and, where possible, be engaged in development and self-help projects including housing, school, construction, agriculture and road-building (section 29). Persons who fail without reasonable excuse to present themselves to serve when called upon may be punished with a fine and imprisonment (section 35(2)).

Having noted the Government's repeated statements that the National Service was created to respond to national disasters and that section 35(2) of the Act has not been applied, the Committee referred to section 9(1) of the Act, according to which the objectives of the National Service "shall be to mobilize the energies of the people of Dominica to the fullest possible level of efficiency, to shape and direct those energies to promoting the growth and economic development of the State". The Committee observed that there is no reference to natural disasters, let alone a limitation in scope to such occurrences. It also referred to *Article 1(b)* of the Abolition of Forced Labour Convention, 1957 (No. 105), ratified by Dominica in 1983, which specifically prohibits the use of forced or compulsory labour "as a means of mobilizing and using labour for purposes of economic development", and requested the Government to take the necessary measures with a view to repeal or amend the 1977 National Service Act so as to bring national legislation into conformity with Conventions Nos. 29 and 105.

The Government indicated in its report of 2000 that no measures had been taken to repeal the National Service Act of 1977. The Committee trusts that appropriate measures will be taken in the near future in order to bring national legislation into conformity with the Conventions and asks the Government to provide, in its next report, information on the progress made in this regard.

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

France (ratification: 1937)

The Committee notes that no report has been received from the Government. It must therefore repeat its previous observation on the following matters:

The Committee has noted the report of the Commission of Inquiry on conditions of detention in prison establishments in France, which was set up under a resolution adopted by the Senate on 10 February 2000.

Article 1, paragraph 1, and Article 2, paragraphs 1 and 2(c), of the Convention. Prisoners working for private enterprises. The Committee recalls that, in accordance with section D.103(1) of the Code of Criminal Procedure, work in prison establishments is performed principally under one of the following three forms: general service work (intended to discharge the various types of work or tasks necessary for the operation of the prison establishment); the hiring of prison labour; and work for the Industrial Board of Prison Establishments (RIEP). Where labour is hired, prisoners work for a private enterprise in the event that the hiring enterprise is in the private sector, which is most frequently the case. Furthermore, in the few cases in which the prison establishment itself is administered by a private enterprise, detainees assigned to general tasks in the prison establishment are thereby in the service of a private enterprise.

Free consent and conditions of employment approximating a free labour relationship. With reference to its general observation under the Convention, the Committee recalls that since the adoption of the Act of 22 June 1987, convicted persons are no longer in principle compelled to work. Under section D.99(1) of the Code of Criminal Procedure:

Detainees, irrespective of their penal category, may request that work be proposed to them.

Under the terms of section D.102(2):

The organization, methods and remuneration of work shall be as close as possible to those of external occupational activities with a view, inter alia, to preparing detainees for the normal conditions of free work.

According to section D.106(2):

Such remuneration shall be subject to employers' and workers' contributions under the terms established, for sickness, maternity and old-age insurance, by sections R.381-97 to R.381-109 of the Code of Social Security.

Prisoners thus benefit from social security in the same way as other workers. Reasonable deductions from remuneration are furthermore envisaged in sections D.112 and D.113 to share in the costs of maintenance, indemnify civil parties and for alimony payments.

According to section D.108:

Working time by day and by week, determined by the internal rules of the establishment, shall approximate the hours of work in the region or in the type of work concerned; in no case may they be higher. Observance of weekly rest and national holidays shall be ensured; working schedules shall foresee the time required for rest, meals, exercise and educational and leisure activities.

The Committee also notes with interest, further to its previous comments on this point, that under section D.109 of the Code of Criminal Procedure, as amended by Decree No. 98-1099 of 8 December 1998:

The safety and health measures provided for in Book II, Title III of the Labour Code and the decrees issues thereunder ... shall be applicable to work performed by detainees within and outside prison establishments ...

and the intervention of the labour inspection services is envisaged in this respect by section D.109-1 of the Code of Criminal Procedure, incorporated by the above Decree No. 98-1099, and regulated by a joint circular of the Ministries of Justice and of Employment and Solidarity of 16 July 1999, which was attached to the Government's report.

Finally, under section D.110:

The right to compensation for employment accidents and occupational diseases shall be recognized for detainees performing work, in accordance with the special scheme established by Decree No. 49-1585 of 10 December 1949 (codified text, cf. sections D.412-36 to D.412-71 of the Code of Social Security) respecting the application to detainees of Act No. 46-2426 of 30 October 1946 on the prevention and compensation of employment accidents and occupational diseases.

What remains to be done. It appears from the above provisions that the guiding principles of French legislation governing prison work respond on a number of essential points, and in an exemplary fashion, to the criteria set forth by the Committee so that work performed by a prisoner for a private enterprise can be assimilated to a free labour relationship and not come under the prohibitions set out in *Article 1, paragraph 1, and Article 2, paragraphs 1 and 2(c)*, of the Convention. However, in certain respects, already noted in the Committee's previous comments, the legislative provisions governing prison work still require amendments to this effect: firstly, with regard to the elimination of "the menace of any penalty", within the meaning of *Article 2, paragraph 1*, of the Convention, in the event of refusal to work; and secondly, amendments are necessary to ensure that the relationship between a prisoner working for a private enterprise and her or his employer is always covered by an employment contract, and not only in the case of certain categories of detainees. Furthermore, with reference also to its previous comments concerning remuneration for work and safety and health conditions, the Committee notes that the report of the Commission of Inquiry on the conditions of detention in prison establishments in France found a number of serious deficiencies in practice, some of which have a bearing on the observance of conditions under which the work of a prisoner can be assimilated to a free labour relationship. In all these respects, the Committee notes with interest the Government's statement in its report that the Prime Minister committed the Government in November 2000 to two series of measures: a vast programme for the renovation of prisons with a view to a substantial improvement in the conditions of detention of prisoners, and the formulation of major legislation on the discharge of sentences. The Committee hopes that account will be taken in this exercise of the points mentioned above, which it develops in greater detail 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.

Gabon (ratification: 1960)

1. Article 1, paragraph 1, and Article 2, paragraphs 1 and 2(c), of the Convention

Prison labour

In its previous comments, which it has been making for a number of years, the Committee noted that prison labour is compulsory for all convicts, subject to penalties, by virtue of section 3 of Act No. 22/84 of 29 December 1984 establishing the rules respecting prison labour. By virtue of section 4, such labour includes work inside and outside, and the hiring of prisoners to private parties, both individuals and entities, is admitted for external work on condition that this workforce is not in competition with free labour.

The Committee draws the Government's attention to the fact that *Article 2, paragraph 2(c)*, prohibits any convict from being placed at the disposal of private individuals, companies or associations. However, it considers that prison labour

performed for private companies may be compatible with these provisions of the Convention where the prisoners work under conditions approximating those of a free employment relationship. As the Committee indicated in paragraph 91 of its General Report submitted to the 89th Session of the International Labour Conference in June 2001, this necessarily requires the voluntary consent of the prisoner, as well as further guarantees and safeguards covering the essential elements of an employment relationship, such as the existence of an employment contract, the application of labour legislation, the payment of a normal wage and social security coverage. With regard to the voluntary nature and conditions for the private employment of prisoners, the Committee refers to paragraphs 128-143 of its General Report of 2001.

The Committee notes that, under the terms of section 9 of the Act of 29 December 1984 above, prisoners may be hired to public services or private parties, both individuals and entities, following a written request addressed, in the provinces, to the head of the administrative unit, and in Libreville, to the director of the central prison. Section 10 determines the conditions for the hiring of prisoners to private individuals, including the condition that only convicts who have completed over half of their sentence may be hired where their personality, record, conduct in detention and the indications of reform that they have given provide adequate guarantees for public security and order. Under the terms of section 17, any detainee who has been hired to work for private individuals or entities is granted a payment which is not a wage. The Committee notes that it results from the above provisions that the conditions of a free employment relationship are not fulfilled. In the light of the above, the Committee requests the Government to take measures to repeal the provisions of the above Act which are contrary to the Convention, so as to ensure that prison labour for private parties can only be authorized under conditions approximating those of a free employment relationship.

2. Trafficking of children for the purposes of exploitation

The Committee refers to its general observation of 2001 concerning the trafficking of persons for the purposes of exploitation. In this respect, the Committee notes the information contained in the following reports:

- (i) *Synthesis report of the subregional project of the International Programme for the Elimination of Child Labour (ILO/IPEC, 2001) entitled, "Combating Trafficking in Children for Labour Exploitation in West and Central Africa"*. The study carried out by IPEC in 1998-99 indicates that Gabon is a destination country for the trafficking of persons and that children are brought there from Togo, Benin and Nigeria. The Committee notes that this trafficking of children with a view to their economic exploitation is closely related to certain of the worst forms of child labour. According to the report, the child victims of trafficking are deprived of the right to education and adequate nutrition and are often the victims of physical and sexual abuse.
- (ii) *Report of the Working Group on Contemporary Forms of Slavery of the Sub-Commission on the Promotion and Protection of Human Rights, adopted at its 26th Session, in July 2001*, which describes the case of the Etireno, a vessel on board which were discovered in April 2001 around 40 children who were being brought to Gabon (Doc. E/CN.4/Sub.2/2001/30, paragraphs 35-38).

- (iii) *Reports of Anti-slavery International submitted to the 24th, 25th and 26th Sessions of the Working Group on Contemporary Forms of Slavery of the Sub-Commission on the Promotion and Protection of Human Rights.* The Committee notes that, according to these reports, the majority of children who are the victims of trafficking to Gabon are girls employed in domestic service and as street hawkers, whereas boys mainly work in agriculture. The children often have to work between 14 and 18 hours a day and they are frequently compelled to carry heavy loads and to walk many kilometres each day to sell their goods.
- (iv) *Report of the Government of Gabon examined on 17 January 2002 at the 29th Session of the Committee on the Rights of the Child.* According to this report, the penalties set out in section 16 of the Labour Code, which punish persons who have had recourse to forced labour with a fine of between 300,000 and 600,000 CFA francs and/or imprisonment from one to six months, are rarely applied due to the fact that the activities of labour inspectors are limited to the structured sector which, by its nature, does not have recourse to work by children below the statutory age of admission to employment. The Committee notes that, since March 1998, Gabon has become a partner in the IPEC programme. It also notes that a joint commission for Benin and Gabon was created in March 1999 within the context of bilateral cooperation with responsibility, among other matters, for proposing practical measures to combat the trafficking and work of children from Benin in Gabon (Doc. CRC/C/41/Add.10, paragraphs 266-268). The Committee requests the Government to provide information on the results of the work of this joint commission.
- (v) *Concluding Observations of the Committee on the Rights of the Child respecting Gabon*, adopted on 1 February 2002. The Committee notes the adoption in 2001 of an Act introducing into the Penal Code the offence of the trafficking of children. It notes that, despite the adoption of this Act and the establishment of a national inter-ministerial committee to combat the trafficking of children, as well as the serious commitment by the State on this issue, the Committee on the Rights of the Child has expressed deep concern at the large number of trafficked children who are still exploited, mostly on the informal labour market or enslaved, and particularly in the case of children coming from abroad (Doc. CRC/C/15/Add.171, paragraphs 3 and 59). The Committee requests the Government to provide a copy of the above Act.

In the light of this information, the Committee requests the Government to indicate the measures taken or envisaged to ensure the effective application of the provisions of the national legislation intended to prevent, suppress and punish the trafficking of persons for the purpose of exploitation, as well as the provisions of the Convention.

Haiti (ratification: 1958)

1. 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.

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.

India (ratification: 1954)

1. The Committee has noted the Government's detailed reports and their annexes received in January and August 2001, which contain replies to its earlier comments, as well as the Government's report received in August 2002, which contains a reply to the Committee's 2000 general observation concerning trafficking in persons. It has also noted a discussion which took place at the Conference Committee on the Application of Standards during the 89th Session of the International Labour Conference (June 2001). The Committee has further noted a communication dated 29 August 2001 received from the International Confederation of Free Trade Unions (ICFTU), which contained comments from the Anti-Slavery International on the application of the Convention in India, as well as the Government's reply to these comments. It has also noted the comments made by the National Front of Indian Trade Unions (NFITU) annexed to the Government's 2001 and 2002 reports.

2. The Committee notes two new communications dated 11 June and 2 September 2002, received from the ICFTU, which contain observations concerning the application of the Convention by India. It notes that these communications have been sent to the Government on 29 July and 2 October 2002, for such comments as might be considered appropriate. The Committee hopes that the Government will supply its comments on the above observations with its next report.

Bonded labour

3. In its earlier comments, the Committee repeatedly referred to the urgent need to compile accurate statistics of the number of persons who continue to suffer under bonded labour, using a valid statistical methodology, with a view to identification and release of bonded labourers. It has noted that, according to the data provided in the 2001 Government's reports, since the enactment of the Bonded Labour System (Abolition) Act, 1976 up to 31 March 2000, 280,411 bonded labourers have been identified and 251,569 have been rehabilitated. However, according to the communication received from the ICFTU in June 2002, the vast majority of estimates for the number of forced labourers in India range between 5 million and, according to recent research from the Anti-Slavery International, the much higher figure of 20 million. In the communication transmitted by the ICFTU, the Anti-Slavery International is stressing the necessity for a comprehensive national survey to be carried out to identify the total number of bonded labourers in the country, utilizing the services of an independent body to assist in developing the methodology and conducting the survey.

4. The Committee has noted the Government's repeated statement in its reports that it has rejected the findings of the survey conducted by the Gandhi Peace Foundation and the National Labour Institute (NLI) in 1978-79 which cited a number of 2.6 million bonded labourers, since, in the Government's view, the methodology of the survey was not scientific. The Government also states that the process of identification of bonded labourers is fraught with problems and difficulties; it is not like a mere headcount that can be routinely done through any other survey, but rather a difficult task which requires extraordinary efforts keeping in mind the delicate social and psychological condition of the victims. According to the Government's view, bonded labour is a dynamic problem; existence of the bonded labour system can occur and reoccur at any point of time in any industry/occupation, which requires continuous vigilance and surveillance, as well as institutional arrangements. Having previously noted the Government's indication that identification and release of bonded labourers is the direct responsibility of state governments concerned, as well as certain reluctance of state governments to participate in such efforts, the Committee urged the Government to take effective measures to ensure that they would participate in an early and concentrated effort to do so. It has noted from the Government's 2001 report, as well as from the statement by the Government representative during the Conference Committee discussion in 2001, that surveys were conducted by all state governments during October-December 1996, on the basis of which seven state governments had reported identification of 28,916 bonded labourers through the affidavits filed in the Supreme Court. It has also noted from the statement by the Government representative during the Conference Committee discussion that there were 172 sensitive districts in 13 states where incidents of bonded labour were reported frequently. In this connection, the Committee has noted with interest the positive measures described by the Government, such as the modification in May 2000 of the Centrally Sponsored Plan Scheme for Rehabilitation of Bonded Labour, under which 100 per cent financial assistance will be provided to state governments to conduct surveys on bonded labour in each sensitive district on a regular basis once every three years; grants will also be provided for the awareness-generation activities and evaluatory studies (five studies every year by each state government) to study the impact of existing land-debt related issues affecting bonded labourers and the impact of poverty alleviation programmes and financial assistance provided under various government

programmes. The Government indicates in its 2001 report that, during the current financial year (2001-02) surveys on bonded labour are being conducted in a total of 57 districts, the remaining state governments being requested to send their proposals for conducting such surveys; the surveys' findings shall be reported to the Ministry of Labour.

5. While noting this information and recognizing difficulties described by the Government regarding the preparation of survey for identification of bonded labour, the Committee points out once again that accurate data is 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. Noting also the conclusions of the discussion in the Conference Committee, in which the Conference Committee urged the Government once again to 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, the Committee hopes that such survey will at last be prepared (using also the results obtained through measures taken on the state and district levels referred to above). Please also continue to provide information on the application in practice of the revised Centrally Sponsored Plan Scheme for Rehabilitation of Bonded Labour referred to above.

6. In its earlier comments, the Committee requested information on the functioning of vigilance committees, which the Bonded Labour System (Abolition) Act, 1976, requires to be established to deal with the problem. According to the information provided by the Government in its 2001 report, such committees are in existence in 29 states and union territories; they have been constituted at the district and subdivisional levels and the meetings are held regularly. The Committee has noted, however, that, in response to the comments by the Anti-Slavery International, transmitted by the ICFTU, in which satisfactory functioning of these committees was doubted, the Government recognized that in some instances vigilance committees were not able to meet regularly, considering the huge number of districts in the country and many other functions of district functionaries, though such instances were exceptions and not the rule. The Committee hopes that greater clarification of this issue will be provided by the Government in its next report, as well as information on measures taken or envisaged to ensure that vigilance committees are functioning effectively.

7. As regards other initiatives taken by the Government to eradicate bonded labour throughout the country, the Committee has noted with interest the following action: the increase of rehabilitation grant from Rs10,000 to Rs20,000 for each released bonded labourer, as a result of a modification of the Centrally Sponsored Plan Scheme for Rehabilitation of Bonded Labour; field visits of senior officials (between July 1999 and April 2000) to monitor the utilization of funds released for the rehabilitation of bonded labour, as well as to review and monitor progress made in the implementation of the Bonded Labour System (Abolition) Act, 1976; regular review meetings held by the Ministry of Labour with state government representatives (the latest one was held in February 2002) to review the implementation of the 1976 Act and the Scheme; the efforts of the National Human Rights Commission to oversee and supervise the implementation of the 1976 Act on the instructions of the Supreme Court of India.

8. While noting the above information with interest, the Committee again points out that more than 25 years after the adoption of the Bonded Labour System (Abolition) Act, 1976, the system of bonded labour still exists in the country, and that the Government's efforts to eradicate it should be pursued with vigour. The Committee hopes that the Government will continue to provide detailed information on the action taken.

9. In its earlier comments, the Committee referred to the law enforcement problem in connection with the eradication of bonded labour and sought information on the number of prosecutions, convictions and acquittals in various states under the Bonded Labour System (Abolition) Act, 1976, also questioning the adequacy of the penalties imposed. The Committee has noted the comments by the NFITU, annexed to the Government's 2001 report, in which the union stressed that one of the reasons of the existence of bonded labour is that the law enforcement machinery is not functioning properly and effectively. It has also noted that, in comments transmitted by the ICFTU, the Anti-Slavery International expressed concern about "a widespread failure to prosecute those found to be using bonded labourers". According to the Government's reply to these comments, since the enactment of the 1976 Act, 4,743 cases of prosecutions have been reported under the Act, though the information on convictions and sentences passed in each case is not available, since the collection of such information is likely to be very time consuming and difficult. The Committee observes that, in the light of *Article 25 of the Convention*, the number of prosecutions launched under the Act appears to be inadequate in comparison with the numbers of identified and released bonded labourers reported by the Government. The Committee therefore hopes that appropriate measures will be taken with a view to initiating prosecutions against perpetrators and that the Government will provide information on the number of convictions and on the penalties imposed, including sample copies of relevant court decisions. Effective prosecution and penalties must form part of a cohesive approach to combat bonded labour.

Child labour

10. In its earlier comments, the Committee raised a number of questions concerning efforts to eliminate child labour falling under the Convention (i.e. in conditions which are sufficiently hazardous or arduous that the work concerned cannot be counted as voluntary). In this connection, the Committee noted information from the International Programme for the Elimination of Child Labour (IPEC) on the matter, and the Concluding Observations of the United Nations Committee on the Rights of the Child (CRC) following its examination of the report of the Government of India on the Convention on the Rights of the Child (UN doc. CRC/C/15/add.15, 23 February 2000), in which the United Nations Committee expressed concern "at the large numbers of children involved in child labour, including bonded labour, especially in the informal sector, household enterprises, as domestic servants, and in agriculture, many of whom are working in hazardous conditions"; it was also concerned that "minimum age standards for employment are rarely enforced and appropriate penalties and sanctions are not imposed to ensure that employers comply with the law".

11. The Committee has before it observations from the ICFTU on this and other points, received in June 2002 and transmitted to the Government in July 2002, to which

the Government has not yet replied. According to these observations, estimates of the numbers of working children in India vary between 22 million and 50 million, and the efforts to reduce child labour have yet to have much impact and must be considered inadequate to deal with the scale of the problem, although some progress have been made. The Government indicated in its 2001 report that the census data for 1991 had estimated the number of working children in the country as 11.28 million, and that the results of the census held early in 2001 were still awaited. The Committee hopes that the Government will respond to the above observations in its next report and supply the results of the latest census.

12. The Committee has noted the information submitted by the Government representative to the Conference Committee in June 2001 concerning the efforts made by the Government to address this issue, as well as the Government's reply to the Committee's previous observation received in August 2001. It has taken note of the following information:

- that, as a result of direct actions taken by the Ministry of Labour in compliance with the directions of the Supreme Court in its judgement of 10 December 1996, 130,210 children have been identified as employed in hazardous occupations and 392,139 children as employed in non-hazardous occupations in 30 reporting states and union territories as on 31 March 2001; child labour rehabilitation and welfare funds have been constituted at the district level by state governments concerned and, besides taking action for collection of compensation (Rs20,000 per child employed by the offending employer), penal action has also been initiated against the employers;
- that, under a notification issued on 10 May 2001, six more processes in the hazardous category were added to the Schedule of the Child Labour (Prohibition and Regulation) Act, 1986, bringing the total to 13 occupations and 57 processes (the number of hazardous occupations remained unchanged);
- that, at the instance of Ministry of Labour, the Central Civil Service (Conduct) Rules, 1984 and All India Services (Conduct) Rules, 1961 have been amended by notifications of 14 October 1999 and 1 February 2000 prohibiting employment of children below the age of 14 by civil servants; the amendments will also be incorporated by state governments in the State Government Civil Service (Conduct) Rules;
- that, the implementation of the National Child Labour Projects (the number of which was increased up to 100 in 1999) is being monitored regularly through a central monitoring committee, which includes representatives from the central Government and the labour secretaries of state governments;
- that, altogether, 160 action programmes have been taken up for implementation under the IPEC programme during 1992 to 2000; the total number of children covered is 90,574;
- that, a national conference on child labour was held in New Delhi on 22 January 2001, paying special attention to the elimination of child labour from hazardous occupations and to the strengthening of the law enforcement machinery.

13. While noting the above information, as well as the Government's commitment to eliminate child labour expressed by the Government representative during the 2001

Conference Committee discussion, the Committee hopes that the Government will pursue its efforts in this field, particularly as regards the identification of working children and strengthening the law enforcement machinery, in order to eradicate exploitation of children, especially in hazardous occupations. It asks the Government to provide detailed information on these matters in its next report.

14. As regards, more particularly, child labour in the unorganized sector, the Government indicates in its 2001 report that it has no intention to extend the coverage of the Child Labour (Prohibition and Regulation) Act, 1986, and the Factories Act, 1948, since, in the Government's view, child labour cannot be eliminated through coercive and inspectorial mechanisms, but rather through a holistic, integrated and convergent approach that takes care of a child's physical and mental development through effective and rigorous attempts at reducing the poverty of the family by implementing developmental schemes strongly and effectively. As regards the Factories Act, the Government considers that it would be logistically and financially not possible to cover units of all sizes and workshops for the purpose of eliminating of child labour. The Committee points out in this connection, having noted also the recommendations contained in the Concluding Observations of the United Nations Committee on the Rights of the Child referred to above, that developing and reinforcing the legislative provisions and strengthening the law enforcement mechanism are vital, along with the measures of socio-economic character, for the effective eradication of child labour. It hopes that appropriate action will be taken to enlarge the scope of the legislation and asks the Government to continue to provide information on measures taken to address child labour in the unorganized sectors, i.e. in small-scale units not yet covered by the Factories Act, in cottage industries, particularly in such occupations as are hazardous to the child.

15. The Committee has noted from the Government's 2001 report, as well as from the statement by the Government representative to the Conference Committee in 2001, that the examination of Conventions Nos. 138 and 182 with a view to their ratification has already been started and that an inter-ministerial meeting to discuss the implications of ratifying Convention No. 182 has been held. The Committee hopes that the Government will keep the ILO informed of the developments.

Prostitution and sexual exploitation

16. The Committee has noted the information provided by the Government in reply to its earlier comments in its 2001 and 2002 reports and in the statement by the Government representative to the Conference Committee in June 2001, as well as the report of the Committee on prostitution, child prostitutes and children of prostitutes (1998), prepared by the Department of Women and Child Development of the Ministry of Human Resources Development, supplied by the Government. It has noted, in particular, the following positive measures taken by the Government:

- drawing up a national plan of action (1998) to combat trafficking and commercial sexual exploitation of women and children;
- constitution of a national advisory committee, as well as state advisory committees, to combat trafficking and rehabilitate victims of trafficking and commercial sexual exploitation; the Government is also planning to establish a central cell in the Ministry of Home Affairs with a view to monitoring and coordinating the action

- taken by various national agencies and programmes for the prevention, rescue and rehabilitation of women and children victims;
- establishment of protective homes under section 21 of the Immoral Trafficking (Prevention) Act, 1956, exclusively for girls and women detained under the Act and also for those who seek protection from being forced into prostitution;
 - reviewing the existing legal framework including the Immoral Trafficking (Prevention) Act, the Indian Penal Code, the Criminal Procedure Code and the Evidence Act, with a view to make the punishment more stringent for traffickers, while making the laws more victim-friendly;
 - enacting legislation to prohibit Devdasi and Jogin traditions of sexual exploitation (in states of Andhra Pradesh, Karnataka and Maharashtra);
 - implementation of projects for rehabilitation of Devdasis, Jogins, women victims under various schemes for training and employment of women, like the Support for Training and Employment Programme (STEP);
 - conducting of surveys in several states with a view to identification of Devdasis/Jogins women and their rehabilitation;
 - ratification by India of the International Protocol to prevent, suppress and punish trafficking in persons, especially women and children and signing of the SAARC Convention on combating trafficking and commercial sexual exploitation of women and children.

17. The Committee welcomes the abovementioned actions and the Government's commitment to address the problem. However, it notes from the report of the Committee on prostitution, child prostitutes and children of prostitutes referred to above that, "though there are a number of studies and reports on commercial sexual exploitation of women and children, there are no reliable estimates of the extent and magnitude of trafficking and commercial sexual exploitation in India". The Committee hopes that, in spite of the obstacles in trying to estimate the magnitude of the problem, described by the Government, measures will be taken to compile reliable statistics, including that concerning child prostitutes, which would contribute to the process of their rehabilitation. It also asks the Government to continue to provide information on the action taken to combat trafficking and commercial sexual exploitation of women and children, and in particular, as regards the revision and development of the legislative framework and implementation of rehabilitation projects.

[The Government is asked to report in detail in 2003.]

Iraq (ratification: 1962)

The Committee notes that no report has been received from the Government. It must therefore repeat its previous observation on the following matters:

Restrictions on workers' freedom to leave their employment

In comments made for a number of years under both Conventions Nos. 29 and 105, the Committee has drawn attention to the restrictions imposed on workers throughout the economy to leave their employment by giving notice – restrictions that are enforceable with penal and other sanctions.

In its latest report, the Government states that there are no constraints imposed on the freedom of workers to end their service as provided for in section 36 of the Labour Code

(No. 71 of 1987) which concerns the termination of labour contracts. Under section 36, paragraph 3, of the Labour Code, a labour contract of indefinite duration ends when the worker decides to terminate it, provided he or she has given the employer written notice at least 30 days before the date of termination set. The Government adds that military personnel in the armed forces do not come under these provisions.

The Committee has taken due note of these provisions. It must, however, point out once again that, under Revolutionary Command Council Resolution No. 150 of 19 March 1987, the rights and obligations of officials shall also apply to all labourers in state departments and the socialist sector who are thus removed from the scope of the application of section 36, paragraph 3, of the Labour Code and come under the following provisions:

- under article 35 of the Civil Service Act (No. 24 of 1960), the resignation of an official is not valid unless accepted by a decision of the competent authority;
- under Revolutionary Command Council Resolution No. 521 of 7 May 1983, resignation of Iraqi officials appointed in the state departments of socialist or mixed sectors shall not be accepted before ten years of actual service in such departments, and moreover the resigning official shall bear the expenses of studying at all educational stages passed before appointment or during the period of service;
- under Revolutionary Command Council Resolution No. 700 of 13 May 1980, an official who resigns without the approval of the department shall in addition be deprived of the rights arising from previous service;
- only women may have their resignation accepted without any conditions, by virtue of resolution No. 703 of 5 September 1987;
- resignation restrictions also apply to civil officers and seafarers under section 40 of Law No. 201 of 1975 on the Civil Marine Service, and to various categories of officials under Resolutions Nos. 917 of 1988 and 550 of 1989;
- finally, under section 364 of the Penal Code of Iraq, any official and any person in charge of a public service may be punished with imprisonment, inter alia, if they leave their work, even after having resigned, if this might paralyse a public service.

Referring to the comments made for a number of years under both the present Convention and the Abolition of Forced Labour Convention, 1957 (No. 105), the Committee must once again point out that the effect of statutory provisions preventing termination of employment by means of notice of reasonable length is to turn a contractual relationship based on the will of the parties into service by compulsion of law, and is thus incompatible with the Conventions relating to forced labour. This applies to workers throughout the socialist and mixed sectors as well as to public officials and, in time of peace, to career members of the armed forces, all of whom must remain free to terminate their employment by giving notice of reasonable length. The Committee once again expresses the hope that the necessary measures will at last be taken to bring national law into conformity with the Convention in this regard, and that the Government will supply information 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.

Jamaica (ratification: 1962)

The Committee has noted the Government's reply to its earlier comments.

Article 1(1) and Article 2(1) and (2)(c), of the Convention. The Committee previously noted that, under section 155(2) of the Correctional Institution (Adult Correction Centre) Rules of 1991, no inmate may be employed in the service of, or for

the private benefit of, any person, except with the authority of the Commissioner or in pursuance of special rules. It has noted from the Government's report supplied in 2001 that, under section 60(b) of the Corrections Act, as amended by the Corrections (Amendment) Act, 1995, the Minister may establish programmes under which persons serving a sentence in a correctional institution may be directed by the Superintendent to undertake work in any company or organization approved by the Commissioner, subject to such provisions as may be prescribed relating to their employment, discipline and control, and such work may be within the centre or institution or outside its limits. The Committee has also noted the information concerning the functioning of the Correctional Services Production Company (COSPROD), supplied by the Government in 2001 and 2002, as well as the Government's repeated statement that, under this programme, some inmates have been working under the conditions of a freely accepted employment relationship, with their formal consent and subject to guarantees regarding the payment of normal wages.

Referring to the explanations provided in paragraphs 97 to 101 of its General Survey of 1979 on the abolition of forced labour, the Committee expresses the hope that on the occasion of a future amendment of the Correctional Institution (Adult Correction Centre) Rules, section 155(2) will be amended so as to ensure that no prisoners may work for private individuals, companies, etc., except where they do so under the conditions of a freely accepted employment relationship, with their formal consent and subject to guarantees regarding the payment of normal wages and social security, etc., in order to bring this provision into conformity with the Convention and the indicated practice. The Committee also requests the Government to provide a copy of any special rules referred to in the above section 155(2) and to continue to provide information on its application in practice, pending the amendment.

Japan (ratification: 1932)

The Committee notes the Government's report, received on 1 November 2002, in which it has provided responses, including four attachments, to the Committee's last two observations, as well as to a number of comments received from workers' organizations. The Committee also notes the Government's report, also received on 1 November 2002, containing additional responses to the communications of the trade unions.

The Committee notes the communication of the Tokyo Local Council of Trade Unions, received on 6 June 2002, along with five attachments, a copy of which was transmitted to the Government on 29 July 2002, as well as a communication of the All Japan Shipbuilding and Engineering Union dated 29 July 2002, and seven attachments, received by the ILO on 12 August 2002, a copy of which was transmitted to the Government on 2 September 2002. The Committee also notes a communication of the Korean Confederation of Trade Unions (KCTU) and the Federation of Korean Trade Unions (FKTU) dated 27 August 2002, received on 4 September 2002, as well as of its 11 attachments received on 1 October 2002, a copy of which was transmitted to the Government on 1 October 2002.

The Committee recalls that in several recent sessions it has considered the application of the Convention to two issues relating to the Second World War and the years leading up to it: military sexual slavery, of which the victims are referred to as wartime "comfort women", and wartime industrial forced labour.

1. Victims of wartime sexual slavery

The Committee has previously considered the occurrence, during the Second World War and the years leading up to it, of a system by which women and girls, referred to euphemistically as “comfort women”, were confined to military camp facilities, so-called “comfort stations”, and forced to provide sexual services to military forces, and it has found that this conduct fell within the absolute prohibitions contained in the Convention. The Committee has recognized that this conduct involved gross human rights abuses and sexual abuse of the women and girls detained in the military “comfort stations”, and that it should be characterized as sexual slavery.

In paragraphs 8 and 10 of its 2000 observation, the Committee noted the considerable number of claims which had been commenced in Japanese courts by comfort women which were pending examination or had been decided or alternatively were awaiting appeal to superior courts. The Committee also noted in paragraph 5 of the observation that, under the Committee’s terms of reference, it did not have the power to order the relief which could be given only by the Government as the responsible body under the Convention. However, in paragraph 10 of that observation, the Committee expressed that the Government would find an alternative way, in consultation with the comfort women and the organizations representing them, to compensate them before it was too late and in a manner which met their expectations.

Subsequently in its 2001 observation, the Committee following receipt of a communication from a workers’ organization and the Government correspondence in reply, again reiterated its hope that the Government would be able to respond to the claims made by the comfort women in a satisfactory way and that it would be in a position to supply particulars to the International Labour Conference in 2002.

The Government by response in its latest detailed report in relation to the topic of comfort women makes three major points.

Firstly, it considers that there are procedural irregularities in the preparation of the 2001 observation in that in its view the observation:

- was prepared and published in reliance on the communication from the trade union pending further submissions from the Government on the trade union communication;
- “jumped to the conclusion” without scrutiny of the contents of the communication of the trade union that the issue should be discussed in the International Labour Conference;
- took up the issue of the comfort women when the trade union had addressed another issue in relation to conscription of forced labour.

Secondly, the Government expressed the view that there is no legal basis for individual claims for compensation arising from the issues related to the circumstances of comfort women and that the trade union assertions are wrong. It therefore urges the Committee to bring its deliberations to an end and declare the case closed.

Thirdly, the Government contends that although there is no legal liability in relation to individual claims, it has nevertheless expressed its apologies and remorse on numerous occasions and refers to the Asian Women’s Fund subsidized by the letters sent by the Japanese Prime Minister expressing apologies.

(a) Procedural issues

In relation to the first issue raised, the Committee rejects that there has been any procedural irregularity. The trade union communication addressed the issue of war-related compensation in general which was also relevant to the circumstances of comfort women. The serious matters raised by the Committee in its 2000 observation concerning comfort women as at that time had not been dealt with by the Government and regardless of whether the trade union specifically raised the matter, the Committee is fully entitled to pursue the situation and request that it be taken up at the Conference.

(b) Legal basis for individual claims

In relation to the second issue, the Committee notes that the Government takes the position, as it has previously, that with regard to reparations, property, and claims arising out of the Second World War, “including the issues known as ‘wartime comfort women’ and ‘conscription as forced labourers’”, it has “fulfilled its obligations”. It argues that the provisions of post-war multilateral and bilateral peace treaties and agreements with governments of the Allied Powers and the States of the Asia-Pacific region, waive or renounce war reparations and other claims between the government parties and their nationals.

(i) The treaties

The treaties referred to by the Government include, but are not limited to:

- article 14(b) of the 1951 Treaty of Peace with Japan (“San Francisco Peace Treaty”) under which the Allied Powers “*waive all reparations claims ... and other claims of the Allied Powers and their nationals*”;
- article 2 of the 1965 Agreement on the Settlement of Problems concerning Property and Claims and on Economic Cooperation between Japan and the Republic of Korea, which states in part: “*The Contracting parties confirm that [the] problem concerning property, rights and interests of the two contracting parties and their nationals ... is settled completely and finally*”; and
- article 5 of the Joint Communiqué of the Government of Japan and the Government of the People’s Republic of China which stated that China “renounces its demand for war reparations”.

The Government states: “In this sense, the issues of claims, including claims of individuals under domestic law, are settled completely and finally between Japan and its nationals and the Allied Powers and their nationals.”

(ii) Previous government statements

In its previous observation, the Committee noted that the All Japan Shipbuilding and Engineering Union indicated in its communication of June 2001 that, with regard to war-related compensation, the position of the Japanese Government is that a treaty had put an end to the right to demand compensation and the right to diplomatic protection at the state level, but not the right of individuals to damages. The union stated that the Government had made this position clear on many occasions, such as:

- the Government’s statement in Atomic Bomb Victims Lawsuit (Final Judgement in 1963), that “*item (a) of the Article 19 in the San Francisco Treaty does not mean*

that the country of Japan has given up the right of individual Japanese people to demand compensation for the damages from Truman or the country of the United States of America”;

- the Government’s statement in relation to the Siberian Internee Compensation Lawsuit (Final Judgement in 1989), in which it took the position that the waivers, under clause 6, item 2, under the Joint Declaration of Japan and the Soviet Union, *“are claims and the right of diplomatic protection the State of Japan had, but not the claims of individual Japanese people. When we say the right of diplomatic protection, it means the internationally acknowledged right of States to seek the responsibility of a foreign country for the damages Japanese people suffered in the foreign territory arising out of violation of the international laws on the side of such foreign country ... As stated before, Japan did not give up any right belonging to individual Japanese nationals under the Joint Declaration of Japan and Soviet [Union]”;*
- a statement by Shunji Yanai, then chief of the Foreign Ministry’s Treaties Bureau, to an Upper House Budget Committee session on 27 August 1992, that the Japan-South Korea Basic Treaty of 1965 had not deprived individual victims of their right to seek damages in domestic legal terms, but *“only prevents the Japanese and South Korean governments from taking up issues as exercise of their diplomatic rights”.*

The Committee notes that, in its reply to the union’s reference to these comments, the Government indicates that the statement of Mr. Shunji Yanai “was intended to explain that all the issues of reparations claims related to the last war between Japan and the Allied Powers, including the claims of individuals, had been settled from the viewpoint of the right of diplomatic protection that is a concept of general international law. In other words, he explained that even if Japanese nationals’ claims against the Allied Powers or their nationals were dismissed, Japan could no longer pursue state responsibilities of the Allied Powers”. The Government further notes an additional statement by which “Mr. Yanai clearly explained at the Committee on Foreign Affairs of the House of Representatives of the Diet of Japan on 26 March 1993 that, ‘with regard to substantive rights with legal basis, namely property rights, the Government of Japan nullified the property rights of the nationals of the Republic of Korea with certain exceptions by this Agreement’, and therefore that ‘the Korean nationals are no longer able to claim against Japan these property rights with legal basis either as private rights or rights in domestic law’”.

The Committee notes that the Government did not provide any comments which refute the other examples cited by the union, namely, its statement in the Atomic Bomb Victims Lawsuit (Final Judgement in 1963) and its statement of interpretation of article 6 of the Joint Declaration of Japan and the Soviet Union, in relation to the Siberian Internee Compensation Lawsuit (Final Judgement in 1989), other than to quote the text of article 6 of that declaration.

(iii) Reports to United Nations human rights bodies

The Committee also notes the final report of 22 June 1998 on systematic rape, sexual slavery and slavery-like practices during armed conflict (UN document E/CN.4/Sub.2/1998/13), submitted by Ms. Gay McDougall to the United Nations Sub-

Commission on Prevention of Discrimination and Protection of Minorities (now the Sub-Commission on the Promotion and Protection of Human Rights) at its 50th session. The Committee notes that Ms. McDougall, who was appointed by the Sub-Commission as UN Special Rapporteur, is the Executive Director of the International Human Rights Law Group, and that her report, which was forwarded with the observation of the KCTU and the FKTU, has been cited by the International Criminal Tribunal for the former Yugoslavia as an authoritative statement of international criminal law. The Committee also notes the appendix to the report, "An analysis of the legal liability of the Government of Japan for 'comfort women stations' established during the Second World War".

In her report, Ms. McDougall finds that *"the Japanese military's enslavement of women throughout Asia during the Second World War was a clear violation, even at that time, of customary international law prohibiting slavery ... As with slavery, the laws of war also prohibited rape and forced prostitution"* (appendix, paragraphs 12 and 17). The Committee also notes the further findings: *"The widespread or systematic enslavement of persons has also been recognized as a crime against humanity for at least half a century. This is particularly true when such crimes have been committed during an armed conflict ... In addition to enslavement, widespread or systematic acts of rape also fall within the general prohibition of 'inhumane acts' in the traditional formulation of crimes against humanity ..."* (appendix, paragraphs 18 and 20).

Referring to article 2 of the 1965 Settlement Agreement between Japan and the Republic of Korea and Article 14(b) of the 1951 Treaty of Peace, the report of Ms. McDougall states: *"The Government of Japan's attempt to escape liability through the operation of these treaties fails on two counts: (a) Japan's direct involvement in the establishment of the rape camps was concealed when the treaties were written, a crucial fact that must now prohibit on equity grounds any attempt by Japan to rely on these treaties to avoid liability; and (b) the plain language of the treaties indicates that they were not intended to foreclose claims for compensation by individuals for harms committed by the Japanese military in violation of human rights or humanitarian law"* (appendix, paragraph 55).

The Committee also notes the reference in the trade unions' comments to paragraph 58 of the appendix to the McDougall report, which states: *"It is also self-evident from the text of the 1965 Agreement on the Settlement of Problems concerning Property and Claims and on Economic Co-operation between Japan and the Republic of Korea that it is an economic treaty that resolves 'property' claims between the countries and does not address human rights issues [citation omitted]. There is no reference in the treaty to 'comfort women', rape, sexual slavery, or any other atrocities committed by the Japanese against Korean civilians. Rather, the provisions in the treaty refer to property and commercial relations between the two nations. In fact, Japan's negotiator is said to have promised during the treaty talks that Japan would pay the Republic of Korea for any atrocities inflicted by the Japanese upon the Koreans [citation omitted]."* The Committee notes further that in paragraph 59 of the appendix, the report states: *"Clearly, the funds provided by Japan under the Settlement Agreement [with Korea] were intended only for economic restoration and not individual compensation for the victims of Japan's atrocities. As such, the 1965 treaty – despite its seemingly sweeping language – extinguished only economic and property claims between the two nations and not private claims ..."*

The Committee further notes the points made in paragraph 62 of the appendix to the report: *“As with the 1965 Settlement Agreement between Japan and Korea, moreover, the interests of equity and justice must prevent Japan from relying on the 1951 peace treaty to avoid liability when the Japanese Government failed to reveal at the time of the treaty the extent of the Japanese military’s involvement in all aspects of the establishment, maintenance and regulation of the comfort stations [citation omitted]. As an additional principle of equity, when jus cogens norms are invoked, States that stand accused of having violated such fundamental laws must not be allowed to rely on mere technicalities to avoid liability. And, in any event, it must be emphasized that Japan may always voluntarily set aside any treaty-based defences to liability that may be available to them in order to facilitate actions that are clearly in the interests of fairness and justice.”* The report, at paragraph 12, recognizes that *“the prohibition against slavery ... has clearly attained jus cogens status [citation omitted]”*. The Committee notes that, according to Article 53 of the Vienna Convention on the Law of Treaties of 23 May 1969 (UN document A/Conf.39/28), a *jus cogens* (peremptory) norm is “a norm accepted and recognized by the international community of States as a norm from which no derogation is permitted ...”.

The Government in its comments on the report of UN Special Rapporteur McDougall, states that resolutions based on the report were adopted annually by the Sub-Commission on Promotion and Protection of Human Rights from 1998 to 2002, and that “these resolutions only ‘welcomed’ the report of Special Rapporteur McDougall and made no reference at all to Japan, nor to the issue known as ‘wartime comfort women’”. There was absolutely no language in the resolutions making any recommendations to Japan or condemning Japan for anything”.

The Committee points out, however, that whilst the resolutions of the Sub-Commission, such as resolution 2000/13 on the June 2000 update to the final report of Special Rapporteur McDougall do not include specific references to, or recommendations for, any individual country, the resolutions have taken general note of the report and also call upon the UN High Commissioner for Human Rights to monitor and report to the Sub-Commission on the status and implementation of the resolution and of the recommendations made in the Special Rapporteur’s report of which note is taken.

The Committee notes the 1996 “Report on the mission to the Democratic People’s Republic of Korea, the Republic of Korea, and Japan on the issue of military sexual slavery in wartime”, submitted by Ms. Radhika Coomaraswamy, UN Special Rapporteur, to the 52nd session of the UN Commission on Human Rights (UN document E/CN.4/1996/53/Add.1). Addendum 1 of that report, which was forwarded as an attachment to the observation of the Korean Confederation of Trade Unions (KCTU) and the Federation of Korean Trade Unions (FKTU), refers in paragraph 107 to the report of the International Commission of Jurists (ICJ) of a mission on “comfort women” published in 1994, which states that the treaties referred to by the Government of Japan *“never intended to include claims made by individuals for inhumane treatment. [The ICJ] argues that the word ‘claims’ was not intended to cover claims in tort and that the term is not defined in the agreed minutes or the protocols. It also argues that there is nothing in the negotiations which concerns violations of individual rights resulting from war crimes and crimes against humanity. The [ICJ] also holds that, in the case of the*

Republic of Korea, the 1965 treaty with Japan relates to reparations paid to the Government and does not include claims of individuals based on damage suffered”.

(iv) *Tribunal rulings*

*Women’s International War Crimes Tribunal for the
Trial of Japan’s Military Sexual Slavery*

The Committee notes the report of the *New York Times* of 4 September 2001, referred to by the Women’s International War Crimes Tribunal for the Trial of Japan’s Military Sexual Slavery, in its “Judgement on the Common Indictment and the Application for Restitution and Reparation” (Case No. PT-2000-1-T), delivered on 4 December 2001 (corrected 31 January 2002), a copy of which was forwarded by the All Japan Shipbuilding and Engineering Union in its communication. The report, authored by Steven C. Clemons refers to a recently (April 2000) declassified exchange of letters between Prime Minister Shigeru Yoshida of Japan and the Minister of Foreign Affairs of the Government of the Netherlands, and occurring just prior to the signing of the San Francisco Treaty of Peace in 1951, in which Prime Minister Yoshida conveyed the understanding that “*the Government of Japan does not consider that the Government of the Netherlands by signing the Treaty has itself expropriated the private claims of its nationals so that, as a consequence thereof, after the Treaty comes into force these claims would be non-existent*”.

The Committee notes the “Judgement on the Common Indictment and the Application for Restitution and Reparation” (Case No. PT-2000-1-T), of the Women’s International War Crimes Tribunal for the Trial of Japan’s Military Sexual Slavery, delivered on 4 December 2001 (corrected 31 January 2002), a copy of which was forwarded by the union in its communication. The Committee notes that the Tribunal, which sat in Tokyo from 8 to 10 December 2000, is a People’s Tribunal, which was established to adjudicate gender-related crimes that the International Military Tribunal for the Far East, the original Tokyo Tribunal, failed to redress. The Committee notes the indication of the All Japan Shipbuilding and Engineering Union, that the judges, chief prosecutors, and legal advisers of the Tribunal were “internationally renowned experts involved in International Criminal Tribunals for the former Yugoslavia and the International Criminal Court for Rwanda”, as well as its reference to several of the important findings in the Judgement. The Committee further notes the comments of the Korean trade union organizations, the FKTU and the KCTU, on the Tribunal as “a civilian initiative, with a highly respected panel of judges”.

The Committee notes the indication of the Tribunal, in the Introduction and Background of the Proceedings of its Judgement, that the Registry of the Tribunal served the Government with notice of the proceedings, including an invitation to participate in the proceedings, on 9 November 2000 and 28 November 2000, but received no reply. The Tribunal nevertheless endeavoured to consider all defences the Government might conceivably raise on its own behalf had it agreed to participate. To that end, it requested that the anticipated arguments of the Government be compiled by an attorney assisting as *amicus curiae* (or “friend of the court”) and it received an *amicus curiae* brief submitted in response to this request. The Tribunal further considered arguments advanced by the Government in cases pending before its courts, and the responses of the

Government to the reports of the United Nations Special Rapporteurs who have investigated the military sexual slavery system.

The Committee notes the finding of the Tribunal at paragraph 1034 of the Judgement, with regard to the 1965 Agreement between Japan and the Republic of Korea: *“It can be questioned whether ‘property, rights and interests’ includes claims such as those of the ‘comfort women’ against Japan. The two States adopted Agreed Minutes of their negotiation of the Peace Treaty in which they agreed that ‘property, rights and interests means all kinds of substantial rights which are recognized under law to be of property value’. This would appear to exclude the ‘comfort women’s’ extensive claims. Korea submitted an outline of claims of the Republic of Korea (called the Eight Items) at the negotiations. There is no evidence that this list included that claims of the comfort women for crimes against humanity committed against them and indeed the Treaty provisions encompass ‘either the disposition of property or the regulation of commercial relations between the two countries, including the settlement of debts’”* [citation omitted].

The Tribunal in turn quoted a 1970 Opinion of the International Court of Justice (Barcelona Traction, Light and Power Co. Ltd., 1970 ICJ Rep. 3, paras. 33-34 (5 February)), which articulates the notion of obligations of a State which, by their very nature, are owed *erga omnes* – to the international community as a whole: *“Such obligations derive ... from the principles and rules concerning basic rights of the human person, including protection from slavery and racial discrimination.”* Referring also to the third report of the UN Special Rapporteur on State Responsibility (UN document A/CN.4/507/Add.4, 4 August 2000), the Tribunal found that: *“the category of norms which are generally acceptable as universal in scope and non-derogable as to their content, and in the performance of which all States have a legal interest, is small but includes ‘the prohibitions of genocide and slavery ...’”* In light of these principles, the Tribunal found that *“it is legally impossible for bilateral or multilateral agreements, even agreements concluded by States of which the victims are nationals, to waive the interests of non-participating States in redressing injury done to all”* (paragraphs 1041-1043).

The Committee notes that, on the basis of the reasoning of these and other legal points, the Tribunal concluded that, with regard to Japan’s reliance on the Peace Treaties, *“the negotiating parties had no power to waive the claims of individuals for harm suffered as a result of the commission of crimes against humanity and we reject the assertion that these claims were effectively or permanently waived”*.

The Government, in its comments on the Women’s International War Crimes Tribunal and the Judgement it delivered in December 2001, states: *“The Tribunal was privately organized by the people concerned and was not an official organization. Therefore, the Government of Japan is not in a position to make any comments on the statements made by the Tribunal, nor any views expressed therein.”*

(v) *Japanese and American court decisions*

In its report, the Government states that its interpretation that Article 14(b) of the San Francisco Peace Treaty waived all individual claims *“is consonant with a series of court rulings”*, and it then quotes from rulings in two cases involving claims brought by former prisoners of war: a ruling of 21 September 2000 of the United States District

Court for the Northern District of California, in the case of *In re: World War II Era Japanese Forced Labor Litigation*, and a ruling of 11 October 2001 of the Tokyo High Court on a lawsuit filed by former Dutch prisoners of war. The Committee notes the ruling of the United States District Court of California, as set out by the Government: “[T]he treaty waives ‘all’ reparations and ‘other claims’ of the ‘nationals’ of Allied powers ‘arising out of any actions taken by Japan and its nationals during the course of the prosecution of the war.’ The language of this waiver is strikingly broad, and contains no conditional language or limitations, save for the opening clause referring to the provisions of the treaty. ... The waiver provision of Article 14(b) is plainly broad enough to encompass the plaintiffs’ claims in the present litigation. ... The court ... concludes ... that the Treaty of Peace with Japan was intended to bar claims such as those advanced by the plaintiffs in this litigation.”

The Committee also notes that the portion of the ruling quoted by the Government in the U.S. case omits the court’s finding which specifies only that the Treaty, by its terms, adopted a settlement plan “for war-related *economic injuries*.” [emphasis added]

Further, the Government in its latest report indicates that, during the period from 1 January 2001 to 30 June 2002, there were two cases in high courts and three in district courts in Japan involving claims by victims of the wartime practice of military sexual slavery. The Government indicates that the courts “rejected the plaintiffs’ claims against the Government of Japan in all the cases”. With regard to the April 1998 judgement of the Shimonoseki Branch of the Yamaguchi District Court, the Government states that both the defendant and plaintiffs appealed to the Hiroshima High Court. The Government states that the High Court issued its judgement on 29 March 2001, accepting the plea of the Government and ruling that it was not clear that the Government had a constitutional obligation to legislate, and that how to deal with post-war settlement should be left to the discretion of the legislature in terms of comprehensive policy-making. The Government also states that the plaintiffs appealed to the Supreme Court in March 2002 and are awaiting its final judgement.

The Committee notes that the rulings in this case were discussed in the December 2001 judgement of the Women’s International War Crimes Tribunal: “*The Hiroshima High Court reversed the Shimonoseki judgement on the ground that the individuals lack standing under international law. Not only does this Tribunal disagree with the Hiroshima court ruling as a matter of international law; we note also that, as a matter of principle, international law does not extinguish domestic law or remedies that are more protective of human rights.*”

Conclusions on legal basis for individual claims

The Committee has set out these matters in some detail in order to reflect the complexity of the issue and also to demonstrate the diversity of opinions which have been expressed as to whether there is a legal basis for the comfort women to claim compensation. In the view of the Committee the issue remains an open question. The Committee notes that the Government in the recent past has expressed the view that such rights have been extinguished by treaties; however, the texts quoted above demonstrate that such a view is not necessarily supported by independent experts.

This Committee has already previously emphasised that it does not have power to order relief for breach of the Convention. The Committee in its 2000 observation, has

also accepted that “the Government is correct in stating that compensation issues have been settled by treaty”. The Committee has however refrained from expressing any legal view on whether those treaties have or have not resulted in individual claims of comfort women being extinguished as a matter of law. The Committee does not have any mandate to rule on the legal effect of bilateral and multilateral international treaties. The Committee is therefore unable and does not finally pronounce on that legal issue, which is the remit of other bodies.

(c) Government response to claims of comfort women

As to the third major issue raised by the Government, in its report the Government indicates once again that, in recognition of the issue of the so-called wartime “comfort women”, it has expressed its apologies and remorse on numerous occasions. It states that it has cooperated to the fullest extent possible with the Asia Peace National Fund for Women, or “Asian Women’s Fund” (AWF) set up to provide “atonement” money to the victims by, among other things, bearing the operational costs of the fund and sending letters of apology from the Prime Minister. The Government indicates that in September 2002 the AWF completed the implementation of its programmes for the provision of atonement money. The Government states that, since October 2000, when the Government submitted its previous views to the Committee, an additional 114 victims had accepted the atonement money, and that the AWF has delivered atonement money to a total of 285 victims in the Philippines, the Republic of Korea and Taiwan.

The Committee also notes from the comments of the trade union organizations, that in 2002 the AWF announced the closure of its programmes. In its communication of 29 July 2002, the All Japan Shipbuilding and Engineering Union noted that on 20 July 2002, the AWF announced that 285 survivors had accepted atonement money. It points out, however, that this number does not include survivors from China, the Democratic People’s Republic of Korea, or Indonesia, and that only some of the survivors from the Republic of Korea, Taiwan, the Philippines and the Netherlands had accepted atonement money.

In their observation, the KCTU and the FKTU point out that the “goodwill” of the AWF is refuted by many Korean victims who had to suffer the various “approaches” made by Fund-related persons to persuade them to accept the so-called “consolation money”. The union organizations point out that, while the Fund may be an expression of goodwill by the Japanese people, Korean victims have not regarded the Fund and its activities as a valid response of the Government to their demands or as a resolution of the legal responsibilities of the Government under international law. They indicate further that the AWF is perceived as an effort by the Government to make a financial contribution without any prior official acknowledgement of responsibility and to evade the essential process of an official inquiry.

In its reply, the Government refers to statements in its report indicating, in part, that the Government came to consider the Asian Women’s Fund as “the only feasible means for providing a practical remedy for former ‘comfort women’ who were already of an advanced age, because the issue of claims had been legally settled between the Governments and peoples of the parties to the treaties and agreements”. The Government replies further, in part, that a number of the beneficiaries of the programmes “expressed their appreciation in one way or another”, and that the Government considers

that the Fund's programmes "have been steadily implemented and welcomed by a large number of the former 'comfort women' as illustrated by their words of appreciation".

The Committee notes the 1998 final report of UN Special Rapporteur McDougall, which states: "The Sub-Commission [on Prevention of Discrimination and Protection of Minorities] has joined other United Nations bodies in 'welcoming' the creation in 1995 of the Asian Women's Fund. The Asian Women's Fund was established by the Japanese Government in July 1995 out of a sense of moral responsibility to the 'comfort women' and is intended to function as a mechanism to support the work of NGOs that address the needs of the 'comfort women' and to collect from private sources 'atonement' money for surviving 'comfort women'. The Asian Women's Fund does not, however, satisfy the responsibility of the Government of Japan to provide official, legal compensation to individual women who were victims of the 'comfort women' tragedy, since 'atonement' money from the Asian Women's Fund is not intended to acknowledge legal responsibility on the part of the Japanese Government for the crimes that occurred during the Second World War" (appendix, paragraph 64).

The Committee has noted that organizations seeking additional measures from the Government have not considered the AWF to be a sufficient response, as there has been no compensation paid to victims directly by the Government and no apology based on an acknowledgement of legal responsibility towards the victims. In view of the latest comments and indications supplied by the Government and trade union organizations, the Committee considers, as it has previously, that the rejection by the majority of "comfort women" of monies from the AWF because it is not seen as compensation from the Government, and that the letter sent by the Prime Minister to the few who have accepted monies from the AWF is also rejected by some as not accepting government responsibility, suggest that the expectations of the majority of the victims have not been met.

The Committee further notes the recommendations of UN Special Rapporteur Coomaraswamy in Addendum 1 to her 1996 report. Pointing out that she "counts, in particular, on the cooperation of the Government of Japan, which has already shown, in discussions with the Special Rapporteur, its openness and willingness to act to render justice to the few surviving women victims of military sexual slavery carried out by the Japanese Imperial Army", Special Rapporteur Coomaraswamy recommended, inter alia, that the Government of Japan should: (a) acknowledge that the system of "comfort stations" set up by the Japanese Imperial Army during the Second World War was a violation of its obligations under international law and accept legal responsibility for that violation; and (b) pay compensation to individual victims of Japanese military sexual slavery according to principles outlined by the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on the right to restitution, compensation and rehabilitation for victims of grave violations of human rights and fundamental freedoms.

The Committee further notes the similar recommendations in paragraphs 63-67 of the final report of UN Special Rapporteur McDougall, as well as those in paragraph 1086 of the December 2001 Judgement of the Women's International War Crimes Tribunal for the Trial of Japan's Military Sexual Slavery.

The Committee notes the comments of the KCTU and the FKTU that the Government, despite the repeated recommendations of the UN human rights bodies and

this Committee's observations, there has been no change by the Government in its approach. The Committee also notes the comments of the All Japan Shipbuilding and Engineering Union that aged victims are having great difficulty in travelling to Japan either for appearing before the court or for negotiating with government officials, and it expresses the fear that "most of the victims would pass away in a few years and that the chance of correcting the wrongdoings of the past would be lost forever".

Final conclusions on victims of wartime sexual slavery

This Committee reiterates that it has no mandate to rule on the legal effect of bilateral and multilateral international treaties and is therefore unable and does not finally pronounce on that legal issue. It has previously indicated its concerns about the ageing of the victims of the Government's earlier breach of the Convention and the failure of the Government to meet their expectations in spite of similarly publicly expressed views by other reputable bodies and persons on the issue. The Committee repeats its hope that the Government will take measures in the future to respond to the claims of these victims. The Committee asks to be kept informed as to any relevant court decisions, legislation or government action. The Conference Committee may wish to consider whether to look at the matter on a tripartite basis.

2. *Wartime industrial forced labour*

The Committee has previously considered the wartime practice involving the forcible conscription of hundreds of thousands of labourers from other Asian countries, including China and the Republic of Korea, to work under private-sector control in Japanese wartime factories, mines and construction sites. The Committee has noted a 1946 report of the Japanese Ministry of Foreign Affairs (MOFA) entitled "Survey of Chinese labourers and working conditions in Japan", which details very harsh working conditions and brutal treatment, including a death rate of 17.5 per cent, and up to 28.6 per cent in some operations. Although these workers had been promised pay and conditions similar to those of Japanese workers, they in fact received little or no pay. The Committee has found that the massive conscription of labour to work for private industry in Japan under such deplorable conditions was a violation of the Convention.

In its last two observations, the Committee noted that there were still a number of claims by former prisoners and others pending in different instances, and in view of the age of the victims and the rapid passage of time, it had hoped that the Government would be able to respond to the claims of these persons in a satisfactory way.

The Committee notes in its latest very detailed report, that the Government remains of the view that, with regard to the issue of wartime industrial forced labour, it has "fulfilled its obligations" in accordance with the post-war treaties and agreements it entered into with the governments of the Allied Powers and other governments of the Asia-Pacific region, and that the issue has been "legally settled" by the parties to these agreements.

As it has indicated previously, the Government points out that it has actively promoted friendship and cooperation with the governments of its neighbouring countries. It refers in particular to the economic development assistance it has provided to the Republic of Korea and to China. The Government also indicates that it has formally expressed apologies for "past history" on various occasions, citing:

- the 1972 Joint Communiqué of the Government of Japan and the Government of China, which includes a statement that the Government of Japan “deeply feels responsible for the serious damage it caused in the past to the Chinese people through the execution of the war, and profoundly reproaches itself”;
- the 1993 statement by Chief Cabinet Secretary Yohei Kohno on the results of the study of the issue of wartime “comfort women”, in which he said: “*It is incumbent upon us, the Government of Japan, to continue to consider seriously, while listening to the views of learned circles, how best we can express this sentiment [of apology]. We shall face squarely the historical facts as described above instead of evading them ...*”;
- the statement of Prime Minister Tomiichi Murayama on the “Peace, Friendship and Exchange Initiative” in 1994 in which he stated that one way to demonstrate such feelings [of apology] is “*to face squarely to the past and ensure that it is rightly conveyed to future generations*”;
- the statement delivered by Prime Minister Murayama on 15 August 1995 on the occasion of the 50th anniversary of the war’s end; and
- the letters sent out in 2002 from Prime Minister Junichiro Koizumi to the victims of wartime sexual slavery. The letters state in part: “*We must not evade the weight of the past, nor should we evade our responsibilities for the future. I believe that our country, painfully aware of its moral responsibility, with feelings of apology and remorse, should face up squarely to its past history and accurately convey it to future generations.*”

The Committee notes that the statements and expressions of apology cited by the Government include repeated references to the expression of an intent by the Government to “squarely face” its past history and not to evade its “moral responsibility”.

In its 2001 observation, the Committee noted that a settlement was reached in one of the pending court cases, by which the contracting firm Kajima agreed to establish a 500 million yen (approximately \$4.5 million) fund to compensate survivors and relatives of conscripted Chinese labourers who died at its Hanaoka copper mine during the war, with the fund to be administered by the Chinese Red Cross. The Committee requested the Government to provide additional information on this case and its impact on similar lawsuits against other firms.

The Committee notes the Government’s indication that is not in a position to provide the Committee with information on the Hanaoka case in any detail because it was a civil law case brought by Chinese nationals against a private company and because certain lawsuits of a similar nature are currently pending at the Japanese courts. The Government notes that the settlement has not involved an admission of any legal responsibilities on the part of the company defendant for apologies or compensation.

The Committee notes the comments of the Tokyo Local Council of Trade Unions, indicating that the implementation of the settlement is moving forward. Kajima has set up the Hanaoka Friendship Fund with a donation of half a billion yen. The Council notes that on 26 March 2001, the executive committee of the fund held its first meeting at the Chinese Red Cross headquarters in Beijing, that on 27 September 2001, an initial

allocation of funds was presented to 21 survivors, and that on 15 December 2001, a similar ceremonial presentation was made to 40 members of the bereaved families.

The Tokyo Local Council of Trade Unions refers to decisions on wartime forced labour compensation claims in three recent court rulings at the district court level. These include two against the Government: the judgement of the Tokyo District Court on 12 July 2001 in the Liu Lianren case, and a judgement of the Kyoto District Court on 23 August 2001 in the case of the Ukishima-Maru incident; and one against a private enterprise: the judgement of the Fukuoka District Court on 26 April 2002.

With regard to the judgements in the Liu Lianren and Ukishima-Maru cases, the Council indicates that these rulings are considered to be major victories. It points out that, while the court did not recognize the liability of the Government based directly on its policy and practice of wartime conscription and exaction of forced labour, the rulings are important in that they found that the Government had a duty to rescue and protect conscripted Chinese labourers who were the victims of that policy and to promote their repatriation, and because they found the Government to be liable for compensatory damages in negligently failing, in these cases, to meet these obligations. The Council indicates that the Government has appealed these rulings to the higher courts “based on the statute of limitations and other legal technicalities”. The Council expresses the view that the Government “is trying to evade its responsibilities counting out all possible legal excuses”. The Council further states that the Government has “continued to turn down all forced labour-related claims and demands”.

In its reply, the Government indicates that, during the period from 1 January 2001 to 30 June 2002, there were five rulings in high courts and two rulings in district courts in cases involving claims for compensation from the Government over its wartime policy of industrial forced labour, and that in all of these cases the plaintiffs’ claims were dismissed. The Government states that, therefore, the two favourable rulings mentioned in the comments of the Tokyo Local Council of Trade Unions “are very exceptional” and “cannot be over-evaluated”. The Government has noted that “it is not responsible for compensation claims for damages”, and that it has appealed both rulings to the High Court. The Government indicates that, since the claims of Chinese and Korean nationals were “legally settled” according to post-war peace treaties and bilateral agreements to which the Government of Japan was a party, the district court rulings in the Liu Lianren and Ukishima-Maru cases “were not based on correct understanding of the settlement reached by these treaties, and were completely inappropriate”.

The Committee notes the judgement of the Fukuoka District Court dated 26 April 2002, in which the court, while dismissing the claims against the Government, held the Mitsui Mining Company liable for damages in the amount of 11 million yen to each of 15 Chinese workers because of its actions, planned and carried out jointly with the Government, involving the wartime conscription and exaction of forced labour of the plaintiffs. In its comments, the All Japan Shipbuilding and Engineering Union points out that this is the first case in which a court has issued a ruling ordering the payment of damages caused by the practice of forced labour and forced recruitment during the Second World War. In its opinion, the court referred to article 5 of the 1972 Joint Communiqué of the Governments of Japan and the People’s Republic of China, and to the Treaty of Peace and Friendship between the two governments, in which China renounced its demands for war reparations. The court also referred, on the other hand, to

a finding that at the time the San Francisco Peace Treaty was concluded in 1951, the Government of China maintained the position that individual Chinese citizens were in a position to bring claims, and to a public statement in March of 1995 by Qian Qichen, then Vice-Premier and Foreign Minister, indicating that the Government of China had renounced war reparations claims only at the state level, and not those of individual Chinese citizens. The court, taking these facts into consideration, held that it was unclear as a matter of law whether the claims of individual Chinese citizens had been finally renounced, and it concluded that it *“does not recognize that the plaintiff’s claim for damages has been renounced by the Joint Communiqué and the Treaty of Peace and Friendship between the two countries”*.

In commenting on the judgement of the Fukuoka District Court, the Government points out that the court dismissed the claims against the Government and that the court ruled that there was a legal doubt as to whether individual claims of Chinese nationals for damages suffered during the war between Japan and China were renounced by the Joint Communiqué of the Government and the Government of the People’s Republic of China. The Government states further that the judgement *“is based on the trivial and biased information which the plaintiffs provided without considering the views of the Government and the Government of the People’s Republic of China, regarding the Joint Communiqué ... and others”*. The Government notes that the Mitsui Mining Company did not accept this ruling and has appealed it to the Fukuoka High Court, which is examining the case. With reference to the court’s finding that, in March of 1995, Qian Qichen, then Vice-Premier and Foreign Minister made a public statement indicating that the Government had renounced war reparations claims at the state level but not those of individual Chinese citizens, the Government states that *“this remark was reported only by the media and has not been confirmed by the Government of the People’s Republic of China”*. The Government proceeds to cite three other remarks by Chinese government officials reported by the media, which appear to conflict with the March 1995 remark by the then Vice-Premier Qian Qichen.

The Committee notes the reference of the All Japan Shipbuilding and Engineering Union to H.R.1198, the Justice for United States Prisoners of War Act of 2001 (*“Rohrabacher Bill”*), introduced in the 107th Congress of the United States on 22 March 2001 in the House, and on 29 June 2001 in the Senate, of which the aim is *“to preserve certain actions in federal courts brought by members of the United States armed forces held as prisoners of war by Japan during World War II against Japanese nationals seeking compensation for mistreatment or failure to pay wages in connection with labor performed in Japan to the benefit of the Japanese nationals”*. Section 3(a)(1) stipulates that courts *“shall not construe section 14(b) of the Treaty of Peace as constituting a waiver by the United States of claims by nationals of the United States”* against Japanese nationals, so as to preclude such actions. The Committee notes the union’s comment that the Rohrabacher Bill exemplifies that opinions are gaining ground in favour of a position that the San Francisco Peace Treaty should not preclude individual forced labour compensation claims.

In its response, the Government states that the Rohrabacher Bill *“has serious problems because the Bill would change the settlement by the Treaty of Peace retrospectively. Moreover the Government of the United States has strongly opposed to this Bill which would violate the obligation stipulated in the San Francisco Peace Treaty, and would undermine the relations between Japan and the United States”*.

Final conclusions on wartime industrial forced labour

As with the victims of wartime sexual slavery, the Committee indicates that it has no mandate to rule on the legal effect of bilateral and multilateral international treaties. The Committee takes the same approach, namely, that it requests to be kept informed as to the outcome of the Liu Lianren, Ukishima-Maru and Fukuoka District Court cases and any relevant court decisions, as well as any legislation or government action. The Conference Committee may wish to consider whether to look at the matter on a tripartite basis.

Kuwait (ratification: 1968)

The Committee notes the Government's reports. In its previous comments, it noted that a draft Labour Code was being prepared and that a copy thereof would be provided by the Government as soon as adopted by the competent authority. The Committee would appreciate receiving information in this connection.

1. *Article 2(1) of the Convention. Domestic workers and similar categories.* The Committee refers to its earlier comments concerning the conditions under which domestic servants can leave their employment (in particular their freedom to terminate employment) and their possibility to have recourse to courts if necessary.

The Committee noted that the contract concluded between the employer and the domestic servant is subject to the provisions of civil law and that conflicts are settled by civil courts. It notes from the Government's 2000 report the information concerning the establishment of an independent administration at the Ministry of Interior to which is entrusted the supervision of domestic service agencies. The latter are required to pay a deposit worth 5,000 Kuwaiti dinars at one of the local banks in the Ministry's account for the repatriation of a domestic worker in specific cases instead of him/her assuming the travel costs.

The Committee had previously asked the Government to indicate whether it was possible to derogate from the model contract attached to Ordinance No. 617 of 1992 on domestic service agencies. In its reply, the Government indicates that nothing prevents either party from amending the terms of the contract if there were more advantageous terms for the domestic worker. The Committee again asks the Government to supply sample copies of such contracts.

The Committee had also asked the Government to indicate whether the procedures before the civil courts were ordinary procedures or if there existed simplified procedures and to give examples of cases brought to the civil courts. It notes the Government's indication in its 2000 report that, in the private sector, it is better to resort to civil courts rather than to apply the Labour Code provisions as the former are competent in examining conflicts relating to the rights of domestic workers. The Government also indicates that the Ministry of Justice has provided a sufficient number of officers who are responsible for drafting proceedings to be instituted by plaintiffs, at no cost. The Committee again asks the Government to give examples of cases brought to the civil courts.

The Committee noted in its previous comments that the Labour Code currently in force excludes domestic workers and that, pursuant to section 5 of the draft Labour Code, the competent Minister would make an order specifying the rules governing the

relationship between domestic servants and employees regarded as such by their employers. It had asked the Government to provide any ministerial order or any other legislative text to specify the rules governing the relationship between domestic workers and their employers. Having received no information in this connection, the Committee repeats its previous request on this point.

2. *Article 25.* The Committee had noted that the legislation does not contain any specific provision under which the illegal exaction of forced or compulsory labour is punishable as a penal offence, and invited the Government to take the necessary measures, for example by introducing a new provision to that effect in the legislation, and to provide information on any measures taken. The Committee notes that, in its latest report, the Government refers to section 49 of Law No. 31 of 1970 amending a few provisions of the Penal Code. The Committee also notes that, according to the Government's report, the abovementioned section provides that "any public official, employee, or worker employing by force workers in work for the State or for any public body, or retains part or the whole of their wages without justification shall be punishable by imprisonment for a period not exceeding three years, and to a maximum fine of 225 dinars or by either of these two penalties". The Committee asks the Government to provide a copy of the abovementioned Law and to indicate whether similar provisions exist in the private sector. In case such provisions do not exist, the Committee requests the Government to provide information on the measures taken to introduce a new provision to that effect in its legislation.

3. *Reply to the general observation of 2000.* The Committee notes that in reply to its general observation made in 2000 respecting the measures taken or contemplated to prevent, suppress and punish trafficking in persons for the purpose of exploitation, the Government refers to the provisions of the Labour Code and the Penal Code that prohibit and punish the use of forced or compulsory labour. It also notes the Government's statement that the victims of forced labour have the right to refer to the authorities, though without them being allowed to stay in the country during the civil action unless their legal residence allows them to do so. The Committee asks the Government to indicate the measures it intends to take, if any, to allow the victims of forced labour to stay in the country at least for the duration of court proceedings.

The Committee also addresses a direct request to the Government on another point.

Liberia (ratification: 1931)

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 points:

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.

Madagascar (ratification: 1960)

The Committee notes that no report has been received from the Government. It must therefore repeat its previous observation on the following matters:

1. *Prison labour.* For several years the Committee has drawn the Government's attention to Decree No. 59-121 of 27 October 1959 (amended by Decree No. 63-167 of 6 March 1963) to establish the organization of the prison services, under which prison labour may be hired to private undertakings and prison work may be imposed on persons detained pending trial. The Committee requested the Government to repeal or to amend the legislation in question so as to bring it into conformity with the Convention. In the Government's previous reports, the Committee noted with interest the renewed statements to the effect that the hiring of prison labour had been abolished by Circular No. 10-MJ/DIR/CAB/C of 1 July 1970 and that people detained pending trial were no longer forced to undertake prison labour. The Committee also noted the repeated information provided by the Government according to which the revision of Decree No. 59-121 was being studied. The Government indicated that the hiring of prison labour was still justified by the general economic recession prevailing in the country, since the administration has only a limited budget available which does not allow it to guarantee the vital minimum (food and shelter) for the prison population.

The Committee recalled that under *Article 2, paragraph 2(c), of the Convention*, a prisoner shall not be hired or placed at the disposal of private individuals, companies or associations even if these are entrusted with carrying out public works. The Committee also referred the Government to the explanations provided in paragraphs 97-101 of its 1979 General Survey on the abolition of forced labour.

The Committee observes that the last report of the Government does not contain information on this question.

The Committee notes that a week of sensitization on the ILO Declaration on Fundamental Principles and Rights at Work, and more particularly on the prohibition of forced labour, was organized from 7 to 13 October 2001 in Antananarivo with assistance from the ILO, and that a national survey on the reality of forced labour in Madagascar is under way. In the framework of this programme, it is planned to examine with the relevant ministries the follow-up to the observations of the Committee.

The Committee hopes that the Government will take the necessary measures to bring the legislation into conformity with the Convention, in particular by prohibiting the hiring of prison labour to private contractors and the imposition of prison labour on persons detained pending trial.

2. *National service.* The Committee noted the information supplied by the Government in its report on the points raised by the Committee concerning national service. The Committee notes that Act No. 68-018 has been repealed by Act No. 94-018 and that Decree No. 92.353 has also been repealed by Act No. 94-033. The Committee requests the Government to supply a copy of the repealing Acts.

Concerning Ordinance No. 78-002 of 16 February 1978 on the general principles of national service, which defines national service as the compulsory participation of young Malagasies in national defence and in the economic and social development of the country, the Committee noted the information provided by the Government, according to which the political and social context has changed considerably since 1978 and, consequently, Ordinance No. 78-002 of 16 February 1978 to introduce national service has been rendered obsolete.

The Government indicated that it was considering the revision of Ordinance No. 78-002.

The Committee recalls once again that forcing young people to participate in development work as part of compulsory military service – or as an alternative thereto – is incompatible with the forced labour Convention. The Committee again expresses the hope that the Government will take the necessary measures to bring the legislation into conformity with the Convention, in particular by ensuring that young boys and young girls participate in national service on a voluntary basis and that the service required under the military service laws is of a purely military character.

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

Mauritania (ratification: 1961)

Pursuant to its previous observation, the Committee notes the information provided by the Government to the Committee on the Application of Standards at the International Labour Conference in 2002 and the ensuing discussions. The Committee also takes note of the report on the application of the Convention submitted by the Government in response to its previous observation.

1. In its previous observation, the Committee noted the observations of the International Confederation of Free Trade Unions (ICFTU), which were transmitted to the Government in October 2001. Those observations referred to the persistence of certain forms of slavery in Mauritania. The ICFTU alleged that in the eyes of certain persons, birth continued to impose an inferior status on descendants of slaves. Such persons of inferior status who typically work as agricultural workers, herders of livestock or domestic servants, remain completely dependent on their traditional masters to whom they give the money they earn or for whom they work directly in exchange for food and lodging. The Committee noted that, according to the ICFTU, “the central point of concern does not relate to the legal status of slavery in Mauritania, but to whether slavery and involuntary servitude (what the Government refers to as ‘the vestiges of slavery’) have been abolished in practice”.

The Committee notes that, in its statement to the Committee on the Application of Standards in 2002, the representative of the Government of Mauritania stated that the Government intended to revise its Labour Code with a view to reinforcing the prohibition of forced labour, while recalling that “the Government did not acknowledge the existence of forced labour practices in the country, even as isolated occurrences”.

The Committee notes that in its latest report, the Government states that the Ordinance of 1980 was not necessary either from the point of view of law, since the Constitution of 20 May 1961 and specific laws such as Act No. 63-023 of 23 January 1963 issuing the Labour Code had abolished slavery, or in terms of practice, since slavery had already disappeared from Mauritanian society. According to the Government, present-day descendants of slaves are no longer regarded as slaves themselves, and the fact that an individual belongs to a particular social category originating in the past has no repercussions at all on his or her social rights. The Government also states that this social stratification no longer has any impact in real life, since there are no longer occupations reserved for one category of the population or inherent privileges reserved for others. The Government states that the legacy of the old social system may still linger in the form of attitudes and ways of thinking in some remoter areas, despite the measures that have been taken and the social and economic reforms that have taken place. The Government notes that such attitudes will disappear only with time, and their continued existence should not be equated with slavery as such.

The Committee notes that, as regards the case cited in the ICFTU report concerning a young man and a 13-year-old girl forced by their master to work as a shepherd and then as a camel herder before escaping and subsequently being recaptured with the help of the police, the Government states that the girl was in fact a married woman and mother of two children, and a local political leader had told the *Wali* of Adrar that she had been reduced to slavery, an allegation that was refuted by two inquiries ordered by the *Walīs* of Adrar and Tagant. According to the Government, a hearing involving the parties during the first inquiry revealed that the woman had worked as an employee who had decided to end her employment.

The Committee also notes that the ILO's technical mission, to which the Government agreed, was in the end unable to travel to the country to examine the situation of forced and child labour. The Committee hopes that this mission will be able to go to the country in the near future in order to investigate those factors which will allow the Committee to assess the situation and ensure that national law and practice comply fully with the Convention.

2. *Article 25 of the Convention.* In its previous observation, the Committee noted that there are no provisions in law imposing legal sanctions as required by *Article 25* of the Convention. The Committee had noted in its previous reports that forced labour was prohibited by the Labour Code, but that the Code applied only to relations between employers and workers. The Committee had invited the Government to take measures to extend the prohibition of any form of forced labour to work relationships such as may result from after-effects of historical phenomena. The Committee notes that the Government refers in its latest report to section 56 of Book V of the Labour Code, which provides for a term of imprisonment and/or a fine for persons guilty of contravening section 3 in Book I of the Code prohibiting forced or compulsory labour, which is 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 himself voluntarily. The Committee notes the information contained in the Government's report, according to which section 5 of the Labour Code, which is in the process of being adopted, will effectively extend the prohibition of forced labour to any work situation, even to one not based on a contract. The Committee notes that this section of the Code also provides that anyone guilty of contravening its provisions is liable to sanctions set out under the

regulations in force. The Committee notes that, according to the Government, these sanctions are provided for in the draft Labour Code, and requests the Government to give details of the sanctions applicable in cases of contravention of section 5 of the draft Labour Code. The Committee notes that the draft text in question was adopted by the National Labour Council in May 2002 and will be presented to the Government with a view to its adoption during the next session of Parliament in November-December 2002. The Committee requests the Government to communicate information on the legislative process under way and to supply a copy of the Labour Code once it has been adopted.

3. In its previous comments over many years, the Committee had requested the Government, following the adoption of Act No. 71-059 of 25 February 1971 issuing rules to organize civil protection, which limits the powers to requisition labour to specific exceptional circumstances corresponding to the definition of cases of emergency set out in *Article 2(2)(d)* of the Convention, to take measures to repeal the Ordinance of 1962, which confers very wide powers on local leaders to requisition labour. The Committee noted the Government's intention, as expressed in its previous report, to formally repeal the 1962 Ordinance, and requested the Government to indicate in its next report the measures taken to that end. Since no information has been communicated by the Government on this point, the Committee repeats its request, and urges the Government to take the necessary measures without delay.

4. The Committee had noted that sections 1 and 2 of Act No. 70-029 of 23 January 1970 provided for the possibility of requisitioning labour when circumstances so required, to ensure the functioning of a service considered to be essential for the country or the population. Under section 5 of the Act, persons who have not obeyed a requisition order can be subject to a penalty of imprisonment ranging from one month to one year, as well as to a fine. In its previous report, the Government stated that it considered the types of requisitioning provided by the abovementioned law to be in conformity with the Convention and that, in particular, the terms "a service considered to be absolutely necessary to meet an essential need of the country or the population" corresponded to the cases of emergency set out in *Article 2(2)(d)* of the Convention. The Committee requested the Government to provide a complete list of establishments that could be considered as services that are essential for the population and which could be affected by a possible requisition order under Act No. 70-029. The Committee notes that the Government's latest report contains no reply to its comments on this point, and urges the Government in its next report to provide the information requested.

5. In its previous comments over many years, the Committee had noted that Decree No. 70-153 of 23 May 1970 issuing the internal rules of prison establishments contained provisions providing for the possibility of hiring prison labour to private individuals, and had requested the Government to bring the legislation into conformity with the Convention. The Government has indicated in its previous report its intention to amend this Decree. Since the Government has not provided any information on this matter in its latest report, the Committee reiterates its hope that it will do everything in its power to ensure that the necessary measures are taken in the very near future.

6. The Committee takes note of the report of the ICFTU dated 9 September 2002, which was received by the Office on 10 September 2002 and transmitted to the Government on 31 October 2002, containing observations regarding the application of

Convention No. 29 in Mauritania. The Committee requests the Government to communicate its comments on this report.

Mexico (ratification: 1934)

The Committee notes the comments made by the International Confederation of Free Trade Unions (ICFTU), dated 13 March 2002, on the application of the Convention. The above comments were forwarded to the Government on 18 July 2002 so that it could make the observations that it considers appropriate.

In its comments, the ICFTU refers to the trafficking of women and girls within the country and abroad for the purposes of forced prostitution and the trafficking of illegal migrant workers from Central America to Mexico and the United States.

The Committee notes that the Government has replied to the comments of the ICFTU in a communication dated 28 November 2002 merely referring to its report on this Convention.

The Committee notes the information provided by the Government in its report in reply to the Committee's general observation on the measures taken or contemplated to prevent, suppress and punish the trafficking of persons for the purpose of exploitation. The Committee notes the Government's statements relating to the Mexican legislation with regard to the protection that is accorded against forced labour in general, debt slavery, the exploitation of prostitution and the penalties that can be imposed on those responsible. The Committee notes that no citations were made in the report of the legal texts or provisions to which reference was made. The Committee requests the Government to indicate the relevant texts and provisions.

With regard to the protection of victims who are prepared to give evidence against reprisals by exploiters, the Government indicates in its report that "the federal Government adopts various 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 requests the Government to indicate the measures concerned.

The Committee notes that the situations to which the ICFTU refers in its comments could involve serious violations of the Convention and it hopes that the Government will provide information on the measures which have been taken in relation to the matters raised.

[The Government is asked to reply in detail to the present comments in 2003.]

Morocco (ratification: 1957)

Article 2, paragraph 2(c), of the Convention

Prison work

1. For many years, the Committee has been asking the Government to repeal or amend the Dahir of 26 June 1930 which allows prisoners to be handed over to and employed by private enterprises. Although this Dahir was repealed by Act No. 23-98 concerning the organization and operation of penal establishments, promulgated by Dahir No. 1-99-200 of 25 August 1999, the Committee notes that section 40 of the Act provides for the possibility of a prisoner to work for a private individual or organization

under an administrative agreement fixing the conditions of employment and remuneration. The Committee recalls that employment of prisoners by private individuals would not be compatible with the Convention, unless the conditions under which the work is carried out were similar to those that apply in a free labour relationship. The Committee refers on this point to paragraphs 97 to 101 of its 1979 General Survey on the abolition of forced labour, paragraphs 82 to 146 of its 2001 General Report, especially paragraph 143, which defines what is to be understood as a free labour relationship, as well as to its 2002 general observation, in particular paragraphs 10 and 11. The Committee requests the Government to supply information on the procedures for concluding the administrative agreement in question, measures taken to ensure that prisoners consent freely (that is, have a genuine choice as to whether or not to work, without pressure or threats of any form of penalty), wages paid and other conditions of work, in particular, the application of labour law, social security coverage and safety and health.

2. The Committee notes the information supplied by the Government in reply to its 1999 general observation on prisoners working for private enterprises. In this regard, the Committee notes that there are no private prisons, or prisons managed by private companies, in Morocco, and notes also that there is no legislation authorizing individuals to enter prisons for the purpose of hiring prisoners. Furthermore, prisoners do not work outside prison premises, with the exception of those employed to do agricultural work for the prison, in which case the consent of the prisoners is required and they must be paid. Such work is done as part of the training and re-education of the prisoners and in order to facilitate their reintegration. The Committee requests the Government to indicate whether there are private enterprises using prisoners in prison establishments, either for themselves or on behalf of other enterprises, and whether the prisoners who are allowed to work outside prisons to do agricultural work can be employed by private enterprises or individuals and, if so, to supply information on the safeguards that apply in respect of prisoners' freely given consent. The Committee notes that the joint Order of the Ministers of Justice and Economics and Finance, No. 239-00 of 3 February 2000 enacted under the terms of section 45 of Act No. 23-98 referred to above, sets the rate of remuneration of each prisoner carrying out work in prison at six dirhams a day. The Committee requests the Government to supply information on the rate of remuneration of prisoners employed outside prison premises.

3. The Committee notes that section 26 of Decree No. 2-00-485 of 3 November 2000 establishing procedures for implementing Act No. 23-98 provides for the possibility of convicts to be employed outside the prison on work of benefit to the community. The Committee requests the Government to indicate whether such work can be carried out for the benefit of private parties, be they individuals or companies, and to communicate information on the practical arrangements for carrying out this work.

Article 2, paragraph 2(d)

Call-up of persons

4. For many years, the Committee has been drawing the Government's attention to a number of legislative texts which authorized the calling up of persons and the requisitioning of goods in order to satisfy national needs (the Dahirs of 10 August 1915

and 25 March 1918, as contained in the Dahir of 13 September 1938 and reintroduced by Decree No. 2-63-436 of 6 November 1963). The Committee had requested the Government to take steps to ensure that calling up could only take place in situations endangering the existence or well-being of the whole or part of the population. The Committee noted that according to the Government, the only cases in which the provisions allowing the requisitioning of goods and the calling up of persons may be invoked are emergencies within the meaning of the Convention and that recourse to such measures must be based on the necessity of satisfying urgent needs, under circumstances of extreme difficulty, in order to protect the nation's vital interests (for example, war, natural disasters or major accidents). The Committee had expressed the hope that the Government would take the necessary measures in the very near future to give legislative expression to this practice, by repealing or amending the aforementioned provisions. Since the Government has not communicated any information on this point in its most recent reports, the Committee again expresses the hope that the Government will soon repeal or amend the legislation in question and supply information on the measures taken or envisaged to ensure that the conditions under which persons can be called up are strictly limited to situations endangering the existence or well-being of the whole or part of the population.

Article 25

5. The Committee previously also drew attention to the absence in national legislation of any penal sanctions against persons guilty of the illegal exaction of forced labour, and recalled that *Article 25* of the Convention stipulates that the illegal exaction of forced or compulsory labour must be subject to really adequate and strictly enforced penal sanctions. The Committee takes note of the information in the Government's report to the effect that under the terms of section 10 of the draft Labour Code, the exaction of forced labour is prohibited and liable to criminal sanctions. The Committee notes that the draft Labour Code is currently being discussed by Parliament. The Committee reiterates its hope that this legislation will be adopted soon, and requests the Government to supply a copy once it has been adopted.

Article 1, paragraph 1, and Article 2, paragraphs 1 and 2, of the Convention

Freedom of public servants and career members of the armed forces to terminate their employment

6. In its previous comments, the Committee had noted that, under the terms of section 77 of the Dahir of 24 February 1958 establishing the General Conditions of Employment of the Public Service, the resignation of an official does not come into effect unless it is accepted by the authority within whose competence the power of appointment lies, and in the event of refusal by the competent authority the person concerned may bring the case before the Joint Administrative Committee, which issues a reasoned opinion for transmission to the competent authority. The Committee noted the information provided by the Government to the effect that the criteria applied in accepting or rejecting a resignation request are the needs of the service and whether or not it is possible to find a similarly qualified replacement for the official who is resigning. Furthermore, since this is an administrative decision, a refusal of the

resignation request, like any other administrative decision, can be challenged before the competent jurisdiction on grounds of exceeding authority. The Committee had referred to paragraphs 67-73 of its 1979 General Survey on the abolition of forced labour, where it had expressed the view that legislation under which workers may in emergency situations be prevented from leaving employment does not affect the observance of the Convention in so far as the power is limited to what is necessary to cope with cases of emergency within the meaning of *Article 2, paragraph 2(d)*, of the Convention. The Committee took the view that the worker's right to free choice of employment remains inalienable, and that legislation preventing an employee from terminating his employment by a reasonable period of notice has the effect of transforming a contractual relationship based on the will of the parties into service by compulsion of law and is thus incompatible with the Convention. Since no information has been communicated by the Government on this point in its most recent reports, the Committee once again requests the Government to amend the legislation with a view to restricting the possibility of preventing an official from leaving his or her employment to emergency situations, and to ensure the freedom of officials to terminate their employment by reasonable notice. The Committee again asks the Government to indicate in its next report the measures taken or planned to this end, and to provide a copy of the provisions governing the resignation of career officials.

Reply of the Government to the general observation of 2001

7. The Committee notes the information supplied by the Government in reply to its general observation of 2001, in particular regarding the provisions of national legislation to punish the exploitation of the prostitution of others. The Committee would like to have had more detailed information on points 1(b), 2 and 3, in particular with regard to measures taken to combat trafficking in persons.

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

Myanmar (ratification: 1955)

1. The Committee has noted the Government's responses on the application of the Convention, including: reports received on 9 September 2002 and on 17 October 2002, communications dated 15 November 2002 and 18 November 2002, a report entitled "Developments concerning Convention No. 29" dated 18 November 2002, a report transmitted on 27 November 2002, and a supplementary progress report dated 27 November 2002. In examining compliance with the recommendations of the Commission of Inquiry established to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29), the Committee has furthermore taken note of the following information:

- the information submitted to, and the discussions held at, the International Labour Conference at its 90th Session (June 2002) (*Provisional Record* No. 28, Part Three);
- the information submitted to the Governing Body of the ILO at its 285th Session in November 2002, including in particular the report on "Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29)" (GB.285/4 and appendices), the presentation

by the representative of the Government and the conclusions by the Governing Body (GB.285/PV);

- a communication dated 14 October 2002 with which the International Confederation of Free Trade Unions (ICFTU) submitted to the ILO fresh documentation referring to the continuing massive recourse to forced labour by military authorities in Myanmar, a copy of which was transmitted to the Government on 8 November 2002 for such comments as it may wish to present on the matters raised therein.

2. Information available on the observance of the Convention by the Government of Myanmar will again be discussed under three main parts, dealing with: (i) the amendment of legislation; (ii) any measures taken by the Government 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.

I. Amendment of legislation

3. In paragraph 470 of its report of 2 July 1998, the Commission of Inquiry noted:

... that section 11(d), read together with section 8(1)(g), (n) and (o) of the Village Act, as well as section 9(b) of the Towns Act provide for the exaction of work or services from any person residing in a village tract or in a town ward, that is, work or services for which the said person has not offered himself or herself voluntarily, and that failure to comply with a requisition made under section 11(d) of the Village Act or section 9(b) of the Towns Act is punishable with penal sanctions under section 12 of the Village Act or section 9(a) of the Towns Act. Thus, these Acts provide for the exaction of “forced or compulsory labour” within the definition of Article 2(1) of the Convention.

The Commission of Inquiry further noted that the wide powers to requisition labour and services under these provisions do not come under any of the exceptions listed in *Article 2, paragraph 2, of the Convention* and are entirely incompatible with the Convention. Recalling that the amendment of these provisions had been promised by the Government for over 30 years, the Commission urged the Government to take the necessary steps to ensure that the Village Act and the Towns Act be brought into line with the Convention without further delay, and at the very latest by 1 May 1999 (paragraph 539(a) of the Commission’s report).

4. The Committee observes that, as at the end of November 2002, the amendment of the Village and Towns Acts sought by the Commission of Inquiry as well as the present Committee and promised by the Government for many years had still not been made, nor had any draft law proposed or under consideration for that purpose been brought to the knowledge of the Committee. In its previous observation, the Committee noted that legislative powers were exercised by the Government in June 2000 and February 2001 when it adopted the “Judiciary Law, 2000” and the “Attorney-General Law, 2001”. The Committee once again expresses the hope that the Village Act and the Towns Act will at last be brought into conformity with the Convention.

5. In its observation in 2001 the Committee noted, however, 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” (No. 1/99), as modified by an “Order Supplementary 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 officers entitled to call on the assistance of local authorities under the Acts. This, in the view of the Committee, called for further measures to be undertaken, as indicated by the Commission of Inquiry in its recommendations in paragraph 539(b) of its report.

II. Measures to stop the exaction in practice of forced or compulsory labour and information available on actual practice

A. Measures to stop the exaction in practice of forced or compulsory labour

6. In its recommendations in paragraph 539(b) of its report of July 1998, the Commission of Inquiry indicated that steps to ensure that, in actual practice, no more forced or compulsory labour be imposed by the authorities, in particular the military, were:

... all the more important since the powers to impose compulsory labour appear to be taken for granted, without any reference to the Village Act or Towns Act. Thus, besides amending the legislation, concrete action needs to be taken immediately for each and every of the many fields of forced labour examined in Chapters 12 and 13 (of the Commission's report) to stop the present practice. This must not be done by secret directives, which are against the rule of law and have been ineffective, but through public acts of the Executive promulgated and made known to all levels of the military and to the whole population. Also, action must not be limited to the issue of wage payment; it must ensure that nobody is compelled to work against his or her will. Nonetheless, the budgeting of adequate means to hire free wage labour for the public activities which are today based on forced and unpaid labour is also required.

7. *Absence of specific and concrete instructions.* In its observation in 2001, 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.

8. In its previous observation, the Committee noted that in its report the Government only referred to a directive issued on 1 November 2000 by the State Peace and Development Council (SPDC) "instructing all concerned authorities to strictly abide by the Orders issued by the Ministry of Home Affairs", i.e. Order No. 1/99 and its Supplementary Order. The Committee noted from the report of the High-Level Team (HLT) that, at the time of drafting its report (in October 2001), the HLT had only received three instructions in Burmese issued by various military commanders to units under their command. Two of these instructions did not contain any specifications either of the kinds of tasks for which the requisition of labour was prohibited nor the manner in which the same tasks were henceforth to be performed. The third instruction issued by the NaSaKa and dated 22 July 2001 provided another example of the blurring of the borderline between compulsory and voluntary labour and of action which in the last

resort is limited to the issue of wage payment, contrary to the specific indications in paragraph 539(b) of the report of the Commission of Inquiry.

9. In the Government's report received on 9 September 2002, the Government only refers to "explanations" of Order No. 1/99 and its Supplementary Order, mentioned in paragraph 5 above, that were made "at the offices of the Peace and Development Councils at various levels and also the offices of the General Administration Department throughout the country". The Government also indicates that the Orders were circulated to all ministries, including the Ministry of Defence, "for issuance of further directives to all units under its command". In its report transmitted on 27 November 2002, the Government indicates that "explanations" of the Orders were made at the offices of the Department of Justice and to the police forces and township courts. The Government has not supplied any further details about the "explanations" or the "further directives" referred to, nor has it made any further reference to the directive issued on 1 November 2000 by the SPDC, which it mentioned in its 2001 report.

10. The Committee notes the report "Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29)" (ILO document GB.285/4 and addenda), which includes, in Appendix I, a summary of activities carried out by the ILO interim Liaison Officer. The summary, at paragraph 25 of Appendix I, refers to a meeting the interim Liaison Officer had on 23 August 2002 with the Implementation Committee "in order to review developments since the HLT visit [in September and October of 2001]". At that meeting, the Deputy Minister for Labour indicated that:

On two occasions since the visit of the HLT, a number of teams headed by directors in the Department of Labour had visited the field to assess the situation and explain the Orders to the people of the area. As was explained by another member of the [Implementation] Committee, however, these teams did not generally meet with local military commanders.

The Implementation Committee stated further that:

... in addition to being distributed on paper in English and Burmese, the Orders had been announced publicly by town criers, and meetings had been called at which verbal explanations had been given to the people in the language that they understood, including various ethnic languages. Regarding additional instructions, none had been issued since the visit of the HLT, but further briefings had been given to administrative officials called to Yangon.

11. In its report transmitted on 27 November 2002, the Government, in referring to visits by field observation teams in 2002, states only that during the visits the teams "left necessary guidance to the authorities". The Government has not supplied information in any greater detail regarding the content of the "explanations", "briefings", or "guidance" which it states it provided in conjunction with the dissemination of Order No. 1/99 and its Supplementary Order.

12. Before the ILO Governing Body at its 285th Session in November 2002, a representative of the Government stated that "necessary directives and instructions" were issued to all the ministries and departments concerned including the Ministry of Defence. The representative did not provide information in any greater detail.

13. Thus, accepting that the Government has undertaken some distribution of instructions, nonetheless, clear instructions are still required to indicate to all officials concerned, including officers at all levels of the armed forces, both the kinds of tasks for

which the requisition of labour is prohibited, and the manner in which the same tasks are henceforth to be performed. The Committee hopes that the necessary detailed instructions will soon be issued, and that they will, inter alia, cover each of the following:

- portering for the military (or other military/paramilitary groups, for military campaigns or regular patrols);
- construction or repair of military camp/facilities;
- other support for camps (guides, messengers, cooks, cleaners, etc.);
- income generation by individuals or groups (including work in army-owned agricultural and industrial projects);
- national or local infrastructure projects (including roads, railways, dams, etc.);
- cleaning/beautification of rural or urban areas;
- the supply of materials or provisions of any kind. The prohibition of requisition also must apply to demands of money (except where due to the State or to a municipal or town committee under relevant legislation) since in practice, demands by the military for money or services are often interchangeable.

14. *Publicity given to orders.* In its previous observation, the Committee noted the allegation made by the International Confederation of Free Trade Unions (ICFTU) in its communication dated 29 November 2001 that:

Indeed, many reports included herewith confirm that, in certain parts of the country at least, Order 1/99, its Supplementary Order and other relevant legal texts had been widely publicized. Reports abound in the ICFTU's evidence of meetings organized in villages by the authorities to this effect, ahead of the ILO's visit. As often as not, they had been run by senior SPDC officials dispatched from regional commands or even Rangoon.

... In actual fact, villagers frequently – if not always – had to pay the costs of these “information gatherings”, such as gasoline or food and drink for visiting SPDC officials. As for the “Orders” themselves, they were publicized, quite cynically, through what can only be described as “forced distribution”, whereby the so-called “Green Book” issued by the authorities on the subject had to be bought at 1,000 kyats or more per copy, with typically one to eight copies forcibly sold to each village; the villagers were also forced to purchase foam boards on which the “Orders” had to be posted.

15. The Committee invited the Government to comment on this allegation. The Committee notes that the Government has not commented on this allegation in any of its most recent reports and communications. Instead the Government reports in various documents, either on its actions or its expressed intentions in relation to publicity of orders:

- In its report received on 9 September 2002, the Government states that Order No. 1/99 and its supplementing order have been circulated to all state organs and ministries including the Ministry of Defence.
- In its report transmitted on 27 November 2002, the Government indicates that the Orders were posted at the offices of the Peace and Development Councils at the various levels, at the offices of the General Administration Department, the Department of Justice and with police forces and township courts.
- In a communication of 15 November 2002 from the Director-General of the Department of Labour to the ILO Liaison Officer (Appendix to GB.285/4 (Add.2))

it was stated that, within a matter of days, translations of Order No. 1/99 and its Supplementary Order in Shan, Mon, and Kayin languages would be disseminated, and that translations into Kayah, Chin, and Kachin languages were in progress and would be published very soon. It also stated that a pamphlet on forced labour was being prepared in order to publicize the Convention. In a report dated 18 November 2002, the Government attached copies of what it states are translations of the Orders into the Mon, Shan, and Kayin languages.

- In a report transmitted on 27 November 2002, the Government states, at paragraph 3, that the translated versions would be distributed in the very near future, that it now planned to translate the orders into Chin, Kachin, and Kayah, and that it was initiating necessary steps to publicize the provisions of the orders in pamphlet form and by brochure, press release, etc.

16. The Committee notes this information and trusts that the Government will honour the indications it has given in relation to publicity of orders and report action on those items. The Committee also requests that the Government respond to the earlier allegation made by the ICFTU in its communication dated 29 November 2001 and in addition, to respond to the recent indications of the ICFTU in its communication dated 14 October 2002, that:

... in certain areas, villagers ... indicate that the practice [of forced labour] has never stopped and they had, in fact, never heard of any “Orders” from Rangoon to the effect that forced labour was now banned. This is clearly indicated in a number of interviews by forced labour victims provided by the Federation of Trade Unions – Burma (FTUB) and EarthRights International (ERI).

17. A June 2002 report by EarthRights International, which is appended to the communication of the ICFTU, is based on scores of interviews with villagers of Shan State, Karenni State, Karen State, Pegu Division, Mandalay Division, and Tenasserim Division during the period from January to May 2002. It alleges that:

Few villagers are familiar with Order No. 1/99 ... More villagers are aware of announcements that the practice of forced labour is to have ended, but many villagers still have never heard of such proclamations – formally or informally.

Further documentation supplied by the ICFTU also refers to:

... announcements regarding no more forced labour that had created confusion and fear among the population. This had resulted in an atmosphere that was not conducive to encouraging villagers to make complaints about ongoing forced labour. To date, ERI had yet to speak with a villager who knew how to make a complaint, much less one who had attempted to make a complaint about ongoing forced labour.

The Committee awaits the comments of the Government on these allegations.

18. *Budgeting of adequate means.* In its previous observation, the Committee noted that the issue of allocating adequate budgetary resources to recruit voluntary wage labour for public activities, which have been based on forced and unpaid labour, was taken up by the HLT with the Myanmar authorities. On a number of occasions during its field trips and in Yangon, the HLT requested details on alternative means of obtaining required labour or services now that forced labour was prohibited. The HLT also inquired about any changes in budgetary arrangements. The Committee noted that it appeared from paragraphs 63 to 66 of the report of the HLT that at the time the report was finalized (29 October 2001), the HLT had not received 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 for public works projects.

19. The Committee notes that the interim Liaison Officer (discussed below) took up the issue of allocating adequate budgetary resources to recruit voluntary wage labour with the Implementation Committee, during his meeting with that Committee on 23 August 2002. The summary of the meeting (GB.285/4, Appendix I, paragraph 25) states: "Regarding evidence of budgetary provision for the payment of labour in public works projects, it was again explained that according to the Myanmar budgetary system there was no separate budget line for labour costs, and it was therefore not possible to provide such evidence."

20. The Committee notes the statement of the Government in paragraph 5 of the supplementary progress report transmitted on 27 November 2002, that:

As regards the budget allocation, ... there is always a budget allotment for each and every project. The labourers and all persons employed under the respective projects can enjoy the prevailing wages rate of the respective areas. In the light of this, we are confident that we have fully implemented the measures regarding the budgetary allotments ...

21. The Committee once again expresses the hope that the necessary detailed instructions will soon be issued and that, in the words of paragraph 539(b) of the Commission of Inquiry's report, provision will also be made for "the budgeting of adequate means to hire free wage labour for the public activities which are today based on forced and unpaid labour".

22. *Monitoring machinery.* In its previous observation, the Committee noted that the Government referred to the creation of a Ministerial Level Committee and a National Level Implementation Committee which are not only to monitor the adherence to law by local authorities, members of the armed forces and other public service personnel, but also to ensure that the local authorities and the people at the grass-roots level are fully aware of the aforementioned Orders nationwide. The Government also referred to field observation teams (FOTs), respectively led by Heads of the Departments under the Ministry for Labour and comprising of responsible personnel from the General Administration Department, Myanmar police force and the Department of Labour, which it stated had been dispatched to various areas to investigate the situations relating to the practice of forced labour and to observe the public awareness of these Orders. The Government stated that these FOTs would make frequent visits to all areas within the country.

23. In its supplementary progress report transmitted on 27 November 2002, the Government again indicates that it has formed a Ministerial Committee with regard to ILO matters, headed by the Minister for Labour, and an Implementation Committee, headed by the Deputy Minister for Home Affairs, to monitor the implementation of Order No. 1/99 and its Supplementary Order. The Government also indicates, both in paragraph 6 of this report and in its previous report dated 18 November 2002, that the authorities have decided to include a high-ranking military official from the Office of the Inspector General under the Ministry of Defence to serve as a member of the Implementation Committee. The Committee notes that this inclusion would be a helpful and important addition to the Implementation Committee.

24. In its supplementary progress report transmitted on 27 November 2002, the Government refers to visits by FOTs headed by the members of the Implementation

Committee to disseminate Order No. 1/99 and its supplemental order, and it refers to inquiries made by the teams about whether the Orders were made known to the public and whether there were any complaints on the exaction of forced labour. At paragraph 4 of its report, the Government indicates that a list of these visits was included in the attachment to the report. The attachment consists of a list of monthly visits by individual ministers to various townships and to visits by individual members of the Implementation Committee, most of which appear to have occurred in August, September, and October of 2002. At paragraph 7 of its report, the Government states that measures were carried out in the course of the visits, which included: determining first-hand the awareness and understanding of the Orders by the local populace; and assessing the effectiveness of the Orders and of measures taken by regional authorities at the state/division, township, and village tract levels.

25. *ILO Liaison Officer.* The Committee notes that, pursuant to an understanding concluded on 19 March 2002, the Government agreed to the appointment of an ILO Liaison Officer in Myanmar, as a step towards the establishment of a continued ILO presence in the country capable of contributing effectively to the objective of eliminating forced labour. The mandate of the Liaison Officer has been defined as covering all activities relevant to the objective of ensuring the prompt and effective elimination of forced labour in the country. Pursuant to this agreement, an interim Liaison Officer was appointed from 6 May 2002 to October 2002. During that time the interim Liaison Officer:

- made initial contacts in May 2002 with government officials;
- held a number of meetings with various parties during the period from June to October of 2002;
- conducted a field trip to Tanintharyi Division (GB.285/4, paragraph 6).

On 7 October 2002, a permanent ILO Liaison Officer took up her appointment in Yangon and already has had a range of contacts and meetings with government officials and others during October and November of 2002 (GB.285/4 (Add.), paragraph 1).

26. The Government makes several comments in relation to the field trip undertaken by the interim Liaison Officer to the Tanintharyi Division in September 2002. In the Government's report received on 17 October 2002, the Government refers to a visit by a FOT "composed" of government officials and the ILO interim Liaison Officer. The Government states that the report of the visit, submitted to the Ministry for Labour by the FOT, mentioned that "there are no instances of forced labour practices in the region, and that no legal action has to be taken against anyone under Penal Code 374 for infringement of Order No. 1/99." The Government has not supplied a copy of the report it refers to.

27. The report on Developments (GB.285/4) at paragraphs 13 and 14, also refers to an FOT which "consisted" of the ILO interim Liaison Officer, his assistant, and a senior official from the Ministry of Labour which visited the Tanintharyi Division, and indicates that the purpose of the trip "had not been to conduct investigations into specific allegations, but was rather to gain an impression of the root causes of the problem (such as the economic situation) and explore the possibilities for ILO assistance in solving the problem".

28. Whilst welcoming the interaction between the ILO Liaison Officer and the Implementation Committee and the FOTs, the Committee hopes that there will not be confusion between the differing roles and functions of the Liaison Officer from that of the government bodies. It is important that the FOT's actions are not regarded as "comprising" the ILO Liaison Officer as the function and actions of each of the respective bodies should remain separate and not become blurred.

29. The Committee notes these indications given by the Government of its endeavours to abolish the practice of forced labour throughout the country. The Committee notes, however, that these endeavours need to be placed in the context of the absence of specific and concrete instructions as well as the lack of budgetary allocations for the replacement of forced and unpaid labour.

B. Information available on actual practice

30. In its previous observation, the Committee took note of the "Findings as regards the impact on the realities of forced labour of the steps taken to implement the Orders", set out in paragraphs 54 to 58 of the October 2001 report of the HLT. The Committee also noted the analysis by the HLT in paragraphs 59 to 62 of its report, in which it identified the obstacles to the more effective eradication of forced labour in Myanmar, particularly the "self-reliance" policy of the army, the uncertainty as regards substitute financial/practical arrangements, and institutional obstacles.

31. The Committee, in its previous observation, also noted the communication of the ICFTU dated 29 November 2001, which included allegations that the military authorities of Burma had continued to resort to forced labour on a massive scale. In support of its claims, the ICFTU enclosed nearly 30 reports and other documents, totalling over 100 pages, and which often included precise indications of time and place, any military battalions or companies involved, and the names of the commanders. The Committee hoped that the Government would examine the indications given by the ICFTU and supply detailed information on any action taken thereupon, as well as upon the report of the HLT, to prosecute all persons found responsible for ordering forced labour, and that it would supply full information on the action taken. In its latest reports, the Government has not supplied the information requested by the Committee.

32. *The Government's view.* In its earlier report on the application of the Convention transmitted on 30 September 2001, the Government states that the elimination of forced labour "will be the main priority concern of the Government". Before the ILO Governing Body at its 285th Session in November 2002, the Government representative stated that, in comparing the situations in 2000 and 2001 to the one in November 2002, one would definitely say that improvement and progress in Myanmar has been made over the years, but he did not explain in specific terms the improvement or progress he considered had been made. In its recent report transmitted on 27 November 2002, the Government states that the Implementation Committee "will carry out its endeavours to eradicate forced labour". Thus, the Government still gives no indications as to the progress and results so far achieved.

33. *Reports on meetings of ILO liaison officers and government officials.* The Committee notes that the report on developments (GB.285/4) refers to a number of communications between the Liaison Officers and government officials on a range of issues including:

- A meeting with the Minister for Home Affairs on 1 July 2002 concerning alleged abduction of teenagers in Yangon who were said to have been forced to work as porters, which was subsequently a matter for discussion by the ILO Governing Body at its 285th Session in November 2002 (GB.285/PV).
- A letter dated 24 July to the Minister for Labour (reproduced in GB.285/4, Appendix V) and a subsequent meeting on 30 July 2002, in which the interim Liaison Officer drew attention to specific allegations of forced labour contained in a report by Amnesty International (dated 17 July 2002 entitled “Myanmar: Lack of security in counter-insurgency areas”), and recommended that the Implementation Committee dispatch teams to the various areas to start investigating these allegations as well as also investigating other allegations of a worsening forced labour situation in parts of northern Rakhine State.
- A letter dated 4 October 2002 from the interim Liaison Officer to the Implementation Committee giving the details of a complaint (without identifying the source), that vehicle owners were being requisitioned along with their vehicles to transport troops and supplies in the Kyaikto area as well as work on the construction of an artillery base, and requesting that the Committee investigate this matter urgently and inform the ILO of the result.
- A meeting with the Implementation Committee on 23 August 2002 at which the interim Liaison Officer was briefed on progress that had been made since the last meeting in May. The Implementation Committee indicated that it was aware of various allegations of forced labour, including those contained in the report by Amnesty International, but stated there was no information from the field about any such cases and it considered that most of the allegations were exaggerated or had been fabricated by expatriate groups, but it would, however, take note of the point made in the report of the ILO HLT and look into the situation in remote areas.
- A meeting with the Implementation Committee on 9 November 2002, when the Liaison Officer was able to follow up on the allegations transmitted by the interim Liaison Officer in letters dated 23 July, 7 August, and 4 October of 2002. The Committee briefed the Liaison Officer on the various places in the country that its members had travelled to in order to disseminate information and learn about the situation on the ground. As regards the specific allegations, the Implementation Committee indicated that the situation in northern Rakhine State had been thoroughly investigated, and the allegations had been found to be false, as had the allegations concerning requisition of vehicles in Mon State. No investigations had been made of the Amnesty International allegations, or the allegations relating to the construction of an artillery base in Mon State. The Liaison Officer stressed the need for written reports of such investigations, indicated that the information provided by the Implementation Committee concerning northern Rakhine State was not consistent with a separate response given by the authorities to the United Nations High Commissioner for Refugees (UNHCR) on the same issue, and also raised a number of new allegations that had been communicated which she indicated the Committee should investigate. These new allegations, some details of which had been communicated to the Implementation Committee by the Liaison Officer in advance of the meeting, related to the forced recruitment of child

soldiers, the killing of a trade unionist whilst being forced to work as a porter, a number of other specific allegations contained in information recently submitted to the Committee of Experts by the ICFTU, as well as information on alleged forced labour in two towns in Bago Division. The Liaison Officer transmitted further details of these allegations to the Implementation Committee in a follow-up letter dated 14 November.

- A meeting with the Minister for Foreign Affairs on 12 November 2002, at which the Minister indicated that the authorities had no policy of using forced labour, although they realized that the practice may be continuing in remote areas and they understood the need for prosecution of offenders.
- A meeting with Secretary-1 of the State Peace and Development Council (SPDC) on 14 November 2002, at which the Secretary stated that the authorities did not condone forced labour and had given clear instructions prohibiting it, although it was possible that such practices still occurred in remote areas. The Liaison Officer stressed the need to improve the existing system for investigating allegations and to find a way to investigate allegations concerning the army.

34. The addendum to the report on developments refers to a meeting of the Liaison Officer on 30 October 2002 with Daw Aung San Suu Kyi, the General-Secretary of the National League for Democracy (NLD). According to the report:

Daw Aung San Suu Kyi welcomed the appointment of an ILO Liaison Officer in Yangon, and hoped that the NLD would have regular contact with the Liaison Officer. She felt that while substantial progress on the forced labour issue ultimately required progress in the reconciliation process, the ILO might nevertheless be able to bring about improvements in some areas. The NLD had noted some decline in the use of forced labour, but also had information on continued recourse to the practice, including cases that she had come across herself.

35. The Committee welcomes the dialogue which the Government is having with the ILO Liaison Officer and hopes that the Government will rigorously carry out investigations into the allegations indicated by the Liaison Officer and will provide written reports including any prosecutions undertaken to enforce Order No. 1/99. In this way the Government may be able to demonstrate that it is truly implementing its expressed commitment to eliminate forced labour in the country.

36. *The ICFTU communication.* In its communication dated 14 October 2002, the ICFTU indicated that the information supplied therewith covers roughly the period October 2001 to September 2002. This information from a number of sources indicates very serious ongoing allegations related to forced labour. The communication describes cases from, among others, Chin State, Shan State, Mon State, Karen State, Arakan State and Irrawaddy and Tenasserim Divisions. The ICFTU stated that based on this information, it:

... considers that forced labour continues to be imposed in Burma by military and civilian authorities alike and that this forced labour is regularly, if not always, accompanied by egregious violations of human rights, including child labour, murder, assassination, torture, rape, beatings, looting or confiscation of property, denial of food, medical treatment, rest and shelter and many other violations ... All available evidence in fact clearly demonstrates that, after the ILO's High-Level Team left the country in October 2001, forced labour has fully resumed in all parts of the territory previously concerned by this practice.

37. The ICFTU pointed out that its communication was supported by numerous documents, including scores of interviews of forced labour victims. It stated:

Our evidence, totalling over 350 pages, describes, as always, hundreds of incidents of forced labour, involving thousands of victims and is supported by hundreds of written “forced labour orders”. Most of the forced labour is for the direct benefit of the army, such as construction and maintenance of camps, barracks, fences and other army installations, forced labour on army agricultural property (mostly confiscated earlier from civilians). Part of it also concerns forced labour on or in connection with industrial projects operated by foreign companies. One report describes forced cultivation of opium, imposed by the army on the civilian population in Shan State.

38. The documents appended to the communication of the ICFTU include:

- ICFTU documentation concerning alleged murder by army elements in August 2002 of U Saw Mya Than, an official of the FTUB (Federation of Trade Unions – Burma) and the KEWU (Kawthoolei Education Workers Union), who had been forcibly recruited as a porter for the army’s Light Infantry Battalion (LIB) No. 588, led by one Major Myo Hlaing. The ICFTU considered that the role of U Saw Mya Than as a trade union official and human rights activist was directly linked to his forcible recruitment as a porter and subsequent murder by the army (paragraph 3).
- A situation report from Kya Inn-Seik Gyi and Kawkereik Townships and Dooplaya District, in Karen State based on interviews conducted with villagers, which details specific allegations involving the exaction of forced labour by SPDC soldiers from Division 88.
- The June 2002 report by EarthRights International (ERI), “We are not free to work for ourselves: Forced labor and other human rights in Burma (January 2002-May 2002)”, based on 77 interviews concerning the practice of forced labour, conducted with villagers of Shan State, Karenni State, Karen State, Pegu Division, Mandalay Division, and Tenasserim Division during the period from January to May of 2002. The allegations in the report include findings that during that period, portering and other forms of forced labour continued in circumstances involving grave human rights abuses, that few villagers were familiar with Order No. 1/99, and that the use of fees to extort money continued to increase. The report included a very concerning allegation that the aftermath of Order No. 1/99 may have made the practice of forced labour more insidious and difficult to eradicate in the future. For example, ERI indicated that it found: efforts by the military authorities to “document” that forced labour had ended by pressuring villagers to give false testimony in a variety of forms that the practice had ended despite its continuance; threats of retribution by military commanders and soldiers, including the threat of being killed, if villagers told others that forced labour was continuing; changes in vocabulary surrounding forced labour in some areas, such as the use of the “helper” (a-ku-ah-nyi) instead of “forced labour” (loy-ah-pay); payments that now accompanied a few cases of forced labour, but villagers were still not able to refuse to work.
- Excerpts from an October 2002 report by the Documentation and Research Centre of the All Burma Students’ Democratic Front, which includes allegations of forced labour in Chin State, Irrawaddy Division, Rakhine State, Shan State and Tenasserim Division.

- Excerpts from the Narinjara News concerning allegations of forced labour in Rakhine State.

39. The ICFTU documentation included a further supplement to the October 2001, namely a report of EarthRights International “More of the same: Forced labor continues in Burma”. The report of EarthRights concerns alleged forced labour along the Yadana and Yetagun pipelines including allegations involving:

- military units providing security for two natural gas pipeline projects using conscripted forced labour and portering of villagers for construction or repair of military camps/facilities; national or local infrastructure project (including clearing roads, building bridges, etc.) in relation to the provision of military security;
- allegations that the consortiums which operate these pipelines which include TotalFinaElf (formerly Total) of France and Unocal of the United States, Premier Oil of the United Kingdom, use the Burmese military to provide security for their projects despite specific knowledge that the military has used and would continue to use forced labour;
- allegations that in about April 2002, civilians in at least 16 villages in Tenasserim Division (southern Burma) were forced to undertake construction work on a road between Kanbauk and Maung Ma Gan.

The documents appended to the ICFTU communication also included a copy of The Mon Forum (Issue No. 7/202, 31 July 2002), a publication of the Human Rights Foundation of Monland, in southern Burma, which includes similar allegations in relation to forced labour used in relation to the natural gas pipeline projects.

The Office has received correspondence from TotalFinaElf dated 31 October 2002 essentially denying the accusations.

40. The Committee requests the Government to examine the observations of the ICFTU which are specifically detailed in its report and attachments and supply detailed information on its investigations and any action taken thereupon to prosecute persons found responsible for ordering forced labour and for any concomitant crimes.

III. Enforcement

41. In paragraph 539(c) of its recommendations 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 requires thorough investigation, prosecution and adequate punishment of those found guilty.

42. In its observation published in 2001, the Committee had noted that point 4 of the directive dated 1 November 2000 from the State Peace and Development Council to All State and Divisional Peace and Development Councils (referred to by the Government in its 2001 report), provides for the prosecution of “responsible persons” under section 374 of the Penal Code, and that a similar clause is included in point 3 of an instruction dated 27 October 2000, addressed by the Director-General of the Police Force to all units of the police force.

43. The Committee again observes that no action under section 374 of the Penal Code has been brought to the knowledge of the Committee and that the report by the

Government of asserted administrative action is inadequately documented and in any event does not fulfil the Convention requirements.

44. In its communication dated 14 October 2002, the ICFTU, in commenting on allegations demonstrating that forced labour had fully resumed following the visit by the High-Level Team in October 2001, stated:

Hence, in certain areas, villagers complain that forced labour has resumed with the same intensity, irrespective of Order No. 1/99 and Supplementary Order to No. 1/99, while in others, villagers indicate that the practice has never stopped ...

... Moreover, many incidents demonstrate clearly that field commanders and other army officers have only contempt for villagers' pleas to be spared from forced labour on the grounds of Order No. 1/99 and its Supplementary Order. Hence, in Kyaik Don (Doooplaya District, Karen State), the Commander Ohn Myint, in charge of army Division 88, is quoted in one of our reports as saying: "If some of you do not agree and are not satisfied with my arrangements for requesting villagers to work for us, you can submit it or inform about it to media if you dare. I am General Khin Nyunt's cousin".

The Committee requests the Government to comment on these matters, indicating in particular how any investigations into the allegations are being conducted, by the military themselves or by the judiciary, and any measures taken to protect from reprisals both witnesses having testified, and victims of forced labour seeking redress.

The Committee also requests the Government to give consideration to the establishment of the Office of Ombudsman or similar mechanism having the mandate and the necessary means to receive complaints of forced labour and conduct investigations as suggested by the HLT in 2001. The Government may wish to have dialogue with the Liaison Officer on this issue.

* * *

45. In summary, the Committee notes the following namely:

- measures recently announced by the Government which include the translation of Order No. 1/99 and its Supplementary Order into Shan, Mon, and Kayin languages;
- impending translation of the Orders into Kayah, Chin, and Kachin languages;
- the intent to disseminate these translated versions;
- the expansion of the Implementation Committee to include a high-ranking military official from the Office of the Inspector General under the Ministry of Defence;
- the preparation of a pamphlet on forced labour in order to publicize the Convention;
- the indication of the Government in paragraph 8 of its report dated 27 November 2002 that "an action plan calling for more effective and enforced measures to be adopted will be coordinated with the ILO Liaison Officer".

46. Whilst these actions are to be commended, at the same time the Committee recalls that the ILO Governing Body, at its 285th Session in November 2002 (GB.285/PV), welcomed the words of the Government but awaited the concrete action that must follow, and that the action it required of the Government is the eradication of forced labour, the bringing to justice of those responsible for perpetrating the acts of forced labour, and changing the legal process to give effect to the foregoing.

47. The Committee indicates that in spite of the indications and rhetoric of the Government, none of the three recommendations formulated by the Commission of Inquiry and accepted by the Government have so far been met. Despite longstanding promises, as well as the Government's assured good will, the Village Act and Towns Act have not yet been amended. While Order No. 1/99, as supplemented, has been widely publicized, by itself the Order has not stopped the exaction of forced labour, in particular by the military. There is no indication that the necessary specific and concrete instructions and budgetary provisions have been adopted or even prepared with a view to effectively replacing forced labour by offering decent wages and employment conditions to freely attract any workers needed. Finally, there is no indication that any person responsible for the exaction of forced labour and often concomitant crimes was sentenced or even prosecuted under section 374 of the Penal Code or any other provision, in conformity with *Article 25 of the Convention*.

[The Government is asked to supply full particulars to the Conference at its 91st Session.]

Niger (ratification: 1961)

The Committee notes that no report has been received from the Government. It must therefore repeat its previous observation on the following matters:

1. The Committee has noted the study undertaken by the ILO in 1999 on child labour in small-scale mining. The study covers the following mines:

- Birnin N'Gaouré in the department of Gosso (natron mining);
- Gaya in the department of Dosso (salt mining);
- Torodi and Téra in the department of Tillabéry (gold mining);
- Madaoua in the department of Tahoua (gypsum mining).

The Committee notes that under sections 9, 15, 32, 45 and 75 of Ordinance No. 93-16 of 2 March 1993, no operations can be carried out without an operation authorization and that the framework for working the minerals in small-scale mines is contained in this Ordinance and further clarified in Decree No. 93-44/PM/MMEI/A of 12 March 1993. The Committee notes however that there are no specific regulations on safety in mines.

The Committee notes that, according to the ILO study, child labour is extremely common in Niger, mainly in the informal sector. Moreover, small-scale artisanal mining is the country's most dangerous informal sector activity; this branch alone employs several hundred thousand workers. According to ILO estimates, the numbers are as follows:

- small mines: 147,380 workers, 70,000 of whom are children (47.5 per cent);
- small mines and quarries: 442,000 workers, 250,000 of whom are children (57 per cent).

In all the abovementioned mines, according to the study, conditions of work for children are extremely difficult. As from the age of eight, they carry out physically exacting and dangerous tasks, more often than not seven days a week for approximately ten hours a day. The work involves serious risks of accidents and diseases which are damaging for children's health. The Committee further notes the absence of modern mine safety techniques in the sites observed and the lack of sanitary infrastructures and any systematic health care in the neighbourhood.

The Committee also notes that the statutory 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), so neither the child nor the persons with

parental authority may give valid consent to such employment. Moreover, being in economic straits, parents often force children to work, which means they are deprived of schooling.

The Committee observes that, even though not all work done by children 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 and the possibility of leaving such employment, in order to determine whether the situation falls within the scope of the Convention.

The Committee asks the Government to examine the situation of children working in mines in the light of the Convention, to provide full information on their working conditions and on any measures taken or envisaged to protect them against forced labour.

2. The Committee refers to the report of the Working Group on Contemporary Forms of Slavery (E/CN.4/Sub.2/1994/33 of 13 June 1994), and notes that children are forced to beg in West Africa, including in Niger. According to paragraph 73 of the above report, many families entrust their children as soon as they are 5 or 6 years of age to the care of a religious leader (*marabout*) with whom they live until the age of 15 or 16. During these ten years the *marabout* has absolute control over their lives and forces them to perform various tasks, including begging, in return for which he undertakes to teach them.

The Committee considers that persons in a relationship resembling a slave-master relationship, lacking freedom to control their own lives, are, due to these very circumstances, carrying out work for which they have not offered themselves voluntarily.

The Committee notes section 4 of Ordinance No. 96-039 (Labour Code) which prohibits forced labour unconditionally, and section 333 establishing the corresponding penalty. The Committee notes however that, under sections 1 and 2, the Labour Code applies only to relations between employers and workers. The Committee asks the Government to take the measures to extend the prohibition of all forms of forced labour to employment relationships such as those between children and *marabouts*.

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

Oman (ratification: 1998)

The Committee raises its concern on the situation of children involved in camel races who are subjected to exploitation and are placed in conditions in which they cannot freely give their consent, nor can such consent validly be provided by their parents in their place.

The Committee notes the concluding observations of the Committee on the Rights of the Child (CRC/C/15/Add.161, paragraph 51), noting the risks incurred by children involved in camel racing. According to the above Committee, very young children are employed as jockeys in races which endanger their life and safety.

The Committee notes that working as camel jockeys is liable to jeopardize the health and safety of jockeys by reason of its nature and the extremely hazardous conditions in which it is performed.

The Committee requests the Government to provide information on the measures taken to prevent children who are involved in camel races being subjected to conditions of forced labour and exploitation.

The Committee also addresses a direct request to the Government concerning other points.

Pakistan (ratification: 1957)

I. The Committee notes that no report has been received from the Government. It must therefore repeat its previous observation on the following matters:

Debt bondage

1. The Committee has taken note of communications dated 29 August 2001 and 18 September 2001 of the International Confederation of Free Trade Unions (ICFTU), submitting comments on the observance of the Convention, copies of which were forwarded to the Government on 18 October 2001 and 25 October 2001, respectively, for any comments it might wish to make on the matters raised therein. In its communication dated 18 September 2001, the ICFTU alleged that forced labour is prohibited by law but 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 ICFTU indicated that trade union studies found 200,000 families in bonded labour in the brick kiln industry alone. It alleged that the Bonded Labour System (Abolition) Act (BLSA) of 1992 prohibits bonded labour, but remains ineffective at addressing the problem in practice.

2. The Committee also notes 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, the 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 alleged that, while efforts carried out by non-governmental organizations, such as the Bonded Labour Liberation Front, have succeeded in freeing thousands of bonded labourers, this is a tiny proportion of the total number of bonded labourers, and the problem remains endemic. The ICFTU alleged that due to lack of alternatives, some freed debt slaves have reportedly returned to bonded labour.

3. The Committee notes the ICFTU communication of 29 August 2001, in which a report by Anti-Slavery International indicates that recent research by the non-governmental organization PILER (Pakistan Institute for Labour Education and Research) 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. According to the report, this estimate did not include forced labour which is demanded by the landlord of his tenants. 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.

4. The report communicated by the ICFTU further indicates that PILER also carried out a survey of bonded *hari* settlements in Sindh Province and 1,000 individuals responded (representing more than 6,000 people). The report indicates that the respondents to the survey stated that 2,226 men, women and children were subject to restrictions on their freedom of movement and a further 608 men and women were chained. According to the report, this information clearly indicated that bonded labour affects millions of people in Pakistan and is accompanied by other extremely serious human rights violations.

5. The Committee notes the indications in the report of Anti-Slavery International that in April 2001 the Government published its revised “Draft National Policy and Plan of Action for the Abolition of Bonded Labour and Rehabilitation of Freed Bonded Labourers”. The report indicates that this remains a draft and needs to be approved by the federal Cabinet. The Committee asks the Government to supply a copy of its draft national policy and plan of action, and that it provide information on its final approval and on the application of the policy and on implementation of the plan of action.

6. The Committee hopes that the Government will present its comments on the allegations on the matters raised in the reports communicated by the ICFTU.

Specific agreements aimed at eradicating bonded child labour

7. In its previous observation 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), particularly as to the short-term goal of withdrawing from the carpet industry some 8,000 children over a three-year period. The Committee also asked the Government to provide information on progress on implementation of the agreement it signed in 1997 with the European Commission and the ILO to take measures aimed at the eradication of bonded child labour. The Committee once again expressed its concern about the Government's inaction in collecting reliable statistics on the numbers of bonded child labourers.

8. The Committee once again requests the Government to provide information on the progress in the implementation of these agreements and on the practical results achieved, and also to provide a report containing valid statistical data on the numbers of bonded child labourers. In its report 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 requests the Government to supply information on and results from this survey, particularly as to the incidence of bonded labour.

Trafficking in persons

9. The Committee notes the allegations of the ICFTU, according to which trafficking in persons is a serious problem in Pakistan, including the trafficking of children. It alleges that some reports suggest that more than 100 women are 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 Burma, 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 indicates that estimates of the number of child prostitutes in Pakistan vary, but most suggest around 40,000.

10. The Committee notes the indications of the ICFTU that there are also 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.

11. The Committee hopes that the Government in its next report will respond to the allegations on the matters raised in the reports communicated by the ICFTU.

Restrictions on voluntary termination of employment

12. In its previous observation the Committee noted that the Government representative informed the Conference Committee in June 1999 that 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 Committee notes that in its report the Government indicated that the Commission's final report was expected at the end of

September 2000. The Committee requests the Government to supply a copy of this report. The Committee trusts that the Government will take the necessary steps to bring the federal and provincial Essential Services (Maintenance) Act into conformity with the Convention, and requests that it supply information on the progress achieved towards that aim.

13. The Committee also asks, in this regard, that the Government provide the full text 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

14. The Committee notes the allegation, contained in the report of August 2001 communicated by the ICFTU, that the Bonded Labour System (Abolition) Act of 1992 has not been applied, as few officials are willing to implement it for fear of incurring the wrath of the landlords, thus allowing them to use forced labour with impunity. The Committee also notes the allegation of the ICFTU, in its communication dated 18 September 2001, that the Bonded Labour System (Abolition) Act of 1992, in spite of the adoption of rules in 1995 to ensure the Act was implemented, remains ineffective at addressing the problem in practice.

15. The Committee has previously expressed concerns relating to inspections, 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. In its previous observation the Committee requested the Government to supply information on measures taken to reinforce the effectiveness of vigilance committees, and also on the manner of cooperation and communication between the vigilance committees and the magistrates; and on the role of magistrates in the process of identifying, freeing and rehabilitating bonded labourers. In its report the Government indicated that it was consulting with the provincial chief secretaries to obtain further information on these questions. Bearing this in mind, the Committee requests the Government to supply further information on each of these questions.

16. The Committee expressed its concern over the role of magistrates in the process of identifying, freeing and rehabilitating bonded labourers. The Committee notes that information on this point has not been provided, and it therefore repeats its request that the Government provide information on this question.

17. The Committee has previously 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. The Committee notes that the data provided by the Government in its report concern only the Sindh Province, and do not indicate under what law(s) prosecutions have occurred. The Committee requests the Government to provide information from each of the provinces and on each of the relevant laws. It asks that, in general, the Government provide information on the enforcement of laws aimed at punishing the exaction of forced or compulsory labour, and on measures it has taken to ensure that penal sanctions applied are really adequate and are strictly enforced, as required by the Convention. The Committee hopes the Government will also provide its comments in reply to the matters raised in the reports communicated by the ICFTU.

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

II. The Committee notes a communication received in September 2002 from the International Confederation of Free Trade Unions (ICFTU), which contains observations

concerning the application of the Convention by Pakistan. It notes that this communication was sent to the Government in October 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.

Qatar (ratification: 1998)

The Committee raises its concern on the situation of children involved in camel races who are subjected to exploitation and are placed in conditions in which they cannot freely give their consent, nor can such consent validly be provided by their parents in their place.

Trafficking of children with a view to their exploitation as camel jockeys. The Committee notes the information contained in the concluding observations of the Committee on the Rights of the Child (CRC/C/15/Add.163 of 6 November 2001), according to which very young children from Africa and South Asia are trafficked with a view to their exploitation as jockeys in camel races. It also notes the comments of the above Committee that such racing seriously prejudices the education and health of the children, particularly in view of the risk of serious injury to the jockeys.

The Committee also notes the report by Anti-Slavery International, submitted to the Human Rights Commission at its 26th Session. This report emphasizes the dangers to which children involved in camel racing are subjected and also mentions a study carried out in Bangladesh according to which over 1,600 boys were victims of trafficking during the 1990s. The study shows that most of these boys were under ten years of age and that they were certainly used as jockeys in the Gulf States.

In this respect, the Committee notes the information provided by the representatives of the Government at the 28th Session of the Committee on the Rights of the Child (CRC/C/SR.734), according to which the involvement of children in camel racing is a priority for the Government. It also notes the Government's statement that certain laws protecting child jockeys have been adopted and that measures are to be taken to increase the minimum age of jockeys.

The Committee requests the Government to provide copies of the laws adopted with a view to protecting child jockeys from the exaction of forced labour, and copies of the legislative texts intended to increase the minimum age of jockeys, once they have been adopted.

The Committee recalls its general observation published in 2001 under the Convention, in which it requested governments to provide information on, among other matters, measures designed to strengthen the active investigation of organized crime with regard to trafficking in persons, including international cooperation between law enforcement agencies, with a view to preventing and combating trafficking in persons.

The Committee requests the Government to take all the necessary measures, in cooperation with the other governments concerned, with a view to eliminating the trafficking of children for their use as camel jockeys and to punish those responsible through the strict application of the appropriate penal sanctions. It hopes that the Government will provide full particulars on the measures taken, and particularly on the

legal action taken against persons involved in trafficking and the penalties imposed upon them.

The Committee also addresses a direct request to the Government concerning other points.

Romania (ratification: 1957)

The Committee notes with satisfaction the provision of Act No. 7/1998 repealing Act No. 24/1976 on the hiring and distribution of labour, which required unemployed persons to register with the Labour Directorate and regional offices in order to be placed in employment.

The Committee is addressing a request directly to the Government with regard to certain other points concerning the application of the Convention.

Russian Federation (ratification: 1956)

The Committee has noted a communication dated 2 September 2002 of the International Confederation of Free Trade Unions (ICFTU) submitting comments on the observance of the Convention, a copy of which has been forwarded to the Government on 2 October 2002 for any comments it might wish to make on the matters raised therein.

The communication of the ICFTU concerns the problem of trafficking of persons for sexual and labour exploitation. While pointing out that there are no accurate statistics, the ICFTU alleges that there is little doubt that thousands of persons are trafficked from the Russian Federation to other countries, including Canada, China, Germany, Israel, Italy, Japan, Spain, Thailand and the United States. It is also alleged that internal trafficking within the Russian Federation is taking place; women are generally forced to work as prostitutes while men are trafficked into agricultural or construction work. There are also said to be confirmed cases of children being trafficked for sexual exploitation.

The ICFTU refers to allegations that organized criminal gangs operate through false employment agencies offering good jobs abroad, and that women, who make up 63 per cent of the registered unemployed, are particularly vulnerable to these offers. On arrival, their papers are taken away and traffickers use coercion and violence to control them. The victims often find themselves in debt bondage as they owe the traffickers recruitment and transport costs which are then inflated with charges for food, accommodation and interest on the debt.

The ICFTU indicates that there is currently no specific law against trafficking in the Russian Federation. Traffickers are most often prosecuted for document fraud, if at all. It is pointed out that widespread corruption, lack of resources, and a lack of understanding of trafficking issues mean law enforcement agencies rarely investigate cases. The ICFTU notes that law enforcement authorities are said to have acknowledged that they rarely open a case following such complaints because often no domestic laws were broken, and because law enforcement authorities are evaluated according to the number of cases they close.

In its communication the ICFTU refers to figures from Russian consulates showing that only very small numbers of victims of trafficking seek assistance from government

officials, and to information which appears to indicate that only a very limited number of consular officials are aware of and receptive to the problems faced by trafficked women. The ICFTU also points out that for those women and men who manage to escape and return to the Russian Federation, there is limited support available to them. It indicates that there is no direct government assistance available to victims in the form of counselling, medical assistance, or training, despite their having endured mental and physical abuse.

The ICFTU considers that the absence of specific anti-trafficking legislation and the lack of specialized training in law enforcement are serious impediments to preventing people from being subjected to trafficking and forced labour, and that the lack of adequate resources available for providing support and assistance to victims who have returned to the Russian Federation leaves them vulnerable to being re-trafficked.

The Committee requests the Government to present its comments on the allegations made by the ICFTU.

Sierra Leone (ratification: 1961)

The Committee notes with regret that no report has been received from the Government for the fifth year in succession. It must therefore repeat its previous observation on the following matters:

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 above-mentioned 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.

Singapore (ratification: 1965)

The Committee notes the information provided by the Government in reply to its earlier comments.

Articles 1(1) and 2(1) of the Convention. Over a number of years the Committee has been commenting on the Destitute Persons Act, 1989, which repeated without change certain provisions of the Destitute Persons Act, 1965. Under sections 3 and 16 of the 1989 Act, any destitute person may be required, subject to penal sanctions, to reside in a welfare home, and under section 13 of the same Act any person resident in such a home may be required to engage in any suitable work for which the medical officer of the home certifies him to be capable, either with a view to fitting him for an employment

outside the welfare home or with a view to contributing to his maintenance in the welfare home.

The Committee recalled that, under *Article 2, paragraph 1*, of the Convention, the term “forced or compulsory labour” shall mean 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 himself voluntarily. It pointed out that the imposition of labour under the Destitute Persons Act, 1989, comes under this definition, and the Convention makes no exception for labour imposed “in the context of rehabilitation” of destitute persons.

The Committee notes the Government’s renewed statement that section 13 of the Act should be interpreted in the context of rehabilitative service for the destitute persons. The Government also indicates that, under the current practice, only residents in the welfare home who give their written consent will participate in the work-training and employment schemes after medical clearance, and that participants of the various work schemes would receive payment for their participation.

Whilst the current practice in relation to the Destitute Persons Act would appear to be in conformity with the Convention, in that consent is obtained from the residents and they are paid, it is still a requirement that the legislation should also be brought into conformity with the Convention.

Recalling also that the question of work imposed on destitute persons has been the subject of comments since 1970, the Committee expresses firm hope that appropriate steps will be taken with a view to amending section 13 of the Act so as to make any work in a welfare home to be done voluntarily, thus bringing the abovementioned legislation into conformity with the Convention and the indicated practice. The Committee asks the Government to provide, in its next report, information on the action taken to this end.

United Republic of Tanzania (ratification: 1962)

1. The Committee notes with satisfaction that the Human Resources Deployment Act, 1983, under which compulsory labour could be imposed by administrative authority on the basis of a general obligation to work and for purposes of economic development, has been repealed by the National Employment Promotion Service Act, 1999 (section 34).

2. The Committee has noted the information provided by the Government in 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 to 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 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. The Government also indicated that efforts to amend the Penal Code, the Resettlement of Offenders Act, 1969, the Ward Development Committees Act, 1969, and the Local Finances Act, 1982, were under way in the Law Reform Commission.

The Committee also 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 states in its latest report that such by-laws do not take much into account the provisions of the ILO Conventions and the national Constitution and that it is 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 Government indicates in its reports received in 2001 and 2002 that labour laws and other related legislation that are incompatible with the Conventions will be re-examined in the course of the labour policy and legislation reform.

While noting the Government’s awareness of the discrepancies between the national law and practice and the provisions of the Convention, the Committee has also noted the Government’s view that some of such discrepancies fall under the exceptions from the definition of forced labour set out in *Article 2(2)(b) and (d)* of the Convention. The Committee recalls, referring to paragraph 34 of its 1979 General Survey on the abolition of forced labour, that the provision of *Article 2(2)(b)* exempts from the definition of forced labour any work or service which forms part of the normal civic obligations of citizens, examples of such normal civic obligations being the three exceptions specifically provided for in the Convention (compulsory military service, work required in cases of emergency and minor communal service), or also compulsory jury service, the duty to assist a person in danger or to assist in the enforcement of law and order. As the Committee pointed out, these exceptions must be read in the light of other provisions of the Convention and cannot be invoked to justify recourse to forms of compulsory service which are contrary to such other provisions. As regards the provision

of Article 2(2)(d), which exempts from the definition of forced labour any work or service exacted in cases of emergency, the Committee recalls, referring to paragraph 36 of its 1979 General Survey, that the concept of emergency involves a sudden unforeseen happening calling for instant countermeasures; the power to call up labour should be confined to genuine cases of emergency, and the duration and extent of compulsory service should be limited to what is strictly required by the exigencies of the situation. In the light of the above considerations, the Committee points out that the exceptions referred to by the Government cannot be invoked to justify recourse to compulsory labour under the abovementioned national provisions. As regards the example of “self-help schemes” referred to by the Government, the Committee is dealing with this subject in its comments under Convention No. 105.

The Committee urges that the necessary measures be taken in the very near future to repeal or amend the provisions contrary to the Convention.

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

[The Government is asked to report in detail in 2003.]

Uganda (ratification: 1963)

The Committee notes 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 to 73 of its 1979 General Survey on the abolition of forced labour, the Committee points out that career military servicemen who have voluntarily entered into an engagement cannot be deprived of the right to leave the service in peacetime within a reasonable period, either at specified intervals, or with previous notice, subject to the conditions which may normally be required to ensure the continuity of the service. The Committee therefore hopes that the necessary measures will be taken with a view to amending section 28(1) of 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.

United Arab Emirates (ratification: 1982)

Article 1(1) and Article 25 of the Convention. Work by children as camel jockeys. Referring to its observation made under Convention No. 138, also ratified by the United Arab Emirates, the Committee notes the information provided by the Government in reply to its previous observation under this Convention, as well as to the comments made in 2000 and 2001 by the International Confederation of Free Trade Unions (ICFTU). According to the ICFTU's comments, which referred to the information received from Anti-Slavery International, numerous young boys of 5 or 6 years of age were being trafficked (kidnapped, sold by their parents or taken under false pretences) to the United Arab Emirates to be used as jockeys in camel races. The boys were often mistreated, underfed and subjected to severe diets before races so as to be as light as possible. The comments emphasized that the children were separated from their families and thus completely dependent on their employers and de facto coerced into working.

The Government stated in its reply received in October 2001 that the ICFTU's comments referred to separate incidents and events that took place in 1997-99, and pointed out that the employment of children under the age of 15 is a clear violation of section 20 of the Federal Labour Code No. 8 of 1980 and that current laws prohibit the buying of children, their exploitation or mishandling (sections 346 and 350 of the Federal Penal Code of 1987).

In its latest report received in August 2002, the Government indicates that, according to the investigations carried out by the police, this phenomenon is somewhat limited and cannot be considered as an indicator of existing widespread practices in the country. According to a memorandum from the Dubai Police General HQ, communicated by the Government in January 2002, the investigations indicated that the children brought to the country to work as camel jockeys were under the tutelage of their parents who put them into employment without the authorities' knowledge, for the sake of quick material gain. The police further indicated that those parents whose responsibility was proven had been referred to the public prosecution for their trial. The Government also indicates in its latest report that the Minister of State for Foreign Affairs has promulgated an Order dated 29 July 2002, by virtue of which a child under the age of 15 years and whose weight is under 45 kg shall not be employed in camel racing, violations of this Order being punishable with a fine, prohibition to participate in a race for one year and imprisonment.

The Committee notes these indications. It also notes a new communication received from the ICFTU on 11 September 2002, which was transmitted to the

Government on 2 October 2002 for such comments as might be considered appropriate. This communication contains information on recent cases in which children under 15 have been used as camel jockeys in the UAE. It also contains a reference to the US Department of State's country report on human rights practices in the UAE for 2001, which states that there continue to be credible reports that hundreds of under-age boys from South Asia, mainly between 4 and 10 years of age, continue to be used as camel jockeys, and that camel owners who employ the children are not prosecuted for violation of labour laws.

The Committee hopes that the Government will supply its comments on the above communication by the ICFTU, so that the Committee could examine them at its next session. It also requests the Government once again to provide information in reply to its 2000 general observation under the Convention, and in particular, information on measures designed to strengthen the active investigation of organized crime with regard to trafficking in persons, including international cooperation between law enforcement agencies with a view to preventing and combating the trafficking in persons.

The Committee trusts that the Government will take without delay all the necessary measures, in cooperation with the other governments concerned, to eradicate the trafficking in children for use as camel jockeys and to punish those responsible through the strict enforcement of adequate penal sanctions. It requests the Government to provide, in its next report, full information on the action taken, including information on legal proceedings instituted against those involved in trafficking and on any penalties imposed.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Albania, Algeria, Angola, Antigua and Barbuda, Azerbaijan, Bahrain, Belgium, Belize, Botswana, Burkina Faso, Chad, China (Hong Kong Special Administrative Region), Côte d'Ivoire, Cyprus, Czech Republic, Djibouti, Dominica, France, Georgia, Guinea, Islamic Republic of Iran, Ireland, Jordan, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Lesotho, Liberia, Libyan Arab Jamahiriya, Luxembourg, Madagascar, Malawi, Morocco, Netherlands, Niger, Nigeria, Oman, Papua New Guinea, Qatar, Romania, Russian Federation, Saint Lucia, Saint Vincent and the Grenadines, Senegal, Sierra Leone, Singapore, Slovakia, Solomon Islands, South Africa, Switzerland, Tajikistan, United Republic of Tanzania, Trinidad and Tobago, Tunisia, Turkey, United Arab Emirates, Zambia, Zimbabwe.*

Convention No. 30: Hours of Work (Commerce and Offices), 1930

Equatorial Guinea (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.

Kuwait (ratification: 1961)

See comments made under the observation on Convention No. 1.

Panama (ratification: 1959)

Annual limits to additional hours worked in case of temporary exemptions. The Committee notes with interest the detailed report provided by the Government for the period ending on 30 June 2002. It notes that the Government insists on its view that the Constitution and the actual provisions of the Labour Code do not permit harmonizing the Labour Code with *Article 7, paragraph 3, of the Convention* by setting an annual limit on the number of additional hours of work provided for under section 36(4) of the Labour Code. The Government again refers to objections alleged to have been raised in the study commissioned by the Ministry of Labour on a bill, which was drawn up following direct contacts with the ILO in 1977. The Committee reiterates that it does not find substantial objections in the study. It further notes the Government's indication that an amendment to bring the Labour Code in line with this provision of the Convention would not find the necessary majority in Parliament nor the consent of the social partners, in particular of the workers' organizations concerned.

From the indications supplied by the Government, the Committee cannot conclude any legal reasons that could prevent the competent national bodies from bringing the Labour Code into conformity with the Convention. The legal limits of additional hours of work, as provided for under sections 35(2) and last paragraph, and section 36(3) of the Labour Code, apparently are those set in section 36(4) of the Code. The Committee requests the Government to reconsider, if it desires with ILO assistance, the modification of the Labour Code in the light of *Article 7, paragraphs 2 and 3, of the Convention* by setting annual limits to additional hours worked in case of temporary exemptions, except in case of accident, *force majeure* or urgent work.

The Committee also urges the Government to include in any considerations concerning the revision of section 36(4) of the Labour Code that in its actual version this section does not respect the limits to be set on the number of overtime hours, according to *Articles 4, 5, paragraph 1(a), (b) and (c), and 6 of the Convention*.

Convention No. 32: Protection against Accidents (Dockers) (Revised), 1932*Algeria* (ratification: 1962)

The Committee notes that the Government's report does not reply to its previous comments. It must therefore repeat its previous observation which read as follows:

1. Further to the comments it has been making for several years, the Committee notes with regret that the Government's report does not contain information concerning the adoption of implementing legislation covering ports and docks, based on the general framework for the prevention of occupational risks established by Act No. 88-07 of 26 January 1988. In its latest report, while acknowledging the absence of legislation and collective agreements covering this category of workers, the Government indicates there exists a category of posts established in collective agreements that relate to cargo handling, and that dockworkers have been regularized since 1974 and that their conditions are above those required by the Convention. The Committee has been encouraging the Government to adopt the long-promised specific texts of application for a number of years. It considers the absence, since 1975, of legal texts applying the provisions of a Convention ratified in 1962 to be a serious situation. The Committee notes that there is not even a reference to the promised texts in the Government's last report. It trusts the Government will not fail to urgently finalize the adoption of the implementing legislation based on Act No. 88-07 of 26 January 1988, with a view to ensure full conformity with the provisions of the Convention.

2. Further to its previous comments, the Committee notes the Government's report does not contain the requested copies of Executive Decree No. 93-120 of 15 May 1993 on the organization of occupational medicine and Executive Decree No. 96-209 of 5 June 1996 on the composition, organization and functioning of the national council on occupational safety and health, copies of provisions concerning safety and health contained in the collective agreement governing employment relations at the port enterprise, ARZEW, and in the internal regulations of the port enterprise of Algiers. The Committee would be grateful if the Government would supply copies of these documents with its next report.

3. In its previous comments, the Committee had noted the information that copies of the "documents 1 and 2" referred to in section 2 of the Inter-Ministerial Order of 5 November 1989 as establishing the supervisory procedure and as being attachments to the same Order, had been requested from the Ministry of Transport and that they were to be supplied to the Committee as soon as they were received. Please supply copies of these documents with the 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 comment in 2003.]

Argentina (ratification: 1950)

1. The Committee notes the Government's replies to its previous comments that the requirements of *Article 8 of the Convention* (the measures of security for hatch coverings and beams used for hatch coverings), *Article 13, paragraph 2* (the rescue of immersed workers from drowning), *Article 14* (prohibiting the removal of or interference with any fencing, gangway, gear, ladders, etc.), and *Article 18* (agreements of reciprocity) were not provided for or were only provided for in general terms in Decree No. 351/79. The Committee would like to point out that specific measures have to be taken to provide for the requirements of these Articles of the Convention under national

legislation. It trusts the Government will take the necessary measures soon and thus give effect to these provisions of the Convention.

2. The Committee notes the Government's reply to its previous comments regarding the two denunciations submitted to the National Department of Health and Safety at Work by the Union of Maritime Workers of Argentina, alleging violations of Act No. 19587 and imposition of excessively long working days by the Argentinian Port Enterprise. It notes the information that a visit made by the labour inspectorate revealed that there was neither a reference to the tonnage of goods handled nor to the observance of occupational safety and health safety standards, and that the length of the working days were legal. The Government report indicates that the Union was invited to take note of these findings. Upon its failure to do so, the matter was classified. The Union had also alleged that only 39 stevedores were engaged and that personnel aged between 18 and 23 years were engaged, and 12 hours of work per day were imposed. Following visits made by the labour inspectorate, the enterprise was found to be in order in respect to all its personnel. The matter was classified after the Union failed to respond to an invitation to take note of these findings.

3. Further to its previous comments, the Committee notes the information that no procedures had commenced with a view to ratifying the Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152).

* * *

In addition, requests regarding certain points are being addressed directly to *Nigeria* and *Panama*.

Convention No. 33: Minimum Age (Non-Industrial Employment), 1932

Côte d'Ivoire (ratification: 1960)

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

With reference to its general observation of 1997, the Committee noted the Government's statement in the report received in August 1998 concerning the Minimum Age (Industry) Convention, 1919 (No. 5), to the effect that children are frequently employed as domestic workers (housemaids), which could lead to abuse and that the authority's attention had been drawn to the need to regulate this sector. The Committee also noted that, according to the report for the Minimum Age (Non-Industrial Employment) Convention, 1932 (No. 33), the Government had organized seminars to eradicate the employment of children for domestic work. The Committee again requests the Government to provide more detailed information with regard to any measures taken concerning the employment of children for domestic work.

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In addition, requests regarding certain points are being addressed directly to the following States: *Chad*, *Côte d'Ivoire*, *Gabon*, *Guinea*.

Convention No. 44: Unemployment Provision, 1934*Peru* (ratification: 1962)

The Committee notes the observations made by the World Federation of Trade Unions (WFTU), which were forwarded to the Government in August 2002. The WFTU denounces the significant number of dismissals in the company *Telefónica del Peru* and stresses their significant social impact, which has aggravated the unemployment problem. In this respect, the Committee refers to the comments that it is making on the application of the Employment Policy Convention, 1964 (No. 122).

The Committee also refers to the observation that it made in 2000 on the application of this Convention and hopes that the Government will provide the information requested in its next report.

[The Government is asked to report in detail in 2004.]

Convention No. 52: Holidays with Pay, 1936*Peru* (ratification: 1960)

The Committee takes note of Legislative Decree No. 276 (Law of the Bases of the Administrative Career and Remuneration in the Public Sector) and the new Code of Children and Adolescents (Law No. 27337) of 7 August 2000.

Article 1, paragraph 1, of the Convention. The Committee notes that public servants are entitled to 30 days of paid annual leave, as provided for under section 24, paragraph (d), of Legislative Decree No. 276. It further notes section 2 of the Decree, which states that public servants under contract and officials with political or confidential functions are only covered by the provisions of the Decree, “as far as they are applicable”, and that they are not applicable to the armed forces, the police forces and workers of state undertakings and of mixed companies. The Government is requested to indicate the legislative provisions that govern annual holidays with pay for these categories of workers in the public sector.

Article 2, paragraphs 1 and 4. The Committee notes that section 24, paragraph (d), of Legislative Decree No. 276 permits agreements on the accumulation of holidays up to two periods. It recalls that the Convention entitles the worker, after one year of continuous service, to a minimum annual holiday with pay of six working days. In special circumstances, any part of the annual holiday that exceeds the stated minimum duration prescribed by the Convention may be divided into parts. The Committee asks the Government to indicate in its next report the legislative measures taken or envisaged to ensure the application of the Convention in this respect.

Article 2, paragraph 2. The Committee notes from the report that equal rights for all persons are established in section 2 of the Constitution and that Legislative Decree No. 713 does not make any distinction in respect of age, sex or economic conditions. Thus, section 10 of the Decree also entitles young workers to 30 calendar days of paid annual holidays, after one year of continuous service. The Committee recalls, however, that the Decree is restricted to activities in the private sector. It therefore requests the Government to inform it of any legislation, which would ensure annual holidays with

pay for young workers in the public sector. The Committee notes the indication in the report that young workers under 16 years of age, in general, still attend school. For this group, section 61 of the new Code of Children and Adolescents (Law No. 27337) requires the employer to make work compatible with regular school attendance and to grant annual holidays with pay simultaneously with school holidays, which usually last from the middle of December until April of the following year. Notwithstanding, it does not become clear from the text of the Code, whether, for instance, young persons under 16 years who do not go to school, have the right to at least 12 working days of paid annual holidays, after one year of continuous service, as required by the Convention. Please provide information as to how this requirement of the Convention is satisfied in the public as well as in the private sector.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Kyrgystan, Tajikistan*.

Convention No. 53: Officers' Competency Certificates, 1936

Argentina (ratification: 1955)

The Committee notes the Government's report. It notes the Government's indication that the Argentinian naval prefecture is the only governmental body authorized to issue embarkation certificates (*cédulas de embarco*) and that no private institution has this authority. Recalling the comments previously made by the Union of United Maritime Workers (SOMU) that the competency certificates for foreign seafarers were given recognition too easily, the Committee requests the Government to provide information on the practical application of the legislation concerning recognition of foreign competency certificates in Argentina. Please also provide information on the number of foreign competency certificates recognized during the latest reporting period.

Mauritania (ratification: 1963)

The Committee notes the information in the Government's report and recalls that for some years it has spoken about adopting decrees concerning the certification of officers in order to implement the relevant provisions of the Merchant Shipping Code of 1995.

According to the Government's 2001 report, the Committee understands that assistance funded by the World Bank has been provided, several draft decrees have been prepared (one of which is included with the report), and implementing texts will be adopted by the Ministry of Fisheries in the very near future.

The Committee requests the Government to keep it informed of progress in this matter and to forward copies of final texts when they are adopted.

[The Government is asked to report in detail in 2003.]

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Djibouti, Liberia, Luxembourg*.

Convention No. 55: Shipowners' Liability (Sick and Injured Seamen), 1936*Liberia* (ratification: 1960)

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:

Article 1, paragraph 2, of the Convention. In reply to the Committee's previous comments, the Government refers to the provisions of section 51 of the Maritime Law concerning vessels which can be registered under Liberian law. In this regard, the Committee wishes to draw the Government's attention to the fact that its comments concerned section 290-2 of the law, which provides that persons employed on vessels of less than 75 net tons are not covered by the provisions of Chapter 10 of the law relating specifically to the obligations of the shipowner in the event of seafarers' sickness or accident.

Article 2, paragraph 1. The Committee noted that section 336-1 of the Maritime Law provides for payment of the wages, maintenance and medical care of the seaman in cases of sickness or accident while he is off the vessel provided that he is "off the vessel pursuant to an actual mission assigned to him by, or by the authority of, the master". The Committee recalls that under this provision of the Convention the shipowner is liable in all cases of sickness and injury occurring between the date specified in the articles of agreement for reporting for duty and the termination of the engagement.

Article 6, paragraph 2. The Committee noted that, contrary to this provision of the Convention, the approval of the competent authority is not required when a sick or injured seaman has to be repatriated to a port other than the port at which he was engaged, or the port at which the journey commenced, or a port in his own country or the country to which he belongs. Under section 342-1(b) of the Maritime Law, agreement between the seafarer and the master or shipowner suffices. The Government states that if there is agreement between the parties, administrative authorization is not necessary but that, in the event of disagreement, the parties may submit the matter to the Commissioner of Maritime Affairs by virtue of section 359 of the law. The Committee notes this information. It wishes to draw the Government's attention to the need to include provisions in its legislation making it compulsory to seek the approval of the competent authority when the parties agree to a port of repatriation other than those laid down in *Article 6, paragraph 2(a), (b) or (c)*, of the Convention. In fact, the provisions of this Article of the Convention are designed to protect a sick or injured seafarer by preventing the master or the shipowner imposing on him a port of repatriation other than the port at which he was engaged, the home port of the vessel or a port in his own country or the country to which he belongs, without the approval of the competent authority; in the event of disagreement between the parties, an appeal to a conciliation authority is not sufficient in itself.

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

Peru (ratification: 1962)

In its previous comments, the Committee noted the information provided by the Government with regard to the comments made in May 1999 and January and March 2000 by the Trade Union of Fishing Boat Owner-Masters of Puerto Supe and Associates concerning the operational difficulties of the system of supplementary occupational risk insurance (SCTR) established under the Social Security Modernization Act No. 26790.

The Committee pointed out the need for the Government to take adequate measures to prevent seafarers who are victims of accidents or who contract a disease from being left without protection and for this purpose to strengthen the inspection system to ensure that employers comply with the obligation to include their workers in the register of enterprises carrying out high-risk activities and to take out the SCTR envisaged by Act No. 26790 for this purpose. The Committee therefore requested information on the application in practice of the SCTR as it relates to seafarers.

On this subject, the Government indicates in its report that during 2001 at the national level a total of 1,184 enterprises were registered under the SCTR, which is a supplementary protection system for persons who are insured normally under the social security system in respect of health and who perform high-risk activities. Furthermore, over the past year, a total of 5,507 technical inspections were undertaken on occupational safety and health related to the supplementary occupational risk insurance, 640 of which were in construction, six in mining, 4,366 in industry and 495 in services. The purpose of these inspections is to verify that employers have complied with the obligation to take out this insurance. The Government adds that the function of inspection activities is not just to inspect, but also to provide guidance with regard to the rights and obligations deriving from labour law. The Committee notes this information with interest. However, it observes that the inspections referred to hardly appear to cover seafarers. It therefore requests the Government to provide information on the activities carried out by inspection bodies in this sector, including copies of the relevant reports and, where applicable, examples of the administrative sanctions imposed upon shipowners.

The Committee also requested the Government to provide information on whether the fishing enterprises Chapsa and Atlántida, which are referred to by the Trade Union of Fishing Boat Owner-Masters of Puerto Supe, have also subscribed to the SCTR and, if not, to provide information on the cases referred to by the above trade union. With regard to the fishing enterprise Chapsa, the Committee notes the inspection carried out by the Sub-directorate of Occupational Health and Safety Inspection. During the inspection, it was verified that the enterprise was included on the register of employers carrying out high-risk activities and that it had paid the premium to take out the insurance policy for its workers, with health, invalidity and survivors' coverage. It also notes that a further inspection on 14 October 2002 determined the number and names of the workers covered by the SCTR with health, invalidity and survivors' coverage on the date of the programmed inspection. The Committee requests the Government to provide the text of the final report when it is available.

With regard to the fishing enterprise Atlántida, the Sub-directorate of Occupational Health and Safety Inspection, in accordance with the respective provisions, investigated an employment accident following a complaint by the Federation of Fishing Boat Owner-Masters of Peru. During the investigation, it verified that the enterprise was included on the register of enterprises carrying out high-risk activities and that it had taken out the SCTR insurance, with health coverage for the accident mentioned in the schedule with the Social Health Insurance Scheme (ESSALUD). However, it found that it had not complied with the obligation to take out the above supplementary insurance for invalidity and survivors' coverage. Subsequently, on 5 December 2001, a follow-up inspection was carried out, which found that although on the date of the accident (23 June 1998) the enterprise provided justifications that it had taken out the SCTR with

health coverage and made the payment of the corresponding premium in the name of Mr. Juan Morales de la Cruz, it could not establish having taken out the SCTR with invalidity and survivors' coverage, nor the payment of the corresponding premium. In view of the above, a fine was imposed upon the enterprise, in accordance with Legislative Decree No. 910 (approved by Supreme Decree No. 020-2001-TR).

With regard to the cases referred to by the Federation of Fishing Boat Owner-Masters of Peru, the Government states that, at its request, the administrative authority investigated the employment accidents denounced in the enterprises Chapsa and Atlántida. The investigation undertaken found that the above enterprises were duly included in the register of employers carrying out high-risk activities, and that they were registered for the payment of remuneration to injured workers. However, financial penalties were imposed upon the enterprises based on the finding that they had not taken out the SCTR in relation to invalidity and survivors' coverage, and had not paid the corresponding premium.

Without prejudice to the administrative penalties imposed, employers which do not comply with the obligation to register with the administrative labour authority or to take out supplementary occupational risk insurance for all workers covered by this obligation, or take out inadequate coverage, are liable for the cost of the benefits provided by ESSALUD and the Insurance Standardization Office (ONP) in the event of injury to workers, irrespective of their civil responsibility to the worker and his dependants for the damage and injury caused. In the event of an employment accident or occupational disease occurring as a direct consequence of failure to comply with occupational health and industrial safety standards, or serious negligence attributable to the employer or failure to comply with protection or prevention measures, the injury is covered by ESSALUD, the health care provider, the ONP or the insurer, although they may exercise the right to claim the cost of the benefits provided from the employer.

The Committee notes the Government's statement with interest. It recalls that, under the terms of *Article 4, paragraph 3, and Article 5, paragraph 3, of the Convention*, a shipowner may cease to be liable for the grant of medical benefits and for the payment of wages in whole or in part in respect of the seafarer in the case of injury resulting in incapacity for work from the time at which such seafarer becomes entitled to cash benefits under compulsory sickness insurance, compulsory accident insurance or workmen's compensation for accidents in force for seafarers in the territory in which the vessel is registered. The Committee requests the Government to provide information on the case of Mr. Juan Morales de la Cruz, with an indication on whether the corresponding premium has been paid to the SCTR for invalidity and survivors' coverage and, if so, on the manner in which the institution has covered the accident. Finally, the Committee requests the Government to indicate whether the enterprises Chapsa and Atlántida have paid the corresponding premium to SCTR for invalidity and survivors' coverage. It also requests it to indicate the negative effects that failure to pay the above premium has had on the workers in the above enterprises.

[The Government is asked to reply in detail to the present comments in 2003.]

Spain (ratification: 1971)

The Committee notes with satisfaction that as a result of the amendments (1996 and 1997) to section 7(1) of the General Social Security Act, foreigners residing in Spain

or who are legally in the Spanish territory are now covered by the Social Security System for the purpose of contributory benefits, provided that they carry on their occupation in the national territory in accordance with the provisions of clauses (a) to (e) of section 7. The Committee also notes with interest the Government's statement that, pursuant to section 7 of the General Social Security Act, as amended, all foreign seafarers fulfilling the abovementioned conditions, whether employees or self-employed, on board ship or otherwise, are covered by the special seafarers scheme and enjoy fully equal treatment with national seafarers with regard to the contributory benefits provided by the said scheme, in accordance with *Article 11 of the Convention*.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Spain, United States*.

Convention No. 56: Sickness Insurance (Sea), 1936

Peru (ratification: 1962)

The Committee takes note of the information provided by the Government in its report, and in particular the information regarding the application of *Article 1 of the Convention*.

Article 4 (Payment to the family of the seafarer of sickness benefit to which he would have been entitled had he not been abroad). With reference to its previous comments, the Committee notes the information provided by the Government, and once again requests the Government to indicate the provisions of the legislation under the terms of which, in the event that the insured person is abroad and would have been entitled to cash benefit in respect of sickness, family members or other persons can receive the benefit when duly accredited to do so. The Committee recalls that the cash benefit payable under this provision of the Convention must be paid to the family members of the insured person without restriction. The Committee requests the Government to provide information on benefits paid to the family members of insured persons.

Article 7 (Continuation of the right to insurance benefit after the termination of the engagement). In its previous comments the Committee had noted that, under section 37 of Supreme Decree No. 004-2000-TR, in the event of unemployment or the full suspension of activity resulting in the loss of entitlement to coverage, regular insured persons with a minimum of five months of contributions, whether or not they are consecutive, during the three years prior to the cessation or full suspension of activity, are entitled to the medical benefits envisaged in sections 11 and 12 of the above Decree to the level of two months of coverage for every five months of contributions. The Committee requested the Government to indicate whether the period of coverage covers the normal interval between successive engagements. In its report, the Government indicates that this provision of the Convention is reflected in current legislation only in respect of medical benefits, and is applicable to persons who remain unemployed or have their contracts of employment fully suspended. The system of supplementary occupational risk insurance (SCTR) applies during the period in which the worker is actually in employment, its purpose being to provide protection for persons employed in

high-risk activities. The Committee notes the Government's statement. Since the Government does not refer in its report to Supreme Decree No. 004-2000-TR, the Committee requests that it indicates whether section 37 of that Decree is applicable to seafarers and, if that is not the case, to indicate the measures which it intends to take with a view to maintaining, in accordance with *Article 7* of the Convention, the continuity of medical benefits in the period after the termination of the last engagement, which period should be fixed in such a way as to cover the normal interval between successive engagements.

[The Government is asked to reply in detail to the present comments in 2003.]

* * *

In addition, a request regarding certain points is being addressed directly to *Egypt*.

Convention No. 58: Minimum Age (Sea) (Revised), 1936

Liberia (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:

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.

* * *

In addition, a request regarding certain points is being addressed directly to the *United Republic of Tanzania* (Zanzibar).

Convention No. 59: Minimum Age (Industry) (Revised), 1937

Sierra Leone (ratification: 1961)

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:

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 expresses the hope again that the new Act will be adopted in the very near future in order to ensure complete conformity of the national legislation with the Convention on these points and that the Government will 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.

Convention No. 62: Safety Provisions (Building), 1937

Algeria (ratification: 1962)

The Committee notes the information contained in the Government’s report, including the indication on the regulations adopted or envisaged in application of Act No. 88-07 of 26 January 1988 regarding occupational health, safety and medicine, as well as the statistics of occupational accidents in the building and public works sector for the year 2000.

1. Further to the comments it has been making for a number of years, the Committee notes the information that several laws and regulations have since been adopted in application of Act No. 88-07 of 1988, but that special regulations concerning safety in the building industry are still listed as being in the drafting stages and thus have not yet been adopted as required by the Convention. The Committee once again recalls that a considerable period of time has elapsed since the ratification of this Convention and that the building industry continues to be an acknowledged high-risk activity. It trusts the Government will not fail to take the necessary measures to ensure that the long-awaited regulations will come into force in the very near future and that a copy of the adopted texts will be sent to the Office.

2. *Article 6 of the Convention.* Further to its previous comments, the Committee requests the Government to continue to provide up-to-date statistics covering the building industry as required by this Article of the Convention.

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

Central African Republic (ratification: 1964)

The Committee notes with regret that the Government’s report does not in fact reply to its previous comments. It must therefore repeat its previous observation which read as follows:

The Committee notes in particular 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.

* * *

In addition, a request regarding certain points is being addressed directly to *Guinea*.

Convention No. 68: Food and Catering (Ships' Crews), 1946

Requests regarding certain points are being addressed directly to the following States: *Luxembourg, Peru, Spain*.

Information supplied by *New Zealand* in answer to a direct request has been noted by the Committee.

Convention No. 69: Certification of Ships' Cooks, 1946

Requests regarding certain points are being addressed directly to the following States: *Croatia, Djibouti, Indonesia, Spain*.

Convention No. 71: Seafarers' Pensions, 1946*Peru (ratification: 1962)*

1. With reference to its previous comments, the Committee notes the detailed information provided by the Government on the manner in which benefits are paid to retired employees of the Peruvian Steamship Company (CPV). It notes with interest the fact that by a ruling of 28 December 1999, the Administrative Corporate Affairs Tribunal declared that the many claims made by CPV pensioners were valid. The ruling in question required that the appropriate level of pension be established for every claimant, and to that end the Insurance Standardization Office (ONP) must establish the equivalent public positions that apply in each case. The Committee also notes the adoption of resolution No. 048-2001-JEFATURA/ONP of 14 February 2001, by which the ONP approved Directive No. 002-2001-JEFATURA/ONP on procedures for determining the equivalent public posts for the CPV pensioners referred to in Legislative Decree No. 20530. The Committee notes the judicial ruling of 7 November 2001 to the effect that, contrary to the decision of the superior body, the ONP determined the equivalent posts and wage categories of the CPV retired employees without taking into account that the determination of pension benefits should depend directly on the claimant's occupational category at the time of retirement. The ruling instructs the ONP to determine the pensions of all the retired employees within ten days. The Ministry of Economics and Finance is awaiting the rulings of the court and the determination of the ONP regarding the adjustment of pensions payable to former CPV employees. The Committee requests the Government to keep it informed in this regard, and requests the Government once again to provide information on the situation, with reference to the Convention, of former employees of this company who were excluded from the pension fund and have not been reinstated in it by a court ruling.

2. In its previous comments, the Committee had requested the Government to indicate whether the new system of private management of pension funds (SPP), established by Decree No. 054-97-EF of 13 May 1997, applies to persons employed on board or in the service of vessels flying the Peruvian flag and, if so, to supply information on the impact of this system on the application of the Convention. In its report, the Government reiterates that the SPP does not provide for any special scheme for seafarers, and adds that the early retirement rights (introduced by Act No. 27252) for SPP-affiliated workers employed in work that carries risks for their life or health do not apply to seafarers. The conditions of membership and retirement for seafarers are the general conditions that cover all SPP members.

In terms of social insurance, a specific pension scheme for seafarers has not been established as envisaged by the Convention. Seafarers are included in schemes which were not necessarily established for them, but under which they can be insured. There is also a special insurance scheme for maritime workers, who fall within the scope of the national pension system provided for by Decree No. 19990. Acts Nos. 21952, 21933 and 23237 include within this scheme maritime, inland waterway and dock workers, and also make provision for the early retirement of maritime workers. The Committee notes this information, and once again requests the Government to provide detailed information on the impact of the new pension scheme on the application of the Convention and to provide, where possible, statistics on the number of seafarers covered by the national

pension scheme to which Decree No. 19990 refers, or by the SPP, or by any other special scheme.

3. In its previous comments the Committee had noted the information provided by the Government in reply to the communication from the Association of Former Employees and Retirees of the National Ports Enterprise (Empresa Nacional de Puertos S.A. – ACJENAPU) denouncing the violation of the acquired rights of retirees of the National Ports Enterprise. In its reply, the Government provides detailed information on the legal action taken by the ACJENAPU in its supplementary action against the National Ports Enterprise. The Committee notes once again that the Insurance Standardization Office (ONP) has still to establish the internal procedure to be followed by the National Ports Enterprise to give effect to the award by the courts in favour of the ACJENAPU in its supplementary action. The Committee hopes that the Government will take the necessary measures in this respect and requests it to keep the Committee informed of the progress achieved in this regard.

4. With reference to the observations presented by the Union of Crew Members of Maritime Vessels for the Protection of CPVSA Workers concerning, among other matters, the application of the Convention, which were transmitted to the Government on 20 February 2001, the Committee notes that the Government will supply additional information, and hopes that the Government will communicate its comments in this regard as soon as possible.

[The Government is asked to reply in detail to the present comments in 2003.]

Convention No. 73: Medical Examination (Seafarers), 1946

Requests regarding certain points are being addressed directly to the following States: *Argentina, Djibouti, Russian Federation, Ukraine.*

Convention No. 74: Certification of Able Seamen, 1946

Requests regarding certain points are being addressed directly to the following States: *China (Hong Kong Special Administrative Region), Netherlands.*

Convention No. 77: Medical Examination of Young Persons (Industry), 1946

Bolivia (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:

Further to its previous observation, the Committee notes the Government's report, in which it states once again its intention to introduce regulations on the establishment of the medical examination for fitness for employment in industry for young workers of 18 years of age. The Committee regrets to note that, although the Government has been repeating this intention for many years, the necessary steps have not been taken to adopt legislative or regulatory measures to give effect to the provisions of the Convention.

The Committee regrets to note that, for more than 20 years and despite repeated requests from the Committee, the Government has not taken appropriate measures to apply, in particular, *Articles 2, 3, 5 and 7 of the Convention*. The Committee is the more concerned as the Government stated in its previous report, regarding *Article 2* of the Convention, that “issuance of a document certifying fitness for work is not established by law, nor is it usual practice”. Referring to the same report, the Committee noted with concern the Government’s statement pertaining to *Article 4* to the effect that “the competent authority had not been determined [...] nor had the text of the Convention been disseminated in an adequate and timely manner”.

The Committee notes that in its last report the Government refers to the Act on Occupational Safety and Health and Welfare, pointing out in particular that section 6(29) requires employers to “maintain the pre-employment medical certificates and clinical records of the personnel in their charge”, and section 7(11), which requires workers to “undergo a medical check-up prior to taking up employment, and such periodical examinations as may be determined”. The Committee also notes the information in the Government’s report concerning the National Institute of Occupational Health (INSO) and the Bolivian Social Security Institute, now the National Health Insurance Institute, and the medical services of enterprises. It notes that the abovementioned Act of 1979 refers to the INSO and its functions (section 20), to the National Social Security Fund (section 24) and the medical services of enterprises (section 41). The Committee also notes that sections 8 and 9 of the Act refer to the employment of women and minors.

The Committee regrets to note, however, that none of the abovementioned provisions refer to the specific obligation for young persons under the age of 18 years to undergo medical examination before admission to employment (*Article 2*), the frequency of such examinations (*Article 3*), the frequency of medical examinations until the age of 21 years for young people in occupations which involve high health risks (*Article 4*), the requirement that the examinations must 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 the 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 therefore recalls that, when a Government chooses to ratify a Convention, it assumes the obligation to take all necessary steps to give effect to its provisions, and urges the Government to adopt the necessary legislative and regulatory measures to apply the provisions of the Articles of this Convention. The Committee reiterates its suggestion that the Government may wish to seek the technical assistance of the Office in finding the best solution to the technical problems which are preventing 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.

[The Government is asked to reply in detail to the present comments in 2003.]

Ecuador (ratification: 1975)

The Committee notes the information provided by the Government in response to its previous comments. It notes in particular that the Government refers to its activities aiming to eliminate child labour and the information supplied to this effect under Convention No. 138 and Convention No. 182. The Committee recalls that this Convention in general terms does not aim at prohibiting work of young persons, but places the assignment of young persons to work under the condition of compulsory thorough medical examinations, periodically renewable, in order to assert their fitness,

from the standpoint of their present health, for the work on which they are to be employed. This would ensure the adaptation of young persons to employment with a minimum danger to health. In the light of these indications, the Committee again draws the Government's attention to the following points.

Article 1 of the Convention. Further to its previous comments, the Committee notes again the Government's declaration that it intends to prepare regulations, which will reflect the definition of industrial undertakings set forth by the Convention. The Committee hopes that the above regulations will be elaborated in the near future, and asks the Government to transmit a copy of them for further examination as soon as they are adopted.

Article 2. With regard to the application of this Article of the Convention, the Government refers to the provisions of articles 141 seq. of the Labour Code of 1997. The Committee notes that article 141 of the Labour Code requires medical examinations for young persons under 21 years of age only for specific occupations, i.e. underground work in mines and quarries; article 142 determines the periodicity of the medical examinations to be carried out pursuant to article 141; and, according to article 143 of the Labour Code, the medical examinations have to be carried out and certified by physicians of the Ecuadorian Institute of Social Security (IESS). The Committee, while observing that medical examinations for fitness for employment are required only for young workers under 21 years of age employed for underground work in mines and quarries, stresses once again that *Article 2* of the Convention calls for medical examinations of fitness for employment of young persons under 18 years of age of *all* industrial occupations which are covered by its scope of application, and that these medical examinations have to be carried out *before* any employment. Recalling the importance of pre-employment medical examinations of young persons to determine the necessary physical strength to perform the work for which the young person is to be employed, the Committee urges the Government to take the necessary legal action to ensure that all young workers under the age of 18 are submitted to medical examinations for fitness for employment before being employed in industrial occupations.

Article 3. The Committee notes that article 142 of the Labour Code of 1997 provides for subsequent annual medical examinations of young workers who are employed in underground work in mines and quarries. The Committee notes again that this provision covers only a limited category of workers. The Committee recalls that *Article 3* of the Convention provides for subsequent medical examinations for fitness for employment of young persons in all industries with respect to the work for which they are engaged. The Committee underlines that these medical examinations are particularly important in order to assert whether the health of young workers has been undermined by the prevailing working conditions. The Committee therefore urges the Government to extend the scope of application of article 142 of the Labour Code, to guarantee that the fitness of young persons for their work is subject to medical supervision until they have attained the age of 18.

Article 4. With regard to medical examinations and re-examinations for fitness for employment in occupations involving high health risks, the Committee notes that article 138 of the Labour Code of 1997 prohibits the employment of young persons under 18 years of age in industries or occupations deemed to be dangerous or insalubrious, according to this provision. As to young persons between 18 and 21 years of age who are

employed to perform underground work in mines and quarries, which is considered as dangerous and insalubrious pursuant to article 138(f) of the Labour Code, article 141 of the Labour Code provides for their medical examination for fitness for employment before employment which includes the carrying out of lung X-rays. In addition, article 142 of the Labour Code prescribes the carrying out of subsequent annual medical examinations of these workers. With regard to the other occupations qualified under article 138 of the Labour Code as dangerous and insalubrious, the Committee observes that provisions requiring medical examinations of fitness for employment for young workers between the 18 and 21 years of age are lacking. In this respect, the Committee notes the Government's indication that the provisions of the General Regulations concerning safety and health of workers are applicable. The Committee observes that the Regulations concerning safety and health of workers of 17 November 1986 do not address the issue of medical examination of young workers. The Committee therefore calls on the Government to take the necessary legal measures to ensure that young persons under the age of 21 years, but over the age of 18, who are employed in *all* occupations which involve high health risks, particularly those referred to in article 138 of the Labour Code, are required to undergo medical examinations for fitness for employment, in conformity with *Article 4* of the Convention.

Article 5. The Committee notes that the medical examinations for young workers employed in underground work in mines and quarries do not involve the young person, or his parents or his guardian in any expense (article 143 of the Labour Code). The Committee therefore requests the Government to take the necessary measures to ensure that, in the framework of the establishment of legal provisions requiring the carrying out of medical examinations for fitness for employment in all occupations where young persons are employed, these examinations are free of charge to the young persons or their parents.

Article 6. The Committee notes the Government's indication that it has started, through the National Committee on the Progressive Elimination of Child Labour, separation and rehabilitation measures for children employed in dangerous occupations. The Committee recalls that, according to this Article of the Convention, the competent authority must take appropriate measures for vocational guidance and physical and vocational rehabilitation of children and young persons found by medical examination to be unsuited to certain types of work. For this purpose, cooperation must be established between the labour, health, educational and social services, and the national laws or regulations must provide for the issue to children and young persons of temporary work permits or medical certificates and require them to undergo re-examination. In this respect, the Committee also would refer to Paragraphs 9 and 10 of Recommendation No. 79 which contain further indications on the measures to be taken by the national authority for enforcing the provisions of this Article of the Convention. The Committee urges the Government to take the necessary action in the near future in order to give effect to this Article of the Convention.

Article 7, paragraph 1. The Committee notes again that article 147 of the Labour Code, to which the Government refers, requires the employer to file and keep available to labour inspectors special records on minors, which must be sent once a month to the Director-General of Labour and the Director of Employment and Human Resources. The information which must be contained in these records are the age of the young worker, the type of work, the number of working hours, the wages paid and the certificate that

the young person has fulfilled his compulsory school attendance. The Committee observes that the information to be filed and kept pursuant to article 147 of the Labour Code does not include information on the fitness for employment of the young person. Due to the fact that the Government has not indicated further legal provisions, the Committee concludes that a legal provision is lacking which requires the employer to file and keep available to labour inspectors either the medical certificate for fitness for employment or the work permit, as provided for in *Article 7, paragraph 1*, of the Convention. The Committee accordingly urges the Government to take the necessary steps to include in its legislation a provision requiring the employer to file and keep available to labour inspectors either the medical certificate for fitness for employment or the workbook showing that there are no medical objections to the employment.

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

Nicaragua (ratification: 1976)

The Committee notes the information provided by the Government in reply to its previous comments. It notes the adoption of the Ministerial Resolution of 28 July 2000, respecting health in industrial workplaces and the adoption of the Ministerial Resolution of 24 November 2000 respecting safety and health in the utilization, handling and application of pesticides and other chemicals in agriculture. It notes that, according to the Government, the above texts give effect to the Convention.

With regard to the Ministerial Resolution applicable in agriculture, the Committee takes this opportunity to emphasize that, under *Article 1, paragraph 1, read in conjunction with paragraph 3, of the Convention*, the agricultural sector is not covered by the scope of the Convention. As a consequence, the Ministerial Resolution of 24 November 2000 respecting safety and health in the utilization, handling and application of pesticides and other chemicals in agriculture cannot serve as a legal basis for giving effect to the provisions of the Convention. The Committee also notes the provisions contained in the Ministerial Resolution of 28 July 2000 respecting health in industrial workplaces, Chapter VIII, sections 8-14 of which address health surveillance, and Chapter X, sections 17-20, which cover occupational medical examinations. The Committee notes that section 8, read in conjunction with section 18, provides for a compulsory prior medical examination for workers whose functions may expose them to specific risks adverse to their health. The Committee considers that the nature and scope of this text does not correspond to the requirements of the Convention, since *Article 2, paragraph 1*, of the Convention provides for medical examination of children and young workers as a condition of admission to employment generally and not only to those occupations considered dangerous to health.

The Committee also notes that, according to the Government, the Child Inspection Directorate is the body responsible for authorizing work by young persons between 14 and 16 years of age, with the agreement of their parents or guardians. Nevertheless, in no case does the Government refer to the obligation for such children and young persons to undergo a medical examination prior to their employment.

The Committee recalls that, under the terms of the Convention, children and young persons under 18 years of age shall not be admitted to employment by an industrial enterprise unless they have been found fit for the work on which they are to be employed by a thorough medical examination. This examination must also be carried out regularly

up to the age of 18 years at intervals of not more than one year (*Article 3, paragraphs 1 and 2*). Furthermore, where the work performed involves high health risks, the medical examination for fitness for employment shall be required until the age of 21 years (*Article 4*). The Convention also provides that such medical examination shall not involve the child or young person or their parents in any expense (*Article 5*) and that appropriate measures shall be taken by the competent authority for vocational guidance and physical and vocational rehabilitation of children and young persons found by medical examination to be unsuited to certain types of work or to have physical handicaps or limitations (*Article 6, paragraph 1*).

It is not therefore through the adoption of laws or regulations which provide for medical examinations for adult workers who are to perform work involving hazards that the provisions of the Convention can be applied.

The Committee recalls that for many years it has been requesting the Government to take the necessary measures to give effect to the provisions of the Convention. It hopes that the Government will take the necessary measures on an urgent basis to give effect to the Convention. It suggests, where appropriate, that the Government might request the technical assistance of the ILO for this purpose.

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

Spain (ratification: 1971)

The Committee takes note of the Government's report. It notes the detailed information sent in reply to its previous comments, particularly that regarding domestic work in families. The Committee also notes the explanations given by the Government concerning the comments made by the Trade Union Confederation of Workers' Commissions (CC.OO).

Article 2 of the Convention. In the comments it has been making for a number of years, the Committee has referred to the absence of provisions establishing that minors must undergo a medical examination for fitness for employment before being employed. In its previous comments, the Committee again asked the Government to examine the problems caused by this inconsistency between national legislation and practice and the Convention and to take the necessary steps to bring its legislation and practice into conformity with the Convention.

The Committee notes that, according to the Government, no new or amended laws or regulations concerning the application of the Convention have been adopted. It notes that, to the explanations provided in earlier reports, the Government adds that *Article 2* of the Convention is applied inter alia by the provisions of section 37(3) of Royal Decree No. 39 of 17 January 1997 on occupational health services. The Committee observes, however, that this provision deals with high-level supervision and control of workers' health by the occupational health services. It establishes that workers undergo, on the orders of the occupational health services and at the hands of a physician specializing in occupational medicine or a company doctor and a holder of an "ATS/DUE", a medical examination before recruitment (subsection b(1)) and further medical examinations in the course of employment (subsection b(3)). The medical examinations are conducted according to conditions laid down in section 22 of Act No. 31/1995 on the prevention of occupational risks. As the Committee has observed in previous comments, section 22(1)

of that Act provides that the medical examination may be carried out only at the worker's request or with the worker's consent, except when such an examination is required in order to assess the effects of working conditions on the health of workers, or to establish whether the worker's state of health may constitute a danger for him or her, for the other workers, or for other persons having a connection with the enterprise. The Committee therefore concludes that there is no express provision in section 37(3) of Royal Decree No. 39/1997, read in conjunction with section 22 of Act No. 31/1995, for a thorough medical examination of workers to be required before they are employed, as this Article of the Convention prescribes.

The Committee also notes that, according to the Government, section 13(2) of Legislative Decree No. 5 of 4 August 2000 issuing provisions on offences and penalties in the area of social protection includes among the most serious breaches of the law failure to respect provisions concerning protection of the occupational safety and health of minors. The Government adds that this provision is an integral part of the occupational health and standards system, the hub of which is Act No. 31/1995 on the prevention of occupational risks, which incorporates in the national legislation European Directive 94/33 of 22 June 1995 on the protection of young people at work. The Committee again points out, in this context, that section 27 of Act No. 31/1995 on risk prevention at work provides, in its first paragraph, that, before assigning minors under 18 years of age to a job, employers must carry out an appraisal of the posts to which they are to be assigned, focusing particularly on the specific risks to the safety, health and development of young people which may arise out of their lack of experience, their lack of knowledge or their lack of maturity. This means that the employer must take measures, on the basis of an assessment of the risks that the work involves for the young people who are to perform it, to protect their safety and health, taking account of the specific risks arising out of their lack of experience, their unawareness of hazards or their incomplete development. The Committee can only repeat what it has already pointed out in this connection: first, the measures to be taken under the relevant legislation must be adapted to the nature of the risks inherent in the work; secondly, the medical examination prior to employment specified in the Convention concerns the persons expressly referred to therein – namely children and young people under 18 years of age – the aim being to certify their fitness for a specific job, whereas the risk evaluation provided for in the abovementioned Act concerns the type of work to be performed and is therefore limited to the risks inherent in the work.

Consequently, the Committee is bound to point out that no provisions of the national legislation cited by the Government provide expressly for a compulsory thorough medical examination prior to employment, in order to give effect to *Article 2* of the Convention. Recalling once again that it is of vital importance that all minors should undergo a medical examination for admission to employment, the Committee trusts that the necessary measures will be duly taken as soon as possible to bring the law and practice into line with the requirements of this Article of the Convention. The Committee hopes that the Government's next report will contain information on progress made in this respect.

With regard to the CC.OO's comments on the absence of provisions establishing that minors from 16 to 18 years of age must undergo a thorough medical examination prior to employment, the Committee notes that the Government refers, *mutatis mutandis*, to the explanations mentioned above. The Committee is therefore bound to note once

again that there are no provisions requiring young persons under 18 years of age to undergo a thorough medical examination before being admitted to employment. It therefore asks the Government to take the necessary steps to bring its legislation into line with the provisions of *Article 2, paragraph 1*, of the Convention.

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In addition, requests regarding certain points are being addressed directly to the following States: *Haiti, Kyrgyzstan, Tajikistan*.

Convention No. 78: Medical Examination of Young Persons

Bolivia (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 information supplied by the Government in its last report to the effect that the Ministry of Labour and Micro-enterprises is planning, amongst other things, a study on the draft regulations to implement the General Health and Safety (Industry) Act which are to include the prescriptions concerning medical examination of young persons. The Government adds that the abovementioned Act covers medical examination of young persons in non-industrial occupations.

Article 2 of the Convention. The Committee also notes that, according to the Government, in regard to this and the other Articles of the Convention, regulations are to be adopted which are compatible with the Children and Young Persons Code. The Committee recalls that the Government has been stating for many years that it will adopt the necessary laws and regulations to give effect to the provisions of the Convention. The Committee therefore urges the Government to ensure that such measures are adopted in order to bring the national legislation into line with the provisions of the Convention.

The Committee again asks the Government to take into consideration Recommendation No. 79 on the medical examination of young persons, particularly Paragraph 14 on methods of enforcement in respect of young persons engaged either on their own account or on account of their parents in itinerant trading or in any other occupation carried on in the streets or in places to which the public have access.

See the Committee's comments under Convention No. 77.

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

[The Government is asked to reply in detail to the present comments in 2003.]

Ecuador (ratification: 1975)

The Committee notes the information supplied by the Government in response to its previous comments.

1. *Articles 1, 2, 3, 4, 5 and 6 of the Convention.* Please refer to the comments made under Convention No. 77.

2. *Article 7, paragraph 1.* The Committee notes that article 158 of the Act on minors requires the tribunal for young workers to maintain a register, which must be sent to the Director-General of Labour and the Director of Employment and Human Resources and the Director responsible for the Protection of Minors. The information to

be contained in this register is the age of the young worker, the type of work, the place of work, the institution of education, the working day and the remuneration received. The Committee observes that the information to be filed and kept pursuant to article 158 of the Act on minors does not include information on the fitness for employment of the young person. Due to the fact that the Government has not indicated further legal provisions, the Committee concludes that a legal provision is lacking which requires the employer to file and keep available to labour inspectors either the medical certificate for fitness for employment or the work permit, as provided for in *Article 7, paragraph 1*, of the Convention. The Committee accordingly urges the Government to take the necessary steps to include in its legislation a provision requiring the employer to file and keep available to labour inspectors either the medical certificate for fitness for employment or the workbook showing that there are no medical objections to the employment.

3. *Article 7, paragraph 2(a)*. The Committee notes that article 163 of the Act on minors provides that young persons who work on their own account may obtain a card issued by the municipality in coordination with the tribunals for young persons. This card allows them to have access to the following benefits: permission to affiliate voluntarily to the insurance under the IESS so that they are entitled to all of its benefits; protection and support by the National and Municipal Police; priority access to the health centres, temporary housing, public eating rooms, cultural centres and cultural events; exemption to register to public education entities, etc. The Committee observes that medical examinations for fitness for employment are not included in the benefits obtained by this card. The Committee therefore urges the Government to take the necessary measures to ensure that children and young persons engaged on either their own account or on the account of their parents in itinerant trading must undergo medical examination for fitness for employment before starting their occupation.

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

Nicaragua (ratification: 1976)

The Committee notes the information provided by the Government in reply to its previous comments and regrets that the national legislation does not contain the provisions required to give effect to *Article 7, paragraph 2(a), of the Convention*. The Committee recalls that this Article of the Convention provides that national laws or regulations shall determine the measures of identification 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 or in places to which the public have access. The Committee urges the Government to take the necessary measures to ensure that the national legislation provides for the organization of such examinations in order to give effect to this Article of the Convention.

With regard to the other provisions of the Convention, the Committee requests the Government to refer to the comments made under Convention No. 77.

Spain (ratification: 1971)

The Committee requests the Government to refer to the comments in its observation on the application of Convention No. 77.

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In addition, requests regarding certain points are being addressed directly to the following States: *Algeria, Haiti, Kyrgyzstan, Tajikistan.*

Convention No. 79: Night Work of Young Persons

Paraguay (ratification: 1966)

The Committee notes with regret that the Government has not communicated the requested report concerning its earlier comment.

In its previous observation, the Committee 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 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 takes 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 hopes that the Government will 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 refers to its comments on the application of Convention No. 90.

Uruguay (ratification: 1954)

Articles 3(1) and 4(3) of the Convention. In its previous comments, the Committee noted the Government's indication that in special cases it was appropriate that young persons between 16 and 18 years of age should be able to work, with the consent of their parents and the permission of the competent body, in work which is not physically harmful for them. Referring to information communicated by the Government concerning inspection, according to which persons under age had been found to be engaged in night work mainly in cafés and drinks outlets, the Committee had asked the Government to indicate in its next report, requested for 2006: (a) whether the prohibition of night work had been suspended by the competent authority and authorizations had

therefore been granted to young persons to work at night; (b) on the basis of which legislative provisions or regulations such authorizations were granted; and (c) for which industries, what periods and under what conditions such authorizations had been granted.

The Committee notes the observations made by the PIT-CNT (Inter-Trade Union Assembly – Workers’ National Convention) on the application of the Convention that were transmitted by the Government in a communication dated 30 September 2002.

Night work of young persons of 16 years of age

According to the PIT-CNT, the National Institute for Minors (INAME), the authority for youth policy matters, has adopted resolutions authorizing the night work of young persons aged 16, in breach of the provisions 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 Directorate of the INAME authorizes the departmental directions of the interior of the country and the Inspection, Training and Labour Market Integration Division of Montevideo to deliver temporary individual permits (for a period of up to three months between 15 December and 15 March) authorizing young persons aged 16 to work between 10 p.m. and 12 p.m., provided that the activity neither interferes with their course of education nor jeopardizes their moral or physical safety. In addition, the prior consent of the father or guardian or other person in charge of the young person needs to be obtained.

The PIT-CNT also indicates that such authorizations have been granted since 1977, when for the first time the enterprise “Gauchito de Oro S.A. McDonald’s Uruguay” was granted an authorization to employ on its premises in Punta del Este, Maldonado and Piriapolis young persons aged between 16 and 18 years to perform night work until 12 p.m. The PIT-CNT deems the authorizations granted for the night work of young persons aged 16 to be illegal and in breach of the Night Work of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 79) and the Minimum Age Convention, 1973, 1946 (No. 138).

Articles 3(1) and 4(3) of the Convention

Under *Article 3* of the Convention, children over 14 years of age who are no longer subject to full-time compulsory school attendance and young persons under 18 years of age shall not be employed nor work at night during a period of at least 12 consecutive hours, including the interval between 10 p.m. and 6 a.m. *Article 4* of the Convention provides that national laws or regulations may empower an appropriate authority to grant temporary individual licences in order to enable young persons of 16 years of age and over to work at night when the special needs of vocational training so require.

Prohibition of night work of young persons in non-industrial occupations under national legislation

National legislation establishes in section 6 of Decree No. 852/71 that, for the purposes of the prohibition of night work of children over 14 and below 18 years, the night period may not be shorter than 12 consecutive hours, including the interval between 10 p.m. and 6 a.m. The PIT-CNT further indicates that, under generally accepted doctrine in Uruguay, the prohibition of night work of young persons has a

“practically absolute character”, and that the INAME adopted the resolutions in question in spite of the contrary advice of its own legal sector. When consulted about the legality of the request of McDonald’s Uruguay in 1997, the legal sector of the INAME gave the opinion that under the law in force the INAME could not accede to the request of McDonald’s in granting an authorization for persons under 18 years to work at night. Also, the Direction of Taxes and Fines Department declared in January 2000 that “the resolution of the Directorate was illegitimate”. As for the possibility of authorizing such work because of the needs of vocational training, provided for in the Convention, the Committee notes the indication of the PIT-CNT that it does not appear necessary for young people to perform night work to learn making or serving hamburgers.

The Committee notes with concern that the resolutions of the INAME authorizing the work of young persons aged 16 during hours included in the night interval imposed by the Convention (10 p.m. to 6 a.m.) are measures cutting into the protection that the Convention and national legislation give young persons against night work. The Committee hopes that the Government will take the necessary measures to ensure observance of the provisions of the Convention and of national legislation that prohibit the night work of young persons between 10 p.m. and 12 p.m.

The Committee further notes that Uruguay has ratified the Worst Forms of Child Labour Convention, 1999 (No. 182).

The Committee also refers to its comments on the application of Convention No. 38.

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In addition, requests regarding certain points are being addressed directly to the following States: *Azerbaijan, Belarus, Italy, Kyrgyzstan, Ukraine*.

Convention No. 81: Labour Inspection, 1947

Argentina (ratification: 1955)

The Committee takes note of the Government’s report for the period ending on 30 June 2001, the documents sent in reply to its previous comments and the annual report of the labour inspectorate for 2000.

The Committee also notes the comments by the Latin American Confederation of Labour Inspectors (CIIT) sent on 20 May 2002, complementing those of 1999, stating that there has been no change in the situation and that *Articles 1; 3, paragraphs 1(a) and 2; 4; 6; 7, paragraph 3; 10, 11, 14 and 16, of the Convention* are not applied.

The Committee also notes that, in a communication received on 6 June 2002 by the Office, the Government refers to the serious economic and financial crisis which has given rise to internal and external insolvency and paralysis of all banking activity with implications for the labour market. The Committee refers in this connection to its previous comments and the information which the Government sent in reply, and would appreciate information on developments in the situation, particularly as regards the application of the abovementioned provisions of the Convention.

Labour inspection and child labour. The Committee notes with interest Annex IV to the Federal Labour Pact concerning the national action programme on child labour

(Act No. 25.212 of 2000), and Decree No. 719 of 2000 setting up a national committee for the elimination of child labour which is responsible for the evaluation and coordination of efforts to prevent and eliminate child labour. The Committee notes that the abovementioned national action programme provides for the reinforcement of the labour inspectorate, inter alia, through the implementation of relevant training programmes, the establishment of interdisciplinary technical support teams for labour inspection, the formation of social networks allowing an immediate social response by the inspection services to every instance of child labour and the establishment of new machinery for detecting child labour. The Committee hopes that the Government will regularly send detailed information, including figures, of the results obtained by the strategy to combat child labour.

Regional and sectoral cooperation in labour inspection. With reference to its previous comments on joint labour inspection operations by MERCOSUR countries in the construction, manufacturing, food and electrical energy sectors, the Committee requests the Government to provide information on the running of such operations in the country and the results obtained in the light of the objectives pursued.

Cooperation between government labour inspection services. The Committee notes that the supervision of occupational hygiene, health and safety conditions is carried out by the provincial labour administrations which may call on the inspectors of the Occupational Risks Supervising Authority to determine arrangements for supervision, training or technical assistance. Noting the information on the new comprehensive strategy developed by the occupational risk supervision service through the “Safe work for all” programme, the Committee asks the Government to indicate whether, and to what extent, labour inspectors who report to the Ministry of Labour are involved in the implementation of the above programme and to give particulars of the type of measures taken, particularly in the construction sector which, along with the agricultural sector, has been shown by studies to have the highest number of fatal accidents.

Bahamas (ratification: 1976)

The Committee notes the Government’s replies to its observation and direct request of 2000, supplementing the report provided in 2001 on the application of the Convention.

It notes with interest the adoption of the Health and Safety at Work Act, No. 2 of 2002, which gives effect to various provisions of the Convention, and particularly to *Article 13, paragraphs 1 and 2*, respecting the powers of injunction that inspectors should be able to exercise or to make recommendations during the inspection of working conditions relating to occupational safety and health.

The Committee also notes the increase in the staff of the inspection services and their allocation of vehicles, as well as the information that labour inspectors receive training after their recruitment and benefit from training from ILO experts. The Committee would be grateful if the Government would provide information on the form and content of these two types of training and provide copies of any relevant documents.

Noting the announcement by the Government of the future provision of annual inspection reports, the form and content of which are specified in *Articles 20 and 21 of the Convention*, the Committee once again hopes that measures have been taken in

practice with a view to the publication and regular communication to the ILO by the central labour inspection authority of such reports, which are indispensable both for evaluation by the Government of the effectiveness of the labour inspection system, and for the assessment by the Committee of the extent to which the Convention is applied.

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

Belize (ratification: 1983)

The Committee takes note of the Government's report as well as the table of labour statistics gathered by the Central Bureau of Statistics for 1996, the table of statistics concerning occupational accidents and diseases covering the period of January 2000-June 2001, and the statistics of complaints and visits by the labour inspection from January 1999-June 2001. The Committee notes that the information communicated by the Government in response to its previous comments does not indicate any improvement in the application of the Convention. As a result, it once again draws the attention of the Government to the following points.

Labour inspection staff and inspection visits. (Articles 2, 3, 10 and 16 of the Convention). The number of inspection visits communicated dropped from 169 in 1999 to three for the first semester of 2001. Indeed, the Government notes in its report that, for reasons of insufficient human resources, inspection visits could not be made in conformity with the Convention. With reference to its previous comments, the Committee once again notes that the staff described in the Government's report is composed of persons designated by the terms "labour commissioner" and "labour officer", and that these terms do not indicate which persons exercise the functions of labour inspection in the sense of the Convention. The Government is requested to provide details in this regard and to clarify how, in conformity with the instrument, legal provisions regarding the conditions of work, as well as provisions regarding hours of work, wages, occupational safety, occupational health and well-being, employment of children and young persons and the protection of workers in commercial and industrial establishments are applied.

Occupational safety and health. As it has in its previous comments, the Committee once again refers to the mission report of an ILO consultant in 1996 which indicated that, from the workers' point of view, it was urgent that questions of occupational safety and health be considered as priorities and that legal measures be taken to ensure a reduction in the worrisome number of occupational accidents and their consequences. The Committee asks the Government to communicate all useful information on measures taken to fill the gaps in legislation and to establish a labour inspection system which includes visits of establishments.

Noting that workers had indicated that the absence of any representative workers' organizations in the important economic sectors constituted a principal obstacle in the improvement of the situation, the Committee would be grateful if the Government would indicate how it plans to give effect to *Article 5(b)* of the Convention, according to which the competent labour inspection authority should take appropriate measures to encourage the collaboration between labour inspection staff and employers and workers or their organizations.

Brazil (ratification: 1989)

The Committee takes note of the Government's detailed report containing replies to its previous comments and of the appended documentation. Further to its previous comments, it notes with interest that pursuant to Decree No. 3.129 of 9 August 1999, a body (Corregedoria) has been set up in the Ministry of Labour to be responsible for the probity of public employees.

1. *Prevention and supervision in occupational safety and health.* The Committee notes from the information sent that strategies are in place to reduce occupational accidents and instances of occupational disease through the extension of supervisory activities, first and foremost to the inspection of sectors and work premises where risk levels are highest; educational measures; the training of technical staff; and the involvement of various administrative and non-governmental bodies. According to the Government, the measures include the revision and dissemination of the legislation and the development of information technologies and the training of labour supervisors, as well as the development of specific training activities for trade union organizations. The Committee would be grateful if the Government could continue to provide information in this regard, indicating the impact of the abovementioned strategy in sectors particularly exposed to risks of industrial accidents such as the construction sector, and the marble, granite and limestone industry of the State of Spirito Santo.

2. *Labour inspection and child labour.* The Committee notes with interest the information on the activities carried out by the child labour and young workers' protection task forces. It notes that, thanks to the action of these task forces, which are composed solely of labour inspectors and work in liaison with the body responsible for coordinating special labour inspection projects, indicators on child and adolescent labour have been devised which can also be used in the informal sector. The Committee further notes Order No. 07 and Instruction No. 01 of 23 March 2000, concerning the creation of the child labour and young workers' protection task forces (GECTIPA) which have a computer support system (ACTI) the main functions of which are: information dissemination; situation diagnosis; activity planning and evaluation; and the production of statistical tables and graphics. The Committee notes that, as part of the implementation of the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182), a tripartite committee has been established to draw up a list of types of work that are potentially dangerous for the physical and mental health and the safety of children, with a view to classifying the worst forms of child labour. The Committee also notes that, in the same context, Ordinance No. 06 of 5 February 2001 has been adopted, dealing with premises and jobs which are insalubrious for persons of less than 18 years of age. The Committee would be grateful if the Government would continue to provide information on the activities of the inspectorate aimed at eliminating child labour.

3. *Labour inspection and forced labour.* Noting the information that the regional coordination bodies of the special mobile inspection group which report to the labour inspection services play an important role in combating forced labour, the Committee would be grateful if the Government could provide information on the results of the latter's activities.

The Committee is also addressing a request directly to the Government in which it raises other matters.

Bulgaria (ratification: 1949)

With reference to its previous comments, the Committee notes with satisfaction that, as a result of the adoption in May 2000 of the Decree of May 2000 establishing and determining the functions, organization and operation of the General Labour Inspectorate Executive Agency (EAGLI), supervision of compliance with legal provisions in the field of occupational safety and health is now the responsibility of an inspection system, and that this system is to be placed under the sole authority of the department responsible for labour, which is also responsible for coordinating labour inspection activities, including those which may be entrusted to services under the responsibility of other structures. The Committee notes that the Government has thereby given effect to the conclusions of a mission report by an ILO expert in January 1998 on the need to modernize the labour inspection system on an integrated basis, and that this approach is endorsed by the representative organizations of the social partners. The Committee also notes that the new Decree provides that the functions envisaged in *Article 3, paragraph 1(b) and (c), of the Convention*, namely the provision of technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions, and to bring to the notice of the competent authority defects or abuses not specifically covered by existing legal provisions, will henceforth be covered by the functions of the labour inspectorate. The Committee would be grateful if the Government would provide a copy with its next report of any texts issued under the above Decree, as well as any information available on the effect given in practice to the provisions respecting the coordination and cooperation between the various services and institutions engaged in inspection functions (*Article 5(a) of the Convention*).

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

Central African Republic (ratification: 1964)

The Committee notes the Government's reports and the attached documentation. It also notes the observations made by the Christian Confederation of Workers of the Central African Republic (CCCT), of 26 August 2002, received by the Office on 22 October 2002, concerning the lack of facilities of the labour inspection services which are necessary to discharge their duties. The Committee requests the Government to provide information on the issue raised by the CCCT and additional information on the following points.

Articles 10, 11 and 16 of the Convention. The Committee notes with interest the recruitment of ten new labour inspectors, including one occupational medicine inspector and 11 labour supervisors. It also notes that the building housing the offices of the labour inspection services in Bangui Centre has been rehabilitated. However, the Committee notes with concern the repeated indications by the Government drawing attention to the lack of material resources of the labour inspection services and, in particular, the shortage of office supplies and the absence of transport facilities. Furthermore, no measures have been taken, as required by *Article 11, paragraph 2*, for the reimbursement to labour inspectors of any travelling and incidental expenses necessary for the

performance of their duties. These shortcomings, in practice, by the Government's own admission, constitute serious obstacles to the application of the Convention. The economic and social value of labour inspection and the social costs of reducing its effectiveness have been emphasized by the Committee in paragraph 214 of its 1985 General Survey on labour inspection. Noting that the Labour Department is prepared to accept any financial and material support in order to overcome this situation, the Committee trusts that the Government will make every effort to obtain assistance through international cooperation and with the technical support of the ILO with a view to fulfilling the essential prerequisites for the application of the Convention. The Committee hopes that the Government will provide information in the near future on any measures taken for this purpose, and the results achieved.

Articles 20 and 21. The Committee notes with regret that 38 years after the ratification of the Convention, no annual inspection report, as envisaged by these Articles of the Convention, has been provided to the ILO. The Committee recalls that the publication by the central inspection authority and the communication to the ILO of a report on the activities of the services under its control are two essential obligations and that the ILO's technical assistance may be requested with a view to their fulfilment. The Government is therefore requested to make every effort and to take all the necessary steps to give effect to the two above provisions of the Convention and to provide information on the measures taken for this purpose.

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

Djibouti (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*).

Guatemala (ratification: 1952)

The Committee notes the Government's reports, the partial replies to its previous comments, the attached documents and the text of Decree No. 18-2001 amending the Labour Code. It also notes the communication by the Government on 19 September 2002 of the observations made by the National Federation of State Workers' Unions (FENASTEG) and the Trade Union Confederation of Guatemala (UNSITRAGUA) concerning the application of the Convention. The Committee notes that the Government do not reply to the points raised by these observations.

According to FENASTEG, the public administration interferes in the functions of labour inspectors. Furthermore, inspectors are not assured of stability of employment and do not have at their disposal the necessary resources and materials for the performance of their duties. It deplores the failure to comply with procedures for the application of the penalties imposed for infringements of legal provisions, and the exclusion from the scope of labour inspection of conflicts between State employees and their employers.

In the view of UNSITRAGUA, labour inspectors should not be confined to the sole function of supervision and taking action in the event of infringements and should also discharge the functions of mediation and the education of employers. It adds that the means of transport available to labour inspectors are inadequate and their expenses for professional travel are not reimbursed. Considering the remuneration of labour inspectors as being inadequate and describing as forced labour the performance by the latter of their work without pay outside normal working hours, the trade union has also made observations along the same lines concerning the application by the Government of Conventions Nos. 29 and 105 on forced labour. Finally, according to the trade union, the labour inspectorate does not have the capacity to protect workers making complaints against any reprisals.

Noting the Government's indication of the existence of procedures for the payment of additional hours carried out by labour inspectors, the Committee would be grateful if it would provide a copy of any text and of any relevant documents or forms.

The Government is also requested to provide additional information on the manner in which effect is given in law and practice to *Articles 6, 11 and 15 of the Convention* concerning, respectively, the status and conditions of service of labour inspectors, the arrangements for the use of transport facilities and the reimbursement of travelling expenses for labour inspectors and; finally, the obligation of confidentiality with regard to the source of any complaint bringing to their notice a defect or breach of legal provisions.

Articles 5 and 18 of the Convention. The Committee notes with interest the new provisions introduced by Decree No. 18 of May 2001 amending sections 269 et seq. of the Labour Code establishing procedures for the imposition of penalties with a view to ensuring that they are effectively applied in cases of infringements that are duly reported by labour inspectors. Noting that these provisions usefully supplement section 281(c) of the Labour Code, under which labour inspectors are authorized to have recourse to

public forces to bring to an end any resistance preventing them from discharging their functions, the Committee requests the Government to provide information on the application of this procedure in practice and on the progress achieved in the application of the legal provisions enforceable by labour inspectors.

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

Guinea (ratification: 1959)

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

The Committee notes the information contained in the Government's report. It also notes the transmission of the annual activities report of the regional inspectorate of N'Zérékoré (Guinée-Forestière) for 1998. It notes that, according to this report, the regional structures of the labour inspectorate have not received any operational budget since 1990. The sole means of transport available consisted of a motorcycle in poor condition and no expenses were paid for professional travel. The grievances described in this report are intended to obtain a means of transport, an operational budget and the renovation of the administrative premises of the labour inspectorate. The Committee notes in this respect that, according to the information provided by the Government under *Article 11 of the Convention*, a study of structural adjustment measures in the labour sector was undertaken with a view to the allocation of a portion of the resources created by the increase in the public budget as operating credits for administrative bodies responsible for labour matters. The Committee would be grateful if the Government would provide information on the conclusions of this study once they are available, but, as of now, it requests the Government to provide detailed information on the material situation of the inspection services in each regional and local labour inspection structure, to indicate the measures which have been taken or are envisaged for their improvement and to describe the manner in which labour inspectors and supervisors are reimbursed their travelling and incidental expenses necessary for the performance of their duties.

The Committee also reminds the Government that an annual inspection report on the matters set out in *Article 21(a) to (g)*, should be published and transmitted to the ILO within the time limits set out in *Article 20*. It wishes to stress the importance that it attaches to compliance with these provisions, the application of which enables it to assess the extent to which the Convention is applied. The publication of annual inspection reports is also intended to inform employers and workers and their organizations of the activities of the labour inspection services and to allow them to express their opinions in this connection, in a spirit of constructive cooperation. The Committee trusts that the Government will take the necessary measures rapidly, so that these reports will in future be published regularly and transmitted to the ILO.

Haiti (ratification: 1952)

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.

Lebanon (ratification: 1962)

The Committee takes note of the Government's report and its responses to its previous comments. It notes with satisfaction the provisions of Ordinance No. 3273/2000 which give effect to provisions of *Articles 3, paragraph 1; 5; 11; 12(c)(i), (ii) and (iv); 12, paragraph 2; 13; 15; 17; 18 and 19 of the Convention*.

The Committee also takes note of Ordinance No. 128/2 of 17 February 2001 regarding labour inspection in the fields of occupational safety and health in the private sector as well as the table on the geographic distribution of labour inspection staff; of Ordinance No. 129/2 of 17 February 2001 regarding the establishment of labour inspection programmes, the setting forth of regulations applicable to labour inspection and the formulation of reports and statistics concerning enterprises and various categories of workers; as well as Decree No. 161/1 of 18 February 1999 regarding the renewal of monthly travel allocations for inspectors and assistant inspectors for travel within the city of Beirut. Finally, the Committee notes that, through a circular of 23 August 2001, labour inspectors were requested to give priority to the inspection of conditions of work of children in enterprises falling under their competence; and engineering inspectors and occupational health doctors were requested to take all measures necessary so that information relating to occupational accidents, classified by their nature and their cause, as well as occupational illnesses were included in the annual report.

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

Libyan Arab Jamahiriya (ratification: 1971)

The Committee notes the Government's report containing general information on the application of provisions of the Convention. It also notes that the Government has not responded to its comments of 1999 and 2000, despite its indication that it would do so through the appointment of an ad hoc technical commission.

1. *Status of inspection staff; qualification and powers.* The Committee again requests the Government to transmit copies of texts mentioned or cited in its previous reports, including Order No. 3 of 1995 providing for a new post of supervisor general of inspection, Order No. 174 of 1995 regarding labour inspection, and any legislation regarding the status of each category of staff carrying out labour inspection functions, the conditions of recruitment of such staff, and their powers.

2. *Central authority and annual general report.* According to information gathered by an ILO mission from 4 to 9 November 2001, labour inspection from now on operates in a decentralized fashion so that the production of an annual general report as stipulated in *Articles 20 and 21 of the Convention* cannot be envisaged. The Committee reminds the Government in this regard that, according to *Article 4, paragraph 1*, labour inspection should be placed under the supervision and control of a central authority responsible for the publication and transmission to the ILO of an annual general report on labour inspection whose contents should address matters defined in *paragraphs*

(a)-(g) of Article 21. The Committee would be grateful if the Government took the necessary measures to give effect to each of the abovementioned provisions of the Convention and to keep the Office informed of any progress in this regard.

3. *Protection of workers affected by serious illnesses.* The Committee takes note of information according to which annual medical examinations of all workers is one of the principal obligations of the employer and that the treatment of workers affected by serious illnesses is paid by the employer until the illness is cured. It would be grateful to the Government if it would transmit the relevant texts.

Luxembourg (ratification: 1958)

The Committee notes the Government's report and the information replying in part to its previous comments. The Committee also notes that, following a preparatory mission of the ILO in April-May 2002, a tripartite audit of the inspectorate of labour and mines was conducted in the country with support from an ILO team in July of the same year. It requests the Government to provide information on the measures taken or envisaged as a result of the recommendations of the above tripartite mission as regards the organization and operation of the labour inspection system in terms of the application of the Convention.

Malawi (ratification: 1965)

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.

Mali (ratification: 1964)

The Committee notes the Government's detailed report and the table showing the distribution of the staff of the National Directorate of Employment, Labour and Social Security and the Regional Labour Directorates (DRETSS). The Government is requested to provide additional information on the following points.

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 utopic 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 (ratification: 1963)

The Committee notes the Government's report and replies to its previous comments. It also notes with interest the steps taken by the Government as a follow-up to its previous comments that had emphasized the basic requirements of the Convention as regards the status and conditions of service of labour inspectors. The Conference Committee on the Application of Conventions and Recommendations had also recalled these requirements at the conclusion of its discussions in 2000. At the request of the Government, the ILO has resumed its technical assistance (that had started in 1989 but had no follow-up on the part of the Government), by sending on a diagnostic mission an expert in labour administration in 2000 who examined the drafting of legislative texts. The said expert had made proposals in this respect but the draft legislative texts sent by the Government to the Office did not reflect the solutions proposed to give effect to the requirements of *Article 6 of the Convention* on the status and conditions of service of labour inspectors, and the requirements of *Article 11, paragraphs 1(a) and 2*, on the transport facilities necessary for the performance of inspection duties and on the reimbursement of labour inspectors for any travelling and incidental expenses which may be necessary for the performance of their duties. The Committee notes that, following the guidance given by the ILO, the adoption of the draft was delayed and the draft was re-examined as result of a second mission carried out by the same expert sent by the ILO and funded by the United Nations Development Programme (UNDP). The Committee hopes the Government will be in a position to report, in its next report, on the adoption of provisions that meet the requirements of the Convention and to provide copies of the adopted texts.

The Committee notes the inspection reports of the regional services. Further to its previous comments, the Committee once again requests the Government to take the necessary measures to ensure the publication and transmission to the ILO of an annual report on the work of labour inspection services within the time limits set by *Article 20* of the Convention, and containing all the information required by *Article 21(a) to (g)* of the Convention.

Mauritius (ratification: 1969)

The Committee notes the Government's report, the replies to its previous comments and the documents attached. The Committee also notes the information provided by the Government concerning the matters raised in the observation made by the Federation of Progressive Unions. It requests the Government to provide additional information on the following points.

1. *Material conditions of work of inspectors.* The Committee notes that, in reply to the statements by the Federation of Progressive Unions that safety and hygiene inspectors are not provided with protective equipment against the risks inherent in certain hazardous substances at the workplace which are liable to their supervision, the Government enumerates the equipment which is normally provided to them. The Committee would be grateful if it would provide a copy of any text setting out the obligation to provide such equipment, any document demonstrating the purchase by the inspection services of such equipment and any instructions for their utilization.

With regard to the inadequacy, from the point of view of the Federation of Progressive Unions, of the remuneration of labour inspectors, the Committee considers that its comparison with the remuneration received by newly recruited persons leaving secondary education without qualifications is not pertinent. It would be grateful if the Government would provide documents enabling it to make a comparison between the remuneration of labour inspectors and that received by other state employees possessing comparable skills and with comparable levels of responsibility.

2. *Occupational safety and health.* With regard to the allegations made by the Federation of Progressive Unions concerning the deterioration in occupational safety and health conditions due to the lack of commitment by the public authorities to the supervision of the relevant legislation, particularly on asbestos, benzene and other hazardous substances, the Committee notes with interest that the numbers of labour inspectors have been increased by the recruitment of 11 new inspectors and that an Act on the protection of consumers, adopted in 1999, prohibits the use of blue asbestos. The Committee also notes that the Government has requested the technical assistance of the ILO for the development of regulations with a view to the implementation of a programme to control and eliminate the use of asbestos. The Government is requested to continue providing information on any progress achieved by the labour inspection system with a view to improving the protection in law and practice of workers exposed to occupational hazards related to hazardous substances.

Finally, the Committee requests the Government to provide information on the progress made in the process of revising the 1998 Act respecting occupational safety, health and welfare, as well as the draft regulations respecting electricity, safety warnings and occupational noise.

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

Morocco (ratification: 1958)

The Committee takes note of the Government's report for the period ending 31 May 2001, the information supplied in reply to its previous comments, and the documents supplied with the report. The Committee draws the Government's attention to the following points.

Child labour and labour inspection. The Committee notes that, following the survey conducted in 1996 with the assistance of UNICEF, 200 labour inspectors and medical inspectors have been trained with a view to improving the methods of the labour inspectorate in the area of child labour. The Committee also notes the launch of an International Programme on the Elimination of Child Labour (IPEC) project, with the creation of a national committee responsible for following up activities initiated as part of this project. Referring to its previous observation, the Committee hopes that specific information on sanctions imposed in cases of violations of child labour legislation will be provided, as the Government has undertaken to do, as soon as this information is available for the implementation of the IPEC programme, and that relevant statistics will be included in the annual inspection report.

Mozambique (ratification: 1977)

The Committee notes the Government's report for the period ending on 31 May 2001, the Government's replies to its previous comments and the tables appended to the report.

The Government indicates that in the last few years, 60 to 65 per cent of the general state budget is financed from external resources and that, following the situation in 2000 and 2001 marked by war and natural disasters, the Government has given priority to health, education and the reconstruction of infrastructure. The Committee notes that, as a consequence, an extremely limited portion of the budget is available for the operation of the labour inspectorate. The material and financial difficulties facing the labour inspection services (precarious equipment, inspection offices far away from enterprises, lack of transport facilities, non-reimbursement of labour inspectors' duty travel expenses) account for the substantial reduction in the number of inspection visits and a general drop in the efficiency of inspection services. Noting that, according to the Government, it would be desirable for labour inspectors to be trained to identify occupational risks, and referring to paragraph 332 of its General Survey of 1985 on labour inspection, the Committee draws the Government's attention to the possibility of seeking technical assistance from the International Labour Office and from the competent regional labour administration. It also points out that Members have the possibility, where the country's economic position does not allow adequate effect to be given to the provisions of the Convention, of calling on international cooperation with support from the Office, if necessary, in seeking the necessary funds. The Committee hopes that the Government will take steps to that end and that it will be in a position to provide relevant information in its next report.

Paraguay (ratification: 1967)

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 notes that the Government's report has not been received and it is therefore bound to reiterate its previous observation on the following points:

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.

Rwanda (ratification: 1980)

The Committee takes note of the Government's report and the replies to its previous observations, which indicate that the labour inspection services are unable to carry out their allotted tasks. The inadequacy of human resources, in terms both of numbers and training, the lack of funds, and the impossibility of providing the inspectors with the mobility they need to monitor the implementation of legislation at workplaces, are all obstacles to the application of the Convention. In addition, the Government has announced the forthcoming decentralization of the labour inspection services, which are to be placed under the authority of the district prefects. In the Committee's view, it is important to ensure that labour inspection is organized and operates under the supervision and control of a central authority (*Article 4 of the Convention*). The human and material resources required should be shared out among the different services on the

basis of identical criteria throughout the country, so as to provide the same level of protection for all workers covered by the Convention (*Article 10*). The status and conditions of service of the inspection staff should be such that they are assured of the stability and independence they require to carry out their numerous and complex duties (*Article 6*), and they should be recruited with sole regard to their qualifications (*Article 7*). The decentralization of the labour inspection structures, linked to a decentralization of resources under the management of the prefects in their respective districts, without the control and supervision of a central authority, is not conducive to the establishment and operation of an inspection system consistent with the principles set out in the Convention.

Noting that the Government has requested technical assistance from the ILO with a view to applying the Convention, and that an assessment of requirements regarding training for labour administration staff was carried out by the International Training Centre in Turin in 2000, the Committee notes that the funding needed for activities is nevertheless not available. The Committee hopes that the steps taken by the Government to find donors will soon be successfully concluded, and that it will be possible to begin the process of establishing a labour inspection system consistent with the provisions of the Convention. The Committee requests the Government to continue to provide information on any progress made in this regard.

Senegal (ratification: 1962)

Articles 11, paragraph 2, and 16. The Committee notes with interest that, further to its previous comments concerning the need to provide the inspection services with equipment and transport facilities to enable them to discharge their function of supervising workplaces as effectively as possible, the Government took measures in 1999 to allocate new service vehicles to all the regional labour inspection services. It would be grateful if the Government would supplement this information by indicating the geographical distribution of service vehicles and by providing information on the impact of this improvement in the facilities available on the number and quality of inspections.

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

Sierra Leone (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:

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.

Swaziland (ratification: 1981)

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:

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.

Turkey (ratification: 1951)

The Committee takes note of the Government's report and the attached documentation, which includes the observations of the Turkish Confederation of Employers' Associations (TISK) and the Confederation of Trade Unions of Turkey (TÜRK-İŞ), as well as the Government's replies to these observations. The Committee also notes the observation communicated by the Confederation of Progressive Trade Unions (DISK) and the absence of any government reply thereto.

The Committee notes that most of the points raised by the TISK and the TÜRK-İŞ were examined in its observations of 1998 and 1999. The problems were brought up by these organizations in previous comments concerning the application of those provisions of the Convention that relate to the scope of the national labour inspection system, collaboration between labour inspection officials, employers and workers or their organizations, the number of labour inspectorates and inspection visits, and the publication of the annual inspection report.

The observation of the DISK concerns the need to ensure that the number of labour inspectors meets the requirements of *Article 10 of the Convention*, as well as ensuring that they have sufficient funding and suitable working conditions so as to enable them to meet the objectives of the Convention. The DISK considers furthermore that labour inspectors must enjoy the independence which they need to do their work without being subjected to pressure, and that they should have trade union rights, in particular the right to form associations. Noting that the Government has not replied to the points raised by this organization, the Committee would be grateful to receive its views in this regard.

1. *Scope of the national system of labour inspection (Article 2 of the Convention).*

In reply to observations on the problem of informal work, the Government acknowledges that this is one of the main problems of the Turkish economy and states that the methods used in inspection visits have been designed to ensure that labour inspection also covers informal sector enterprises. The Committee notes with interest that, in addition to the scheduled visits to establishments that are regularly registered on a list, non-scheduled visits are made in particular regions covering all establishments located in those regions, and no distinction is made between registered undertakings and those in the informal sector. According to the Government, this method, which makes it possible to monitor informal work, is used frequently, the emphasis being on education and training for all parties involved, while sanctions are used only as a last resort. The Government explains that labour inspectors are also free to carry out other types of inspection visit, without prior authorization, in order to follow up complaints or for any other pertinent reason. Measures cited by the Government in connection with the development of supervision activities in the informal sector include the publication of a guide to labour inspection by geographical region and by sector. The Government considers that regional inspections should help to eradicate the chronic problems of clandestine work, child labour and occupational hazards. Similarly, according to the Government, it should be possible to resolve labour relations problems quickly and comprehensively. The Committee would be grateful if the Government would provide information on the impact of regional inspections and the observance of legislation on conditions of work and protection of workers at work, especially in the informal sector.

2. *Arrangements to promote collaboration between the labour inspection services, employers and workers (Article 5, paragraph (b)).* According to the Government, even though such collaboration is not institutionalized, there are no obstacles to it in practice and inspectors are encouraged to consult workers or their representatives during inspection visits and the International Programme on the Elimination of Child Labour (IPEC) project implementation. The Government also states that the meetings organized by the Ministry of Labour and Social Security with the Labour Inspection Board, constitute a forum for collaboration with the social partners. The Committee would be grateful if the Government would indicate the questions on which there is collaboration between the labour inspection authority and the social partners during these meetings and on the results of such collaboration.

3. *Combating child labour.* With reference to its observation in 2000, the Committee notes once again with interest the development of activities under the IPEC aimed at bringing about the progressive elimination of child labour, with the participation of the social partners, universities and non-governmental organizations. The Committee notes in particular the training activities for labour inspectors in this area, the cooperation agreements concluded by the Labour Inspection Board with the social services and the child protection authority, the authorities responsible for primary education, and the traders' and craftsmen's association and the measures taken to enable the families concerned to send their children aged below 15 years to school. The TISK has expressed its satisfaction at the activities carried out jointly by the Government, the employers and representatives of civil society as part of the IPEC project, and at the Government's commitment, under the five-year plan and the National Programme to implement European Union standards, to develop legislation on child labour with a view to prevention. The TISK also welcomes its involvement in the activities of the Child

Labour Unit set up within the Ministry of Labour and Social Security and tasked with coordination of child labour programmes. According to the TISK, training activities for labour inspectors in the area of child labour are of great benefit for an approach to labour inspection that is preventive, rather than exclusively punitive.

As regards the question of child labour in the informal sector, the Government confirms that the phenomenon is growing, especially in commercial or crafts enterprises employing fewer workers than the threshold number defined for enterprises to be covered by labour legislation. Noting the Government's data showing that, during 1994, visits carried out under the IPEC programme led to the registration of 257 previously non-declared enterprises, the Committee would be grateful if the Government would continue to communicate information on developments with regard to labour inspection activities in informal sector enterprises that employ child labour and on the results of such activities.

4. *Shortage of labour inspectors (Articles 10 and 14).* The Government reports that the Prime Minister has approved a plan to recruit 100 assistant labour inspectors. The Committee notes, however, that no indication is given as to whether this has been followed up. Furthermore, the total number of labour inspectors in service, as indicated in the Government's report, suggests a significant reduction by comparison with the figures given previously, and the same can be said with regard to inspections. The Committee trusts that in its next report the Government will be able to report on measures to reinforce the number of labour inspectors with a view to attaining the stated objectives.

5. *Publication of an annual inspection report (Article 20).* Referring to the observation of the TÜRK-İŞ to the effect that the annual inspection report is not published in a manner that allows any reliable assessment of inspections, and noting that it is not clear from the Government's reply to the observation whether a report of this kind is actually published and made available to the social partners and any other interested party, the Committee requests the Government to provide clarification on this point by specifying the mode of publication and by detailing how the report is disseminated.

Uganda (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 with regret that the Government's report has not been received. With reference to its previous comments, the Committee recalls the deliberations which took place within the Committee on the Application of Standards of the International Labour Conference in June 2001 during which the Government recognized the relevance of the points raised, and provided clarifications on the economic reasons for a deteriorating labour inspection system since the decentralization of services. The Government has given assurances to the Conference Committee to the effect that the situation would be closely examined, taking due account of all viewpoints, with all the partners concerned. It further indicated that the process would take time, and would require technical assistance. The Conference Committee expressed the hope that the Government, through technical cooperation, will be able to find solutions. Recalling each of the points raised in its previous comments, the Conference Committee also expressed the hope that, with the assistance of international collaboration, the Government will quickly take the necessary measures, as

requested by the Committee. The Committee is therefore obliged to reiterate its previous comments on the following points:

1. *Socio-economic situation and labour inspection.* The Committee notes with concern the socio-economic impact of the epidemic of HIV infection. It notes the educational activities carried out by the Government and the health measures taken, but notes that the information provided by the Government and the conclusions of a report by a joint ILO/UNDP/EAMAT mission undertaken in 1995 on labour administration indicate that the structures of the labour inspection system are in a critical situation. The decentralization of the organization and the management of services and personnel of the labour inspectorate is resulting in practice in serious shortcomings in supervising the application of legal provisions for which the labour inspectorate is responsible in an environment which is characterized by the very rapid growth in the number of national and foreign private industrial enterprises. Noting that the provisions of the Convention are not applied, the Committee wishes to draw the Government's attention to the importance, particularly in such a difficult economic, health and social situation, of ensuring the best possible protection for workers.

2. Supervision and control of the labour inspectorate by a central authority (Articles 4, 5, 6 and 10 of the Convention); annual inspection report (Articles 20 and 21). The Committee notes that the power conferred since 1994 on district authorities to decide whether to establish an inspection structure to recruit and manage labour inspectors is in contradiction with the objective of the Convention, which is to ensure a coordinated and effective labour inspection system throughout the national territory under the supervision and control of a central authority. However, the disparities in the status and conditions of service of labour inspectors operating in the offices established in 21 of the 45 districts in no way permits the establishment of such a system, and the precariousness of inspectors is incompatible with the requirement of authority and impartiality which are indispensable in the relations that inspectors should maintain with employers and workers. The Committee also notes that the periodic inspection reports provided to the Ministry of Labour by a small number of district offices cannot provide the latter with the means of making an overall assessment of the level of application of labour legislation in workplaces liable to inspection and are not adequate to serve as a basis for the preparation of an annual report, as required by Article 20. The Committee reminds the Government that, under the terms of Article 2, paragraph 1, of the Convention, the system of labour inspection shall apply to all workplaces in respect of which legal provisions relating to conditions of work and the protection of workers while engaged in their work are enforceable by labour inspectors, and that the annual report, the contents of which are set out in Article 21(a) to (g) has the objective of providing a regular assessment of the situation with a view to determining the action to be taken for its improvement. The Committee also invites the Government in this respect to refer to paragraph 273 et seq. of its 1985 General Survey on the value at both the national and international levels of preparing, publishing and forwarding such a report to the ILO. It hopes that the Government will commence without delay a process of reflection at the local, regional and national levels on the manner in which the Convention should be applied and that it will associate in this process the social partners, ministerial departments and public and private bodies concerned. It would be grateful if the Government would provide information regularly on the action envisaged to establish a labour inspection system placed under the supervision and control of a central authority and involving cooperation and collaboration with the social partners and the above institutions.

3. *Material and financial resources of the labour inspectorate (Articles 10, 11 and 16).* The Committee notes the Government's repeated statements concerning the crucial lack of means of transport and transport facilities and its consequences on workplace inspection. Furthermore, according to the report of the ILO/UNDP/EAMAT mission, the premises serving as offices for labour inspectors in some districts give rise to problems of

accessibility for their users and are not equipped to meet the needs of the service. According to the Government, even before the decentralization of inspection services, difficulties were experienced in the application of the requirements set out in *Article 11* in view of the same budgetary constraints on personnel and means of transport in particular. The Committee notes that the inadequacy of the resources of the inspection services encourages a general laxity by employers with regard to their legal obligations respecting occupational safety and health and other conditions of work. The Committee wishes to emphasize once again, as it did in paragraph 214 of its 1985 General Survey on labour inspection, the economic and social value of labour inspection and the social cost of reducing its effectiveness. It trusts that measures will be taken, including having recourse to international cooperation, to ensure that the proportion of the national budget allocated to labour inspection is determined as a function of the priority nature of the objectives which it should be assigned in accordance with the Convention.

Uruguay (ratification: 1973)

The Committee notes the comments by the Latin American Confederation of Labour Inspectors (CIIT) on the application of the Convention, which were communicated to the ILO on 20 May 2002 and forwarded to the Government on 23 July 2002. Also with reference to its previous comments and the discussion in the Committee on the Application of Standards of the International Labour Conference in June 2002, the Committee would be grateful if the Government would provide information in reply to all the points raised on the application of the Convention.

Viet Nam (ratification: 1994)

With reference to its previous comments, the Committee notes the Government's report for the period ending 2001.

Articles 7, 10, 11, 16 and 18 of the Convention. Effective labour inspection. With respect to its previous comments on necessary conditions for effective inspection, the Committee notes with interest the ILO/Viet Nam national project entitled "Safe Work and Integrated Labour Inspection (ILO/VIE/00/MO1/GER)" launched in November 2001. It also notes that through the said project, the Government strives to establish and effectively operate an integrated state labour inspectorate and to prepare and implement a comprehensive labour inspector training and staff development policy and programme. The Committee requests the Government to provide in the next report detailed information on the measures taken in this regard and on the progress made.

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

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In addition, requests regarding certain points are being addressed directly to the following States: *Antigua and Barbuda, Bahamas, Bangladesh, Belarus, Brazil, Bulgaria, Central African Republic, China (Macau Special Administrative Region), Côte d'Ivoire, Croatia, Cuba, Democratic Republic of the Congo, Egypt, Ghana, Grenada, Guatemala, Guyana, Haiti, Hungary, Iraq, Jamaica, Kenya, Kuwait, Latvia, Lebanon, Lithuania, Madagascar, Malta, Mauritius, Republic of Moldova, Morocco, Panama, Paraguay, Poland, Romania, Saint Vincent and the Grenadines, Sao Tome and Principe, Senegal, Singapore, Solomon Islands, Suriname, Swaziland, Syrian Arab Republic, United Republic of Tanzania (Tanganyika), Tunisia, Viet Nam, Yemen, Zimbabwe.*

Information supplied by *Austria* and *Japan* in answer to a direct request has been noted by the Committee.

**Convention No. 84: Right of Association
(Non-Metropolitan Territories), 1947**

A request regarding certain points is being addressed directly to *Mauritius*.

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

Algeria (ratification: 1962)

The Committee notes the information contained in the Government's report. It regrets that, this year again, the report contains no new information relevant to its previous comments and merely repeats previous replies. It also notes the comments made by the International Confederation of Free Trade Unions (ICFTU) on the application of the Convention in Algeria and the Government's reply thereto.

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 the comments of the ICFTU that in practice the authorities have prevented the registration of some unions by refusing to acknowledge receipt of their application for registration; in this respect, the ICFTU refers to the case of the Algerian Confederation of Autonomous Trade Unions (CASA). The Committee notes the Government's reply to the effect that: (1) under Act No. 90-14 of 2 June 1990 concerning the exercise of the right to organize, no previous authorization is required to establish an occupational organization and that a mere declaration of constitution duly acknowledged by the competent authority is necessary; and (2) in respect of the particular case mentioned by the ICFTU, unions can conduct their activities within the framework of the envisaged Confederation without waiting for the legal opinion of the Ministry of Labour and Social Security and the Government has never interfered in the activities of the said Confederation. The Committee also notes the Government's reply in Case No. 2153 examined by the Committee on Freedom of Association to the effect that it had sent a negative reply concerning the establishment of two confederations, including CASA, in accordance with sections 2 and 4 of Act No. 90-14 (see paragraphs 170-174 of the 329th Report of the Committee on Freedom of Association).

The Committee notes from section 8 of Act No. 90-14 that occupational organizations are required to register with the competent administrative authority to be declared as being constituted and that the competent administrative authority must acknowledge receipt of the registration within 30 days of the submission of the application for registration. On the other hand, and for the particular case mentioned by the ICFTU, the Committee notes that the Government refers to the legal opinion of the Ministry of Labour and Social Security – and therefore not to a simple acknowledgement of receipt as provided for in the law. The Committee understands from the Government's report that this legal opinion has apparently not been handed down yet. Further, the

Committee notes from the Government's reply in Case No. 2153 that it has refused the application for registration of two confederations in light of sections 2 and 4 of Act No. 90-14. The Committee recalls 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 in particular that they do not amount in practice to a requirement for previous authorization in respect of the constitution of occupational organizations and which is prohibited under *Article 2* (see General Survey on freedom of association and collective bargaining, 1994, paragraphs 68 and 69).

In these circumstances, the Committee requests the Government to provide clarification, in its next report, on the practical application of section 8 of Act No. 90-14, in particular in light of its indications that a refusal for registration can be made under sections 2 and 4 of the Act. The Committee further requests the Government to provide the following information: (a) the grounds on which a registration may be refused; (b) the provisions if any specifying the grounds for refusal; (c) the practical implications of such a refusal on the existence and the functioning of an occupational organization; and (d) the organization's right of appeal in case of refusal or the absence of acknowledgment within the prescribed time limit. Finally, the Committee requests the Government to provide clarification in respect of the legal opinion concerning CASA referred to in its report, in light of section 8 of Act No. 90-14, as well as on the practical implications of such an opinion for the existence and functioning of the Confederation, now and in the future.

The Committee recalls that for several years it has been addressing the following points in its comments.

Article 3. Right of organizations to organize their activities and formulate their programmes without any interference from the public authorities. The Committee noted previously that section 1, read together with sections 3, 4 and 5, of Decree No. 92-03 of 30 September 1992, defines as subversive acts offences directed, in particular, against the stability and normal functioning of institutions, through any action taken with the intention: (1) of obstructing the operation of establishments providing public service; or (2) of impeding traffic or freedom of movement in public places or highways, under penalty of severe sanctions including imprisonment of up to 20 years. The Committee therefore again requests the Government to take steps through legislation or regulation to ensure that none of these provisions may be applied against workers peacefully exercising their right to strike. The Government is asked to report on any instances of these provisions having been applied where the right to strike has been exercised.

With regard to section 43 of Legislative Decree No. 90-02 of 6 February 1990, the Committee has previously noted that this provision 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 an acute economic crisis. Furthermore, section 48 authorizes the minister or the competent authority, where the strike persists and after the failure of mediation, to refer, after consultation of the employer and the workers' representatives, a collective dispute to the arbitration commission. The Committee wishes to recall, however, 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. Consequently, the Committee once again urges the Government to amend its legislation along the lines indicated above so as to guarantee fully the right of workers' organizations to organize their activities and formulate their programmes without interference from the public authorities, in accordance with *Article 3* of the Convention.

The Committee had noted in connection with the previous report from the Government that, in the absence of a legal framework for public service workers since the repeal of Act. No. 78-12 establishing the General Workers Statute, the Government had stated that a new general statute of the public service was envisaged and that the conclusions of the National Commission for the Reform of State Institutions were to be an important element in framing the future public service statute. The Committee again asks the Government to provide information in its next report on the conclusions of the abovementioned commission and to send any draft legislation concerning the public service statute.

The Committee expresses the firm hope that the Government will take all necessary steps in the near future to bring its legislation fully into line with the provisions of the Convention. It reminds the Government in this connection that it may call upon the Office for technical assistance should it so wish.

Antigua and Barbuda (ratification: 1983)

The Committee notes that the Government's report has not been received. It must 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 (ratification: 1960)

The Committee notes the Government's report. It also notes the comments made by the Congress of Argentinian Workers (CTA) and the Government's reply in this respect.

I. The Committee recalls that for a number of years its comments have been referring to Act No. 23551 of 1988 respecting trade union associations and implementing Decree No. 2184/90, as follows.

1. 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. The Committee notes the Government's statement that: (1) the Bill to reform section 28 of Act No. 23551, which it noted in its observation of 2001, deletes the phrase "considerably higher" and establishes an objective criterion for reversing the granting of trade union status by providing that the petitioning association must have 5 per cent more dues-paying members than the existing association with trade union status, and that the Bill is before Parliament and ready to be examined by the National Legislative Authority, in accordance with the schedule of parliamentary work; and (2) the Government is currently assessing whether it is appropriate and timely to issue a Decree amending section 21 of Decree No. 467/88 to reduce the envisaged percentage from 10 to 5 per cent. In this respect, the Committee considers that, while the amendment of Decree No. 467/88 would constitute a positive step in bringing the legislation into conformity with the provisions of the Convention, it is necessary to amend Act No. 23551 respecting trade union associations. In these conditions, the Committee hopes that the Bill to amend Act No. 23551 will be adopted in the near future and requests the Government to provide information in its next report on any developments in this respect (including the amendment of Decree No. 467/88, if it is adopted).

2. 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", and 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 craft, occupation or category of workers. The Committee notes the Government's statement that: (1) with regard to section 29, the legislation permits the existence and operation of enterprise trade unions, and of unions representing a craft, occupation or category of workers, and that the granting of trade union status is only conditional upon the absence of a first-level trade union association or union in the geographical area, activity or category concerned (the Government adds that there is a significant increase in collective bargaining at the enterprise level); and (2) with regard to section 30, this endorses the principle of the differentiated representation of sectors within the same world of workers, discharged by trade union associations which are also differentiated, and that trade unions representing a craft or occupation have continually concluded collective agreements representing their category of workers. The Committee once again points out that these provisions are not in conformity with *Article 2 of the Convention* with regard to the right of workers to establish and join organizations of their own choosing. Indeed, although the legislation allows the establishment of trade union associations at the enterprise level and trade unions representing a trade, occupation or category of workers, no workers' organization, even if it has demonstrated that it is the most representative, in accordance with section 28 of the Act, can acquire trade union status which, among other benefits, grants the exclusive right to collective bargaining, if there is already a trade union with trade union status representing the activity in the field concerned. In this regard, the Committee requests the Government to provide information in its next report on any measure that it is considering adopting to amend the above sections.

3. With regard to the abovementioned situations where legislation in Argentina distinguishes between trade unions with "trade union status" and trade unions that are merely "registered", with the former being granted certain preferential rights in law, the Committee for a number of years has commented on the following points:

- (a) Section 38 of the Act only permits associations with trade union status, and not associations which are merely registered, to benefit from the check-off of trade union dues. The Committee notes the Government's statement that: (1) following the technical assistance mission which visited the country in May 2001, it issued Decree No. 758/01 establishing that associations which are merely registered can apply for the check-off of dues to the banking establishment which pays the wages, but that the above Decree was repealed shortly afterwards by Decree No. 922/01; (2) even though the emergency measures adopted in the context of the financial crisis have given rise to a general refutation by the population of the banking system, the Government plans to implement this system, as approved by the social partners in the Joint Tripartite Commission established by Decree No. 10/2001; and (3) federations with trade union status to which the majority of trade unions are affiliated by simple registration have authorized them to receive trade union dues through the second-level association, and even associations which have merely been registered have been able to agree with employers concerning the check-off of trade union dues. In this respect, the Committee considers that this inequality of treatment between trade union associations with trade union status and trade union associations which are merely registered is not justified and that an appropriate arrangement should be found to overcome this inequality, which does not

necessarily have to involve the banks. The Committee therefore requests the Government to take measures to amend section 38 of the Act to place all trade union associations on an equal footing, permitting them to benefit from the check-off of the dues of their members, and to provide information in its next report on any measure adopted to this effect.

- (b) Section 39 of the Act only exempts associations with trade union status, and not associations which are merely registered, from taxation and other levies. The Committee takes due note of the information provided by the Government that, in accordance with the national legislation, the scope of section 39 now covers all Argentinian trade union associations.
- (c) 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 information provided by the Government that: (1) the National Constitution in article 14bis provides that trade union representatives shall enjoy the necessary safeguards to discharge their trade union functions and that section 47 of the Act respecting occupational associations provides that all workers (without exclusion) who are impeded or prevented from the regular exercise of the rights of freedom of association guaranteed by the law may seek the protection of these rights through the competent judicial tribunal, by express summary procedure; (2) national case law has found that the criteria for the interpretation of the rights of freedom of association must be broad, although the provisions of Act No. 23551 are not self-standing, but are derived from article 14bis of the Constitution; (3) the range of constitutional provisions, the provisions of Act No. 23551 and of Act No. 23592 on the exercise of constitutional rights and guarantees/measures against discriminatory acts mean that any person who arbitrarily impedes, obstructs, restricts or in any way prejudices the full exercise of the fundamental rights and guarantees recognized in the National Constitution shall be compelled, at the petition of the victim, to end the discriminatory act or nullify it, and to compensate the victim for any moral or material damage caused, with particular reference to discriminatory acts or omissions on grounds such as political or trade union opinion, with the above measures constituting adequate protection for each worker in the exercise of their trade union activities; and (4) the trade union representatives of an association that is merely registered, but is affiliated to a federation with trade union status, enjoy the protection set out in sections 48 and 52 of Act No. 23551. The Committee considers that, even though the legislation provides for general protection against acts of anti-union discrimination, the trade union leaders of associations with trade union status enjoy special protection in addition to that available to the leaders or representatives of associations which are merely registered. Furthermore, the Committee notes that the general protection afforded by Act No. 23592 is of a limited nature with regard to the exercise of trade union rights, as it is confined to discriminatory acts or omissions on grounds of trade union opinion. The Committee considers that such discrimination is not compatible with the requirements of the Convention. In this respect, the Committee requests the Government to take measures to amend the provisions in question and to indicate in its next report any measure adopted to this effect.

II. Decree No. 843/2000

The Committee also notes that the Government refers in its report to Decree No. 843/2000 which permits strikes in essential services in the strict sense of the term, and adds that it is assessing the possibility of providing greater guarantees for the system than those envisaged in the Decree by including the consultation of an impartial commission composed of persons of recognized technical expertise with a view to determining the essential nature of a service which is not included in the services strictly defined as such and which by its characteristics could be assimilated to them. In this respect, the Committee suggests that the Government, if it is planning to make amendments to the Decree, should examine the possibility that the determination of the minimum services to be maintained during a strike, where the parties do not reach agreement, should not be the responsibility of the Ministry of Labour, but of an independent body. The Committee requests the Government to keep it informed of any measure that it is considering adopting in relation to Decree No. 843/2000.

Finally, the Committee notes with interest the Government's indication of its intention to continue making progress in harmonizing national legislation with the provisions of the Convention, and that significant progress has been made at the institutional level, reflecting the firm will of the Government to promote the coexistence of the various actors (the Government emphasizes the official participation of the Congress of Argentinian Workers in all the socio-labour bodies of MERCOSUR and in the tripartite consultation body envisaged in Convention No. 144). The Committee hopes that the Government's intentions in this respect will be reflected in the amendment of the legislative provisions referred to above and calls upon the Government and the social partners to bring the legislation into full conformity with the Convention by means of the strengthening of the debate which has been commenced.

Australia (ratification: 1973)

The Committee notes the information provided in the Government's report, and the decisions of various courts at state and federal levels. It further notes the comments of the Australian Chamber of Commerce and Industry (ACCI) and the International Transport Workers' Federation (ITF) and requests the Government to provide its comments thereon.

Federal jurisdiction

1. *The 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 sympathy action 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; it confers immunity from tort liability in respect of certain industrial action in support of claims for proposed certified agreements and Australian workplace agreements (AWAs); this immunity can be described as a right to strike as it creates a right to take certain forms of industrial action without sanction. The requirement that certain conditions be met in order to attract the immunities is

compatible with the Convention; the current conditions are reasonable and appropriate in the overall national industrial relations context. Extending protection to action associated with the negotiation of multi-employer 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 merely reflects the common law rule that denies remuneration to workers who do not 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 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; conciliation and arbitration procedures are then available to the parties.

Noting with regret that the Government states that no legislative reform is proposed, the Committee recalls that: workers' organizations should be able to take industrial action in support of multi-employer agreements; providing in legislation that workers cannot take action in support of a claim for strike pay is not compatible with the Convention; 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 once again the Government to amend the provisions of the Act, to bring it into conformity with the Convention.

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 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. Noting that the Government has set up a committee of inquiry for the review of the competition provisions of the Act, the Committee requests that the Government keep it informed of the results of that review, which it hopes will take the above principles into consideration. The Committee again expresses the firm hope that the Government will amend the legislation accordingly, and requests that it continue to provide information on the practical application of the boycott provisions of the Act. The Committee also requests that the Government provide in its next report its observations concerning the comments of the International Transport Workers' Federation.

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 reiterates that, since no action has been taken under these provisions for over 40 years, amending the Crimes Act would be given low legislative 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 developments in this respect.

State jurisdictions

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 states that the powers under section 638 would be used only in extreme circumstances and that no action has been taken under this provision. The Government considers that this provision establishes a fair balance between its obligations under the Industrial Relations Act and the organization's right to take industrial action. Recalling that this provision results in a prohibition of strikes going beyond essential services in the strict sense of the term, the Committee requests that the Government amend this provision.

South Australia. In reply to the Committee's previous comments concerning section 222 of the Industrial and Employees Relations Act, 1994 (secondary boycott provisions), the Government mentions that the Act is currently the object of a legislative review, which includes in its terms of reference the appropriateness of integrating international labour standards within the South Australian legislation, and that the Committee's comments on section 222 will be considered as part of that review. The Committee requests that the Government keep it informed of developments in this respect.

Northern Territory and Victoria. The Committee also notes that pursuant to the Northern Territory (Self-Government) Act, 1978, and the Victorian Commonwealth Powers (Industrial Relations) Act, 1996, the Federal Workplace Relations Act, 1996, is the principal legislation applying in the Northern Territory and Victoria. The Committee again requests that the Government take measures to have these state legislations amended in the light of the corresponding comments concerning the Federal Workplace Relations Act, 1996.

Austria (ratification: 1950)

The Committee takes note of the information supplied by the Government in its report. The Committee also notes that a new Act on Associations entered into force on 1 July 2002 (BGBl I No. 66/2002) and repealed the Act on Associations of 1951 (BGBl No. 233/1951). The Committee will examine the conformity of this Act with the provisions of the Convention at its next meeting.

Article 3 of the Convention. Right of workers' organizations to elect their representatives in full freedom. The Committee has been commenting for a number of years on the need to amend section 53(1) of the Industrial Relations Act (Arbeitsverfassungsgesetz) in order to enable foreign workers to be eligible for election to work councils. In this respect, the Committee notes from the Government's report, the views adopted on 4 April 2002 by the Human Rights Committee under article 5, paragraph 4, of the optional Protocol to the International Covenant on Civil and Political Rights on the basis of a communication by a non-European Economic Area (EEA) national who was stripped of his elected position as a work council representative. The Committee notes the view of the Human Rights Committee that there was no objective and reasonable ground justifying exclusion from a close and natural incident of employment, namely the right to stand for election to the relevant work council, on the basis of citizenship alone and that, as a remedy, the Government should modify the applicable law. Furthermore, the Committee notes from the Government's report that the European Commission has initiated proceedings against Austria before the European Court of Justice for failure to fulfil an obligation (No. 99/4115) with regard to the eligibility of foreign employees in work council elections. The Committee notes that according to the Government, any discussion of legislative measures should await the conclusion of proceedings before the European Court of Justice which is expected to clarify the legal situation on this issue in the course of the current year, so that this decision can be complied with when opening eligibility to foreign employees in work council elections.

Recalling that the Committee has been commenting upon this discrepancy with the provisions of the Convention since 1993, the Committee trusts that the Government will take all necessary measures in the very near future to amend its legislation so as to ensure that foreign workers may be eligible for election to work councils and expresses the firm hope that the Government will be in a position to indicate in its next report the measures taken in this regard.

Azerbaijan (ratification: 1992)

The Committee notes 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 concerned the divergencies between the national legislation and the guarantees set forth in the Convention, namely:

- the restrictions on the right to strike (section 188-3 of the Criminal Code);
- restrictions on the political activities of trade unions (section 6(1) of Act No. 792 on trade unions of 24 February 1994).

1. *Right to strike.* With reference to its previous comments on the need to explicitly amend or repeal section 188-3 of the Criminal Code, which contains major restrictions on the right of workers to engage in collective action with a view to disrupting public transport, associated with penalties of up to three years' imprisonment, the Committee had noted the information supplied by the Government in its last report to the effect that a reform of the legislation, including the Criminal Code, was currently under way and that the comments of the Committee of Experts had been transmitted to the bodies concerned. The Committee recalls that the right to strike is an intrinsic corollary of the right to organize protected by the Convention and that restrictions or prohibitions on the right to strike should be limited to public servants exercising authority in the name of the State or to essential services, that is

those whose interruption would endanger the life, personal safety or health of the whole or part of the population, and it expresses the firm hope that section 188-3 of the Criminal Code will be amended or repealed in the very near future.

2. *Article 3 of the Convention. Right of workers to organize their activities and to formulate their programmes.* The Committee once again noted with regret that, by virtue of section 6(1) of Act No. 792 of 24 February 1994 on trade unions, these organizations do not have the right to engage in political activities, nor to associate with political parties or conduct joint activities with them or provide them assistance, including gifts, nor to receive any from them. The Committee reminds the Government that the complete prohibition of trade unions from engaging in political activities is incompatible with the right of workers' organizations to organize their activities and formulate their programmes in full freedom. It therefore once again requests the Government to amend its legislation to eliminate the prohibition of any political activities 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 expresses the firm hope that the Government will take the necessary measures in the very near future to bring its legislation fully into conformity with the provisions of the Convention and it requests the Government to indicate in its next report any progress achieved in this regard.

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

Bangladesh (ratification: 1972)

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

It notes in particular the Government's indication that the issue concerning the workers' right of association in the Security Printing Press is under active consideration. The Committee notes that the draft Labour Code has been finalized and that the Government is in the process of placing it before Parliament. The Committee trusts that the necessary measures will be taken in the very near future to amend the legislation, in order to bring it into full conformity with the requirements of the Convention. It requests the Government to transmit a copy of the draft Labour Code, so that it may examine its conformity with the Convention.

The Committee recalls in this respect its previous comments concerning serious discrepancies between the national legislation and the Convention:

- the exclusion of managerial and administrative employees from the right of association under the 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 hopes that the Government will continue the process of its labour laws and will amend the legislation referred to above, to ensure that it is brought into line with the provisions of 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.

Barbados (ratification: 1967)

The Committee notes that the Government's report has not been received. It further notes the observations made by the International Confederation of Free Trade Unions (ICFTU) and requests the Government to transmit its observations thereon. It must repeat its previous observation, which read as follows:

In its previous comments, the Committee had noted that section 4 of the Better Security Act, 1920, provided that 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 of up to three months' imprisonment and recalled that, if this provision applied to strike action, it should be amended so that such penalties may only be imposed with respect to essential services in the strict sense of the term and that the sanctions should not be disproportionate to the seriousness of the violation. Noting the indication in the Government's latest report that this section has never been invoked, the Committee requests the Government to consider amending this provision so as to ensure that it may not be invoked in the case of strikes, with the possible exception of those in essential services in the strict sense of the term, and thus ensure that workers' organizations may carry out their activities and formulate their programmes without interference by the public authorities.

The Committee also noted the Government's indication that the draft legislation regarding trade union recognition was still at the consultative stage with the employers' and workers' representatives and that a copy of the text would be transmitted once the draft legislation has been reviewed and approved. The Committee 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.

Belarus (ratification: 1956)

The Committee notes the information contained in the Government's report, the discussion in the Conference Committee on the Application of Standards and the conclusions of the Committee on Freedom of Association in Case No. 2090 (329th Report approved by the Governing Body at its 285th Session in November 2002). It further notes the comments made by the International Confederation of Free Trade Unions (ICFTU) on the application of the Convention and requests the Government to provide its comments thereto.

Article 2 of the Convention. Right of workers and employers to establish organizations of their own choosing without previous authorization. The Committee

takes note of the information provided by the Government on the number of registered trade unions since the publication of Presidential Decree No. 2 of 26 January 1999 and of the Government's statement that all the trade unions have undergone registration, with only isolated cases of organizational units of trade unions not being registered. The Committee also notes the Government's statement that it considers that the issue of registration should be further examined and that the National Council has adopted the decision to establish a tripartite group of experts on the application of ILO standards which envisages examining the recommendations of the Committee of Experts during one of its first meetings. In this respect, the Committee hopes that the necessary measures will be taken to address the previous concerns of the Committee, in particular, as concerns the application of *Article 2* of the Convention, those regarding: the matter of legal address, the need to amend section 3 of Presidential Decree No. 2 concerning the banning of activities of non-registered associations and to repeal the minimum membership requirement of 10 per cent of workers at enterprise level. The Committee requests the Government to keep it informed of all the measures taken or envisaged in order to bring its legislation into conformity with the Convention.

The Committee takes note that the collective labour relations of employees of governing councils, who are excluded from the Labour Code by virtue of section 6, are regulated by sections 861-869 of the Civil Code. The Committee notes the Government's indication that the members of the advisory boards and other supervisory bodies of the organizations do not act as workers and that a "worker" means a person who is in an employment relationship with an employer on the basis of a concluded labour agreement of employment. The Committee recalls however that section 6 refers to "employees" of advisory councils and not "members". It therefore requests that the Government indicate how the right to organize is guaranteed for this category of employees.

Article 3. Right of workers' organizations to organize their activities in full freedom. The Committee recalls that its previous comments focused on the need to amend the legislation on the right to strike. In particular, the Committee commented on the following Labour Code provisions:

- sections 388 and 399, permitting legislative limitations on the right to strike in the interest of rights and freedom of other persons, which could be used in a manner so as to restrict the legitimate exercise of the right to strike;
- section 390, providing for the requirement of the notification of strike duration;
- section 392, providing for the obligation to provide minimum services during the period of the strike.

The Committee once again requests that the Government amend these provisions so as to ensure the right of workers' organizations to organize their activities in full freedom. The Committee requests that the Government keep it informed of measures taken or envisaged in this respect.

The Committee takes note of the information provided by the Government concerning Presidential Decree No. 11 of 7 May 2001. The Government states that there were no cases of dissolution of trade unions for the violation of the procedure for holding mass events. The Committee notes, nevertheless, that paragraph 1.5 of the Decree permits the dissolution of a trade union in the event that an assembly,

demonstration or picketing action results in the disruption of a public event, the temporary termination of an organization's activities or disruption of transport. The Committee once again recalls that the dissolution of a trade union is an extreme measure and recourse to such action on the basis of a picket action resulting in the disruption of a public event, the temporary termination of an organization's activities or disruption of transport is not in conformity with the right of workers' organizations to organize their activities in full freedom. The Committee once again draws the Government's attention to paragraph 174 of its 1994 General Survey wherein it considered that restrictions on pickets should be limited to cases where the picketing ceases to be peaceful. The Committee therefore once again requests the Government to take the necessary measures to ensure that this provision of the Decree is modified so that restrictions on pickets, assemblies and demonstrations are limited to cases where the action ceases to be peaceful or results in a serious disturbance of public order and that any sanctions imposed in such cases be proportionate to the gravity of the violation.

The Committee further notes with concern from the conclusions of the Committee on Freedom of Association, in Case No. 2090, that there has been interference by the public authorities in recent trade union elections. The Committee recalls that workers' organizations have the right to elect their representatives in full freedom and that the public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof. The Committee requests that the Government indicate any measures taken or envisaged, including the adoption of explicit legislative provisions prohibiting and sanctioning any such interference, aimed at ensuring the full application of *Article 3* both in law and in practice.

The Committee notes that public servants, as defined under section 8 of the Act on the Fundamental Principles of Employment in the Public Service of 23 November 1993, include those working in the National Bank and therefore, by virtue of section 12, this category of employees does not enjoy the right to strike. The Committee considers 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 1994 General Survey on freedom of association and collective bargaining, paragraph 158) and therefore requests the Government to take necessary measures to ensure that employees of the National Bank may have recourse to strike action, without penalty. It requests that the Government keep it informed of any measures taken in this respect.

Articles 5 and 6. In its previous comments the Committee recalled the need to amend section 388 of the Labour Code, which prohibits strikers from receiving financial assistance from foreign persons and Presidential Decree No. 8 of March 2001 regarding certain measures aimed at improving the arrangement for receiving and using foreign gratuitous aid, in particular, its paragraphs 4(3) and 5.1. The Committee notes an indication in the Government's report that there were no cases of denying registration for foreign gratuitous assistance and that seven applications from trade unions to receive foreign funds had been approved. The Committee recalls that the mentioned paragraphs of the Decree provide that foreign gratuitous aid, in any form, cannot be used towards the preparation and carrying out of public meetings, rallies, street processions, demonstrations, pickets, strikes, designing and disseminating campaign material, as well as running seminars and other forms of mass campaign of the population and that violation of this requirement by trade unions and other public associations can result in the termination of their activities. The provision of such aid by representative bodies of

foreign organizations and international non-governmental organizations on the territory of Belarus can result in the termination of the activities of such bodies. The commentary to the Decree emphasizes that “even a single violation can bring about the elimination of a public association, fund or other non-profit organization”. Considering that these provisions of the Decree are incompatible with *Articles 5 and 6* of the Convention, the Committee once again asks the Government to take the necessary measures to amend both the Decree and section 388 of the Labour Code so that national workers’ and employers’ organizations may receive assistance, even financial, from international workers’ and employers’ organizations in pursuit of their legitimate aims. It requests the Government to keep it informed of any measure taken in this respect.

Belgium (ratification: 1951)

The Committee notes the detailed 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 the Government’s statements that if no amendment to the legislation has yet been made, this is because it has had to take into account many parameters, such as the maintenance of cohesion and therefore social solidarity, the wishes of the workers expressed fairly clearly during social elections and the well-recognized need to avoid centrifugal trends in social dialogue. The Committee also notes that, according to the Government, an amendment can certainly not be excluded, but its form must be envisaged with care. The Committee expresses the firm hope that the Government will be in a position to adopt legal provisions in the very near future determining specific and appropriate criteria of representativeness and requests the Government to indicate the measures taken in this respect in its next report.

Belize (ratification: 1983)

The Committee takes note of the information provided by the Government in its latest 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 empower 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 and transport services and services in which petroleum products are sold, which are not essential services in the strict sense of the term. The Committee had noted the Government’s statement in a previous report to the effect that discussions were under way regarding the amendment of the list of essential services. The Committee notes that, according to the information contained in the Government’s latest report, a copy of the amendments will be sent shortly.

In the meantime, the Committee recalls the need to amend the list of essential services so that restrictions on the right to strike apply only to the essential services in the strict sense of the term, whose interruption would endanger the life, personal safety or health of the whole or part of the population and to public servants exercising authority in the name of the State. It expresses the firm hope that the Government will take the necessary measures in the near future to delete the abovementioned services from the list of essential services and requests it to provide a copy of the amendments proposed in this regard with its next report.

The Committee also takes note of the Trade Unions and Employers' Organizations (Registration, Recognition and Status) Act, No. 24 of 2000. Recalling that workers and employers, without distinction whatsoever, shall have the right to establish and to join organizations of their own choosing without previous authorization, the Committee requests the Government to indicate the manner in which the right to organize is ensured for prison staff and firefighters who are not covered by this Act.

Benin (ratification: 1960)

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

1. *Article 2 of the Convention. Right to establish trade unions without prior authorization.* The Committee notes that after consultation on the issue of the deposit of trade union by-laws in order to obtain legal personality, the Government and the social partners have concluded that the Labour Code needs to be amended and that the matter will be discussed in greater depth by the National Labour Council at its session in 2003. The Committee requests that the Government indicate the measures actually taken in this regard in its next report.

2. *Article 2. Right of workers without distinction whatsoever to establish trade unions.* The Committee recalls that in its previous comments it noted that seafarers are excluded from the scope of the Labour Code and are covered by Ordinance No. 38 PR/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). Noting that the Government has taken note of its observation and will act on it in due course, the Committee requests the Government once again to grant seafarers the guarantees established by the Convention, and to send information in its next report on measures taken to that end.

3. The Committee notes the adoption of Act No. 2001-09 of 21 June 2002 on the exercise of the right to strike. It notes, however, that section 8 of the Act still requires the strike notice to indicate the anticipated length of the strike. While noting that, according to the Government, the unions have no objection to this provision, the Committee recalls that to require workers' organizations to specify the length of a strike amounts to a restriction on their right to organize their administration and their activities and draw up their programmes. The Committee again invites the Government to abolish the obligation to specify the length of the strike and to indicate the measures taken to that end in its next report.

Bolivia (ratification: 1965)

The Committee notes the Government's report, including the observations and additional legal texts sent in reply to the comments that the Committee has been making for many years in relation to the application of the Convention on the following points:

- (1) the exclusion of agricultural workers from the scope of the General Labour Act of 1942, and thus 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);
- (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 in order to constitute a trade union when it concerns an industry (section 103 of the General Labour Act);
- (4) the wide powers of supervision conferred on the labour inspectorate over trade union activities (section 101 of the General Labour Act);
- (5) the requirement of Bolivian nationality for eligibility to trade union office (section 138 of the Regulatory Decree) and for having permanent employment status in the enterprise (sections 6(c) and 7 of Legislative Decree No. 2565 of June 1952);
- (6) the possibility of the dissolution of trade union organizations by administrative decision (section 129 of the Regulatory Decree);
- (7) the 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 put 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); and
- (8) the observations submitted by the Bolivian Central of Workers regarding the dismissal of airport workers in the SABSA enterprise following a strike for the purpose of securing the application of an arbitration award in their favour.

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 that the Government does not supply any information concerning measures taken to ensure the right to organize of agricultural workers. It notes however that, contrary to its statement in its 1999 report that the programme of the modernization of labour relations and the related draft Supreme Decree agreed upon between the parties would repeal the exclusion of agricultural workers from the scope of section 1 of the General Labour Act of 1942 and section 1 of Regulatory Decree No. 224

of 23 August 1943, the Government now states in its latest report that such a Decree cannot amend an Act.

The Committee emphasizes once again the importance of the right to organize for all persons working in rural areas, whether they are wage-earners, labourers or self-employed workers. It also expresses the firm hope that legislative measures will be adopted as soon as possible to guarantee the right to organize of these categories of workers. The Committee requests the Government to inform it of the measures that it plans to take to give effect in practice to the right to organize of agricultural workers.

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 category and position. The Government adds that in this respect it has to be understood as meaning the employees in the centralized public sector, as these are the direct representatives of the State, similar to employers, and receive funds directly from the General State Treasury and are appointed directly. The Committee recalls that *Article 2* applies to all workers, without distinction whatsoever, including those engaged in the centralized public sector. The Committee therefore 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.

C. Requirement that an excessively high number of workers give their agreement for the establishment of a trade union at the industry level (50 per cent of the workers)

The Committee notes that the Government has once again failed to supply information on the amendment to section 103 of the General Labour Act, even though the above amendment was announced in the report for 1998 within the context of the programme for the modernization of labour relations and was to be communicated to the social partners with a view to its adoption by consensus.

The Committee recalls that section 103 imposes a percentage which is too high and could therefore hinder the establishment of trade unions at the industry level, and has the indirect result of preventing the establishment of other organizations. The Committee therefore once again requests the Government to bring its legislation into line with the requirements of the Convention as soon as possible. The Committee also requests that the Government seek wording acceptable to the social partners which would, for example, define the concept of the most representative trade union.

II. Article 3. Right of workers' organizations to organize their administration and activities, elect their representatives in full freedom and formulate their programmes, without interference from the public authorities

A. Broad powers of supervision over trade union activities

The Committee recalls that under the terms of section 101 of the General Labour Act, "trade unions shall be administered by a responsible committee. Labour inspectors shall attend their debates and monitor their activities". The Committee notes that, notwithstanding this, under the terms of the Ministerial Decision of 2 May 2001, the participation of labour inspectors in the debates of trade union bodies by virtue of section 101 of the General Labour Act "shall only be at the explicit request of workers' organizations".

The Committee notes that the above Decision was adopted in view of "the number of workers in the country, which has increased considerably over the past 30 years, thereby increasing the quantity of trade union organizations and leading to a shortage of inspectors in the Ministry of Labour and Micro-Enterprises, who should attend the debates of the trade union organizations, but resulting in the impossibility in practice of their participation in these events". The Committee notes that although, on the one hand, the Decision states that "trade union freedom and autonomy must prevail in their various decisions, which on many occasions are delayed by formalities", it provides, on the other hand, that "the Ministry of Labour and Micro-Enterprises aims to activate and facilitate trade union activities without the intention of amending the General Labour Act and its Regulatory Decree in their essential content". The Committee recalls that *Article 3* of the Convention lays down the principle that workers' organizations have the right to organize their administration and that the public authorities must refrain from any interference which would restrict this right, with the effect that this right is therefore independent of the incapacity of the labour inspectorate to attend all trade union meetings in view of their high numbers and frequency. The Committee therefore trusts that the Government will ensure full observance of this right and requests it to indicate in its next report the measures which have been adopted to amend section 101 accordingly.

B. Requirement of Bolivian nationality and permanent employment status in the enterprise for eligibility to trade union office

Although the Government has been indicating for some time that the requirement to have permanent employment in the enterprise is not implemented and cannot be applied in the country, the Committee notes that this provision has not been repealed. The Committee further notes that section 138 of the Regulatory Decree of the General Labour Act requiring Bolivian nationality in order to hold trade union office has not been repealed. The Committee emphasizes that provisions on nationality which are too strict could deprive workers in some instances of the right to elect their representatives in full freedom, for example in the case of migrant workers in sectors in which they

account for a significant share of the workforce (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 118).

Furthermore, provisions requiring members of trade unions to belong to the occupation concerned and to be members of the trade union to be elected to trade union office in the union are contrary to the Convention. Provisions of this type infringe the organization's right to elect their representatives in full freedom by preventing qualified persons, such as full-time union officers, from carrying out union duties, or by depriving unions of the benefit of certain experience among their union officers when enough qualified persons from among their own ranks cannot be supplied. When national legislation imposes conditions of this kind on all trade union leaders, there is also a real risk of interference by the employer through the dismissal of trade union officers, which deprives them of their trade union office. In order to bring such legislation into conformity with the Convention, it would be desirable to make it more flexible, either by admitting as candidates persons who have been previously employed in the occupation concerned, or by exempting from the occupational requirement a reasonable proportion of the officers of an organization (see General Survey, *op. cit.*, paragraph 117).

The Committee therefore once again urges the Government to take steps to ensure the rapid harmonization of the legislation with this Article of the Convention through the explicit removal of these two restrictions.

III. Articles 3 and 10. Right of workers' organizations to formulate their programmes to defend the professional and socio-economic interests of their members, without administrative interference

The Committee notes with regret the Government's statement which, contrary to the indications provided in its previous report, indicates that the legislation from 1940 relating to restrictions on the right to strike remains in force. As a result, under the terms of section 114 of the General Labour Act and section 159 of the Regulatory Decree, the requirement remains that any decision to call a strike has to be approved by at least three-quarters of all the workers in active service.

The Committee also regrets that in its report the Government does not take a position on the prohibition of general and solidarity strikes, under threat of penal sanctions (sections 1 and 2 of Legislative Decree No. 2565 of 1951), nor the prohibition of strikes in banks (section 1(c) of Supreme Decree No. 1959 of 1950), nor concerning the possibility of imposing compulsory arbitration to bring an end to a strike, also in services which are not essential in the strict sense of the term (section 113 of the General Labour Act).

The Committee therefore once again urges the Government to ensure the prompt amendment of the provisions which curtail the free exercise of this right so that workers' organizations have the right to organize their activities and to formulate their programmes without interference by the public authorities.

IV. Article 4. Right of workers' organizations not to be liable to dissolution from administrative authority

The Committee once again notes that, under the terms of a Supreme Decree of 11 June 1999, any ministerial decision dissolving a trade union organization must be transmitted automatically to the labour courts. While noting that such administrative

dissolution orders have to be reviewed by a judicial body, the Committee regrets that such procedure does not have the effect of suspending the administrative decision.

The Committee therefore requests the Government to take measures in order to bring its legislation into line with the Convention by ensuring that an administrative decision to dissolve a trade union will not take effect until a judicial decision has been handed down confirming this order.

V. Observation submitted 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 a result of a strike.

Bosnia and Herzegovina (ratification: 1993)

The Committee takes note with interest of the information contained in the first report of the Government and, in particular, the adoption of the new Law on the Associations and Foundations of Bosnia and Herzegovina of 30 November 2001.

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.

Bulgaria (ratification: 1959)

The Committee notes the information provided in the Government's report. It also notes with interest the entry into force of the new Labour Code, as amended in 2001, as well as the Civil Servant Act, as amended in 2000 and 2001.

Article 2 of the Convention. Right of workers, without distinction whatsoever, to establish and join organizations of their own choosing. The Committee notes that while section 43 of the current Civil Servant Act provides that civil servants have the right to associate, section 3(2) provides that persons implementing technical functions in the administration are not considered as civil servants. In this regard, the Committee recalls that given the very broad wording of *Article 2* of the Convention, 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 undertakings. However, to bar senior public officials from the right to join trade unions which represent other workers is not necessarily incompatible with freedom of association, but on two conditions, namely that they should be entitled to establish their own organizations, and that the legislation should limit this category to persons exercising senior managerial or policy-making responsibilities (see General Survey of 1994 on freedom of association and collective bargaining, paragraphs 49 and 57). The Committee therefore asks the Government to indicate in its next report 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.

Article 3. The Committee recalls that its previous comments concerned the need to amend section 11(2) of the Act of March 1990 regarding the settlement of collective labour disputes, which provides that the decision to strike shall be taken by a simple majority of the workers of the enterprise or the unit concerned. The Committee has recalled in the past that account in a strike ballot should only be taken of the votes cast and that the quorum should be fixed at a reasonable level. It once again requests the Government to indicate in its next report the measures taken or envisaged to bring its legislation into full conformity with the Convention in this respect. Furthermore, the Committee notes that section 11(3) stipulates that the duration of the strike must be declared. In this regard, the Committee considers that forcing the employees and their organizations to specify the length of a strike would restrict the right of workers' organizations to organize their administration and activities and to formulate their programmes. The right to strike is effectively, by definition, a means of applying pressure which the workers and their organizations may use to promote and defend their social and economic interests and achieve satisfaction in their claims. The Committee therefore requests the Government to amend the legislation so as to eliminate the obligation to give notification of the duration of the strike, and asks it to include details in its next report on the measures taken in this connection.

As concerns the provision of compensatory guarantees for workers in the energy, communications and health sectors whose right to strike is denied, the Committee recalls that compensatory guarantee procedures should provide sufficient guarantees of impartiality and rapidity, arbitration awards should be binding on both parties and once issued should be implemented rapidly and fully. In this respect, the Committee takes due note of the creation, in March 2001, of the National Institute for Conciliation and Arbitration, which is not, however, yet functional. The Committee therefore requests the Government to indicate in its next report if the said institute is operational.

As concerns the Civil Servant Act, the Committee had noted 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. It had thus recalled that restrictions on the right to strike should be limited to public servants exercising authority in the name of the State. In its latest report, the Government indicates that the Ministry of Labour has 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 notes that article 24 of the draft Bill amends section 47 of the current Act and would enable public servants not only to strike symbolically but also to discontinue their work effectively.

The Committee asks the Government to indicate, in its next report, the type of employees who will be covered by this new law and trusts that the said draft Bill will be adopted soon. It requests the Government to keep it informed of developments in this regard.

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

Burkina Faso (ratification: 1960)

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

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, under which 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 to cases in which the right to strike may be limited or even prohibited, namely where public servants exercise authority in the name of the State, in services the interruption of which would endanger the life, personal safety or health of the whole or part of the population, or in the event of an acute national crisis (see General Survey of 1994 on freedom of association and collective bargaining, paragraphs 152, 158 and 159). In its latest report, the Government once again merely reiterates the information supplied in earlier reports.

The Committee is therefore bound to repeat its request to the Government to send in its next report detailed information on the practical effect given to this provision, including the requisition orders issued during the period covered by the report, and also to provide information on the legislative measures taken or envisaged to amend sections 1 and 6 of Act No. 46-60/AN of 25 July 1960 regulating the right to strike of public servants and state employees, in order to bring its legislation into full conformity with the provisions of the Convention.

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

Burundi (ratification: 1993)

The Committee notes the information contained in the Government's report. It recalls that in its previous comments it raised the following points.

Article 2 of the Convention. 1. Trade union rights of public servants. In its previous comments the Committee had noted that section 14 of the Labour Code excludes state employees and magistrates from the scope of the Code. The Committee notes with interest in this connection that Legislative Decree No. 1-009 of 6 June 1998 (Public Service Regulations) provides in section 28 for the right to organize of public servants. The Committee also notes the entry into force of Act No. 1-001 of February 2000 amending the magistrates' regulations. Noting that there is no express reference in this Act to the magistrates' right of association, the Committee asks the Government to specify in its next report the provisions which ensure that magistrates have such a right.

2. *Trade union rights of minors.* The Committee has been pointing out for several years that section 271 of the Labour Code under which young people under the age of 18 may not join a trade union without the express authorization of their parents or guardians needs to be amended so that minors who are legally entitled to work have the right to join trade unions. In its last report, the Government states that it is considering amending section 271 of the Labour Code so as to allow minors to join trade unions without previous parental authorization. The Committee therefore once again asks the Government to indicate the measures taken or envisaged to ensure that minors who are entitled to enter the labour market either as workers or as apprentices have the right to join trade unions without parental authorization.

Article 3. 1. Public servants not exercising authority in the name of the State. The Committee notes that the bill laying down rules for the exercise of the right to strike in the public service has recently been approved by Parliament and is currently being examined by the Senate. The Committee requests the Government to send the text of the above bill as soon as it has been adopted.

2. *Election of trade union leaders.* The Committee noted previously that the Labour Code sets a number of conditions for holding the position of trade union officer or administrator.

- *Criminal record (section 275 of the Labour Code).* In its previous comments the Committee recalled that a 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. In its last report, the Government states that it is planning to amend this provision following consultations with the National Labour Council. The Committee requests the Government to send, as soon as they have been adopted, the amendments to ensure that only offences that impair the performance of trade union duties are taken into consideration in barring candidates from trade union office.
- *Belonging to the respective occupation (section 275 of the Labour Code).* The Committee recalled that a provision requiring trade union leaders or administrators to have belonged to the occupation or trade for at least one year can impair the right of organizations to elect their representatives in full freedom by denying them the possibility of electing qualified people such as full-time union officers or pensioners, or by depriving them of the benefits of the experience of certain officers when they are unable to provide enough qualified persons from among their own ranks. The Committee asked that the Government make its 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 last report, the Government states that it is considering the amendment of this provision following consultations with the National Labour Council. The Committee requests the Government to send a copy of the amendments as soon as they have been adopted.

Articles 3 and 10. Right of workers' organizations to organize their administration and their activities to further and defend the interests of their members. Regarding 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 to prevent all strikes, the

Committee again asks the Government to provide the draft implementing text 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.

The Committee also noted that, under section 213 of the Labour Code, strikes are lawful when they are called with the approval of a simple majority of the employees of the workplace or enterprise, whereas in practice no vote on the matter was required and a consensus sufficed. The Government states in its report that the questions concerning *Articles 3 and 10* of the Convention will be submitted to the National Labour Council so that a common position may be agreed. The Committee requests the Government to keep it informed of any new developments in this respect.

The Committee again requests the Government to take the necessary steps, in the light of the above comments, to bring its legislation into conformity with the Convention.

Cameroon (ratification: 1960)

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

Canada (ratification: 1972)

The Committee notes the Government’s report, 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 1(3)(a) of the amended Labour Relations Act, 1995.

The Committee notes 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 notes that the government of Ontario introduced Bill 187 in October 2002 (Agricultural Employees Protection Act, 2002) 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. The Committee recalls once again that all workers, with the sole possible exception of armed forces and police, have the right to organize under the Convention. It requests the Government to ensure that any new legislation introduced will guarantee full respect for this right for all the categories of workers mentioned above, and to keep it informed in its next report.

Noting that the governments of Alberta and New Brunswick are currently reviewing the implications of the decision, the Committee brings their attention to the abovementioned considerations; it requests them to amend their legislation accordingly and to inform it of developments in this respect in their next report.

B. Prince Edward Island, Nova Scotia, Ontario. Trade union monopoly established by law. In its previous comments, 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 Act 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 the government of Ontario has no plans to amend the Education Act. It notes that the government of Nova Scotia states that there have been no further developments in this matter. It notes the explanations of the government of Prince Edward Island to the effect that the Civil Service Act does not prohibit another union from making an application to represent civil servants, and is therefore broad enough to meet the requirements of the Convention. While noting the explanations of the government of Prince Edward Island, the Committee points out that the difficulty arises here in view of the *reference by name* to a given organization, which may have the effect of maintaining a de facto monopoly. The Committee requests, once again, the governments of these three provinces to repeal from their respective legislation the designation by name of individual trade unions and to keep it informed of developments in this respect 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. The Government states that a review committee of the Legislative Assembly has been set up to undertake a broader review of Alberta's labour laws, and that no amendments are planned while this committee continues its work.

The Committee recalls once again, as regards the categories of hospital staff mentioned above, that the right to strike is an intrinsic corollary of the right to organize and any restriction 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. The Committee also

recalls that all workers, without distinction whatsoever, with the sole possible exception of armed forces and police, have the right to establish and join organizations of their own choosing without previous authorization. It requests the Government to amend its legislation to ensure that kitchen staff, porters and gardeners are not denied this right, and that all university staff are given the right to organize, and to keep it informed in its next report of measures taken in this respect.

B. British Columbia. The Committee notes that the Act to bring an end to a collective dispute in certain provincial school commissions was repealed in July 2000, and that a report is expected in the near future on the collective bargaining regime for support staff. Hoping that the Government will refrain in future from adopting back-to-work legislation, the Committee requests it to keep it informed of developments in this respect.

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 strikes or lockouts that exceed 60 days are detrimental to employers, employees and the public interest, and that some safeguards are built into the dispute resolution system to ensure that fair collective bargaining has taken place prior to the process being used. The Committee further notes that the Labour Management Review Committee (LMRC), where labour and management organizations are equally represented, must review the operation of these provisions every two years and report to the Legislative Assembly.

The Committee recalls that arbitration imposed by the authorities at the request of *one* party is contrary to the principle of voluntary bargaining and the autonomy of the parties (General Survey of 1994 on freedom of association and collective bargaining, paragraph 257) and requests the Government to take the necessary measures to ensure that recourse to arbitration for the settlement of conflicts is voluntary. It requests the Government to communicate in its next report the conclusions of the LMRC.

2. Prohibition of strikes by teachers, section 110(1) of the Public Schools Act. The Committee notes the Government's statement that both the prohibition of strikes and the system of compulsory binding arbitration that have existed since 1956 were enacted following joint recommendations by the Manitoba Teachers' Society (representing teachers) and the Manitoba Association of School Trustees (representing employers). In essence, the amendments brought by Bill 42 made the collective bargaining under the general legislation applicable to public schools, but compulsory binding arbitration was retained in a somewhat different format. Bill 42 also introduced the recommendations of the Freedom of Association Committee concerning the jurisdiction of interest arbitrators. The Committee further notes that, commenting on the relevant amendments before the legislative committee, a representative of the Manitoba Teachers Society indicated that Bill 42 would give teachers fair treatment and would improve their relations with the school boards.

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, and that arbitration imposed by the authorities at the request of one party is contrary to the principle of the voluntary negotiation of collective agreements and the autonomy of the partners. While taking due note of the Government's indication that the strike prohibition came about following a joint

recommendation between the Manitoba Teachers' Society and the Association of School Trustees as far back as 1956, the Committee observes that this agreement was codified in the Manitoban legislation by the Public School Amendment Act of 1996, which explicitly prohibits the right to strike under section 110(1). 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 is placed out of the hands of those concerned, but rather may be set forth in legally binding agreements, which may be reviewed by the parties concerned in accordance with such agreements. It therefore requests once again the Government to amend its legislation accordingly and to keep it informed of developments in its next report.

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 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 had requested the Government to take the necessary measures so that community workers are guaranteed the right to organize and that teachers may exercise the right to strike, and requested it to avoid having recourse to back-to-work legislation in future.

The Committee notes with regret that the Government merely maintains its position concerning Bill 22 and that no legislative amendments are "planned or envisaged", and that "there are no updates regarding Ontario's position" in respect of the Back to School Act, 1998. The Committee further notes 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. The Committee requests the Government to amend its legislation so that these categories of workers are guaranteed the right to establish and join organizations of their own choosing, in conformity with the Convention.

The Committee recalls, once again, that the only exceptions as regards the right to organize are armed forces and police, and that teachers should be allowed to strike. It requests the Government to amend its legislation and to keep it informed in its next report.

E. Newfoundland and Labrador. 1. The Committee notes that during a recent public sector labour dispute, the designation of employees entrusted with ensuring the essential services proceeded with the cooperation of all parties, to ensure the health and safety of the public.

2. The Committee notes that the collective bargaining legislative model in the fishing industry was developed and endorsed by the main bargaining agent in the sector. The parties chose a final offer selection process as the agreed dispute resolution mechanism. In 2002, out of 12 rounds of negotiations, nine settlements were achieved through negotiations and three through arbitration. 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. It further recalls its above comment for Manitoba concerning the renunciation of the right to strike. It

therefore requests the Government to amend its legislation accordingly and to keep it informed of developments in its next report.

Central African Republic (ratification: 1960)

The Committee notes the information contained in the Government's report. It notes in particular the Government's indications that funding has been provided for work to continue on a preliminary draft of the Labour Code.

It recalls that its previous comments related to sections 1, 2 and 4 of Act No. 88/009 of May 1988 on freedom of association and the protection of the right to organize, amending the Labour Code, and to section 11 of Order No. 81/028 of 1984 concerning the Government's power of requisition in the event of a strike:

- section 1 of Act No. 88/009 provides that any person having lost the status of worker cannot either belong to a trade union or take part in its leadership or administration;
- section 2 of the Act provides that trade union officers must be members of a trade union;
- section 4 of the Act provides that trade unions constituted in federations and confederations may group together in a single central national union.

The Committee had noted in previous comments that sections 1 and 2 of Act No. 88/009 may infringe the right of organizations to elect their representatives in full freedom. The Committee had requested the Government to relax excessive restrictions concerning the requirement that trade union officers belong to the same occupation in order to ensure that qualified persons may carry out union duties. In a previous report, the Government had indicated that in the preliminary draft of the Labour Code these restrictions would be replaced by more flexible provisions.

The Committee also noted that section 4 of Act No. 88/009 infringes the right of workers' organizations to establish federations and confederations of their own choosing. In a previous report, the Government had indicated in this respect that it noted the relevance of this observation and that the provisions of this section would effectively be abolished by not including them in the draft of the new Labour Code.

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 that it is necessary to restrict powers of requisition to cases in which the right to strike may be limited, or even prohibited, namely in services the interruption of which would endanger the life, personal safety or health of the whole or part of the population, or in a situation of acute national crisis.

The Committee recalls that in its previous report the Government indicated that the work of revising the Labour Code had commenced. However, the Committee notes that in its latest report the Government provides no information on the progress made in this revision. It therefore once again requests the Government to keep it informed of the progress made in the work of revising the Labour Code and to supply a copy of the preliminary draft Labour Code with its next report so that the Committee can examine its conformity with the provisions of the Convention. In this regard, the Committee reminds the Government that it can avail itself of technical assistance from the Office if it so wishes.

Chad (ratification: 1960)

The Committee notes 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 related to the following points.

1. *Right to establish organizations without previous authorization.* The Committee had requested the Government on several occasions to amend Ordinance No. 27/INT/SUR of 28 July 1962 regulating associations, which subjects the establishment of associations to the authorization of the Ministry of the Interior and confers extensive powers on the authorities to oversee the management of associations under penalty of administrative dissolution, which is contrary to *Articles 2, 3 and 4 of the Convention*. The Committee had noted that, in its last report, the Government stated in this respect that, following the intercession of the Ministry of the Public Service, Labour and Employment Promotion with the Ministry of the Interior, the Ordinance of 1962 no longer applies to trade union organizations. The Government stated that all the workers' and employers' organizations in the country recognize its non-application. Moreover, the Minister of Labour had expressed his concern at the failure up to the present to repeal this provision.

2. *Right of organization of minors.* While recalling that all workers have the right to freedom of association, the Committee had noted that under the terms of section 294(4) of the Labour Code, fathers, mothers or guardians may oppose the right to organize of minors under the age of 16 years. The Committee had emphasized that *Article 2* of the Convention guarantees all workers, without distinction whatsoever, the right to establish and join organizations. In its last report, the Government had indicated that, due to the slowness of the administration, the texts to be issued under the Labour Code of 1996 had still not appeared. However, it stated that this provision should be eliminated when the texts to be issued under the Labour Code are adopted.

3. *Supervision by the authorities of trade union assets.* The Committee had noted 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 had indicated in its last report that the texts to be issued under the Labour Code on this point should establish further provisions on the conditions under which such controls may be carried out following a representation or complaint by a member of a trade union.

4. *Right to strike in the public sector.* The Committee had requested the Government to provide information on the application in practice of Decree No. 96/PR/MFPT/94 of 29 April 1994 issuing regulations concerning the exercise of the right to strike in the public service. In its last report, the Government stated that the above Decree, which gave rise to strong opposition by trade union confederations, had never been applied in practice. Once again, the Government stated that the texts which are due to be issued under the Labour Code should explicitly repeal this Decree.

The Committee had noted the Government's explanations and hopes that the Government will take the necessary measures in the near future with a view to adopting the texts to be issued under the Labour Code of 1996, repealing Ordinance No. 27/INT/SUR of 1962, repealing or amending Decree No. 96/PR/MFPT/94 of 1994; and amending articles 307 and 294 of the Labour Code, in order to bring its legislation into full conformity with the provisions of the Convention. It requests the Government to indicate the measures taken in practice in this respect in its next report.

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

Colombia (ratification: 1976)

The Committee notes the Government's report and the discussions that took place in the Conference Committee on the Application of Standards at the 2002 session of the Conference. The Committee also notes the reports of the Committee on Freedom of Association on the various cases pending that concern Colombia adopted at its meetings of March, June and November 2002.

The Committee once again notes with grave concern the climate of violence in the country and particularly the conclusions that the Committee on Freedom of Association formulated in Case No. 1787 in November 2002. In those conclusions the above committee noted that for the year 2002 there have been "a total of 83 murders" and that the Committee is bound once again to regret the fact that, despite the various bodies that have been established and the investigations conducted by those bodies, and even in some cases the arrests of suspects, the Government has not thus far reported any actual convictions of individuals for the murders of trade unionists (see 329th Report, paragraphs 378 and 379). Like the Conference Committee on the Application of Standards, the Committee urges the Government to take the necessary steps to end this situation of insecurity and allow workers' and employers' organizations to enjoy in full the rights granted to them by the Convention, and to establish and strengthen the institutions needed to put an end to the intolerable situation of impunity prevailing in the country, which is a serious obstacle to the free exercise of trade union rights.

The Committee recalls that it has been commenting for many years on certain provisions of the legislation, namely:

- 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 power of the Minister of Labour to refer a dispute to arbitration when a strike lasts longer than a specified period (section 448(4) of the Labour Code).

The Committee regrets to note in this connection that in its report the Government merely states that there have been no changes in the legislation. The Committee recalls that during its examination of the application of the Convention at its meeting of June 2002, the Conference Committee on the Application of Standards observed that the Government had stated that questions concerning the application of the Convention had been placed before the Consultative Commission on Social and Labour Policies. In this context, the Conference Committee asked the Government to send a detailed report so that the Committee of Experts could examine the situation again at its next meeting. The Committee accordingly urges the Government to take steps to bring its legislation into full conformity with the provisions of the Convention, for instance by adopting the

preliminary draft legislation prepared during the direct contacts mission in February 2000.

Lastly, the Committee notes that the International Confederation of Free Trade Unions (ICFTU) and the Colombian Workers' Confederation (CTC) have sent comments on the application of the Convention, and asks the Government to send its observations thereon.

Congo (ratification: 1960)

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

The Committee had noted the Government's statement that work had begun on revising the Labour Code.

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 (ratification: 1960)

The Committee notes the Government's report and the observation made by the Rerum Novarum Confederation of Workers in a communication dated 31 August 2001.

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 notes 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 "foreigners are

prohibited from exercising direction or authority in unions". The Committee notes 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 draws the Government's attention to the importance of amending not only section 345 of the Labour Code, but also article 60(2), 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 requests the Government to provide information on this matter.

2. *The obligation for the trade union assembly to appoint the executive board each year* (section 346(a) of the Code). The Committee notes with interest that Bill No. 13475 no longer requires the appointment of the executive board each year.

3. *Inequality of treatment between solidarist associations and trade unions with regard to the management of compensation funds for dismissed workers*. The Committee notes the Workers' Protection Act of 16 February 2000 and notes with satisfaction that sections 30 and 74 of the Act allow trade union organizations to establish administrators to manage occupational deposit funds and pension funds.

4. *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 on these matters the Government refers to the wording of the ruling by the Constitutional Chamber of 27 February 1998 (which is still awaited) or indicates that the Committee's recommendations will be considered by the authorities with a view to a possible amendment. The Committee hopes that the Government will transmit the full ruling in question as soon as it is available.

Moreover, the Committee notes that a magistrate of the Supreme Court of Justice indicated that, of the approximately 600 strikes that have occurred over the past 20 or 30 years, a maximum of ten have been declared legal, and that, according to the trade union federations, the procedure for calling a strike may take three years.

The Committee emphasizes that the exercise of the right to strike should not be subject to legal or practical requirements which render its legal exercise very difficult or impossible. The Committee considers that the various points raised are incompatible with the right of worker's organizations to organize their activities and to formulate their programmes in full freedom, as set out in *Article 3* of the Convention, and that these matters need to be given priority by the authorities and the social partners. The Committee requests the Government to provide information in its next report on the measures adopted.

5. *Necessity for the Labour Code to reflect the ruling by the Supreme Court of Justice that section 14 of the Labour Code is unconstitutional* in excluding from its scope (and therefore from trade union rights) workers in agricultural or stock-raising enterprises which permanently employ no more than five workers. The Committee notes with interest that the March 2001 edition of the Labour Code explicitly acknowledges this ruling that the above provision is unconstitutional.

6. *Necessity for Bill No. 13475, in amending section 344 of the Labour Code, to establish a specific 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 that the Government has not commented on this matter and requests it to amend section 344 as indicated.

Finally, the Committee has been informed of the establishment of a tripartite committee to examine the Committee's comments with a view to reaching agreements with the parties on solutions which are acceptable with regard to the matters relating to freedom of association, so that they can be reflected in national law and practice. 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 on these matters, including the progress made in processing Bill No. 13475.

Croatia (ratification: 1991)

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

With reference to its previous comments, the Committee notes with interest from the Government's report that the Act on the Amendments and Supplements to the Labour Act, which entered into force on 10 March 2001, amended article 165(2) of the Labour Act by reducing from ten to three the minimum number of legal or natural persons required for the establishment of employers' organizations, and amended the first paragraph of article 210 of the Labour Act by including among the legal grounds for declaring a lawful strike the non-payment of salaries or salary compensations within 30 days of the maturity date.

Concerning the issue of the division of trade union assets, the Committee notes that although new legislation has been enacted concerning association assets, trade unions are excluded from its scope. The Government reports that although section 43 of the new Associations Act (*Official Gazette* No. 88/01) provides that assets in respect of which an association used to have the right of disposal or the right of utilization will become the property of the association, sections 1(2) and 43(1) of this law exclude trade unions from its scope and state that section 38, paragraphs 3 and 4, of the old Associations Act continue to apply in their case. The Committee notes moreover the conclusions of the Committee on Freedom of Association in this respect (Case No. 1938) in which it 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 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 in the very near future. The Committee draws the Government's attention to the availability of the technical assistance of the Office in this respect should it so desire.

Cuba (ratification: 1952)

The Committee notes the Government's report and the comments made by the International Confederation of Free Trade Unions (ICFTU). The Committee requests the Government to send its observations on the ICFTU's comments in its next report.

The Committee recalls that, in its previous comments, it referred to: (1) the need to delete from the Labour Code of 1985 the reference to the "Confederation of Workers" (sections 15 and 16); (2) the need to amend Legislative Decree No. 67 of 1983 (section 61), which confers on the Confederation of Workers the monopoly of representing the country's workers on government bodies; and (3) recommendations by the Committee on Freedom of Association requesting the Government to ensure the recognition of certain trade unions.

1. With regard to trade union monopoly, the Committee notes that, according to the Government, these issues are being examined as part of the Labour Code revision process.

Articles 2, 5 and 6 of the Convention. Regarding the need to delete from the Labour Code of 1985 the reference to the Confederation of Workers, the Committee again emphasizes that trade union pluralism must remain possible in all cases. Accordingly, 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).

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 urges the Government to amend this provision in order to ensure trade union pluralism, for instance by replacing the reference to the "Confederation of Workers" by the term "most representative organization".

The Committee again expresses the firm hope that the draft revision of the Labour Code will be adopted in the very near future and will take account of the provisions of the Convention. The Committee requests the Government to send the Office a copy of the draft revision.

2. Regarding the recommendations of the Committee on Freedom of Association in Case 1961 (see 328th Report, June 2002), in which the Government was asked to ensure the recognition of the Single Council of Cuban Workers (CUTC) and to allow the latter full freedom to carry out its legitimate trade union activities without any threats, intimidation or pressure, the Committee notes that the Government reiterates its observations submitted in the framework of Case No. 1961 to the effect that the above organization has not been shown to carry on any union activities and that, consequently, the persons concerned cannot be assigned any union representational duties being neither leaders nor representatives of any group of workers in any entity in the country. The Committee reiterates that the freedom, de facto and *de jure*, to establish organizations is the foremost among trade union rights and is the essential prerequisite without which the other guarantees enunciated in Conventions Nos. 87 and 98 would remain a dead letter (see General Survey, op. cit., paragraph 44). The Committee hopes that the necessary

measures will be taken to ensure that all workers enjoy this right both in law and in practice.

Cyprus (ratification: 1966)

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

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.

The Government indicated in its latest report that the discussions on the right to strike in essential services had been continuing between a ministerial committee and the trade unions and that the two sides had met on several occasions and most recently on 24 May 2000. The Government indicated that following the views expressed within the framework of this dialogue, it had decided to introduce a framework law which would be confined to defining "essential services" and "minimum service" and which would bind the parties in the case of a labour dispute in an essential service to follow for its settlement a procedure which would be defined and agreed upon by the parties.

The Committee noted this information but recalls that it has been formulating its observations on the restrictions on the right to strike provided for in the Defence Regulations for more than a decade. The Committee trusts that the necessary steps will be taken in the near future to ensure the total conformity of the legislation with the principles of the Convention, namely that the right to strike may only be prohibited in essential services in the strict sense of the term, for public servants exercising authority in the name of the State or in times of acute national crisis.

The Committee trusts once again that the Government will be able to indicate in its next report that substantial progress has been made in this regard. It requests the Government to provide information on the progress made and to provide the text of the new legislation 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.

Denmark (ratification: 1951)

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

The Committee recalls that it has been commenting since 1989 on the need to amend section 10 of the Act No. 408 of 1988 establishing the Danish International Ships' Register (DIS) which prohibited workers employed on board Danish ships but who are not residents of Denmark from being represented in collective bargaining by Danish trade unions if they so wished, in contravention of *Articles 2, 3 and 10 of the Convention*.

The Committee had noted from the Government's last report that a two-year agreement was entered into between the social partners in September 1999 confirming the fundamental principle that Danish labour organizations 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. Pursuant to the agreement, a contact committee was established with the

purpose of developing and extending cooperation between the parties and, on 25 February 2000, the parties further entered into a framework agreement on the establishment of collective agreements with foreign unions and individual agreements for foreign seafarers from outside the European Union which sets minimum standards to be upheld. According to the Government, the Danish trade unions had agreed to have a “truce” over section 10 of the Danish International Shipping Register Act.

While further noting the Government’s view that any position towards the Danish International Shipping Register should await a broad discussion in the ILO of international registers and second registers based on an upcoming study on their impact on the conditions of employment of seafarers, the Committee reaffirms its hope that the Government will take the necessary steps to amend section 10 of Act No. 408 so as to ensure that non-resident seafarers will have the right to be represented by organizations of their own choosing that is to say foreign trade union or Danish trade unions depending on their own will. It requests the Government to indicate in its next report any measures taken or envisaged in this respect.

The Committee is also 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.

Djibouti (ratification: 1978)

The Committee notes that the Government’s report has not been received. It further notes the observations made by the International Confederation of Free Trade Unions (ICFTU) and requests the Government to transmit its observations thereon. It must repeat its previous observation, which read as follows:

The Committee recalls that its previous comments concerned the divergencies between national law and practice and the guarantees set forth in the Convention, namely:

- the requirement of prior authorization for the establishment of trade unions (section 5 of the Act on associations, as amended in 1977);
- the requirement to be a national of Djibouti in order to hold trade union office (section 6 of the Labour Code);
- the broad powers of the authorities to requisition public servants who are on strike (section 23 of Decree No. 83-099/PR/FP of 10 September 1983);
- the failure to reinstate trade union leaders dismissed for strike action;
- the restrictions on the right of workers to elect their trade union representatives freely and democratically in elections in their enterprises and in the ordinary assemblies of trade union confederations.

1. *Article 2 of the Convention. Right to establish organizations without previous authorization.* The Committee notes once again that section 5 of the Act on associations, as amended in 1977, requires organizations to obtain prior authorization before establishing themselves as trade unions. The Committee has already recalled on several occasions that, under the terms of *Article 2* of the Convention, workers have the right to establish organizations of their own choosing *without previous authorization*. It noted that the Government was prepared to examine amendments to be made to this provision and to submit the necessary amendments as soon as possible to the National Assembly with a view to bringing this text into conformity with the provisions of the Convention. The Committee requests the Government to provide information on the measures taken in this respect in its next report.

2. *Article 3. Right of workers to elect their representatives in full freedom.* The Committee recalls once again 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. It noted that, according to the information provided by the Government in its last report, this provision would be repealed by the draft Labour Code which was currently being prepared. The Committee expresses the firm hope that measures will be taken as soon as possible to allow foreign workers to have access to trade union office, at least after a reasonable period of residence in the country. It requests the Government to indicate the progress achieved in this respect in its next report and to provide copies of any relevant legislation as soon as it has been adopted.

3. *Requisitioning.* With regard to section 23 of Decree No. 23-099/PR/FP of 10 September 1983, which confers broad powers on the President of the Republic to requisition public servants who are indispensable to the life of the nation and to the proper operation of essential public services, the Committee had noted the information provided by the Government in its last report to the effect that the power of requisitioning only applies to essential services (health, safety, air traffic). Furthermore, the Committee had noted that the Government was prepared, if the Committee considers it necessary, to specify the limits of this power. The Committee once again requests the Government to amend its legislation so as to limit the power of requisitioning to public servants who exercise authority in the name of the State or essential services in the strict sense of the term, that is those whose interruption 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.

4. *Reinstatement of trade union leaders.* With regard to the reinstatement in their jobs of the trade union leaders of the UGTD/UDT who were dismissed due to their legitimate trade union activities five years ago, the Committee had noted that the Government considers the matter to have been resolved. Certain trade unionists had been reinstated in their jobs since 1997, but the Government stated that it could not reinstate trade unionists in their trade union functions, since that would amount to interference in trade union activities. The Government provided an assurance that it would reinstate any trade unionist who would so request, provided that they would not set prior conditions for their reinstatement. The Committee noted this information and requested the Government to endeavour to obtain the reinstatement in their jobs of all dismissed trade union leaders who so request and to provide information in its next report on the measures taken in this respect.

5. *Right of workers to elect their trade union leaders freely and democratically.* While recalling that its previous comments concerned the need to guarantee workers the right to elect their trade union representatives freely and democratically in elections in their enterprises and in the ordinary assemblies of trade union confederations, the Committee had noted the information provided by the Government in its last report to the effect that it considered this issue to be an internal matter for the trade union movement which must be resolved without any external interference, even by the Government. Furthermore, the Committee noted that the Government had called on international trade unions to come and observe the proper functioning of these trade union elections. The Committee emphasizes the importance of workers being able to elect their representatives in full freedom in enterprises, trade unions, federations and confederations and requests the Government to provide information in its next report on developments in this respect.

The Committee had noted that the Government indicated that it would examine the necessary measures in order to put its legislation into conformity with the Convention during its future revision of all legislative texts with the assistance of the ILO, as soon as the conditions will be met to organize national tripartite consultations. Recalling that ILO technical assistance is available, the Committee expresses the firm hope that measures will be taken without delay in order to put the legislation and practice into conformity with the

Convention. The Committee requests the Government to provide information in its next report on any progress achieved in these fields in both law and practice and to provide copies of any provisions which have been amended.

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

Dominica (ratification: 1983)

The Committee notes with regret the indication in the Government's report that there has been no change in legislation or practice concerning the issues raised in the Committee's previous observation. 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 this Act empowered the Minister to refer disputes to compulsory arbitration if they concerned serious issues in his or her opinion.

The Committee urges the Government once again to take the necessary measures in the very near future to ensure that strikes may only be prohibited in essential services in the strict sense of the term, in conformity with *Article 3 of the Convention*. Furthermore, the Committee requests the Government to provide in its next report information on the application of the abovementioned provisions in practice. The Committee requests the Government in particular to transmit 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 (ratification: 1956)

The Committee notes the Government's report. It further notes the observations made by the International Confederation of Free Trade Unions (ICFTU) on the application of the Convention and requests the Government to transmit its comments thereon. It 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 60 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

1. The Committee notes that the Government requires 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 it undertakes to convene the Advisory Labour Council to hear the various opinions on this matter.

The Committee notes that, by virtue of sections 383 and 388 of the Labour Code, the agreement of two federations, supported by the votes of two-thirds of their members, is still required to establish a confederation. The Committee recalls in this respect the commitments made by the Government in the past, which it has failed to fulfil, that it would submit to the National Congress a Bill allowing federations to set out in their rules the necessary requirements to establish confederations, after consulting the most representative occupational organizations. Accordingly, 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). It urges the Government to ensure that it removes from the applicable legislation in the near future 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 lay down the criteria in this respect. It also requests the Government to provide information on this matter with its next report.

Establishment of trade unions in export processing zones

2. The Committee notes that, according to the information provided by the Government, the resistance of certain enterprises in export processing zones to the establishment of trade unions is an attitude that is now past history, and that the establishment of trade unions is a fact in those enterprises. The Committee also notes that, according to the Government, eight collective agreements have been concluded on conditions of work between enterprises in export processing zones and that there are 148 trade unions dispersed throughout all the export processing zones in the country.

The Committee notes, however, that the Government does not refer to the problems raised concerning the recognition of and respect for trade union protection in export processing zones, as requested in its observation of 1999. It therefore once again requests the Government to provide information on this matter with its next report, as well as on the specific observations made by the ICFTU in respect of trade union rights in these zones.

Observance of trade union rights in sugar cane plantations

3. The Committee notes that, according to the information provided by the Government, since the privatization of the sugar cane plantations sector, there are 38 trade unions in the various branches of sugar cane production.

Requirement of a majority vote to call a strike

4. The Committee notes the Government's repeated statement that at present the social partners have not reached any agreement with regard to section 407(3) of the Labour Code for the reduction of the statutory minimum requirement for calling a strike. In its report, the Government states that it will convene the Labour Advisory Council so that employers and workers can reach agreement as a basis for the preparation of draft legislation reducing this requirement.

The Committee recalls 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). It therefore requests the Government to amend its legislation in this respect and to indicate the progress made in its next report.

Right to organize of employees of autonomous and municipal state institutions

5. The Committee notes that by Decree No. 559-01 of 18 May 2001, the President of the Republic amended section 142 of Regulations No. 81-94 adopted under the Civil Service and Administrative Careers Act, reducing the minimum number of employees required to be able to establish associations of public servants in each institution under the Executive Authority to 40 per cent. The Committee nevertheless recalls that, by requiring organizations to have a minimum number (or percentage) of members as a condition of registration, restrictions are placed on the right of workers to establish organizations of their own choosing, tantamount to prior authorization, which is contrary to *Article 2* of the Convention. The Committee continues to consider that 40 per cent is too high and therefore requests the Government to adapt its legislation accordingly and to provide information on this matter in its next report.

Ecuador (ratification: 1967)

The Committee notes the Government's report.

The Committee recalls that in its previous observations it referred to the following points.

1. *Need to reduce the minimum number of workers (30) required to be able to establish associations, works committees or assemblies to organize works committees (sections 450, 466 and 459 of the Labour Code).* The Committee notes the Government's statement that there is no desire among the social partners to amend these provisions. The Committee regrets to note that it has been referring to this legal requirement for many years and reiterates that, even though this minimum number would be permissible for industry trade unions, it could have the effect of hindering the establishment of enterprise organizations, particularly in small enterprises, which appear to be very numerous in the country. The Committee once again expresses the firm hope that in the very near future the Government will adopt the relevant measures to reduce the minimum number of workers required to form works committees.

2. *The need for civilian workers in bodies associated with or dependent on the armed forces, and workers in the maritime transport sector, to enjoy the right to join trade unions, and the refusal to register the Union of Ecuadorian Shipping Transport Workers (TRANSNAVE).* In this respect, the Committee notes the information provided

by the Government that there is no explicit prohibition in the Act respecting personnel in the armed forces of the right to organize of civilian personnel in the armed forces and that, as a consequence, article 35 of the Political Constitution, which refers to freedom of association, is fully applicable. The Committee also notes the Government's statement that, while there is no opposition to the registration of the TRANSNAVE trade union, the workers themselves have no intention of being unionized, for which reason the trade union is not being registered. The Committee nevertheless notes that, during the examination of Case No. 1664, the Government indicated that the workers in TRANSNAVE were governed by the Act respecting personnel in the armed forces, in accordance with which they could not establish a trade union (see the 286th Report of the Committee on Freedom of Association, paragraph 283). In these conditions, the Committee requests the Government to clarify whether civilian personnel in the armed forces and workers in the maritime transport sector benefit from the right to organize and to keep it informed of the measures adopted by the workers of TRANSNAVE with a view to the registration of the trade union.

3. *The 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 the Government's statement that it is assessing the possibility of amending the above provisions with a view to recognizing the right of association of public servants and the consequences of such an amendment not only for the workers involved, but also for the rest of society, particularly with regard to the right to strike. The Committee recalls that, in accordance with *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. Indeed, while the Committee has reiterated on many occasions that the right to strike is one of the essential means available to workers and their organizations for the promotion and protection of their economic and social interests, this right cannot be considered as an absolute right and may be governed by provisions laying down conditions for, or restrictions on, the exercise of this right (see General Survey of 1994, paragraphs 147 and 151). In this respect, the Committee considers that the right to strike may be restricted in the case of public servants exercising authority in the name of the State. Moreover, with regard to services, the Committee considers that the right to strike can also be restricted in essential services, namely 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.*, paragraphs 158 and 159), irrespective of whether the entity providing such services is public or private. In the case of services which are non-essential, but which are considered to be of public utility, such as education and transport where, without calling into question the right to strike of the large majority of workers, consideration might be given to ensuring that users' basic needs are met, a minimum service may be established (see General Survey, *op. cit.*, paragraphs 161 and 162). The Committee requests the Government to take measures to amend the above provisions so as to bring them into conformity with *Articles 2 and 3 of the Convention*.

4. *The need to amend section 522(2) of the Labour Code respecting the determination of minimum services in the event of a strike by the Minister in the case of*

disagreement between the parties. The Committee notes the information provided by the Government that the first subsection of the above section provides that the parties shall agree on the procedures for the provision of minimum services that shall be maintained for the duration of the strike. Nevertheless, the Committee notes that the same section, in subsection 2, provides that in the absence of agreement, arrangements for the provision of minimum services shall be established by the Ministry of Labour. The Committee considers that in this case the determination of the above minimum services should be the responsibility of an independent body in which both parties have confidence, and not the Ministry of Labour. The Committee requests the Government to take the necessary measures to amend section 522(2) of the Labour Code to bring it into conformity with the provisions of the Convention.

5. *The implicit denial of the right to strike for federations and confederations (section 505 of the Labour Code) and the imposition of penalties of imprisonment on persons who participate in illegal work stoppages and strikes (Decree No. 105 of 7 June 1967).* The Committee notes the information provided by the Government that there have been no amendments to the legislation in this respect. The Committee recalls that, in accordance with *Article 3* of the Convention, workers' organizations shall have the right to elect their representatives in full freedom, to organize their administration and activities and to formulate their programmes. The Committee therefore requests the Government to take measures to amend the above provisions so as to bring them into conformity with the provisions of the Convention.

6. *The requirement to have Ecuadorian nationality to serve as a trade union official (section 466(4) of the Labour Code).* The Committee notes that, according to the Government, there are no plans to amend this provision. The Committee recalls once again that, by virtue of *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, op. cit., paragraph 118) so as to ensure that workers' and employers' organizations have the right to elect their representatives in full freedom. The Committee therefore once again requests the Government to take measures to amend section 466(4) of the Labour Code.

7. *The need to ensure the right to appeal to the judicial authorities against the dissolution by administrative authority of a works committee, as envisaged under section 472 of the Labour Code.* The Committee notes the information provided by the Government that, by virtue of section 447 of the Labour Code, "Workers' organizations shall not be suspended or dissolved except by judicial process before the labour courts" and that any dissolution by administrative authority is accordingly suspended until the judicial authority has ruled thereon.

The Committee observes once again that, despite the technical assistance provided by the Office, the Government has still not brought its law and practice into conformity with the requirements of the Convention on the points referred to above. The Committee encourages the Government to make progress in adapting its legislation to the Convention on all the matters referred to above and requests the Government to provide information in this respect in its next report. The Committee once again recalls that ILO assistance is available to the Government for this purpose.

Egypt (ratification: 1957)

The Committee notes the Government's report. It notes in particular the Government's statement that the Minister of Labour has decided to set up a tripartite committee in order to review the Law on Trade Unions No. 35 of 1976, as well as the draft Labour Code, in the light of the observations formulated by the Committee in recent years.

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

1. *Articles 2, 5 and 6 of the Convention.* In its previous comments, the Committee had requested the Government to amend sections 7, 13 and 52 of Act No. 35 of 1976, as well as sections 14, 16, 17 and 41 of Act No. 12 of 1995 to ensure that all workers who so wish have the right to establish occupational organizations outside the existing trade union structure. The Committee had recalled in this respect the importance of the right of workers to establish organizations *of their own choosing*, that this right was breached where the law maintained a trade union monopoly and that the preference of the trade union movement for a unified system was not sufficient to justify a monopoly established by law. The Committee once again urges the Government to ensure that sections 7, 13 and 52 of Act No. 35 of 1976, as well as sections 14, 16, 17 and 41 of Act No. 12 of 1995, are 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 and it requests the Government to keep it informed of the ongoing review of the labour legislation that has been undertaken by the tripartite committee referred to above.

2. *Article 3.* The Committee recalls that its previous comments concerned sections 41 and 42 of Act No. 12 of 1995. The Committee had noted that section 41 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 General Confederation of Trade Unions. Section 42 sets out the manner of filling vacancies and also permits the General Confederation to determine the conditions and modalities of the dissolution of such boards in the event of a reduction in the number of members. In this regard, the Committee recalls that the procedures for the nomination and election to trade union office should be fixed by the rules of the organization concerned, and not by law or by the single trade union central organization designated by the law. 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.

With reference to sections 62 and 65, the Committee had recalled that it is contrary to *Article 3* to empower the single central trade union organization designated by the law to exercise financial control. It once again requests the Government to take the necessary measures to ensure that section 62, which provides that the Confederation 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, and section 65, which provides that the Confederation shall control all trade union activities, are amended so that workers' organizations have the right to organize their administration, including their financial activities, without interference, in accordance with *Article 3*.

3. *Articles 3 and 10.* The Committee has been commenting for several years on the following provisions:

- (i) sections 93 to 106 of the Labour Code, as amended by Act No. 137 of 1981, providing for compulsory arbitration at the request of one of the parties in services other than those that are essential in the strict sense of the term;
- (ii) section 70(2)(b) of Act No. 35 of 1976 authorizing the Public Prosecutor to ask the criminal courts to remove from office the executive committee of a trade union that has provoked work stoppages or absenteeism in a public service; and
- (iii) section 14(i) of Act No. 12 of 1995 requiring the General Confederation to approve the organization of strike action.

The Committee notes in this respect the Government's reference once again to a draft Labour Code. It trusts that this Code will be adopted in the near future and that it will ensure full conformity with the provisions of the Convention. It requests the Government to transmit a copy of the new draft Labour Code as soon as it is adopted.

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

Ethiopia (ratification: 1963)

The Committee notes the Government's report, the oral information provided by the Government representative to the Conference Committee in 2002, as well as the discussion which took place therein and the resulting special paragraph in the Conference Committee's report. It further notes the most recent conclusions and recommendations by the Committee on Freedom of Association in Case No. 1888 (see 327th Report, approved by the Governing Body at its 283rd Session (March 2002)).

In its previous comments, the Committee had expressed its deep concern over the extremely serious trade union situation, the Government's interference in trade union activities, and the sentencing of Dr. Taye Wolde-smiate, President of the Ethiopian Teachers' Association, to a prison term of 15 years. The Committee notes with interest from the judgement of the Supreme Court of Ethiopia (10 May 2002) that Dr. Taye Wolde-smiate and one co-defendant have been released and notes with satisfaction that the other co-defendants were acquitted.

As concerns the legislation relating to freedom of association, while noting the Government representative's statement before the 2002 Conference Committee, that the initial draft of a new labour law has been examined by the appropriate authorities and is now in its final phase of exhaustive review, and noting in the Government's report that the drafting process will be finalized soon, the Committee points out that the Government has been referring to the drafting of new legislation for over nine years now. The Committee is compelled to express, once again, its deep regret that no concrete progress or developments have yet occurred.

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

Article 2 of the Convention. Right of workers without distinction whatsoever to join an organization of their own choosing. The Committee had noted that only one trade union may be established in an undertaking where the number of workers is 20 or more, in accordance with section 114 of Labour Proclamation No. 42-1993. The

Committee considers that legislation which provides that only one trade union may be established for a given category of workers runs counter to the provisions of the Convention. It therefore once again urges the Government to take the necessary measures in order to guarantee that trade union diversity remains possible in all cases.

Articles 2 and 10. Restrictions on the right to unionize of teachers and civil servants. In its previous comments, the Committee had noted that section 3(2)(b) of Labour Proclamation No. 42-1993 excludes teachers from its scope of application and had requested the Government to indicate how teachers' associations could promote their occupational interests. It noted the Government's statement for several years that a new law governing teachers' associations and state administration employees was under way. The Committee urges the Government to take the necessary measures in the very near future to ensure that teachers and other civil servants may exercise fully the right to join and form the organization of their own choosing and requests it to forward any draft legislation governing teachers' associations and other government employees, so that it may examine its conformity with the provisions of the Convention. Furthermore, having also noted that state administration officials, judges and prosecutors are also excluded from Proclamation No. 42-1993, the Committee reiterates its request that the Government indicate whether these categories of workers are entitled to associate to further and defend their occupational interests and if they will be covered by the proposed draft legislation mentioned above.

Article 4. Administrative dissolution of trade unions. In its previous comments, the Committee had noted with concern that the Ministry of Labour had cancelled the registration of the former Confederation of Ethiopian Trade Unions (CETU) pursuant to the powers vested in it under section 120 of the Labour Proclamation. The Government had indicated in its last report that the Ministry of Labour and Social Affairs had submitted draft legislation to the Council of Ministers which would vest the power of cancellation solely in the Ethiopian courts. The Committee urges the Government to make diligent efforts to move their bill towards passage. It once again requests the Government to transmit with its next report any draft legislation or amendments which would ensure that an organization cannot be dissolved or suspended by an administrative authority.

Articles 3 and 10. Right of workers' organizations to organize their programme of action without interference by the public authorities. In its previous comments, the Committee had noted that the Labour Proclamation contains broad restrictions on the right to strike, namely: the definition of essential services contained in section 136(2) is too broad. The definition should, in particular, not include air transport and railway services, urban and inter-urban bus services, filling stations, bank and postal services (section 136(2)(a), (d), (f) and (h)). In addition, sections 141(1), 142(3), 151(1), 152(1), 160(1) and (2) allow labour disputes to be reported to the Ministry for conciliation and binding arbitration by either of the disputing parties. In order to avoid damages which are irreversible or out of all proportion to the parties, namely the users or consumers who suffer the economic effects of collective disputes, the Committee suggests that the Government give consideration to the establishment of 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). The Committee once again requests that the Government amend its legislation so that the

ban on strikes be limited to essential services in the strict sense of the term and so that disputes may be submitted to the Labour Relations Board for binding arbitration only if both parties agree, or if they are in relation to essential services whose interruption would endanger the life, personal safety or health of the whole or part of the population or in case of an acute national crisis.

The Committee expresses its strong hope that the draft law which, according to the Government, is in its final phase, will contain all necessary provisions to amend the legislation and practice in order to comply with the requirements of the Convention, and to ensure the full respect of the civil liberties essential for the implementation of the Convention. The Committee urges the Government to provide copies of any relevant draft legislation as soon as possible.

Germany (ratification: 1957)

The Committee takes note of the information provided in the Government's report. It also notes the comments made by the German Confederation of Trade Unions (DGB) and the German Employers' Associations (BDA), and the Government's detailed comments thereon.

Articles 3 and 10 of the Convention. Right of public servants' 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 referring for a number of years to the importance of taking the necessary measures so as not to sanction public servants ("*Beamte*" including postal workers, railway employees and teachers) who are not exercising authority in the name of the State for taking collective action, which includes recourse to strike. The Committee notes from the Government's report that there is no change in the law which continues to lay down the rights and duties of civil servants ("*Beamte*") in terms of their status rather than their function, and that the sanctioning of civil servants who have violated a continuing ban on strikes cannot be ruled out for the future as a result of a Federal Constitutional Court ruling in 2002 to the effect that disciplinary law applied to civil servants working in the public telecommunications company. On this last point, the Committee would point out that it has always considered that telecommunications may be considered an essential service in the strict sense of the term and that workers in that sector may thus be restricted in their right to exercise collective action, as may be the case for public servants exercising authority in the name of the State.

The Committee recalls, however, that its previous comments have referred to strike restrictions for public servants, including postal workers, railway employees, teachers, etc. The Committee considers that this restriction placed on the right to strike of public servants goes significantly beyond the exceptions permitted in respect of essential services and public servants exercising authority in the name of the State. In order to have a fuller understanding of the impact of the restriction on the right to strike for "*Beamte*", the Committee requests the Government to furnish additional information in its next report on the number of civil servants considered to be "*Beamte*" and the types of activities carried out by them, as well as to communicate any available information on the evolution in the number of workers and the sectors of activities covered within the scope of "*Beamte*" due to privatization.

Emphasizing that 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 once again requests the Government to indicate in its next report the measures envisaged to open the way to the full implementation of *Articles 3 and 10* of the Convention by ensuring that public servants who do not exercise authority in the name of the State and who cannot be considered as providing an essential service in the strict sense of the term, 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 hopes that the Government will make every effort to find constructive solutions in the very near future to this longstanding issue.

Ghana (ratification: 1965)

The Committee takes note of the report submitted by the Government. It 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.

Greece (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 previous comments, the Committee takes note of the legislative texts concerning the freedom of association of seafarers transmitted by the Government in its report. The Committee recalls that it has noted with concern for many years that seafarers' organizations are excluded from Act No. 1264 of 1982 concerning the democratization of the trade union movement and the protection of workers' trade union freedoms. The Committee once again urges the Government to extend the general protection concerning freedom of association to seafarers and their organizations. The Committee requests the Government to indicate in its next report any positive development that has occurred in this respect.

Article 2. Recognition of the most representative trade unions. The Committee notes from the Government's report that Act No. 3276 of 1994 on collective agreements concerning work at sea authorizes the Minister of Mercantile Marine to evaluate freely which seafarers' organizations are the most representative for collective bargaining purposes. The Committee considers that the determination of the most representative organizations must be based on objective, pre-established and precise criteria (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 97). It requests the Government to indicate the criteria on the basis of which the representative status of seafarers' organizations is evaluated and any relevant legislative provisions in this respect.

Article 3. Right of workers' organizations to organize their administration and activities. The right to strike. The Committee notes that section 32(2) of Act No. 330 of 1976, transmitted by the Government with its report, respecting occupational unions and federations, prohibits a strike which has been declared in contravention of the provisions of Act No. 3239/1955 on the procedures for the settlement of collective labour disputes, etc., and that this Act is apparently still applicable to seafarers. The Committee requests the Government to specify in its next report the conditions under which seafarers' organizations may declare a strike and to transmit the text of Act No. 3239/1955 along with any amendments, as well as any other relevant legislative texts, so that the Committee can examine their conformity with the provisions of the Convention.

The Committee urges the Government to take all necessary steps in the very near future to guarantee seafarers the full enjoyment of the rights entrenched in the Convention and to transmit information in this respect in its next report.

Guatemala (ratification: 1952)

The Committee notes the Government's report. The Committee notes the comments made by the Trade Union and People's Action Unit (UASP), dated 8 June 2001, and the Government's reply in this respect. The Committee also notes the discussions in the Conference Committee (June 2002) concerning the application of the Convention. The Committee notes the comments concerning the application of the Convention made by the International Confederation of Free Trade Unions (ICFTU) (10 January and 18 September 2002) and by the Union of Guatemalan Workers (October 2002), and the comments of the National State Union Workers Federation of Guatemala (FENASTEG) and the Trade Union Confederation of Guatemala (UNSITRAGUA), forwarded by the Government with its report.

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) confirm the existence of a high number of murders, acts of violence and death threats against trade unionists. The Committee notes and welcomes the Government's indication of the establishment of a special unit in the General Inspectorate, which has begun operations, to improve the effectiveness of penal investigations of acts of violence against trade unionists, a unit which is currently investigating 50 cases. The Committee emphasizes the gravity of the situation and the fact 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 make diligent efforts to ensure the effective observance of human rights and the fundamental freedoms essential to the exercise of trade union rights.

2. *Requirement under the Constitution to be of Guatemalan origin 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, in view of the constitutional hierarchy of the provisions preventing foreign nationals from exercising trade union office, the legislation cannot contradict this constitutional provision. The Government adds that it is natural that the leaders of a trade union in an enterprise should be workers in that enterprise and that the leaders of branch unions should be working in the respective occupation.

The Committee emphasizes that it is for trade union statutes and not the legislation to lay down the eligibility criteria for trade union office. Nevertheless, the Committee has recognized a State may require foreign workers to have resided in the host country for a reasonable period before they are eligible to be elected to trade union office. The Committee points out that branch or industry unions may have an interest in some officers, having 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 amend the legislation and the Constitution to ensure that workers' organizations can determine in full freedom the conditions for the election of their officers and can therefore elect the representatives of their own choosing.

3. *Requirement that to call a strike the workers must constitute 50 per cent plus one of those working in the enterprise (without including in the total workers in positions of confidence or who represent the employer) (section 241 of the Labour Code).* The Committee notes the Government's undertaking to continue giving effect to the recommendations of the Committee of Experts and that this matter is being discussed in the Tripartite Commission on International Affairs. The Committee recalls that in its previous comments it pointed out that only the votes cast should be counted in calculating the majority and that the quorum should be set at a reasonable level. The Committee requests the Government to take measures to amend the legislation in the sense set out above.

4. *Imposition of a penalty of imprisonment of from one to five years for anyone engaged in acts intended to paralyse or disrupt the running of enterprises which contribute to the economic development of the country with the intention of causing damage to national production (section 390(2) of the Penal Code).* The Committee had requested the Government to state whether, with the repeal of section 257 of the Labour Code (which provided for the arrest and trial of persons publicly attempting unlawful strikes), section 390(2) of the Penal Code had ceased to apply in the event of strikes. The Committee notes with interest the Government's statement that section 390(2) of the Penal Code is no longer in force and is not therefore applicable in the event of strikes.

5. *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 energy provision, and the prohibition of sympathy strikes by trade unions (section 4(d), (e) and (g) of Legislative 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 the restrictions set out in Legislative Decree No. 35-96 have or have not implicitly been repealed. The Committee notes the commitment expressed by the Government to continue implementing the recommendations of the Committee of Experts and the fact that on 8 February 2002 a High-Level Labour Committee was established, composed of the Ministers of State and representatives of the Trade Union and People's Action Unit (UASP), in which these matters will be examined, including the repeal of Legislative Decree No. 35-96. The Government's report, although it provides no further information, indicates that the decrees criticized by the Committee have already been implicitly partially repealed. The Committee emphasizes the importance of trade union rights being set out with precision in the law and therefore requests the Government to take the necessary measures to abolish the restrictions referred to above, which are contained in Legislative Decree No. 71-86, as amended by Decree No. 35-96.

6. *Claims by the trade union federations that in recent years there have been no cases of legal strikes.* The Committee notes that, according to Government's report, the trade union federations have not complied with the provisions of the Labour Code. The Government adds that, for example, a legal strike took place in the municipality of Jalapa this year and that in the public sector actions similar to strikes have been undertaken, for example in the health sector, in judicial bodies and the Department of the Attorney-General. The Committee requests the Government to provide statistics on both legal and illegal strikes over the past two years, with an explanation in the latter case of the reasons that they were declared illegal.

7. *Comments made by trade union organizations.* The Committee notes that the Government has not replied to the majority of the comments made by trade union organizations. It is raising these matters in a direct request.

Finally, the Committee notes that the Government has requested technical assistance from the ILO. The Committee reminds the Government that the Office is at its disposal.

Guinea (ratification: 1959)

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

Articles 3 and 10 of the Convention. The Committee had previously observed that, while public transport and communications do not in themselves constitute essential services in the strict sense of the term, they appear on the list contained in Order No. 5680/MTASE/DNTLS/95 of 24 October 1995 which defines and determines essential services in the context of the exercise of the right to strike. In this regard, the Committee requested the Government to indicate, in cases where the parties do not manage to reach an agreement on the negotiated minimum service, the measures envisaged for a joint independent body to examine rapidly and without formalities the difficulties raised in the determination of the minimum service.

In addition, the Committee recalled that arbitration at the request of one of the parties, in this case the employer (sections 342, 350 and 351 of the Labour Code), was likely to restrict the exercise of the right to strike, contrary to *Article 3* of the Convention. In this

regard, the Committee requested the Government to take measures in order to ensure that arbitration could not be imposed at the request of only one of the parties to a dispute. Finally, the Committee requested the Government to continue to provide information on the application in practice of the above sections of the Labour Code and of Order No. 5680/MTASE/DNTLS/95 of 24 October 1995.

The Committee had noted that, according to the information contained in the Government's latest report, the Order of 24 October 1995 was discussed and adopted by the Advisory Commission on Labour and Labour Legislation, which is a tripartite structure. While in legal terms arbitration at the request of one of the parties, in this case the employer, may restrict the exercise of the right to strike, the Government emphasizes that in practice such arbitration has never extended beyond the scope of labour inspections. Finally, the Government stated that it will take the Committee's comments into account in the revision of the Labour Code.

The Committee had noted this information. With regard to the determination of essential services in the context of the right to strike in public transport and communications, the Committee once again requests the Government to indicate, in cases where the parties do not reach an agreement on a negotiated minimum level of service, the measures which have been taken or are envisaged for a joint independent body to examine rapidly and without formalities the difficulties raised by the definition of such a minimum service (see General Survey on freedom of association and collective bargaining, 1994, paragraph 161). With regard to recourse to arbitration imposed by one of the parties to the conflict, the Committee once again requests the Government to continue to provide it with information on the application in practice of sections 342, 350 and 351 of the Labour Code and requests it to keep it informed of any measures which are taken or envisaged concerning the amendment of the Labour Code on this matter, with a view to ensuring that recourse to arbitration can be imposed by one of the parties to a conflict, in both law and practice, only 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, namely 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), or in the event of an acute national crisis.

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

Guyana (ratification: 1967)

The Committee takes note of the Government's report.

In its previous comments, the Committee recalled 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. Noting the indication in the Government's report that there has been no change in the application of the Convention, the Committee, once again, urges the Government to take the necessary measures in the near future 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, and apply only 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 (ratification: 1979)

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

Honduras (ratification: 1956)

The Committee notes the Government's report. It 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 (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 Honduran (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:
 - (i) 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);

- (ii) the ban on strikes being called by federations and confederations (section 537);
- (iii) the power of the Ministry of Labour and Social Security to end disputes in the petroleum production, refining, transport and distribution services (section 555(2));
- (iv) 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
- (v) 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).

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 (section 2(1))

The Committee observes that, according to the Government, the exclusion provided for in the Labour Code applies only to farms which do not regularly employ more than ten workers. The Government nevertheless states that it is aware of the need to reform the law so as to cover all workers, including those employed on farms with fewer than ten regular workers. The Committee recalls that *Article 2 of the Convention* lays down the right for *all* workers to form free and independent organizations.

Prohibition of more than one trade union in a single enterprise institution or establishment (section 472)

The Committee notes that the Government once again indicates that the workers' and employers' organizations are of the view that for national legislation to allow the establishment of more than one union in an enterprise or institution is inappropriate since it detracts from the legitimacy of trade union representation and creates economic conflicts in the enterprise and the trade unions. The Committee points out, however, that *Article 2 of Convention 87* states that workers and employers have the right to establish "organizations of their own choosing". This means that the law must not institutionalize a de facto monopoly. Furthermore, even in a situation where at some point all workers have agreed to have only one union, they should still remain free to form unions outside the established structures should they so wish.

Requirement of 30 workers to constitute a trade union (section 475)

The Committee notes that, according to the Government, both the workers and the Government are of the view that this provision allows regular changeover in trade union office and ensures that trade union organizations are representative. The Government nevertheless indicates that this provision will be examined in tripartite consultations in the forthcoming reform of the Labour Code. The Committee points out that to require a minimum membership in order to create an organization is not in itself incompatible with the Convention, but the number set must remain within reasonable limits so as not to obstruct the formation of organizations. In the Committee's view, a minimum

requirement of 30 workers is not conducive to the formation of trade unions in small and medium-sized enterprises.

Requirement that the officers of a trade union, federation, or confederation must be Honduran (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))

The Committee notes that, according to the Government, the requirements laid down in the law ensure that trade union officials are able to carry out their functions vis-à-vis the other members and the organization. With regard to the requirement of Honduran nationality, the Committee requests the Government to indicate whether Decree No. 760 of 25 May 1979, which abolished the restriction that 90 per cent of trade union members must be Honduran, is still in force. It points out once again that where provisions on the nationality of trade union officials are too strict, they run the risk of depriving some workers of the right to elect their representatives in full freedom. In the Committee's view, national laws and regulations should allow foreign workers access to trade union office, at least after a reasonable period of residence in the host country. As regards the requirement that they must be engaged in the corresponding activity, the Committee reiterates that this provision may impair the right of organizations to elect their representatives in full freedom. It also involves the risk that employers might dismiss trade union officers, which would deprive them of their trade union office. It would be desirable to make the legislation more flexible, for example by admitting as candidates persons who have previously been employed in the occupation concerned, or by exempting from the occupational requirement a reasonable proportion of the officers of an organization (see General Survey of 1994 on freedom of association and collective bargaining, paragraphs 117 and 118).

Restrictions on the right to strike:

- With regard to the ban on strikes being called by federations and confederations (section 537), the Committee recalls that, in accordance with *Articles 3, 5 and 6 of the Convention*, workers' organizations, as well as the federations and confederations that they have established or joined, have the right to organize their activities and to formulate their programmes.
- With regard to the requirement of a two-thirds majority of the votes of the total membership of the trade union organization to call a strike (sections 495 and 563), the Committee notes that the Government again states its intention to hold tripartite consultations in the context of the forthcoming reform of the Labour Code.
- With regard to the power of the Minister of Labour and Social Security to end disputes in petroleum 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 statement that the above provisions have been

submitted to tripartite consultation in the context of the reform of the labour legislation.

The Committee expresses the firm hope that the tripartite consultations will be held soon and that, in the very near future, the necessary steps will be taken to amend the abovementioned provisions in order to bring the legislation into line with the Convention. The Committee also requests the Government to send a copy of any preliminary draft legislation and to inform it in its next report of any developments in this regard. The Committee reminds the Government that it may call upon the technical assistance of the Office.

Jamaica (ratification: 1962)

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

The Committee recalls that for a number of years it has been commenting on the need to amend sections 9, 10 and 11A of the Labour Relations and Industrial Disputes Act No. 14 of 1975, as amended ("the Act"), which empower the Minister to submit an industrial dispute to compulsory arbitration and hence to terminate any strike. The Committee has noted in the past that the Minister's powers to refer an industrial dispute to the Industrial Dispute Tribunal are too broad, the list of essential services contained in the first schedule to the Act is too extensive, and the notion of a strike which is likely to be "gravely injurious to the national interests" can be interpreted overly broadly. In previous reports, the Government had stated that it was making significant progress in reforming the Act through the Labour Advisory Committee. It once again informed the Committee that an amendment to the first schedule of the Act had been proposed, which would result in the deletion of the following services from the list of those deemed to be essential: public passenger transport services; telephone services; any business whose main functions consist of the issue and redemption of security, government securities and the trading in such securities; management of the official reserves of the country, providing banking services to the Government; and air transport services for the carriage of passengers, baggage, mail or cargo destined to or from Jamaica or within Jamaica. With respect to the power of the Minister to refer an industrial dispute to compulsory arbitration, in its previous reports, the Government stated that the Committee's concern had been noted and that this section was still in the process of revision.

The Committee once again recalls that the provisions of the Act can be broadly interpreted in such a way as to permit the use of compulsory arbitration in situations other than those involving essential services or acute national crises. It therefore expresses the firm hope that the list of essential services will be amended in the near future so as to refer only to essential services in the strict sense of the term; namely, those services, the interruption of which would endanger the life, personal safety or health of the whole or part of the population (see General Survey on freedom of association and collective bargaining, 1994, paragraph 159). The discretion of the Minister to amend the first schedule should also be limited by such criteria. Furthermore, the Committee recalls the need to amend sections 9, 10, and 11A of the Act which provide the Minister with extensive powers to refer an industrial dispute to the Tribunal. It once again recalls that the imposition of compulsory arbitration should be limited to essential services or situations of acute national crises; 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.

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

Japan (ratification: 1965)

The Committee notes the information in the Government's report, as well as the observations made by the Japanese Trade Union Confederation (JTUC-RENGO), the Japan National Hospital Workers' Union (JNHWU/ZEN-IRO), the ZENTOITSU (All United) Workers' Union (and other endorsing unions), the National Railway Motive Power Union of Chiba (DORO-CHIBA), the Japan Federation of Prefectural and Municipal Workers' Unions (JICHIROREN), and the National Network of Firefighters (FFN).

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 compensatory guarantees for hospital workers. The Committee notes that all these issues were debated at some length in the Conference Committee on the Application of Standards at the 89th Session of the International Labour Conference (2001), which expressed the hope that the Government would hold a bona fide dialogue with firefighters' unions and that it would take measures, as soon as possible, to guarantee their right of freedom of association. The Conference Committee also trusted that this Committee would be in a position to consider whether real progress had been made in the application of the Convention.

The Committee also notes the conclusions and recommendations of the Committee on Freedom of Association in Cases Nos. 2177 and 2183 (329th Report, November 2002 session) where all these issues, and some additional ones (e.g. the right to organize of prison staff, the trade unions' registration system, right to strike of public servants, lack of sufficient compensatory procedures for workers deprived of fundamental rights) have been raised, without being able to note any progress. The Committee further notes with concern from those conclusions that a major reform of the public service legislation is currently under way, to be presented to the Diet in 2003 and to be introduced in fiscal year 2005; a reform which does not, at present, address adequately the issues previously raised by this Committee and may even further aggravate the situation.

1. *Denial of the right to organize of fire-fighting personnel.* The Committee recalls that as early as 1973, it had 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 organise is recognised for this category of workers" (ILC, 58th Session, Report III(4A), page 122). While it had been hoped that the system of fire defence personnel committees introduced in 1995 might constitute an important step towards the application of the Convention, the comments submitted over the years by Japanese workers' organizations on the application of this Convention and the discussions in the Conference Committee, and the most recent complaint filed to the Committee on Freedom of Association, clearly demonstrate that this is not the case and that the system of fire defence personnel committees is not a valid alternative to the right to organize. While noting the information provided in the Government's report concerning the functioning of these committees, the Committee urges the Government to take legislative measures in the very 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 in its previous comments it had referred to the detailed comments of the Fact-Finding and Conciliation Commission 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" (ILC, 63rd Session, 1977, Report III(4A), page 153). The Government limits itself to stating in this respect that the Supreme Court of Japan has held that the prohibition of strikes by public servants is constitutional, something it had already mentioned at the time (ILC, 64th Session, 1978, Report III(4A), page 143). The Committee also notes with concern the decisions of the Committee on Freedom of Association in the abovementioned cases concerning public servants and in Case No. 2114 concerning public school teachers (328th Report, paragraphs 371-416). The Committee is bound to note 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 sense of the term, and that the others (e.g. hospital workers) benefit from sufficient compensatory 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. This reform has been the subject of recent complaints before the Committee on Freedom of Association (Cases Nos. 2177 and 2183). The Committee notes with concern from the conclusions in these cases, and from the Government's report, that it "has decided to retain the current restrictions on the workers' fundamental rights". The Committee emphasizes 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 practical problems have been raised by workers' organizations over the years. The Committee requests the Government to keep it informed of developments in this respect in its next report.

Kuwait (ratification: 1961)

The Committee takes note of the Government's report. In its previous comments, the Committee had noted the draft amendments to the Private Sector Labour Code provided by the Government, which responded to a number of comments concerning discrepancies between the national legislation and the Convention, which the Committee

had been commenting upon for several decades. It notes with regret that the Government's latest report does not contain any information on the progress made in adopting these amendments and merely refers to the current legislation with a general statement that the draft Labour Code governing the private sector responds to most of the Committee's comments. Recalling that the Government has been referring to a draft Labour Code since 1996, the Committee expresses the firm hope that this Code will be adopted in the near future and that it will ensure full conformity with the provisions of the Convention.

The Committee recalls that it has commented for several years on the need to repeal or amend the following provisions of the Labour Code (Act No. 38 of 1964), which are contrary to the Convention.

Article 2 of the Convention

- The exclusion from the scope of the Code, and thus from the protection afforded by the Convention, of domestic workers (section 2 of the Code as modified in 1996).
- The requirement of at least 100 workers to establish a trade union (section 71) and ten employers to form an association (section 86).
- The prohibition on joining a trade union for individuals under 18 years of age (section 72).
- The requirement of five years' residence in Kuwait for non-national workers before they may join a trade union, and the requirement that a certificate of moral standing and good conduct delivered by the competent authority be obtained in order to join a trade union (section 72).
- The requirement that a certificate be obtained from the Minister of the Interior stating that he has no objection to any of the founding members, before a trade union may be established, and the requirement that at least 15 members must be Kuwaiti in order to found a trade union (section 74).
- The prohibition to establish more than one trade union per establishment, enterprise or activity (section 71).

Article 3

- The ban on the right to vote and to be elected to trade union office for unionized workers not of Kuwaiti nationality, except to elect a representative having the right only to voice their opinions with the Kuwaiti union officers (section 72).
- The prohibition on trade unions from engaging in any political activity (section 73).
- The wide powers of supervision of the authorities over trade union books and registers (section 76).
- The reversion of trade union assets to the Ministry of Social Affairs and Labour in the event of dissolution (section 77).

Articles 5 and 6

- The restriction imposed on trade unions to join federations only where the activities are identical, or where industries are producing the same goods or supplying similar services (section 79).
- The prohibition for organizations and their federations to establish more than one general confederation (section 80).
- The single trade union system established under sections 71, 79 and 80, read together.

While the Committee had previously noted that several of the draft amendments appeared to eliminate earlier sections of the Labour Code which were not in conformity with the Convention, and that the Government had submitted a proposal to amend section 71 (concerning the requirement of 100 workers to form a union) of the current Labour Code of 1964 until the new draft Labour Code was adopted, the Committee nevertheless had observed that some important discrepancies remained between the draft law and the provisions of the Convention, in particular as concerns trade union rights for migrant workers and the powers bestowed upon the Council of Ministers to dissolve workers' and employers' organizations. Therefore, it expresses once again the firm hope that the necessary measures will be taken in the near future to bring the legislation into conformity with the Convention in respect of the abovementioned issues and trusts that the other points which had been raised in its previous comments will also be fully addressed in the new Code. The Committee requests the Government to indicate in its next report the progress made in this regard and supply a copy of the Code once it is adopted.

Kyrgyzstan (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 (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.

Lithuania (ratification: 1994)

The Committee notes the information contained in the Government's report. The Committee also notes the conclusions and recommendations of the Committee on Freedom of Association in Case No. 2078 (see 324th Report, paragraphs 592-622; 325th Report, paragraphs 44-46; 326th Report, paragraphs 99-101; and 327th Report, paragraphs 74-76).

Articles 3 and 10 of the Convention. Right of workers' organizations to organize their activities without interference from the public authorities. The Committee recalls that in its previous comments it had noted that the Act of 1992 on the Settlement of Collective Disputes created serious obstacles to the right to legal strike and in particular:

- (a) section 10 which prohibits the right to strike by, among others, workers in heating and gas supply companies and public servants not considered to be those exercising authority in the name of the State;
- (b) section 12 which enables the Government in practice to determine unilaterally the minimum service in case of a strike in certain services;
- (c) section 10 which provides that strikes might be prohibited in regions where a state of emergency had been declared; the Committee had also requested the text of the new Act No. I-551 of 2000 amending the Penal Code and the amendments that it has introduced to the Criminal Code in order to ensure that they do not unduly restrict industrial action;
- (d) the need to define compensatory guarantees for workers employed in essential services in the strict sense of the term who may be prohibited from taking industrial action;
- (e) section 13 which enables the courts to delay for 30 days a strike that has not yet begun and for another 30 days a strike that has already begun in case of "especially important reasons".

The Committee notes the statement in the Government's report that the Act of 1992 on the Settlement of Collective Disputes will be replaced by a new Labour Code which was adopted on 4 June 2002 and will enter into force on 1 January 2003. The Committee will examine the text of the new Labour Code at its next session when it will

be available in translation. In the meantime, and in light of the information provided by the Government in respect of the new Labour Code, the Committee wishes to raise the following points:

- (a) *Prohibition of the right to strike by workers who are not employed in essential services in the strict sense of the term.* The Committee notes from the Government's report that section 78 of the new Labour Code does not amend the provisions previously laid down in section 10 of the Act of 1992 on the Settlement of Collective Disputes concerning the definition of essential services. As a result, a general prohibition of strikes is imposed on the system of internal affairs, the defence and national security sectors, the electricity generating, heating and gas supply companies and in emergency medical services. The Committee recalls that while the defence, national security, public health and electricity services might be considered as essential services in the strict sense of the term, the other services set out in the list are not necessarily so. Concerning services of public utility such as heating and gas supply, the Committee considers that a system of minimum service is more appropriate than an outright ban on strikes, which should be limited to essential services in the strict sense of the term, namely those where the life, personal safety and health of the whole or part of the population may be endangered. The Committee notes in this context that a non-essential service in the strict sense of the term may become essential if a strike exceeds a certain duration or extent so that the life, personal safety or health of the population are endangered (see General Survey on freedom of association and collective bargaining, 1994, paragraphs 152-164). The Committee therefore requests the Government to lift the outright prohibition of the right to strike by workers in the heating and gas supply companies. As for internal services, the Committee requests the Government to indicate the personnel concerned by this restriction.
- (b) *Unilateral determination of minimum service.* The Committee notes from the report that according to section 80.2 of the new Labour Code, the Government has the authority to define the minimum service after having considered the conclusions of a Tripartite Board or, in the absence of a Tripartite Board, those of the municipal authorities in consultation with the parties to the dispute. The Committee wishes to emphasize the importance that it attaches to genuine participation of the parties directly concerned, that is, the organizations of employers and workers, alongside the public authorities in the definition of a minimum service. The Committee observes that, as noted by the Committee on Freedom of Association in Case No. 2078, in the event of disagreement, the parties should be able to bring the matter before an independent and impartial body with competence to make a final ruling on this matter. The Committee therefore requests the Government to amend its legislation so as to ensure that in the event of disagreement among the parties to negotiations on the minimum service, the definition of the service to be ensured may be determined by an independent and impartial body.
- (c) *Prohibition of strikes during a state of emergency and penal sanctions against strike action.* Concerning limitations of the right to strike during a state of emergency, the Committee notes from the Government's report that according to the State of Emergency Act of 6 June 2000, No. IX-938, a state of emergency can be declared for successive six-month periods. The Committee recalls that

restrictions on the right to strike during a state of emergency should be for limited periods and may only be justified in situations of acute national crisis. The Committee requests the Government to transmit in its next report the text of Act No. IX-938.

The Committee takes note of the text of Act No. I-551 of 2000 which has been transmitted with the Government's report, and will examine it at its next meeting when it will be available in translation. The Committee also notes the amendments to the Criminal Code which have been transmitted by the Government. The Committee observes that article 199(3) of the amended Criminal Code imposes a penalty of imprisonment of up to three years or corrective works of up to two years, or a fine, in case of participation in collective action which causes disturbance to work in the sector of transportation or in public or social enterprises, establishments and organisations, and that article 199(4) enforces the prohibition of strikes at nuclear energy facilities with a sentence of two years of corrective works. The Committee furthermore observes that article 67 of the amended Criminal Code characterizes as an act of "sabotage" punishable by a ten-year term of imprisonment, any action aimed at obstructing the proper functioning of public or other enterprises in the sectors of industry, energy, transportation, agriculture, trade, other branches of the economy, or the public sector, with a view to weakening the State of Lithuania. The Committee observes that such provisions are highly likely to have the practical effect of restricting the right of workers to participate in industrial action by characterizing their activities as criminal acts punishable by penal sanctions. The Committee wishes to emphasize that if measures of imprisonment are to be imposed at all, they should be justified by the seriousness of the offences committed (see General Survey, *op. cit.*, paragraph 177). The Committee requests the Government to amend these provisions so as to ensure that penal sanctions may not be imposed for the exercise of the right to strike and that if penalties are imposed, in exceptional circumstances, they should be justified by the seriousness of the offences committed and accompanied by all the necessary judicial safeguards.

- (d) *Compensatory guarantees for workers employed in essential services in the strict sense of the term who are prohibited from striking.* The Committee also notes from the Government's report that section 78 of the new Labour Code, provides that the Government will consider the conclusions of a Tripartite Board before addressing the claims of employees in essential services in the strict sense of the term where the right to strike is prohibited. The Committee recalls that where restrictions are adopted on the right to strike of workers who are employed in essential services in the strict sense of the term, compensatory guarantees should include appropriate, rapid and impartial conciliation and mediation procedures. The Committee requests the Government to provide details in its next report concerning the composition and functioning of the Tripartite Board and the extent to which the Government is bound to follow up on its conclusions in settling the claims of workers employed in essential services in the strict sense of the term, who are prohibited from striking.
- (e) *Court rulings ordering a postponement of a strike.* The Committee notes that the Government has not provided any information concerning section 13 of the Act of 1992 on the Settlement of Collective Disputes and in particular, whether this provision has been amended by the new Labour Code in order to define in more

precise terms the legal grounds on which the Courts may decide to postpone a strike. The Committee requests the Government to communicate information on this point in its next report.

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

Madagascar (ratification: 1960)

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

1. *Right of workers, without distinction whatsoever, including seafarers, to establish and join organizations.* The Committee recalls that seafarers are excluded from the scope of the 1993 Labour Code (article 1). However, it noted the information provided by the Government to the effect that Act No. 99.028 of 3 February 1999 revising the Maritime Code referred to "seafarers' trade unions" in section 3.3.02 and that the reference to "seafarers' trade unions" in this section confirmed the freedom of association and exercise of trade union rights by seafarers, in accordance with article 31 of the Constitution of 8 April 1998, which provided that "The State recognizes the right of every worker to defend his interests through union activity and in particular through the freedom to form a union." The Committee had already noted that the national legislation granted seafarers certain rights related to the right to organize (the right to conclude collective agreements to determine their wages, section 3.05.03 of the Maritime Code, as amended in 1966; procedures for the settlement of collective disputes and the right to strike after an arbitration award had been contested; Act No. 70-002 of 23 June 1970 respecting individual and collective disputes in the merchant marine and its implementing Order No. 3012-DGTOP/SSM of 1970). However, the Committee considers that the legislation should contain specific provisions granting seafarers the right to organize. It therefore requests the Government to take the necessary measures explicitly to guarantee seafarers the right to establish and join trade unions. The Committee also requests the Government to provide a copy in the near future of Act No. 99.028 of 3 February 1999 revising the Maritime Code.

2. *Right of workers to establish organizations without previous authorization.* The Committee noted the information provided in the Government's last report to the effect that a revision of Act No. 94.029 of 25 August 1995 issuing the Labour Code was being completed. The Government stated that it would provide copies of any texts relating to the procedures for the establishment, organization and functioning of trade unions once they had been published, after the enactment of the revised Code. The Committee trusts that, in accordance with the requirements of *Article 2 of the Convention*, all workers, including seafarers, will be able to establish trade union organizations without previous authorization once they have deposited their statutes with the competent authorities. The Committee also requests the Government to provide copies of texts governing procedures for the exercise of the right to organize.

3. *Requisitioning of persons.* The Committee had noted that the conditions giving rise to the right to requisition, as set out in section 21 of Act No. 69-15 of 15 December 1969 respecting the requisition of persons and goods, which allowed the requisitioning of workers where a sector of national life or a part of the population was endangered, were too broad to be compatible with the principles of freedom of association. It had thereafter taken due note of the proposals made by the Government to amend section 21. The Committee had nevertheless noted that these amendments included certain services, such as garbage collection, radio and television broadcasting, post and telecommunications, banking, whose interruption does not endanger the life, personal safety or health of the population. In the view of the Committee, recourse to requisitioning is to be avoided except

where, in particularly serious circumstances, essential services have to be maintained. Requisitioning may be justified by the need to ensure the operation of essential services in the strict sense of the term, that is those whose interruption would endanger the life, personal safety or health of the whole or part of the population. The Committee took due note of the information provided in the Government's last report to the effect that it would transmit the Committee's comments to the ministry concerned so that it could take the necessary measures with a view to improving the application of the Convention. The Committee requests the Government to keep it informed of the measures adopted in this respect.

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

Mali (ratification: 1960)

The Committee notes the information contained in the Government's report. It also notes the comments made by the Workers' Trade Union Confederation of Mali (CSTM) on the application of the Convention in Mali, as well as the Government's detailed observations in reply to these comments. The Committee recalls that its previous comments related to the following matters.

Article 3 of the Convention. Right of workers' organizations to formulate their programmes without any interference from the public authorities. The Committee had recalled the need to amend section L.229 of the Labour Code of 1992 in order to limit the authority of the Minister of Labour to impose arbitration in order to end strikes liable to cause an acute national crisis. This section allows the Minister of Labour to refer certain disputes to compulsory arbitration, not only in the case of disputes involving essential services, the interruption of which is likely to endanger the life, personal safety or health of the population, but also for disputes liable to "jeopardize the normal operation of the national economy or affecting a vital industrial sector". In this respect, the Government stated that it had embarked upon a revision of the Labour Code under which subsection 2 of section L.229 would be worded as follows: "for disputes involving essential services, the interruption of which would be likely to endanger the life, personal safety or health of the population, the minister responsible for labour, in the event of the disagreement of one of the two parties, shall refer the dispute to the Council of Ministers, which may make the decision of the Arbitration Tribunal binding." In its latest report, the Government explains that Mali has just completed its presidential and legislative elections and that the new Assembly is not yet sitting. It notes that, as soon as the work of revising the Labour Code is completed, it will provide the text of the new section L.229. The Committee requests that the Government provide a copy of the amended text of section L.229 of the Labour Code once it has become law.

The Committee further notes the communication by the CSTM in which it alleges, among other matters, that the regulations regarding the maintenance of a minimum service are not in conformity with the provisions of the Convention. The Committee notes the Government's detailed observations on the CSTM's allegations. With regard to the regulations requiring a minimum service, the Government explains that Decree No. 90-562 P-RM of 22 December 1990 determines the list of services, positions and categories of employees strictly indispensable for the maintenance of a minimum service in the event of a strike in the public services. The Government recognizes that the trade unions did indeed contest the contents of this text at the time of its adoption, not because

its provisions in themselves constituted an obstacle to the exercise of the right to strike, but because they had not been consulted in its formulation. The Government adds that it has decided to re-examine these texts so as to ensure that the viewpoint of the workers is taken into account.

The Committee notes this information. It requests the Government to provide information in its next report on the progress made in the revision of the Decree of 1990 determining the minimum service to be provided in the event of a strike in the public services, in full consultation with the social partners.

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

Malta (ratification: 1965)

The Committee takes note of the information provided by the Government in its report. It notes, in particular, the Government's indication that the activities of the Department of Industrial and Employment Relations regarding conciliation and mediation have been consolidated through the approval and cooperation of the social partners.

The Committee is compelled, once again to recall that it has been commenting on the incompatibility between the Industrial Relations Act and the provisions of the Convention for more than 20 years and therefore regrets that no amendments have been made to date to improve voluntary procedures for the settlement of industrial disputes. The Committee points out that restrictions on strike action, in particular through the imposition of a compulsory arbitration procedure leading to a final award, which is binding on the parties concerned, constitutes a prohibition which seriously limits the means available to trade unions to further and defend the interest of their members, as well as their right to organize their activities and to formulate their programmes, and is not compatible with *Article 3 of the Convention* (see General Survey on freedom of association and collective bargaining, 1994, paragraph 153).

The Committee notes that according to the Government, Maltese law does not proscribe industrial action when a dispute is referred to the Industrial Tribunal. The Committee, however, recalls the discrepancies between the legislation (sections 27-34 of the 1976 Industrial Relations Act) and the Convention relating to the discretionary powers of the Minister to impose compulsory arbitration. Since the decision of the Industrial Tribunal is binding and it can be given on application by one party to the dispute, and since it entails the prohibition of all recourse to strikes once it has been issued or the interruption of a strike that has been called during the conciliation procedure, the Committee must point out once again that compulsory arbitration should be restricted to the following cases: (a) public servants exercising authority in the name of the State; (b) essential services, namely those the interruption of which would endanger the life, personal safety or health of the whole or part of the population; (c) situations of acute national crisis; or (d) cases in which both parties request arbitration.

While noting the Government's indication that there has been no interference in industrial action in practice, the Committee requests the Government to continue to provide information on the number of strikes and any use of the Minister's power to refer disputes to the Industrial Tribunal under section 27(1) at the request of only one of

the parties to the dispute. The Committee once again expresses the firm hope that the Government will take the necessary measures in the very near future to bring its legislation into greater conformity with the Convention by ensuring that the Minister's power is restricted to the cases mentioned above. It draws the Government's attention to the availability of the technical assistance of the Office, should it so desire.

Mauritania (ratification: 1961)

The Committee notes the information contained in the Government's report. It notes the Government's statement that the draft Labour Code has been examined and approved by the National Labour Council, and that it will be approved by the Government and the Parliament during the course of the year.

Article 3 of the Convention. Right of organizations to elect their representatives in full freedom. In its previous comments, the Committee emphasized that section 7 of the Labour Code, as amended by Act No. 93-038 of 20 July 1993, limits the right of access to trade union office to nationals of Mauritania. The Committee recalled in this respect that the national legislation should allow foreign nationals to have access to trade union office, at least after a reasonable period of residence in the host country. In its latest report, the Government indicates that a provision in the new draft Labour Code will permit foreign workers to be elected to office in occupational organizations once they have resided in the country for at least five years. The Committee notes this information with interest and will examine this new provision when it has received a copy of the new Labour Code.

Articles 3 and 10. Right of organizations to organize their activities and to formulate their programmes in full freedom in order to further and defend the interests of their members. The Committee previously expressed the hope that the Labour Code would be amended to confine the prohibition of strikes solely to essential services in the strict sense of the term, that is those the interruption of which would endanger the life, personal safety or health of the whole or part of the population, or in the event of an acute national crisis. The Committee notes from the information provided in the Government's report that it is aware that the existing provisions respecting the right to strike may be inadequate. The Government adds that the draft Labour Code therefore aims at clearly defining strikes in sections 357 to 366, thereby granting trade union organizations the possibility to have recourse to strike action to defend the social, economic and occupational interests of their members.

The Committee requests the Government to indicate in its next report the progress made towards the adoption of a new Labour Code. It also requests that the Government provide it with a copy of the updated version of the Code once it has become law.

Mexico (ratification: 1950)

The Committee notes the Government's report and the comments made by the International Confederation of Free Trade Unions (ICFTU) on the application of the Convention. The Committee notes the Government's reply to the comments received during its meeting, which it will examine at its next session.

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

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

The Committee notes the Government's indication that the Constitution of Mexico guarantees freedom of association in articles 9 and 123(A) and (B) and that workers in the service of the State have been able to exercise their trade union rights, with an increase in the number of government agencies with more than one trade union and in the cases of the re-election of trade union leaders. The Committee nevertheless observes that the Federal Act on State Employees, issued under article 123(B) of the Constitution, establishes restrictions on freedom of association that are incompatible with the Convention, despite the Opinion of the Supreme Court of Justice (No. 43/1999 issued on 27 May 1999) guaranteeing the exercise of the right of workers in the service of the Mexican State to join trade unions in full freedom, by ruling that the requirement of a single trade union of officials for each government agency violated the social guarantee of the freedom of workers to join trade unions set out in article 123(B)(X) of the Constitution, the provisions of which continue to remain in force. The Committee once again expresses the firm hope that the Government will adopt measures to repeal or amend these provisions with a view to adapting them to the above Opinion and to the Convention. The Committee once again requests that the Government provide information in its next report on any measures adopted in this respect.

2. *Prohibition of foreigners from being members of trade union executive bodies (section 372(II) of the Federal Labour Act).* The Committee notes that the Government reiterates that it does not currently envisage reforming the above provision. Nevertheless, the Committee recalls 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 1994 General Survey on freedom of association and collective bargaining, paragraph 118). The Committee therefore considers that the public authorities should refrain from any interference which might restrict the exercise of this right as regards the conditions of eligibility of representatives. The Committee once again expresses the firm hope that the Government will take the necessary measures to amend the legislation in order to bring it into conformity with the provisions of the Convention. The Committee

requests the Government to provide information in its next report on any measure envisaged in this respect.

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

- (i) workers, including those who are employed in public banks, are only able to exercise the right to strike in one or more agencies of the public authorities, when there is a general and systematic violation of the rights set out in article 123(B) of the Constitution (which provides that workers shall have the right to associate in the defence of their common interests) (section 94(4) of the Federal Act on State Employees and section 5 of the Act on banking and credit issued under article 123B(XIIIbis) of the Constitution);
- (ii) the requirement of two-thirds of the workers in the public agency concerned to call a strike (section 99(II) of the Federal Act on State Employees).

The Committee notes that, although the right to strike is guaranteed, it is limited. 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 (see General Survey, *op. cit.*, paragraph 148). The Committee emphasizes that the prohibition of the right to strike in the public service should be limited to public servants exercising authority in the name of the State and that, while in certain circumstances the right to strike may be governed by provisions laying down conditions for, or restrictions on the exercise of this fundamental right, in borderline cases respecting restrictions in the public service, one solution might be to provide for the maintenance by a defined and limited category of staff of a negotiated minimum service when a total and prolonged stoppage might result in serious consequences for the public (see General Survey, *op. cit.*, paragraphs 151 and 158). The Committee therefore once again urges the Government to take the necessary measures to amend the legislation to bring it into conformity with the Convention. The Committee requests the Government to keep it informed in its next report of any measures adopted in this respect.

With regard to the number of workers required to call a strike in the public agency concerned, the Committee notes the Government's information that there are no plans for an amendment in this respect. The Committee recalls once again that public servants who do not exercise authority in the name of the State should enjoy the right to strike without excessive restrictions and that, in this respect, it would be preferable to amend the legislation so that only a simple majority of votes cast is required. The Committee therefore requests the Government to take measures to harmonize its legislation with the provisions of the Convention and to keep it informed in its next report on any developments in this respect.

The Committee notes that the various laws on the public services contain provisions relating to the requisitioning of personnel in cases, among others, when the national economy could be affected (section 66 of the Federal Telecommunications Act, section 56 of the Act regulating the railways, section 112 of the Act respecting general thoroughfares, section 25 of the Act respecting the national vehicle register, section 83 of the Civil Aviation Act, section 5 of the internal rules of the Secretariat for Communications and Transport and section 26 of the internal rules of the Federal Telecommunications Commission). The Committee reminds the Government that restricting the right to strike in circumstances in which the national economy could be

affected could be contrary to the provisions of the Convention and that the requisitioning of workers who are on strike could be abused where it is used as a means of settling labour disputes (see General Survey, op. cit., paragraph 163). The Committee therefore requests the Government to provide information in its next report on whether the above provisions are applied in cases in which workers exercise the right to strike.

Mozambique (ratification: 1996)

The Committee takes note of the information supplied by the Government in its report. The Committee recalls that, in its previous comments, it referred to the fact that public servants are not entitled to form and join unions. Under section 3(3) of the Labour Act No. 8/98, and Act No. 23/91 of 1991, which regulate freedom of association, the legal employment relationship of public servants is governed by specific conditions of service and, according to the Government, the right of public servants to form and join trade unions is not established by law.

The Committee recalls that in its previous comment it had pointed out 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 undertakings. The Committee nonetheless emphasizes that the recognition of the right of association of public servants in no way prejudices the question of the right of such officials to strike (see General Survey on freedom of association and collective bargaining, 1994, paragraphs 48 and 49). The Committee asks the Government to state whether the General Statute of Public Servants (Decree No. 14/87) is still in force. The Committee once again expresses the hope that the Government will adopt legislation in the near future guaranteeing public servants the right to organize, not only for cultural and social purposes but also to further and defend their occupational and economic interests (see General Survey, op. cit., paragraph 52). The Committee reminds the Government that it may avail itself of the Office's technical assistance.

Myanmar (ratification: 1955)

The Committee takes note of the information contained in the Government's reports. In particular, it notes the indication in the Government's latest report that the Minister of Labour has conducted detailed discussions with the Office of the Attorney-General and other concerned ministries and organizations on measures to be implemented that will reflect the positive approach by the Government to be in conformity with the provisions of the Convention. The Committee nevertheless feels obliged to point out that, for over eight years now, it has been taking note of the Government's statement that the drafting of a new state Constitution is under way, as well as the review and redrafting of old labour laws, including the Trade Unions Law, without any concrete development in this respect. While noting the Government's contention that important progress has been made with the creation of the Myanmar Overseas Seafarers' Association, the Committee considers that no real progress has been made in providing a legislative framework in which free and independent workers' organizations may be established.

The Committee once again recalls that it has been commenting upon the Government's failure to apply this Convention, both in law and in practice, for over 40 years. In its previous comments, it had urged the Government, in particular, to adopt the necessary measures to ensure the right of workers to establish, without previous authorization, and to join, subject only to the rules of the organizations concerned, first-level unions, federations and confederations of their own choosing for the furtherance and defence of their interests and to ensure the right of first-level unions, of federations and of confederations to affiliate with international organizations (*Articles 2, 5 and 6 of the Convention*).

Furthermore, while noting the indication in the Government's reports that Workers' Welfare Associations and Workers' Supervisory Committees protect the rights of the workers and can be regarded as a surrogate of the trade unions, the Committee is of the opinion that such associations are not a substitute for the fundamental right to organize provided for in the Convention.

The Committee, therefore, firmly urges the Government to adopt the necessary measures to ensure fully the right to organize, and the right to affiliate with international organizations, without impediment. Furthermore, it once again asks the Government to furnish with its next report a copy of any proposed revisions of the Trade Unions Law under consideration.

[The Government is asked to report in detail in 2003.]

Namibia (ratification: 1995)

The Committee takes note of the Government's report.

In its previous comments, the Committee had noted the need to repeal the provision in the Export Processing Zones Amendment Act, 1996, which prohibited any employee from taking action by way of, or participating in, a strike in an export processing zone (EPZ), an action for which the worker was liable to disciplinary penalty or dismissal.

The Committee now notes with satisfaction that the Labour Act, No. 6, of 1992 is applicable in its entirety to all zones, including the export processing zones. It requests the Government to transmit a copy of the repealing order in question with its next report.

Nicaragua (ratification: 1967)

The Committee notes the Government's report. The Committee points out once again that certain provisions of the Labour Code of 1996 (Act No. 185 of 30 October 1996), of the 1997 Regulations on Occupational Associations (Decree No. 55-97), and of the Civil Service and Administrative Careers Act of 1990 (Act No. 70, March 1990) have been the subject of the following comments:

- (1) the suspension, due to failure to adopt implementing regulations, of the Civil Service and Administrative Careers Act of 1990, section 43(8) which recognizes the right to organize, to strike and to collective bargaining of public servants;
- (2) restrictions on the access of foreigners to trade union office (article 21 of the 1997 Regulations on Occupational Associations);

- (3) restrictions on the functions of federations and confederations (article 53 of the 1997 Regulations);
- (4) the possibility of a dispute being submitted to compulsory arbitration 30 days after a strike has been called (sections 389 and 390 of the Labour Code); and
- (5) grounds on which a worker may lose trade union membership, which are left to the discretion of the public authority (article 32 of the 1997 Regulations).

With regard to the Civil Service and Administrative Careers Act of 1990, which, pursuant to the same Act has been suspended until the President of the Republic or the Ministry of Labour issues its implementing regulations, the Committee regrets to note that, although the Government states that there is full freedom of association and, in practice, there is nothing in the legislation to obstruct the exercise by public servants of the right to organize, and despite the years that have elapsed, the Government has not reported the adoption of any implementing regulations or the drafting of any such text. The Committee requests the Government to recognize by law and in practice the right of public servants to establish organizations to further and defend their interests, in accordance with *Article 2 of the Convention*, and to keep it informed of any legislation adopted to that end.

With regard to the restrictions on the access of foreign nationals to trade union office envisaged in article 21 of the Regulations on Occupational Associations, the Committee notes that, according to the Government, foreigners may avail themselves of the naturalization procedures. The Committee nonetheless points out once again that provisions on nationality which are too strict might run the risk of some workers being deprived of the right to choose their representatives freely, for example, migrant workers working in sectors where they account for a considerable proportion of the membership. According to *Article 3* of the Convention, workers' organizations must have the right to elect their representatives in full freedom. Furthermore national legislation ought to allow foreign workers to take up trade union office at least after a reasonable period of residence in the host country (see General Survey on freedom of association and collective bargaining, 1994, paragraph 118).

As to the restrictions on the right to strike of federations and confederations, the Committee observes once again that in accordance with article 53 of the 1997 Regulations on occupational associations federations and confederations, shall only intervene in labour disputes to provide advice and the moral or economic support needed by the workers concerned. The Committee again reminds the Government that, pursuant to *Articles 3, 5 and 6* of the Convention, workers' organizations, and the federations and confederations which they establish or join, shall have the right to organize their activities and to formulate their programmes.

With regard to the maintenance of compulsory arbitration in sections 389 and 390 of the Labour Code where 30 days have elapsed from the calling of the strike, the Committee notes that the Government repeats its previous statement to the effect that if a dispute is referred to compulsory arbitration after this time period has elapsed, the arbitration award should be binding only if all the parties agree to it and only in cases in which the strike has been called in an essential service in the strict sense of the term, or in the context of an acute national crisis.

The Committee hopes that the Government will pursue its efforts to bring the provisions of sections 389 and 390 of their Labour Code of 1996, and articles 21, 32 and 53 of the 1997 Regulations on Occupational Associations into conformity with the Convention. It requests the Government to provide information in its next report on progress made in this regard.

Niger (ratification: 1961)

The Committee notes the summary report of the proceedings of the Labour Advisory Committee concerning the draft decree issuing the regulations of the Labour Code.

The Committee notes with regret that the Government has not sent its report on the Convention. It observes, however, that an ILO mission visited Niger in September 2002 in order to provide technical assistance to the Government and the social partners in the context of the tripartite meetings to discuss strikes and the representativeness of occupational organizations.

Articles 3 and 10 of the Convention. With regard to requisitioning, in its previous comments the Committee addressed the need to restrict the scope of Ordinance No. 96-009 of 21 March 1996 to work stoppages 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. Noting that the Government has received technical assistance from the ILO on all strike-related issues, the Committee requests the Government to bring section 9 of Ordinance 96-009 into line with the Convention, and to send a copy of the official text adopted to that end.

Nigeria (ratification: 1960)

The Committee notes the information provided in the Government's report. The Committee recalls that its previous comments concerned the following points.

Article 2 of the Convention (the right of workers to form and join organizations of their own choosing)

(a) Legislatively imposed trade union monopoly under Decree No. 4 of 1996

In its previous comments, the Committee had requested the Government to indicate the measures envisaged to amend section 3(2) of the Trade Unions Act, which provides that no trade union shall be registered to represent workers or employers in a place where a trade union already exists. In this regard, the Government indicates that an amendment to section 3(2) might give rise to a crisis in the trade union movement and that, within the framework of the actual law, workers can still enjoy freedom to associate. While noting that the listing of the 29 industrial unions set forth in the Trade Unions (Amendment) Decree No. 1 of 1999 provides for the registration of other unions, the Committee considers that the maintenance of the restriction in section 3(2) contradicts such a possibility. The Committee recalls that for the right of workers to establish and join organizations of their own choosing to exist, such freedom has to be fully established and respected in law and in fact. Although it was clearly not the

purpose of the Convention to make trade union diversity an obligation, it does at the very least require this diversity to remain possible in all cases (see General Survey on freedom of association and collective bargaining, 1994, paragraph 91). The Committee therefore once again requests the Government to take the necessary measures to rectify the abovementioned contradiction, so as to ensure that workers have the right to form and join the organization of their own choosing even if another organization already exists.

With regard to section 33(2) of the Trade Unions Act, which deems all registered trade unions to be affiliated to the Central Labour Organization, which is named in the law (section 33(1)), the Committee notes the Government's indication to the effect that it will amend section 33(1) during the ongoing review of labour laws, subject to the concurrence of the social partners. The Committee trusts that the necessary amendments will be adopted in the near future and requests the Government to transmit a copy of the relevant text.

(b) Organizing in export processing zones

In its previous comments, the Committee noted section 4(e) of the Export Processing Zones Decree, 1992, which sets forth the functions and responsibilities of the Export Processing Zones Authority to include the resolution of disputes between "employers and employees" (rather than workers' organizations or unions) in the zone and section 13(1), which states that no person shall enter, remain in or reside in a zone without the prior permission of the Authority. In this regard, the Government indicates that it will review this issue with the Ministry of Commerce. The Committee takes note of this information and once again requests the Government to indicate the measures taken to ensure that zone workers may form and join the organization of their own choosing in the furtherance and defence of their occupational interests and, in particular, the measures taken to ensure that representatives of workers' organizations may have reasonable access to the zones so that trade unions can communicate with workers in order to apprise them of the potential advantages of unionization.

(c) Organizing in various government departments and services

In its previous comments, the Committee had requested the Government to amend section 11 of the Trade Unions Act, which denies the right to organize to employees in the Customs and Excise Department, the Immigration Department, the Prison Services, the Nigerian Security Printing and Minting Company, the Central Bank of Nigeria and Nigerian External Telecommunications. In this regard, the Government indicates that, for security purposes, section 11 has been retained but in practice, provisions have been made for joint consultative committees in the establishments mentioned in section 11(2) of the Act, and these committees perform similar functions to those of trade unions. The Committee recalls that, under *Article 9* of the Convention, the right to organize may only be restricted in respect of the police and armed forces. The Committee has already considered that prison staff do not fall within the exclusion permitted by this Article, and equally considers that the employees of the other abovementioned departments and services must also be ensured the right to organize (see General Survey, *op. cit.*, paragraph 56). Furthermore, the Committee is of the opinion that the establishment of

joint consultative committees cannot be considered as a substitute for this fundamental right. The Committee does consider, however, that restrictions may be imposed on employees in the Customs and Excise Department, the Immigration Department, the Prison Services and Nigerian External Telecommunications, in respect of their right to take industrial action either due to their classification as public servants exercising authority in the name of the State or due to the essential nature of their services. The Committee therefore once again requests the Government to amend its legislation so that these categories of workers are granted the right to organize, and to keep it informed of the measures taken or envisaged in this respect.

(d) Further obstacles

The Committee notes the Government's indication that it will amend section 3(1) of the Trade Unions Act, which sets the excessively high requirement of 50 workers to form a trade union. The Committee considers that such a requirement severely restricts the right of workers to form organizations of their own choosing, and recalls that the number should be fixed in a reasonable manner so that the establishment of organizations is not hindered. The Committee requests the Government to transmit a copy of the relevant amendment once adopted.

Article 3 (the right to elect officers in full freedom, to organize administration and activities and to formulate programmes without government interference)

(a) The right to strike

1. *Export processing zones.* With regard to section 18(5) of the Export Processing Zones Act, which forbids strikes for a period of ten years following the commencement of operations within a zone, the Committee recalled in its previous comments that the prohibition was incompatible with the provisions of the Convention (see General Survey, op. cit., paragraph 169) and had requested the Government to indicate the measures taken or envisaged to ensure that workers, including those in export processing zones, had the right to establish organizations of their own choosing and that such organizations had the right to organize their activities and to formulate their programmes without interference by the public authorities. The Committee takes note of the Government's statement to the effect that it will examine the necessary follow-up actions with the Nigeria Export Processing Zones Authority. The Committee expresses the firm hope that the above provision will be brought into conformity with *Article 3* of the Convention in the near future and requests the Government to provide information in this respect in its next report.

2. *Conditional check-off facilities.* In its previous comments, the Committee had recalled that section 5(b) of the Trade Unions (Amendment) Decree No. 1 of 1999, conditioned check-off facilities on the inclusion of "no-strike" clauses in relevant collective bargaining agreements, which amounted to undue influence by the authorities in the right of workers' organizations to formulate their programmes and organize their activities without interference by the Government, in violation of *Article 3* of the Convention. It therefore had requested the Government to indicate the measures taken or envisaged to allow workers' and employers' organizations to bargain freely on this

matter. While noting the Government's indication that this section will be abrogated during the next review of labour laws, the Committee requests the Government to transmit a copy of the relevant amendment once adopted.

3. *Compulsory arbitration.* The Committee continues to note that the legislative provisions allowing for the imposition of compulsory arbitration (other than in cases of essential services in the strict sense of the term and for public servants exercising authority in the name of the State or in the case of acute national crisis) under penalty of a fine or six months' imprisonment for any person failing to comply with a final award issued by the National Industrial Court (section 7 of Decree No. 7 of 1976 amending the Trade Disputes Act) have not been amended. The Committee points out that restrictions on strike action, in particular through the imposition of a compulsory arbitration procedure leading to a final award, which is binding on the parties concerned, constitutes a prohibition which seriously limits the means available to trade unions to further and defend the interest of their members, as well as their right to organize their activities and to formulate their programmes, and is not compatible with *Article 3* of the Convention (see General Survey, *op. cit.*, paragraph 153). Moreover, the Committee considers that sanctions for strike action should be possible *only* where the prohibitions in question are in conformity with the Convention. Even in such cases, both excessive recourse to the courts in labour relations and the existence of heavy sanctions for strike action may well create more problems than they resolve. The Committee recalls that the application of disproportionate penal sanctions does not favour the development of harmonious and stable industrial relations, and if measures of imprisonment are to be imposed at all they should be justified by the seriousness of the offences committed (see General Survey, *op. cit.*, paragraph 177). The Committee therefore must once again request the Government to indicate the measures taken or envisaged to amend this provision in order to ensure that workers' organizations may formulate their programmes and organize their activities free from interference by the public authorities.

(b) *Further obstacles*

As to the need to amend sections 39 and 40 of the Trade Unions Act in order to limit the broad powers of the Registrar to supervise the union accounts at any time, the Committee takes note of the Government's indication that these legislative provisions will be amended. The Committee therefore requests the Government to keep it informed and, in this regard, to transmit a copy of the amendment as soon as it has been adopted.

*Article 4 (cancellation of registration
by administrative authority)*

In its previous comments, the Committee referred to the need to amend section 7(9) of the Trade Unions Act by repealing the broad authority of the Minister to cancel the registration of workers' and employers' organizations. The Committee notes the Government's indication according to which it will submit the issue to the National Labour Advisory Council for consideration during the review of labour laws. Recalling that the possibility of administrative dissolution as set out in this provision involves a serious risk of interference by the authority in the very existence of organizations, the Committee once again requests the Government to take the necessary measures to bring

the legislation into full conformity with *Article 4* of the Convention and to indicate, in its next report, the progress made in this regard.

Articles 5 and 6 (international affiliation)

The Committee notes once again that no amendments have been made to the Trade Unions (International Affiliation) (Amendment) Decree No. 2 of 1999, which provides that an application for affiliation must be submitted with details to the Minister for approval. The Committee strongly emphasizes that a provision which requires ministerial approval for international affiliation on the basis of a detailed application infringes on the right of workers' organizations to affiliate with international workers' organizations freely. It therefore requests the Government to indicate, in its next report, the measures taken or envisaged to amend Decree No. 2 of 1999, so as to ensure full conformity with *Articles 5 and 6* of the Convention.

The Committee expresses the firm hope that appropriate measures will be taken in the very near future to amend these legislative provisions in order to bring them into full conformity with the Convention and reminds the Government of the availability of ILO technical assistance in this regard.

Norway (ratification: 1949)

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

Articles 3 and 10 of the Convention. The Committee recalls that in its previous comments it had expressed the hope that any restrictions imposed on the right of workers' organizations to organize their activities and formulate their programmes for furthering and defending their interests would be removed and that in particular, the possibility of imposing legislative intervention in respect of industrial action would be limited to essential services in the strict sense of the term, that is to say, those the interruption of which would endanger the life, personal safety or health of the whole or part of the population, or to public servants exercising authority in the name of the State. The Committee had noted the information provided by the Independent Unions' Forum (UFF) to the effect that specific proposals had been made by the tripartite national committee set up to review the system of collective bargaining and the settlement of industrial disputes, which the UFF considered to be contrary to the provisions of the Convention. In this respect, the Committee notes with interest from the Government's report its decision, in the absence of broad support from the social partners, not to follow the proposal to grant the mediator appointed under the Labour Dispute Act the power to order a linked ballot on a proposal for a settlement. It further notes with interest the Government's decision to amend the regulations concerning linkage of ballots, which had remained dormant for 20 years, so that the mediator may only link ballots if the parties concerned give their consent. The Committee requests the Government to keep it informed of any developments in this respect.

As concerns, more generally, the use of compulsory arbitration, the Committee once again recalls the need to limit the possibility of imposing legislative intervention in respect of industrial action to essential services in the strict sense of the term or to public servants exercising authority in the name of the State. It requests the Government, in the meantime, to take the necessary measures to ensure that any ad hoc legislative

intervention in labour conflicts will be limited to the abovementioned cases and asks the Government to keep it informed of any further developments in this regard.

Pakistan (ratification: 1951)

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

The Committee takes note of the comments made by the International Confederation of Free Trade Unions (ICFTU) dated 18 September 2002 and by the All Pakistan Federation of Trade Unions (APFTU) dated 11 November 2002, which concern the promulgation of the new Industrial Relations Ordinance of 2002. The Committee requests that the Government transmit, with its next report, its observations in this regard, so that it may examine these points at its next meeting. It also notes the conclusions of the Committee on Freedom of Association in Case No. 2096 (329th Report, approved by the Governing Body at its 285th Session in November 2002).

As regards certain other points previously referred to in its comments, the Committee must repeat its observations, which read as follows:

Article 2 of the Convention

1. The Committee notes from the conclusions of the Committee on Freedom of Association that the Government still has not lifted the ban on trade union activities at Karachi Electric Supply Corporation (KESC) and restored the rights of the KESC Democratic Mazdoor Union as collective bargaining agent. The Committee once again urges the Government to take such measures without delay and to indicate the progress made in this regard in its next report.

2. The Committee noted the indication in the Government's report for last year that it had authorized the Export Processing Zones Authority (EPZA) to frame draft labour legislation and that draft labour laws were being finalized by the Authority and sent to the relevant ministries of the federal Government for vetting, clearance and enactment. The Committee once again trusts that this legislation will ensure the rights under the Convention to EPZ workers and requests the Government to indicate in its next report the progress made in this regard and to transmit a copy of any relevant draft texts or adopted legislation.

Article 3

Right to elect officers freely. In its previous comments, the Committee noted the information provided by the Government concerning 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 once again recalls that provisions of this type infringe 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. Therefore, the Committee once again requests 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.

Finally, 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 applicable.

[The Government is asked to report in detail in 2003.]

Panama (ratification: 1958)

The Committee notes the Government's report and the conclusions and recommendations of the Committee on Freedom of Association in Case No. 1931 [see 318th Report, paras. 493-507].

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

- the power of the Regional or General Labour Directorate to submit labour disputes to compulsory arbitration in order to stop a strike in a public enterprise, including those which cannot be considered essential services in the strict sense of the term (including food products of basic necessity and transportation, under sections 486 and 452(3) of the Labour Code);
- sections 174 and 178, final paragraph, of Act No. 9 (“establishing and regulating administrative careers”), of 1994, which lay down respectively that there shall not be more than one association in an institution, and that associations may have provincial or regional chapters, but not more than one chapter per province;
- section 41 of Act No. 44 of 1995 (amending section 344 of the Labour Code), which requires an excessively high number of members to establish an employers’ occupational organization (ten) and an even higher number to establish a workers’ organization (40) at the enterprise level;
- article 64 of the Constitution, which requires Panamanian nationality to serve on the executive board of a trade union;
- the obligation to provide minimum services with 50 per cent of the personnel in establishments which provide essential public services, which go beyond essential services in the strict sense of the term and which include transport, and the penalty of the summary dismissal of public servants for failing to comply with the requirement respecting minimum services in the event of a strike (sections 185 and 152(14) of Act No. 9 of 1994); and
- legislation interfering in the activities of employers’ and workers’ organizations (sections 452(2), 493(1) and 497 of the Labour Code) (closure of the enterprise in the event of a strike and compulsory arbitration at the request of one of the parties).

The Committee notes that the Government emphasizes the difficulties of amending its legislation both in respect of the setting in motion of the procedures for constitutional reform, and the absence of a parliamentary majority. The Government further emphasizes that the technical assistance of the ILO is indispensable. The Committee trusts that the Government will be in a position to amend the above provisions in the near future and requests the Government to keep it informed in this respect.

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

- (a) *Requirement of 50 public servants to establish an organization of public servants under the Act respecting administrative careers.* The Government recognizes that this is a high number, but section 176 of Act No. 9 allows public servants to organize by class (category) or sector of activity. The Committee requests the

Government to take measures to amend the legislation with a view to reducing the minimum number of public servants required to establish organizations.

- (b) *Denial of the right to strike for workers engaged at sea and on inland waterways (Act No. 8 of 1998) and in export processing zones (Act No. 25).* The Government states that both sectors may conclude collective agreements, but does not refer specifically to the right to strike. The Committee requests the Government to indicate whether this right may be exercised in both sectors, and on what legal basis.
- (c) *Prohibition of federations and confederations from calling strikes (the prohibition of strikes protesting against problems relating to economic and social policy and the unlawful nature of strikes not related to a collective agreement in an enterprise).* The Government states that it is the trade unions which maintain relations with workers (whether or not they are unionized) at the enterprise level, and that if federations and confederations can call strikes, this would lead to trade union cannibalism and infighting between organizations; with regard to strikes protesting against the Government's economic and social policies, it states that it is unjustified to submit enterprises to the effects of a strike of this type, since such policies are outside the control of the employer. The Committee emphasizes that federations and confederations should enjoy the right to strike. The Committee recalls that organizations responsible for defending workers' socio-economic and occupational interests should, in principle, be able to use strike action to support their position to seek solutions to problems posed by major social and economic policy trends which have a direct impact on their members and on workers in general, in particular as regards employment, social protection and the standard of living (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 165). The Committee requests the Government to take measures to amend the legislation with a view to bringing it into line with the above principles.
- (d) *Disaffiliation of the FENASEP from the Trade Union Convergence Confederation by the decision of the authorities.* The Government states that public servants are governed by the Act respecting administrative careers and considers that they must join homologous organizations of public servants. The Committee points out that, although first level organizations of public servants may be restricted to this category of workers, such organizations should, however, be free to join federations and confederations of their own choosing, including those which also group together organizations from the private sector (see General Survey, op. cit., paragraph 193). The Committee requests the Government to take measures to amend the legislation with a view to bringing it into line with the above principle. The Committee requests the Government not to prevent the affiliation of FENASEP with the Trade Union Convergence Confederation.

The Committee is examining other matters raised by CONATO in a direct request.

Paraguay (ratification: 1962)

The Committee takes note of the Government's report. 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.

Peru (ratification: 1960)

The Committee takes note of the Government's report. The Committee also notes that the Peruvian Workers' Confederation has sent comments on the application of the Convention and asks the Government to send its observations thereon.

The Committee also notes the conclusions and recommendations of the Committee on Freedom of Association in Case No. 2098 in which the latter draws attention to the high number of workers required by law to establish non-enterprise trade unions and the cancellation, pursuant to that requirement, of the registration of the Union of Ticket Sellers and Ushers in Cinematographic Enterprises (see 325th Report, paragraphs 524 to 546). The Committee endorses the recommendation by the Committee on Freedom of Association concerning the request not to cancel the registration of the abovementioned

organization on the grounds that it has only 57 and not the statutory 100 members. The Committee asks the Government to keep it informed of any developments in this respect.

The Committee recalls that, for a number of years, it has referred in its comments to the following provisions of the Industrial Relations Act and its regulations and to Presidential Decree No. 003-82-PCM, pointing out that they are inconsistent with the provisions of the Convention:

- (1) the denial of trade union membership during the probation period (section 12(c) of the Act);
- (2) the requirement of a high level of membership (100) in order to form trade unions by branch of activity or occupation and in a number of professions (section 14);
- (3) the requirement that workers must be active members of the trade union (section 24(b)) and must have been in the service of the enterprise for a minimum of one year (section 24(c)) to become eligible for trade union office (section 24);
- (4) the prohibition of political activities for trade unions (section 11(a));
- (5) the excessive restrictions on the right of workers to call a strike, in particular sections 73(a) and (b), 67 and 83(g) and (j);
- (6) the obligation for trade unions to compile reports which may be requested by the labour authorities (section 10(f));
- (7) the power of the labour authority to cancel the registration of a trade union (section 20 of the Act) and the requirement that the trade union must wait six months after the cause of cancellation has been remedied before reapplying for registration (Regulation 24);
- (8) the prohibition of federations and confederations of the public services from forming part of organizations which represent other categories of workers (section 19 of Presidential Decree No. 003-82-PCM);
- (9) the power of the labour administration in the event of a dispute to establish minimum services when a strike is declared in essential public services (section 83 of the Act).

The Committee recalls that in its previous observation it noted the existence of a Bill (No. 0096 of 31 July 2000) on industrial relations which took account of many of the Committee's comments. The Committee notes in this connection the Government's statement that the Bill was shelved by the Congress Committee on Labour and Social Security on 7 June 2001. The Committee nonetheless notes that, according to the Government, the Ministry of Labour drafted a new Bill (No. 2281) which was submitted to the Congress of the Republic on 19 March 2002 and includes several of the amendments requested by the Committee. The Committee observes that the Bill is on the whole in line with its comments, but some of its provisions are not in conformity with the Convention (particularly as regards allowing federations and confederations to call strikes and strikes being declared illegal by the administrative authority).

The Committee hopes that a bill that takes account of all its comments will finally be adopted. It reminds the Government that it may seek technical assistance from the Office in this matter and requests it to provide information in its next report on any developments in the legislation.

The Committee further notes that the Federation of Petroleum, Energy and Allied Workers of the Grau Region has sent comments on the application of the Convention which concern the removal from the trade union register of the Union of Workers of Petrotech Peruana S.A. The Committee notes that, according to the Government, the membership of this union dropped below the number required to form a trade union organization and that, as a consequence, the administrative authority, in strict pursuance of the labour law, ordered its removal from the trade union register in accordance with section 43 of Presidential Decree No. 007-2000-TR. The Committee refers in this connection to its critical comments on the legislative provisions concerning the high level of membership necessary for trade union registration. The Committee accordingly asks the Government to place the trade union in question back on the register.

Philippines (ratification: 1953)

The Committee notes with regret that the Government's report contains no reply to the points raised in its previous comments. It hopes that the next report will include full information on these matters, and in particular, which concerned the following points.

Articles 2 and 5 of the Convention

- The need to review 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 requirement of too high a number of unions (ten) to establish a federation or a national union (section 237(a)).
- 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 the provisions of the Department Order No. 9 amending the rules implementing Book V of the Labor Code, which confirm such restrictions.

Article 3

- The following provisions which set forth disproportionate sanctions for participation in an illegal strike: the dismissal of trade union officers and penal liability to a maximum of three years (sections 264(a) and 272(a) of the Labor Code) and the penalty of "reclusion perpetual" to death for organizers or leaders of any meeting held for propaganda purposes against the Government, the word "meeting" being understood to include picketing of labour groups (section 146 of the revised Penal Code).

Noting the Government's reference in its previous report to the ongoing comprehensive review of the Labor Code, the Committee once again expresses the firm hope that the necessary measures will be taken in the very near future to amend the legislation in respect of the abovementioned points. It once again requests the Government to indicate, in its next report, the progress made in this respect.

Poland (ratification: 1957)

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

1. *Article 3 of the Convention.* The Committee recalls that its previous comments concerned various prohibitions imposed upon civil service employees and civil servants by the Civil Service Act, namely: article 69(2), prohibition on manifesting publicly political beliefs; article 69(3), prohibition on participating in strikes or actions of protest; article 69(4), prohibitions on performing functions within trade unions.

- (a) The Committee notes with interest that the Government states that it will take measures to repeal article 69(4); it requests the Government to keep it informed of developments in this respect and to provide it with the amended text as soon as it is adopted.
- (b) The Committee notes the Government's explanations regarding the restrictions on the right to strike (article 69(3)). The Committee recalls that, when the legislation deprives public servants who exercise authority in the name of the State or workers in essential services of the right to strike, such workers lose an essential means of defending their interests and thus should be afforded appropriate guarantees to compensate for this restriction. The Committee requests the Government to provide in its next report information on the compensatory procedures available to those employees whose right to strike, under the Convention, may be restricted or prohibited.
- (c) While noting the Government's explanations regarding the prohibition on expression of political opinions, the Committee recalls that trade union activities cannot be restricted solely to occupational matters, since a government's choice of a general policy may have an impact on workers in both the private and public sectors, and that public servants in the exercise of their trade union activities should be able to voice their opinions on political issues in the broad sense of the term and, in particular, to express their views publicly on a government's economic and social policy. The Committee requests the Government to amend article 69(2) with a view to bringing the legislation into conformity with the Convention, and to provide information in its next report on progress in this respect.

2. *Trade union assets.* The Committee notes that, on 12 January 1999, the Council of Ministers issued an ordinance laying down the principles for discharging the state liabilities, resulting from the decisions of the Social Revendication Commission. Provisions were made in this respect in the 1999 and 2000 budgets, but due to budgetary difficulties, non-cash liabilities resulting from decisions of the Commission up to 31 December 2001 have been discharged with treasury bonds, and liabilities in respect of decisions made after 31 December 2001 are currently discharged in cash by the *Voivods*. According to the Government, there are only nine proceedings pending before the Supreme Administrative Court against decisions of the Commission. The Committee, once again, expresses the hope that these issues will be resolved in the very near future and requests the Government to keep it informed of further developments in this matter, including judicial decisions that may be issued thereon.

3. *Articles 3, 5 and 6. Representativeness of trade unions.* The Committee notes the adoption, on 9 November 2000, of the Act amending the Labour Code; it notes the disjunctive nature of the representativeness criteria at both national and enterprise level, as well as the subsidiary criterion whereby organizations regrouping the largest number of workers are recognized as representative for collective bargaining purposes. The Committee also notes the adoption, on 6 July 2001, of the Act on the Tripartite

Commission for socio-economic issues and *Voivodship* social dialogue commissions, which establishes representativeness criteria for social dialogue at the national level. The Committee requests the Government to inform it in its next report of the operation of these Acts in practice.

4. The Committee takes notes of article 48 of the Act of 24 July 1999, which provides that customs officers may associate in trade unions.

5. The Committee notes the Government's statement, in reply to earlier comments of the Trade Union of Medical Analysts and Technicians and the National Trade Union of Nurses and Midwives, that no legal provisions impose upon employees of the public health-care system the obligation to change conditions of employment from full-time employment into a civil law relationship.

Portugal (ratification: 1977)

The Committee notes the Government's report and the comments by the General Union of Workers.

The Committee recalls that its previous comments referred to:

- section 8(2) and (3) of Legislative Decree No. 215/B/75, which requires 10 per cent, or 2,000 of the workers concerned, in order to establish a trade union and one-third of the trade unions in a region or category in order to establish a federation; and
- section 7(2) and (3) of Legislative Decree No. 215/C/75, which requires one-quarter of the employers concerned and up to 20 individuals in order to establish an employers' organization, and a minimum of 30 per cent of employers' associations, in order to establish a group or federation.

The Committee notes with interest the information sent by the Government to the effect that the preliminary draft of the Labour Code prepared by the Government and submitted to the social partners in July 2002 establishes no minimum numbers of workers or employers for the formation of workers' organizations or employers' associations. The Committee hopes that the above bill will be adopted in the near future and requests the Government to send a copy of the new Labour Code once it has been enacted.

The Committee also notes with interest the adoption of the following laws:

- Act No. 81/2001 on check-off (trade union dues deducted from workers' wages and transferred to the union);
- Basic Act No. 3/2001 on the right of military personnel to form and join occupational associations; and
- Act No. 2002 regulating the exercise of the right of association, and the right to collective bargaining and participation of police personnel.

The Committee notes in this connection the comments by the General Union of Workers stating that police personnel are prohibited from exercising the right to strike. The Committee recalls that, under *Article 9 of the Convention*, the extent to which the guarantees established in the Convention shall apply to the armed forces and the police, shall be determined by national laws or regulations. As such, States can decide that

certain rights within the substantive scope of the Convention, and in particular the right to strike, will not apply to these two categories of workers.

Romania (ratification: 1957)

The Committee notes the information contained in the Government's report. It notes in particular the new Employers Act (No. 356), which came into force in July 2001 and the new bill on trade unions which has been submitted to parliament for approval.

The Committee notes with interest that the new bill on trade unions contains provisions that take into account several of the concerns expressed by the Committee in its previous comments concerning the former legislation, particularly:

- the requirement of Romanian nationality in order to be eligible for trade union office (there is no such requirement in the new bill);
- the requirement of a clean criminal record in order to be eligible for trade union office (modified in the new bill: convictions for acts the nature of which does not call into question the integrity of the person concerned and involves no risks for the performance of trade union duties are no longer grounds for ineligibility);
- the requirements that candidates to trade union office must belong to the trade union and employed in the production unit (no such requirements in the new bill);
- the possibility for workers performing more than one job in different activities or sectors to join the corresponding unions (the new bill allows membership of more than one union).

Article 3 of the Convention. Right of workers' organizations to organize their administration and activities and to formulate their programmes. In its previous comments, the Committee invited the Government to provide details and actual examples of the application of certain provisions of Act No. 168 on the settlement of labour disputes. The Committee notes that the Government's report provides no reply to its previous comments, which read as follows:

- Section 55 of Act No. 168 provides that the management of a production unit may demand the suspension of a strike, for a maximum period of 30 days, if it endangers the life or health of individuals, and that an irrevocable decision may be taken in this respect by the Court of Appeal under the terms of section 56. The Committee again requests the Government to specify the criteria relating to "the life or health of individuals", by providing, where possible, actual examples of court decisions handed down under this provision.
- Section 62(1) of Act No. 168 provides that the management of a production unit may submit a dispute to an arbitration commission where a strike has lasted for 20 days without agreement and being reached and to continue it would affect humanitarian interests. Emphasizing that it should not be up to the management of the production units to evaluate whether the continuation of a strike affects humanitarian interests, the Committee requests the Government to clarify the concept "humanitarian interests" by providing, where possible, actual examples of the application of this provision.

The Committee again requests the Government in its next report to provide information and practical examples of the application of the legislation on the settlement

of labour disputes. It also asks the Government to provide a copy of the new bill on trade unions as soon as it is adopted.

Russian Federation (ratification: 1956)

The Committee notes the information contained in the Government's report. It further notes the adoption of the new Labour Code.

Article 2 of the Convention. Right of workers and employers, without distinction whatsoever, to establish and join organizations of their own choosing. The Committee takes note with satisfaction that the Labour Code of 2002 contains no reference to an imposed trade union monopoly.

The Committee notes that according to section 11 of the Labour Code, restrictions provided for by federal law may apply to managers of organizations, personnel combining jobs, women, persons bearing family responsibilities, youth, state employees and others. It further notes that members of directors' councils of the organizations (with the exception of members who concluded a labour contract with the organization) and persons whose relationship with an employer is regulated by the civil law contract are excluded from the scope of the Labour Code. Recalling that this Article of the Convention provides that all workers, without distinction whatsoever should have the right to establish and join organizations in the furtherance and defence of their occupational interests, with the sole possible exception being that of armed forces and the police, the Committee requests the Government to indicate whether any restrictions have been imposed on the right to organize of these workers and to provide clarification in respect of those persons considered to be regulated by a civil law contract, who are excluded from the scope of the Code.

The Committee further notes the Government's indication that a draft federal Law on Associations of Employers is in the process of preparation by the State Duma. The Committee requests the Government to provide a copy of this legislation as soon as it is adopted so that the Committee may examine its conformity with the provisions of the Convention.

Article 3. Right of workers' and employers' organizations to draw up their constitutions and rules, to elect their representatives in full freedom and to organize their administration and activities. The Committee notes the Government's indication that the Federal Law on the Procedure of Settling Collective Labour Disputes is no longer in force. However, the Committee notes with regret that the new Labour Code does not address the previous concerns of the Committee. Thus, regarding the quorum required for a strike ballot the Committee notes section 410 of the Labour Code, which provides that a minimum of two-thirds of the total number of workers should be present at the meeting and the decision to take a strike should be taken by at least half of the number of delegates present. Considering that the quorum set out for a strike is too high and may potentially impede recourse to strike action, particularly in large enterprises, the Committee requests the Government to amend its legislation so as to lower the quorum required for a strike ballot and to keep it informed of the measures taken or envisaged in this regard.

The Committee further notes that section 410 of the Labour Code maintains the obligation to declare a "possible" duration of the strike, whereas the Committee had

previously indicated that requiring workers and their organizations to specify the length of a strike would restrict the right of workers' organizations to organize their administration and activities and to formulate their programmes. The Committee requests the Government to amend its legislation so as to ensure that no legal obligation to indicate the duration of a strike is imposed on workers' organizations and to keep it informed of measures taken or envisaged in this regard.

Furthermore, the Committee notes section 412 of the Labour Code, which provides that in the event of a disagreement between the parties on the minimum services to be provided in organizations (enterprises) the activities of which ensure safety, health and life of the people, and vital interests of society, the decision is made by an executive body. However, the Committee notes from the Government's report that minimum services are to be ensured in every sector of activity. In the view of the Committee, the authorities may establish a system of minimum service in services which are of public utility 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. Minimum services could be appropriate in situations in which a substantial restriction or a total prohibition of strike action would not appear to be justified and where, without calling into question the right to strike of the large majority of workers, one might consider ensuring that user's basic needs are met or that facilities operate safely or without interruption (see 1994 General Survey on freedom of association and collective bargaining, paragraphs 160 and 162). The Committee asks the Government to indicate whether the establishment of minimum services is a requirement applicable to all categories of workers and if that is the case, it requests the Government to amend its legislation so as to ensure that such a requirement is limited to the abovementioned cases. As regards the provision that any disagreement concerning the establishment of minimum services should be settled by the authorities, section 412 provides that the parties to collective bargaining may appeal the decision of the mentioned body to the courts. The Committee, however, considers that it is preferable for such disagreements to be resolved by an independent body in the first place, so as to avoid any possible delay that would be tantamount to a restriction of strike action. The Committee therefore requests the Government to amend its legislation so as to ensure that any disagreement concerning minimum services is settled by an independent body having the confidence of all the parties to the dispute and not the executive body and to keep it informed of measures taken or envisaged in this regard.

The Committee notes that the right to strike may not be exercised during the period of emergency and in essential services as well as when restrictions are provided for by the federal law. In those cases, the Committee notes that section 413 provides that the decision on collective agreement disputes are made by the Government of the Russian Federation. In this respect, the Committee recalls that, if the right to strike is subject to restrictions or a prohibition, workers who are thus deprived of an essential means of defending their socio-economic and occupational interests should be afforded compensatory guarantees, for example, conciliation and mediation procedures leading, in the event of deadlock, to arbitration machinery seen to be reliable by the parties concerned which should provide sufficient guarantees of impartiality and rapidity (see General Survey, *op. cit.*, paragraph 164). The Committee therefore requests the Government to review its legislation so as to ensure that in those cases any disagreement

concerning a collective agreement is settled by an independent body and not by the Government and to keep it informed of measures taken or envisaged in this regard. Furthermore, recalling that restrictions on the right to strike can only be imposed in essential services and in the case of public servants exercising authority in the name of the State, the Committee requests the Government to transmit copies of any federal laws providing for restrictions on strike action.

Rwanda (ratification: 1988)

The Committee notes the Government's report. It notes with satisfaction the entry into force of Act No. 51/2001 issuing the Labour Code and Act No. 22/2002 issuing the general conditions of service of the public service. The Committee recalls that its previous comments concerned the following points.

Article 2 of the Convention. Right of workers, without distinction whatsoever, to establish organizations of their own choosing. (i) Agricultural workers. The Committee notes with interest that the exclusion of agricultural workers from the scope of the Labour Code, as set out in the former Code, has not been retained in section 2 of the new Code.

(ii) *Public servants.* The Committee notes that, on the one hand, section 2(2) of the new Labour Code excludes from its scope persons engaged in a public administration, but that, on the other hand, the new general conditions of service of the public service do not contain any specific provision respecting the right to organize of public servants. In this respect, recalling that the provisions of the Convention cover all workers, without distinction whatsoever, the Committee requests the Government to indicate in its next report whether public servants in practice benefit from the right to organize.

Article 3. (i) Right of workers' organizations to elect their representatives in full freedom. In its previous comments, the Committee had noted that section 8(b) of the Labour Code of 1967 provided that only nationals could be elected as members responsible for the management and administration of a workers' occupational organization. The Committee notes with interest that, under the terms of section 145 of the new Labour Code, trade union leaders may be of Rwandan nationality or of foreign nationality, although the latter may not be elected until they have completed a period of residence of at least five years in the country and they may not exceed in number one-third of the members of the executive board of the organization.

(ii) *Right to strike.* The Committee notes that section 191 of the new Labour Code provides that the right to strike of workers in jobs that are indispensable for the safety of persons and goods, and in jobs the cessation of which would jeopardize human safety and life, shall be exercised subject to specific procedures, for which the rules are to be set out in an order made by the Minister of Labour. In this respect, the Committee requests the Government to provide a copy of the above order so that it can ascertain its conformity with the provisions of the Convention.

Furthermore, a request on certain other points is being addressed directly to the Government.

Sao Tome and Principe (ratification: 1992)

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

1. *Article 2 of the Convention.* With regard to public employees, the Committee asks the Government to state whether this category of workers has the right to organize and to indicate the applicable legislation.

2. *Articles 3 and 10 (right of workers' organizations to formulate their programmes to promote and protect workers' interests without interference from the public authorities).* The Committee points out that it has always been of the opinion that the right to strike is one of the essential means available to workers and their organizations for the promotion and protection of their economic and social interests (see General Survey on freedom of association and collective bargaining, 1994, paragraph 147).

Majority for calling a strike. The Committee notes that section 4 of Act No. 4/92 establishes that decisions on the calling of strikes must be adopted by a two-thirds majority of the workers present at the general assembly convened for the purpose. The Committee considers that the requirement of two-thirds of the workers is high and could be an obstacle to the exercise of the right to strike and that it would therefore be appropriate for the decision to be taken by a simple majority of the workers present at the assembly.

Minimum services. The Committee also notes that paragraph 4 of section 10 of Act No. 4/92 establishes that employers determine the minimum services after consulting the workers' representative. In the Committee's view, it would be more appropriate to provide that in the event of disagreement in determining such services, the matter should be settled by an independent body.

The Committee further notes that under paragraph 2 of section 9 of the Act, the Ministry in charge of labour administration may authorize the enterprise to hire workers to perform essential services, in order to maintain the economic and financial viability of the enterprise should it be seriously threatened by the strike. Bearing in mind that the application of this provision could restrict the effectiveness of the strike as a means of pressure, the Committee considers that, in such cases, rather than authorizing the enterprise to hire workers to perform essential services, minimum services could be determined by negotiation in which the workers would participate along with the enterprise.

Essential services and compulsory arbitration. The Committee notes that, under section 11 of Act No. 4/92, compulsory arbitration applies to the essential services set out in section 10, which include postal services (c) and banking and loans (j), which are not essential services in the strict sense as explained by the Committee (services whose interruption might endanger the life, personal safety or health of the whole or part of the population) (see General Survey, paragraph 159). The Committee therefore asks the Government to take the necessary steps to ensure that workers in the postal, banking and loans services may exercise the right to strike.

Grounds for strike. Lastly, the Committee notes that, under section 1 of Act No. 4/92, the sole purpose of strikes is to safeguard the legitimate occupational and social interests of workers and the interests of the national economy. In the view of the Committee, organizations responsible for defending workers' socio-economic and occupational interests should, in principle, be able to use strike action to support their position in the search for solutions to problems posed by major social and economic policy trends which have a direct impact on their members and on workers in general, in particular as regards employment, social protection and the standard of living (see General Survey, paragraph 165).

The Committee asks the Government to state whether strikes are allowed as a means of seeking solutions to economic and social policy questions which are of direct concern to the worker.

Article 6. The Committee asks the Government to state whether the right to strike also applies to federations and confederations.

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

Senegal (ratification: 1960)

The Committee notes the information contained in the Government's report. It notes in particular the Government's statement that all the points raised in its previous comments will be taken into account during the work of the committees responsible for the formulation of texts to be issued under the Labour Code. Noting that these committees are currently suspended, the Committee expresses the firm hope that the necessary measures will be taken in the very near future to give full effect to the provisions of the Convention. In this respect, it recalls that its previous comments concerned the following matters.

Article 2 of the Convention. Trade union rights of young persons. For several years, the Committee has been emphasizing that section L.11 of the Labour Code (as amended in 1997) provides that young persons over 16 years of age may join trade unions, unless their membership is opposed by their father, mother or guardian, and it recalls in this respect that the Convention does not authorize any distinction based on such reasons (see the General Survey on freedom of association and collective bargaining, 1994, paragraph 64).

Articles 2, 5 and 6 of the Convention. Right of workers to establish organizations of their own choosing without previous authorization. The Committee recalls the need to repeal Act No. 76-28 of 6 April 1976, which confers discretionary powers on the Minister of the Interior with regard to issuing a receipt recognizing the existence of a trade union. Furthermore, the Committee has already emphasized on several occasions that section L.8 of the Labour Code (as amended in 1997) reproduces the substance of the provisions of the Act of 1976 by requiring previous authorization from the Minister of the Interior for the establishment of trade unions, federations and confederations. The Committee once again emphasizes the importance that it attaches to compliance with *Articles 2, 5 and 6* of the Convention, which guarantee workers and workers' organizations the right to establish organizations of their own choosing without previous authorization. It once again requests the Government to repeal as soon as possible the requirement for previous authorization contained in section L.8 of the Labour Code and to inform it of all measures taken to this effect.

Article 3. Requisitioning. The Committee has been emphasizing for several years that section L.276 grants the administrative authorities broad powers to requisition workers in private enterprises and public services and establishments who occupy posts considered essential for the safety of persons and goods, the maintenance of public order, the continuity of public services or the satisfaction of the country's essential needs. The Committee once again requests the Government to provide a copy of the Decree issued under section L.276 determining the list of essential services so that it can ensure that it is compatible with the provisions of the Convention. It once again recalls

that the requisitioning of workers as a means of settling labour disputes can result in abuses. Such action is therefore to be exclusively confined to the maintenance of essential services in particularly serious circumstances. In the view of the Committee, requisitioning can be justified only in services the interruption of which would endanger the life, personal safety or health of the whole or part of the population, or in the event of an acute national crisis.

The Committee further recalls that section L.276 *in fine* provides that workplaces or the immediate surroundings thereof may not be occupied during a strike, under penalty of the sanctions provided for in sections L.275 and L.279. The Committee has already indicated to the Government that restrictions on workplace occupations should be limited to cases where the action ceases to be peaceful (see the General Survey, op. cit., paragraph 174).

Article 4. Dissolution by administrative authority. The Committee recalls the need to amend the national legislation with a view to protecting trade union organizations against dissolution by administrative authority (Act No. 65-40 of 22 May 1965), in accordance with *Article 4* of the Convention. The Committee noted previously that section L.287 of the Labour Code did not explicitly repeal the provisions respecting administrative dissolution contained in the 1965 legislation. The Committee once again reminds the Government that it would be preferable to incorporate in a law or regulations a provision explicitly stating that the measures respecting administrative dissolution contained in Act No. 65-40 on associations do not apply to trade union organizations.

The Committee emphasizes that the Office's technical assistance is available to the Government, if it so wishes.

Seychelles (ratification: 1978)

The Committee takes note of the Government's report. It notes in particular the Government's indication that steps have already been taken to bring all the comments that were raised in the past before the National Tripartite Employment and Labour Council (NTELC). It further notes that the Government has approached the Office for assistance with regard to a national programme entitled Consolidating Rights at Work and Labour Relations in Seychelles in which revision of labour laws is one of the major programmes to be implemented.

The Committee recalls that its previous comments concerned the following:

Articles 2 and 3 of the Convention. Legislative restrictions on the right of workers to establish organizations of their own choosing without previous authorization, and on the right of workers' organizations to formulate their programme of action to further and defend the professional interests of their members without interference by the public authorities. The Committee had noted that the conditions set out in section 9(1)(b) of the Industrial Relations Act of 1993, for the compulsory registration of trade unions, confer on the Registrar a discretionary power to refuse registration. The Committee further notes that the Registrar may refuse to register a trade union under section 9(1)(f) of the Act if its constitution does not contain adequate provision, or it is not organized to provide adequately, for the protection and promotion of the interests of its members in every trade which it purports to represent. The Committee recalls that workers'

organizations have the right to draw up their constitutions and their rules and that public authorities should refrain from any interference which would restrict this right, and thus requests once again the Government to keep it informed in its next reports of any instance where the Registrar has refused registration under sections 9(1)(b) or 9(1)(f).

Articles 3 and 10. The right to strike. The Committee recalls that it has been commenting for several years on the following points:

- section 52(1)(a)(iv) stipulates that a strike has to be approved by two-thirds of union members present and voting at the meeting called for the purpose of considering the issue;
- section 52(4) allows the Minister to declare a strike to be unlawful if he is of the opinion that its continuance would endanger, amongst others, “public order or the national economy”;
- section 52(1)(b) provides for a cooling-off period of 60 days before a strike may commence; and
- certain prohibitions of, or restrictions on, the right to strike, which may or may not be in conformity with the principles of freedom of association, sometimes provide for civil or penal sanctions against strikers and trade unions who have violated these provisions.

The Committee once again requests the Government to keep it informed of the measures taken or envisaged to amend sections 52(1)(a)(iv), 52(1)(b), 52(4) and 56(1)(a) and (b) in order to bring its legislation into conformity with the provisions of the Convention.

Spain (ratification: 1977)

The Committee notes the Government’s report.

The Committee notes the Act respecting foreign nationals (Organic Act No. 8/2000 on the rights of foreign nationals in Spain and their social integration), which prohibits “irregular” foreign workers (those without proper work papers) from exercising the right to organize. The Committee draws the Government’s attention to the fact that that *Article 2 of the Convention* establishes the right of workers, without distinction whatsoever, to join organizations of their own choosing, with the sole exception of members of the armed forces and the police. The Committee therefore requests the Government to provide information in its next report on any measure taken to amend this Act with a view to securing the right of all foreign workers to join organizations to further their interests as workers.

Swaziland (ratification: 1978)

The Committee notes the report of the Government and the statement made by the Government representative to the Conference Committee in 2002 and the discussion that followed. It further notes the comments made by the International Confederation of Free Trade Unions (ICFTU) on the application of the Convention and requests the Government to transmit its comments thereon.

Article 2 of the Convention. Noting the statement in the Government’s report, that due to the unique local conditions no legislative changes have been made to ensure the

right to organize for prison staff, the Committee recalls that under *Article 2* of the Convention, workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization. The Committee once again requests the Government to amend its legislation or enact separate legislation to ensure that prison staff are granted the right to organize in defence of their economic and social interests.

Article 3. In its previous comments, the Committee had noted the lengthy procedure required before strike action could be taken legally, and had recalled that provisions which require workers' organizations to observe certain procedural rules before launching a strike are admissible, provided they do not make the exercise of the right to strike impossible or very difficult in practice. The Committee notes that the Government did not address this issue in its report. The Committee once again requests the Government to amend its legislation in order to decrease the length of the compulsory dispute settlement procedure provided for in sections 85 and 86, read with sections 70 to 82, of the Industrial Relations Act (IRA), 2000, and asks to be kept informed of progress in that regard.

The Committee also drew the attention of the Government to section 40(13) of the Act which ensures that federations, unions and individuals involved in protest action may only be subject to civil liability for criminal, malicious or negligent acts. The Committee requests once again that the Government keep it informed in future reports of any practical application of section 40 and, in particular, in regard to any charges brought by virtue of section 40(13).

Moreover, the Committee takes note with concern of the provisions in the Internal Security Bill, 2002, which confer broad powers on the public authorities to restrict public gatherings and boycotts under penalty of imprisonment. The Committee considers that such provisions could impair the guarantees set out in *Article 3* of the Convention. It therefore requests the Government to indicate in its next report whether this Bill has been adopted and, if so, to transmit a copy of the adopted text.

In previous comments, the Committee had noted that section 12 of the Decree of 1973 on the rights of organizations was incompatible with the provisions of the Convention as it suppressed trade union rights and had expressed its hope that it would be abrogated with the adoption of the Industrial Relations Act of 2000. The Committee notes with concern that during the discussions of the application of the Convention at the Conference Committee in 2002, the 1973 Decree appears still to be in force. The Committee notes from the statement made by the Government representative that a committee has been established to draft the national Constitution in conformity with international standards. The Committee trusts that the process will ensure that trade unions rights will be respected and that the Decree of 1973, which had suspended all constitutional freedoms, will finally be repealed. The Committee requests the Government to keep it informed in its next report on all progress made in this regard.

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

Syrian Arab Republic (ratification: 1960)

The Committee notes the information supplied by the Government in its latest report. It further notes the comments made by the International Confederation of Free Trade Unions (ICFTU) on the application of the Convention and requests the Government to transmit its observations thereon.

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

- section 18(a) of Legislative Decree No. 84, as amended by section 4(5) of Legislative Decree No. 30 of 1982, which authorizes the Minister to set the conditions and procedures for the use of trade union funds;
- 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 establishing trade union monopoly;
- section 44(3)(b) of Legislative Decree No. 84 subjecting eligibility for trade union office to Arab nationality;
- section 1(4) of Act No. 29 of 1986 amending Legislative Decree No. 84 which determines the composition of the congress of the federation and its presiding officers;
- sections 330, 332, 333 and 334 of Legislative Decree No. 148 of 1949, issuing the Penal Code, restricting the right to strike by imposing heavy sanctions including imprisonment; and
- section 19 of Legislative Decree No. 37 of 1966, concerning the Economic Penal Code, which imposes forced labour on anyone causing prejudice to the general production plan decreed by the authorities, by acting in a manner contrary to the plan.

The Committee notes the Government's statement generally that it engages in dialogue and consultations with workers' and employers' organizations with the aim of amending the legislation on trade unions so as to bring it into conformity with the Convention. The Government adds, however, that legislative amendments need time and careful examination.

With respect to section 18(a) of Legislative Decree No. 84, as amended by section 4(5) of Legislative Decree No. 30 of 1982, the Committee notes the Government's statement to the effect that, in practice, the General Federation's mandate is to determine and set down the conditions relating to the use of trade union funds in financial, industrial and service-related matters and that the Minister shall sign without amending any of the proposed provisions. The Government further states that it has addressed the General Federation with a view to amending this section. The Committee requests the Government to keep it informed of any progress made in this respect.

With regard to the legislative provisions establishing trade union monopoly, the Committee notes the information provided in the Government's reports for several years, that the workers and employers support the principle of trade union unity in order to maintain their organizational strength. The Committee further notes the Government's statement that in spite of refusal by the workers' and employers' organization of the idea

of multiple unions, it has transmitted the request of the Committee to the social partners. The Committee requests the Government to keep it informed of any progress made in this respect.

With reference to its previous comments, the Committee expresses the hope that measures will be taken at the earliest possible date to bring the national legislation concerning trade union monopoly, restrictions on non-nationals and penal sanctions for exercising strike action into full conformity with 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 (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 (ratification: 1991)

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

The Committee notes with regret that, since the entry into force in respect of The former Yugoslav Republic of Macedonia of this Convention in 1992, the Government's first report has still not been received.

The Committee trusts that the Government is now in a position to provide detailed replies to the questions contained in the report form, along with any relevant legislative texts, in its next report.

The Committee further notes the conclusions 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). Noting the apparent absence of legislation for the registration and legal recognition of employers' organizations, the Committee requests the Government to indicate, in its next report, the measures taken or envisaged to ensure the recognition of employers' organizations in a status corresponding to their objectives. It further requests the Government to indicate in its next report the steps taken to finalize the registration of the Union of Employers of Macedonia.

Togo (ratification: 1960)

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

1. *Article 2 of the Convention.* In its previous observations, the Committee noted that the agreement of 1996 was vague and afforded no safeguards for the rights of workers in export processing zones, particularly the right of access for trade union officers, the right to form unions and the right to nominate candidates.

In a previous report the Government stated that the provisions of the Labour Code of 1974 apply to labour relations between employers and workers in the export processing zones established pursuant to Act No. 89-14 of September 1989. The Committee requests the Government to confirm that the provisions of the Labour Code on freedom of association have force of law in these zones.

Noting that, according to the Government, no trade union organizations have complained of candidates not being nominated as trade union delegates for the purpose of representing workers, the Committee asks the Government to provide all available information on the representation of workers in export processing zones (for example, representation by unions, number of members, etc.).

2. *Article 3.* In its previous comments the Committee noted that section 6 of the Labour Code of 1974 was incompatible with the Convention as regards the right of foreign workers to hold trade union office, at least after a reasonable period of residence in the host country. The Committee noted the draft amendment prepared by the Government to bring section 6 of the Labour Code of 1974 into conformity in this respect. The Committee notes from the information in the Government's latest report that this legislative amendment has not yet been adopted.

The Committee hopes that the Government will take the necessary steps to ensure that the draft amendment is adopted in the very near future and requests it to provide a copy once it has been adopted.

Trinidad and Tobago (ratification: 1963)

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

In its previous comments, the Committee recalled 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, or when the Minister considers that the national interest is threatened, under penalty of six months' imprisonment.

The Committee had noted from the Government's latest report that the Tripartite Committee established to review the Industrial Relations Act had reviewed these sections and had agreed that these provisions were in keeping with the cultural and legislative environment of the country and were, therefore, in no way objectionable to the parties in the collective bargaining process. The Tripartite Committee did not view these provisions as a deterrent to the Government's conformity with Convention No. 87.

As concerns the prohibition under section 67 of industrial action in essential services, the Committee notes the inclusion of sanitation services and a public school bus service in the list of essential services in schedule 2 and considers that such services cannot be considered to be essential in the strict sense of the term. In this respect, the Committee draws 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. Noting further that section 69 appears to prohibit the teaching service and employees of the Central Bank from taking industrial action, under penalty of 18 months' imprisonment, the Committee requests the Government to indicate whether these restrictions are still in force and, if so, to take the necessary measures to repeal them so that teachers and bank employees are not prohibited from undertaking industrial action.

As concerns the Minister's power under section 61 to refer a dispute to the Court and, under section 65, in cases where the national interest is threatened or affected, the Committee considers that such powers should be limited to essential services in the strict sense of the term, as indicated above, to public servants exercising authority in the name of the State and to cases of acute national crisis.

As concerns the possibility of prohibiting a strike which has not been declared by a majority union (section 59(4)(a)), the Committee recalls that the requirement that the exercise of the right to strike be subjected to prior approval by a certain percentage of workers is not in itself incompatible with the Convention. On the other hand, legislative provisions which require a vote by workers before a strike can be held should ensure that account is taken only of the votes cast, and that the required quorum and majority are fixed at a reasonable level (see 1994 General Survey, *op. cit.*, paragraph 170). The Committee considers that the prohibition of strike action by non-majority unions could result in the restriction of the right to strike even where a simple majority of the workers in the bargaining unit, excluding those workers not taking part in the vote, have voted in favour of the strike.

In light of the above, the Committee once again urges the Government to take the necessary measures to bring the legislation into conformity with the Convention and requests the Government to indicate the progress made in this respect.

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

Tunisia (ratification: 1957)

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

Article 3 of the Convention. Right of workers' organizations to organize their administration and activities. With reference to its previous comments concerning the obligation to obtain the approval of the central workers' union before declaring a strike, under the terms of section 376bis(2) of the Labour Code, the Committee had noted the

Government's indication in its last report that the expression "central workers' union" was intended in a broad sense and that, by virtue of a circular of the Tunisian General Labour Union (UGTT) dated 1989 referring to the exercise of the right to strike, all the members of the extended executive board of this organization were empowered to sign the strike notification. This board includes, in accordance with section 16 of the internal rules of the UGTT, in addition to the members of the executive board, all the secretaries general of the organization's regional unions, which include representatives of first-level occupational trade unions and are in direct and permanent contact with first-level trade unions in enterprises. The Government also indicated that the administration has received no complaints from first-level trade unions that the requirement of prior approval for strikes by the central workers' union restricts their right to organize their activities. While noting this information, the Committee nevertheless considers that this provision may be such as to limit the right of first-level trade union organizations to organize their activities and promote and defend the interests of the workers, and it therefore requests the Government to repeal this provision so as to bring its legislation fully into conformity with the principles of freedom of association.

With regard to the essential services listed in section 381ter of the Labour Code, the Committee noted the Government's statement in a previous report that a copy of the Decree determining this list would be forwarded to the Office once it had been adopted. The Committee once again requests the Government to provide in its next report the list of essential services envisaged under section 381ter of the Labour Code.

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

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

Turkey (ratification: 1993)

The Committee takes note of the information provided in the report communicated by the Government, as well as the comments attached to the report made by the Confederation of Turkish Trade Unions (TÜRK-İS), the Confederation of Progressive Trade Unions of Turkey (DISK) and the Turkish Confederation of Employers' Associations (TİSK). The Committee also notes the response of the Government to the observations made by the Confederation of Public Servants' Trade unions (KESK) and by the Energy-Building and Road Construction-Union (EYYSEN), dated 1 June and 10 September 2001, respectively. The Committee also notes that observations were communicated by the Independent Public Sector Communication Employees' Union (BAGIMSIZ HABER-SEN), the Turkish Union of Public Employees in the Education, Training and Science Services (TÜRK EGİTİM-SEN), as well as by the International Confederation of Free Trade Unions (ICFTU). The Committee requests the Government to transmit its comments thereon.

In its previous comments, the Committee had examined particular provisions of the following laws: Act No. 4688 on public employees trade unions, the Unions Act No. 2821, the Collective Labour Agreements, Strike and Lockout Law No. 2822 and Act No. 3218 imposing compulsory arbitration in export processing zones. The Committee had asked the Government to take the necessary measures: (a) to ensure that public servants, other than members of the armed forces and the police, fully enjoy the right to organize (sections 3(a) and 15 of Act No. 4688); (b) to enable workers' organizations to determine freely whether union officers may remain in their posts during their candidacy or election to local and general elections (section 37 of Act No. 2821 and section 10 of

Act No. 4688); (c) to ensure the right of workers' organizations to organize their activities without interference by the public authorities (sections 29, 30 32 and 54 of Act No. 2822); (d) to ensure that those public servants who are not exercising authority in the name of the State and who cannot be deemed to be carrying out essential services in the strict sense of the term may have recourse to industrial action without penalty (Act No. 4688); (e) to ensure that workers in export processing zones have the possibility of taking industrial action in defence of their interests (provisional section 1 of Act No. 3218); and (f) to ensure that public officials' organizations may organize their administration and activities without any undue interference by the public authorities (section 10 of Act No. 4688).

The Committee notes that according to the information provided by the Government in its report, the review of Acts Nos. 2821, 2822 and 4688 will be undertaken by a tripartite commission, in light of the provisions of the Convention and that the relevant comments of the Committee have been communicated to the commission.

The Committee also notes with interest, from the Government's report, that by virtue of an Act adopted by Parliament on 3 August 2002, provisional section 1 of Act No. 3218 has been repealed. It requests that the Government communicate a copy of this Act with its next report, as well as a copy of the recent Labour Security Law which, the Committee understands, is due to take effect in March 2003.

The Committee requests that the Government keep it informed of the progress made in the review of Acts Nos. 2821, 2822 and 4688 and in this regard refers the Government to its previous comments made thereon. In light of the Government's report, the Committee would especially like to draw the Government's attention to the following points.

Article 2 of the Convention

Right of workers and employers without distinction whatsoever to establish and join organizations of their own choosing. The Committee notes the Government's comments in respect of sections 3(a) and 15 of Act No. 4688. The Committee would like to recall that, in light of the broad wording of *Article 2* of the Convention, all public servants and officials should have the right to establish occupational organizations (see paragraphs 48 and 49 of its General Survey on freedom of association and collective bargaining, 1994). The only admissible exception is that specified in *Article 9* of the Convention in respect of members of the armed forces and the police. It follows, and to address specifically the point raised by the Government concerning public officials holding managerial positions or positions of trust, that under the Convention, to exclude totally these public officials from the right to organize is not compatible with its provisions. On the other hand, the Committee recalls that to bar such officials from the right to join trade unions representing other workers is not necessarily incompatible with the Convention provided that two conditions are met: (a) the officials concerned are entitled to establish their own organizations; and (b) the legislation should limit the category of officials concerned to those exercising senior managerial or policy-making responsibilities (see General Survey, op. cit., paragraph 57). While duly noting the Government's indications that Act No. 4688 is a significant development in the legislative reforms engaged by it, the Committee once again requests that the

Government take the necessary measures to amend sections 3(a) and 15 of Act No. 4688 so as to ensure that all workers without distinction whatsoever fully enjoy the right to organize in accordance with *Article 2* of the Convention.

Article 3 of the Convention

In its previous comments, the Committee had pointed out, in respect of several provisions of Acts Nos. 2821, 2822 and 4688, that the national legislation unduly regulated trade union internal matters and that it could give rise to undue interference by public authorities in the functioning and the activities of trade unions. The Committee takes note of the indications given by the Government in respect of several provisions of Act No. 4688 (sections 9, 10, 13, 18, 23, 25) and that, in particular, the aim of these provisions is either to facilitate the internal functioning of the unions or to encourage the emergence of powerful unions. The Committee must recall, however, that *Article 3* of the Convention, guarantees the free functioning of workers' and employers' organizations by recognizing four basic rights: 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 by the public authorities (see General Survey, op. cit., paragraph 108). The Committee considers that the abovementioned Acts overly regulate the functioning, the organization and the activities of trade unions. It refers the Government to its previous comments in this regard.

With reference to the observations made by the Confederation of Progressive Trade Unions of Turkey (DISK), the Committee notes from section 43 of Act No. 4688 that, when a matter is not regulated by the Act, the provisions of the Law on Associations No. 2908, shall apply. Further, under section 63 of Act No. 2821, unions are subject, in particular, to the provisions of the Law on Associations, which are not contrary to Act No. 2821. The Committee asks the Government in its next report to specify the matters relating to the functioning and the activities of trade unions which are governed by the law on associations and the practical implications for trade unions of these provisions.

1. *Right of workers' and employers' organizations to organize their activities and formulate their programmes free from government interference – public servants.* In its previous comments, the Committee had noted that section 35 of Act No. 4688 made no mention of the circumstances in which strike action may be exercised in the public service. It had also noted the comments made by the Government on the specificity of the status of public servants in respect of the right to strike. Noting the absence of comments from the Government on this particular issue and the observations made by the Turkish Confederation of Employer Associations (TISK), the Committee would like to reiterate the following: the restrictions on the right to strike in the public service should be limited to public servants who are exercising authority in the name of the State (see General Survey, op. cit., paragraph 158). The Committee would also like to recall that restrictions to the right to strike by the imposition of compulsory arbitration can only be justified in respect of this limited category of public servants and those working in essential services in the strict sense of the term. Further, where the right to strike may be prohibited or limited, compensatory guarantees should be afforded to public servants, such as mediation and conciliation procedures or, in the event of deadlock, arbitration

with sufficient guarantees of impartiality and rapidity. In these circumstances, the Committee must once again request the Government to take the necessary measures to ensure that those public servants who are not exercising authority in the name of the State and who may not be considered to be carrying out essential services in the strict sense of the term have the right to engage in industrial action. For those public servants who may be restricted in the exercise of industrial action, the Committee requests the Government to indicate the measures taken or envisaged to ensure that these workers have the full benefit of compensatory guarantees.

In its previous comments, the Committee had noted that, under section 10 of Act No. 4688, upon application to a labour court by an official of the Ministry of Labour and Social Security, a union executive committee can be removed if it does not comply with the requirements set out in the law in respect of the timing of the general assembly meetings, the majority needed to summon an extraordinary general assembly or in respect of other meetings of the general assembly. In its report, the Government indicates that it is the labour court which decides on the removal of the union executive committee and that the appointment of a temporary administrator is provided to ensure continuity in the most important activities of the union. The Committee recalls that the removal of union executive bodies should be motivated solely by considerations related to protecting the members of organizations and should only be possible through normal judicial proceedings (see General Survey, *op. cit.*, paragraphs 122 and 123). Section 10 provides for the removal of the executive bodies in case of non-respect of requirements set out in the law, whereas the Committee has considered that the requirements referred to should be left to the free determination of the occupational organizations and their members in their constitution and rules. The Committee therefore once again requests the Government to take the necessary measures to repeal section 10 of the Act so as to ensure that workers' organizations may organize their administration and activities without interference by the public authorities.

2. The Committee further recalls the need to amend the following provisions:

- Act No. 2821: section 37 (suspension and termination of the mandate of a union officer in case of candidacy to local and general elections or election);
- Act No. 4688: section 10 (suspension and termination of the mandate of a union officer in case of candidacy to local and general elections or election – public service);
- Act No. 2822: sections 25 and 70 (prohibition of protest and sympathy strikes and penal sanctions applicable for participation in “unlawful strike” not determined in accordance with the Convention); sections 29 and 30 (imposition of compulsory arbitration in respect of services which cannot be considered to be essential in the strict sense of the term); sections 21 to 23 as well as sections 27, 28, 35 and 37 (excessively long waiting period of nearly three months from the start of negotiations before a decision to call a strike may be taken); and section 48 (severe limitations on picketing).

The Committee asks the Government to indicate in its next report the measures taken to bring its legislation and practice on all outstanding points into full conformity with the Convention.

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

Ukraine (ratification: 1956)

The Committee takes note of the report supplied by the Government. It further notes the comments made by the Ukrainian Union of Leaseholders and Entrepreneurs (SOPU) on the application of the Convention and requests that the Government transmit its observations thereon.

The Committee also notes the conclusions of the Committee on Freedom of Association concerning Case No. 2038 (see 326th and 329th Reports, approved by the Governing Body at its 282nd and 285th Sessions).

Article 2 of the Convention. Right of workers and employers to establish and join organizations of their own choosing. The Committee notes the adoption on 13 December 2001 of the Act amending the Trade Unions Act, and more particularly its sections 11 and 16 previously commented upon by the Committee. It notes with interest that the requirement to unite more than half the workers of the same vocation or occupation in order for a trade union to obtain district or all-Ukrainian status provided for by section 11 was repealed. It further notes with interest that, according to the current wording of section 16 of the Trade Unions Act, trade unions and confederations of trade unions acquire their legal personality from the moment of their creation. As concerns the procedure of trade union registration, the Committee notes that the relevant paragraphs of section 16 remain unchanged. The Committee understands that the Government itself has acknowledged that the distinction between the acquisition by a trade union of legal personality (which occurs as soon as its by-laws are approved) and official legal recognition of a trade union creates certain difficulties with regard to the interpretation of standards concerning the inclusion of trade unions in the appropriate state registers. The Committee notes from the Government's report that a final consensus on this issue has not yet been achieved and that the National Council of Social Partnership has made a decision to recommend that the Cabinet of Ministers charge the Ministry of Justice, with the participation of the parties concerned, with the task of elaborating, within a two-month period, eventual proposals on introducing further changes to the Trade Unions Act. The Committee recalls that in many countries, organizations are required to register; such legislation is not in principle incompatible with the Convention. However, it considers that problems of compatibility with the Convention may arise where, in practice, competent administrative authorities make excessive use of their powers and are encouraged to do so by the vagueness of the relevant legislation (see General Survey on freedom of association and collective bargaining, 1994, paragraphs 74 and 75). The Committee trusts that, after full consultations with the social partners on the possible amendment of section 16 of the Act, a consensus will be found with a view to ensuring that the legalization requirement (through registration) is not applied in practice so as to amount to a requirement for previous authorization to establish an organization. The Committee requests that the Government keep it informed of any developments in this respect and to provide information in its next report on the number of cases where registration has been denied and the reasons therefore.

Article 3. Right of workers' organizations to formulate their programmes of action without interference from the public authorities. The Committee had previously noted

that section 19 of the Act on the procedure for the settlement of collective labour disputes provided that a decision to call a strike had to be supported by a majority of the workers or two-thirds of the delegates of a conference. The Committee once again asks the Government to indicate in its next report the measures taken or envisaged in order to amend section 19 of the Act so as to ensure that account is taken only of the votes cast and that the required majority and quorum is fixed at a reasonable level.

Finally, the Committee once again requests that the Government indicate whether the former provisions of the Penal Code which were previously applicable in the USSR, and particularly section 190(3) which contained significant restrictions on the exercise of the right to strike in the public and transport sectors enforceable by severe sanctions, including up to three years' imprisonment, have been repealed by a specific text.

In addition, a request regarding certain points is being addressed directly to the Government in respect of some provisions of the Law on the organizations of employers.

United Kingdom (ratification: 1949)

The Committee takes note of the information provided in the Government's report, and its reply to the comments of UNISON and the Trades Union Congress (TUC) of November 2000. It further notes the recent TUC comments of November 2002 on the application of the Convention and requests the Government to transmit its observations thereon.

The Committee notes that parts of the 1999 Employment Relations Act (ERA) have entered into force as planned: namely, the establishment of a statutory procedure for union recognition (June 2000); a simplification of the law on industrial action ballots and notices; and the right of workers to be accompanied by a representative at grievance hearings (September 2000). The Committee also takes note of the revised Code of Practice on Industrial Action Ballots and Notice to Employers.

1. *Unjustifiable discipline (sections 64-67 of the 1992 Trade Union and Labour Relations (Consolidation) (TULRA) Act)*. The Committee recalls that its previous comments in this respect concerned provisions which prevent trade unions from disciplining their members who refuse to participate in lawful strikes and other industrial action or who sought to persuade fellow members to refuse to participate in such action.

The Government indicates that only 49 such complaints have been brought in the reporting period, in spite of an increase in the number of days of strike, which confirms that unions have adapted to the law and are not inhibited by it when taking industrial action. With respect to the TUC comments on the subject, the Government maintains that these sections provide necessary protections for individual workers in their relationship with their unions and do not represent an undue interference in internal affairs of trade unions, and that there is a need to reconcile the freedoms of individuals and those of unions.

The Committee takes note of this information. It recalls that unions should have the right to draw up their rules without interference from public authorities and so to determine whether or not it should be possible to discipline members who refuse to comply with democratic decisions to take lawful industrial action. It requests the Government to continue to keep it informed of developments in this respect in its future reports.

2. *Immunities in respect of civil liability for strikes and other industrial action (sections 223 and 224 of the TULRA).* The Committee recalls that its previous comments concerned the absence of immunities in respect of civil liability when undertaking sympathy strikes. It commented that workers should be able to participate in sympathy strikes provided the initial strike they are supporting is itself lawful, and stressed that this principle is particularly important in the light of earlier TUC comments that employers commonly avoid the adverse effects of disputes by transferring work to associated employers and that companies have restructured their businesses in order to make primary action secondary.

The Government states that while the TUC agrees that employers often re-engage in negotiations with unions once a ballot provides evidence that its members would support industrial action, the TUC contends that this is irrelevant to the issue of solidarity action. The Government considers that this is indeed important in ascertaining whether the law is balanced. If it were not, employers would often ignore the result of a ballot in the knowledge that the threat of industrial action would have little effect on their organizations. This shows that the law does not disadvantage unions in their dealings with employers. These restrictions are necessary in a decentralized system of industrial relations, as they ensure that the widespread disruption to industrial life caused by secondary and solidarity action, once prevalent in the United Kingdom, is avoided.

While taking due note of the information provided by the Government, the Committee must recall once again that workers should be able to take industrial action in relation to matters which affect them even though, in certain cases, the direct employer may not be party to the dispute, and that they should be able to participate in sympathy strikes provided the initial strike they are supporting is itself lawful. It requests the Government to continue to keep it informed of developments in this respect in its future reports.

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

Venezuela (ratification: 1982)

The Committee notes the Government's report, the discussion in the Committee on the Application of Standards of the International Labour Conference in 2002 and the comments forwarded by the International Confederation of Free Trade Unions (ICFTU) on 18 September and 21 November 2002 on the application of the Convention. The Committee requests the Government to supply its observations on these comments.

The Committee also notes the report of the direct contacts mission which visited the country in May 2002, and particularly that the mission noted with concern: (1) that the information supplied by the CTV and FEDECAMARAS on various allegations relating to the establishment, with Government 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 (2) 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, like the Conference Committee on the Application of Standards: (a) recalls that respect for civil liberties is

essential to the exercise of trade union rights and urges the Government to take the necessary measures immediately so that workers' and employers' organizations can fully exercise the rights recognized by the Convention in a climate of complete security; and (b) urges the Government to commence without delay an in-depth dialogue with all the social partners without exclusion so that solutions can be found 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 measure adopted in relation to the above points and to carry out investigations of acts of violence and violent groups.

The Committee notes that a draft Bill to reform the Organic Labour Act, prepared following the visit by the direct contacts mission, is reported to have been submitted to the National Assembly on 7 June 2002. The Committee notes that the above draft Bill contains a number of provisions which are in line with the comments that it has been making for many years (particularly the elimination from sections 408 and 409 of the over-detailed enumeration of the mandatory functions and purposes of workers' organizations; the amendment of section 419 respecting the excessively high number of employers required to establish an employers' organization, reducing this number from 10 to 4; the amendment of section 418 respecting the excessively high number of workers required to establish trade unions of independent workers, reducing this number from 100 to 40; and the amendment of section 404 respecting the requirement of 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 requests the Government to provide information in its next report on any progress made in relation to the draft Bill referred to above.

Furthermore, in its previous observation, the Committee referred to a number of provisions of the Constitution of the Republic, which are not in accordance with the requirements of the Convention, namely:

- article 95, which states 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 the Government's statement that: (a) the term “alternation” refers solely and exclusively to the periodic holding of elections; (b) it does not imply any prohibition of the re-election of men or women workers to hold representative office in trade unions and the draft Bill to amend the Organic Labour Act referred to above envisages amending section 434 with a view to specifying the contents and terms of article 95 of the Constitution. In this respect, the Committee notes that the envisaged amendment of section 434 refers to the duration of the mandate for which the executive body exercises its functions and not to the possibility for members of the executive body to be re-elected. In these conditions, the Committee requests the Government to take measures to recognize explicitly in the amendment to the Organic Labour Act the right of trade union leaders to re-election, if it is so provided in their rules or failing that to amend article 95 of the Constitution of the Republic so as to bring it into full conformity with the provisions of the Convention; and
- article 293 and the eighth transitional provision, which provide that the Electoral Authority (the 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 will be

convened, organized, managed and supervised by the National Electoral Council. In this respect, the Committee notes the Government's statements that: (i) the draft Bill to amend the Organic Labour Act proposes an amendment to section 433, which provides that trade union organizations may request the cooperation of the Electoral Authority for the holding of elections to their executive bodies; (ii) once this provision has received parliamentary approval, it will repeal the Special Transitional Rules for the renewal of trade union leadership; and (iii) the eighth transitional provision of the Constitution of the Republic is no longer in force and is not therefore applicable. Notwithstanding the Government's observations, the Committee considers that it should amend article 293 of the Constitution of the Republic to remove the power entrusted to the Electoral Authority, through the National Electoral Council, to organize the elections of trade unions, and it requests the Government to provide information in its next report on any measure adopted in this respect. The Committee also notes that the direct contacts mission expressed its concern with regard to the draft Electoral Bill, which maintains the intervention of the National Electoral Council in trade union matters. In this regard, the Committee notes that on 30 October 2002 approval was given to the Organic Act respecting the Electoral Authority, which contains provisions that are not in conformity with the Convention (for example section 33, which makes the National Electoral Council competent for organizing trade union elections, proclaiming the elected candidates, monitoring elections and declaring them null and void, hearing and resolving appeals and investigating complaints). 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. In these conditions, the Committee requests the Government to take measures to amend article 293 of the Constitution of the Republic and the Organic Act respecting the Electoral Authority, which provides for its intervention in the elections of workers' organizations, and to provide information in its next report on any measures adopted in this respect.

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 respect, the Committee notes the Government's statement that the Ministry of Labour requested the Prosecutor of the Republic to repeal this resolution. The Committee expresses the firm hope that the resolution will be repealed rapidly and requests the Government to provide information on this matter in its next report.

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 they have been removed from the legislative agenda and that there is no intention of adopting any of the above Bills. The Committee requests the Government to assure it of the definitive withdrawal of these Bills.

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

[The Government is asked to report in detail in 2003.]

Yemen (ratification: 1976)

The Committee notes the Government's report.

The Committee notes the adoption of the Law on Trade Unions and requests the Government to supply a copy of this legislation with its next report so that the Committee may examine its conformity with the provisions of the Convention at its next meeting.

The Committee notes the Government's statement that, in collaboration with the social partners, it is preparing draft amendments to the Labour Code. It further notes the Government's indication that the General Union of Yemeni Trade Unions was not appointed by the public authority but rather elected by the trade unions. The Committee must, however, once again recall that while the purpose of the Convention was clearly not to make trade union diversity an obligation, it does at the very least require that diversity remain possible in all cases. It considers that the naming of a particular union confederation in the legislation renders such diversity impossible; for instance, if in the future some trade unions were to desire to form a different confederation. The Committee therefore trusts that the new amendments will take into account this issue and the previous concerns of the Committee, in particular those regarding strict conditions for exercising strike action and the right to organize of workers not covered by the current Labour Code. The Committee requests the Government to keep it informed of the developments in this respect and to provide a copy of the abovementioned legislation once it has been adopted.

[The Government is asked to report in detail in 2003.]

Yugoslavia (ratification: 2000)

The Committee notes the information contained in the Government's first report. The Committee also takes note of the conclusions and recommendations of the Committee on Freedom of Association in Case No. 2146 (327th Report, paragraphs 893-898 and 329th Report, paragraphs 152-155) and the comments communicated by the International Organisation of Employers (IOE) in this respect. The Committee asks the Government to submit its observations in this respect.

Article 2 of the Convention. Right of employers to establish organizations of their own choosing. The Committee notes from the conclusions of the Committee on Freedom of Association in Case No. 2146 that the federal Republic's Law on the Yugoslav Chamber of Commerce and Industry is contrary to *Article 2* of the Convention as it establishes compulsory membership in the chamber of commerce and vests it with the powers of employers' organizations within the meaning of *Article 10* of the Convention, such as the power to sign collective agreements. The Committee notes from the latest examination of this case by the Committee on Freedom of Association that no progress has yet been made in amending this Law.

The Committee requests that the Government take the necessary measures in the very near future to repeal all provisions of the Law on the Yugoslav Chamber of Commerce which give rise to compulsory membership or financing and to refrain from adopting any other legislative measure which would have a comparable effect. The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

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

Zambia (ratification: 1996)

The Committee notes that the Government's report has not been received. It further notes the observations made by the International Confederation of Free Trade Unions (ICFTU) on the application of the Convention and requests the Government to transmit its observations thereon. It must repeat its previous observation which read as follows:

The Committee recalls that its previous comments concerned the following discrepancies between the Labour Relations (Amendment) Act, 1997, and the provisions of the Convention:

- the discretionary power of the Minister to exclude workers from the scope of the Act;
- the limitations of the right to strike.

1. *Article 2 of the Convention. Right of workers, without distinction whatsoever, to establish and join organizations.* As regards the general discretionary power of the Minister to exclude employees from the scope of the Act (section 2(2)), the Committee had noted the information provided by the Government in its last report that this power had not been used at all. However, considering that pursuant to *Article 2* of the Convention, workers and employers, *without distinction whatsoever*, are to have the right to form and join organizations of their own choosing, with the only possible exception being the police and armed forces (*Article 9* of the Convention), the Committee recalls that the discretionary power of the Minister should not be exercised in such a way as to deny workers the rights guaranteed under the Convention. It therefore asks the Government to amend this provision to bring it into full conformity with the Convention and to inform it in its next report of all measures taken in this regard.

2. *Articles 3 and 10 of the Convention. Right of organizations to organize activities to further and defend the interest of their members.* The Committee recalls that the right to strike is one of the essential means available to workers and their organizations for the promotion and protection of their economic and social interests. The Committee further recalls that this right 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. If the right to strike is subject to such restrictions or 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.

The Committee notes once again that certain provisions in the Labour Relations Act, 1997, limit or restrict strikes in circumstances that go beyond those permitted under the Convention, in particular under section 78(6) to (8), a strike can be discontinued if it is found by the court not to be "in the public interest", and section 100 refers to exposing property to injury. In addition, section 107 prohibits strikes in essential services and section 107(10)(f) defines essential services broadly, in that it includes any service for the maintenance of not only safe but also sound conditions in mines, and the sewage services. The Minister, in consultation with the Tripartite Consultative Labour Council, is also empowered to add any other service to the list of essential services (section 107(10)(g)) where strikes are prohibited. In its previous comments, the Committee had noted the Government's statement that during the revision of the Industrial and Labour Relations Act, it will take into consideration the previous indication made by the Committee; that is to say that the Government might substitute for the legislated restrictions that go beyond those

permitted under the Convention the concept of minimum negotiated services, which should be limited to the operations that are strictly necessary to meet the basic needs of the population or the minimum requirements of the service, while maintaining the effectiveness of the pressure brought to bear. The Committee asks the Government to inform it in its next report of any progress made in this area.

With reference to its previous comments regarding the conciliation procedure that must be undertaken pursuant to section 76 of the Act before a strike can take place, the Committee noted the information supplied by the Government in its last report to the effect that there was no time frame provided in which conciliation should end; the conciliator terminates the conciliation effort when he or she is convinced that the continued effort will not result in a positive development. The Committee recalls the importance of ensuring that the procedures that are to be exhausted before a strike may be called must not be so slow or complex that a lawful strike becomes impossible in practice or loses its effectiveness. Furthermore, as regards the interpretation of section 78(1), the Committee noted that a recent decision of the Industrial Relations Court ruled that *either* party may now take the matter to court, and that this decision will be incorporated into law in due course. Recalling that recourse to arbitration should be at the request of both parties or eventually of one party in the case of strikes occurring in essential services in the strict sense of the term or in case of an acute national crisis, the Committee asks the Government to forward a copy of the decision of the Industrial Relations Court to enable it to examine its compatibility with the principles of freedom of association.

With reference to its previous comments as regards the possibility for 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 and the fact that this person is then liable to a fine and up to six months' imprisonment (section 107), the Committee noted the information supplied by the Government in its last report that no worker or workers have been arrested and imprisoned when the workers in an essential service resorted to industrial action and, often times, the issue of imprisonment has never been considered. However, fines have been imposed on workers who, in furtherance of their industrial action, resort to violence and their action threatens state security. The Government also stated that the action usually ended at police stations after the admission of guilt and the payment of fines. Nevertheless, as sanctions for strikes should not be disproportionate to the seriousness of the violation, the Committee requests once again the Government to amend these provisions to bring them into full conformity with the principles of freedom of association, in particular by removing the sanction of imprisonment for strikes other than those in essential services in the strict sense of the term or in case of an acute national crisis.

Concerning the measures taken or contemplated to bring the legislation into closer conformity with the Convention, the Committee noted that the Government would take its concerns into consideration when the revision took place. It firmly hopes that all the necessary measures will be taken in the near future to bring the national legislation into full conformity with the Convention and it requests the Government in its next report to indicate any progress made in this area.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Albania, Australia, Bangladesh, Bosnia and Herzegovina, Botswana, Bulgaria, Burkina Faso, Cambodia, Chile, China (Hong Kong Special Administrative Region), China (Macau Special Administrative Region), Czech Republic, Denmark, Egypt, Eritrea, Estonia, Finland, Gabon, Georgia, Grenada, Guatemala, Haiti, Indonesia, Kyrgyzstan, Latvia, Lesotho, Libyan Arab Jamahiriya, Lithuania, Luxembourg, Malawi, Mali, Republic of Moldova, Mongolia, Pakistan, Panama,*

Rwanda, Saint Lucia, Slovenia, Sri Lanka, Swaziland, Sweden, Switzerland, Tunisia, Turkey, Ukraine, United Kingdom, Venezuela, Yugoslavia, Zambia.

Information supplied by *Peru* and *Romania* in answer to a direct request has been noted by the Committee.

Convention No. 88: Employment Service, 1948

Argentina (ratification: 1956)

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 report in detail in 2003.]

Bolivia (ratification: 1977)

The Committee notes that the Government's report has not been received. It must therefore repeat its 2000 observation, which read as follows:

The Committee notes the information contained in the Government's candid report. The Government has begun to establish a network of offices in La Paz, Cochabamba and Santa Cruz, in accordance with the requirements of *Article 2 of the Convention*; and placement services and training are provided to young persons under a Code for Children and Adolescents (1999), as required under *Article 8*. However, in all other respects, the Government is having substantial difficulty applying the provisions of the Convention because, in the words of the Government, the employment service is organized in a "precarious manner" that undermines its usefulness to employers and workers.

The Committee notes the Government's request for technical assistance from the Office to help it establish a sound basis for applying all of the provisions of the Convention, including in particular a tripartite consultative committee (*Article 4*), a clear link between

the employment service and the national employment policy (*Article 1, paragraph 2*), and a basic network of offices (*Article 3*). It hopes that the Office will be able to provide the needed assistance in the near future. The Committee asks the Government to keep it informed of progress made in applying the Convention.

Libyan Arab Jamahiriya (ratification: 1962)

The Committee notes that the Government's report received in September 2002 does not contain replies to the points raised in the previous comments. The Committee again draws to the Government's attention the following points.

Articles 4 and 5 of the Convention. Please provide full information on the arrangements made through advisory committees for the cooperation of employer and worker representatives in the organization and operation of the employment service and in the development of employment service policy. Please also indicate the number of advisory committees established, how they are constituted, and the procedure adopted for the appointment of employer and worker representatives. Please also include specific examples of the activities of the advisory committees and indicate how their views were taken into account in the organization and operation of employment services, and in formulation of an employment services policy.

Article 6. Please supply information on the organization of the General Manpower Authority, including the role played by the manpower and in-house training offices in facilitating the movement of workers from one country to another with the cooperation of the governments concerned. Please also supply information on measures taken to facilitate occupational mobility, in accordance with paragraph (b), and on the activities of the placement offices to fulfil the duties specified in paragraphs (a), (c), (d) and (e).

Nigeria (ratification: 1961)

In reply to comments made since 1994, the Government indicated in August 2002 that it has made arrangements to encourage full voluntary use of employment service facilities. The Committee notes the significant increase in placements: from 1,144 vacancies registered in 2000 to 7,155 registered in 2001; from 1,662 jobseekers in 2000 to 8,112 in 2001; and from 923 placements in 2000 to 4,881 in 2001. In view of the situation in the labour market, the Committee requests the Government to provide a detailed report on the application of the Convention and recalls the need to ensure the essential duty of the employment service and its adjustment to meet the new requirements of the economy and the working population (*Articles 1 and 3 of the Convention*). The Committee asks the Government to include in its next report any new statistical information published in annual or periodical reports on the number of public employment offices established, applications for employment received, vacancies notified and persons placed in employment by such offices (*Part IV of the report form*).

Sao Tome and Principe (ratification: 1982)

1. In reply to the comments made in 1990, the Government communicated a short statement in June 2002 indicating that the National Council for Social Dialogue (CNCS), created by Act No. 1/99, is consulted on the subject of employment and social security. The Government also indicated that, in the framework of the governmental programme

for the period 2002-05, a Directorate of Public Employment Services will be established within the Ministry of Labour. The Committee hopes that in its next report the Government will provide information on the arrangements made in accordance with *Articles 4 and 5 of the Convention* by the CNCS or the Directorate of Public Employment Services to ensure the cooperation of representatives of employers and workers in the organization and operation of the employment service and in the development of employment service policy.

2. Please indicate the manner in which the employment service is organized and the activities which it performs in order to achieve effectively the objectives and carry out the functions set out in *Article 6* of the Convention.

3. Please also provide the detailed information requested in the report form concerning the effect given to *Articles 7, 8, 9, 10 and 11* of the Convention.

4. *Part IV of the report form.* Please furnish statistical information concerning the number of public employment offices established, the number of applications for employment received, the number of vacancies notified and the number of persons placed in employment by such offices. The Committee recalls that the Office is available to provide the Government with technical advice and assistance for the implementation of a public employment service within the meaning of the Convention.

Sierra Leone (ratification: 1961)

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

The Committee notes from the Government's report that the draft Employment Service Regulations to which the Government has been referring since 1974 have still not been adopted. The Government indicates once again that the question of the adoption of the draft Regulations is still on the agenda of the next meeting of the Joint Consultative Committee.

The Committee reiterates its hope that the new provisions 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*.

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

Turkey (ratification: 1950)

The Committee notes the information contained in the Government's report, received in September 2001, which included comments by the Confederation of Progressive Trade Unions (DISK) and the Turkish Confederation of Employers' Associations (TISK).

In reply to previous comments, the Government indicates that Legislative Decree No. 617 had been promulgated by the Council of Ministers in October 2000. However, the Constitutional Court subsequently held Act No. 4588, which had purportedly given

the Council of Ministers authority to promulgate laws, to be unconstitutional. The Government has therefore submitted a new draft to the Grand Assembly for consideration. The Government further states that employment institutions will be restructured as part of the European Union entry process. TISK considers it important that the bill to restructure the employment services be brought into effect as soon as possible. The Committee notes this information and would appreciate receiving a copy of the new law once it is adopted.

Articles 4 and 5. The Committee notes that no information has been supplied concerning the operation of advisory committees, in particular representation of workers' organizations. It also notes the observation of DISK that in their view *Articles 4 and 5* are not applied. Please supply further information on the application of these Articles.

Article 9. The Committee again requests information concerning the status and conditions of employment service staff.

Article 11. The Committee notes the comments of TISK that the new Turkish Labour Institute is to cooperate closely with private employment agencies. However, DISK states that private employment agencies may charge fees to top-level managers. DISK also fears that private employment agencies may pose a risk of exploitation of workers in the current climate of high unemployment. Please supply full information on arrangements made to secure effective cooperation between the public employment service and private employment agencies not conducted with a view to profit.

The Committee hopes that the abovementioned points will be kept in mind during the restructuring of employment institutions, and would appreciate receiving further information on how the Convention is applied.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Belize, Djibouti, Madagascar, Republic of Moldova.*

Convention No. 90: Night Work of Young Persons (Industry) (Revised), 1948

Paraguay (ratification: 1966)

The Committee notes with regret that the Government has not communicated the requested report concerning its earlier comment.

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 takes 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 hopes that the Government will 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 refers to its comments on the application of Convention No. 79.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Azerbaijan, Belarus, Italy*.

Convention No. 91: Paid Vacations (Seafarers) (Revised), 1949

Requests regarding certain points are being addressed directly to the following States: *Angola, Djibouti*.

Convention No. 92: Accommodation of Crews (Revised), 1949

Algeria (ratification: 1962)

The Committee notes the information in the Government's reports on the application of the Convention from 30 June 1997 to 30 June 2002, including the text of Law No. 98-05 of 26 June 1998 amending the 1976 Maritime Code. It also notes the reports of ship inspections.

Articles 6 to 17 of the Convention

The Committee recalls its comments since 1981 requesting the Government to supply a copy of the implementing legislation for article 446 of the Maritime Code, according to which the Minister sets by Order detailed conditions concerning, inter alia, the installations and fittings for the accommodation of the crew.

It notes with concern that the Government's report in 1999 again states that the implementing text for article 446 on crew accommodation of the 1976 Maritime Code has still not been promulgated. Consequently, the Convention is not fully applied in law.

The Committee calls on the Government to take all necessary action to remedy this situation and to report on the measures taken.

[The Government is asked to report in detail in 2004.]

Iraq (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 been pointing out for several years that while some legislation exists referring in general terms to inspection in the Civil Marine Service and dealing with some specific aspects of working conditions, there appear to be no detailed laws and regulations applying the Convention. The Committee notes that the Government's latest report provides no further elements in response to its previous comments. The Committee recalls that under *Article 3, paragraph 1, of the Convention* a ratifying Member undertakes to maintain laws or regulations which ensure the application of the provisions of Part II (Planning and control of crew accommodation), Part III (Crew accommodation requirements) and Part IV (Application of Convention to existing ships) of the Convention. The Committee again expresses the hope that the Government will take the necessary measures in law and practice to apply the Convention.

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

Liberia (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 comments made since 1990, the Committee noted that while the Government had supplied provisions in relation particularly to the inspection of crew accommodation, there does not appear to be any detailed regulation on crew accommodation as required by Part III of the Convention. The Committee notes from the Government's report that its comments have been forwarded to the Commissioner of the Bureau of Maritime Affairs for handling. The Committee urges the Government to take the necessary measures to apply the Convention and hopes that it will soon report on progress achieved.

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

The Committee also notes the comments made by the Norwegian Union of Marine Engineers (NUME), previously transmitted to the Government for reply, that alleges non-observance by Liberia of Convention No. 92 and Convention No. 133. The Committee asks the Government to provide its response to these comments in its next report.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Azerbaijan, Croatia, Cuba, Cyprus, Luxembourg, Russian Federation, Spain, Ukraine*.

Convention No. 94: Labour Clauses (Public Contracts), 1949*Central African Republic (ratification: 1964)*

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:

With reference to the comments it has been making for a number of years, the Committee notes the statement to the effect that the Government intends to supplement Decrees Nos. 61/135 and 61/137 of 19 August 1961 relating to public contracts for the supply of goods and services, taking into account the Committee's suggestions. Recalling that the Government has been expressing this intention since 1982, the Committee hopes that the Government will be able to adopt these texts in the very near future. In this connection, the Committee emphasizes that in accordance with the provisions of *Article 2, paragraph 1, of the Convention*, the contracts to which the Convention applies shall include clauses guaranteeing to the workers concerned working conditions, and not only wages, which are not less favourable than those established for work of the same character in the trade or industry concerned in the same district. The Committee hopes that the Government will be able to supply the texts adopted with its next report.

With regard to the National Collective Agreement for Public Works and Construction, the Committee requests the Government to supply a copy of this agreement since the copy referred to in its earlier report has not been received.

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

Guinea (ratification: 1966)

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

The Committee notes the information supplied by the Government in its report to the effect that there are no legal or practical difficulties in implementing this Convention. The Committee recalls that States ratifying this Convention undertake, amongst other things, to ensure that contracts awarded by a public authority which involve the employment of workers by the other party to the contract include clauses ensuring for 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 (*Article 2 of the Convention*), and that adequate sanctions are applied for failure to observe and apply such clauses (*Article 5*).

The Committee also notes that the Government again states that enterprises which are awarded public contracts are subject to the provisions of the Labour Code and of sectoral collective agreements. It recalls that the general application of national labour legislation to workers does not release the Government from its obligation to take the necessary steps to ensure the inclusion and application of labour causes, as required by the Convention. The Committee again expresses the hope that the Government will shortly take the necessary measures to ensure that such clauses are included in all the public contracts provided for in *Article 1, paragraph 1(c)*, and thereby give effect to the Convention, on which the Committee has been commenting for several years.

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

Uruguay (ratification: 1954)

The Committee takes note of the Government's report and the attached documentation. It also 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 Government is asked to reply in detail to the present comments in 2003.]

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In addition, requests regarding certain points are being addressed directly to the following States: *Saint Vincent and the Grenadines, United Republic of Tanzania, Uganda*.

Convention No. 95: Protection of Wages, 1949

Argentina (ratification: 1956)

With reference to its observation, the Committee notes the information supplied by the Government.

I. Deferred payment of wages

1. The Committee recalls that in its previous comments it referred to non-compliance with *Article 12(1) of the Convention* which provides that wages must be paid at regular intervals. It pointed out in particular that in some provinces regular payment of the wages of public employees was subject to considerable delay. It took note of the efforts made by the Government to remedy the situation.

2. The Committee notes that, according to the most recent information sent by the Government, the country is undergoing a serious economic and financial crisis, reflected in the lack of external and internal credit, paralysis of banking activity and growth in unemployment. It also notes that to tackle the consequences of the crisis, one of which is payment of wages in instalments, a “Crisis Prevention Procedure” has been implemented which involves compulsory registration of enterprises intending to reduce or suspend staff. The aim of the procedure is to bring to light the real situation of enterprises and to embark on a dialogue with the unions with the Government taking part. According to the Government, complaints of delayed wage payments have been filed by unions in the aeronautical and transport sectors and public employees’ associations in the provinces. The Government indicates that as well as inspections, other ways and means have been sought to secure proper payment of wages by enterprises. They include the signing of agreements with passenger transport companies granting enterprises a special price for fuel provided they ensure job stability; the adoption of a decree extending deadlines for the payment of taxes by small and medium-sized enterprises if they buy inputs essential to production; the creation of a “universal subsidy” for heads of households (men and women) subject to prior registration of the employer in the programme, and of a wage subsidy or supplement to be borne by the employer in order to make up the wage fixed in the corresponding sectoral agreement.

3. The Committee is aware of the grave problems caused by the current economic and financial crisis in the country, which is causing many workers and their families severe hardship. In this context, the Committee notes of the information supplied by the Government’s report on initiatives to protect the wages of workers so that they can receive their wages at regular intervals. The Committee urges the Government to continue taking measures of this type and to provide information on any developments in the situation in its next report.

II. Payment of wages in the form of legal tender issued locally

4. In the information sent to the Office, the Government expresses its concern that workers’ wages are being paid in the form of local legal tender which is valid only in the province issuing it. The Government indicates that the vouchers are to be withdrawn from circulation, in accordance with agreements concluded between the nation and the provinces, once agreements with the international credit institutions have been concluded.

5. The Committee hopes that in the very near future the economic and financial situation will make it possible for the Government to take the necessary steps to ensure that workers in provinces where wages are paid with local legal tender receive their wages in legal tender and not in substitutes therefor, thereby ensuring that full effect is given to *Article 3, paragraph 1*, of the Convention.

III. Benefits to improve the nutrition of workers and their families

6. The Committee recalls that in its previous comments it referred to the problem of benefits granted to workers to improve their nutrition and that of their families. Since the Government does not refer to the matter in the latest information sent to the Office, the Committee is bound to request the Government to provide detailed information on this matter in the light of the comments it made in 2001, including information on whether employers pay social contributions in respect of these benefits.

Central African Republic (ratification: 1960)

The Committee notes the reports sent by the Government. It also 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 Government is asked to reply in detail to the present comments in 2003.]

Colombia (ratification: 1963)

The Committee notes the Government's report responding to the comments made in its last observation. It also notes the new comments sent on 23 August 2002 by the Union of Maritime and River Transport Workers (UNIMAR), to which it will refer below.

1. With regard to its previous observation concerning comments made by the Union of State Workers of Colombia to the effect that the municipality of Popayán owed six months' wages, which affected both serving and retired employees, the Committee notes the Government's statement in its report that, according to the mayor of Popayán, the municipality is now up to date in the payment of wages. The Committee notes this information and once again asks the Government to ensure that the wages of workers employed, at whatever level, in the public administration are paid regularly and at prescribed intervals, as required by *Article 12, paragraph 1, of the Convention*.

2. The Committee takes note of the Government's reply to the comments sent by the World Federation of Trade Unions (WFTU) and the Yumbo subdivision of the National Union of Chemical Industry Workers of Colombia (SINTRAQUIM) alleging non-compliance with the provisions of *Article 12, paragraph 2, of the Convention* (final settlement of wages due) by the enterprises Whitehall Robins Laboratorios Ltd. and American Home Products International.

3. The Government states in this connection that the Ministry of Labour and Social Security, through the Valle del Cauca Territorial Directorate, initiated an investigation into Whitehall Robins Laboratorios Ltd. which concluded that "the mere proposal of a voluntary retirement plan does not amount to conduct which may be deemed to be in breach of the labour standards in force". The Government indicates that the complainants appealed against that ruling. The decision on the appeals, based on the case law of the Supreme Court of Justice, was that "neither the law nor judicial decisions bar employers from promoting retirement plans (...), nor is it true that the offer by employers of money by way of an allowance accepted voluntarily by a worker constitutes per se an act of coercion". The Committee notes the foregoing information and urges the Government to continue to ensure observance of the workers' right laid down in *Article 12, paragraph 2, of the Convention*, with regard to the final settlement of wages due. It hopes that the Government will send information regarding the enterprise American Home Products International and the comments made by SINTRAQUIM.

4. The Committee notes the Government's observations on the comments made by the Union of Public Employees of the Medellín subdivision (SINDESENA) in connection with a recommendation by the Supreme Court of Justice of Colombia to make the corresponding adjustment of the wages. As the Committee understands it, the Government indicates with reference to those comments that, in accordance with Decision No. SU-1052 of 10 August 2000, the Government of Colombia paid in full the wage increase due to employees in the public sector. The Committee takes note of this information and once again urges the Government to take the necessary measures to ensure that the wages of workers in the public service are paid regularly and at the prescribed intervals, as required by *Article 12, paragraph 1, of the Convention*.

5. The Committee also notes the new comments, sent on 23 August 2002, by the Union of Maritime and River Transport Workers (UNIMAR). The Committee notes that the International Labour Office informed the above organization that the matters addressed in its comments had been dealt with by the Committee in an observation, and that the Government's comments were awaited. In its previous observation, the Committee asked the Government to take the necessary steps to ensure payment of the wages due to workers in accordance with the Convention (*Article 11: treatment of*

workers as privileged creditors in the event of bankruptcy or judicial liquidation) and to provide information on them.

6. Under cover of its comments of 23 August 2002, UNIMAR sends a copy of a communication which the Ministry of Labour and Social Security sent to the management of UNIMAR stating that the Ministry of Labour “lacks the authority to enforce labour- and pension-related obligations of enterprises or employers, whether public or private”. The Ministry of Labour goes on to indicate that it forwarded UNIMAR’s request to its General Directorate of Economic Benefits and Supplementary Social Services so that it may “examine its claim to guarantees once the assets have been liquidated”.

7. The Committee notes with regret that the terms of the communication of the Ministry of Labour and Social Security are contrary to section 157 of the Labour Code, as amended in 1990, under which: “Credits payable to workers by way of wages, unemployment and other social benefits and employment allowances belong to class I as established in section 2495 of the Civil Code and shall take precedence over all others.” It is also contrary to section 485 of the Labour Code, under which “supervision of compliance with the provisions of this Code and other social provisions shall be carried out by the Ministry of Labour in the manner prescribed by the Government or by the Ministry itself”. Consequently, the Ministry of Labour and Social Security will plainly be in breach of the provisions of the Labour Code if it fails to adopt the necessary measures to protect the credits of the workers of the Merchant Fleet Investment Company S.A. (formerly Grancolombia Merchant Fleet) in the liquidation procedure. The Committee urges the Government to take the necessary steps to protect the claims (employment and pension) of the above workers, in accordance with the provisions of the Labour Code and the Civil Code and *Article 11* of the Convention. It also urges the Government to inform the International Labour Office of the action taken to this end.

8. Lastly, the Committee recalls that in its previous observation it noted the comments received from the Union of the Administradora de Seguridad Limitada (SINTRACONSEGURIDAD) alleging non-payment of workers’ wages due to closure of the enterprise. The above union indicates that the enterprise known as the Administradora de Seguridad Limitada, established by the Banco Cafetalero, registered with the Ministry of Agriculture, is a mixed economy enterprise. As noted, these comments were transmitted to the Government, which had not sent its comments before the Committee’s meeting. The Committee therefore requests the Government to provide as soon as possible its comments on the allegations made by SINTRACONSEGURIDAD and, in any event, to take the necessary measures to guarantee the payment of wages due to workers in accordance with *Article 11* (payment of the wages of workers in the event of bankruptcy or judicial liquidation).

Congo (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:

Further to its previous observation, the Committee notes the Government’s report and asks the Government to supply further information as required.

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 Ogoué 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.

[The Government is asked to report in detail to the present comments in 2003.]

Costa Rica (ratification: 1960)

With regard to its previous comments, the Committee takes note of the information supplied by the Government in its reports.

1. In its previous observation, the Committee had referred to the comments provided by the Transport Workers' Union of Costa Rica (SICOTRA) and by the Confederation of Workers Rerum Novarum (CTRN), according to which deductions were being made systematically from workers' wages in certain public transport enterprises. It was stated that the owners of the enterprises in question were making these deductions to make up for losses incurred as a result of the malfunctioning of the electronic user registration service or caused by vehicle breakdowns or traffic accidents. The Committee had stated that such practices might be considered to be violations of *Articles 1, 8, 9 and 14 of the Convention*.

2. In reply to these comments, the Government states that the National Directorate and General Inspectorate of Labour states in a report dated 4 August 2002 that a detailed study has been launched into the systems used in public transport systems to reduce margins of error and implement means of educating users in order to reduce and ultimately eliminate the burden of responsibility of drivers. As regards the comments on deductions from workers' wages by the owners of the public transport company, the Government states that the National Directorate and General Inspectorate of Labour has taken note of these actions and will take steps to ensure that the laws, collective agreements and regulations concerning conditions of work and social security are observed.

3. Noting the information supplied by the Government on measures taken in relation to the matters referred to in the comments of SICOTRA and CTRN, the Committee requests the Government to continue to provide information on the results of the initiatives of the National Directorate and General Inspectorate of Labour with a view to ensuring full compliance with national legislation in this area and with the provisions of this Convention with regard to the deductions from wages.

4. The Committee had previously referred to the comments of the CTRN regarding the failure to comply with *Article 12, paragraph 1*, of the Convention (respecting payment at regular intervals). In this regard, the CTRN stated that workers in the road transport sector were paid irregularly. In response to the Committee's request to the Government to provide relevant extracts of official reports and inspection records, the Government has stated that the necessary measures have been taken to ensure that the provisions of the Convention concerning regular payment of wages are observed. The Government refers in particular to the instructions issued by the Ministry of Labour and Social Security to prepare the information requested by the Committee. The Committee once again hopes that the Government will supply with its next report information on the results of the measures adopted to ensure that national legislation and *Article 12, paragraph 1*, of the Convention are observed, supported by extracts from labour inspection reports.

5. As regards the comments made by the Association of Customs Officers (ASEPA) concerning wage stoppages, the Committee takes note of the information that has been supplied to the Committee on Freedom of Association in connection with this matter.

6. *Article 3, paragraph 1*. The Committee had referred to the incompatibility between national law and this Article of the Convention. The Committee recalls that, under the terms of section 165, paragraph 3, of the Labour Code, it is permitted to remunerate coffee plantation workers with any of the items listed as substitutes for legal tender, which is not consistent with this Article of the Convention.

7. The Committee notes that, according to the Government, this has been customary practice in the country for some years, without any significant loss of wages to workers. However, the Government states that, in consultation with the main representative organizations in the coffee-growing sector, legislation is being prepared to reform the current system of payment.

8. In the light of the Government's statement, the Committee's understanding is that, although the practice of paying coffee sector workers with substitutes for legal tender may not entail any significant loss of wages for these workers, it does nevertheless entail some loss of what these workers should receive. The Committee therefore hopes that the Government will take all necessary steps to bring its legislation into line with *Article 3, paragraph 1*, of the Convention, so as to ensure that coffee sector workers are not paid in promissory notes, vouchers, or any other substitute for legal tender. The Committee requests the Government to provide the International Labour Office with relevant information on any progress made in amending section 165 of the Labour Code.

9. *Article 4, paragraph 2*. The Committee recalls that for some years it has requested the Government to adopt the measures needed to give effect to this Article of the Convention. The Committee had noted the fact that the Government had referred to the adoption of the regulations envisaged under section 2 of Decree No. 11324-TSS respecting the valuation of allowances in kind. In its latest report, the Government, citing section 166 of the Labour Code, concludes that the section in question gives effect to *Article 4, paragraph 2*, of the Convention, and that "the implementation of the regulations envisaged under the Decree, which has been cited frequently to date, would be of no benefit". The Committee notes with regret that the Government, by contrast

with its previous position, now considers that section 166 of the Labour Code is sufficient to give effect to *Article 4, paragraph 2*, of the Convention. The Committee must emphasize that the text of section 166 contains no requirement that such allowances in kind be appropriate for the personal use and benefit of the worker and his family or that the value attributed to such allowances be fair and reasonable. Lastly, the Committee hopes that the Government, in reviewing its latest position, will either amend section 166 of the Labour Code to reflect the provisions of this Article of the Convention, or adopt the regulations contained in Decree No. 11324-TSS, as it had previously indicated it would do. The Committee requests the Government to keep the International Labour Office informed of the measures taken to give effect to this Article of the Convention.

[The Government is asked to reply in detail to the present comments in 2003.]

Cyprus (ratification: 1960)

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

The Committee notes the Government's indication that it intended to give effect to the provisions of the Convention through the law transposing Council Directive 91/533/EEC on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship, but this has not been achieved. The Committee wishes to note in this respect that the objective of the above Directive is limited to the obligation of employers to inform workers and that it would not therefore, even if transposed into domestic law, provide a basis for complying with all the provisions of the Convention. Such a transposition would only give partial effect to *Article 14(a) of the Convention*.

The Committee also notes the Government's statement acknowledging the importance of adopting the necessary legislative measures to give effect to the Convention and that it considers them to be one of its priorities. In this respect, the Committee notes that a tripartite technical committee of the Labour Advisory Board is currently examining draft legislation to give effect to the provisions of the Convention and that the above committee is expected to submit a proposal to the Board by the end of this year. The Committee recalls in this respect that the Government had already indicated in its report in 1973 that a similar approach had been initiated. The Committee feels bound to express its continued regret that the work of such a technical committee has not, since that time, resulted in the adoption of a legislative text giving effect to the provisions of the Convention.

The Committee therefore hopes that the Government will take the necessary measures without more ado to give full effect to the provisions of *Article 3* (payment of wages in legal tender), *Article 4* (restrictions on the partial payment of wages in kind), *Article 6* (freedom of workers to dispose of their wages), *Article 8* (restrictions on deductions from wages), *Article 10* (restrictions on the attachment or assignment of wages), *Article 13* (time and place of the payment of wages) and *Article 15(d)* (maintenance of wage records) of the Convention.

[The Government is asked to reply in detail to the present comments in 2003.]

Djibouti (ratification: 1978)

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

Further to its previous observation, the Committee notes the Government's indication that the problem of wage arrears was due to internal political conflicts which prevented the national administration from functioning properly. According to the information supplied by the Government in its report, these difficulties have now been overcome and as a result the Minister of Finance publicly announced in October 2000 that wage arrears would be settled with a first payment to be made before 20 November 2000. The Committee notes, however, that according to a press report, a copy of which was annexed in the Government's report, the settlement of existing wage arrears would only be made possible through foreign financial aid which a neighbouring country was expected to offer. Recalling that in the absence of documented information it is difficult for the Committee to appreciate the nature and scale of the problem, the Committee requests the Government to provide full and up-to-date information on: (i) the actual size of outstanding debts due to wage-earners (number of workers affected, amount of sums owed, length of the delay in payment, number of enterprises concerned); and (ii) the concrete measures taken to improve the present situation, including measures to ensure effective supervision and strict application of penalties to prevent and punish infringements. It also asks the Government to provide a copy of the 1998 Act on Finance referred to in the joint communication of the Labour Union of Djibouti and the General Union of Djibouti Workers (UDT/UGTD) dated 26 April 1998.

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 2003.]

Greece (ratification: 1955)

The Committee notes the information supplied by the Government in response to its previous observation.

Article 4 of the Convention. The Committee recalls that, according to the Government, Act No. 1876/90 provides for wages to be fixed by free collective bargaining in which the State does not intervene. In its last report, the Government indicates that certain collective agreements provide that employers must offer workers, over and above their wages, various allowances in kind additional to, and not counted in, their wages, such as a helmet, a pair of gloves, a work uniform or a daily or weekly amount of food. The Government also indicates that, to date, no collective agreements provide for wages to be paid in kind. It appears obvious to the Committee, however, that such payment could, theoretically, be permitted by collective bargaining. It therefore points out once again that this provision of the Convention requires legislative or regulatory measures to be adopted expressly prohibiting payment of wages totally in kind. Furthermore, where the law does allow part payment of wages in kind, it should at the same time ensure that such allowances bear a fair and reasonable value and are appropriate for the personal use and benefit of the worker and his family, as required by *paragraph 2* of this Article of the Convention. In the Committee's view, measures of this kind are the more important as the Government has itself stated in previous reports that total or partial payment of wages in kind appears still to exist in short-term employment in the agricultural sector. Consequently, the Committee trusts that the Government will be in a position to indicate, in accordance with the intention it has been stating for many

years, the measures envisaged to ensure that this provision of the Convention is implemented by the adoption of laws or regulations.

Article 7. With regard to work stores, the Committee notes that they are operated like other commercial shops but sometimes charge less than market prices, that they serve not only workers, who are free to choose what they purchase there, but all consumers in general. The Committee would point out that, for the provisions of *paragraph 2* of this Article to be applied, legislative or regulatory measures need to be adopted by the competent authority. The Government is therefore asked to send with its next report all the instruments or draft rules governing the operation of work stores that apply or will apply the provisions of this Article of the Convention.

[The Government is asked to reply in detail to the present comments in 2003.]

Islamic Republic of Iran (ratification: 1972)

The Committee notes the observations made by the International Confederation of Free Trade Unions concerning the application of the Convention which were received by the Office on 20 September 2002 and transmitted to the Government on 12 November 2002, as well as the comments made by the World Confederation of Labour on the same subject which were communicated to the Office on 31 October 2002. The Committee hopes the Government will provide, with its next report, detailed information regarding the comments made by the abovementioned organizations as well as on the Committee's previous comments.

Kyrgyzstan (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 (ratification: 1962)

The Committee notes that the Government's report does not fully reply to its previous comments. It must therefore repeat its previous observation which read as follows:

The Committee notes the Government's report and the explanations given in response to the comments made in October 2000 by the International Confederation of Free Trade Unions (ICFTU) concerning the situation of sub-Saharan migrant workers in Libya.

The Committee recalls that, according to the allegations of the ICFTU, thousands of workers from different African countries have been forced to leave the country without receiving the wages owed to them. In its reply, the Government dismisses the allegation that all Africans have been expelled from the country regardless of their situation and states that there are at present thousands of foreign workers, African and others, with valid work authorizations and residence permits in the country. The Government adds that the displacement of some African illegal immigrants was undertaken in full coordination with their respective home countries and that Libya covered all the costs of their repatriation. Moreover, the Government indicates that no complaint has so far been received from any citizen or trade union organization in connection to those allegations and that it would be ready to hear any such complaint and eventually make full restitution in accordance with national laws applicable in this matter. As regards the violent incidents reported in the communication of the ICFTU, the Government considers the news accounts on those events to be grossly exaggerated and in any event unrelated to labour matters.

The Committee notes this information. It hopes that the Government will take all measures with a view to establishing whether any amounts are due to the workers who were expelled, and eventually settling such outstanding payments. The Committee would appreciate receiving further details on the circumstances surrounding the deportation of the foreign workers considered to be illegal immigrants, in particular the levying of money, if any, by the Libyan immigration authorities. In addition, the Committee requests the Government once again to supply full information on the measures taken to ensure the final settlement of wages for the Palestinian workers, other than those with employment permits and formal contracts, on which the Committee has been commenting for many years.

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

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

[The Government is asked to reply in detail to the present comments in 2003.]

Mauritania (ratification: 1961)

The Committee notes the brief report sent by the Government which merely reproduces the information contained in its previous report.

Article 12, paragraph 2, of the Convention. The Committee notes with regret that, although for many years it has been regularly requested to do so, the Government has again failed to provide detailed information on the final settlement of all wages due to the persons expelled from Mauritania following the events of April 1989, the number of workers concerned, and the amounts paid to them. The Committee notes the Government's statement that it will spare no effort to ensure that justice is done for all nationals and foreigners in Mauritania. It observes, however, that the Government does not mention the persons who are no longer in Mauritania, having been expelled.

Referring again to the conclusions adopted by the ILO Governing Body in 1991 following examination of the representation made by the National Confederation of Workers of Senegal under article 24 of the ILO Constitution, the Committee is bound to repeat its previous observations and to urge the Government to inform it of the amounts paid to the workers who suffered from the events of April 1989 and of the number of workers affected. The Committee reminds the Government that it may call upon the technical assistance of the Office.

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

Republic of Moldova (ratification: 1996)

The Committee notes the information provided by the Government in its report. It also notes the discussion in the Committee on the Application of Standards at the 90th Session of the International Labour Conference (June 2002). It notes with satisfaction the adoption of the Wages Act of 14 February 2002, repealing the Act of 25 February 1993 on the same subject. The Committee also notes with interest the adoption of Act No. 140-XV of 10 May 2001 establishing the labour inspectorate. Furthermore, it notes the adoption of Act No. 1071-XV of 23 May 2002 amending and supplementing the Penal Code and the Code of Administrative Offences.

I. Payment of wages in kind

1. *Article 4 of the Convention.* The Committee notes the information contained in the Government's report and the discussion in the Committee on the Application of Standards. During this discussion, the Government stated that the payment of wages in kind in the form of alcoholic drinks, tobacco or narcotic substances was no longer the practice in the country. Certain members of the Conference Committee considered that such a practice, which was common in the country, was contrary to the Convention and that it needed to be combated on an urgent basis through the imposition of appropriate penalties. The Conference Committee requested the Government to implement efficiently the recommendations of the committee set up by the Governing Body under article 24 of the ILO Constitution, adopted by the Governing Body in June 2000, and invited the Government to supply the Committee of Experts with relevant and detailed information on the number and nature of the establishments reported to practice the partial payment of wages in kind in the form of alcoholic drinks, tobacco or any other allowances in kind in violation of the Convention.

2. The Committee notes with satisfaction that, under the terms of section 29(3) of the new Wages Act of 14 February 2002, any payment in kind, whether total or partial, is prohibited and that the payment of a part or whole of the wages in the form of spirits, tobacco or narcotic substances is henceforth explicitly prohibited. It also notes that, according to the Government's report, during the year 2001 and the current year, the inspections carried out have not reported any cases of the replacement of wages by alcoholic drinks or narcotics and that such cases have not been reported by trade union organizations or the workers themselves. The Committee requests the Government to provide information, including statistics, in future reports on the compliance in practice with the new legislation respecting the payment of wages in kind by providing, for example, extracts from official reports, statistics on the number and type of

contraventions reported and any other information relating to the application of the Convention in practice.

II. Wage arrears

3. *Articles 12, paragraph 1, and 15(c).* The Committee notes the Government's report and the discussion in the Committee on the Application of Standards at the 90th Session of the International Labour Conference (June 2002). The Government described the measures that it had taken to resolve the problem of wage arrears which has been chronically affecting the country for several years. It indicated that the total amount of wage arrears had decreased by 26.3 per cent at that time, with a decrease in the average length of the delay in their payment from four months to one month. The Government undertook to use all the means within its power to find a satisfactory solution to this problem. Certain members of the Conference Committee recalled that the problem of wage arrears had come before the Committee repeatedly for several years. They stated that, while the figures provided by the Government representative showed progress, the question remained as to whether any reliable signs of a positive development existed. They called upon the Committee of Experts to compare the figures provided by the Government with the actual situation and indicated that, in certain sectors such as agriculture and food processing, the situation of wage arrears was deteriorating, particularly because of the absence of effective labour inspection services. The Committee on the Application of Standards therefore requested the Government to provide the Committee of Experts with detailed, up-to-date and relevant information on the concrete measures taken to ensure the application of the Convention in practice.

4. In its report, the Government states that, due to the deep-rooted crisis and the situation of insolvency affecting most of the country's enterprises, the phenomenon of the non-payment of wages still persists. It refers to the various legislative measures adopted with a view to organizing and supervising the action taken to reduce the accumulated arrears of wages. The Government also refers to the new provisions contained in the Wages Act, which include giving priority to the payment of wages in relation to other debts (section 28 of the Wages Act), the determination of specific intervals for the payment of wages (section 30), the responsibility of banks and persons in positions of responsibility in the event of the non-payment of wages within the time limits that have been set (section 34) and compensation in the event of the non-payment of wages in due time by means of their compulsory indexation to the consumer price index (section 35). The Government also refers to the establishment, by Act No. 140-XV, of the labour inspectorate with the mission of supervising compliance with labour legislation in publicly or privately owned enterprises, institutions and organizations, irrespective of their legal nature, and in public authorities at the central and local levels (section 1(2)). Finally, it refers to the adoption of Act No. 1071-XV amending and supplementing the Penal Code and the Code of Administrative Offences, which sets out penalties for cases of wilful non-observance of the regular intervals determined for the payment of wages and other payments of a permanent nature.

5. The Government considers that, following the adoption of this series of measures, wage arrears have diminished since October 2000 by 22 per cent and, as of 1 June 2002, amounted to around 370 million lei, of which 126.5 million are in the public budget sector. Of the 370 million lei, some 44.6 per cent represented wage arrears from

the month of May, with the average delay in the payment of wages also having been reduced from 2.1 months in October 2000 to 1.1 months in June 2002. The limit of three months is exceeded only in the agricultural sector.

6. The Committee notes with interest the measures taken by the Government to combat the phenomenon of the non-payment of wages and notes the progress that has been achieved in resolving the problems raised by wage arrears. However, it recalls the concerns expressed by the members of the Committee on the Application of Standards of the International Labour Conference and considers that further efforts should be made to fully resolve the problem of wage arrears. In this respect, the Committee requests the Government to provide additional information on the three-month limit for the payment of wages referred to in its report. The Committee notes that such a limit is not in accordance with the Wages Act, which provides for the periodical payment of wages not less than twice or once a month depending on the type of payment, namely for piece-work or on a monthly basis, respectively (section 30).

7. Furthermore, the Committee notes that section 138(1) of the Penal Code and section 41(2) of the Code of Administrative Offences provide for penalties solely in the event of wilful non-compliance with the regular intervals set out in the law for the payment of wages. The Committee wishes to recall that, under the terms of *Article 15(c)* of the Convention, national laws or regulations have to prescribe adequate penalties for any violation thereof, without any distinction between the wilful or unintentional nature of such violations. By prescribing penalties only in cases of wilful non-compliance with the prescribed intervals for the payment of wages, the provision of the above Codes are not therefore in conformity with this provision of the Convention. The Committee accordingly requests the Government to indicate the measures which are envisaged to ensure that all violations of the legislation giving effect to the Convention are penalized in accordance with the Convention.

8. The Committee hopes that the Government will take all the necessary measures to achieve the full and entire application of the Convention in both national law and practice, and it requests the Government to continue to provide in future reports up-to-date information on the number of workers affected and the number and nature of enterprises in which the payment of wages has been subject to delays since the entry into force of the new legislation on wages and the establishment of the labour inspectorate. The Government is also requested to provide information on the number of violations reported in relation to the payment of wages at the intervals required since the adoption of the above national legislation, the number of complaints investigated and the nature of the penalties imposed under the new regulations in force, including any rulings handed down by the competent courts.

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

[The Government is asked to reply in detail to the present comments in 2003.]

Niger (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:

The Committee notes the Government's report. It also notes with interest the adoption of Order No. 96-039 of 29 June 1996 establishing the Labour Code.

At the same time, the Committee notes with regret that the Government has reported no progress on the observation it has been making for more than 30 years concerning section 206 of Decree No. 67-126/MFP/T of 7 September 1967, which exempts all agricultural, industrial and commercial undertakings from the obligation of paying at regular intervals not exceeding 15 days the wages of workers employed on a daily or weekly basis, and therefore is incompatible with the requirements of *Article 12(1) of the Convention* and needs to be amended. The only progress reported is the indication that the provision in question will be repealed in the context of the elaboration of new regulations following the adoption of the new Labour Code. Recalling that several times in the past the Government had announced that it was planning to repeal this section within the framework of a general revision of the legislation in force, the Committee can only hope that the Government will make every effort to take the necessary action without further delay.

Moreover, the Committee notes the Government's reference to section 158 of the new Labour Code which stipulates that employers may not limit in any manner the freedom of workers to dispose of their wages as they choose. The Government indicates that this new provision aims at better implementing the requirements of the Convention while it renders null and void section 206 of the Decree of 7 September 1967 which, in any event, is no longer applied in practice. In this respect, the Committee feels obliged to observe that, even though section 158 of the new Labour Code seems in principle to give effect to the provision of *Article 6* of the Convention concerning the free disposal of wages, it has little bearing with *Article 12(1)* of the Convention, and thus with section 206 of the abovementioned Decree, which seeks to protect workers against irregular payments and wage arrears by requiring the payment of wages at regular intervals. The Committee asks the Government to include in its next report any information on legislative measures taken or contemplated to ensure that workers employed in agricultural, industrial and commercial undertakings receive their wages at regular intervals in conformity with the relevant provisions of the Convention.

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

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 2003.]

Sudan (ratification: 1970)

The Committee notes the information sent by the Government in its report. It notes with regret that the national legislation has been amended to take account of the comments it has been making for many years. It must therefore request the Government to provide fuller information on the points below, and hopes that specific measures will be taken as swiftly as possible to bring the legislation into conformity with the requirements set by the Convention.

Article 2 of the Convention. The Committee recalls that in its previous comments it noted that section 3(f), (g), (i) and (j) of the 1997 Labour Code excluded the following categories of workers from the scope of the Code: domestic servants; agricultural workers other than those employed in the operation, repair and maintenance of machinery, or in enterprises which process or market agricultural products such as cotton, or in dairy product factories, or in jobs related to the administration of agricultural projects including office work, accountancy, storage, gardening and livestock husbandry; casual workers; any categories of persons excluded totally or

partially from the provisions of the Code by order of the Council of Ministers. Recalling that the Convention applies to all persons to whom wages are paid or payable, the Committee again requests the Government to indicate, in accordance with *paragraph 4* of this provision, the measures taken or envisaged to extend the protection of the new Labour Code to the abovementioned workers or to apply in some other manner the protection afforded to these workers by this Article of the Convention.

The Government indicates in its report that a tripartite committee has been established to study the possibility of bringing certain agricultural workers within the scope of the labour law. The Committee observes that the Government already envisaged such a possibility for these workers in 1994. It hopes that the tripartite committee will soon be in a position to obtain results and afford these workers the protection they are entitled to under the Convention. The Committee also recalls that certain agricultural workers, casual workers and any other categories of workers to whom the Labour Code does not apply, either in part or in full, have for many years been excluded from the national laws and regulations governing wage protection, although the Government has stated time and again its intention to extend such protection to them. The Committee stresses once again that the Convention applies to all persons to whom wages are paid or payable and requests the Government to take all necessary steps to extend to all workers the wage protection afforded by the Convention.

Article 3. The Committee notes the Government's indication in its report that the absence of provisions in the Labour Code does not mean that wages can be paid by means other than cash. The Committee would point out, however, that under this provision of the Convention the payment of wages in the form of promissory notes, vouchers, coupons or in any other form alleged to represent legal tender, must be prohibited. Accordingly, to be consistent with the Convention the national legislation must expressly establish such a prohibition. The Committee requests the Government to take all necessary steps to ensure that effect is given to the Convention in this regard.

Article 4. Recalling that section 35(1) of the Labour Code authorizes payments in cash without prescribing any conditions for such payments, the Committee notes the Government's statement that payments in kind under section 35(1) apply only in establishments that provide housing, food, fuel and uniforms to workers. The Government further indicates that this type of payment is not automatic in all such establishments, and gives assurances that the partial payment of wages in kind in the forms mentioned above is better for workers than cash payments. The Committee notes, however, that the Government's report makes no mention of the draft new regulations on the payment of wages in kind referred to in its previous report. It wishes to point out that, under the Convention, where part payment of wages in kind is allowed in certain industries or occupations, measures must be taken to ensure that such allowances are appropriate for the personal use and benefit of the worker and his/her family and that their value is fair and reasonable (*paragraph 2*). The Committee accordingly asks the Government to take the necessary measures in the very near future to bring the national legislation into line with this provision of the Convention.

Article 6. The Committee notes the Government's statement that it intends to take the Committee's previous observations on this provision of the Convention into consideration in amendments to the Labour Code or regulations issued thereunder. It hopes that the Government will be in a position in the very near future to take the

necessary measures to prohibit employers from limiting in any manner the freedom of workers to dispose of their wages as they see fit.

Article 7. The Committee notes that, according to the Government, works stores are regulated by initiatives of the trade unions within the framework of the legislation on cooperatives. It asks the Government to provide copies of the relevant texts so that it may ascertain whether they comply with the provisions of this Article of the Convention.

Article 8. The Government indicates in its report that the provision of loans is governed by special contracts which establish ways of reimbursement in accordance with the law. The Committee states, however, that the Government's report does not specify, as the Committee requested, the types and extent of deductions from wages prescribed by national legislation, or the manner in which workers are to be informed of the conditions and limits within which deductions may ordinarily be made. The Committee consequently urges the Government to indicate the measures taken or envisaged to ensure that full effect is given to the provisions of this Article.

Article 10. The Committee notes that the Government again refers to section 67 of the Labour Code which offers limited protection from arbitrary or unfair attachment in providing that any contract of employment under which a worker undertakes to assign to his/her employer all or part of his/her remuneration shall be deemed null and void. The Committee must therefore stress that this provision of the Labour Code does not specify the manner and limits within which wages may be attached or assigned, and contains no provision protecting wages from attachment or assignment to the extent necessary for the maintenance of the worker and his/her family. It accordingly asks the Government to indicate the measures taken or envisaged to give effect to this provision of the Convention.

Article 13, paragraph 2. The Government indicates in its report that retail stores and places of amusement are very limited and are to be found only in big cities. The Committee recalls, however, that under this provision of the Convention payment of wages in shops or stores for the retail sale of merchandise and in places of amusement must be prohibited by national laws or regulations, and that there appear to be no provisions prohibiting wage payment in such places except in the cases of persons employed there. The Committee trusts that in its next report the Government will indicate the measures that have been taken or are envisaged to give effect to this Article of the Convention.

Article 14. In its report the Government indicates that under section 28(1) of the Labour Code any contract that exceeds three months in duration shall be made in writing by the employer and shall be written in three copies and signed by the two parties. The Committee recalls that in its last report the Government stated its intention of adopting regulations to ensure that workers engaged under oral employment contracts were informed before entering employment of the wage conditions applying to them and that all workers were informed at the time of each payment of the particulars of their wages. The Committee notes, however, that the Government provides no new information as to the promulgation of this text. Consequently, it points out once again that under this provision of the Convention workers must be informed in an appropriate and easily understandable manner of the conditions in respect of wages under which they are employed, whether by oral or written contract and regardless of the length of the contract. It trusts that the Government will take measures in the very near future

enabling the national laws and regulations to be brought into line with this provision of the Convention, and asks the Government to provide copies of any new regulations adopted to this end.

Article 15(d). The Committee notes that the regulation referred to in section 65 of the Labour Code concerning the wage data of which employers must keep a record has not yet been adopted. It hopes that the Government will be in a position to take the necessary steps to secure its adoption as soon as possible and asks the Government to keep it informed of any developments in this regard.

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

Turkey (ratification: 1961)

The Committee notes the Government's report and the appended submissions from the Turkish Confederation of Employer Associations (TISK), the Confederation of Progressive Trade Unions of Turkey (DISK) and the Confederation of Turkish Trade Unions (TÜRK-İŞ) containing observations on the application of this Convention. The Committee notes with satisfaction the adoption of Act No. 4773 on 9 August 2002 to amend the Labour Code by extending its scope to agricultural and forestry workers. It requests the Government to provide the Office with a copy of the above Act. It also asks the Government to send information in future reports on progress made in applying the Convention to workers in craft trades and small businesses who are not yet covered by the legislation and to all categories of persons to which it plans to extend the wage protection afforded by the Convention, in accordance with *Article 2, paragraph 4, of the Convention*.

I. Non-payment or delayed payment of wages

1. In its comments, appended to the Government's report, the workers' organization, TÜRK-İŞ, raised the same objections to the application of the Convention as in its previous observations, in which it pointed out that employers frequently defer payment of workers' wages and fringe benefits due to financial problems, while in local governments it is widespread practice to delay for months the payment of wages, overtime pay, bonus and other benefits.

2. The workers' organization, DISK, repeats the observations it made last year which the Committee was unable to examine not having received the Government's comments on them. DISK also reports practices such as failure to pay wages and late payment of wages, particularly in the public sector as well as in other sectors. The result is a drop in the value of the wages of those concerned in view of the high inflation rate in Turkey due to the effect of the economic crisis in the country. Furthermore, according to DISK, even the Government, which is supposed to monitor implementation of the Convention and control infringements, is using the economic crisis to gain acceptance of the late payment of the wage increases laid down in public sector collective agreements.

3. The Committee notes with concern that the Government provides no response in its report to either the previous or the latest observations by TÜRK-İŞ and DISK. The Committee recalls that, pursuant to *Article 12* of the Convention, wages must be paid at regular intervals. In the Committee's view, the right to be paid one's wages on time is an essential right arising from the labour relationship, particularly in periods of crisis when

workers and the members of their families rely entirely on income from their wages. The Committee therefore expresses the hope that the Government will take all appropriate steps to solve the problems of non-payment or late payment of wages as soon as possible. The Committee also asks the Government to provide in its next report up-to-date, precise and detailed information on the number of workers affected in the public service and the number and nature of the enterprises in which there are delays in the payment of wages.

II. Deductions from wages for the payment of social contributions and other taxes

4. In the observations it sent in 2000 and 2002 on the application of this Convention, TISK considers that the main factor hindering wage protection in Turkey is the excessive income tax burden, 50 per cent of gross wages being deducted for social contributions and other taxes. In TISK's view, such a system is not compatible with the Convention's objective of protecting wages creating, consequently, a need to reduce permanently – not just temporarily as prescribed by the Employment Promotion Act of April 2002 – the amount deducted from wages for social contributions and income tax.

5. The Government indicates in its report that with the tax legislation reform enacted on 22 July 1998, income tax rates which apply to wages and salaries have been lowered. It further indicates that the Employment Promotion Act grants temporary and partial tax deferment to employers as an incentive to employment.

6. The Committee understands that, under Act No. 4369, income tax rates range from 15 to 40 per cent depending on the level of earnings. It requests the Government to give particulars of the limits placed by the national legislation on all authorized deductions from wages, including sickness and unemployment insurance contributions, and to specify how workers are informed of the conditions under which and the extent to which deductions may be made from their wages, in accordance with *Article 8* of the Convention.

III. Application of the Convention in practice

7. In comments on the application of the Convention, DISK observes that breaches of the law on collective agreements go unpunished as there are no means of redress under which complaints may be filed in such cases. The TÜRK-İŞ, for its part, is of the view that the lack of effective penalties for non-payment or late payment of wages can only encourage practices of this kind.

8. In its observations of 2001 and 2002, TISK asks the Government to provide information on the operation of the inspection machinery, the nature and number of infringements recorded and the penalties imposed.

9. On this last point, the Government indicates that the inspections carried out with a view to ensuring regular payment of wages were continued during the period covered by the report; the number of enterprises fined for non-compliance, inter alia, for non-payment or late payment of wages, was 97 and the total amount of fines charged was approximately TRL300 million in the public sector and TRL5.3 billion in the private sector; and fines for breaches of the Labour Act rose by 56 per cent in 2001 as compared to the previous year.

10. The Committee notes the statistical information supplied by the Government. It points out, however, that according to the DISK, breaches of the obligation to pay wages on time occurred largely in the public sector. According to the information sent by the Government on the practical effect given to the Convention, however, only a small portion of the penalties imposed were in the public sector. The Committee recalls that under *Article 2, paragraph 1*, of the Convention, the latter applies to all persons to whom wages are paid or payable regardless of whether they are employed in the public sector or the private sector. It accordingly asks the Government to indicate the measures taken to give full effect to the Convention both in law and in practice, inter alia, through effective supervision by the labour inspectorate in sectors where problems are noted. In this connection, the Committee observes that the Government's report does not respond to the observation made by DISK to the effect that breaches of the law and collective agreements go unpunished because there are no means of redress allowing complaints to be filed in such circumstances. It requests the Government to send its comments on this point and recalls that the Convention intends that, where rights arising from the Convention are disregarded, the worker should have access to a court or other body established by law in order to secure their enforcement. The Committee trusts that the Government's next report will contain precise and detailed information on the manner in which workers are enabled to assert their rights regarding the protection of their wages.

[The Government is asked to reply in detail to the present comments in 2003.]

Ukraine (ratification: 1961)

The Committee notes the Government's reports and the comments made by the Federation of Trade Unions of Ukraine and Ukrainian Employers' Confederation. It notes the amendments made to section 23 of the Act on labour remuneration which entered into force in July 2002, establishing limits for the payment of wages in kind, which is henceforth only permissible up to a ceiling of 50 per cent of the wage set out in the employment contract, on the understanding that the price of the goods in kind must not exceed their cost price.

Wage arrears in the Voltex company

1. With regard to the comments made previously by the Free Trade Union of the Voltex company concerning the non-payment or the delayed payment of wages in the Voltex silk production industrial complex, the Government indicates that the new management of the factory has adopted practical measures with a view to paying wage arrears. According to the information provided by the Government, wage arrears in 2002 in this factory exceeded 2.17 million grivnas in January and 1.85 million grivnas in July, although the maximum level was reached in April at over 2.78 million grivnas. The company management took the decision to sell property belonging to the enterprise with a view to the payment of the wage arrears and developed a plan for the payment of arrears in accordance with which 0.8 million grivnas in arrears are to be paid before the end of 2002 and the remainder in 2003. The Government adds that over the first seven months of this year dismissed workers received wage arrears amounting in total to 1.08 million grivnas, paid in cash and in kind. The Government also indicates that the payment of current wage arrears takes place, with the agreement of the workers, at the rate of 70 per cent in kind and 30 per cent in cash.

2. The Committee expresses concern at the situation that exists in the Voltex factory, where the problem of the non-payment of wages has persisted now for several years and in which wage arrears have only been reduced very slightly since 2000 at which time they amounted to 2 million grivnas. It recalls that, according to the Free Trade Union of the Voltex company, large proportions of wages are paid in kind and are much lower than the subsistence level.

3. In view of the above, the Committee requests the Government to indicate the conditions under which the payment in kind of 70 per cent of the total arrears took place, and the appropriate measures which have been taken to ensure, in accordance with *Article 4, paragraph 2*, of the Convention, that such allowances in kind are appropriate for the personal use and benefit of the workers and their families and that the value attributed to them is fair and reasonable. Furthermore, while noting the measures adopted with a view to the total payment before the end of 2003 of wage arrears in this enterprise, the Committee requests the Government to continue informing the International Labour Office of developments in the situation with regard to the enterprise Voltex. It also calls upon the Government to take all appropriate measures to ensure that the total amount of unpaid wages due to workers over many years are paid to them in practice as rapidly as possible, also taking into account the fact that the State is a shareholder in this company to a total of 26.22 per cent of its capital.

Developments in the situation with regard to wage arrears

4. In the information brought to its knowledge, the Committee notes that there has been a clear improvement in the problem of arrears in the payment of wages, although the pace of the payment of wage arrears has not yet reached a satisfactory level. As of 1 August 2002, the total amount of wage arrears was 44 per cent lower than the previous year for the same period and the number of workers who had not received their wages on time had been reduced by 45.3 per cent in comparison with the same period in 2001. According to the latest figures available, the total amount of the wage debt was 2,472,100,000 grivnas in August 2002, constituting only a slight improvement from what it was in the month of April 2002, when it amounted to around 2,510,000,000 grivnas. According to the Government, arrears in the payment of wages due for the period between January and June 2002 amounted to 1,030,000,000 grivnas, which represents a fall of 40 per cent in relation to the amount of arrears for the same period in 2001. The number of workers who have not received their wages on time is 2.45 million, which amounts to 20 per cent of the total number of workers in the Ukraine. The Government indicates that, of these workers, 46.4 per cent suffered delays not exceeding three months and that the wage debt has fallen by 29.2 per cent in the public sector and 50.9 per cent in the private sector in relation to the previous period. In comparison with the amount of arrears in July 2001, the reduction in the wage debt, according to the Government's report, concerns all branches of the economy and industry, and all the regions of the country.

5. In this respect, the Ukrainian Employers' Federation considers that since 2001 economic growth has made it possible to achieve a significant reduction in wage arrears in all economic and industrial activities and in all the regions of the country, which has led to considerable progress in the application of the Convention in practice. Wage arrears in the public and private sectors have been reduced, by over 40 per cent and

50 per cent, respectively. Practical measures have also been taken by the Government, the labour inspectorate and the judicial authorities to improve supervision of compliance with the labour legislation. The Employers' Federation believes that joint action by the Government and employers' organizations to resolve the problem of wage arrears and ensure the payment of wages in time are the means to comply with the comments of the Committee of Experts.

6. For its part, the Federation of Trade Unions of Ukraine believes that the problem of the non-payment of wages has not been resolved, at a time when the debts of the state budget have been totally liquidated and the debts of local budgets have fallen by 91.7 per cent. This organization considers that nearly 2.7 million workers are affected by the problem of wage arrears, or 21.7 per cent of the total number of workers. It estimates at 32.9 per cent the proportion of workers who do not receive their wages on time and suffer delays in their payment of over six months, and adds that 40 per cent of the total wage debt concerns wages which remain due for the year 2001.

7. While noting the information provided by the Government and the social partners, the Committee notes that in certain branches of economic activity, such as industry (extraction of coal, lignite and peat) and in certain services, such as health, welfare and education, wage arrears have increased since April 2002. It also notes that the two regions in which wage arrears are the highest, namely Donetsk and Luhanska, are also those in which the reduction in the total amount of arrears was the lowest between July 2001 and August 2002, at 19.9 per cent and 28.1 per cent, respectively, and which have even experienced increases in wage arrears since April 2002. The Committee requests the Government to continue providing detailed information on developments in this situation, and in particular on branches of economic activity and regions of the country in which the rates of wage arrears are the highest.

Monitoring the payment of wage arrears and supervising the application of legislation respecting labour remuneration

8. According to the latest information provided by the Government, the situation with regard to wage arrears is still analysed every month by the State Department for the Supervision of Compliance with Labour Legislation, the results of which are submitted to the Council of Ministers and the Presidential Administration of the Ukraine, as well as the Board of the Ministry of Labour and Social Policy. The capacities of ministerial and local bodies and autonomous government agencies also continue to be used in support of efforts to resolve the problem of wage arrears and they are empowered to examine reports by heads of enterprises. A more in-depth supervision procedure has been established for the 270 enterprises which have accumulated the highest wage arrears.

9. The Government recalls in its reports the machinery established to supervise compliance with the legislation on the payment of wage arrears. It indicates that the national legislation provides for disciplinary, administrative and penal liability in the event of violations of the legislation respecting labour remuneration. During the course of 2001, this machinery enabled the labour inspectorate to supervise around 40,000 enterprises, institutions and organizations and to report over 13,000 heads of establishments for violations of the legislation on labour remuneration and to forward the cases to the competent courts, which handed down penalties totalling around 1.3 million grivnas against the heads of these enterprises. The Government adds that labour

inspectors themselves imposed 5,670 penalties in the form of fines, totalling over 500,000 grivnas, upon heads of enterprises who failed to comply with their injunctions. In overall terms, administrative action has been taken against 19,279 heads of enterprises for violations of the labour legislation in general, or 48.9 per cent of those who were inspected. According to the Government's reports, the number of inspections carried out during the course of 2001 was around 30 per cent higher than for the year 2000. Furthermore, for the same period, the number of court rulings imposing penalties on heads of enterprises, following the reporting of violations by labour inspectors, rose by 97.9 per cent. The amount of the fines imposed in 2001 by the labour inspection services also increased substantially by 97.7 per cent, while the courts handed down 6.5 times as many penalties. The Government also provides figures relating to compliance with labour legislation in the first half of 2002, when inspections of 16,584 enterprises led to 6,724 reports of violations of the legislation respecting labour remuneration and the forwarding of the cases to the competent courts. According to the information provided by the Government, the levels of the penalties imposed by labour inspectors and the courts during the first half of 2002 with a view to ensuring compliance with the legislation on labour remuneration rose substantially in comparison with the figures for 2001. During the first three months of the current year, there was a rise of 64.7 per cent in the fines imposed by labour inspectors and an increase of 26.5 per cent in the penalties imposed by the courts.

10. The Ukrainian Employers' Federation observes that the Government, the labour inspectorate and the judicial authorities have strengthened the application of the legislation respecting the disciplinary, administrative and penal liability of those with political responsibility and of employers for non-compliance with the intervals prescribed for the payment of wages.

11. The Federation of Trade Unions of Ukraine, however, points out that the directives of the Head of State concerning the elimination of the wage debt before the end of 2001 were not given effect to, and that this did not result in severe penalties against the directors of the central and local authorities. The above organization, while noting the increase in the activities of the national labour inspectorate, emphasizes the need to extend its powers and duties with a view to accelerating the payment of wage debts to workers.

12. The Committee notes the progress achieved in the effective supervision of compliance with the legislation on labour remuneration. Nevertheless, it notes with concern the fact that the inspections carried out by labour inspectors found in one case out of three during the course of 2001, and in one case in 2.6 out of 2002, violations of the above legislation. It requests the Government to provide its observations to the International Labour Office on the comments made by the Federation of Trade Unions of Ukraine with regard to the activities of the state supervisory bodies and their results. It also requests the Government to continue providing precise and detailed information on compliance with the national wage legislation, and particularly on the results achieved through the activities of the national labour inspectorate.

13. The Committee notes that certain improvements have been achieved with a view to resolving the problem of wage arrears that the country has been experiencing for a number of years and the reduction by 44 per cent in the amount of wage arrears in comparison with the previous year. In view of the information brought to its knowledge,

the Committee is however bound to express its concern at the persistence of the problem of wage arrears throughout the country and in all sectors of the economy. It notes that in practice, since April 2002, there has been a slowing down in the payment of arrears, and even an increase in arrears in certain sectors since that date. The Committee recalls that sustained efforts and an open dialogue with the social partners are necessary to bring an end to the phenomenon of wage arrears. It therefore urges the Government to continue unceasingly and as a national emergency its action against the disastrous consequences of the problem of wage arrears, which continues to place nearly 2.5 million workers and their families in great hardship in their everyday existence. It also requests the Government to continue to keep it informed of any new developments in this respect.

Legislative developments

14. The Government states in its report that the problem of the payment of wage arrears is under constant supervision by the leaders of the country and that action is being taken at the legislative level. Since the Government's previous report, the Act on labour remuneration has set limits on the payment of wages in kind, which is now only authorized up to the ceiling of 50 per cent of the wage and the allowances paid in kind must be deducted from the wage at a rate which does not exceed the cost price. The Government states that in practice payment in kind is principally found in the forestry and fishing sectors and that the list of goods prohibited for the purposes of payment in kind by Order No. 244 of the Council of Ministers of 3 April 1993 limits the practice of the payment of wages in kind.

15. According to the Federation of Trade Unions of Ukraine, the new provisions respecting the payment of wages in kind differ substantially from those which were in force previously and should result in a reduction in the proportion of wages paid in kind and contribute to increasing the cash income of the population from wages. The Federation notes, however, that the Act respecting the elimination of the debt relating to wages and other forms of remuneration, the objective of which is to accelerate the payment of debts in this field, has been vetoed for the fifth time by the Head of State. It adds that up to now the legislation has not given priority to the payment of wages over other compulsory payments, despite several parliamentary initiatives to this effect. Since September 2001, the Supreme Council of the Ukraine has on three occasions adopted the Act respecting the priority payment of wages but, once again, the Head of State has used his veto to block the promulgation of the text. Nor has the issue of the exceptional payment of wages to workers in the event of the bankruptcy or liquidation of enterprises benefited from a legislative solution, with the result that in such cases, according to the Federation, the workers do not receive the whole of their termination allowances or their wage arrears. In consequence, the Federation of Trade Unions of Ukraine urges the adoption of a law giving priority to the payment of wages, as well as a legislative solution to the issue of the exceptional payment of wages in the event of the bankruptcy or liquidation of enterprises. On this subject, the Federation states that its President, a member of the Supreme Council of the Ukraine, took the initiative of submitting for examination by the Council a Bill providing for the exceptional payment of wages in the event of the bankruptcy or liquidation of enterprises intended to bring the national legislation into conformity with the Convention.

16. In this respect, the Committee recalls that, under the terms of section 31 of the Act respecting the renewed solvency of the debtor or confirmation of bankruptcy, the payment in whole of the debt constituted by the wages is given second place after the acquittal of the debt constituted by the loan and the payment of the expenses of the liquidation procedure. Under the above Act, where the assets of the bankrupt enterprise are insufficient, the wage claims of workers are considered as being settled. As it has done in the past, the Committee is bound to express its concern at this provision which does not give adequate guarantees to workers and would result in their wage claims not being settled in the event of the bankruptcy of enterprises. Furthermore, while noting the comments of the Federation of Trade Unions of Ukraine concerning the Act respecting the priority payment of wages adopted by the Supreme Council of the Ukraine, but vetoed by the Head of State, the Committee urges the Government to take the necessary measures to afford the workers real and effective protection of their wages in the event of the bankruptcy of enterprises, in accordance with the spirit and letter of *Article 11* of the Convention.

Other provisions of the Convention

Article 12, paragraph 1, in conjunction with Article 1 of the Convention. The Committee notes that, by virtue of section 16 of the Act respecting local state administrations, the latter exercise control, each within its area of geographical competence, over the payment of wages on time and in proportions which must not be lower than the amount of the minimum wage in force in the country. The Committee recalls that, in accordance with *Article 1* of the Convention, the term “wages” means remuneration or earnings capable of being expressed in terms of money and fixed by mutual agreement between the parties to the employment relationship or by national laws or regulations. As a consequence, unless the workers have been recruited at the level of the minimum wage, the wage which must be paid to them and to which they are entitled is not the minimum wage, but the wage set out in their contract of employment. The local authorities responsible for compliance with the legislation on the payment of wages therefore have to ensure that the wage that is paid to workers is paid on time and is in practice the wage to which they are entitled, and not only the minimum wage established for the country, unless the latter wage is the wage set out in their contract of employment. The Government is requested to take all the necessary measures to bring this provision of the national legislation into conformity with the Convention.

Zambia (ratification: 1979)

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

Article 12(1) of the Convention. The Committee notes that, in reply to the comments made by the Zambia Congress of Trade Unions (ZCTU) regarding the deferred payment of wages to local council employees, the Government acknowledges the poor financial situation of most councils and indicates that funds are disbursed through the Ministry of Local Government and Housing to support individual efforts.

According to the information supplied by the Government, financial resources were released from the national budget in 1998, 1999 and 2000 for the purpose of assisting local councils to meet their obligations. The Government has also stated that councils have been advised to reduce their labour forces to manageable levels in order to prevent the

reoccurrence of the problem. While taking due note of this information, the Committee finds it difficult to appreciate the actual size of existing debts owed to local council employees, if any, since the Government has not supplied precise figures as to the total amount of wage arrears, or the exact number of employees and local authorities concerned. Neither has the Government specified whether its financial assistance to local councils has practically eliminated, contained, or diminished the extent of the problem.

The Committee hopes that the Government will spare no effort to rapidly put an end to this violation of the Convention and ensure the settlement of any outstanding wage arrears. The Committee considers that the problem of wage arrears calls not only for budgetary measures to redress past debts but also for a sustained application of a wide range of measures such as effective supervision and imposition of appropriate penalties in order to prevent and punish future infringements. It requests the Government to supply detailed information on all relevant measures taken to ensure the regular payment of wages including data showing their results. The Committee would also urge the Government to include information on any decision made by courts of law or other tribunals concerning the question of regular payment of wages. Finally, the Committee would appreciate receiving a copy of the Preferential Claims in Bankruptcy Act No. 9 of 1995 and the Companies Act No. 6 of 1995 to which the Government refers in its 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 2003.]

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In addition, requests regarding certain points are being addressed directly to the following States: *Belarus, Central African Republic, Djibouti, Guinea, Kyrgyzstan, Libyan Arab Jamahiriya, Republic of Moldova, Niger, Nigeria, Sierra Leone, Solomon Islands, Tajikistan, United Republic of Tanzania.*

Convention No. 96: Fee-Charging Employment Agencies (Revised), 1949

Swaziland (ratification: 1981)

The Committee observes the very brief report supplied by the Government in September 2002 and notes again with regret 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 the 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*.

Convention No. 97: Migration for Employment (Revised), 1949

Malaysia

Sabah (ratification: 1964)

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

Article 6, paragraph 1(b). In its previous comments, the Committee drew to 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 its main arguments for introducing the lump-sum system of payment. However, the Government does not give elements of scientific comparison of the benefits which would be awarded according to each system in identical circumstances. In this perspective, the Committee 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.

[The Government is asked to reply in detail to the present comments in 2003.]

Spain (ratification: 1967)

1. The Committee notes the mechanisms established by the Government with a view to implementing its general immigration policy: the creation on 11 May 2000 of the Government Office for Foreign Nationals and Immigration within the Ministry of the Interior, as the body responsible for formulating government policy on affairs relating to foreign nationals and immigration; the establishment on 4 April 2001 of the Higher Council on Immigration Policy, a collegiate body responsible for ensuring coordination and cooperation between the national authorities, the autonomous regions and local authorities; the adaptation as of 4 April 2001 of the Permanent Observatory on Immigration, which analyses and surveys migration trends in Spain and disseminates relevant information; and the restructuring, also in April 2001, of the Forum for the Social Integration of Immigrants, a tripartite government consultative, information and advisory body dealing with all matters of immigration policy. The Committee also notes the agreement of April 2001 approving the General Regulatory and Coordination Programme for affairs relating to foreign nationals and immigration.

2. The Committee understands from the Government's report that there has been no reoccurrence of the acts of violence perpetrated in 2000 in El Ejido. It nevertheless requests the Government to provide information on the activities of all the

abovementioned bodies and on any measures adopted to combat effectively the exploitation of migrant workers, racism and xenophobia.

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

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In addition, requests regarding certain points are being addressed directly to the following States: *Algeria, Belize, Cameroon, China* (Hong Kong Special Administrative Region), *Nigeria, Saint Lucia, Slovenia, Spain, United Republic of Tanzania* (Zanzibar).

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

Belize (ratification: 1983)

The Committee takes note of the Government's report and of the adoption of the Trade Unions and Employers Organizations (Registration, Recognition and Status) Act, Chapter 304, which came into force on 31 December 2000.

Article 1 of the Convention. In its previous observation, the Committee recalled that since 1989 it had been drawing the Government's attention to the need to ensure that workers benefit from adequate protection against anti-union discrimination and it requested that the Government take measures to amend its legislation, given that the monetary penalties did not exert a sufficiently dissuasive effect against acts of anti-union discrimination. The Committee notes with satisfaction that the Trade Unions and Employers Organizations (Registration, Recognition and Status) Act prohibits acts of anti-union discrimination against workers, in taking up employment and in the course of employment, including dismissals, disciplinary measures, termination and any other prejudicial action, provides that in the case of allegations of acts of anti-union discrimination the burden of proof lies on the accused, and provides that the Supreme Court may reinstate the employee, or make any orders it may deem just and equitable, including, without limitation, orders for restoration of benefits and other advantages, and the payment of compensation.

The Committee also takes note of section 44 of the Act, under which any person, who contravenes any provision of the Act for which no penalty is specifically provided, is liable to a maximum fine of \$5,000 or to imprisonment up to a maximum of five years.

Articles 3 and 4. The Committee notes that, under section 22(1) of the Act, a tripartite body appointed by the Minister is responsible for the certification of any trade union for the purpose of negotiating any collective bargaining agreement. However, under paragraph 2 of section 28(1), the tripartite body shall not certify any trade union as the bargaining agent unless the trade union has received 51 per cent of the votes. The Committee recalls that problems may arise when the law stipulates that a trade union must receive the support of more than 50 per cent of the members of a bargaining unit to be recognized as a bargaining agent; a majority union which fails to secure this absolute majority is thus denied the possibility of bargaining. The Committee considers that when no union covers more than 50 per cent of the workers, collective bargaining rights should be granted to all the unions in this unit, at least on behalf of their own members. The Committee requests the Government to take the necessary measures in order to guarantee that the legislation is in conformity with this principle.

Bolivia (ratification: 1973)

The Committee notes the Government's report and observes that it does not contain the information requested in its previous observations.

Articles 1, 2 and 3 of the Convention. The Committee recalls that in its previous observations it noted that Supreme Decree No. 25421, of 11 June 1999, prohibited any anti-union discrimination against workers (in broad terms, that is, not only against trade union leaders), as well as any act of discrimination or interference by employers' organizations in workers' organizations and vice versa, and that infringements of these provisions would be penalized in conformity with the General Labour Act and its related provisions. The Committee had requested the Government to indicate clearly the penalties provided for in the law which would be applicable to such violations and to provide information on the manner in which the system operates in practice. The Committee notes the Government's indication in its report that Legislative Decree No. 38 of 7 February 1944 provides in section 5 that, inter alia, a financial fine of between 1,000 and 5,000 bolivianos may be imposed upon any employer or representative of an employer who directly or indirectly impedes the free exercise of trade union activities. In this respect, the Committee requests the Government to take measures to review the rates of financial fines so that they are of a sufficiently dissuasive nature in respect of acts of anti-union discrimination or interference.

Articles 4 and 6. The Committee notes that the legislation denies the right to organize to public servants. The Committee emphasizes that, in accordance with the Convention, public servants not engaged in the administration of the State must have the right to bargain collectively through their organizations. The Committee requests the Government to take steps to amend its legislation accordingly and to provide information in its next report on any measure adopted to remedy this grave violation of the Convention.

Brazil (ratification: 1952)

The Committee notes the information sent by the Single Confederation of Workers (CUT) in a communication of 10 October 2002, raising questions on the application of the Convention. The Committee requests the Government to send its observations thereon in its next report so that it may examine these questions, as well as other questions pending, at its next meeting.

Colombia (ratification: 1976)

The Committee notes that the Confederation of Workers of Colombia (CTC) has sent comments on the application of the Convention in its communication dated 21 June 2002. In this respect, the Committee requests the Government to provide its observations on these comments with its next report.

The Committee will examine the other questions pending next year in the framework of the regular examination of the application of the Convention.

Comoros (ratification: 1978)

The Committee notes with regret that the Government's report does not reply to its previous comments. It must therefore repeat its earlier direct request, which addressed the following points:

The Committee had noted the information supplied by the Government in its report, the comments made by the Union of Independent Organizations of Comorian Workers (USATC) and the Government's reply thereto.

With reference to its previous comments on the embryonic state of collective bargaining in both the private and public sectors in the country, the Committee noted the information supplied by the Government to the effect that it understood and accepted the importance of trade unionism in the various occupational sectors. The Committee also noted the Government's observation that the Comorian trade union movement was beginning to form and that several meetings had taken place between the Government and the unions which led to the conclusion of memoranda of understanding.

The Committee noted, however, the comments by the USATC to the effect that in Comoros there existed one collective agreement concluded in 1961. There were also a few agreements between sector unions and their respective employers arising out of specific disputes; however, these agreements were generally not effective. The Government replied that the initiative for collective bargaining must come first and foremost from the social partners in the enterprise. It nonetheless hoped that collective bargaining, tripartism and social dialogue would be strengthened once the Higher Council for Labour and Employment (CSTE) was operating effectively. The Government explained in this connection that, despite the adoption of Decree No. 94-047/PM of 3 August 1994 on the organization and operation of the CSTE, the latter was still not operational because the Government had been unable to meet the material and technical costs of organizing its meetings. Noting the Government's statement that it would appreciate assistance from the ILO, the Committee pointed out to the Government that the Office's technical assistance was at the disposal of national authorities and recommended that the Government make the necessary arrangements with the Office.

The Committee notes from the Government's report that, thanks to technical assistance from the Office, the CSTE conducted a revision in September 2001. The Committee can but reiterate the importance it attaches to *Article 4 of the Convention* which

stipulates that, when necessary, measures must be taken to promote the voluntary negotiation of collective agreements between employers' and workers' organizations. It once again asks the Government to keep it informed of the signing of all memoranda of understanding or collective agreements and expresses the hope that the next report of the Government will show that significant progress has been made.

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

Côte d'Ivoire (ratification: 1961)

The Committee notes that the Government's report does not answer its previous comments in full.

Protection from acts of anti-union discrimination. The Committee notes that section 100.5 of the Labour Code provides for sanctions which are an adequate deterrent to acts of anti-union discrimination against trade union officials. The Committee observes, however, that for *workers other than trade union officials*, no sanctions are established for breach of trade union rights in the legislation cited by the Government (neither in section 100.4 of the Labour Code, nor in Decree No. 64-543 of 20 November 1964). The Committee notes that section 3(i) of Decree No. 64-543 merely stipulates that breaches of trade union rights are punished as "category three offences". It therefore asks the Government to provide information in its next report on the exact amount of fines or on any other penalties that may be applicable for such offences and to supply the text of the legal provisions establishing them. The Committee further notes that, according to the Government's report, the new Labour Code will take account of its comments. It therefore hopes that the Government will be in a position to provide the information requested in its next report in order to confirm its statement that there are sufficiently effective and dissuasive sanctions in the case of workers who are not trade union officials.

Cuba (ratification: 1952)

The Committee notes the information supplied by the International Confederation of Free Trade Unions (ICFTU) in a communication of 18 September 2002 raising questions about the application of the Convention. The Committee requests the Government to send its observations thereon in its next report so that the Committee may examine the questions at its next meeting.

Czech Republic (ratification: 1993)

The Committee takes note of the observation of the International Confederation of Free Trade Unions (ICFTU) dated 5 October 2001, and the comments thereon made by the Government.

Practical application. The Committee notes the comments communicated by the ICFTU to the effect that while trade union rights are generally protected by law, in practice there remains anti-union discrimination, acts of interference by certain employers, and acts aimed to obstruct collective bargaining, including in the free trade zones of the country. The ICFTU further holds that while there is legal recourse for victims of anti-union discrimination, the court procedure is generally slow.

The Committee notes that in its comments the Government states that trade unions have recently filed several complaints. Criminal proceedings have been instituted in one case which is monitored by the tripartite partners and the OECD National Contact Point. In addition, the Government informs the Committee that the Council for Economical and Social Agreement (RHSD), which is the highest tripartite body, discussed these matters especially in connection with the enforcement of the law through the supervisory activities of labour offices. As a result of the above, the labour offices pay much more attention to the proper application of the provisions of the labour law on anti-union discrimination.

The Committee notes that the Government has not provided specific comments on the question of the slowness of the proceedings in case of anti-union discrimination or interference and invites it to send such comments in its next report. The Committee wishes to stress the need for specific measures to provide protection to workers against acts of anti-union discrimination, including expeditious proceedings and sufficiently effective and dissuasive sanctions, and asks the Government to provide details on these matters.

Public sector employees. The Committee notes that according to the comments communicated by the ICFTU, the draft Civil Service Act bars public sector employees from collective bargaining. These workers and their unions are offered instead the possibility to sign agreements with the public sector employer concerning some elements of their contract – excluding wages, working conditions and working time – but these agreements are not legally binding.

The Committee notes the Government's comments which admit that while the current legislation in force (Act No. 2/1991) provides for collective bargaining within the public bodies (section 3 subsection 2), the draft Civil Service Act which is currently under discussion in the Czech Parliament and on which ILO experts were consulted, does not guarantee the right to collective bargaining for civil servants (employed in the administration of the State) and provides only for the right of consultation on topics concerning the employment relationship and working conditions of civil servants. According to the Government, the draft Act is justified by the exception stipulated in *Article 6* of the Convention concerning public servants.

The Committee recalls that *Article 6* of the Convention allows to exclude from its scope only public servants engaged in the administration of the State and that the exclusion from the protection offered by the Convention of large categories of workers employed by the State merely on the grounds that they are formally assimilated to public officials engaged in the administration of the State should be avoided. In this respect, a distinction must be drawn between, on the one hand, public servants who by their functions are directly employed in the administration of the State who may be excluded from the scope of the Convention and on the other hand, all other persons employed by the Government, by public enterprises or by autonomous public institutions, who should benefit from the guarantees provided for in the Convention.

The Committee requests the Government to provide in its next report the text of the draft Act and clarifications concerning the scope of collective bargaining and the categories of public servants who do not enjoy this right.

Democratic Republic of the Congo (ratification: 1969)

The Committee notes the information contained in the Government's report. It recalls that its previous comments related to the following points.

Article 1 of the Convention. The Committee had noted that section 228 of the Labour Code (Legislative Order No. 67/310 of 9 August 1967) prohibits the dismissal of or discrimination against workers by reason of trade union membership or participation in trade union activities, but that section 49 of the Labour Code only provides for the payment of compensation in the event that a contract of employment is terminated without due cause. The Committee therefore requested the Government to indicate the protection granted to workers whose contracts are terminated for reasons of trade union membership or activities. In its last report, the Government indicates in this respect that workers benefit from the protection set out in sections 48, 49 and 252 of the Labour Code. In the light of these provisions, the Committee notes that workers whose contract is terminated without due cause may receive compensation. In this respect, the Committee has always considered that legislation which allows the employer in practice to terminate the employment of a worker on condition that he pay the compensation provided for by law in all cases of unjustified dismissal, when the real motive is trade union membership or activity, is inadequate under the terms of *Article 1* of the Convention, the most appropriate measure being reinstatement (see the General Survey of 1994 on freedom of association and collective bargaining, paragraph 220). The Committee therefore once again requests the Government to indicate, firstly, the protection afforded in practice to workers, whose contracts are terminated for reasons of trade union membership or activities and, secondly, to specify the applicable penalties.

Article 2. The Committee had noted that section 229 of the Labour Code obliges employers' and workers' organizations to refrain from any act of interference by each other in their establishment, functioning and administration. In this respect, the Committee once again requests the Government to provide information on the manner in which protection is provided against acts of interference by an individual employer.

Article 4. The Committee had requested the Government to specify the measures adopted to encourage and promote machinery for the negotiation of terms and conditions of employment between the public authorities and workers' organizations, including in public sector enterprises. In its last report, the Government indicates in this respect that it has established a joint commission with the objectives of: (1) examining the social conditions of state employees and officials; (2) examining the problems of these employees that are specific to their services and administrative situations; and (3) regulating trade union activities in the public administration. Finally, the Government adds that public enterprises are under private management and are also governed by the Labour Code. The Committee notes this information and requests the Government to continue to keep it informed in future reports of the measures taken to encourage and promote the negotiation of the terms and conditions of employment between the public authorities and workers' organizations in this sector.

Denmark (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:

1. The Committee had noted the information provided by the Government concerning the negotiation of terms and conditions of employment of foreign seafarers employed aboard Danish ships.

2. In its previous observation, in the context of concerns it had raised regarding section 10 of the Danish International Shipping Register Act (DIS Act) which limits the negotiating power of Danish trade union organizations to residents of Denmark, the Committee took note of the extension of an agreement between Danish shipping federations and seafarers' organizations. This agreement secures the right of Danish unions to represent foreign seafarers for the purpose of collective bargaining in order to ensure that the agreements concluded meet an acceptable international level. The Government in its most recent communication cites developments in this regard, in particular the signing of a new two-year agreement on 13 September 1999 between the social partners. The Government states that this agreement confirms the fundamental principle that Danish labour organizations have a right to be represented at negotiations between Danish shipping companies and foreign organizations to ensure that the results of such negotiations regarding working and living conditions are at an internationally acceptable level. Pursuant to the agreement, a contact committee has been established to develop and extend cooperation between the parties. The Government also refers to a further agreement between the social partners entered into on 25 February 2000 concerning the establishment of collective agreements with foreign unions and individual agreements for foreign seafarers from outside the European Union, which clarifies what is meant by "an internationally acceptable level". The Government states further that the main organizations in the industry and the Government have discussed the issue of the collective agreement provisions in section 10 of the DIS Act, and have confirmed that a common understanding of the administration of the collective agreement provisions in the Act has been achieved through the above-noted agreements. The Committee notes with interest these agreements which appear to promote the voluntary negotiation of terms and conditions of employment of foreign seafarers employed aboard Danish ships. The Committee requests the Government to indicate in its next report the status of these agreements as well as any measures taken or envisaged to bring section 10 of the DIS Act into conformity with the existing practice and into full conformity with *Article 4 of the Convention*.

3. With respect to the Committee's previous comments concerning the application of section 12 of the Conciliation Act, the Committee will address this matter when it receives the Government's full report.

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

Dominican Republic (ratification: 1953)

The Committee notes the information supplied by the International Confederation of Free Trade Unions (ICFTU) in a communication of 30 September 2002 raising questions about the application of the Convention. The Committee requests the Government to send its observations thereon in its next report so that the Committee may examine the questions at its next meeting.

Ethiopia (ratification: 1963)

The Committee notes the Government's report.

Article 2 of the Convention. 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 latest report, the Government indicates that workers' and employers' organizations do not interfere with each other. While taking note of this information, the Committee must once again point out that the legislation contains no specific provisions, coupled with sufficiently effective and dissuasive sanctions, providing for protection against acts of interference. It therefore once again requests the Government to indicate the measures envisaged or taken to give effect to this provision of the Convention.

Articles 4 and 6. The Committee had previously noted that the Constitution of 8 December 1994 granted civil servants the right to organize and to conclude agreements with their employers (article 42). The Government had indicated that legislation granting public servants the right to organize and voluntarily negotiate employment conditions was still under consideration, and that the Federal Civil Service Commission was planning to adopt this legislation in the near future. The Committee notes that according to the Government, there is no further development on this issue. The Committee once again requests the Government to ensure that the above-noted draft legislation grants to all public servants, with the sole possible exception of those engaged in the administration of the State, the right to negotiate voluntarily their terms and conditions of employment. It further requests the Government to keep it informed of any progress made towards the adoption of this legislation.

Fiji (ratification: 1974)

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.

Guatemala (ratification: 1952)

The Committee notes the Government's report. The Committee also notes the comments forwarded with the Government's report by the National Federation of State Workers' Unions of Guatemala (FENASTEG) and the Trade Union Confederation of Guatemala (UNSITRAGUA) on the application of the Convention.

The Committee notes that it has been referring for several years to the lack of any consultation procedure (in the context of collective bargaining in the public sector, regulated by Legislative Decree No. 35-96) to enable trade unions to express their views to the financial authorities so that the latter can take them duly into account in preparing the budget. In this respect, the Committee notes the Government's indication that there

exist direct negotiation procedures for the negotiation of collective accords for public employees and that consultations with employers' and workers' organizations are held in writing, through meetings and other means. In these conditions, the Committee requests the Government to provide fuller information in its next report on the consultation and negotiation procedures covering the terms and conditions of employment of workers in the public sector, and particularly whether sufficient time is given to trade union organizations prior to the discussion of the budget.

In its previous observation, the Committee also referred to the failure to comply with final court decisions ordering the reinstatement in their jobs of workers dismissed for trade union activities. The Committee had requested the Government to take steps to have section 414 of the Penal Code amended to strengthen the penalties for failure to comply with the orders and rulings of the judicial authority (currently punishable by fines, the amounts of which are extremely out of date) so that final decisions imposing penalties for anti-trade union discrimination are effectively complied with. In this respect, the Committee notes the Government's indication that the current legislation empowers the Ministry of Labour to drastically penalize failure to comply with the rulings of labour tribunals and that the Ministry of Labour has initiated a discussion with trade union organizations, employers and jurists, the intended outcome of which is a single procedure to facilitate the processing of labour-related matters and that positive results are expected before the end of the year. The Committee hopes that, as a result of the tripartite debate announced by the Government on this subject, measures will soon be adopted to ensure rapid and effective compliance with judicial decisions ordering the reinstatement in their jobs of workers dismissed for trade union activities and that effective penalties will be established for failure to comply with such decisions. The Committee requests the Government to provide information on the number and nature of the penalties imposed by the Ministry of Labour and/or the judicial authorities for failure to give effect to final decisions ordering reinstatement.

The Committee notes that the Government has not supplied its observations on the comments made by UNSITRAGUA, forwarded with the Government's report, on the slowness of procedures relating to penalties for infringements of the legislation and the processing of complaints relating to violations of trade union rights, the compilation of blacklists by *BDO Platero y Asociados* of unionized workers, the dismissal of trade union leaders of the Ministry of Public Health and Social Assistance, the municipalities of El Tumbador, San Marcos, and San Juan Chamelco (Alta Verapaz), the enterprises ACRICASA and INAPSA, the failure to comply with reinstatement orders issued by the Ministry of Labour for unionized workers dismissed by the enterprise *Corporación Bananera*, and the violation of the right to collective bargaining as a result of the adoption of Governmental Agreement No. 60-2002 of the Ministry of Public Finances. In view of the lack of observations by the Government on the comments of UNSITRAGUA, the Committee: (1) reiterates the comments made in the previous paragraph where it noted certain measures adopted by the Government; recalls that in its previous observation it had noted the existence of draft and preliminary draft legislation intended to overcome the delays and inefficiencies of judicial procedures in cases of anti-union discrimination; and requests the Government to provide information in its next report on whether the above have been adopted and whether it is planned to take any other measures; (2) requests the Government to carry out an investigation into the allegations of anti-trade union discrimination and, if they are found to be true, to take the

necessary compensatory measures; and (3) requests the Government to provide a copy of the Governmental Agreement referred to by UNSITRAGUA.

With regard to the comments made by FENASTEG, forwarded with the Government's report, concerning 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 the Government has not supplied its observations on this matter. In these conditions, the Committee requests the Government to take measures to give full effect to the provisions of *Articles 4 and 6 of the Convention* so as to ensure that public servants who are not engaged in the administration of the State find the necessary support from the budgetary authority in exercising the right to collective bargaining. The Committee recalls in this respect that budgetary powers reserved for the legislative authority should not have the effect of impeding compliance with collective agreements concluded directly by these authorities or on their behalf.

The Committee notes that the International Confederation of Free Trade Unions (ICFTU) made an observation on the application of the Convention in a communication dated 10 January 2002. The ICFTU refers in general terms to: (1) the dismissal of unionized workers and the impossibility of achieving compliance with judicial decisions ordering the reinstatement of these workers in banana enterprises (a subject addressed in the paragraphs above); and (2) the existence of anti-union conduct in enterprises in export processing zones where collective agreements cannot be negotiated and do not exist and where workers who attempt to establish trade unions are physically aggressed by groups organized by enterprises (for example, in the export processing enterprises *Cimatextiles* and *Choi Shin*) and threatened with dismissal. The Committee regrets that the Government has not supplied its comments on these observations. The Committee requests the Government to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations, on the one hand, and workers' organizations, on the other, with a view to the regulation of terms and conditions of employment by means of collective agreements in enterprises in export processing zones and to provide information in its next report on any new collective agreement concluded in this sector. In view of the Government's lack of response to the comments of the ICFTU relating to acts of violence because of the establishment of trade union organizations, the Committee emphasizes in general terms that freedom of association can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of trade unions and it requests the Government to endeavour to ensure compliance with this principle in enterprises in export processing zones and to inform it of any measure adopted in this respect.

With regard to the comments by UNSITRAGUA criticizing the draft Code of Labour Procedure submitted by the authorities, leaving aside the draft on which workers and employers had reached agreement, the Committee is addressing this subject in a direct request in the context of its examination of the application of Convention No. 87.

Finally, the Committee notes that the ICFTU, the General Confederation of Workers of Guatemala (CGTG) and the Guatemalan Union of Workers (UGT) have recently sent observations on the application of the Convention. The Committee requests the Government to supply its comments in this respect.

Guinea (ratification: 1959)

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

The Committee recalls that its previous comments referred to the need for the national legislation to contain specific provisions to protect workers against anti-union discrimination at the time of recruitment and during employment, to protect workers and their organizations against acts of interference by employers, and that these provisions should be accompanied by effective procedures and sufficiently dissuasive sanctions.

The Committee had noted the Government's indication that under the provisions of section 3 of the draft Labour Code, drawn up with ILO technical assistance, no employer may take into account the trade union activity or affiliation of workers in decisions regarding contracts, wages and work organization, termination of employment contracts, etc. In this context, the Committee recalls that by virtue of the provisions of *Article 2 of the Convention*, national legislation should also include provisions aimed at protecting workers' and employers' organizations against any acts of interference by each other, and that it is necessary to provide expressly for legal procedures and sufficiently dissuasive sanctions against acts of anti-trade union discrimination and interference so as to ensure the effective application of *Articles 1 and 2*. The Committee draws the attention of the Government to the availability of further ILO technical assistance concerning these questions, in the process of drafting the new Labour Code, and hopes that this Code will be in full conformity with the provisions of the Convention and will be adopted in the near future. The Committee asks the Government to indicate in its next report progress achieved in this regard.

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

Haiti (ratification: 1957)

The Committee notes with regret that the Government's report has not been received. It is therefore bound to 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 measures in the near future.

Iceland (ratification: 1952)

The Committee notes the comments of the Icelandic Federation of Labour (IFL) concerning the application of the Convention, in particular criticizing Act No. 34/2001. The Committee notes that the IFL has lodged a complaint concerning this legislation before the Committee on Freedom of Association (Case No. 2170). The Committee will examine the matter in the light of the conclusions of the Committee of Freedom of Association.

Indonesia (ratification: 1957)

The Committee notes the information supplied by the International Confederation of Free Trade Unions (ICFTU) in a communication dated 18 September 2002, concerning the application of the Convention. The Committee requests the Government to transmit, with its next report, its observations in this regard so that it may examine these points.

The Committee will also examine at its next meeting the other questions that were raised in its previous observation.

Iraq (ratification: 1962)

The Committee notes the Government's report.

The Committee notes the information supplied by the International Confederation of Free Trade Unions (ICFTU) dated 18 September 2002, concerning the application of the Convention. The Committee requests that the Government transmit its observations in this regard so that it may examine these points at its next meeting.

Articles 1 and 4 of the Convention. The Committee had observed that the Labour Code (No. 71 of 1987) and Act No. 52 of 1987 regarding trade union organizations contain no provisions on the application of *Articles 1 and 4* of the Convention. It notes that, in its latest report, the Government states that measures have been adopted with a view to amending the Labour Code in conformity with *Article 1* and that, with reference to *Article 4*, a new chapter on collective agreements has been introduced in the Labour Code. The Government adds that it will send the relevant texts as soon as they are adopted by the legislature. The Committee expresses the hope that the amendments will be adopted as soon as possible and that they will take into account its comments, so as to introduce into the legislation provisions guaranteeing the protection of workers against all acts of anti-union discrimination, enforceable by sufficiently effective and dissuasive sanctions, and to encourage and promote the full development and utilization of machinery for the voluntary negotiation of collective agreements in the private, mixed and cooperative sectors. The Committee requests the Government to provide the texts mentioned in its report as soon as possible for examination at its next meeting.

Articles 1, 4 and 6. The Committee had also observed that Act No. 150 of 1987 regarding public servants does not contain specific provisions to ensure that the guarantees of the Convention are applied to public employees not engaged in the administration of the State. It notes that, in its latest report, the Government states that public servants enjoy protection against acts of anti-union discrimination and have the right to negotiate their conditions of employment collectively in accordance with the laws and regulations applicable in the enterprises and the institutions in which they

work. The Government states that it will send the relevant laws in due course. The Committee once again requests the Government to supply copies of the laws and regulations applicable to the state and public enterprises and independent public institutions as well as information on the practice followed in the abovementioned establishments (how negotiations are conducted, number of agreements concluded, number of public employees covered, etc.). The Committee requests the Government to provide the texts mentioned in its report for examination at its next meeting.

Japan (ratification: 1953)

The Committee notes the observations of the Japan National Hospital Workers' Union (JNHU/ZEN-IRO) dated 22 August 2001 and 6 August 2002, the Zentoitsu (All United) Workers' Union dated 26 January, 3 June and 24 September 2002 and the International Confederation of Free Trade Unions (ICFTU) dated 31 October 2002. The Committee requests the Government to send its comments on these observations for examination at its next meeting.

The Committee notes the response of the Government to the observation of the Japanese Trade Union Confederation (JTUC-RENGO) dated 15 October 2001 and will examine the questions raised therein at its next meeting.

Other questions raised in the Committee's previous observation will be addressed at its next meeting, in the framework of the regular examination of the Convention.

Kenya (ratification: 1964)

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

1. *Refusal of the right to bargain collectively to public servants not engaged in the administration of the State.* The Committee once again requests the Government to take measures to amend its legislation in the near future and to grant the right of collective bargaining to the above category of public servants.

2. *Registration of the Kenya Civil Servants' Union.* The Committee once again requests the Government to register this trade union.

The Committee requests the Government to keep it informed of any developments relating to the matters raised.

Lesotho (ratification: 1966)

The Committee notes that the Government is preparing detailed comments on the observation submitted by the Congress of Lesotho Trade Unions (COLETU). The Committee hopes that these comments will be received very soon so that it could examine them at its next meeting.

The Committee will also examine at its next meeting the questions raised in its 2001 direct request.

Liberia (ratification: 1962)

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

Articles 1, 2 and 4 of the Convention. The Committee recalls that for many years it has been emphasizing the need for national legislation to guarantee workers adequate protection against anti-union discrimination at the time of recruitment and during the employment relationship, accompanied by sufficiently effective and dissuasive sanctions. The Committee has also stressed that national legislation must ensure adequate protection of workers' organizations, accompanied by sufficiently effective and dissuasive sanctions, against acts of interference by employers and their organizations. Finally, the Committee had noted that the possibility of engaging in collective bargaining was not offered to employees of state enterprises and other authorities since these categories were excluded from the scope of the Labour Code, whereas under *Article 6* of the Convention, only public servants engaged in the administration of the State are not covered by the Convention.

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

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

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

Libyan Arab Jamahiriya (ratification: 1962)

The Committee notes the Government's report and the observation made by the International Confederation of Free Trade Unions on the application of the Convention, dated 18 September 2002. The Committee requests the Government to furnish its comments on these observations.

The Committee notes that, according to the Government's report, the legislation affords adequate protection in accordance with the provisions of the Convention. However, the Government indicates that it will take due account of the Committee's comments and that the measures considered necessary will be taken provided that they are in the interests of the workers.

In view of the Government's statements, the Committee is bound to reiterate its previous comments, which read as follows:

The Committee notes the promulgation of Law No. 23 of 15 December 1998 on trade unions, federations and professional associations.

Article 1 of the Convention. In its previous comments, the Committee had noted that while section 34 of Act No. 107 of 1975 protected workers against acts of anti-union discrimination during the employment relationship, it did not provide such protection *at the time of recruitment*. Moreover, the Committee had noted that public servants not engaged in the administration of the State, agricultural workers and seafarers did not enjoy any protection against acts of anti-union discrimination. The Committee had requested the Government to take appropriate measures as soon as possible as regards these issues.

The Committee once again requests the Government to take the necessary measures to ensure that the legislation protects all workers (including public servants not engaged in the administration of the State, agricultural workers and seafarers) against acts of anti-union discrimination, both at the time of recruitment and during the employment relationship, and that such protection is accompanied by sufficiently dissuasive sanctions.

Article 4. In its previous comments, the Committee had requested the Government to repeal sections 63, 64, 65 and 67 of the Labour Code, which require the clauses of collective agreements to be in conformity with the national economic interest, thus violating the principle of the voluntary negotiation of collective agreements and the autonomy of the bargaining parties. The Committee once again urges the Government to repeal the above sections so as to bring its legislation into conformity with the Convention.

The Committee had also noted that public servants not engaged in the administration of the State, agricultural workers and seafarers did not have the right to bargain collectively, and requested the Government to take the necessary measures. The Government had stated that these workers may belong to trade union organizations, which guarantee them the right to collective bargaining. The Committee requests the Government to indicate in its next report the legislative provisions that grant these workers the right to bargain collectively, and to give examples of collective agreements in force in these sectors.

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

Mauritius (ratification: 1969)

The Committee notes the observation made by the International Confederation of Free Trade Unions (ICFTU) on the application of the Convention, as well as the detailed comments provided by the Government in this regard.

The Committee notes that according to the ICFTU, trade unions and collective bargaining in the export processing zone (EPZ) are non-existent due to the repeated violation of fundamental principles and rights of workers by the employers and the lack of adequate legislative protection against acts of both anti-union discrimination and interference by the employers.

The Government responds by indicating that the Industrial Relations Act, not criticized by the experts as far as protection against anti-union discrimination acts is concerned, applies also in the EPZ and that out of 564 export enterprises, 71 are unionized. The Government recognizes that the rate of unionization is below 10 per cent in the EPZ but states that this rate is 12 per cent in the private sector. The Government states that it is supporting a national study, funded also by the ILO, carried out to better understand the causes of the low rate of unionization in Mauritius and to develop strategies for reinvigoration.

The Committee notes that the Government, referring to ICFTU's allegations regarding the violation of trade union rights, points out the limited number of cases related to anti-union discrimination submitted to the Conciliation and Mediation Division from 2000 to 2001 (ten in total, four withdrawn after the intervention of officers of the Division, four settled following conciliation and two pending). Moreover, the Government indicates that no complaints have been put forward regarding harassment or anti-union dismissal in the EPZ.

Article 2 of the Convention. In its previous observation, the Committee expressed the firm hope that measures would be taken to adopt specific legal provisions in the near future to guarantee effective protection against acts of interference by the employers and their organizations in the activities of workers' organizations and vice versa, and that such protection would be accompanied by effective and sufficiently dissuasive sanctions. The Committee had noted that the relevant authorities were examining the draft Labour Relations Bill and that consideration was given to the observations made by the

Committee of Experts. The Committee requests the Government to pursue its endeavours and keep it informed of any progress in this regard.

Articles 4 and 6. The ICFTU states that the Government sets wage levels in the public sector. The Government underlines that trade union representatives are implicated in the decision process regarding statutory salaries as they sit in, or, are consulted by the different public bodies responsible in this matter: Civil Service Industrial Relations Commission, Civil Service Arbitration Tribunal, Pay Research Bureau, National Tripartite Commission and Central Whitley Council. The Committee recalls that trade union organizations should be able to settle directly with their employers the conditions of employment (including salaries) of civil servants not engaged in the administration of the State through collective agreements. The Committee hopes that this principle will be taken into account in the next version of the Industrial Act and that the recourse to compulsory arbitration in the public sector will be only possible in cases regarding civil servants engaged in the administration of the State.

Given the statement of the Government on the low rate of collective bargaining in the EPZ (“almost non-existent”), the Committee requests the Government to indicate, in its next report, any measures taken to promote collective bargaining and to guarantee the full application of *Article 4* of the Convention in law and in practice in the EPZ.

The Committee requests the Government to keep it informed on all these issues concerning collective bargaining.

Pakistan (ratification: 1952)

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

The Committee had noted the Government’s communication dated 20 October 2001 in reply to the comments made by the All Pakistan Federation of Trade Unions (APFTU) regarding the prohibition or the limitations of trade union and collective bargaining rights in several industries, in which the Government had indicated that employees of autonomous and semi-autonomous bodies and corporations (i.e. banks, railways, WAPDA, telecommunications and other state enterprises) are not civil servants within the meaning of section 2(1)(b) of the Civil Servants Act of 1973, as the terms and conditions of their service are not regulated by the Act. The Government had also indicated that the employees of the abovementioned organizations were declared civil servants for the limited purpose of enabling them to file appeals before the Federal Service Tribunal regarding penalties imposed in disciplinary matters. The Committee recalls that these categories of workers should enjoy the rights enshrined in the Convention and requests the Government to take appropriate measures in this respect. The Committee notes the observations made by the International Confederation of Free Trade Unions (ICFTU) dated 18 September 2002 and by the APFTU dated 11 November 2002 and asks the Government to reply thereto. The Committee notes also the conclusions of the Committee on Freedom of Association in Case No. 2069 (November 2001).

The Committee’s other comments referred to the serious discrepancies between national legislation and the Convention on the following points:

- Denial of free collective bargaining in the public banking and financial sectors (sections 38-A to 38-I of the Industrial Relations Ordinance (IRO), 1969). The

Committee had noted that other categories of workers are 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 Government states that it will provide information on the progress of work of the Commission on banking law review which will examine the questions raised by the Committee. 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 and asks again the Government to take measures in order to bring the legislation in conformity with the Convention.

- Denial of the rights guaranteed by *Articles 1* (protection against anti-union discrimination), *2* (protection against acts of interference), and *4* (right to bargain collectively) of the Convention for workers in export processing zones (section 25 of the Export Processing Zones Authority Ordinance, 1980).

The Government had indicated that it has decided to authorize the Export Processing Zones Authority (EPZA) to participate in the preparation of the labour laws, and that draft laws were being finalized. The Government also had indicated that these laws would meet the requirements of the Convention. The Committee requests once again the Government to provide it with a copy of the draft legislation and to ensure that these workers are very soon provided with all the rights and guarantees enshrined in the Convention.

- Lack of sufficient legislative protection for workers dismissed for their trade union membership or activities (the judgement of the Supreme Court of 11 August 1994 restricts the right to judicial recourse in case of dismissal when it is not connected with an industrial dispute, thus impeding the possibility of reinstatement provided for under section 25-A of the IRO).

The Government simply states in its report that the aggrieved party may go to any other court established for this purpose. The Committee regrets that the Government has not sent enough information in this respect and asks it to take the necessary measures to guarantee an adequate protection.

- Imprisonment, and/or fines in case of use of bank facilities (telephone, etc.) or of carrying on trade union activities during office hours (section 27-B of the Banking Companies Ordinance, 1962, as modified in 1997). The Committee requests the Government to repeal this provision.
- Restricted scope of the legislation of trade union rights (IRO, Civil Servants Act, etc.). The Committee refers to the comments made under Convention No. 87.

Paraguay (ratification: 1966)

The Committee notes the Government's report.

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 in its report 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.

Peru (ratification: 1964)

The Committee notes the communication of 19 September 2002 from the Peruvian Workers' Confederation (CTP) containing comments on the application of the Convention. The Committee requests the Government to send its comments in this respect so that it may examine them at its next meeting.

The Committee notes with interest that a bill (No. 2281) to amend the General Labour Act has been drafted and reflects the comments the Committee has been making for many years. The Committee nonetheless observes that the bill does not ensure the right to collective bargaining of federations and confederations. In this context, the Committee hopes that, if passed, the bill will ensure the right to collective bargaining of second and third level workers' organizations. The Committee asks the Government to provide information in its next report on any developments with regard to legislation.

The Committee will examine the matters raised in its previous observation in the course of its regular examination of the application of the Convention.

Sierra Leone (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.

Slovakia (ratification: 1993)

The Committee notes the observation of the International Confederation of Free Trade Unions (ICFTU) dated 16 November 2001 on the application of the Convention. The Committee requests the Government to send its comments thereon for examination at its next meeting.

Switzerland (ratification: 1999)

The Committee notes the observations of the Union of Swiss Trade Unions (USS) in its communications dated 15 February and 11 October 2002 on the application of the Convention, and requests the Government to supply its comments in this respect.

Turkey (ratification: 1952)

The Committee notes the observations of the Confederation of Progressive Trade Unions of Turkey, the Turkish Confederation of Employers' Associations and the International Confederation of Free Trade Unions (ICFTU). The Committee also notes the adoption of the Public Employees' Trade Unions Act No. 4688.

Articles 1 and 3 of the Convention. The Committee notes that while section 18 of the Public Employees' Trade Unions Act No. 4688 generally provides for a prohibition of acts of anti-union discrimination, this guarantee is not accompanied by sufficiently effective and dissuasive sanctions. In its last report, the Government had indicated, regarding the protection of workers against anti-union discrimination, that a new draft Bill amending Labour Act No. 1475 and Trade Unions Act No. 2821 has been prepared by a commission of experts appointed by the social partners and the Minister of Labour and submitted to the Council of Ministers. The Committee requests the Government to provide a copy of the mentioned draft Bill and to indicate whether the new draft Bill covers public servants not engaged in the administration of the State as concerns the protection against anti-union discrimination.

Article 4. In its previous observation, the Committee noted that the Government had initiated work to amend Acts Nos. 2821 and 2822, and that it had proposed to lift the 10 per cent membership requirement in a given branch of activity for collective bargaining purposes. The Government had indicated that the work on the draft Bills amending these Acts had not been finalized due to continuing consultations with social partners in order to reach a consensus on the questions of dual criteria contained in the legislation for determining the representative status of trade unions for collective bargaining purposes. The Committee also considers that at the enterprise level, if no

union covers more than 50 per cent of the workers, collective bargaining rights should be granted to the unions, at least on behalf of their own members. The Committee expresses the firm hope that the Government will take the necessary measures to ensure the conformity of the draft Bills with the requirements of the Convention and once again requests the Government to provide a copy of the draft Bills amending Acts Nos. 2821 and 2822.

In its previous comments, the Committee had also requested the Government to take the necessary measures to ensure that all workers in export processing zones (EPZs) would enjoy the right to negotiate freely their terms and conditions of employment. The Government had indicated that, regarding the issue of compulsory arbitration in EPZs, the proposed amendment in this regard had yet to be enacted. The Committee notes that, in its report on Convention No. 87, the Government states that an Act adopted by the Parliament on 3 August 2002 (not sent by the Government) has repealed Act No. 3218 on EPZs. The Committee therefore requests the Government to send a copy of the new legislation.

Article 6. The Committee notes from sections 3(a) and 15 of the Public Employees' Trade Unions Act No. 4688 that several categories of public servants are denied the right to organize, and therefore to collective bargaining. The definition of "public employee" in section 3(a) refers only to those who are permanently employed and have finished their trial periods. Section 15 lists a number of public employees (such as lawyers, civilian civil servants at the Ministry of National Defence and the Turkish Armed Forces, employees at penal institutions, etc.) who are prohibited from joining trade unions. The Committee would like to underline 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 (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 262). Furthermore, as concerns armed forces and the police, although they can be excluded from the scope of the Convention, even in these areas it is understood that civilian workers at these institutions should be entitled to fully exercise the rights granted by the Convention as all other workers. The Committee therefore requests the Government to take the necessary measures to amend sections 3(a) and 15 so that public servants, other than those engaged in the administration of the State, are fully ensured the right to collective bargaining in accordance with the Convention.

Furthermore, the Committee requests the Government to provide details on the relationship between the role and functions of the Supreme Administrative Committee, the Institution Administrative Committee and the Public Employees Committee during collective bargaining. The Committee points out that, as concerns the employees of public enterprises and institutions, the public employer, instead of a Committee composed of various authorities, should be able to negotiate directly with the representative unions of a given public enterprise or institution and that the scope of employment conditions to negotiate should not be restricted to the economic conditions mentioned in section 28 of the Law but should also cover all the questions concerning working conditions. In this situation, consultations with budgetary authorities or other public bodies and authorities prior or during the collective bargaining could remain possible.

The Committee requests the Government to keep it informed of any measures taken to ensure the full application of the Convention.

Uganda (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 near future.

Venezuela (ratification: 1968)

The Committee notes the observation of the International Confederation of Free Trade Unions (ICFTU) dated 17 September 2002 on the application of the Convention. The Committee requests the Government to send its comments thereon.

The Committee notes the report of the direct contacts mission carried out in Venezuela in May 2002.

The Committee also notes that a bill to reform the Basic Labour Law, drafted after the abovementioned mission, was submitted to the National Assembly on 7 June 2002. The Committee observes that the bill contains several provisions that take account of the comments that the Committee has been making for many years (particularly providing that where no trade union represents an absolute majority of workers in an enterprise, it can at least negotiate an agreement on behalf of its members; and protection against acts of anti-union discrimination and interference by means of effective sanctions). The Committee requests the Government to provide information in its next report on any developments in the processing of the abovementioned bill.

Lastly, in its previous observation the Committee had noted the comments of the World Confederation of Labour (WCL) raising objections to the Act to reform the judicial authorities, adopted on 26 August 1998, on the grounds that it was in breach of the collective agreement in force in the sector. In this regard, the Committee notes from the report of the direct contacts mission the authorities' statement that: (1) the Act to reform the judiciary never really came into force; and (2) labour relations in the judiciary are currently governed by collective agreements.

[The Government is asked to report in detail in 2003.]

Yugoslavia (ratification: 2000)

The Committee notes the observations supplied by the International Organisation of Employers (IOE) dated 7 October 2002 and by the International Confederation of Free Trade Unions (ICFTU) dated 18 September 2002, concerning the application of the Convention. The Committee requests that the Government transmit its comments in this regard so that it may examine these points at its next meeting.

In addition, the Committee notes the conclusions and recommendations of the Committee on Freedom of Association in Case No. 2146 (March 2002) and requests the Government to transmit information on measures taken in this respect and on the content and application of the Labour Law of 12 December 2001.

The Committee requests the Government to send a detailed report, including the legislation in force, concerning the questions addressed in the Convention.

Zimbabwe (ratification: 1998)

The Committee notes the Government's reports and the discussions in the Conference Committee on the Application of Standards in June 2002. The Committee regrets that the Government did not accept an ILO mission suggested by the Conference Committee on the Application of Standards and that it has not sent the Bill amending certain provisions of the Labour Relations Act. The Committee recalls that its previous

comments concerned the following points which involved serious infringements of the Convention.

1. *Protection of workers' organizations against acts of interference of employers' organizations and vice versa.* The Committee previously noted that sections 7, 8 and 9 of the Labour Relations Act do not ensure comprehensive and specific protection against acts of interference. In order to guarantee the application of *Article 2 of the Convention*, the Committee invited the Government to enact section 10(1) of the Act, which provides for a power of the Minister to prescribe by statutory instruments, the acts or omissions constituting unfair labour practices. The Committee notes that, in its first of the three reports, the Government indicates that it may perhaps be appropriate for the trade unions or any other person to bring to the consideration of the Minister or board the issues or instances which they may wish the Minister to proscribe (prohibit) as unfair labour practices or instances of interference. The Committee further notes the Government's statement in its second report that the Labour Relations Amendment Bill, which is currently pending before Parliament and expected to be adopted later in the year, would address the Committee's concerns on this issue. In its third report, the Government indicates that during the discussion of the Labour Relations Amendment Bill, the issue of comprehensive and specific protection will be considered. The Committee expresses its hope that the Labour Relations Amendment Bill will in fact provide for the comprehensive and specific protection against acts of interference and requests the Government to keep it informed in this regard.

2. *Compulsory arbitration in the context of collective bargaining imposed by the authorities at their own initiative.* The Committee had previously requested to amend sections 98, 99, 100, 106 and 107 of the Labour Relations Act. The Committee notes that, in the first of its three reports, the Government indicates that in the proposed Amendment Bill, sections 98, 99 and 100, and not section 106, are being sought to be repealed. Moreover, as concerns section 98, the Government indicates that under the amendment, this section will provide that before referring a dispute to compulsory arbitration, the labour relations officer shall afford the parties a reasonable opportunity to make representations on the matter. The Committee also notes that in its two last reports, the Government indicates that the new Amendment Bill will address the issues raised by the Committee under *Article 4* of the Convention. Noting the information given by the Government in the first of its reports, the Committee regrets that the amendment of section 106 is not envisaged. In this respect, the Committee once again recalls that compulsory arbitration may only be imposed with respect to public servants engaged in the administration of the State and in case of acute national crisis. As for the proposed amendment of section 98, the Committee notes that the new wording does not change the legal effect of the current section 98, as the labour relations officer will continue to have a discretionary power to refer the parties to compulsory arbitration. Therefore, the Committee once again requests that the Government take the necessary measures in order to amend or repeal sections 98, 99, 100, 106 and 107 so as to bring its legislation into conformity with the principles of voluntary collective bargaining.

3. *Other limitations to the right to collective bargaining.* The Committee had previously considered that section 17(2) of the Labour Relations Act, which provides that regulations made by the Minister prevail over any agreement or arrangement, as well as section 22 of the Act which states that the Minister may, by statutory instrument, fix a maximum wage and the maximum amount that may be payable by way of benefits,

allowances, bonuses or increments, limited the parties' right to collective bargaining and had asked the Government to take measures to amend them. The Committee notes that, in the first of its three reports, the Government indicates that according to the amended section 17(2) of the Bill, the power of the Minister to make regulations which take precedence over any agreement is maintained and will be exercised "in consultations with the appropriate council, if any, appointed in terms of section 19". The Committee notes also that according to section 19, the advisory board "may be constituted on the Minister's own initiative and may consist of any persons that he may deem fit". In these circumstances, the Committee requests the Government to take the necessary measures to amend or repeal section 17(2). As concerns section 22, it is rather unclear from the Government's report, whether the current section 22 will remain. The Committee considers that section 22 of the Act should be amended or repealed.

The Committee regrets that the Government is at least partly disagreeing with the Committee's request to amend sections 25(2), 79 and 81 of the 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 the international labour 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 recalls in this respect 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). The Committee further notes that according to the Government, the new section 25(A) of the Amendment Bill would minimize interference by the authorities as long as the agreements are consistent with national laws by giving a recognition and weight to collective bargaining agreements negotiated by work councils at establishments. The Committee points out that the explanation of the Government on this section does not seem to respond neither to the principle above nor to the previous requests of the Committee. The Committee hopes that serious attention will be given to amending the mentioned provisions and that the new Amendment Bill will limit the powers of the authorities in accordance with the criteria laid down. It furthermore requests the Government to provide the text of the Amendment Bill.

As for section 25(1) of the 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 that this condition does not apply to arrangements reached between employers and trade unions. The Committee underlines that collective bargaining, 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, does not promote collective bargaining as set out in *Article 4* of the Convention, which refers to the development of negotiations between employers or their organizations and workers' organizations. The Committee requests the Government to amend section 25(1) in order to bring the legislation into conformity with the abovementioned principle.

As concerns the workers excluded from the Public Service Act, the Committee notes that some of the workers excluded by section 14 of the Act cannot be considered as workers engaged in the administration of the State (prison staff and employees engaged

in the framework of the Lotteries Act); moreover, certain groups of workers are broadly defined and may potentially include workers not engaged in the administration of the State (section 14(c), (h)). The Committee notes the indication of the Government that these categories of workers do not have recognized organizations or associations representing them and that there are no current laws providing for their right to organize and to collective bargaining. In this respect, the Committee recalls that while *Article 6* of the Convention allows public servants engaged in the administration of the State to be excluded from its scope, other categories should enjoy the guarantees of the Convention and therefore be able to negotiate collectively their conditions of employment (see General Survey, op. cit., paragraph 262). The Committee requests the Government to take the necessary legislative measures in order to ensure that the right to collective bargaining is granted to all public servants, with the sole possible exception of those engaged in the administration of the State. It further requests the Government to keep it informed in this respect.

The Committee also notes the Government's statement that teachers, nurses and other civil servants not directly engaged in the administration of the State negotiate collective agreements and participate in consultations. The Committee asks the Government to indicate the number of collective agreements covering these categories of workers as well as the number of workers covered by such agreements.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Angola, Cambodia, Eritrea, Finland, Gabon, Georgia, Kyrgyzstan, Malawi, Mauritania, Nepal, Nigeria, Rwanda, St. Vincent and the Grenadines, Sao Tome and Principe, Slovenia, Sweden, Tajikistan, Venezuela.*

Information supplied by *Mali* and *South Africa* in answer to a direct request has been noted by the Committee.

Convention No. 99: Minimum Wage Fixing Machinery (Agriculture), 1951

Comoros (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:

See under Convention No. 26.

Grenada (ratification: 1979)

The Committee notes the Government's report. It also notes the adoption of the Employment Act, No. 14, 1999.

Article 1, paragraph 1, of the Convention. The Committee notes that, according to the Government's report, the Labour Code has provisions for minimum wage orders in agriculture and other sectors. The Committee understands that the Government is referring to the Employment Act No. 14 of 1999. It notes that, under section 51 of the Act, wages advisory committees are to be established in the agricultural sector where no arrangements exist for the effective regulation of wages. According to the same provision, the wages advisory committees are to investigate conditions of employment in

the agricultural sector and make recommendations as to the minimum rate of wages which should be payable. The Committee also notes that, in accordance with the procedure laid down in section 52 of the Act, minimum wage orders for the agricultural sector are to be adopted. The Committee understands that the wages advisory committees have been set up and have adopted orders to adjust minimum wages with effect from 1 September 2002. The Committee requests the Government to confirm whether this assertion is so and to send a copy of the abovementioned orders.

Article 3. The Committee notes that according to the Government the minimum wage orders have been updated and the new wage rates took effect on 1 September 2002. The Committee asks the Government to indicate whether the employers' and workers' organizations have been fully involved in the revision process and whether the latter was carried out in the wages advisory committee pursuant to section 51(3) of the Employment Act, in accordance with the Convention.

Article 4, paragraph 2, in conjunction with Part V of the report form. The Committee notes the inspection system set up by the second part of the Employment Act. It requests the Government to specify the measures most appropriate to conditions in agriculture that have been applied for supervision, inspection and the imposition of penalties, in accordance with this provision of the Convention.

Article 5. The Committee requests the Government to give, in its next report, particulars of the arrangements for applying minimum wage fixing procedures in agriculture regarding, inter alia, the occupations and approximate numbers of workers subject to such regulation, the rates of minimum wages set and all other important minimum wage-related measures.

Guinea (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:

See under Convention No. 26.

New Zealand (ratification: 1952)

The Committee takes note of the Government's report and the comments sent by the employers' organization "Business New Zealand". It also notes the discussion that took place in the Application of Standards Committee at the 86th Session of the International Labour Conference, June 1998.

The Committee notes that the applicable regulations on minimum wage fixing procedures are general in scope and apply to all sectors of the economy, including agriculture. In its report, the Government reproduces in substance the information given in the report on Convention No. 26. Regarding agriculture, it points out that under the Employment Relations Act, 2000, which establishes leave for training in employment relations, Agriculture New Zealand has provided training courses on employment relations funded from the ERE Contestable Fund. The Government also indicates that other organizations have been funded to provide this training to rural employers and employees.

Referring to the observations under Convention No. 26, the Committee recalls that, according to previous comments from the New Zealand Council of Trade Unions

(NZCTU), studies conducted by the Government show that breaches of the provisions on minimum wages are common in agriculture.

Article 4 of the Convention and Part III of the report form. While noting the specific characteristics of labour in the agricultural sector, the Committee recalls that, under the Convention, states which ratify it must make such provision for supervision, inspection and sanctions as may be necessary and appropriate to conditions in the agricultural sector. The Committee therefore requests the Government once again to provide detailed information on the conditions in which the Convention is applied in the agricultural sector and, more particularly, to provide available statistics of the numbers and categories of workers employed in this sector and covered by the minimum wage regulations, together with the results of inspections carried out in the agricultural sector, the number of infringements recorded and the penalties imposed.

Turkey (ratification: 1970)

The Committee notes the report provided by the Government, as well as the comments by the Turkish Confederation of Employer Associations (TISK) attached to the report. The Committee notes with interest the adoption, on 9 August 2002, of Act No. 4773 extending the scope, as of 15 March 2003, of Labour Act No. 1475 to cover agricultural and forestry workers. It notes with satisfaction the adoption of Act No. 4421, which entered into force on 1 August 2002, increasing twelvefold the fines initially prescribed in the Labour Act No. 1475.

1. *Article 1 of the Convention.* The Committee notes the comments made by the TISK, on the effects of the adoption of Act No. 4773 extending the scope of the Labour Act No. 1475 to workers employed in agricultural enterprises with over 50 employees. According to TISK, the inclusion of agricultural workers within the scope of the Labour Act has drawbacks due to the characteristics of the sector and the social structure. TISK considers that this Act is contrary to the basic principles of social law in so far as it requires the adoption of separate regulations covering, among other areas, working conditions, service contracts and wages. TISK also considers that, with a view to increasing employment levels, the minimum wage should only be applied to workers aged 20 years and over, and not 16 years as provided for under the current law, and that enterprises in which collective agreements are applicable should be exempted from the provisions. Also according to TISK, taxes on the minimum wage should be reduced and a common system of minimum wages established for the public and the private sectors.

2. The Committee notes that the report provided by the Government does not contain information relating to the comments made by TISK and requests it to provide its observations thereon with its next report. The Committee also requests the Government to indicate whether the adoption of the above Act arose from consultation with the most representative organizations of employers and workers concerned, in accordance with *paragraph 2* of this provision of the Convention. Furthermore, the Committee wonders whether in practice the threshold of 50 workers, above which minimum wage provisions become applicable to agricultural and forestry workers, will actually permit a large number of workers in these two sectors to benefit from the minimum wage provisions. In this respect, it requests the Government as from March 2003, to provide statistical data on the number of workers covered by the protection afforded by the Labour Act, as amended.

3. *Article 3, paragraphs 2 and 3.* The Committee notes the Government's response to the previous comments made by TISK, and particularly the fact that the comments made by this organization were discussed in the tripartite minimum wage fixing committees and that certain of them were included in the recommendations made by these committees, which were published in the *Official Gazette*.

4. The Committee further notes the Government's indication that the work of revising the minimum wage fixing regulations is still continuing and that a working group, including representatives of employers' and workers' organizations, has been established for this purpose by the above committees. The Committee requests the Government to indicate whether all the most representative organizations have participated or are participating in the activities of this working group.

5. *Article 4, paragraph 1, and Article 5.* The Committee notes that, by virtue of Act No. 4421, which entered into force on 1 August 2002, the fines initially prescribed by the Labour Act No. 1475 have been increased twelvefold. It also notes that, according to the Government, the implementation of Act No. 4421 will undoubtedly result in the scope of inspections being broadened. The Committee requests the Government in this respect to provide information with its next report on the number and results of the inspections carried out in the agricultural and forestry sectors with a view to ensuring, by means of measures appropriate to the conditions obtained in these sectors, that the wages actually paid are not lower than the applicable minimum rates.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Djibouti, Papua New Guinea, Sierra Leone, Tunisia*.

Convention No. 100: Equal Remuneration, 1951

Angola (ratification: 1976)

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

1. The Committee notes the enactment of the General Labour Act, No. 2/00 of 11 February 2000. It notes with interest that section 162(1) of the Act defines remuneration broadly in general conformity with *Article 1(a) of the Convention*.

2. The Committee further notes with interest that section 264 of the Act requires employers to ensure that workers receive equal remuneration for equal work or work of equal value, subject to the worker's skills and output. Chapter XI(I) of the Act contains provisions relating specifically to the employment of women, including section 268(2)(d), which establishes the right of women workers to receive equal remuneration for equal work or for work of equal value. Subsection 3(b) of section 268 defines work of equal value as "work carried out for the same employer, when the tasks performed, albeit of different natures, are determined to be equivalent through the application of objective job evaluation criteria". In the Committee's view, the incorporation of the principle of equal value and objective job evaluation criteria in national legislation are very positive developments in the application of the Convention. The Committee hopes that the Government will undertake activities to raise awareness and understanding among workers, employers, labour inspectors and other enforcement officers regarding the new equal pay process. It also expresses the hope that the Government will endeavour to promote the principle of equal remuneration for men and women to cases extending beyond those employed by the same

employer, wherever wages are set more broadly, for example, at the sector level. In applying the principle of the Convention by means appropriate to the methods in operation for determining rates of remuneration, the reach of the comparison between jobs should be as wide as allowed by the level at which wage policies, systems and structures are coordinated (see General Survey on equal remuneration, ILO, 1988, paragraph 22).

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

Bulgaria (ratification: 1955)

The Committee notes that the Labour Code amendments of 2001 (Labour Code (Amendments and Additions) Act, Decree No. 44, 12 March 2001) introduced new article 243 in the Labour Code, which contains the “right to equal remuneration for the same or equivalent work” and applies that right “to all payments arising in respect of employment”. In its previous direct request, the Committee had noted that the amendment introduced in the National Assembly by Council of Ministers’ Decision No. 484/10 of July 2000 was framed in such terms as to provide for men and women to receive equal pay for work of equal value. The Committee recalls, as it noted in paragraph 19 of its 1986 General Survey, that the obligations arising from *Article 1 of the Convention* “go beyond a reference to ‘the same’ or ‘similar’ work”, and extend to work “of equal value”, which requires a broader comparison of jobs. The Committee expresses its concern over the adoption of this restricted approach in legislation. It must underscore the importance of ensuring that women who undertake different work from men but work that is of equal value, based on objective job appraisals using criteria, such as responsibility, skill, effort and working conditions be paid equal remuneration. It must also draw attention to the important role that legislation plays in implementing the Convention and the importance of it being in conformity with the Convention. The Committee therefore asks the Government to indicate the manner in which it intends to bring its laws in conformity with *Article 1* of the Convention.

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

Cameroon (ratification: 1970)

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

Czech Republic (ratification: 1993)

1. The Committee notes the comments submitted by the International Confederation of Free Trade Unions (ICFTU) on 5 October 2001 as well as the Government's reply of 7 December 2001. The ICFTU alleges that national legislation is not in conformity with the Convention as it requires only that women receive equal pay for performing the same work. The ICFTU also states that the salaries of women are approximately 30 per cent lower than those of men and that women are disproportionately over-represented in lower remunerated jobs and under-represented in senior positions. The Committee takes note of the Government's reply that Act No. 1/1992 on wages and Act No. 143/1992 on salaries have been amended by Act No. 217/2000, which explicitly states that men and women shall receive equal wages or salary for equal work and for work of equal value. The Committee recalls that, in its previous observation, it welcomed these legislative changes requiring payment of equal remuneration for men and women for equal work and work of equal value. Noting, however, that progress still has to be made in reducing the 30 per cent wage gap between men and women, the Committee asks the Government to provide information on the implementation of the provisions of the Labour Code and the relevant Acts regulating remuneration in the public and in the private sectors and on the progress made in the application of the principle in practice.

2. The Committee notes the adoption of Act No. 218/2002 of 26 April 2002 (Civil Service Act). Pending further translation of the Civil Service Act, the Committee will examine the conformity of the Act with the Convention at its next session.

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

Denmark (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 with interest the adoption on 30 May 2000 of an Act on Equality between Women and Men (Act No. 388) aimed at mainstreaming the principle of equality into statutory form as a basic element in the promotion of equality. It notes from the Government's report that the new Act replaces the Equal Status Council with a three-tiered structure comprising of the Minister of Equality, a research and documentation centre on equality (the Knowledge Centre) and an independent body known as the Equal Status Board. In this respect, the Committee notes that the Minister is responsible for mainstreaming gender issues and for devising and implementing action plans to promote equality generally, as well as for coordinating the work of other ministries in this area. The Equal Status Board is responsible for the handling of all gender discrimination complaints with the exception of those cases which fall under the industrial system. Thus, the Board only deals with complaints from organized employees if the employee can prove that his or her union will not take up the complaint and in this way acts as a safety net. It notes also that the Board can monitor the application of the new Equality Act, the Equal Treatment Act and the Equal

Remuneration Act and can award compensation for violations. The Committee asks the Government to provide information in its next report on the implementation of Act No. 388, including the work of the Minister for Equality, the Knowledge Centre and the Equal Status Board, relevant to the promotion of equal pay for work of equal value.

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

Dominican Republic (ratification: 1953)

The Committee notes the information provided by the Government in its report, including the statistical data. The Committee also notes the comments sent by the International Confederation of Free Trade Unions (ICFTU) on matters related to the application of the Convention, received by the Office on 4 October 2002, which have been forwarded to the Government so that it can make its observations thereon. The Committee will examine the Government's report, ICFTU comments and any additional information received at its next session.

El Salvador (ratification: 2000)

The Committee notes the information provided by the Government in its first report. It also notes a communication from the Inter-Union Commission (CATS-CTD-CGT-CTS-CSTS-CUTS), dated 12 September 2002, raising questions relating to the application of the Convention. The above communication has been forwarded to the Government so that it can make its comments on the matters raised therein. The Committee will examine the Inter-Union Commission's communication at its next session, together with any comments provided by the Government, and the information contained in the first report.

France (ratification: 1953)

1. The Committee notes the numerous initiatives that the Government is continuing to take to promote equality between men and women, including the adoption of new legislation. The Committee notes with interest the amendments to the Labour Code adopted on 16 November 2001 by Act No. 2001-1066 to Combat Discrimination, and in particular section 6, amending section L.140-8 of the Labour Code, respecting the burden of proof in equal remuneration cases. The Committee notes that when a worker presents facts from which it may be presumed that discrimination has occurred, it shall be for the defendant to prove that there has been no breach of the principle of equal remuneration for men and women workers for work of equal value. The Committee also notes that new sections L.122-45 and L.122-45-2 of the Labour Code introduce the possibility for trade unions to submit equal remuneration complaints on behalf of alleged victims.

2. The Committee notes with interest the adoption on 9 May 2001 of Act No. 2001-397 on Occupational Equality between Men and Women, in particular, section 1 amending section L.432-3-1 of the Labour Code respecting the annual report which shall enable a comparison to be carried out of the general working conditions and training of men and women in an enterprise. It further notes that under the terms of Decree No. 2000-832 of 12 September 2000 the annual report shall include the following statistical information disaggregated by sex with respect to equal remuneration: the wage

range; the average monthly wage; and the number of women workers in the ten highest wage grades. It also notes that the information contained in the report must include indicators permitting an analysis to be carried out of the situation with regard to equal remuneration for men and women workers for work of equal value and that it must show the progress achieved in redressing the wage gap. The Committee asks the Government to provide information on these reports and, if possible, copies and information on the impact of these new measures on reducing the remuneration gap between men and women workers.

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

Gabon (ratification: 1961)

The Committee notes with regret that the Government's report does not contain a reply to its previous comments. For a number of years, the Committee has been pointing out that the principle of equal remuneration set out in section 140 of the Labour Code is narrower than the principle laid down in the Convention. The Committee recalls that the reference to work of equal value laid down in the Convention inevitably broadens the comparison, since it implies that jobs of a different nature must be compared in terms of equal value for the purposes of remuneration. It hopes that the Government will endeavour to amend this provision, at an appropriate time, to bring it into conformity with the principle set out in the Convention.

The Committee hopes that the Government will provide information on the rulings handed down by the courts, as well as statistics derived from reports of the inspection services and other sources showing the application in practice of the principle of equal remuneration for work of equal value. It is aware of the difficulties experienced by the Government in providing full statistics on the subject and suggests that it may be appropriate to request the technical assistance of the ILO.

The Committee hopes that the Government's next report will contain full information on the matters raised in its previous direct request, which is repeated this year.

Guatemala (ratification: 1961)

The Committee notes the information in the Government's report including statistical data provided by the General Labour Inspectorate and comments from the Union of Workers of Guatemala (UNSITRAGUA) on matters relating to the application of the Convention. It also notes the comments sent to the Office by the International Confederation of Free Trade Unions (ICFTU) which were forwarded to the Government on 28 January 2002. The Office has not as yet received any reply thereto.

1. The Committee notes that, according to the ICFTU, women suffer obvious discrimination in employment. The ICFTU asserts that women are concentrated in the informal sector and have a low participation rate in high-level jobs; that there is sectoral gender segregation; and that women's status in the export processing industry is precarious. The ICFTU also indicates that women earn between 20 and 40 per cent less than men.

2. In its previous comments, the Committee again asked the Government to indicate whether it was considering the possibility of giving effect in law to the principle of equal remuneration for men and women for work of equal value. The Committee regrets to note that the Government once again repeats its previous comments to the effect that section 89 of the Labour Code and article 102 of the Political Constitution of the Republic of Guatemala are the provisions which give effect to the Convention. The Committee draws the Government's attention to the fact that the above provisions do not include the notion of work of "equal value"; nor do they provide for a comparison of work done for different employers. It again points out that the Convention is intended to prevent work in sectors deemed typically "female" from being undervalued due to gender-based social stereotypes. Noting in this context the information provided in the comments sent by UNSITRAGUA on the reform of the Labour Code, the Committee urges the Government to take the necessary steps to give effect in law to the provisions of the Convention in order to eliminate the wage differential between men and women for work of equal value and occupational segregation.

3. In its previous comments the Committee asked the Government to provide information on the methodology used for job appraisal. The Committee notes that, other than the indication that sex is not a criterion in fixing or negotiating wages, the Government's report contains no detailed reply on the use of a job appraisal methodology which allows objective and analytical measurement and comparison of the relative value of tasks undertaken so that effect can be given to the Convention. As the Committee pointed out in paragraph 255 of its General Survey on equal remuneration, 1986, the reference in the Convention to equal remuneration for men and women workers for "work of equal value" inevitably broadens the field of comparison since jobs of a different nature have to be compared in terms of equal value. Accordingly, it is important that the comparison should not take into account directly or indirectly the criterion of gender but, rather, objective criteria such as professional qualifications, responsibility, physical or mental effort or the working environment. The Committee trusts that in its next report the Government will provide information on any measures taken or envisaged regarding the use of methodologies for job appraisal.

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

Haiti (ratification: 1958)

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

Iceland (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 notes with interest the adoption of the Act on Equal Status and Equal Rights of Women and Men (Act No. 96/2000), which came into effect on 6 June 2000 and is aimed at establishing and maintaining equal status and equal opportunities for women and men in all spheres of society. Section 14 of the Act specifically provides that women and men who are employed by the same employer shall receive equal pay and enjoy equal terms for comparable work of equal value. The Act defines pay as general remuneration for work done and includes both direct and indirect payments and benefits, which are to be determined in the same manner for women and men and to be based on criteria free from gender discrimination. The Committee notes that in regard to implementation of the Act, the Minister of Social Affairs will have overall responsibility, through an Equal Status Bureau to monitor compliance with the Act. It notes also that the Act establishes a consultative body to submit proposals to improve equality in the labour market and in other spheres – the Equal Status Council – and a Complaints Committee on Equal Status to consider allegations of violation of the Act. The Committee asks the Government to provide information in its next report on the implementation of Act No. 96/2000, including the work of the Bureau, the Council and the Complaints Committee in promoting equal pay for work of equal value.

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

India (ratification: 1958)

The Committee notes the information contained in the Government's report as well as the comments from the International Confederation of Free Trade Unions (ICFTU) received on 11 June 2002.

The Committee notes that, aside from indicating that no complaints have been received on the matter, the Government's report contains virtually no reply to its previous comment on the observations of the National Front of Indian Trade Unions (NFITU), which alleged that the principle of equal remuneration for men and women workers for work of equal value is not respected in the informal and unorganized sectors. It further notes the comments of the ICFTU claiming widespread contraventions of the principle of the Convention. In spite of the existence of the Equal Remuneration Act, 1976, the ICFTU points out that wage gaps between men and women persist across all sectors. The ICFTU further maintains that, although the Government has included policies and programmes to achieve the empowerment of women in its Ninth Plan, these have been criticized as superficial: much room for further action remains, particularly in traditional industries. In this regard, the Committee notes the Government's indication that under the Equal Remuneration Act a Central Advisory Committee has been set up which oversees the implementation of the provisions of the Equal Remuneration Act and advises the Government with respect to the creation of employment opportunities for women workers. It also notes that, according to the statistics attached to the Government's report, 4,285 inspections were carried out in 2001. Referring to its previous comments on the observations of the NFITU, the Committee asks the Government to provide statistical data on the inspections carried out in the informal and unorganized sectors to enforce India's equal pay legislation. It also asks the Government to supply a copy of its Ninth Plan and to provide information on the implementation of the policies contained therein to reduce the wage disparity between men and women.

The Committee is addressing a request directly to the Government in respect of other matters.

Japan (ratification: 1967)

1. The Committee notes the Government's report and the attached documentation, as well as a communication dated 31 October 2002 received from the International Confederation of Free Trade Unions (ICFTU), which has been sent to the Government for comment. It recalls the observations received from the Japanese Trade Union Confederation (RENGO), the Japanese National Hospital Workers' Union (JNHWU), JNHWU's Tokyo District Council, the Fukuoka Women's Association Union, and the joint communication from the Community Union's National Network, the Edogawa Union, the Nagoya Fureai Union, the Senshu Union, and the Ohdate Labour Union concerning the application of the Convention in respect to non-regular employees, including part-time workers and wage-based staff. The Committee also recalls the observations received from the Nomura Securities Labour Union, as well as the joint communication received from the Zensekiyu Showa Shell Union, the Shiba Credit Bank Employees' Union, the Tokyo Union, the Women's Labour Union and the Shonai Economic Federation Labour Union alleging that career tracking systems are being used by companies to discriminate against women in respect to wages and promotions.

2. Recalling that the promotion of equality of men and women in society in general is essential for the full application of the Convention, the Committee notes the Basic Act for a gender-equal society (Act No. 78) of 1999. The purpose of the Act is to promote equal opportunities for women and men to participate as equal partners in all areas of society, including workplaces, schools and at home. The Committee notes that under the Act the Government is to draw up and implement a basic plan for gender equality and to establish a council for gender equality within the Prime Minister's Office. The Committee asks the Government to provide information on the Act's implementation, including on the manner in which the principle of equal remuneration for women and men for work of equal value is being taken into consideration in the development and implementation of policies and programmes to promote gender equality. Further, the Committee wishes to recall that neither the Labour Standards Act nor the Equal Employment Opportunity Act fully reflects the principle of equal remuneration for women and men for work of equal value, as contained in the Convention. The Government is asked to indicate whether it is considering amending the relevant provisions of these Acts to include the Convention's principle and, in the meantime, to provide information on its application in practice, including relevant judicial decisions.

3. With reference to its previous comments concerning the high wage differential in the average earnings of men and women, the Committee notes that according to the Basic Survey on Wage Structure 2000 women earned 65.5 per cent of the monthly contractual cash earnings received by men. Earnings differentials continue to be lower at higher levels of education. Among university graduates, women earned 69.3 per cent of men's earnings, for graduates of higher professional schools and junior colleges the ratio was at 77.1 per cent, while the greatest difference exists at the junior high school level (60.3 per cent). The Committee also notes that the earnings of women compared to men continue to decrease significantly with increasing age: while women in the 20-24 age bracket received 91 per cent of men's earnings, the same percentage for women in the 50-54 age range is as low as 55.3 per cent. Comparing data for 1998 and 2000 on the gender composition of the labour force classified by age brackets, it appears that the

participation of women remains largely unchanged and characterized by marked decline in the 25-29 age bracket. The Committee asks the Government to continue to provide statistical information that would enable it to continue to assess the trends in the labour force participation and levels of remuneration of women and men. Noting that the Basic Survey on Wage Structures only covers regular employees, apparently excluding part-time and temporary workers, which contain a heavy concentration of women, the Committee can only discern that the actual remunerations gap between women and men is larger than the figures indicated in the Basic Survey on Wage Structures. It once again draws attention to its general observation on the Convention adopted in 1998 and asks the Government to provide full statistical information, taking into account the earnings of non-regular male and female workers, if possible classified also by average hourly earnings.

4. The Committee notes from the Government's report that research on the issue of wage disparity between men and women was currently being carried out by a group of experts. The Committee understands that the group is analysing the underlying factors as well as the effects of wage and management systems of businesses on wage disparities, with a view to developing a future framework for their reduction. Recalling that some of the disparity is due to low post assignment and lack of promotion of women, the Committee notes the proposal on promoting positive action for women in employment. Noting from the Government's report that the proposal is also intended to clarify the standards concerning personnel appraisal systems, the Committee asks the Government to provide additional information on the proposal's nature, content, implementation in practice, and any results achieved. The Committee also wishes to be kept informed of the results of the work of the group of experts mentioned above, including any follow-up action taken on the expert's findings. Noting that the Government planned to set up a working committee in 2002 in order to form a consensus about what constitutes indirect discrimination, the Committee hopes that the group will take into account the effect of indirect discrimination on pay levels of women and men and looks forward to receiving information on the results and findings of this working committee.

5. With reference to its previous comments concerning wage-based employment in Japanese national hospitals and sanatoriums and the observations of the JNHWU and the JNHWU's Tokyo District Council on this matter, the Committee recalls that it considered the extensive utilization of temporary labour in a predominately female sector to have an indirect impact on wage levels in general, inevitably broadening the wage gap between men and women. The Committee notes from the Government's report that between 1996 and 2002 (fiscal years), the number of wage-based employees in hospitals and sanatoriums decreased by 2,240 employees, while the number of permanent employees increased by 1,587 employees, whereas external contracting for technical and practical tasks, such as cleaning or laundry, was introduced. The Government also states that it has held yearly meetings with the JNHWU and that mutually agreed "Guidelines for wage employees" concerning the treatment of these employees had been sent to the respective establishments every year. In reply to the JNHWU's observation that in 2001, due to a recommendation of the National Personnel Authority, the wages of wage-based employees – despite its objections – were not increased and bonuses were reduced, the Government states that at the 2001 annual meeting an agreement has actually been reached between the employer and employees. The Committee asks the Government to continue to take measures to enable hospitals to

harmonize their employment practices with their personnel needs in the light of the requirement under the Convention to ensure equal pay for work of equal value and to take measures taken to reduce the wage differentials between the wage-based and permanent staff.

6. Recalling its request to the Government to provide information on the utilization of wage-based staff in all sectors, the Committee notes that the Government once again states that in institutions under the national authority, other than hospitals and sanatoriums, wage-based employment did not exist. The JNHWU states that according to a survey conducted by the Administrative Affairs Agency, there are 229,407 temporary employees working for the Government. Noting that the Government applies a specific definition of wage-based employment, the Committee asks the Government to provide full information on the various types and extent and sex composition of temporary employment, including wage-based employment, used in the public and the private sectors.

7. The Committee notes RENGO's statement that, given the high percentage of women engaged in part-time work, ensuring equal treatment for regular and part-time workers is of importance in improving wage inequalities between men and women. Similarly, the joint observations of the Community Union's National Network and other unions state that women part-time workers in the private and public sectors are often being discriminated against in respect to remuneration which amounts to indirect discrimination against women under the Convention, as most of the part-time workers were women. According to the latter observations, 37.4 per cent of all women workers were employed on a part-time basis and 93 per cent of all part-timers were women, while female part-time workers earned 44 per cent of the average hourly wage of a male regular employee and 68.4 per cent of the average hourly wage of a female regular employee (as of 1999). In its reply, the Government points out that efforts are being made to promote a balance between the working conditions of part-time workers and regular workers as provided for in section 3 of the Part-Time Work Act. Consultations were held during 2000 and 2001 with employers and employees, interest groups and experts on the desired future policy concerning temporary employees, including the treatment of part-time workers. The Committee observes that in situations where part-time workers are mostly women, a generally lower level of remuneration for part-timers has an adverse impact on the overall wage gap between men and women. It also recalls that the principle of equal remuneration for men and women for work of equal value applies to all workers, including part-timers. Noting that apparently in many cases part-time employees carry out very similar or identical job duties, the Committee recalls that under the Convention levels of remuneration are to be compared through an objective job appraisal on the basis of the work performed and not on the basis of the sex of the worker or the status of the contract. The Committee asks the Government to continue to provide information on measures taken or envisaged to promote wage parity for part-time workers, taking into account the principle of equal remuneration for men and women for work of equal value. It also asks the Government to provide updated statistical information, the extent to which male and female employees are hired on a part-time basis in the various economic sectors, as well as on their levels of remuneration as compared to full-time employees, on the basis of average hourly earnings.

8. Recalling its comments concerning the use of career tracking systems in Japan as a gender-based employment management system, the Committee notes that according to the Basic Survey of Employment Management of Women 2000 the ratio of companies using such systems which employ both men and women on a “super track” (engagement in planning jobs with possibility for transferral throughout the country) increased to 46.5 per cent in 2000 from 42.4 per cent in 1998 and that the number of companies using career tracking systems decreased for the first time. The Government considers that this development may be the result of the administrative guidance, including corrective measures against employers, given by the Equal Employment Departments of the Prefectural Labour Bureaux in relation to the Equal Employment Opportunity Act and the guidelines concerning employment management differentiated by career track. The Committee notes that the statistical information provided by the Government does not allow for an assessment of the extent to which women are actually employed on career tracks, where such exist. The Committee also notes from the joint communication from the Zensekiyu Showa Shell Union and other workers’ organizations that, in practice, the existence of the two-track system provides opportunities for distinctions to continue to be made indirectly on the grounds of sex, which negatively impact on women’s ability to earn remuneration equal to that of men for work of equal value. With reference to the comments received from the Nomura Securities Labour Union, the Committee notes the decision of the Tokyo District Court of 20 February 2002 in respect to Cases Nos. 24,224 and 12,628. In this case brought by a group of female employees against their employer, the Court held that the separate-track hiring and treatment of women and men applied by the employer was gender based and violated article 14 of the Constitution (equality under the law), and section 6 of the Equal Employment Opportunity Act. The Committee urges the Government once again to take the necessary measures to ensure that career tracking systems are not being used in a manner either directly or indirectly discriminatory against women and to provide information on the application and monitoring of the guidelines concerning employment management differentiated by career track at the enterprise level, as well as information on the guideline’s impact on the wage differential between men and women, including statistics on male and female participation in each track.

9. *Measures of redress.* With reference to its previous comments, the Committee notes that dispute adjustment commissions to be established at the Prefectural Labour Bureaux under the Act on promoting the resolution of individual labour disputes of 2001 replace the Equal Opportunity Mediation Commission under the Equal Employment Opportunity Act. The Committee asks the Government to supply information on the cases concerning wage discrimination on the basis of gender brought before the dispute adjustment commissions under the Equal Employment Opportunity Act. The Committee notes that during the period from 1996 to 2001 labour inspectors found 58 cases of violations of section 4 of the Labour Standards Act, but that no case was referred to the Prosecutor’s Office. Noting that a referral to the Prosecutor’s Office would be made in cases of “grave or flagrant violation”, the Committee would be grateful if the Government would indicate the nature of the violations found and provide examples of what would be considered a “grave or flagrant violation” of section 2 of the Labour Standards Act. Please also continue to supply information on any judicial decision relevant to the application of the Convention.

Madagascar (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:

1. The Committee notes the Government's indications in relation to the observations made by the Union of Commercial On-Board Staff (PNC) of Air Madagascar concerning the unequal remuneration arising out of the difference in the retirement age for male and female on-board staff, which is set at 50 years for men and 45 for women. The Government states that, according to Air Madagascar, the limitation on the age of female on-board staff has been adopted due to the early ageing and nervous fatigue caused by the specific nature of their work. Air Madagascar also states that the age at which on-board staff cease to fly is not the same as a retirement age, since on-board staff are then transferred to a ground job, as indicated in section 12 of the "conditions of work and remuneration of commercial on-board staff", approved by the trade union, the labour inspectorate and the labour tribunal. Furthermore, according to Air Madagascar, the prohibition of discrimination between the sexes with regard to remuneration, whether under the terms of Convention No. 100 or Act No. 94-029, does not concern the retirement age, which relates to other conditions of work in regard to physiological characteristics.

2. The Committee wishes to point out, in relation to this matter, that although the determination of different retirement ages for men and women constitutes a difference of treatment which is covered primarily by Convention No. 111, it has an indirect impact on equal remuneration in view of the fact that remuneration is directly linked to employment. The same applies to the determination of a different age for ceasing to work as on-board staff. Furthermore, the Committee notes that the Arbitration Council of the Court of First Instance of Antananarivo ruled on this issue on 18 November 1997, when it declared section 12 of the "conditions of work and remuneration of commercial on-board staff" inapplicable on the grounds that it established discrimination on the ground of sex. The Committee endorses this conclusion concerning the existence of discrimination. However, the Committee regrets that a legal void is currently giving rise to an obstacle preventing the resolution of this dispute, following the contesting of this arbitration decision by the company. It encourages the Government to make every effort to resolve the situation and to take measures rapidly to fill the legal void which gave rise to this obstacle. It notes in this respect that the new draft Labour Code, section 217, states that arbitration awards, when they have been issued, accompanied by the reasons for the award and immediately notified to the parties, are final and without appeal and bring an end to the dispute.

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

Malawi (ratification: 1965)

The Committee notes the comments submitted by the International Confederation of Free Trade Unions (ICFTU) on 6 February 2002. It also notes the Government's reply of 13 May 2002 to the comments made by the ICFTU as well as the ICFTU's further clarifications of 9 October 2002.

1. The Committee notes the comments made by the ICFTU that women in general continue to face discrimination in employment and that rural women farmers, who constitute the majority of the working poor, face discrimination in terms of access to productive resources. According to the ICFTU, women are under-represented in education and quality employment, including the more secure and higher paying administrative and managerial positions, of which only 5 per cent are held by women.

Further to previous comments, the Committee also notes the Government's statement that, until recently, employers in the agricultural sector in remote rural areas were taking advantage of the illiteracy and ignorance of the local people by paying female employees less than male employees and, in some cases, by paying all employees less than the recommended statutory minimum wage. It asks the Government to provide a copy of the minimum wage order adopted for the agricultural sector as well as information on the measures taken or envisaged to inform employers and rural men and women about the requirements of the Convention and of the national legislation concerning equal pay. Noting also that the labour inspection services are monitoring the implementation of the Employment Act of 2000 in the remote rural areas, the Committee asks the Government to keep it informed of any wage disparity between men and women reported by the labour inspection services in this sector and the corrective action taken.

2. Further to the above, the Committee notes the various initiatives listed by the Government to promote the employment of women, in particular the programmes to promote women's participation in non-traditional occupations and in political and decision-making structures and the initiative to provide credit facilities to rural women. The Committee recalls that the elimination and reduction of wage inequalities between men and women requires a comprehensive approach involving societal, political and cultural and labour market interventions to promote equality of opportunity and equal treatment of men and women in employment and occupation, including in higher level administrative and managerial positions. It refers, in this regard, to its comments made under the Discrimination (Employment and Occupation) Convention, 1958 (No.111), and asks the Government to indicate how the abovementioned initiatives have impacted on the promotion of equal remuneration for men and women for work of equal value, especially for rural women.

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

Mauritania (ratification: 2001)

The Committee notes a communication by the International Federation of Free Trade Unions (ICFTU) dated 9 September 2002 concerning the application of the Convention, which has been submitted to the Government for any comments it may wish to make. The Committee has decided to take up this matter together with the Government's first report on the application of the Convention which is due in 2004.

Mexico (ratification: 1952)

The Committee notes the information provided by the Government in its report, including the attached statistical data. In addition, the Committee notes the comments made by the International Confederation of Free Trade Unions (ICFTU) on matters related to the application of the Convention, and also the reply sent by the Government to the Office. The Committee also notes the comments of the Confederation of Business Chambers of Industry (CONCAMIN) reiterating its previous comments that the Federal Labour Act establishes the principle of equal remuneration without distinction on the basis of sex or other grounds.

The Committee once again asked the Government in its last comment to indicate whether it is considering setting out in the legislation the principle laid down in *Article 2 of the Convention*. The Committee regrets to note that the Government, merely reiterating the statement made in previous comments, replies that article 123 of the Political Constitution of the United States of Mexico and section 86(VII) of the Federal Labour Act, establish the right to equal pay for equal work performed in equal jobs, hours of work and conditions of efficiency, without taking into account either gender or nationality. As the Committee has indicated repeatedly to the Government, the provisions of the Constitution of Mexico and the Federal Labour Act do not apply in full the principle set out in the Convention. The Committee reminds the Government that the Convention goes beyond the reference made in the national legislation to “equal remuneration” for “equal work” and also refers as an element of comparison to the concept of work of “equal value”. As the Committee noted in its previous comments, the wording of the national legislation is inadequate for the application of the principle of equal remuneration to work which is of equal value but of a different nature. The Committee once again reminds the Government that in order for the legislation to be in conformity with the Convention, it should give expression to the principle of equal remuneration for work of equal value.

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

Netherlands (ratification: 1971)

1. The Committee welcomes and takes note of the periodical Evaluation of the Equal Treatment Act and related legislation (1994-2000), the Action Plan on Equal Remuneration of 2000 as well as the Circulars by the State Secretary for Social Affairs and Employment on the implementation of the Plan. It notes that the Plan includes measures to promote the use of gender-neutral job evaluation systems and to ensure equal remuneration for men and women in new flexible wage systems, as well as measures to raise awareness on equal pay amongst the general public and the social partners and to stimulate the social partners to promote equal pay. The Committee notes with interest the series of ongoing activities to implement these policy measures, including the legislative developments with respect to equal remuneration in pensions, the dissemination of information on equal pay through the Internet and the development by the Commission on Equal Treatment of a “quickscan” aimed at rapidly assessing job evaluation systems and structures in organizations and ministries. It notes in particular the report “Weighing the balance: Towards an instrument for gender-neutral job evaluation” providing a legal analysis of the requirements of job evaluation systems which resulted in the development of an instrument to assess the gender neutrality of job evaluation systems (“Weighing the balance: A gender-neutral job evaluation manual”). The Committee notes that the manual has been widely disseminated and promoted by the social partners and that the Labour Foundation has developed a checklist for employers based on the manual to evaluate their remuneration systems. Noting that the manual and the checklist are currently being used and tested by a number of system users and will be evaluated in early 2004, the Committee asks the Government to keep it informed of the progress made and to supply a copy of the evaluation report, when completed.

2. The Committee notes from the latest survey conducted by the Labour Inspectorate (2000) that the wage gap between men and women remained stable at

23 per cent in the private sector and 15 per cent in the public sector. However, taking into account individual and job-related factors, the wage gap between men and women reduced to 5 per cent (7 per cent in 1998) in the private sector and to 3 per cent in the public sector (4 per cent in 1998); it amounted, however, to 11 per cent when comparisons were made between full-time and part-time workers. The survey results further show that wage differentials between men and women increase with age and that in the private sector wage differentials increase when women get into higher level posts. The Committee notes that, in order to determine the exact reasons of these wage differentials, micro-level research into wage differentials has started. Noting that the impact of this research as well as that of the other abovementioned measures on the current wage gap can only be measured in 2004, the Committee hopes that the Government will be in a position to report that these activities have further reduced the existing remuneration gap between men and women in the private and public sectors.

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

Nigeria (ratification: 1974)

1. The Committee notes the adoption of a new Constitution in 1999. It notes in particular article 17(3)(e), which states that “there is equal pay for equal work without discrimination on account of sex, or on any other ground whatsoever”. Noting that this is the same wording as in the former Constitution, the Committee is bound to point out once again that the principle of equal remuneration for work of equal value provides broader protection against gender discrimination because it requires remuneration rates to be established on the basis of an analytical assessment of the value of the job using objective criteria. The Committee is still of the opinion that the narrow formulation of article 17(3)(e) of the Constitution does not in itself ensure the application of the principle set out in the Convention. Noting that a wage gap between men and women persists in the country and that the labour market is highly sex-segregated, the Committee asks the Government to provide information with its next report on the legislative or other regulatory measures which have been taken or are envisaged to ensure the full implementation of the principle of equal remuneration for men and women workers for work of equal value.

2. In this connection, the Committee notes the Government’s statement that it is currently reviewing all national labour legislation. The Committee hopes that the Government will take the opportunity afforded by its review of labour laws to ensure that the national legislation is in conformity with the principle of equal remuneration for men and women workers for work of equal value, as provided for in the Convention.

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

Norway (ratification: 1959)

1. The Committee notes with interest the amendments made by Act No. 21 of 14 June 2002 to the Equal Status Act, No. 45, of 9 June 1978, and in particular to section 5, which continues to provide that men and women workers shall receive equal remuneration for work of equal value. The Committee notes that work of equal value is

required in the Act to be based on an overall appraisal of the competence required for performing the work and other relevant factors, such as the effort needed to perform the work, the level of responsibility and working conditions. The Committee recalls that it previously drew attention to the scope of section 5 being limited to one employer. It notes that the new amendments do not change the scope. In this respect, the Committee notes the Government's statement that, under the Equal Status Act, the central Government is considered as a single workplace (i.e. one employer) for the purpose of applying the principle of equal remuneration for work of equal value and that the same applies to municipalities and counties. The Government also indicates that in the private sector the headquarters and various branches of enterprises are considered to be the same workplace for this purpose. It further notes that the right to equal remuneration for work of equal value is applicable even where workers belong to different trade unions or their wage is based on different wage scales, but that it is still limited to the same employer. Having already noted in its previous comments that both the Equality Ombudsperson and the Equal Status Appeal Board have applied the former section 5 of the Act in such a manner that there is nothing to prevent the comparison of jobs in two different occupations, the Committee notes the Government's statement that the amended Equal Status Act does indeed allow such a comparison.

2. The Committee notes with interest that, under section 1(a) of the Equal Status Act, authorities, employers, employers' organizations and trade unions are obliged to promote gender equality actively and that employers must describe in their annual report the measures taken to promote equal remuneration for work of equal value and that in equal pay claims the burden of proof has been shifted so as to be upon the defendant employer.

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

Peru (ratification: 1960)

For several years, the Committee has been asking the Government to indicate whether it is considering the possibility of setting out in the legislation the principle laid down in *Article 2 of the Convention*. The Committee regrets to note that the Government, reiterating the statement made in previous reports, replies in its latest report that this Article of the Convention is given effect by the following articles of the Constitution: article 2(2), under which "every person has the right: (...) to equality before the law. No one may be discriminated against on account of origin, race, gender, (...)"; article 24, under the terms of which "the worker is entitled to a fair and adequate remuneration enabling him to provide for himself and his family material and spiritual well-being (...)"; and article 26(1) which provides that the principle of equality of opportunity without discrimination, inter alia, shall be respected in employment relations. The Government also refers to section 30 of the single codified text of Legislative Decree No. 728, which provides that acts of discrimination on grounds of sex, race, religion, opinion or language constitute acts of hostility, punishable by dismissal. The Committee once again reminds the Government that these legislative provisions are inadequate for the application of the principle of equal remuneration for men and women workers for work of equal value, particularly in relation to work which is of a different nature. The Committee has pointed out on a number of occasions that,

while there is no general obligation to adopt legislation setting forth this principle under the terms of the Convention, doing so is one of the most effective means of ensuring its application. The Committee therefore once again requests the Government to indicate whether it envisages setting out in the legislation the principle contained in the Convention.

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

Philippines (ratification: 1953)

In its previous requests, the Committee noted that section 5(a) of the 1990 Rules implementing Republic Act No. 6725 of 12 May 1989, which defined work of equal value to be “activities, jobs, tasks, duties or services [...] which are identical or substantially identical”, would appear to restrict the application of the principle of equal remuneration for men and women workers to jobs which are essentially the same – a concept which is narrower than that required by the Convention. In this regard, the Committee recalls that a proposed amendment of section 135(a) of the Labor Code provided for equal remuneration for men and women “for work of equal value *whether the work or tasks are the same or of a different nature*”. The Committee hopes the Government will take action soon to adopt the proposed amendment to the Labor Code and to amend its regulation, so that it is in conformity with the Convention. It also requests the Government to provide information on the measures taken to apply in practice the principle of equal remuneration between men and women workers for work of equal value where women and men carry out different work.

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

Portugal (ratification: 1967)

1. The Committee notes the information provided by the Government in its report. It also notes the comments made by the General Union of Workers (UGT) which were attached to the Government’s report, and which refer to the adoption of legislation on equality of opportunity and treatment which will have an impact on the application of the Convention as well as a trend in the gradual introduction of provisions concerning equality of opportunity in collective agreements. In spite of these developments, the UGT indicates that affirmative measures to give effect to the newly adopted legislation and the equality provisions in agreements are necessary in order to combat the marked disparities in remuneration between men and women.

2. The Committee refers to its 2002 observation on Convention No. 111, where it noted the adoption of several laws to promote gender equality in employment and asked the Government to provide information on the impact of the new laws in improving the labour market situation of women. In this regard, the Committee asks the Government to include in its next report an assessment of the impact of the new legislation, policies, plans and other measures taken to ensure and promote the application to all workers of the principle of equal remuneration for men and women for work of equal value.

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

Saint Lucia (ratification: 1983)

1. 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.

2. In particular, 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 is raising other points in a request addressed directly to the Government.

Slovenia (ratification: 1992)

The Committee notes the comments submitted by the International Confederation of Free Trade Unions (ICFTU), on 14 May 2002, on the application of Convention No. 100, alleging, inter alia, wage discrimination between men and women. In this regard, the Committee refers to its comments under Convention No. 111.

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

Spain (ratification: 1967)

1. The Committee notes the information provided by the Government in its report, and the attached documents and statistical data. The Committee also notes the comments made by the Trade Union Federation of Workers' Confederations (CC.OO), received by the Office on 18 October 2002, raising questions related to the application of the Convention, which have been forwarded to the Government. The Committee will examine the comments made by the CC.OO at its next session, together with any response to these comments by the Government.

2. The Committee refers to the Government's reply to the comments made by the General Union of Workers (UGT) on the application of Convention No. 111, which are also related to the application of the principle of equal remuneration for men and women workers for work of equal value. The UGT referred in its comments to the lack of legal and administrative measures to prevent wage discrimination between men and women in

employment. The Committee notes the Government's reply in which it indicates that the amount of the minimum inter-occupational wage is determined only by the Government, but that the structure and amount of remuneration are the result of collective bargaining. The Government adds that in the event of any failure to comply with the principle of equality and non-discrimination in this respect, public administrators can turn to the commission responsible for negotiating the collective agreement and require the rectification of any clauses which do not respect the principles of equality and non-discrimination. The Government also states that such clauses may be taken up *ex officio* by the labour authorities by means of a special procedure set out in the Labour Procedure Act. The Committee requests the Government to provide information on the practical application of this regulation, including copies of relevant administrative and judicial decisions. The Committee invites the Government to consider the possibility of encouraging the social partners to include a balanced representation of men and women in the teams negotiating collective agreements, and hopes that the Institute for Women will continue its activities to ensure that the persons concerned are adequately trained in the fields of discrimination on grounds of sex and of equal remuneration.

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

Sri Lanka (ratification: 1993)

The Committee notes the information provided by the Government in its report and the comments submitted by the Lanka Jathika Estate Workers' Union on 5 June 2001 and the comments of the Employers' Federation of Ceylon attached to the Government's report.

1. With respect to the existence of different wage rates for men and women in the tobacco trade and different time/piece-rates for men and women in the cinnamon trade, the Committee notes that the Government continues to repeat its previous statement that the necessary action will be taken by the Commissioner of Labour. It also notes the communication by the Employers' Federation of Ceylon, indicating that the principle of equal remuneration is generally respected and that the wages boards for the cinnamon and tobacco trades have remained inactive since 1980; therefore, the wage rates established by these boards are no longer in practice. The Committee asks the Government to provide information on the current wage rates in the tobacco and cinnamon trades for men and women, and to continue to provide full information on all measures taken or contemplated to eliminate wage differentials between men and women in these trades.

2. *Article 4 of the Convention.* The Committee notes the Government's statement that, while the National Labour Advisory Council is having monthly meetings, it has not deliberated the issue of equal pay for at least seven years. It also notes that the Lanka Jathika Estate Workers' Union is again reiterating its earlier comments regarding non-compliance with *Article 4* of the Convention by the Government. The Committee urges the Government to consider more active measures to involve the workers' and employers' organizations in the implementation of the provisions of the Convention, including awareness raising of the social partners regarding their vital contribution to the effective implementation of the principle of equal remuneration for women and men for

work of equal value. It asks the Government to provide information, in its next report, on the particular steps taken in this regard.

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

Uruguay (ratification: 1989)

The Committee notes the information provided by the Government in its report, which also includes statistics, judicial rulings and a study of wage discrimination. The Committee also notes the comments communicated by the Inter-Union Assembly of Workers – National Convention of Workers (PIT-CNT), on matters related to the application of the Convention, which were received by the Office on 14 October 2002. The information received will be examined by the Committee at its next session.

Venezuela (ratification: 1982)

The Committee notes the report of the Government, received on 8 November 2002, and the comments of the International Confederation of Free Trade Unions (ICFTU), received on 22 November 2002, on the application of the Convention. The comments have been forwarded to the Government. The Committee will address the Government's report and the ICFTU's comments, together with any reply the Government may wish to make thereon, at its next session.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Albania, Angola, Azerbaijan, Barbados, Belize, Bolivia, Botswana, Bulgaria, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, Comoros, Cuba, Czech Republic, Democratic Republic of the Congo, Denmark, Djibouti, Dominica, Ecuador, Egypt, France, Gabon, Georgia, Ghana, Guatemala, Guinea, Haiti, Honduras, Iceland, India, Iraq, Israel, Republic of Korea, Kyrgyzstan, Latvia, Lesotho, Lithuania, Luxembourg, Madagascar, Malawi, Malaysia, Mali, Malta, Mexico, Mongolia, Mozambique, Nepal, Netherlands, Niger, Nigeria, Norway, Peru, Philippines, Portugal, Romania, Saint Lucia, Sao Tome and Principe, Saudi Arabia, Senegal, Seychelles, Sierra Leone, Slovakia, Slovenia, Spain, Sri Lanka, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, Togo, Tunisia, Turkey, United Arab Emirates, Viet Nam, Zambia, Zimbabwe.*

Convention No. 101: Holidays with Pay (Agriculture), 1952

Cuba (ratification: 1954)

The Committee takes note of the reports on the application of this Convention and Convention No. 52, to which the Government also refers.

Article 4 of the Convention. The Government indicates that section 95 of the Labour Code of 1984 is also applicable in case of exceptional measures in accordance with section 98 of the Labour Code. This means that the worker is entitled to at least seven days of paid holiday in the course of one working year, whether the holiday is postponed or the State Labour and Social Security Committee, as an exception,

authorizes the replacement of holidays by supplementary remuneration, with the worker's consent and for reasons of production of goods or supply of services in specific branches, activities or workplaces. The Committee notes that for several years the State Labour and Social Security Committee has not exercised its function in accordance with section 98 of the Labour Code. It further notes that the envisaged amendment of the Labour Code of 1984 continues to be under discussion. The Committee again expresses the hope that progress is made in this respect in the near future, and that in particular the provisions on holidays are brought into full conformity with the requirements of the Convention. It asks the Government to supply copies of any relevant legislative texts as soon as they are adopted.

Part V of the report form. The Committee notes from the Government's report that the National Labour Inspection Board (*Dirección Nacional de Inspección*), besides the State Labour and Social Security Commission (sections 298 to 303 of the Labour Code) and the trade union labour inspection (sections 305 and 306 of the Labour Code), is authorized to take appropriate measures to ensure the application of the labour legislation, in accordance with *Article 10* of the Convention and *Part III of the report form*. It requests the Government to provide a copy of Legislative Decree No. 147 of 2 April 1994 and any other legislation related to labour inspection, covering also holidays with pay.

The Committee takes note of the 1998 report of the National Labour Inspection Board, which has been provided with the report concerning Convention No. 81. The inspection report indicates, among others, 8,966 inspections, including the supervision of holidays, and 142,885 infringements of labour legislation. The Committee requests the Government to continue to supply copies of the labour inspection reports and to provide particulars, if any, on the application of holiday provisions.

Ecuador (ratification: 1969)

The Committee notes that the new Labour Code of 12 June 1997 (sections 64 to 78) has brought no change to the substance of the provisions on holidays. The changes only concern the numbering of these provisions. Although section 35, No. 4 of the Constitution and section 72 of the new Labour Code prohibit the relinquishing of holidays, as pointed out by the Government, sections 74 and 75 of the Labour Code continue to be inconsistent with the Convention. The Committee notes with regret that the Government's report does not contain any new elements with regard to bringing national legislation and practice into conformity with the provisions of the Convention.

The Committee must therefore repeat its previous observations, which read as follows:

For several years, the Committee has expressed regret that sections 73 [now 74] and 74 [now 75] of the Labour Code contravene *Articles 1, 3 and 8 of the Convention*. Specifically, section 73 [now 74] authorizes employers to refuse leave during one year in certain cases, and section 74 [now 75] permits workers to postpone leave for three consecutive years so as to accumulate it in the fourth year. The Committee once again recalls that, under the terms of the Convention, workers employed in agricultural undertakings and related occupations must be granted an annual holiday with pay (*Article 1*) whose minimum duration must be determined in a manner approved by the competent authority (*Article 3*), and that any agreement to relinquish the right to an annual holiday with pay, or to forego such a holiday, must be void (*Article 8*). The Committee refers to its

General Survey of the Convention in 1964 and recalls that a certain minimum part of the annual holiday must be granted each year, even where postponement of annual leave is permitted (paragraphs 177 to 181). Any other approach would be contrary not only to the fundamental provisions of the Convention but to the spirit in which it was conceived.

The Committee urges the Government to take the necessary measures to bring the national legislation in line with the Convention as soon as possible.

Peru (ratification: 1960)

The Committee requests the Government to refer to the comments that it has made under Convention No. 52.

Sierra Leone (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.

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

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In addition, requests regarding certain points are being addressed directly to the following States: *Antigua and Barbuda, Comoros*.

Convention No. 102: Social Security (Minimum Standards), 1952

Bolivia (ratification: 1977)

The Committee regrets to note that for the fourth consecutive year the Government's report has not been received. It must therefore repeat its previous observation and thus express its deep concern that, since the adoption of the Supreme Decree No. 22-578 of 13 August 1990, the Bolivian social security system no longer provides for the payment of family benefit as prescribed by *Article 42, Part VII (Family benefit), of the Convention*. It would like to remind once again that in ratifying Convention No. 102 and freely accepting its obligations in respect of *Part VII*, the Government assumed a legally binding international obligation to guarantee in its national law and practice the provision of the family benefit to the persons protected. In the light of the above, the Committee strongly hopes that the Government will not fail to

adopt in the near future the necessary measures to re-establish a family benefit scheme conforming to the provisions of the Convention.

The Committee also refers to its observation on Convention No. 128.

France (ratification: 1974)

With reference to its previous comments concerning Part IV (Unemployment benefit), the Committee notes with satisfaction that the “agreement of 1 January 2001 on assistance for return to employment and unemployment insurance” contains an amendment to article 31 in order to give effect to the requirements of *Article 24, paragraph 3, of the Convention* by reducing the waiting period for payment of the benefit to the first seven days of unemployment.

Italy (ratification: 1956)

With reference to its previous comments, the Committee notes the information supplied by the Government in its report, as well as that provided with respect to the application of the European Code of Social Security. It notes that, while Italy has accepted the obligations of the Convention only for *Parts V, VII and VIII*, the report contains detailed statistics for the calculation of the level of the benefits with respect to *Parts III, IV, V, VIII, IX and X*. These statistics show that the replacement level prescribed by the Convention is attained by all the benefits concerned. The same is true also for the level of the benefits covered by *Parts VI and VII* of the Convention, calculated according to the statistics supplied by the Government in its 16th annual report on the application of the European Code of Social Security. Basing its calculations on *Article 65 of the Convention*, the Government states in its report on the Convention that the level of periodical payments to a standard beneficiary set out in the schedule to Part XI, is fully respected. The Committee notes this statement with interest. It would like to remind the Government of the possibility offered by *Article 4* of the Convention of extending its acceptance of the obligations in respect of those Parts of the Convention which were not initially specified in its ratification. In particular, taking into account that Italy has long since accepted Part VI (Employment injury benefit) of the European Code of Social Security, the Committee suggests to the Government to consider also accepting Part VI (Employment injury benefit) of the Convention, which contains similar provisions.

Libyan Arab Jamahiriya (ratification: 1975)

I. With reference to the comments that it has been making for many years on Conventions Nos. 102, 118, 121, 128 and 130, the Committee notes that the Government provided information in May 2000 prepared by the technical committee responsible for preparing the necessary replies to the comments of the Committee of Experts. The Committee notes with regret that most of the questions raised in its previous comments received no reply, despite the reminders sent to the Government in July 2000. This concerns in particular all the requests for the statistical information required by the report forms adopted by the Governing Body on the above Conventions. Furthermore, the detailed reports on the application of Conventions Nos. 102, 118 and 128, which the Government should have submitted in 2001, have not been received. In these conditions,

the Committee is bound to take up once again certain matters raised in its previous comments in the hope that reports and detailed replies will be sent by the Government for examination at its next session in November-December 2003. The Committee recalls that, if the Government is experiencing difficulties of an administrative or technical nature in the compilation of statistical data in the field of social security, in preparing reports or amending the relevant legislation, it could always have recourse to the technical assistance of the International Labour Office in this field.

II. With regard more particularly to Convention No. 102, the Government has supplied, in addition to the information from the above technical committee, the report for the period ending 30 June 2001, which only contains replies to the observation of 1999, but not to the questions raised by the Committee in its direct request of the same year. The Committee has therefore been bound to take up once again certain of these matters in a new request addressed directly to the Government. Finally, with regard to the matters raised in its previous observation, it hopes that full particulars will be provided by the Government on the following points.

1. *Part IV (Unemployment benefit) of the Convention.* With reference to its previous comments, the Committee recalls that, under the terms of section 38 of the Social Security Act, No. 13 of 1980, and Decision No. 303 of 1988 establishing rules governing the provision of cash unemployment benefits, where a contract of work or service is terminated without the insured person being entitled to a pension, the contributor continues to receive the previous wage from the employer for a maximum period of six months or until he or she finds another job and, upon completion of this period, from the competent people's committee of the public service until the contributor is assigned to a suitable job. In relation to the minimum standards set out in the Convention, which authorizes the limitation of unemployment benefit to 13 weeks at a replacement rate of 45 per cent, the Libyan system extends the protection during the whole period of unemployment with a replacement rate of 100 per cent. In the Government's opinion, as expressed in the past and endorsed in its last report, these provisions of the national legislation are adequate to ensure effective protection against unemployment, which is the essential purpose of the Convention.

The Committee considers that, while the Libyan system may prove to be effective in the current national context in which there is practically no unemployment, with the result that the financial burden borne respectively by employers and local budgets remains under control, its effectiveness could rapidly become inadequate where, in the context of greater openness of the national economy to global markets, unemployment and production costs in the country were to rise. The Committee therefore wishes to draw the Government's attention to the fact that, although the Convention is intended to afford effective protection against unemployment, it envisages doing so by means of a system of social security which makes it possible to finance unemployment benefit through collective contributions from all those concerned, thereby avoiding the situation in which they are payable directly by employers, which may become too burdensome if the level of unemployment in the country rises. The Committee therefore hopes that the Government will reconsider the question in the light of its position as expressed in its 1995 report, in which it indicated that it would endeavour to adopt the necessary rules to permit the Social Security Fund to receive contributions and to pay unemployment benefit, thereby giving effect to Part IV of the Convention by means of the social security system and taking into account more fully the principles of organization and

financing set out in *Articles 71 and 72*. In this respect, the Committee notes that the technical committee is of the opinion that provisions should be introduced in the national social security system to cover unemployment benefit with a view to giving effect in practice to Part IV of the Convention, and that it indicates that the submission to amend section 38 of Act No. 13 and Decision No. 303, referred to above, has been forwarded to the Social Security Fund with a view to bringing these provisions into conformity with the Convention. The Committee would be grateful if the Government would indicate the progress achieved in this respect in its next report.

2. *Part VII (Family benefit)*. In its previous comments, the Committee noted that section 24 of Act No. 13 of 1980 only provided for the granting of family allowances to pensioners under the social security system, whereas *Article 41* of the Convention covers other categories of employees or residents. In reply, the Government indicates that the family benefit for the various categories of employees is covered by the legislation respecting labour and the public service and that the purpose of the Convention of providing family benefit to all employees without exception is fully attained. The Committee notes this information with interest and hopes to receive copies of the legislative provisions in question with the Government's next report.

[The Government is asked to report in detail in 2003.]

Mauritania (ratification: 1968)

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.

[The Government is asked to report in detail in 2003.]

Mexico (ratification: 1961)

The Committee notes with interest the particularly detailed information, including statistical data, provided by the Government in reply to its previous comments made following the coming into force in 1997 of the new legislation, which associates the private sector with the achievement of the objectives pursued by the social security system. It also notes the observations made by the Confederation of Industrial Chambers of the United States of Mexico (CONCAMIN) on the application of the Convention, which were transmitted by the Government with its report.

The Committee requests the Government to provide further information on the following points.

Part II (Medical care). In its previous comments, the Committee noted that, in accordance with section 89 of the Social Security Act, the Mexican Social Security Institute (IMSS) may provide the medical assistance for which it is responsible according to the three following procedures: (I) directly through its own personnel and facilities; (II) indirectly, by means of agreements with other public or private providers of care; or (III) indirectly, through the conclusion of agreements with enterprises with their own medical services. In its report, the Government indicates that the IMSS through this procedure transfers responsibility for the provision of care to those entitled to it to another legal entity, which provides care under the same conditions as the IMSS. This transfer is an instrument allowing the IMSS to provide care to insured persons where it has no adequate infrastructure. In the above manner, the IMSS gives full effect to section 89 of the Social Security Act and consequently to the Convention. Section 89 above is intended to make available to workers flexible insurance schemes and thereby provide the majority of the persons protected with health-care coverage. The Committee notes this information. It also notes the amounts charged by the above services, the number of agreements and contracts concluded with service providers and the reimbursement agreements, as well as the number and principal characteristics (sex, sector of activity, geographical distribution, income levels, etc.) of the insured persons covered by such transfers. The Committee requests the Government to provide copies of agreements for the transfer of responsibility for the provision of services concluded with service providers (care providers in the private sector), as well as copies of reimbursement agreements and agreements for the provision of care concluded with enterprises with their own medical services and with the other institutions referred to in the report.

Part V (Old-age benefit), Articles 28, 29 and 30 of the Convention. 1. In its previous comments, the Committee noted that, for persons who fulfil the qualifying conditions for an old-age pension as set out in the legislation, the level of the pension is not determined in advance, but depends on the capital accumulated in the individual accounts of workers, and particularly the return obtained on such capital, which has to be entrusted to the management of a retirement fund administration company (AFORE) selected by the worker. However, under the terms of section 170 of the Social Security Act, the State guarantees workers who fulfil the age conditions and the qualifying periods set out in section 162 of the Social Security Act the provision of a “guaranteed pension”, the amount of which is equivalent to the general minimum wage for the Federal District. In this respect, the Committee notes that the standard beneficiary is determined on the basis of *Article 66, paragraph 5*, of the Convention. It requests the Government to provide the statistical data requested in the report form approved by the Governing Body under *Article 66* of the Convention, Titles I and III.

2. (a) The Committee notes the detailed information provided by the Government in its report on the various commissions charged by the retirement fund administration companies (AFORES) and by insurance companies. It notes that the accumulated commissions charged by AFORES, both on contributions and on capital, would amount to 11.2 per cent of the capital accumulated over 25 years by a worker receiving the average wage. It requests the Government to indicate the total average percentage of the commissions charged, including the average applied to the accumulated capital and the average applied to contributions, in relation to the average wage of a standard man and woman worker. It also requests it to indicate whether, in determining the amount of

commissions, account has been taken, in accordance with *Article 71, paragraph 1*, of the Convention, of their impact on persons of small means. It requests the Government to provide information disaggregated by sex on the amount of the commissions charged by the AFORES (“programmed retirements”) and insurance companies (lifetime annuities) during the passive period, that is from the time that the pension is paid (lifetime annuity) periodically on the pension received (lifetime annuity or “programmed retirement”) or on the capital accumulated by the pensioner (“programmed retirement”).

(b) In reply to the Committee’s previous comments on the methods used for the calculation of pensions, the Government indicates that in the case of invalidity, life and employment injury insurance, the insurance companies provide benefits to both men and women workers in accordance with the amounts established in the Social Security Act, based on the wage. The basic capital transferred to the insurance company for the provision of a lifetime annuity is calculated in accordance with mortality tables for invalids by age and by sex. The Committee notes this information. In view of the fact that employment injury insurance is financed wholly by the employer, it requests the Government to indicate whether the capital amount transferred to the insurance companies includes the savings accumulated by the worker at the date on which the injury occurred (see the comments made under *Article 71, paragraph 2*, of the Convention).

3. In its previous comments, the Committee drew the Government’s attention to *Article 29, paragraph 2(a)*, of the Convention, which provides that a reduced old-age benefit shall 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. In its report, the Government reiterates that insured persons who do not meet the qualifying condition of 1,250 weeks of contributions set out in sections 154 and 162 of the Social Security Act at the time that they become entitled to old-age benefits, may either withdraw the balance of their individual account in a single transaction, or continue to pay contributions to complete the missing weeks in order to qualify for a pension. Where the insured person has paid contributions for 750 weeks, she or he is entitled to benefits in kind under the sickness and maternity insurance scheme. Workers who have paid at least one contribution to the former pay-as-you-go system maintain the rights provided for under the repealed Act. Insured persons registered prior to the coming into force of the new Social Security Act can opt to be covered either by the pay-as-you-go scheme or the fully funded scheme. The seniority requirements for entitlement to an old-age pension or a pension for termination of employment at an advanced age for all transition workers is 500 weeks of contribution, which is a shorter period than that envisaged in *Article 29, paragraph 2*, of the Convention. The Committee notes this information. However, it is bound to emphasize that, with regard to the fully funded scheme, neither the possibilities offered to insured persons under section 162 of the Social Security Act, nor the right to benefits in kind under sickness and maternity insurance, which is furthermore also granted to all pensioners under the terms of section 84 of the Act, can be considered sufficient to give effect to *Article 29, paragraph 2*, of the Convention. In these conditions, it hopes that the Government will be able to re-examine the situation and indicate the measures which have been taken or are envisaged to secure a reduced periodical old-age benefit to a person protected who has completed, prior to the contingency, a qualifying period of 15 years of contribution or employment, in accordance with the provisions of the Convention on this point.

4. *Part XI (Standards to be complied with by periodical payments), Articles 65, paragraph 10, and 66, paragraph 8 (Review of benefits).* In its previous comments, the Committee noted the information provided by the Government on fluctuations in the cost-of-living index, earnings and benefits, which showed that, with the exception of survivors' benefit, effect was given to these provisions of the Convention requiring the adjustment of long-term benefits for all contingencies. However, according to the statistics provided, the increase in survivors' benefit between May 1997 and June 2000 is far from following that of the general level of earnings and the cost of living since, according to the statistics provided by the Government, the increase is only 34.72 per cent for the average increase per beneficiary and 22.39 per cent for the increase in benefits for a standard beneficiary. The Committee notes the information provided by the Government in its last report to the effect that the increase in survivors' benefit appears to meet the requirements of the Convention. However, it wishes to draw the Government's attention to the fact that the statistical information provided in its last report does not coincide for the same period with the data provided in the report covering the period 1997-2000. The Committee would therefore be grateful if the Government would clarify this situation and provide up-to-date information in this respect.

Part XIII (Common provisions). 1. *Financing (Article 71).* The Committee notes the information concerning the financing of benefits. It requests the Government to indicate the manner in which effect is given to *Article 71, paragraph 2*, of the Convention in the case of employment injury benefits in so far as the capital accumulated in the individual accounts of workers contributes to the financing of such benefits, under the terms of sections 58 and 64 of the Social Security Act.

2. *Administration and control of the social security system (Articles 71, paragraph 3, and 72, paragraph 1).* The Committee notes the information provided by the Government in its report. It notes with interest the Financial and Actuarial Report of the Mexican Institute, approved by the General Assembly of the IMSS on 30 August 2000. However, it notes that there is no overall actuarial report for the whole system. In view of the fact that the State is responsible for the general functioning of the system as a whole, the Committee emphasizes the need to carry out an overall actuarial evaluation of the whole system. In order to give full effect to *Article 71, paragraph 3*, the above evaluation must cover the various pensions schemes, including and recapitulating at a specific evaluation date the fixed and contingent liabilities, as well as all the debts and commitments of the State deriving from the former and the new social security systems, encompassing the responsibilities of the IMSS, the INFONAVIT and the SAR in the financing and the liabilities and all items of expenditure, including collection, administration, supervision and control. The Committee considers that the viability and sustainability of the system depend on a detailed analysis of the real and foreseeable development of the system as a whole. Indeed, this is of the very essence in an actuarial study. Only a global actuarial evaluation of the system will make it possible to estimate the contingent deficits to be underwritten by the State and to make the corresponding forecasts.

3. *Participation of persons protected in the management of schemes (Article 72, paragraph 1).* In reply to the Committee's comments, the Government indicates that it has entrusted the administration of AFORES and Companies Specializing in the Investment of Retirement Funds (SIEFORES) to institutions regulated by a public body,

such as the National Commission for the Savings System (CONSAR). It is therefore the Government's opinion that *paragraph 1 of Article 71* of the Convention is not applicable. The Government accordingly considers that sections 29 and 49 of the Retirement Savings Act of 23 May 1996 give full effect to these Articles of the Convention. The Committee notes this statement. It wishes to point out that section 2 of the above Act does not appear to envisage the administration of individual accounts among the functions of CONSAR. This function is attributed, under section 18 of the Act, to the AFORES. In view of the fact that sections 29 and 49 of the Act do not specify that the independent advisers represent the interests of the workers, the Committee requests the Government to indicate the measures that it intends to adopt to allow the participation of the persons protected in the management of AFORES and of SIEFORES, as well as of insurance companies.

Netherlands (ratification: 1962)

With reference to its previous comments, the Committee notes the information supplied by the Government in its report on the Convention for the period from 1 June 1996 to 1 July 2001, as well as in its annual reports on the application of the European Code of Social Security (ECSS). The Committee also notes the supplied brochures "A short survey of social security in the Netherlands, January 2001", "The Dutch disablement benefits system", and the report prepared for the Parliament "Efforts to reintegrate the unemployed: An overview".

Part III (Sickness benefit) and Part IX (Invalidity benefit) of the Convention in relation to Part XIII (Common provisions), Articles 71 and 72. In its previous comments, the Committee examined the implementation of the 1996 reform of the Civil Code, under which the responsibility for the payment of sickness benefit in the form of wages for a maximum of 52 weeks was transferred from the social security system to enterprises, in the light of the general principles concerning the organization and management of social security schemes laid down by the Convention. Describing the aims of the reform in its report, the Government states that the new law introduced a system of free market forces in respect of the Sickness Benefits Act (ZW), which had thus been privatized to a large extent. Employers could decide whether to bear the risk of paying wages to sick employees themselves or reinsure the risk with private insurance companies. Sickness benefit under the ZW was maintained as a safety net in cases where the employer could not be held responsible for the payment of wages to sick employees. In 1998, the privatization of the sickness benefit scheme has been followed by similar measures as regards the invalidity benefit scheme introduced by the PEMBA Act, which changed the manner of financing employers' contributions under the Disablement Benefits Act (WAO). As explained in the brochure "The Dutch disablement benefits system" (on pages 5 and 7), "in Dutch, PEMBA stands for: contribution differentiation and market forces in connection with disablement benefits". The employer may choose either to pay the differentiated contribution to the social insurance agency, or to bear the risk himself by paying the disablement benefit for the first five years of invalidity of his employee, or else to cover that risk by taking out insurance with a private insurance company; the Government's intention here being "to allow market forces to take effect (competition)". As in the case of the reform of the sickness benefit scheme, the implementation of the PEMBA Act has been also closely followed by the Committee in

its previous conclusions under the ECSS in view of the similar risks of health becoming a criterion of selection in recruitment and the breach opened in the collective nature of the financing of the invalidity branch. It notes from the Government's 35th annual report on the ECSS that, in 2001, there were still only 3,417 (1,612 in 1999) employers with fewer than 15 employees and 836 (536 in 1999) employers with at least 15 employees who had decided to take out a private insurance under the PEMBA Act to cover the risk of invalidity directly. To monitor the spread of the reforms and the redistribution of responsibilities in the private sector, the Committee would be grateful if the Government would continue to provide statistics in future reports indicating the number of enterprises which have decided to assume the risk of invalidity or sickness of their employees themselves, as well as the number of enterprises which have decided to take out collective insurance for these risks with private insurance companies, including the total number of employees employed by such enterprises. The Committee would also like to be informed of the regulatory and supervisory measures taken by the State in compliance with *Articles 71(3) and 72(2) of the Convention* to ensure the financial viability and proper functioning of the private insurance companies providing sickness and disability benefits.

The Committee recalls that both reforms were undertaken to encourage employers to prevent and reduce the number of days of absence caused by sickness and disablement of their employees and that, in view of the much greater numbers of workers unavailable for work due to these reasons in the Netherlands than in the comparable countries, it was expected that the market forces and competition would prove to be more effective in achieving this goal. At the same time, the Government has taken care to maintain the basic social security benefits provided under the ZW and WAO in all cases in which the employers and market forces fail to produce the desired effect. Moreover, the entitlements of the persons protected to these benefits have been safeguarded by a number of additional legislative measures reported by the Government, which have been gradually put in place to mitigate the negative effects of the market forces, which tend to discriminate against the weak and vulnerable and undermine the basic spirit of solidarity inherent in any social security system. The Committee is bound to observe that the resulting reforms to the sickness and disability benefits schemes intended to harness the positive effects of privatization and market forces, while containing their negative effects within the basic social security framework, has no comparison in the history of social security in Europe. It is thus only natural that they pose many new problems of organization and governance of such mixed social security systems, particularly during the transition period, when the new forms of state supervision of the system, the democratic participation of the persons protected in its management, the redistribution of the risk, financial burden and responsibility in society, and the principles of non-discrimination and solidarity with the most vulnerable groups are consolidated. The Committee wishes to recall that, while there is no single right model of social security, all systems should conform to certain basic principles of good governance and social cohesion, the observance of which comes under the general responsibility of the State established in *Articles 71(3) and 72(2) of the Convention*. Moreover, it is during such periods of reforms and transition that the responsibility of the State takes on particular importance for the future development of social security, including at the international level. In view of the profound and continuing nature of the social security reforms in the Netherlands, the Committee would like the Government to provide in its next report,

with reference to *Parts III, IV and V of the report form* on the Convention, an in-depth explanation of its strategy and reform policies, highlighting the principles on which the new design of the sickness and disability schemes is based, the difficulties encountered in the reform process and the major decisions handed down in this respect by courts of law and other tribunals.

With regard more particularly to *Article 72(1)* of the Convention, which provides for the participation of the representatives of the persons protected or their association in a consultative capacity with the management of the social security system, the Committee recalls that, at the national level, workers' organizations participate in the National Institute for Social Insurance (LISV) and in the sectoral councils, as well as in the negotiation of collective agreements regarding sickness benefit; at the company level, employees' councils are fully associated in determining the respective procedures by mutual agreement with the employer; and at the individual level, the persons protected have recourse to an independent medical expert or *Arbodienst* (occupational health and safety service) and participate in the establishment of plans for their reintegration into active employment. In addition, the Government indicates in its 35th report on the ECSS that, as from 1 January 2002, there have been fundamental changes in the implementation of the social insurance schemes for employees, as well as for the disabled self-employed persons and young handicapped persons. In particular, the agencies responsible for administration of employees' insurance schemes have been united into a single central organization (UWV). In order to guarantee the adequate participation of employees, employers and municipalities, the Board of Work and Income (RWI) has been created, which advises the Minister of Social Affairs and Employment on matters related to labour and income and provides subsidies to branches and companies to promote the reintegration of unemployed persons and social security beneficiaries. The Committee notes these new developments with interest and would like the Government to be asked to supply more details on the role played by the representatives of employees in the newly created bodies, as well as to indicate other measures taken or contemplated to further promote a strong role for workers' organizations and the participation of the representatives of the persons protected at the various levels of management, particularly in relation to private benefit providers.

With regard to the guarantees intended to prevent the most vulnerable groups of the population from suffering discrimination which are inherent in the system of the collective financing of risks, as set out in *Article 71(1)* of the Convention, the Committee recalls that protection for workers with a previous medical history against discrimination in access to employment is offered by the Medical Examinations Act of 1998, which also prohibits medical examinations and the selection of personnel in connection with the private insurance taken out by employers to cover the financial risks engendered by the sickness of their personnel. With regard to the protection of sick workers in employment and against the loss of their jobs, reference should be made to the obligation of all companies to be affiliated with a certified *Arbodienst*, to draw up reintegration plans for employees suffering prolonged illness and to have recourse to the assistance of *Arbodienst* for the reintegration of such employees. Under the Reintegration of the Work Disabled Act (REA), which came into force on 1 July 1998, employers do not have to pay the sick employee's wages if the re-employed disabled person falls ill during a subsequent period of five years, during which she/he will receive sickness benefit from the social security agency. The report prepared for Parliament "Efforts to reintegrate the

unemployed: An overview”, and supplied by the Government with its report, describes increased policy measures adopted in 1999 for the integration into employment of persons in a vulnerable position on the labour market, including persons incapacitated for work. The Committee notes in particular the proposed new rules for the exchange of data between the employer, the *Arbodienst* and the social security agencies during the first year of an employee’s sickness, the objective of which is the more rapid and effective reintegration of sick unemployed persons and a reduction of the inflow of new beneficiaries into the disability benefit scheme (implementation of the new “gatekeeper model”). In this respect, the Government indicates in its 35th report on the ECSS that the protection of sick workers has been strengthened by the entry into force on 1 January 2002 of the Gatekeeper Improvement Act (*Wet Verbetering Poortwachter*), which obliges the employer to report cases of employee illness to the *Arbodienst* and, on the basis of the problem analysis prepared by the *Arbodienst* in the sixth week of illness, to draw up in writing a reintegration plan in agreement with the employee concerned. The Committee further notes from the above parliamentary report (pages 44-45) that the Secretary of State is preparing a legislative proposal to improve sick leave supervision in the first year of sickness and that the evaluation of the achievements under the REA is due in 2000. It hopes that the Government will include information on the progress made in this respect in its next report.

Peru (ratification: 1961)

The Committee notes the information supplied by the Government in its report, and the discussion held in June 2002 in the Committee on the Application of Standards of the Conference. It also notes that the Government requested information from the Superintendence of Banks and Insurance to reply to the Committee’s observations, which will be forwarded when it has been received. In view of the fact that this information has not been provided to the Office, the content of the report, in the same way as in 2001, almost exclusively covers the health scheme, and not therefore the pensions scheme. The Committee therefore hopes that the Government will provide this information in the near future.

Health-care scheme

Part II (Medical care), Article 10 of the Convention (in conjunction with Article 8). With reference to the Committee’s previous comments, the Government reiterates that the benefits provided under the new health system include all the benefits set out in *Articles 8 and 9* of the Convention. With regard to domiciliary visiting by general practitioners, the Government indicates that there are no specific regulations. There is a programme of domiciliary care (PADOMI) which provides direct health services by means of general and specialized domiciliary visiting, as well as continuous care for therapeutic purposes and health education. The Committee notes this information. However, it observes that PADOMI is intended for insured persons over 80 years of age and those under 80 years of age who suffer from physical limitations or incapacities. It recalls that, by virtue of *Article 8* of the Convention, medical care must be guaranteed in the event of any morbid condition, whatever its cause, for all persons protected, without any age condition. In these conditions, the Committee hopes that the Government will take the necessary measures to ensure that the medical care provided under the new health system explicitly includes, in accordance with *Article 10, paragraph 1(a)(ii)*, of

the Convention, domiciliary visiting by general practitioners for all persons protected without any distinction as to age.

Part II (Medical care), Article 9, Part III (Sickness benefit), Article 15, and Part VIII (Maternity benefit), Article 48. With reference to its previous comments, the Committee notes the detailed information and statistics provided by the Government on the geographical coverage of the new health scheme, and on the population insured by both health-care providers (EPS) and by ESSALUD. It notes that the system of EPS is national in scope, since the rules do not set out any limitations or exclusions. However, it notes that in four departments (Amazonas, Huancavelica, Madre de Dios, Moquegua) there is no coverage by any type of service, and that in three others (Apurímac, Huanuco, Pasco) there is only outpatient coverage. The Committee hopes that the Government will take the necessary measures to extend the health system to the above regions. It requests the Government to keep it informed of the progress achieved in this respect. The Committee also notes that, according to the above report, as of November 2001 the system of EPS registered an accumulated total of 330,058 insured persons, representing an increase of 2.73 per cent in relation to November 2000. The Committee requests the Government to provide detailed information on the coverage of the persons protected in the manner required in the report form (see the direct request).

Part XIII (Common provisions) (in conjunction with Parts II, III and VIII), Article 71. With reference to its previous comments, the Committee notes the information provided by the Government on the manner in which the Health-Care Providers Superintendence (SEPS) supervises the operation of the health-care system. It notes in this respect Superintendence Resolution No. 053-2000-SEPS/SD, approving the General Supervision Rules of the SEPS, and Superintendence Resolution No. 026-2000-SEPS/CD, published on 6 May 2000, approving the Regulations respecting infringements and penalties for health-service providers. The Committee further notes a supervision report prepared by the SEPS relating to the Clínica del Pacífico S.A.C. It requests the Government to provide, as appropriate, the supervision reports for Novasalud EPS and Rimac Internacional EPS, and the decisions issuing penalties delivered in accordance with Superintendence Resolution No. 026-2000-SEPS/CD (see the Management Evaluation Report for the year 2001, page 5). With regard to the financial viability of the institutions participating in the health scheme, the Government indicates that the legislation (Supreme Decree No. 009-97-SA, and the Regulations issued under Act No. 26790) empowers the SEPS to carry out inspections both during the establishment and functioning of EPS. The Committee once again requests the Government to provide copies of feasibility studies (*ibid.*, page 8).

Article 72. In reply to the Committee's previous comments, the Government reiterates that the participation of protected persons in the administration of the health system is not obligatory as SEPS is a public body established by the law, the objective of which is to authorize, regulate and supervise the operation of EPS and guarantee the proper use of the funds that they administer. It is the policy of SEPS to disseminate the rights of regular insured persons, and to take into consideration the opinions of the various stakeholders. The Committee notes this information. It shares the opinion of the Government that, with regard to the SEPS, the participation of the persons protected is not obligatory. However, it notes that the EPS are entities which are independent of the SEPS and that the supervision carried out by the latter does not imply the participation of the persons protected in the administration of the EPS. The above was corroborated by

the Worker delegate of Peru in June 2002 in the Committee on the Application of Standards of the Conference. In view of the fact that, by virtue of the legislation (sections 15 and 16 of Act No. 26790), enterprises which provide health care, through EPS or their own care services, are entitled to a credit drawn from workers' contributions equal, in principle, to 25 per cent of the latter, the Committee requests the Government to indicate the measures that it intends to adopt to allow the participation of the persons protected in the administration of EPS and the health-care services of individual enterprises which, according to the Institutional Management Evaluation Report of 2001, amounted on 31 December 2001 to 529 enterprises and entities providing health care.

Pension system

The Committee notes the information concerning the Insurance Standardization Office (OMP) and the funds administered by the directorate of the Consolidated Reserve Fund (FCR), as well as the statistical information on the private pensions system. The Committee notes the statement made by the Government representative in the Committee on the Application of Standards of the Conference in June 2002. However, it notes that once again this year the Government has not replied to the questions raised in its previous comments. In these conditions, it is bound to reiterate the points raised previously.

I. Private pensions system

In its statement to the Conference Committee in June 2002, the Government indicated that the introduction of the private pensions system was due to the financial exhaustion of the pay-as-you-go system, resulting from a series of related factors. The State is not, however, considering renouncing its obligation to ensure a national social security system in general. In this respect, on 1 January 2002, Act No. 27617 was published, which is still awaiting implementing regulations, but which among other provisions establishes the minimum pension of the private pensions system. These measures cover the transfer of accredited contribution amounts for pensioners through the National Public Savings Fund. The Government is aware of the importance of social security Conventions, in view of the important role that they play in combating poverty. For this reason, it is important to do everything necessary, with the support of the ILO, to find appropriate solutions to harmonize the international standards and obligations with the internal policy and rights. It is therefore necessary to work towards achieving a better level of the pension to be achieved gradually and which has been proposed as an objective of the private pensions system. The Committee notes the above statement. It hopes that in its next report the Government will describe the manner in which the following issues, which have been raised for a number of years, have been resolved.

1. *Part V (Old-age benefit), Articles 28 and 29, paragraph 1 (in conjunction with Article 65 or Article 66).* In its previous comments, the Committee recalled that the rate of the pensions provided by the private pensions system does not appear to be determined in advance, since it depends on the capital accumulated in individual capitalization accounts, and particularly on the earnings from these accounts. The Committee noted the statistical data on the pensions adjustment factor and the monthly average pension per member, provided by the Government in September 1998, but noted that the data were not adequate to allow it to assess the effect given to the Convention.

The Committee notes that, according to the report on the ONP and the funds administered by the directorate of the FCR, Ministry of Economy and Finance, June 2002, page 5, some 25,000 persons received benefits under the private pensions system. The Committee requests the Government to provide information on the amount of such pensions. The Committee once again recalls that, under *Article 29, paragraph 1*, read in conjunction with *Articles 28 and 65 or 66*, an average benefit at least equal to 40 per cent of the reference wage has to be secured to a person protected who has completed, prior to the contingency, in accordance with prescribed rules, a qualifying period which may be 30 years of contribution. The Committee would therefore be grateful if the Government would provide statistical data as requested in the report form to allow it to make a full evaluation of the extent to which the old-age benefit, in all cases and irrespective of the type of system selected, attains the level prescribed by the Convention.

In relation to its previous comments, the Committee notes with interest that Act No. 27617 was published on 1 January 2002, but that it is still awaiting implementing regulations, and which among other provisions, establishes the minimum pension for the private pensions system. The Committee requests the Government to provide detailed information on the amount of the minimum pension. In this respect, the Committee recalls that the formula set out in *Article 66* can be applied within the framework of a private pensions system, provided that the minimum old-age benefits payable to a standard beneficiary with 30 years of contribution are not less than the minimum amount required by the Convention (40 per cent of the wage of an ordinary adult unskilled male labourer within the meaning of *paragraphs 4 and 5 of the above Article*). The Committee therefore requests the Government to provide a copy of the above Act and, where appropriate, its implementing regulations, as well as the statistical information required by the report form.

2. *Article 30*. The Committee once again requests the Government to indicate the measures which have been adopted or are envisaged to guarantee the full application of this provision of the Convention (payment of the benefit throughout the contingency) with regard to the “programmed retirement” system, under which monthly withdrawals may be made from the account until the accumulated capital is exhausted, contrary to the above Article. In this regard, the Committee also refers to its comments on the application of *Article 4* of the Old-Age Insurance (Industry, etc.) Convention, 1933 (No. 35).

3. *Part IX (Invalidity benefit), Article 58*. With reference to its previous comments, the Committee notes that in the case of a worker with permanent invalidity, the “programmed retirement” is provided as a survivors’ pension, with the insured person maintaining ownership of the individual capital account, which generates rights for dependants and is adjusted every quarter in accordance with the current economic situation. The Committee once again requests the Government to indicate how full effect is given to this provision of the Convention (provision of the benefit throughout the contingency or until an old-age benefit becomes payable) in the event of the permanent total invalidity of a worker who has selected the “programmed retirement” system.

4. *Part XIII (Common provisions), Article 71, paragraph 1*. In relation to its previous comments, the Committee notes that the contributions made by each worker are absolutely independent of each other, and that administrative expenses are covered by a

minimal percentage of the contributions made by each of the workers, and that this percentage goes to form part of a fund through which, by means of a mini-redistribution system, the administrative expenses are financed in a general manner. The Committee recalls that the cost of the benefits, certain administrative expenses and the cost of certain commissions are at the exclusive charge of workers who are insured under an AFP, with employers' contributions being of a voluntary nature. By virtue of *Article 71, paragraph 1*, "the cost of the benefits ... and the cost of the administration of such benefits shall be borne collectively by way of insurance contributions or taxation or both in a manner which avoids hardship to persons of small means and takes into account the economic situation of the Member and of the classes of persons protected". The Committee once again requests the Government to indicate the measures which have been adopted or are envisaged to give full effect to the Convention in this respect.

5. *Article 71, paragraph 2*. The Committee once again recalls that, under these provisions of the Convention, the total of the insurance contributions borne by the employees protected shall not exceed 50 per cent of the total of the financial resources allocated to the protection of employees and their spouses and children. In order to be in a position to assess the effect given to this provision of the Convention, the Committee once again requests the Government to provide in its next report the statistics requested in the report form under this Article of the Convention for both the private pensions and health systems and the schemes administered by the public system.

II. *System of pensions administered by the ONP*

The Committee once again draws the Government's attention to the following points.

1. *Part V (Old-age benefit), Article 29, paragraph 2(a)*. With reference to its previous comments, the Committee notes the Government's statement that, to be entitled to receive a full retirement pension proportional to the amount of the contributions paid, a minimum of 20 years of contributions has been set. In its report received in September 1998, the Government acknowledges that Peruvian law does not envisage the situation described in this provision. The Committee recalls that *Article 29, paragraph 2(a)*, provides that, where the old-age benefit is conditional upon a minimum period of contribution, a reduced benefit shall be secured to a person protected who has completed a qualifying period of 15 years of contribution or employment. The Committee once again points out that the qualifying period laid down in the national legislation is higher than the 15-year period established in the Convention. In these conditions, the Committee is bound to urge the Government to take the necessary measures to ensure that persons protected are entitled to a reduced benefit after 15 years of contribution, as provided by this provision of the Convention.

2. *Part XI (Standards to be complied with by periodical payments), Articles 65 and 66*. The Committee notes the adoption of resolution No. 001-2002-JEFATURA/ONP, which provides for an increase in the pensions under the National Pension System covered by Legislative Decree No. 19990. It requests the Government to provide a copy of the above resolution. The Committee notes the Government's statement that the maximum rate of the old-age pension paid by the public pension system is inadequate and not proportional to the contributions made by workers. It also notes that, as from 1 January 1997, the contributions to the national pension system

cannot be lower than 13 per cent of the insurable wage of each worker. Furthermore, a National Public Savings Fund has been established, the profits from which will be used to provide supplements to pensioners whose total monthly pensions do not exceed 1,000 new soles. The Committee hopes that the Government will continue providing information on the measures adopted or envisaged to increase the amount of the benefits paid by the national pensions system with a view to attaining the level prescribed in the Convention. Furthermore, the Committee once again requests the Government to provide all the statistics required in this respect by the report form under *Article 65 or 66*, including statistics on the review of the long-term benefits to take into account changes in the cost of living. In this respect, the Committee once again recalls the importance that it attaches to the revision of the rates of current periodical payments in the case of long-term benefits, as required by *Article 65, paragraph 10, and Article 66, paragraph 8*. The Committee requests the Government to provide a copy of the above resolution.

III. Supervision of the private and public pensions systems

The Government indicates in its report received in September 1998 that the State assumes overall responsibility for matters relating to the provision of benefits and takes any measures required for this purpose and for ensuring the sound administration of institutions and services involved in the implementation of the Convention. The Committee would be grateful if the Government would indicate the specific measures adopted to apply *Article 71, paragraph 3, and Article 72, paragraph 2*, with regard to both the private and the public pensions systems. In this context, the Committee recalls the importance of carrying out regularly the actuarial studies and calculations required by *Article 71, paragraph 3*.

With particular reference to the private system, the Committee notes that, by virtue of section 23 of Supreme Decree No. 054-97-EF, investments made by AFPs must generate a minimum level of profit. Furthermore, the Government is responsible for determining the criteria of minimum profitability (guaranteed by the statutory reserve formed from the AFPs' own funds and other sources). The Committee would be grateful if the Government would also indicate in its next report all the measures taken to ensure the minimum level of profits generated by AFPs for their members and if it would provide a copy of the Supreme Decree approved by the Minister of Economics and Finance.

IV. Participation of persons protected in the administration of the system

1. The Committee once again requests the Government to indicate the measures which have been taken or are envisaged, in the context of the private pensions system, to give effect to *Article 72, paragraph 1*, which provides that, where the administration is not entrusted to an institution regulated by the public authorities or to a government department responsible to the legislature, representatives of the persons protected shall participate in the management, or be associated therewith in a consultative capacity, under prescribed conditions. In this respect, the Committee refers to the information provided by the Government in its report of 2001 on the application of Convention No. 35, and trusts that the Government will indicate any new measures which have been

adopted to allow the participation by the persons protected in the administration of the private pensions system.

2. The Committee requests the Government to indicate the manner in which representatives of the persons protected participate in the management of the pensions system administered by the Insurance Standards Office (ONP), and particularly whether they are represented on the management bodies of the ONP.

With reference to the observations made by the Association of Retired Oil Industry Workers of the Metropolitan Area of Lima y Callao, the Committee notes the Government's statement that no authority can address issues pending before a judicial body, nor interfere in the exercise of its functions. The Committee refers to its previous comments and trusts that the Government will in due course provide copies of any final judicial decisions on cases brought in connection with the observations made by the Association of Retired Oil Industry Workers of the Metropolitan Area of Lima y Callao.

With reference to a communication submitted by the World Federation of Trade Unions, the Committee notes the information provided by the Government to the effect that a special commission is entrusted with preparing a report on the situation of insurance schemes covered by Legislative Decrees Nos. 1990 and 20530, and others under the responsibility of the State. Once this commission has submitted its report, the Government will be able to determine the merits of the matters raised by the National Central Association of Retired Workers and Pensioners of Peru (CENAJUPE).

While fully aware of the complexity of the issues raised, the Committee trusts that the Government, in accordance with the statement by its representative in June 2002, will seek advice from the competent services of the Office on the organization and working of the public and private social security systems in the areas of health care and pensions. The Committee trusts that the Government will redouble its efforts to provide the information requested in the present observation, as well as in its direct request.

[The Government is asked to reply in detail to the present comments in 2003.]

Switzerland (ratification: 1977)

Part VI (Employment injury benefit), Article 38 of the Convention (in relation to Article 69(f)). In its previous observation, the Committee noted the reversal by the Federal Insurance Court (TFA) of the case law relating to the direct applicability of the above provisions of the Convention, which authorize the suspension of benefit only where the contingency has been caused by the wilful misconduct of the person concerned. According to the rulings of the TFA of 25 August 1993 and 21 February 1994, international standards take precedence over section 7(1) of the Federal Invalidity Insurance Act (LAI) and section 37(2) of the Federal Accident Insurance Act (LAA), which permitted the reduction of cash benefits on grounds of serious negligence. The Committee had therefore requested the Government to indicate in future reports any amendments made to the national legislation with a view to bringing it into formal conformity with *Article 69(f)* of the Convention, for example on the occasion of the next revision of the LAA or the adoption of the Act on the general part of social insurance law.

In reply, the Government indicates in its report that, by means of an amendment of 9 October 1998, which entered into force on 1 January 1999, the LAA was brought into

conformity with *Article 38* of the Convention, in relation to *Article 69(f)*. In accordance with the new wording of section 37(2) of the LAA (as it was in force on 6 April 1999) supplied by the Government, the possibility of reducing the daily benefits of insured persons in relation to an accident caused by their serious negligence is only retained in insurance for non-occupational accidents. The Committee notes with interest this amendment relating to accidents caused by the misconduct of insured persons. However, it notes that as regards the same penalty applied to the survivors of insured persons under section 38(2) of the LAA, which remains applicable to occupational accidents and diseases in addition to non-occupational accidents, the situation in law remains unchanged, since this provision still authorizes the reduction or even the refusal in particularly serious cases, of the cash benefits to a survivor where the latter has caused the death of the insured person by serious negligence.

The Committee notes in this respect, according to the information provided by the Government in its 24th annual report on the application of the European Code of Social Security, that the draft fourth revision of the LAI is currently being examined by Parliament. It also notes, from the information provided by the Government in its report for the period 1996-2001 on Convention No. 128, that the national legislation will be brought into formal conformity with the Convention following the entry into force on 6 October 2000 of the Federal Act on the general part of social insurance law (LPGA). The Committee therefore hopes that the Government will take this occasion to bring section 38(2) of the LAA, as well as section 7(2) of the LAI, into full conformity with the Convention. It requests the Government to inform it of any development which may occur in this respect.

United Kingdom (ratification: 1954)

Part IV (Unemployment benefit). In its previous comments, the Committee has been questioning certain provisions authorizing suspension of unemployment benefit on the grounds of misconduct, taking into account that *Article 69(f) of the Convention* admits suspension of benefit only where the contingency has been caused by *wilful* misconduct. It referred in particular to examples of misconduct in the Adjudication Officer's Guide (AOG) where it was caused not by deliberate acts of the claimant, but rather by his or her negligence or carelessness. For example, claimants who were accidentally late for work may have been found guilty of misconduct, even if there was no deliberate intention to be late (paragraph 39108 of the AOG). The Committee has requested the Government to modify the Guide so as to bring it in line with the adjudication officers' case law sanctioning in practice only wilful misconduct in accordance with *Article 69(f)* of the Convention.

In its report of 2000, the Government agreed that in this context "wilful" was tantamount to "deliberate" and accepted that paragraph 39108 of the AOG did not properly distinguish between circumstances that were beyond the claimant's control and circumstances where the claimant has deliberately and inexcusably failed to exercise a proper duty of care. Lateness for work should only constitute misconduct if there was evidence that the circumstances which caused it were within the claimant's control. The Government was therefore grateful to the Committee for drawing the ambiguity of paragraph 39108 to its attention, and undertook to issue an appropriate amendment at the earliest opportunity. In its report of 2001, the Government indicated that the former

AOG has been replaced by the Decision Makers Guide (DMG), in which the wording of the corresponding paragraph has been amended.

The Committee recalls that paragraph 39108 of the AOG contained a general guidance that “even when claimants have not deliberately done anything wrong, this can still amount to misconduct”, and illustrated its application on the concrete example of sanctioning a claimant who was accidentally late for work, for misconduct. The Committee notes *with satisfaction* that in the new wording of paragraph 34108 of the DMG, which has replaced paragraph 39108 of the AOG, this general guidance has been deleted, thus precluding decisions which would tend to qualify as misconduct non-deliberate and accidental wrongdoing of claimants. The Committee raises a number of other points in the request addressed directly to the Government.

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In addition, requests regarding certain points are being addressed directly to the following States: *Czech Republic, Democratic Republic of the Congo, Denmark, Greece, Iceland, Japan, Libyan Arab Jamahiriya, Mexico, Netherlands, Peru, Senegal, Slovakia, Slovenia, Switzerland, Turkey, United Kingdom, Yugoslavia.*

Convention No. 103: Maternity Protection (Revised), 1952

Bolivia (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 information supplied by the Government in its report, particularly concerning changes made and in progress in the social security field. In this regard, the Government states that subsequent to adoption of the Act on organization of the executive authorities of 1997, the Ministry of Labour and Small Enterprises no longer has responsibility for maternity insurance. The control and supervision of insurance now come under the Ministry of Health and Social Welfare. The Committee also notes the information supplied by the Government in reply to its previous comments and wishes to draw attention to the following points.

Article 1 of the Convention. In its previous comments, the Committee emphasized the need to take appropriate measures, both in law and in practice, to ensure that women workers at home and women agricultural workers benefit from the protection set out in the Convention. For women agricultural workers, the Government states that Congress has before it a draft supreme decree on the inclusion of wage earners in the agricultural sector under the General Labour Act, with the aim of harmonizing the rights of these workers in the field of social welfare and employment. The Committee notes this information with interest and hopes that the draft decree will be adopted very shortly. It hopes that the Government will not fail to take all the measures necessary to ensure that women agricultural workers and women workers at home all benefit in practice from the maternity protection provided by national legislation (General Labour Act and Social Security Code).

Article 3, paragraph 2. In its previous comments, the Committee noted that section 61 of the General Labour Act and Supreme Decree No. 2291 of 7 December 1950 applicable to women workers in the public administration provide for maternity leave of 60 days whereas, according to this provision of the Convention, the minimum period of maternity leave must be 12 weeks. In its latest report, the Government refers once again to section 31 of Decree No. 13214 of 24 December 1975 reforming the social security scheme which provides for payment of maternity benefits for a maximum duration of 45 days before and

45 days after confinement. According to the Government, this section amends section 61 of the abovementioned General Labour Act and allows effect to be given to this provision of the Convention. The Committee notes this information. Nevertheless, it still considers that in order to avoid any contradiction between the various provisions of legislation applicable, labour legislation (section 61 of the General Labour Act and Supreme Decree No. 2291 concerning women workers in the public administration) should be aligned with social security legislation in order to provide expressly for the right to maternity leave of not less than 12 weeks. The Committee considers amendment of labour legislation all the more necessary since social security legislation does not always apply to all categories of women workers covered by the Convention.

Article 3, paragraph 4. The Committee hopes that the Government's next report will contain information on the measures taken or envisaged to include in the General Labour Act, the Social Security Code and the legislation in respect of public servants and employees a provision allowing for the extension of prenatal leave where confinement takes place later than the presumed date, without any reduction in the minimum postnatal leave period of six weeks prescribed by the Convention.

Article 4, paragraphs 5 and 8. The Committee notes the adoption of Supreme Decree No. 24303 of 24 May 1996 on national insurance in relation to maternity and childhood. This free insurance provides medical benefits to the insured persons before, during and after confinement, as well as to children under the age of 5 years for certain diseases. The Committee requests the Government to supply a copy of this Decree. In regard to cash benefits, the Committee requests the Government to specify the measures taken or contemplated to ensure that women workers who do not fulfil the conditions set out in the Social Security Code or who are not yet covered by this scheme receive cash benefits either out of public funds or through public assistance schemes.

Article 5. In its previous comments, the Committee noted that section 61 of the General Labour Act which contains a provision concerning nursing breaks does not apply to public servants and employees as this category of workers is not covered by the General Labour Act. In its latest report, the Government indicates that section 61 applies both to the private sector and the public sector. In these circumstances, the Committee considers that the Government should not encounter any difficulties to include in the legislation concerning the working conditions of public sector employees a provision expressly laying down the right to nursing breaks. The Committee requests the Government to supply information on any progress made in this respect.

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

Chile (ratification: 1994)

The Committee notes the detailed information provided by the Government in reply to the comments of the Federation of Postal Workers of Chile, which were forwarded to it in September 2001. However, the Committee notes that the Government's report has not been received. It 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 Government is asked to reply in detail to the present comments in 2003.]

Spain (ratification: 1965)

The Committee notes the comments sent by the Trade Union Confederation of Workers' Commissions (CC.OO.) on 18 October 2002 concerning the Government's report, which were sent to the Government. The Committee has decided to postpone its consideration of them until the next session. On that occasion it will examine the information sent by the Government in its report in reply to the previous observation together with any information the Government may send in reply to the CC.OO.'s comments.

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In addition, requests regarding certain points are being addressed directly to the following States: *Azerbaijan, Mongolia, Slovenia, Tajikistan, Uruguay, Zambia*.

Convention No. 105: Abolition of Forced Labour, 1957*Afghanistan* (ratification: 1963)

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:

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.

Angola (ratification: 1976)

Article 1(c) of the Convention. The Committee had previously commented over many years on subsections (g) and (m) of section 1 of Act No. 11/75, of 15 December 1975, regarding discipline in the production process, under which “passive resistance to labour” or “any other acts which seriously hinder the production process” constituted “crimes against production” and were punishable with sentences of imprisonment of up to one year or more than six months respectively, involving an obligation to work (section 8(2)). The Committee notes with satisfaction that section 324(b) of the new General Labour Act (No. 2/2000 of 11 February 2000) repeals those non-complying subsections.

Bahamas (ratification: 1976)

The Committee notes the information provided by the Government in reply to its earlier comments.

Article 1(c) and (d) of the Convention. For many years, the Committee has been referring to sections 128 and 130 of the 1976 Merchant Shipping Act, under which various breaches of labour discipline are punishable with imprisonment (involving an obligation to work, under section 10 of the Prisons Act and rules 76 and 95 of the Prison Rules). It also referred to section 134 of the Act, which provides for the forcible return of deserting seafarers to ships registered in another country, provided the Minister is satisfied that reciprocal arrangements will be made in that country. The Committee notes the Government’s indication in its report that some amendments to the Merchant Shipping Act have been concluded. It observes, however, that copies of the amendments have not yet been communicated by the Government. The Committee hopes that the abovementioned provisions of the Act will at last be amended so as to bring the legislation into conformity with the Convention and asks the Government to supply copies of the amendments.

Article 1(d). Over a number of years, the Committee has been referring to section 73 of the 1970 Industrial Relations Act (*Official Gazette*, Supplement Part I, 10 September 1970, No. 36), under which the Minister may refer a dispute which is not in an essential service to the Industrial Relations Board for settlement, if he considers that a strike which is in progress affects or threatens the public interest; any worker who continues to participate in such a strike is liable to a punishment of imprisonment (involving an obligation to perform labour). The Committee expressed the hope that the necessary amendments would be adopted to ensure that compulsory arbitration, when enforced by sanctions involving compulsory labour, be limited to services whose interruption would endanger the life, personal safety or health of the whole or part of the population.

The Committee also referred to section 72 of the same Act, under which participation in a strike is punishable with imprisonment, inter alia, if the strike has any object other than or in addition to the furtherance of a trade dispute within the trade or industry in which the strikers are engaged or if it is designed or calculated to coerce the Government either directly or by inflicting severe hardship on the community. Referring to paragraph 128 of its 1979 General Survey on the abolition of forced labour, the Committee pointed out that the prohibition of purely political strikes lies outside the scope of the Convention, but that restrictions on the right to engage in strikes should not apply to matters of a broader economic and social nature affecting the occupational interests of workers.

The Government indicates in its report that the proposed Trade Unions and Industrial Relations Bill was concluded and tabled in the House of Assembly in May 2001, and that it contains no provisions imposing sanctions of imprisonment for breach of the legislation, which may be punished only with fines. The Government reiterates its previous statement that the above provisions of the Industrial Relations Act have never been applied in practice, and that the legislation will be amended when a consensus is achieved after further consultation with the social partners.

The Committee notes this information. It expresses firm hope that the review of the Act announced by the Government for a number of years will soon result in the amendment of the above provisions and the legislation will be brought into conformity with the Convention. The Committee asks the Government to supply a copy of the new Trade Unions and Industrial Relations Act, as soon as it is adopted.

Bangladesh (ratification: 1972)

The Committee has noted the information provided by the Government in reply to its earlier comments.

Article 1(a), (c) and (d) of the Convention. 1. For a number of years, the Committee has been referring to various provisions of the Penal Code, the Special Powers Act, No. XIV of 1974, the Industrial Relations Ordinance, No. XIII of 1969, as amended, the Control of Employment Ordinance, No. XXXII of 1965, the Post Office Act, No. VI of 1898, the Services (Temporary Powers) Ordinance, No. II of 1963 and the Bangladesh Merchant Shipping Ordinance, No. XXVI of 1983. Under a number of these provisions, compulsory labour may be imposed as a means of political coercion or as a punishment for expressing political views or views opposed to the established political system; it may also be imposed as a punishment for various breaches of labour discipline, and as a punishment for the participation in strikes in a wide range of circumstances; furthermore, under the Bangladesh Merchant Shipping Ordinance, seafarers may be forcibly conveyed on board ship to perform their duties.

2. The Committee previously noted the Government's indication in its 1999 report that a report of the National Labour Law Commission, which was established in 1992 with a view to examining the existing laws and to submit recommendations regarding their amendments, was still under consideration by the Government. The Government expressed the hope that a comprehensive Labour Code, to be made after due consideration of the National Labour Law Commission's report and recommendations, would be in conformity with the Abolition of Forced Labour Convention. In its latest report, the Government indicates that the Commission's report containing a draft Labour

Code raised objections and complaints on the part of employers and workers, as well as other legal bodies and organizations, and has been re-examined by the committee of legal experts, which has submitted its views for consideration by the Government, so that it could be passed by Parliament. With regard to the Committee's comments on the Penal Code and the Special Powers Act, the Government confirmed its previous indications that the Law Commission had been examining the existing laws and would submit recommendations to the Government regarding their amendment. The Committee therefore reiterates its hope that concrete action will at last be taken to bring the national legislation into full conformity with the Convention.

3. In its earlier comments, the Committee referred to sections 198 and 199 of the Bangladesh Merchant Shipping Ordinance, No. XXVI of 1983, which provide for the forcible conveyance of seamen on board ship to perform their duties, and to sections 196, 197 and 200(iii), (iv), (v) and (vi) of the same Ordinance, which provide for penalties of imprisonment (which may involve an obligation to work) for various disciplinary offences, in a situation where life, safety or health are not endangered. The Committee previously noted the Government's indications that the provisions of the Bangladesh Merchant Shipping Ordinance would be examined by a tripartite committee in order to be brought into conformity with the Convention. However, in its latest report the Government states that it is not in favour of amending the above sections of the Ordinance due to socio-economic conditions of the country and because it considers that the decrease in punishment will increase the desertion of seafarers and reduce the employment opportunities for Bangladeshi seafarers on foreign ships.

4. While noting these explanations, the Committee recalls that *Article 1(c)* of the Convention prohibits the exaction of forced or compulsory labour as a means of labour discipline. Referring also to paragraphs 117 to 119 of its 1979 General Survey on the abolition of forced labour, the Committee emphasizes that the Convention does not cover sanctions relating to acts tending to endanger the ship or the life or health of persons. However, as regards sanctions relating more generally to breaches of labour discipline such as desertion, absence without leave or disobedience, sometimes supplemented by provisions under which seafarers may be forcibly returned to their ship, such sanctions (involving compulsory labour) must be either repealed or restricted to offences that endanger the safety of the ship or the life or health of persons. The Committee therefore requests the Government once again to review the Ordinance in the light of the Convention and to indicate the measures taken or envisaged to bring its provisions into conformity with those of the Convention.

5. The Committee trusts that the Government will soon be in a position to indicate the necessary action that has been taken to bring the legislation into conformity with the Convention and requests the Government to supply full information on the various points set out in a request addressed directly to the Government.

Belize (ratification: 1983)

The Committee notes the Government's brief reply to its earlier comments.

Article 1(c) and (d) of the Convention. In comments made for a number of years, the Committee has referred to section 35(2) of the Trade Unions Act, under which a penalty of imprisonment (involving, by virtue of section 66 of the Prison Rules, an obligation to work) may be imposed on any person employed by the Government,

municipal authority or any employer in charge of supplying electricity, water, railway, health, sanitary or medical services or communications or any other service that may by proclamation be declared by the Governor to be a public service. The penalty of imprisonment may be imposed if such person wilfully and maliciously breaks a contract of service, knowing or having reasonable cause to believe that the probable consequences will be to cause injury or danger or grave inconvenience to the community. The Committee has also noted that section 2 of the Settlement of Disputes (Essential Services) Act, Statutory Instrument No. 92 of 1981, declared the National Fire Service, Postal Service, Monetary and Financial Services (banks, treasury, monetary authority), Airports (civil aviation and airport security services) and the Port Authority (pilots and security services) to be essential services; and Statutory Instrument No. 51 of 1988 declared the Social Security Scheme administered by the Social Security Branch an essential service.

The Committee notes from the Government's report that section 35(2) of the Trade Unions Act has not been amended, but there have been no recorded penalties of imprisonment imposed under this section. It points out once again that, under *Article 1(c) and (d)* of the Convention, legislation providing for sanctions involving compulsory labour as a punishment for violations of labour discipline or for having participated in strikes must be repealed.

The Committee draws the Government's attention to the explanations in paragraphs 110, 114-116 and 123 of its 1979 General Survey on the abolition of forced labour, where it considered that the Convention does not protect persons responsible for breaches of labour discipline that impair or are liable to endanger the operation of essential services in the strict sense of the term (that is, services whose interruption would endanger the life, personal safety or health of the whole or part of the population), or which are committed either to the exercise of functions that are essential to safety or in circumstances where life or health are in danger. However, to justify the non-application of *Article 1(c) and (d)* of the Convention in such cases, there must exist an effective danger to safety, life or health, not mere inconvenience. With regard to section 35(2) of the Trade Unions Act, the Committee previously noted that it refers not only to injury or danger but, alternatively, to grave inconvenience to the community, and applies not only to essential services in the strict sense of the term, but also to others whose interruption would not endanger the life, personal safety or health of the whole or part of the population, such as most employment under the Government or a municipal authority and most banking, postal and transport services.

Noting also the Government's repeated indication that there are no recorded penalties of imprisonment imposed under section 35(2) of the Trade Unions Act, the Committee reiterates its hope that the necessary measure will at last be taken to bring section 35(2) of the Trade Unions Act into conformity with the Convention and the indicated practice. It asks the Government to provide, in its next report, information on the action taken to this end.

Central African Republic (ratification: 1964)

The Committee notes the Government's report.

Article 1(a) of the Convention. 1. In its previous observations, the Committee noted that sentences of imprisonment involving compulsory labour may be imposed

under the provisions of Act No. 60/169 of 12 December 1960 (dissemination of prohibited publications liable to prejudice the development of the Central African nation) and Order No. 3-MI of 25 April 1969 (dissemination of periodicals or news of foreign origin not approved by the censorship authority). The Committee had requested the Government to amend or repeal the legislation in question and to provide copies of the new provisions adopted. The Committee also notes the information contained in the Government's latest report to the effect that the Committee's comments on the above laws have been transmitted to the Minister of Communication.

The Committee notes that the Government's latest report does not indicate whether Act No. 60/169 and Order No. 3-MI have been amended. The Committee expresses the firm hope that the Government's next report will indicate the measures taken or envisaged to ensure compliance with the Convention.

2. With regard to freedom of expression, in earlier comments the Committee had requested the Government to provide information on the application in practice of certain provisions enumerated below with a view to ensuring that they are in conformity with the Convention:

- (i) section 77 of the Penal Code (dissemination of propaganda for certain purposes, acts such as to jeopardize public security, etc.); and
- (ii) sections 130 to 135 and 137 to 139 of the Penal Code (offences against persons occupying various public offices).

The Committee had noted that these provisions of the Penal Code provide for sentences of imprisonment involving the obligation to work, in accordance with section 62 of Order No. 2772 of 18 August 1955, issuing regulations respecting the operation of prison establishments and work by detainees. With reference to paragraph 105 of its 1979 General Survey on the abolition of forced labour, the Committee recalls that, in most cases, labour imposed on persons as a consequence of a conviction in a court of law will have no relevance to the application of the Convention. On the other hand, if a person is in any way forced to work because she or he holds or has expressed particular political views, the situation is covered by the Convention.

With regard to freedom of association, the Committee also notes that sentences of imprisonment involving the obligation to work may be imposed under section 12 of Act No. 61/233 governing associations in the Central African Republic and section 62 of Order No. 2772, issuing regulations respecting prison labour. It notes that section 3 of Act No. 61/233 sets certain limits to the right of association and provides that any association which is "of a nature to give rise to political disturbance or cast discredit on political institutions and their functioning" shall be null and void. Section 12 of the above Act provides that the "founders, directors, administrators or members of any association that is unlawfully maintained or reconstituted after the act of dissolution" shall be liable to imprisonment.

The Committee recalls that the Convention prohibits the use of any form of forced or compulsory labour, including compulsory prison labour, as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system.

The Committee also recalls that the protection provided by the Convention is not restricted to activities expressing or displaying opinions different from established

principles. Consequently, if certain activities are directed towards the introduction of fundamental changes to the institutions of the State, this does not constitute a reason for considering them to fall outside the protection provided by the Convention, as long as the use of, or incitation to, violence is not made in arriving at the desired result.

The Committee also observes the importance, for the effective respect of the Convention, of legal guarantees regarding the rights of assembly, of expression, to demonstration and association, and the direct incidence that restriction of these rights may have on the application of the Convention. Indeed, it is often in the exercise of these rights that political opposition to the established order may show itself.

The Committee requests the Government to take the necessary measures to ensure that no sentence involving the obligation to work is imposed as a result of the expression of political opinions and to provide information on the measures that have been taken or are envisaged in this respect. While awaiting the adoption of the above measures, it requests the Government to provide information on the effect given in practice to sections 77, 130 to 135 and 137 to 139 of the Penal Code, and sections 3 and 12 of Act No. 61/233, and to provide copies of any court decisions handed down under these provisions.

Chad (ratification: 1961)

Article 1(a) and (d) of the Convention. The Committee has been referring for many years to Act No. 15 of 13 November 1959 which represses acts of resistance, disobedience and failings towards members of the Government, members of Parliament and the administrative and judicial authorities, and under which participation in a strike is punishable by imprisonment involving forced labour. In addition, the Committee has also referred to Act No. 35 of 8 January 1960 respecting subversive texts, under the terms of which persons who have expressed political ideas may be punished in a manner which is not compatible with the Convention. The Committee has previously requested the Government to take the necessary measures to amend these texts so as to ensure that forced labour is not exacted in a manner that is incompatible with the Convention and being used as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system, or as a punishment for having participated in strikes.

The Committee notes that the Constitution of 31 March 1996 includes provisions on the freedoms of opinion and expression, communication, conscience, religion, the press, association, assembly, movement, demonstration and procession (article 27), trade union freedom (article 28) and the right to strike (article 29). It notes that sections 456 to 461 of Act No. 38/PR/96 of 11 December 1996, issuing the Labour Code, regulates the exercise of the right to strike: section 456 provides that the exercise of the right to strike is recognized for all employees; section 459 provides for the freedom of employees not to participate in a strike; and section 460(2) provides that employees may not be penalized for participation in a strike.

The Committee recalls that in its previous report the Government reaffirmed its determination to conduct inter-ministerial negotiations so that the texts referred to in the first paragraph above are repealed in the future. It therefore once again urges the Government to provide information in the near future on the measures taken in this respect.

Cyprus (ratification: 1960)

The Committee has noted the information provided by the Government in reply to its earlier comments.

Article 1(c) and (d) of the Convention. For many years, the Committee has been referring to section 3(1) of the Supplies and Services (Transitional Powers) (Continuation) Act (Chapter 175A), which authorizes the issuing of orders to make effective Defence Regulations 79A and 79B for the purpose of maintaining, controlling and regulating supplies and services: (i) to secure their equitable distribution or their availability at fair prices; (ii) to promote the productivity of industry, commerce and agriculture; (iii) to foster and direct exports and reduce imports and to redress the balance of trade; and (iv) to ensure that the whole resources of the community are available for use, and are used, in a manner best calculated to serve the interests of the community. Regulation 79A gives authority to direct any person to perform services for any of these purposes and to require persons employed in undertakings engaged in work regarded as essential for any such purpose, not to terminate their employment or absent themselves from work or be persistently late for work, on pain of imprisonment (involving, under the Prison Regulations, the obligation to perform labour). Regulation 79B authorizes the Government to issue further regulations to prohibit strikes, on pain of imprisonment by virtue of Regulation 94.

The Committee previously noted that the Government had proceeded with the drafting of new legislation regulating the right to strike in essential services, and that the ad hoc Ministerial Committee set up to consider the issue effected several amendments to the draft legislation which were presented to the trade unions for consultation. In its latest report received in November 2001, the Government indicated that the dialogue with the social partners on this matter continued and that, following the views expressed in the course of this dialogue, the Government proposed to introduce a framework law which would be confined to defining “essential services” and “minimum service” and which would bound the parties in the case of a labour dispute in an essential service to follow for its settlement a procedure which would be defined and agreed upon by the parties.

While noting this information, and referring also to its observation addressed to the Government under Convention No. 87, the Committee trusts that the list of essential services will be limited to essential services in the strict sense of the term, and that participation in strikes will not be punishable with penalties involving compulsory labour, unless such strikes are likely to endanger the life, personal safety or health of the whole or part of the population. Furthermore, the workers concerned must remain free to terminate their employment by reasonable notice. The Committee hopes that the Government will be able to provide, in its next report, information on the progress made in this regard and asks the Government to supply a copy of the new law, as soon as it is adopted.

Greece (ratification: 1962)

The Committee has noted the information provided by the Government in reply to its earlier comments.

Article 1(c) and (d) of the Convention. 1. For a number of years, the Committee has been referring to the Minor Offences Code of 1967, the Code of Public Maritime Law of 1973 (sections 205, 207(1) and 222), Act No. 3276 of 26 June 1944 with respect to collective agreements and Act No. 299 of 25 October 1936 on the settlement of collective disputes in the merchant marine (section 15), which establish sanctions involving compulsory labour for various breaches of labour discipline by seafarers. The Committee drew the Government's attention to the fact that the actions punishable under these provisions have no bearing on the criteria of the safety of the ship or of the persons on board. It recalled that only acts which endanger the ship or the life or health of persons are excluded from the scope of the Convention and requested the Government to take the necessary measures to bring its legislation into conformity with the Convention.

2. In its earlier comments, the Committee also referred to section 213(1) and (2) of the Code of Public Maritime Law of 1973, under which collective insubordination by seafarers to a ship's master is punishable by deprivation of liberty involving compulsory labour. While having noted the Government's view that this section provides for the imposition of penal sanctions on seafarers not due to any breach of discipline, but as a result of insubordination to the master, the Committee recalled, referring also to paragraphs 117 to 119 of its 1979 General Survey on the abolition of forced labour, that the prohibition established by the Convention from imposing sanctions involving compulsory labour in the event of the violation of labour discipline includes the punishment of acts of disobedience in relation to the master of the vessel, except for cases of acts tending to endanger the ship or the life or health of persons.

3. The Committee has noted with interest the Government's indications in its latest report to the effect that the Ministry of Merchant Marine is preparing a draft law under which the sanctions provided for in the above sections of the Code of Public Maritime Law of 1973 and in Act No. 3276 of 26 June 1944 respecting collective agreements shall be imposed only in the situations where:

- (a) the safety of the vessel, the persons on board or the cargo is endangered;
- (b) pollution or other damage to the maritime environment is caused; or
- (c) public order, national security or public health are undermined.

The Committee expresses strong hope that the draft law will soon be adopted and the legislation will be brought into conformity with the Convention, in the sense that it will not be possible to impose penalties involving compulsory labour as a means of labour discipline. It requests the Government to provide a copy of the new law as soon as it is adopted.

Article 1(a). 4. For a number of years, the Committee has been making comments calling for the repeal of Legislative Decree No. 794 of 1970, certain provisions of which permit the imposition of restrictions on freedom of assembly and expression, in private as well as in public, and give the police discretionary powers allowing them to forbid or disperse meetings under penalty of sanctions involving compulsory labour.

5. The Committee has noted the Government's statement in its latest report that the provisions of the above Decree are considered abolished in their greater part as opposing to the provisions of the Constitution and consequently do not apply in practice. The Government also indicates that Presidential Decree No. 141/91, which is now in force, contains provisions governing assemblies and meetings. The Committee reiterates its hope that Legislative Decree No. 794 of 1970 will be formally repealed, in order to bring the legislation into conformity with the Convention and the indicated practice, and that the Government will provide a copy of the repealing text.

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

Guinea (ratification: 1961)

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:

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 very near future.

Jamaica (ratification: 1962)

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(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 1979 General Survey on the abolition of forced labour, that provisions under which penalties of imprisonment (involving an obligation to work) may be imposed for desertion, absence without leave or disobedience are incompatible with the Convention. Only sanctions relating to acts that are likely to endanger the safety of the ship or the life or health of persons (e.g. as provided for in section 177 of the new Shipping Act) have no bearing on the Convention.

The 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.

Liberia (ratification: 1962)

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. 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 1979 General Survey 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 1979 General Survey 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.

Nigeria (ratification: 1960)

The Committee notes the information provided by the Government in reply to its earlier comments. It notes with interest that the State Security (Detention of Persons) Decree No. 2 of 1984, to which it has been referring since a number of years, has been repealed by Decree No. 63 of 1999.

Article 1(a) of the Convention. 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 1-4), and that offences are punishable with imprisonment (sections 3(c) and 4(5)). The Committee requests the Government to indicate whether this Decree continues to be in force, and if so, to provide information on its application in practice, including information on convictions under the above provisions and on penalties imposed, and supply copies of relevant court decisions.

Please also supply a copy of the Nigerian Press Council Decree No. 60 of 1999, which imposes certain restrictions on journalists' activities enforceable with penalties of imprisonment for a term of up to three years. Please provide information on its practical application, indicating, in particular, any recent convictions under the said Decree, as well as penalties imposed, and supply copies of relevant court decisions.

The Committee would be grateful if the Government would also provide information on the National Action Plan for the Human Rights Steering Committee and

Coordinating Committee, as well as on the activities of the Human Rights Violations Investigation Panel, established in 1999.

Article 1(c) and (d). In its earlier comments the Committee referred to the following legislative 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, 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. The Government indicates in its latest report that section 13(1) and (2) of Decree No. 7 of 1976 (now section 17(2)(a) of the Trade Disputes Act, Cap. 432, of 1990) will be tabled for amendment during the review exercise. The Committee trusts that this legislation if passed, will ensure the observance of the Convention. The Committee asks the Government to indicate, in its next report, the progress of appropriate legislation to ensure compliance with the Convention.

Rwanda (ratification: 1962)

The Committee notes the Government's reports.

Article 1(a) of the Convention. In its previous comment, the Committee noted section 9(1) and (2) of Act No. 33/91 of 5 August 1991, with respect to demonstrations on public thoroughfares and public meetings, under which any person who organizes an unauthorized demonstration or meeting shall be liable to a sentence of imprisonment. The Committee notes that, in accordance with section 39 of the Penal Code and section 40 of Ordinance No. 111/127, of 20 May 1961, with respect to prison organization, work is compulsory for all convicted prisoners. The Committee also noted that, according to the Government's report, any person who expresses their political, social or economic opinions may be convicted to sentences involving the obligation to work as a punishment in the event of failure to comply with the provisions of Act No. 33/91.

The Committee requested the Government to ensure that persons who hold or express – by means or methods that neither use violence nor incite to violence – an opinion opposed to the establish political, social or economic system do not incur sentences involving penalties, in contravention of the Convention. In this respect, it notes that according to its latest report the Government has taken due note of the Committee's comments, but states that no amendment has been made to the legislative texts. The Committee once again requests the Government to take the necessary measures as soon as possible to ensure the application of the Convention on this point.

Sierra Leone (ratification: 1961)

The Committee notes with regret that no report has been received from the Government for the fifth year in succession. It must therefore repeat its previous observation on the following matters:

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.

Sudan (ratification: 1970)

The Committee notes the Government's reply to its earlier comments.

Article 1(d) of the Convention. The Committee previously noted that sections 112, 119 and 126(2) of the Labour Code of 1997 specify that labour disputes which cannot be settled amicably within three weeks will be automatically referred to an arbitration body whose decision will be final and without appeal. Section 126(2) provides for a punishment of imprisonment for a period of up to six months in cases of violation or refusal to apply the provisions of the Code. According to the prison regulations, Chapter IX, section 94, prison labour is compulsory for convicted prisoners. The Committee also noted that the abovementioned provisions reinstate those of the Industrial Relations Act, 1976 (repealed by the Code), which were the subject of earlier comments.

The Government indicates in its report that these provisions of the Labour Code are aiming at the observance of an arbitration body decisions (which are in general directed to employers and not to workers) and not at the punishment of participants in strikes. The Government also states that the penalties specified in section 126(2) have not been applied in practice.

While noting these indications in the Government's report, the Committee observes that, although the provisions of the Labour Code may be "aiming" at the observance of arbitration decisions, they are still capable of being applied to workers in a manner which exposes them inappropriately to sanctions involving forced labour.

The Committee recalls, referring to the explanations in paragraph 123 of its 1979 General Survey on the abolition of forced labour, that restrictions on the right to strike, if enforced with sanctions involving compulsory labour, are incompatible with *Article 1(d)* of the Convention; only penalties (even if involving compulsory labour) imposed for participation in strikes in the civil service or other essential services in the strict sense of the term (i.e. services whose interruption would endanger life, personal safety or health of the whole or part of the population) are not covered by the Convention.

Referring also to its comments addressed to the Government under Convention No. 98, likewise ratified by Sudan, the Committee expresses the hope that appropriate measures will be taken to amend the above provisions so as to ensure that sanctions involving compulsory labour cannot be used to punish participation in strikes, in order to bring legislation into conformity with the Convention and the indicated practice. Pending the adoption of such measures, the Committee asks the Government to continue to provide information on the application of the aforementioned provisions of the Labour Code, particularly regarding the number of persons convicted for having refused to fulfil the decision of an arbitration body, and to supply copies of the relevant judgements.

Article 1(a). In its earlier comments, the Committee referred to the effect that the declaration of emergency and the suspension of the guarantees set forth in the Convention could have on its application. The Committee notes that the declaration of emergency proclaimed in December 1999 is still in force.

The Committee took note of the situation regarding human rights in Sudan as presented by the United Nations Special Rapporteur of the Commission on Human Rights (UN document A/55/374 of 11 September 2000). It also noted that the United Nations Committee on Economic, Social and Cultural Rights expressed concern that “some restrictions on the freedoms of religion, expression and association and peaceful assembly still exist ...” (E/C.12/1/Add.48 of 1 September 2000).

The Committee previously noted that sentences of imprisonment (involving compulsory prison labour) may be imposed under the following Penal Code provisions: section 50 (committing an act with the intention of destabilizing the constitutional system), section 66 (publication of false news with the intention of harming the prestige of the State) and section 69 (committing an act intended to disturb the peace).

The Committee recalled that *Article 1(a)* of the Convention prohibits all recourse to forced or compulsory labour including compulsory prison labour as a means of political coercion or education or as a punishment for holding or expressing certain political views or views ideologically opposed to the established political, social or economic system.

The Government states in its report that, since the declaration of emergency, freedom of association has not suffered at all, and trade unions fully exercised their freedom of expression, activities and peaceful assembly.

While noting this indication, the Committee recalls that the protection conferred by the Convention is not limited to the trade unions activities. As the Committee previously pointed out, it observes the importance for the effective respect of the Convention of the legal guarantees regarding freedom of assembly, expression, demonstration and association, and the direct effect which restriction of these rights can have on the application of the Convention.

The Committee again asks the Government to supply copies of the legislation in force concerning freedom of association, assembly and expression of political opinion, as well as the National Security Emergency Decree or any other provisions adopted pursuant to the declaration of emergency. It also renews its request to the Government to indicate whether the legislation exempts persons convicted for their political views from the obligation to perform prison labour.

United Republic of Tanzania (ratification: 1962)

The Committee has noted the Government's reports received in 2001 and 2002.

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 refers in this connection to its 2002 observation on Convention No. 29, in which it has noted with satisfaction that the Human Resources Deployment Act, 1983, has been repealed.

The Government indicates in its 2001 and 2002 reports, referring also to a statement by the Government representative during the discussion at the Conference Committee in 2000, that the Penal Code, the Newspaper Act, the Merchant Shipping Act, the Industrial Court Act and the Local Government (District Authorities) Act have 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 the forced labour Conventions. The Government also states that, being a developing country, the United Republic of Tanzania suffers from resource constraints, including the shortage of trained personnel, which slows down the review of laws.

The Committee has noted with interest the adoption of the Commission for Human Rights and Good Governance Act, 2001, which empowers the said Commission, inter alia, to promote the ratification of treaties or conventions on human rights and harmonization of national legislation with human rights standards provided for therein, and to make recommendations on any legislative or administrative provisions, proposed or in existence, with a view to ensuring that they conform to human rights and good governance (section 6(1), (k) and (l), of the Act). It has also noted the Government's indication in its 2001 and 2002 reports that the Governments of the United Republic of Tanzania and Denmark have signed an agreement concerning financing by DANIDA of a project entitled "A new approach on labour policy and legislative reform", which covers all labour laws and labour-related legislation in the United Republic of Tanzania, including those texts which have been identified and criticized for the non-compliance with ratified Conventions.

As regards the abovementioned Merchant Shipping Act, the Committee previously noted the Government's indication in its earlier reports that proposals regarding its amendment in order to bring it into conformity with the Convention were to be

submitted to the Labour Advisory Board (LAB) for consideration by the tripartite partners, and that the Government was working towards finalizing the amendments. In its latest report, the Government indicates that the International Maritime Organization (IMO) has prepared proposals for the amendment of the Act, which have been submitted to the Government.

The Committee strongly expresses the hope 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 (ratification: 1969)

1. The Committee notes with satisfaction that the Anti-Communist Activities Act B.E. 2495 (1952), as amended by the Anti-Communist Activities Act (No. 2) B.E. 2512 (1969), which contained provisions punishing with penalties of imprisonment (involving compulsory labour) various acts connected with communist activities, such as propagating communist ideology, or belonging to any communist organization, or attending any communist meeting, etc., has been repealed by Act B.E. 2543 (2000), which came into force on 4 June 2001.

2. *Article 1(c) of the Convention.* Over a number of years (since 1976), the Committee has been commenting on sections 5, 6 and 7 of the Act for the prevention of desertion or undue absence from merchant ships, B.E. 2466 (1923), which provide for the forcible conveyance of seafarers on board ship to perform their duties. The Committee noted the Government's indications in its previous report that the Act had not been applied during the past decade and that a committee was established in March 1999 by the Department of Labour Protection and Welfare, of the Ministry of Labour and Social Welfare, for considering drafting seafarers' legislation and upgrading their standards of work in compliance with ILO standards.

The Government indicates in its latest report of 2001 that the Act is the responsibility of the Royal Thai Police, and that the Ministry of Labour and Social Welfare is proceeding to make suggestions to that government agency on the possibility of repealing the Act. The Committee reiterates its hope that, either in the course of the revision of seafarers' legislation or otherwise, the abovementioned provisions will be at last repealed and the legislation will be brought into conformity with the Convention on this point, and will also be consistent with the indicated practice. It asks the Government to provide, in its next report, information on the progress made in this regard.

3. The Committee previously noted that, under sections 131 and 133 of the Labour Relations Act, B.E. 2518 (1975), penalties of imprisonment (involving compulsory labour) may be imposed on any employee who, even individually, violates or fails to comply with an agreement on terms of employment or a decision on a labour dispute under sections 18(2), 22(2), 23-25, 29(4), or 35(4) of the Labour Relations Act. The Committee pointed out that sections 131 to 133 of the Labour Relations Act were incompatible with the Convention, in so far as the scope of sanctions involving compulsory prison labour is not limited to acts and omissions which impair or are liable to endanger the operation of essential services in the strict sense of the term, or which

are committed either in the exercise of functions that are essential to safety or in circumstances where life or health are in danger.

The Government in its report of 1997, agreed that the distinction between essential and non-essential services should be addressed, and that the Senate was in fact expected to discuss the definition of “essential services”. However, in its latest report of 2001, the Government indicates that the discussion might have taken place during the passage of the draft amendment to the State Enterprise Labour Relations Bill but, as a result of many amendments made, a definition of “essential services” was deleted from the draft amendment and the issue was not opened for discussion in the Senate. The Government also expresses the opinion that, in the context of Thailand as a developing country, “essential services” should also cover the services whose interruption would lead to any national calamity which might affect the population, economy and security.

While noting these indications, the Committee observes, referring also to paragraphs 114 and 123 of its 1979 General Survey on the abolition of forced labour, that the Government’s view on the definition of “essential services” does not seem to meet the criteria of “essential services” in the strict sense of the term (that is, services whose interruption would endanger the life, personal safety or health of the whole or part of the population). The criteria which has to be established is therefore the existence of a clear and imminent threat to the life, personal safety or health of the whole or part of the population; a threat to the national economy, which might be subject to a very broad interpretation, does not seem to meet the requirements of such criteria. Similarly, as the Committee pointed out in its previous comments, some of the services listed in section 23 of the Labour Relations Act (such as railway or port services) and all the services mentioned in Ministerial Regulations No. 2 referred to by the Government in its 1999 report, do not meet the criteria of “essential services” either.

The Committee therefore reiterates firm hope that the Government will reconsider this question in the light of its obligations under *Article 1(c)* of the Convention and that it will provide, in its next report, information on the measures taken in order to ensure compliance.

4. *Article 1(d)*. In its earlier comments, the Committee noted that penalties of imprisonment (involving compulsory labour) may be imposed for participation in strikes under the Labour Relations Act: (i) section 140 read together with section 35(2), if the Minister orders the strikers to return to work as usual, being of the opinion that the strike may cause serious damage to the national economy or hardship to the public or may affect national security or be contrary to public order; (ii) section 139 read together with section 34(4), (5) and (6), if the party required to comply with an arbitrator’s award under section 25 has done so, if the matter is awaiting the decision of the Labour Relations Committee or a decision has been given by the Minister under section 23(1), (2), (6) or (8) or by the committee under section 24, or if the matter is awaiting the award of labour disputes arbitrators appointed under section 25.

The Government indicates in its latest report that the Minister has never exercised the powers conferred under section 35 to intervene in any peaceful strike which does not give the abovementioned effect, and that no penalties have been imposed under the Act. It also states that the penalties of imprisonment are provided to serve only as a preventive measure to protect the public against the interruption of the service which would endanger the life, personal safety, health or well-being of the population or

national security. While noting these indications, the Committee points out once again that, under the abovementioned provisions of the Labour Relations Act, penalties of imprisonment involving compulsory labour may be imposed for participation in strikes not only where they concern essential services in the strict sense of the term (that is, services whose interruption would endanger the life, personal safety or health of the whole or part of the population), but also in a wider range of circumstances which cannot be held to be removed from the scope of *Article 1(d)* of the Convention.

Referring to paragraphs 122-132 of its 1979 General Survey on the abolition of forced labour, the Committee expresses firm hope that the Government will not fail to take the necessary measures to have the abovementioned provisions amended in order to bring the legislation into conformity with the Convention on this point.

5. The Committee previously noted that, under section 117 of the Criminal Code, participation in any strike with the purpose of changing the laws of the State, coercing the Government or intimidating the people was punishable with imprisonment (involving compulsory labour). It referred to the explanations provided in paragraph 128 of its 1979 General Survey, where it indicated that, while the prohibition of purely political strikes lies outside the scope of the Convention, in so far as restrictions on the right to engage in such strikes are accompanied by penalties involving compulsory work, they should apply neither to matters likely to be resolved through the signing of a collective agreement nor to matters of a broader economic and social nature affecting the occupational interests of workers.

The Government reiterates its previous statement that section 117 is essential to internal security and does not concern the prohibition or restrictions on the right to engage in strikes or collective agreements. It indicates again that this section has never been applied in practice. While noting these indications, the Committee expresses firm hope that the necessary action will be taken, on the occasion of the next revision of the Criminal Code, in order to amend section 117 so as to remove strikes pursuing economic and social objectives affecting the workers' occupational interests from the scope of sanctions under this section, with a view to bringing this provision into conformity with the Convention and the indicated practice.

6. In its earlier comments, the Committee referred to section 19 of the State Enterprise Labour Relations Act, which provided that workers of state enterprises were prohibited from striking, this prohibition being enforceable with sanctions of imprisonment (involving compulsory labour), under section 45, paragraph 1, of the Act. The Committee has noted that the new State Enterprise Labour Relations Act B.E. 2543 (2000), which came into force on 8 April 2000, also prohibits strikes in state enterprises (section 33), violation of this prohibition being punishable with imprisonment (involving compulsory labour) for a term of up to one year; this penalty is doubled in the case of a person who instigates this offence (section 77).

The Committee again refers to the explanations provided in paragraph 123 of its 1979 General Survey on the abolition of forced labour and recalls that the imposition of penalties of imprisonment involving compulsory labour on striking employees would be compatible with the Convention only in the case of essential services in the strict sense of the term (i.e. services whose interruption would endanger the life, personal safety or health of the whole or part of the population).

While noting the Government's repeated statement in its report that the state utilities and services are essential for the living of the people and must be ensured against interruption or instability, the Committee again points out that the distinction between essential and non-essential services is a functional one and does not depend on private or state ownership of the enterprises concerned. A blanket prohibition of strikes in all state-owned enterprises, if enforced with penalties involving compulsory labour, is incompatible with the Convention.

The Committee trusts that the necessary measures will be taken in the near future in order to bring the State Enterprise Labour Relations Act into conformity with the Convention. It asks the Government to provide, in its next report, information on the progress made in this regard.

Turkey (ratification: 1961)

The Committee has noted the Government's reply to its earlier comments, as well as the observations of the Confederation of Progressive Trade Unions of Turkey (DISK) and the Confederation of Turkish Employers' Associations (TISK) appended to the Government's report.

Article 1(a) of the Convention. Political coercion and punishment for holding views opposed to the established system. 1. In its earlier comments, the Committee noted that penalties of imprisonment (involving compulsory prison labour, under section 198 of the Regulations pertaining to the administration of penitentiaries and detention centres and to the execution of sentences adopted by decision of the Council of Ministers of 5 July 1967, No. 6/8517, as amended) may be imposed under various provisions of national legislation in circumstances falling within *Article 1(a)* of the Convention, namely:

- (a) section 143 of the Penal Code (participation in foreign associations and institutions without permission of the Government);
- (b) section 159 of the Penal Code (insulting or vilifying, inter alia, "Turkism", various state authorities, the state laws or the decisions of the National Grand Assembly);
- (c) section 241 of the Penal Code (public censuring, by ministers of religion, of government administration, state laws or government activities);
- (d) sections 266-268 of the Penal Code (insulting public officeholders); in this connection, the Committee notes from section 481 of the Code that, in the cases specified in articles 266, 267 and 268, a demand to prove the truth of the imputation of an act harmful to the honour or dignity of a government official or public servant shall not be sustained and considered, even if the imputed act is related to his or her office or public service;
- (e) section 312, paragraphs 2 and 3, of the Penal Code (publicly inciting hatred and enmity of the population with reference to distinctions of class, race, religion or region);
- (f) section 526, paragraph 2, of the Penal Code (acting contrary to prohibitions or obligations under Act No. 671 concerning the wearing of headgear and Act No. 1353 concerning the adoption and use of Turkish letters);

- (g) section 536, paragraph 2, of the Penal Code (public affixing of printed, handwritten or drawn papers, posters, etc., inter alia, on any kind of means of transportation or privately owned signs or boards, without the permission of the authorities);
- (h) section 8 of the “Act against terrorism”, No. 3713 of 12 April 1991 as amended on 13 November 1996 (written or oral propaganda, assemblies, manifestations and demonstrations against the indivisibility of the State).

2. The Committee noted that, while some of the provisions referred to above, in particular under (e) and (h), might appear to be aimed at acts of violence or incitement to the use of violence, armed resistance or an uprising, their actual scope, as shown through their application in practice, is not limited to such acts, but provides for political coercion and the punishment of the peaceful expression of non-violent views that are critical of government policy and the established political system, with penalties involving compulsory labour. In this connection, the Committee noted that in recent years a number of cases, in which penalties involving compulsory labour had been imposed in application of the abovementioned sections 159 and 312, paragraphs 2 and 3, of the Penal Code and section 8 of the “Act against terrorism”, were brought before the European Court of Human Rights which held that the convictions based on national law constituted a breach of article 10 of the European Convention on Human Rights, which protects the freedom of expression. The Committee expressed the hope that the necessary measures would soon be adopted with regard to the above provisions in order to bring national law into conformity with *Article 1(a)* of the present Convention. Having noted that the Government’s report contains no information as to the substance of the questions raised, the Committee expresses strong hope that the Government will not fail to provide such information in its next report.

3. In earlier comments, the Committee referred to certain provisions of the 1965 Act concerning political parties, which prohibited political parties from asserting the existence in Turkey of any minorities based on nationality, culture, religion or language and from attempting to disturb national security by conserving, developing or propagating languages and cultures other than the Turkish language or culture. It requested the Government to provide copies of legislation in force governing political parties and associations. The Committee has noted that penalties of imprisonment (involving compulsory labour) may be imposed under the following provisions of the Political Parties Act (No. 2820, of 22 April 1983) and the Associations Act (No. 2908, of 6 October 1983), of which the copies have been supplied by the Government with its latest report:

- sections 80, 81 and 82, read in conjunction with section 117, of the Political Parties Act (seeking to alter the principle of the unity of the State, claiming the existence of minorities based on a national or religious culture or on racial or linguistic differences, seeking to form minorities by protecting and promoting languages and cultures other than the Turkish language and culture, using any language other than Turkish in the drafting and publication of parties’ statutes and programmes, advocating regionalism);
- sections 5 and 76 of the Associations Act (attacking the principle of the unity of the State; carrying out activities based on principles of regionalism, social class, religion or sect; claiming the existence of minorities based on a national or religious culture or on racial or linguistic differences, etc.).

4. The Committee points out, referring to the explanations contained in paragraphs 133-140 of its 1979 General Survey on the abolition of forced labour, as well as in paragraph 2 of this observation, that prohibitions enforced by penalties involving compulsory labour which affect the constitution or functioning of political parties or associations, either generally or where they advocate certain political or ideological views, are incompatible with *Article 1(a)* of the Convention. The Committee hopes that the necessary measures will be taken in order to bring the Political Parties Act and the Associations Act into conformity with the Convention and that the Government will report on the action taken to this end.

5. In its earlier comments, the Committee also noted certain other provisions of national law which provide for the imposition of penalties involving compulsory labour in circumstances defined in terms which are wide enough to give rise to questions about their application in practice. The Committee is again dealing with these provisions in a request addressed directly to the Government so as to ascertain their compliance with the Convention.

Article 1(b). 6. The Committee previously noted the observation of TÜRK-İŞ that Council of Ministers Resolution No. 87/11945 of 12 July 1987 provides that conscripts in excess of the needs of the military can be obliged to work in public undertakings in lieu of military service, without their consent and under military discipline. The Committee noted the provisions of section 10 of the Military Service Act, No. 1111, as amended by Act No. 3358, as well as section 5 of the Council of Ministers Resolution No. 87/11945 of 12 July 1987, adopted pursuant to section 10 of Act No. 1111, which lays down procedures relating to the surplus reserves, including the procedures concerning the persons liable to military service who are assigned duties in public bodies and institutions. It has also noted the Council of Ministers Resolution No. 86/10266 of 17 January 1986 containing principles governing the performance of military service duties by the Turkish Armed Forces Surplus Reserves, supplied by the Government with its latest report. The Committee noted that, under the above legislation, the persons liable to perform their military service obligations by working in public bodies and institutions are determined by the drawing of lots from among the persons remaining after subtraction of those wishing to pay the exemption sum.

7. In its latest report, the Government confirms its previous indication that Act No. 3358 was applied between 1987 and 1991, but since that time there have been no conscripts in excess of the needs of the military, so the Act was no longer applied. The Government indicates, however, that Act No. 3358, which was indicated in its previous report as abrogated, is still in force, though has not been applied in practice since then. While noting this information, the Committee again refers to paragraphs 49-54 of its 1979 General Survey on the abolition of forced labour, where it pointed out that “the Conference has rejected the practice of making young people participate in development activities as part of their compulsory military service or instead of it, as being incompatible with the forced labour Conventions”; even where young people engaged in economic development work or work of general interest as part of their compulsory national service are volunteers, and even where such volunteers are excused from compulsory military service, “this should take the form of an exemption and not be used as a means of pressure so that a civic service can recruit a number of people for whom there would in any case not be any place in the armed forces”. The Committee hopes that the necessary measures will soon be taken with a view to repealing the above provisions

in order to bring legislation into conformity with the Convention and the indicated practice, and that the Government will provide information on the action taken to this end.

Article 1(c) and (d). 8. In earlier comments the Committee noted that:

- (a) under section 1467 of the Commercial Code (Act No. 6762 of 29 June 1956) seamen may be forcibly conveyed on board ship to perform their duties;
- (b) under section 1469 of the Commercial Code, various breaches of discipline by seamen are punishable with imprisonment (involving, as previously noted, an obligation to perform labour).

The Committee further noted that the Government had submitted to Parliament a Bill to amend section 1467 of the Commercial Code, which contains a provision limiting the powers of the master under section 1467 to circumstances jeopardizing the safety of the ship or endangering the lives of the passengers and the crew. The Committee expressed the hope that section 1469 of the Commercial Code would likewise be amended to limit its scope to acts endangering the safety of the ship or the lives or health of persons. The Government indicates in its latest report that the Bill is still in Parliament to be enacted. The Committee hopes that the Bill will be adopted in the near future and that the above provisions will be brought into conformity with the Convention. It requests the Government to supply a copy of the amending text, as soon as it is adopted.

Article 1(d). 9. The Committee previously noted that Act No. 2822 respecting collective labour agreements, strikes and lockouts, of 5 May 1983, provides in sections 70-73, 75, 77 and 79 for penalties of imprisonment (involving compulsory labour) as a punishment for the participation in unlawful strikes, for disregard of prohibitions to call a strike, for unlawful strikes intended to influence decisions, and for disregard of an order for the suspension of a strike or of restrictions imposed on the number of strike pickets and on the right of peaceful assembly in front of the employer's establishments. The Committee recalled that *Article 1(d)* of the Convention explicitly prohibits the use of sanctions involving any form of compulsory labour "as a punishment for having participated in strikes".

10. The Government states in its report that the above provisions are based upon the definition of illegal strikes, and sanctions are applicable for participation in illegal strikes. According to the Government's view, these sanctions should not be construed and applied as a means of forced or compulsory labour for having participated in strikes. In this connection, the Committee again draws the Government's attention to the explanations contained in paragraphs 120-132 of its 1979 General Survey on the abolition of forced labour, where the Committee has considered that *Article 1(d)* of the Convention is not opposed to the punishment of collective acts aimed at paralysing services the interruption of which would endanger the life, personal safety or health of the whole or part of the population; nor to the punishment of participation in purely political strikes, i.e. strikes which are not aimed at furthering the economic and social interests of the participants; nor to the enforcement of the observance of normal procedures to be followed in calling and organizing a strike, provided that the provisions governing these matters do not impose restrictions on the right to strike itself. The Committee observed, however, that the abovementioned provisions of Act No. 2822 are not limited in scope to the circumstances thus described. It therefore reiterates its hope, referring also to its comments addressed to the Government under the Freedom of

Association and Protection of the Right to Organise Convention, 1948 (No. 87), that the necessary measures will be adopted with regard to Act No. 2822 of 1983 to ensure the observance of *Article 1(d)* of the Abolition of Forced Labour Convention, 1957 (No. 105), and that the Government will report on action taken or contemplated to this end.

Uganda (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), (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.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Afghanistan, Albania, Angola, Bahrain, Bangladesh, Barbados, Belarus, Belize, Botswana, Bulgaria, Burkina Faso, Central African Republic, Chad, China* (Hong Kong Special Administrative Region), *China* (Macau Special Administrative Region), *Comoros, Djibouti, Dominica, Estonia, Gabon, Georgia, Greece, Grenada, Hungary, Indonesia, Ireland, Israel, Latvia, Lebanon, Lithuania, Malawi, Republic of Moldova, Rwanda, Saudi Arabia, Seychelles, Slovakia, Suriname, United Republic of Tanzania, Thailand, Turkey, United Arab Emirates, Zimbabwe.*

Information supplied by *Croatia* in answer to a direct request has been noted by the Committee.

Convention No. 106: Weekly Rest (Commerce and Offices), 1957*Bolivia* (ratification: 1973)

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

The Committee notes with regret that the Government has taken no steps to bring the national legislation into line with the provisions of *Article 8, paragraph 3, of the Convention* under which compensatory rest of a duration at least equivalent to the period provided for under *Article 6* must be granted, without prejudice to any monetary compensation, where temporary exemptions are made in respect of weekly rest. It recalls that since 1976 it has been commenting on the need to amend to this effect section 31 of Regulatory Decree No. 244 of 1943, which provides that remuneration may be granted instead of compensatory rest. The Committee again expresses the hope that the Government will take the necessary steps to this end as soon as possible.

The Committee 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 2003.]

Colombia (ratification: 1969)

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 8, paragraph 3, of the Convention. In comments it has been making for many years, the Committee has noted that under the terms of section 180 of the Labour Code, as amended by Act No. 50 of 1990 to amend the Labour Code, a worker who as an exception works on the compulsory rest day may choose to benefit from compensatory paid leave or financial compensation. The Committee notes the Government's statement in its report that a Bill to amend the above provision is currently being examined. The Committee recalls that under *Article 8, paragraph 3*, compensatory rest of a total duration at least equivalent to the period provided for under *Article 6* must be accorded where temporary exemptions are made to the requirements concerning weekly rest.

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 2003.]

Egypt (ratification: 1958)

The Committee notes the Government's report. It also notes that the Government's report again contains no information on the points that the Committee has been raising in observations for nearly 20 years (since 1983). It is therefore obliged to repeat its previous comments, which read as follows:

In its previous comments the Committee noted that the Labour Code of 1981 does not ensure that compensatory rest is granted to persons working on the weekly rest day, as required by *Article 8, paragraph 3, of the Convention*, under which compensatory rest must be granted, regardless of any monetary remuneration, when temporary exemptions are made for reasons enumerated in *paragraph 1* of the same Article of the Convention. The Committee notes the Government's information in its report that the tripartite committee

entrusted with the preparation of the draft consolidated labour code has been informed of the Committee's comments so as to take them into consideration. The Committee hopes that the Government will soon be in a position to provide information on the provisions adopted to bring legislation into conformity with the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future. It requests the Government to provide full details on the points raised in its next report.

Haiti (ratification: 1958)

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.

Kuwait (ratification: 1961)

The Committee notes the Government's reply to its previous comments.

Article 2 of the Convention. In its previous comments, the Committee noted with interest that temporary workers employed for a period of not more than six months and workers at enterprises employing less than five people are included in the draft Labour Code in the private sector. In its last report, the Government only indicates that domestic workers and other workers covered by specific other regulations are excluded from the scope of the Labour Code (amendment of section 2 of the Labour Code of 1964 by Law No. 2 of 1997). The Committee requests the Government to indicate in its next report the categories of workers excluded and how conformity with the provisions of the Convention is ensured with respect to these workers. Please also supply copies of the relevant legal texts. Furthermore, the Committee hopes that the draft Labour Code in the private sector will be adopted in the near future and asks the Government to keep it informed of any developments in this respect.

Syrian Arab Republic (ratification: 1958)

Article 8, paragraph 3, of the Convention. The Committee notes with satisfaction the issuance on 10 December 2000 of Law No. 24 amending Labour Law No. 91 of 1959. It notes in particular that section 121(b) of the new law expressly provides that in cases, where the work has to be carried out during the weekly rest day of workers, these should be granted an alternative day as compensatory rest.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Bangladesh, Cameroon, Ethiopia, France, Greece, Guinea-Bissau, Honduras, Italy, Peru.*

Convention No. 107: Indigenous and Tribal Populations, 1957

Brazil (ratification: 1965)

1. The Committee notes the Government's last report and its annexes, received in 2000, as well as the additional information provided by the Government to the Committee on the Application of Standards at the 87th Session of the International Labour Conference, 1999. It also notes that the recent ratification by Brazil of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), results in the automatic denunciation of the present Convention. The Committee therefore requests the Government to include the information requested in the following paragraphs in its first report on Convention No. 169, which is due in 2004.

2. The Committee notes that the Government submitted to the National Congress a proposal for the consolidation of the legislation on indigenous peoples, to give effect to almost all the constitutional provisions on this subject and to provide a framework for indigenous policy in Brazil. It requests the Government to provide a copy of the draft text and to take into account, during the discussions of the text, the recent ratification of Convention No. 169, and in particular, *Article 6 of Convention No. 169*, under the terms of which governments shall consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly.

3. *Invasion by "garimpeiros" (independent gold miners).* The Committee recalls that independent gold miners (known as "*garimpeiros*") are active in indigenous lands and that their activities may have particularly serious negative effects on the life, health and environment of the indigenous population. It notes with interest, according to the information provided by the Government, that since the last report was presented four additional operations have been undertaken for the expulsion of illegal occupants from the Yanomami territory, which resulted in the expulsion of 4,500 *garimpeiros*, and that a new operation was planned in collaboration with various federal institutions and with the participation of representatives of the Yanomami population. The Committee requests the Government to indicate whether this operation was undertaken and, if so, to provide information on its outcome. It also requests it to provide information on the current situation in its first report on Convention No. 169.

4. The Government indicated that there are currently 15 units of the National Indian Foundation (FUNAI) in the region with powers to carry out inspections in indigenous areas and to assist the population. The activities to prevent and suppress illegal mining in the Amazon region have been expanded. With regard to the joint Brazil-Venezuela operation, on which the Committee had requested information, the Government states that it was not possible to coordinate joint action, but that this does not prevent each country combating on its own account the illegal gold miners in

Yanomami territory. The Committee requests the Government to re-examine the issue of cross-border coordination with the Government of Venezuela, which also recently ratified Convention No. 169.

5. The Committee notes with interest that, according to the information provided during the 87th Session of the Conference, the Government is continuing its programme of financial assistance to villages and cities located on the borders with Venezuela and Guyana and is promoting the construction of medical care units and schools in the States of Amazonia and Roraima, which are absorbing local labour and thereby preventing its dispersion into unlawful activities. The Government is also continuing to implement the *Calha Norte* programme for the sustainable development of the region. Nevertheless, the Committee cannot fail to note persistent information concerning grave problems arising out of the construction of a military base in Roraima, which is meeting with opposition from the Yanomami indigenous tribe and is reported to have a serious effect on this particularly vulnerable population. The Committee would be grateful if the Government would provide information on this matter and on the measures which have been adopted or are envisaged to protect these populations from *garimpeiros*, and any other intervention resulting in a deterioration of their physical, social, religious and cultural environment. It also requests the Government to provide information on the impact on the indigenous populations of the recent significant increase in the military presence in the frontier areas of Amazonia where these peoples live.

6. *Articles 11 to 14 of the Convention – Decree No. 1775 of January 1996.* In its previous comments, the Committee referred to the effect of this Decree in the area known as Raposa do Sol, and particularly of a ministerial decision issued under the Decree decreasing by 300,000 hectares the area originally identified by the FUNAI for the purposes of occupation by indigenous peoples. The Committee notes with interest that, according to the Government, that decision has been withdrawn. The Committee requests the Government to continue providing information on the delimitation of indigenous lands. The Committee notes that it has received information indicating that the demarcation process is continuing, particularly with German technical assistance.

7. With regard to the four hydroelectric power plants to which the Committee referred previously, which were reported to be resulting in the displacement of Guaraní populations, the Government has stated that three of these projects had been abandoned due to the withdrawal of the concession, while the fourth, in the region of Tijuco Novo, by the *Companhia Brasileira de Alumínio*, is temporarily inactive because the necessary environmental authorization has not been received. Noting that FUNAI will only reach a decision on projects after environmental impact studies have been carried out, the Committee hopes that the Government will provide information on these studies and will also indicate whether or not the continuation of the above project has been authorized. With reference to the alleged eviction of indigenous populations from the lands which had been demarcated by the FUNAI in Sucuriy, Municipio de Maracaju and the State of Mato Grosso do Sul, the Committee noted the conclusion of a judicial agreement under which the Guaraní-Kaiowá ethnic group would occupy 65 hectares of an area of 535 hectares approved in 1998. The Committee once again requests the Government to provide information on the final solution to this issue, and particularly on when the Guaraní-Kaiowá will occupy all the land approved for them.

8. The Committee also notes the statements by the Government at the 87th Session of the Conference to the effect that, in December 1998, the President signed new Decrees approving a further 21 indigenous lands, one of the most extensive of which is the Uneiuxi area, in the State of Amazonia, occupied by the Maku-Nadeb, which consists of 403,182 hectares. On the same occasion, the Minister of Justice signed a declaratory instrument which constituted the first step in the recognition of 12 indigenous lands, including the area known as Raposa do Sol. The Committee would be grateful if the Government would continue providing information on such approvals, with an indication of whether they are final.

9. *Article 15 – Labour.* With reference to its previous comments on the illegal employment of indigenous labour in the distilleries of Mato Grosso do Sul, and particularly on the absence of employment contracts, the Committee notes with interest the Community Charter on Social Rights in Indigenous Labour Relations, concluded on 2 May 2002 between indigenous representatives, the Government of Mato Grosso do Sul, FUNAI, other state institutions, the Order of Attorneys of Brazil, the Regional Indian Missionary Council and enterprises in the State of Mato Grosso. The objective of the Charter is to adapt the recruitment of indigenous workers to the legal standards in force, in the form of a team contract. Prohibiting individual contracts, it provides that the recruitment of indigenous persons shall take place by means of team contracts, which shall be recorded in the Registers of Labour and Social Insurance, and it determines the applicable laws, establishes a fine of 100 UFIRS per worker and per infringement in the event of failure to comply with any provision of the Charter (which fines shall be payable to the indigenous communities) and contains other provisions respecting medical examinations, the number of workers, periods of leave and the promotion of this type of contract. The Committee hopes that these contracts will make an effective contribution to combating the illegal employment of indigenous workers in the State of Mato Grosso and requests the Government to continue providing information on the use made of this type of contract in practice, with an indication as to whether a significant number of enterprises and indigenous workers have signed team contracts, as well as of any problems which may be encountered, infringements reported and sanctions imposed, and any other information which may help to provide a better appreciation of the results in practice of team contracts.

10. *Article 20.* The Committee notes that, on the basis of the model proposed in two national conferences on indigenous health, it will be the sole responsibility of the Ministry of Health to plan and implement health programmes for indigenous populations at the federal level and that, for this purpose, 29 special indigenous health districts have been created under federal responsibility, which will be progressively implemented with financing from the World Bank. Please provide information on the development of these programmes, also taking into account the requirements of *Articles 2 and 27* of the Convention with regard to the need for coordinated and systematic action for the benefit of the peoples concerned, as well as the need for coordination in practice in view of the multiplicity of problems arising including, for example, the negative demographic growth rate of the Yanomami and the alarming cases of suicides of young persons in the Guaraní-Kaiowá ethnic group. The Committee hopes that the Government will establish machinery for coordination between the policies of FUNAI and the Ministry of Health. It would be grateful if the Government would provide information on this matter and, in particular, on the action taken or planned by both institutions, and the coordination

between them, in relation to these problems encountered by the Yanomami and the Guaraní, as these constitute public health problems, but are also related to other issues, such as the maintenance of the lands traditionally occupied by them, and which are essential for their survival, and their contacts with the dominant society.

Panama (ratification: 1971)

1. The Committee notes the Government's detailed report and the full information provided in the numerous annexes. In particular, it notes the intense legislative activity during the period covered by the Government's report, and the progress achieved in establishing a legal framework recognizing the rights of indigenous communities.

2. In this context, the Committee notes with particular interest the adoption of laws establishing *comarcas* (protected regions) and the basic administrative charters for the *comarcas* of Emberá-Wounaan de Darién, Kuna de Madungandí, Ngöbe-Buglé and Kuna de Wargandí. It also notes the various laws setting forth the rights of the indigenous population in such areas as education, intellectual property of the collective rights of indigenous peoples and all the information contained in the compilation on the rights of indigenous peoples of Panama, published by the Project for the Strengthening of the Capacity for the Legal Defence of Indigenous Peoples in Central America, ILO (San José, Costa Rica) and the People's Legal Assistance Centre (CEALP) of Panama, which was published in San José, Costa Rica, in 2002.

3. With reference to its previous observation on the requirements of *Article 2 of the Convention*, under which "governments shall have the primary responsibility for developing coordinated and systematic action", the Committee notes that Executive Decree No. 1 of 11 January 2000 established the National Council for Indigenous Development (CNDI), of which the National Directorate of Indigenous Policy will be the technical secretariat. CNDI is a consultative and deliberative body on public policies and action for indigenous peoples, through coordinated dialogue among state bodies, and indigenous congresses and organizations, to ensure respect and compliance with human rights, indigenous rights and the pluri-cultural nature of the Panamanian State. The Committee also notes that in 1995 the Indigenous Affairs Commission of the Legislative Assembly was created to facilitate the approval of laws and as a permanent body to deal with complaints from indigenous peoples. The Committee hopes that the Government will keep it informed of the efforts made and the progress attained in the implementation of a coordinated and systematic action to the application of the Convention, and that it will indicate in particular the activities undertaken by the bodies referred to above since their establishment.

4. The Committee notes with particular interest that the new legislation represents considerable progress, for example in relation to self-government, the determination of indigenous territories, collective land ownership, the use of natural resources, and establishing the principle of participation in the profits obtained from the exploitation of such resources, and that it strengthens consultation with indigenous communities, protects intellectual property, incorporates respect for customs to varying extents and sets forth the principle of intercultural bilingual education.

5. The Committee also notes certain difficulties, particularly of an economic nature, in the implementation of this new legal framework, for example with regard to intercultural bilingual education, and it hopes that the Government will continue to make

efforts to give effect to the new legislation in practice and that it will keep the Committee informed of the progress achieved and the difficulties encountered.

6. The Committee notes with interest the opinion issued by the Permanent Commission on Indigenous Affairs of the Legislative Assembly, dated 27 June 2000, on ratifying the Indigenous and Tribal Peoples Convention, 1989 (No. 169). This opinion sets out reasons of fact and of law in support of the conclusion that the plenary of the Legislative Affairs Commission considered that Convention No. 169 should be submitted to the Legislative Assembly for approval. The Committee would be grateful if the Government would keep it informed of any further developments in this respect, and draws the Government's attention to the fact that it may have recourse to the Office's assistance where necessary.

7. The Committee is raising other matters in more detailed comments addressed directly to the Government.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *India, Panama*.

Convention No. 108: Seafarers' Identity Documents, 1958

Poland (ratification: 1993)

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

1. Scope of the Convention and entitlement to the identity document

Articles 1(2) and 2(1) of the Convention. The Committee notes from the Government's report that article 11(1)(3) and paragraph 3 of Act No. 258 of 23 May 1991 regarding employment on seagoing merchant vessels (the Act), which presently provide for the issuance of seafarers' identity documents to persons who are neither seafarers nor fishermen, are being amended to bring the Act within the scope of the Convention as regards entitlement. The Committee hopes the Government will provide information on progress in this regard. It also requests information concerning the relevant consultations with shipowners' and seafarers' organizations.

2. Persons legally banned from working on vessels

The Committee again recalls the terms of article 13(1)(2)(c) and (d) of the Act according to which the issuance of a seafarers' identity document can be refused "to persons who have been legally banned from working on vessels" and to "persons for whom there exist reasons to be refused the issuance of a passport".

With regard to the first point, the Committee expresses concern as to the use of provisions of the Penal Code, inter alia, articles 39(2) and 41(1) of the Law of 6 June 1997, to prohibit persons from occupying a specific post or exercising a specific occupation. It notes from the Government's report that this prohibition may be imposed "if a perpetrator had abused such post or exercised occupation when committing a crime, or if it may be assumed that further occupation of a specified post or exercise of a specified occupation would jeopardize significant interests protected by the law".

The penal sanction referred to by the Government is a text of general application; as such, the Committee considers that given its breadth, concerns regarding the adequacy of procedural safeguards are raised.

A sanction of this nature would need to respect the principle of proportionality as regards both the circumstances of the offence and the duration of the prohibition. In practice and particularly in the maritime sector, such sanctions may result in depriving the worker of employment altogether where skills, training and experience are sector-specific.

Such a ban could only be imposed by a court of law taking into account the nature of the offence and in relation to a specific offence, i.e. in the maritime context this would be justified on grounds where the safety of navigation and the protection of life and limb were directly imperilled.

Moreover, a fundamental distinction exists between crimes committed, and the potential to commit crimes or to repeat offences. Pre-emptive sanctions imposed based on *assumptions* that other crimes may occur means punishing people by anticipating crimes they might – or might not – commit.

3. *Refusal to issue seafarers' identity documents*

With regard to refusing seafarers' identity documents to "persons to whom a passport cannot be issued", the Committee recalls its comments in the direct request to the Government in 2000 and again underscores that *the seafarers' identity document is not a passport*. Unlike a passport, which is issued pursuant to national legislation and confers no rights in international law, the seafarers' identity document is issued by a national authority pursuant to and supported by an international Convention which governs the document's issuance (or refusal), possession and use. (Application of the Seafarers' Identity Documents Convention, Report of the Committee of Experts on the Application of Conventions and Recommendations, 1999, International Labour Conference, Report III (Part 1A), pages 21-23.)

The Committee notes as stated in the report of the Government a passage on "the premises for refusal [to issue] a passport", in accordance with article 6 of the Law of 29 November 1990 on passports. It notes from the report, inter alia, that: issuance of a passport may also be refused:

- for a period no longer than 12 months, where a confirmed information was received, under the procedure provided for in international treaties, that a given person had committed profit-seeking – a crime or an offence abroad;
- also, where the border was crossed on the basis of other documents than a passport, as for example seafarers' identity documents. The seafarers' identity document is issued, in accordance with the Convention, by a national authority, which may refuse its issue in cases where a person who applied for it had committed a crime or it may be reasonably suspected that s/he had committed a crime or infringed a statutory obligation.

The Committee further notes that the Government continues to assimilate the seafarers' identity document to a passport and to impose the same restrictions on the issuance of both documents.

With regard to the refusal to issue seafarers' identity documents, in its direct request in 2000, the Committee asked the Government to provide "clarification as to the procedures provided for and the international agreements referred to which cause these actions to be taken". No reply was received on these points. The Committee further considers that the denial of seafarers' identity documents by the State based on "confirmed information" or suspicion, according to unspecified procedures in unspecified international treaties for infractions unrelated to the safety of maritime navigation ("profit-seeking") may defeat the purpose of the Convention which is to facilitate the international professional movements of merchant seafarers.

Finally, as the Government's report states, the refusal to issue a passport as punishment for having crossed the border "on the basis of other documents than a passport, as for example seafarers' identity documents" points toward a misunderstanding of the purpose of the document as set forth in the Convention and in the previously cited comments of this Committee in 1999 on the application of the Seafarers' Identity Documents Convention.

4. *Seafarer's right of return to the issuing State (Article 5 of the Convention)*

The Committee notes from the Government's report that the identity document is issued to foreign seafarers who are permanent resident aliens in Poland. The report states that a foreign employee on board ship should hold another document (other than the seafarer's identity document) for crossing the border and for returning to Poland.

As stated in the 1999 comments of this Committee concerning the application of the Convention, the seafarer's identity document is the sole document needed for the seafarer to enter the territory of another State Party to the Convention and to return to the issuing State. Regarding the seafarer's return to Poland, foreigners who hold a Polish seafarer's identity document are entitled to enter Poland on the basis of that document for up to one year following its expiry. This conventional right of return is independent and unrelated to the validity of any other document the seafarer may hold, such as an alien residence permit. The Committee, therefore, requests the Government to indicate the legislative and/or regulatory texts which guarantee readmission to Poland of foreign seafarers to whom a Polish seafarers' identity document has been issued.

The Committee, therefore, requests the Government:

- (i) to modify the legislative and administrative texts concerning persons legally banned from working on vessels and bring them into line with the above comments and to advise of the measures taken;
- (ii) to identify the aforementioned procedures and international treaties which serve as the legal basis for refusing issuance of seafarers' identity documents;
- (iii) to ensure that the primacy of international agreements, as set forth in article 1(3) of the aforementioned Act, is respected with regard to this Convention and that the identity document is not subjected to the regulations for obtaining passports, and to advise of the measures taken;
- (iv) to indicate the texts guaranteeing the right of foreign seafarers to return to Poland on an expired Polish seafarer's identity document; and
- (v) to indicate the status of the amendment process regarding entitlement to the document, and to forward the amending texts when available.

[The Government is asked to reply in detail to the present comments in 2003.]

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In addition, requests regarding certain points are being addressed directly to the following States: *Azerbaijan, Cuba, Czech Republic, Lithuania, Saint Vincent and the Grenadines, Ukraine.*

Convention No. 111: Discrimination (Employment and Occupation), 1958

General

Article 1(1) of the Convention prohibits discrimination in employment and occupation on, among others, the ground of sex. Over the years the Committee has noted and drawn attention to the various manifestations of sex discrimination covered by the Convention. In so doing, it has increasingly noted the efforts made by numerous governments throughout the world to address sexual harassment in the working environment. It notes that sexual harassment undermines equality at work by calling into question integrity and dignity and the well-being of workers. It damages an enterprise by weakening the bases upon which work relationships are built and impairing productivity.

The Committee has earlier expressed its view that sexual harassment is a form of sex discrimination and should be addressed within the requirements of the Convention. Thus, in accordance with the Convention's requirements to prohibit sex discrimination and adopt a policy to promote equality of opportunity and treatment, measures should be taken to address sexual harassment.

In view of the gravity and serious repercussions of this practice the Committee urges governments to take appropriate measures to prohibit sexual harassment in employment and occupation. Over the years, the Committee has had the opportunity to review various national legislative and policy approaches, judicial decisions and collective agreements on this subject, which reveal similar approaches, definitions, and procedures. Definitions contain the following key elements: (1) (*quid pro quo*): any physical, verbal or non-verbal conduct of a sexual nature and other conduct based on sex affecting the dignity of women and men, which is unwelcome, unreasonable, and offensive to the recipient; and a person's rejection of, or submission to, such conduct is used explicitly or implicitly as a basis for a decision which affects that person's job; or (2) (*hostile work environment*): conduct that creates an intimidating, hostile or humiliating working environment for the recipient.

However, it has come to the attention of the Committee in its review of these various national approaches that some initiatives fall short of the full protection against sexual harassment that would be necessary and appropriate to protect fully against this form of sex discrimination. The Committee considers that it would be helpful to provide guidance to ratifying States in order to assist them in improving their application of the Convention in this regard. In order to do so, the Committee requests governments to provide information in their next report on the following points:

- whether sexual harassment has been prohibited in employment and occupation, and if so, how, e.g. through laws, policies, or codes;
- the definition of sexual harassment. Specifically does it include *quid pro quo*, as well as *hostile working environment*?

- the scope of who is protected, i.e. job or training applicants ranging to full-time employees;
- the scope of protection, i.e. vocational education, vocational training, access to employment, conditions of employment and performing work in any occupation;
- the scope of liability, i.e. employers, supervisors and co-workers and, where possible, clients or other persons met in connection with performance of work duties;
- administrative mechanisms to address sexual harassment, including procedural protection for victims and accused harassers;
- enforcement mechanisms and procedures, including information on labour inspection activities;
- court decisions;
- educational and awareness-raising measures;
- cooperation with employers' and workers' organizations in addressing sexual harassment through policies and collective agreements.

Afghanistan (ratification: 1969)

1. At its previous session, the Committee expressed its hope that the transitional process on which Afghanistan has embarked after the end of the Taliban regime would soon lead to peace, political stability, reconstruction, as well as the establishment of institutions truly reflecting the diversity of the country, with the full and equal participation of women. The Committee stressed the importance of making the application of the Convention an integral part of this process. It also considered that 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, as provided for in the Convention, are fundamental to rebuilding a multi-ethnic society on the foundations of respect, understanding and tolerance.

2. The Committee notes the establishment of a Transitional Administration at the closing of the Emergency *Loya Jirga* in June 2002. While being concerned that insecurity and violence, particularly outside the capital, continue to threaten the recovery process, the Committee is encouraged by certain signs of progress, such as the return of many women and girls to schools, universities and employment, and the establishment of a Ministry for Women's Affairs and an independent Human Rights Commission. It also notes the assistance provided by the international community with regard to promoting gender equality, including through the International Labour Office. Given the long history of discrimination against women in Afghanistan and its continuing existence as evidenced, for instance, by incidents of continuing resistance against girls' education, the Committee hopes that the Transitional Administration will make every effort to promote and protect the human rights of women and girls throughout the country, including in respect to education, training, employment and occupation. While noting that under the Bonn Agreement existing laws will be applicable to the extent that they are not inconsistent with the Agreement or with Afghanistan's international legal obligations, the Committee once again urges the Transitional Administration and its successors to repeal expressly all existing laws, regulations and instructions that restrict the access of women and girls to education and employment, as they are contrary to the Convention.

3. Noting also the creation of a Constitutional Drafting Commission (UN document A/57/487 of 21 October 2002), the Committee trusts that the constitutional process under way will take Afghanistan's obligations under the Convention fully into consideration and that the future constitution will establish the equal status of men and women, including equal rights, opportunity and treatment, and will provide for a prohibition of discrimination in employment and education on all the grounds enumerated in the Convention. It therefore asks the Transitional Administration to bring the Convention to the attention of the drafters of the new constitution and to take the necessary measures to declare and pursue, in law and practice, a national policy designed to promote equality of opportunity and treatment in employment and occupation as envisaged under *Articles 1 and 2 of the Convention*.

Algeria (ratification: 1969)

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. *Discrimination on the basis of religion.* In its previous observation, the Committee noted that the Constitution had been amended in November 1996 and raised the question whether articles 29 (equality before the law, without any discrimination on grounds of birth, race, sex, opinion or any other personal or social condition or circumstance), 32 (guarantee of fundamental freedoms and human rights), 33 (guarantee of protection of fundamental human rights for individuals and associations, and of individual and collective freedoms) and 36 (inviolability of freedom of conscience and freedom of opinion), read together, guaranteed constitutional protection against religious discrimination. Noting that the Government's report does not touch on this question, the Committee would be grateful if the Government would confirm or repudiate this interpretation and repeats its request for copies of all court decisions concerning these articles.

2. *Discrimination on the basis of sex.* The Committee notes that, in 1997, the Government adopted two Decrees: the first on part-time work (No. 97-473 of 8 December 1997) and the other on home workers (No. 97-474 of 8 December 1997). The principal aim of these texts is to allow such workers, primarily women, to contribute to the social security scheme and thus be entitled to social insurance. While appreciating that the abovementioned provisions contribute to improving the employment conditions of these workers, the Committee requests the Government to indicate the measures taken or envisaged to ensure that the proliferation of "atypical" employment relations, several of which are prejudicial to income and job security, do not unduly disadvantage women on the labour market.

3. The Committee notes the detailed information supplied by the Government, in response to its earlier comments, on the efforts that it is making to develop education for young girls, combat illiteracy among women and provide training so that they may obtain qualifications. It also notes the Government's statement that despite incorporating equality between men and women into the legislative and regulatory texts governing the world of work, 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 addressing a request on certain other points directly to the Government.

Argentina (ratification: 1968)

With reference to its previous comments, the Committee recalls that in Decree No. 57 of 27 January 1999, the Executive included on the agenda submitted for consideration by the Congress the Framework Bill regulating public employment, explicitly proposing the repeal of sections (8)(g) and (33)(g) of Act No. 22140 of 1980 respecting the basic terms and conditions of employment in the public service, which prohibits access to the national public administration and requires the dismissal of officials who belong or have belonged to groups advocating the denial of the principles of the Constitution, or who adhere personally to a doctrine of this nature. The Committee had noted in previous comments an earlier Bill to repeal these provisions, which was not adopted. The Committee once again hopes that the provisions in question will be repealed and requests the Government to keep it informed of the progress achieved in the National Congress with regard to the Framework Bill regulating public employment.

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

Australia (ratification: 1973)

1. With reference to its previous comments expressing concern about certain measures taken or announced by the Government which, in the Committee's view, may have an impact on the role and functioning of the national human rights and equality policy and machinery, the Committee notes the Government's statement that the reduction in funding for the Human Rights and Equal Opportunities Commission did not reflect any lack of commitment to human rights, but primarily was a consequence of the High Court's decision in *Brady v. Human Rights and Equal Opportunities Commission*. This decision led to the transfer of the Commission's hearing functions to the Federal Court and the Federal Magistrates Service under the Human Rights Legislation Amendment Act 1999 (HRLAA), which came into effect on 13 April 2000. As a result, the Commission is no longer able to determine complaints alleging unlawful discrimination under the Racial Discrimination Act, the Sex Discrimination Act, and the Disability Discrimination Act, but only to engage in conciliation. Matters that cannot be conciliated or terminated for other reasons in the course of Commission proceedings can now be brought before the Federal Court or the Federal Magistrates Service for an enforceable decision. Noting from the Government's report that there has been no significant change in the number of complaints received by the Commission following the transfer of the hearing function, the Committee requests the Government to continue to provide information on the functioning of the arrangements introduced by the HRLAA, including the number and nature of cases concerning discrimination in employment and occupation brought before the Commission and the Federal Court or the Federal Magistrates Service respectively, and their outcomes.

2. The Committee also notes that the HRLAA centralizes the statutory powers to handle complaints in the office of the Commission's President and that the Human Rights Legislation Amendment Bill (No. 2) 1999, which is currently awaiting debate by the Senate, would make education and dissemination of information on human rights the central functions of the Commission. Hoping that the Commission's capacity to investigate and conciliate complaints will be maintained to the fullest extent, the

Committee asks the Government to keep it informed of the status of this legislative initiative and to provide a text of the Bill as soon as it is adopted.

3. As regards the situation concerning equality of women in employment, the Committee notes that, as announced previously by the Government, the Affirmative Action (Equal Opportunity for Women) Act, 1996 was replaced by the Equal Opportunity for Women in the Workplace Act, 1999. Under the new legislation, the Affirmative Action Agency has been renamed the Equal Opportunity for Women in the Workplace Agency, which, *inter alia*, is charged with advising and assisting employers in the development and implementation of workplace equal opportunities programmes, issuing guidelines to employers, and undertaking research and promotional activities. The Committee also notes that the approximately 3,000 employers covered by the Act are required to report annually to the Agency on the implementation and effectiveness of their workplace equality programmes. With reference to *Article 3, paragraph (a), of the Convention*, the Committee notes that the requirement of consulting with each trade union having members affected by a proposed workplace programme has been replaced by a general consultation requirement according to which the employer must consult with its employees or their nominated representatives. If the Agency is satisfied that an employer has taken all reasonably practicable measures to address the issues relating to employment matters that affect equal opportunities for women, it may waive the employer's obligation to report for a specified period. The Committee notes the Government's statement that while emphasis on facilitation has increased under the new legislation, the sanctions of "naming" and "contract compliance" are maintained as a last resort against non-complying employers. The Committee asks the Government to provide information on the activities of the Equal Opportunity for Women in the Workplace Agency, including its reports under section 12 of the Act, and its practice concerning waiving reporting requirements and imposing sanctions. Noting that the requirements for the content of workplace programmes and the employers' reports set out in the new Act are very broad, the Committee would be grateful to receive information on trends concerning the content of these programmes and reports, as well as on the overall impact of the Act on women's equality in the workplaces covered.

4. Recalling its comments on the adverse situation of indigenous women and migrant women, the Committee notes from the Government's report that the participation in employment of women born in other than the main English-speaking countries was at 44.4 per cent in 2001, compared to 60 per cent in respect to Australian-born women. According to the Government, more recently arrived migrants, including women, have had a more positive experience in the Australian labour force than those arriving in earlier periods. The Committee notes that as of February 2000 the labour force participation rate of indigenous women (42.6 per cent) remains considerably lower than for non-indigenous women (54.8 per cent). It requests the Government to continue to provide information on measures taken to ensure equality of indigenous and migrant women in the labour market, including any follow-up measures on the regional consultations held by the Government on issues of concern to migrant and refugee women during 2001.

5. Further to its previous comments on the disproportionately high unemployment of indigenous Australians, the Committee notes from the Government's report that in May 1999 the Commonwealth Government launched the Indigenous Employment Policy (IEP) which complements mainstream employment services and the activities under the

Community Development Employment Projects (CDEPs). The Committee notes that the IEP is focused on the private sector, taking into consideration indications that the employment situation of indigenous Australians is set to worsen over the next decade (indigenous population is expected to increase at double the rate of the general population) and that currently around 70 per cent of all indigenous employment is reliant on some form of public funding. The Committee notes that in August 2000 the Government received a report on welfare reform that, *inter alia*, underlined the need for innovative approaches to employment service delivery for indigenous peoples that are culturally appropriate and can be adapted to local circumstances. An Indigenous Community Capacity Roundtable was held in October 2000 upon the request of the Prime Minister, and in November 2000 the Council of Australian Governments announced a framework for advancing reconciliation between indigenous and non-indigenous Australians. The Committee notes that the outcomes of these initiatives were taken into account in the development of new initiatives in the area of indigenous employment announced under the 2001 budget. The Committee requests the Government to provide information on implementation and impact of the various programmes and projects to promote equal access to education, training and employment of indigenous Australians, including up-to-date statistical information.

6. The Committee notes with concern that the HRLAA abolishes the portfolio-specific commissioners of the Human Rights and Equal Opportunity Commission, including the Aboriginal and Torres Strait Islander Social Justice Commissioner. According to the Government this measure is aimed at addressing the perception that the Commission is “too focused on protecting those sections of the community for whom a specific commissioner exists”. In light of the continuing inequalities in respect to the access to employment of indigenous Australians, the Committee hopes this development will not reduce the level of protection against discrimination of indigenous peoples.

7. The Committee notes that the Government did not reply to its previous comments concerning the high representation of indigenous Australians in the criminal justice and penal systems, which, in the Committee’s view, may negatively impact on their prospects for employment. The Committee reiterates its concerns over this issue and hopes that the Government will provide information on measures taken to address this problem, including measures to reintegrate indigenous offenders into society through education, training and employment.

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

Bangladesh (ratification: 1972)

1. The Committee notes that a tripartite Labour Law Review Committee and its subcommittee have been established to review and amend the Labour Code, and that their recommendation has been submitted to the Government. The Committee trusts that the revision of the Labour Code will include a prohibition of discrimination as defined in *Article 1 of the Convention* and that the Government will inform the Office of progress made in the adoption process and supply a copy of the text upon adoption.

2. Further to previous comments, the Committee notes an increase in the literacy rate: 54.6 per cent for men and 42.5 per cent for women at the end of 2000. The Committee notes that, despite the progress, the literacy gap between men and women

remains constant. It also notes the efforts reported on by the Government to increase the literacy and education levels of men and women, girls and boys. It further notes a rise in enrolment in primary and secondary schools, especially for girls. The Committee asks the Government to continue to provide information on the enrolment rates for education as well as statistical data and information on the efforts made to enhance the literacy rate and education level of girls and women. Further, noting that no reply has been provided on the measures taken to improve educational curricula that often reflected the traditional roles of men and women, the Committee must again ask the Government for information on progress made to increase gender sensitiveness of the educational curricula. Finally, the Committee recalls that in previous reports the Government declared that it took measures to reach its target of ensuring that females were 60 per cent of all recruitment for primary-school teachers. The Committee notes that the latest data (1997-98) show that only 26.8 per cent of primary-school teachers are women but that the Government hopes to reach 40 per cent of female teachers by 2002. The Committee asks the Government to provide information on the measures taken to promote women's employment as schoolteachers, including in primary schools.

3. Recalling that training and vocational guidance are of paramount importance, in that they determine the actual possibilities of gaining access to employment and occupation, the Committee would appreciate receiving information on the measures taken by the Government to strengthen women's access to vocational training and guidance. Please also supply information on measures taken to improve women's terms and conditions of employment.

4. In its previous comments the Committee noted the 1993 data on women's participation in the public sector, and requested more up-to-date statistics. The Committee recalls the very low level of women's participation in the public sector, with women only filling 7 per cent of the officers' ranks, 10 per cent of the staff positions and 5 per cent of the low-level positions in the public service. Further, from an ILO study undertaken in Bangladesh, the Committee notes that in 1995-97, women comprised 8.56 per cent of the labour force in public and autonomous bodies in the formal private sector. Noting that neither information nor statistical data on women's participation in the public sector were provided in the Government's report, the Committee once again asks the Government to supply full information on the measures taken to ensure that women can actively participate in the public sector and at higher levels of decision-making.

5. The Committee noted, in its previous observations, that women workers were concentrated in export-oriented labour-intensive industries that absorb mostly unskilled and low-paid labour. In this regard, the Committee notes the information provided in the Government's report on minimum wages for unskilled labour, that is applicable to both men and women. Nevertheless, it notes the Government's statement that the "garment industry employs mostly women due to the nature of jobs, which suit them". The Committee also notes that the overwhelming majority of women are working in the informal economy. The Committee is concerned that negative stereotypes and attitudes on women's participation in the labour market result in a perpetuation of sex-based job segregation and exclusion. Therefore, the Committee urges the Government to consider undertaking positive measures in order to enhance women's training, skill development and access to jobs in different sectors of activity. Further, the Committee would appreciate receiving information on the educational and awareness-raising programmes established to secure the acceptance and observance of the principle set forth in the

Convention. Please also provide statistical data on women's employment in the private sector, which would allow the Committee to assess the application of the Convention.

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

Bolivia (ratification: 1977)

1. *Discrimination on grounds of sex.* As indicated by the Committee in its recent comments, for many years it has been referring 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 had pointed out to the Government that this provision is prejudicial to equality of opportunity and treatment on grounds of sex, and on many occasions it has expressed the hope that the revision of the General Labour Act would provide an opportunity to ensure compliance with the Convention in relation to equality of men and women in access to employment and occupation. The Government had indicated its intention to revise the above Act. It subsequently provided a report indicating that a draft of a new General Labour Act had been set aside and that, in the context of the programme of national dialogue initiated by the Government, it had been proposed to establish the parameters for future labour legislation. Finally, in its previous report, the Government indicated that the Ministry of Labour and Micro-Enterprises was evaluating a number of legal measures to review the criterion set out in section 3 of the General Labour Act. The Committee regrets to note that in its last report the Government indicates that there has been no amendment to the provisions offering special treatment for certain persons. The Committee reminds the Government 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 so as to ensure equality for men and women in access to employment and occupation. The Committee requests the Government to provide information on this matter in its next report.

2. In its last comment, the Committee referred to paragraph 5 of the ILO resolution on equal opportunities and equal treatment for men and women in employment, adopted in 1985. It again urges the Government to take measures 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, taking into account, where appropriate, measures aimed at promoting equality in employment between men and women. The Committee reminds the Government that this revision should be carried out in consultation with the representatives of employers' and workers' organizations, and with the participation of women workers. The Committee requests the Government to provide information with its next report on the measures adopted in this respect and the progress achieved.

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

Bosnia and Herzegovina (ratification: 1993)

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.

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

Brazil (ratification: 1965)

The Committee notes the comments from the Inter-American Trade Union Institute for Racial Equality (INSPIR), received on 12 September 2002. The comments have been forwarded to the Government and the Committee will address them, together with any comments the Government might have thereon, at its next session. Noting the discussions in the Conference Committee on the Application of Standards in June 2002, the Committee repeats its previous observation, which read as follows:

1. The Committee notes the report of the Government and the attached documentation. The Committee recalls its previous comments concerning discrimination on the grounds of sex, race and colour, in which it noted with interest legislative and practical measures taken by the Government to implement the principles of the Convention. With reference to *Article 3(f) of the Convention*, the Committee noted that sufficient time had elapsed to warrant an initial assessment of the progress achieved in eliminating employment-related discrimination in the country. In this context, the Committee notes the discussions on the application of the Convention by Brazil in the Committee on the Application of Standards of the International Labour Conference at its 88th Session in 2000 and recalls the observations submitted by the INSPIR on 6 November 2000 containing allegations that the public recognition of racial inequalities by the Government was not followed by appropriate government action to produce results.

2. The Committee notes with interest from the Government's report that a new section 216-A, which makes sexual harassment punishable as a crime, has been included in the Penal Code by Act No. 10.224 of 15 May 2001. The section provides that officials who use their higher position or ascendancy inherent in the exercise of their duties, post or office to pressure another person for the purpose of obtaining sexual advantage or favours shall be punished with one to two years of detention. The Government is asked to provide information on the application and impact of the new legislation.

3. As regards the position of women in the labour market, the Committee notes from the Brazilian National Report on the Implementation of the Platform for Action of the Fourth United Nations World Conference on Women prepared for June 2000 (Beijing +5) that, while women's participation grows and they have greater occupational mobility, occupational segregation and the gender wage gap persist and the rate of women in unemployment has risen. The Committee notes also the statement of the Government that the situation of black women is often characterized by multiple discrimination on the basis of sex, race and colour.

4. The Committee notes the information contained in the Government's report concerning the situation of racial and ethnic minorities in the labour market. According to a survey cited by the Government, 90 per cent of Brazilians living under the poverty line are black or mulatto and 60 per cent of the mulatto and black population work in the informal sector, while that rate among the white population is 48 per cent. The illiteracy rate is 10.6 per cent among whites, 25.2 per cent among mulattos and 28.7 per cent among the black population.

5. The Committee had previously welcomed the promulgation of Act No. 9799 of 1999 which includes provisions prohibiting discrimination on the basis of sex, age, colour and family status, including pregnancy, in respect of access to employment, vocational training and terms and conditions of employment. The Act also contemplates the adoption of temporary measures to establish policies designed to correct inequalities that affect women

in employment and occupation. The Committee requested the Government to provide information on measures adopted in this regard, as well as information regarding the application of Act. No. 9799 and its impact on the position of women and racial and ethnic minorities in the labour market. The Committee notes the announcement by the Ministry of Labour and Employment in July 2001 that 20 per cent of the budget of the Worker's Assistance Fund (FAT), which was R\$8.7 billion in 2000, would be invested in occupational training for the black and mulatto population, with preference given to women. The Committee requests the Government to continue to provide information on the implementation of this initiative and details on other specific measures taken to prevent discrimination on the grounds of sex, race and colour and to promote racial and gender equality, including positive action in respect of access to education, training and employment.

6. With respect to securing the acceptance and observance of the national equality policy, the Committee previously noted the National Programme of Human Rights, the campaign "Brazil, Gender and Race – United for Equal Opportunities" and the establishment of centres for the prevention of discrimination in employment and occupation, which undertake promotional activities and receive complaints. The Committee notes from the report that as of August 2001, 58 such centres have been set up throughout the country and that the target adopted by the federal Government is that in 2002 there will be a centre in each regional labour delegation or sub-delegation. The Committee notes that the centres are carrying out activities in cooperation with black rights' defence groups to raise awareness in society at large about discrimination against blacks and to make black workers themselves aware of discrimination against them. The Committee also notes the efforts by these centres to promote racial equality and diversity through negotiations with employers' associations and managers in the various branches of activity where black workers are absent. Recalling the observations of INSPIR, the Committee requests the Government to provide detailed information on the impact of these awareness-raising measures on improving the position of women and blacks in employment and on their terms and conditions of work.

7. The Committee notes that the centres for the prevention of discrimination in employment and occupation receive complaints about discriminatory practices in employment and occupation. While noting that the number of complaints made to the centres has recently increased, the Committee observes that the number of discrimination complaints based on sex, race or colour remains relatively low. In the first half of 2001, the majority of complaints were based on disability discrimination – here were only four complaints because of racial discrimination (0.1 per cent) and 103 complaints of sex discrimination (3 per cent). The Committee notes the indication of the Government that this is due to the difficulties in obtaining corroborating evidence of discrimination in such cases. The Committee points out that such evidentiary difficulties should not operate to bar the filing and pursuit of complaints. In this regard, the Committee underscores the importance of establishing accessible and effective complaint mechanisms, procedures and remedies for victims of discrimination on grounds of sex and race. It also recalls the importance of promoting legal literacy campaigns to create awareness of workers' rights and the existence of complaint mechanisms. The Committee requests the Government to continue to provide information on the nature and outcome of complaints involving discrimination on the basis of sex or race examined by the centres for the prevention of discrimination in employment and occupation, including the number of cases that have been submitted to the public prosecutors.

8. As regards the assessment of the impact of legislative and practical measures taken to improve the situation of women and ethnic and racial minorities in the labour market, the Committee notes that the Minister of Labour and Employment, by issuing Order No. 1.740 of 26 October 1999, decided to include in the report forms for the Annual Social

Information Report (RAIS) and the General Record of Employment and Unemployment (CAGED) information on race and colour of persons concerned. While welcoming this information, the Committee once again requests the Government to provide full information in its next report, including statistical data, on the situation of women and the indigenous, black and mestizo population in employment and occupation, including access to vocational guidance, vocational training and employment, as well as on the impact of the Government's equal opportunity policy in this respect.

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

Bulgaria (ratification: 1960)

1. Further to its previous comments, the Committee notes with satisfaction that the Labour Code was amended in 2001 to prohibit explicitly indirect discrimination and to add the criterion of skin colour to the list of prohibited grounds of discrimination. Section 8(3) of the Labour Code, as amended, provides that "in the exercise of labour rights and duties no direct and indirect discrimination, privileges or restrictions shall be allowed on the grounds of ethnicity, origin, sex, race, skin colour, age, political and religious conviction, affiliation to a trade union and other public organizations and movements, family, social and property status and disability". The Committee also notes that section 1(7) of the "supplementary provisions" defines that "indirect discrimination shall be such where decisions seemingly admissible by law are applied in the implementation of labour rights and duties, but in a manner, which in view of the criteria under article 8, paragraph (3), of the Labour Code, actually and as a matter of fact render some employees in a more disadvantaged or more privileged position compared to others". The Committee requests the Government to provide in its future reports information on the implementation, enforcement and impact of the abovementioned provisions in practice, including relevant administrative and judicial decisions.

2. *Discrimination on the basis of national extraction or religion.* The Committee has previously expressed its concern over the treatment of the Turkish minority and members of the Roma community, while acknowledging that the Government had taken certain measures with a view to fighting against discrimination and promoting integration, including the adoption in 1999 of a Framework Programme for the Equal Integration of Roma in Bulgarian society. In this context, the Committee notes the information provided by the Government concerning various programmes creating employment opportunities for persons of Roma origin in some districts and municipalities, including vocational training programmes. The Committee asks the Government to assess and evaluate the measures taken and to provide information on the effectiveness of all the programmes to eliminate discrimination and promote equal opportunity in training, skill development and employment of Roma. Noting that according to the Government's reply of February 2000 to the United Nations Secretary-General's questionnaire on the implementation of the Beijing Platform for Action, the Framework Programme 1999 contains a special section on measures to promote equal participation of Roma women in social and economic activities, the Committee is particularly interested in information on the implementation of these measures. It also hopes the Government will provide for specific measures targeting the Roma in the National Strategy on Employment which is currently under preparation.

3. The Committee once again underlines the need to take concrete and proactive measures to promote respect and tolerance among the different ethnic groups of the

population. Recalling the serious situation as regards the participation of the Roma in education, training and employment and the fact that a general climate of prejudice and intolerance against minorities leads to discrimination, the Committee considers that any national policy to promote and ensure non-discrimination and equality of opportunity and treatment in employment and occupation must necessarily include specific measures to promote respect and tolerance, including through education and public awareness raising. The Government is requested to provide detailed information on measures taken in this respect.

4. The Committee notes that the Government did not reply to its previous comments concerning the application of the Act on Political and Civil Rehabilitation of Repressed Persons. The Committee reiterates its request for information on the number of people – particularly members of the Turkish minority – who have applied for and obtained compensation under the implementing decrees of this Act (Nos. 139 of July 1992 and 249 of December 1992). With respect to restoration of real estate to Bulgarian citizens of Turkish origin who asked to return to the Republic of Turkey or to other countries during the period May-September 1989, the Committee once again expresses the hope that the Government will indicate the number of repatriated workers of Turkish origin who were unemployed but not receiving benefits, who were able to benefit from the compensation provided by Decree No. 170 of 30 August 1990 regarding the restoration of real estate to Bulgarian citizens of Turkish origin who were forced to sell. In addition, it requests the Government to supply statistical data on the number of Bulgarians of Turkish extraction registered in schools and other educational institutions and on their participation in the labour market, so that it can measure the progress made by this minority in regard to access to employment and occupation.

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

Chad (ratification: 1966)

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

1. The Committee recalls the communication from the Trade Union Confederation of Chad (CST) of 27 June 1997 alleging non-application by Chad of the principles of equality in employment and occupation for women workers. According to CST, the Government had taken no concrete measures to facilitate access of women to public and private employment, despite the several provisions in the 1996 Constitution aiming at the elimination of all forms of discrimination against women. The CST further referred to the technical shortcomings of the ministerial departments responsible for the promotion of women and the need for data collection and comparative research on the employment situation of women. The Committee notes the Government's reply indicating that the application of the Convention is guaranteed by the Constitution. The Government also states that there is a general lack of means to equip ministerial departments adequately, hence the Ministry responsible for the promotion of women is not the only body affected. The Government believes that the collection of data is only a partial solution as regards the application of the Convention and that poverty remains a major obstacle.

2. The Committee recalls that the existence of constitutional protection in respect of the principles of the Convention is, in itself, not sufficient to constitute a national policy for the promotion of equal opportunity and treatment in employment and occupation, as required under *Articles 2 and 3 of the Convention*. Noting that article 13 of the Constitution

provides for equal rights and duties of men and women and that article 14 establishes equality before the law without distinction and the explicit obligation of the State to watch over the elimination of all forms of discrimination against women and to protect their rights in all spheres of private and public life, the Committee stresses again that the Convention, in addition to legislative measures, requires the Government to pursue the national policy through positive measures with a view to eliminating discrimination on the grounds contained in the Convention and to promoting equality. Noting that the Government has in fact adopted policies and objectives regarding the situation of women, including through Act No. 19/PR/95 of 4 September 1995 declaring a policy on the integration of women into development, the Committee asks the Government to provide information on the implementation of the various measures to promote equal access of women to training and employment in the private and public sector. The Committee shares the Government's view that the collection of statistical data is not an end in itself, but rather part of an effective policy to promote women's equality in employment, and allows for the taking of targeted action. Noting that the Government has provided information on the participation of women and girls in education, the Committee encourages the Government to make every effort to provide also statistical information on the distribution of men and women in employment in the private and public sector. The Committee also encourages the Government to continue to make all possible efforts to allocate adequate resources to the institutions and structures responsible for promoting women's equal education and employment, having in mind that the empowerment of women is fundamental to the development of society as a whole.

3. The Committee refers to its previous comment concerning article 32 of the Constitution, which states that no one can be discriminated against in their work on the grounds of origin, opinions, beliefs, sex or matrimonial situation, but does not include other grounds of discrimination set out in *Article 1(1)(a)* of the Convention, particularly race and colour. The Committee notes the statement of the Government that race and colour never were criteria for discrimination in Chad and that the legislator therefore simply omitted these terms in the Constitution. While stressing the equal importance of all grounds listed in the Convention, the Committee observes that the grounds of race and colour are of particular significance to promote and ensure equality of opportunity and treatment in employment and occupation in multi-ethnic societies. Recalling once again paragraph 58 of the Committee's General Survey of 1988 on equality in employment and occupation, where it stated that where provisions are adopted in order to give effect to the principles of the Convention they should include all the grounds of discrimination laid down in the Convention, the Committee hopes that the Government will consider amending article 32 of the Constitution or adopting legislation so as to bring it fully in line with the Convention. Noting from the report that the regulations enforcing the Labour Code will take into account the grounds of race and colour, the Committee requests the Government to provide information on the progress made in this respect and to provide a copy of these regulations as soon as adopted.

In addition, the Committee is addressing a request directly to the Government on other questions.

Chile (ratification: 1971)

1. The Committee notes with interest the amendments made to the Labour Code by means of Acts Nos. 19739 of 26 June 2001 and 19759 of 11 September 2001, which extend protection against discrimination in employment. With the inclusion of national extraction as a prohibited ground of discrimination in employment and occupation, all of the grounds set out in the Convention are now covered. Furthermore, the Committee notes that age and civil status of persons have been introduced as prohibited grounds of discrimination in employment and occupation.

2. The Committee notes the information provided by the Government in its report concerning discrimination on grounds of political opinion. The Government once again indicates that the Legislative Decrees (Nos. 112 and 139 of 1973, 473 and 762 of 1974, 1321 and 1412 of 1976) which grant wide discretionary powers to Chilean university vice-chancellors to suspend the contracts of persons in academic and administrative posts are no longer in force and that the necessary prerequisites 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 former legislation, the Committee repeats its previous comments and emphasizes that the best way of ensuring that there is no uncertainty with regard to the positive law that is in force is to repeal or amend explicitly laws or other provisions which are not effectively in force. Moreover, 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. Furthermore, 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 the Government's statements with regard to its comments on 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 which 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.

Cuba (ratification: 1965)

1. The Committee notes the information provided by the Government with regard to the application in practice of sections 7 and 29 of Ministerial Resolution No. 150/98 of 13 July 1998 approving the branch Regulations on the educational activities of employees of the Ministry of Education. The Committee requests the Government to provide information on: (a) the commissions envisaged in section 29 of the resolution which are established to hear complaints by workers in education who disagree with the imposition of disciplinary measures for their removal from the sector or activity; (b) whether workers have the possibility of appealing against their provisional suspension from their post or occupation and of their wage for 30 days to any other body or

commission; and (c) actual cases in which such disciplinary measures have been adopted for violations of the utmost gravity, as specified in sections (b) and (g) of the Regulation.

2. The Committee reminds the Government that, in protecting workers against discrimination with regard to employment and occupation on the basis of political opinion, the Convention implies that this protection shall be afforded to them in respect of activities expressing or demonstrating opposition to the established political principles, since the protection of opinions which are neither able to be expressed nor demonstrated would be pointless. Furthermore, the protection of freedom of expression is aimed not merely at the individual's intellectual satisfaction at being able to speak her or his mind, but rather – and especially as regards the expression of political opinions – at giving such persons an opportunity to seek to influence decisions in the political, economic and social life of society (see the General Survey on equality in employment and occupation of 1988, paragraphs 57-63). The Committee reiterates its request for the Government to provide information on the employment status and conditions of self-employed journalists who express political opinions contrary to the Government.

Czech Republic (ratification: 1993)

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.

1. The Committee notes with interest the adoption of Act No. 218/2002 of 26 April 2002 (Civil Service Act) and Act No. 115/2000 amending Act No. 65/2000 (Labour Code) and strengthening provisions concerning equal treatment and protection against direct and indirect discrimination and sexual harassment as well as provisions concerning parental leave and equal treatment of men and women with respect to employees caring for children. The Committee also notes with interest that section 133a of Act No. 99/163 on civil procedure shifts the burden of proof in sex discrimination cases. It trusts that the Government will provide information on the practical application and enforcement of the relevant provisions of the Labour Code and the Civil Service Act, including statistical data of cases involving discrimination in employment and occupation in the private or the public sectors. In this connection, the Committee reiterates its previous request to provide information on the practical application of section 1 of amended Act No. 167/1999 on employment.

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.

3. With respect to the criteria for selection for positions of teachers in public institutions of higher education established under the new Act No. 111/1998 on Higher Education, the Committee notes with satisfaction that the new Act has no further provisions on the competition procedure for such positions and that the only condition is that the announcement of the competition has to be made at least 30 days before the term for applications ends.

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

Denmark (ratification: 1960)

The Committee notes with interest the adoption on 30 May 2000 of the Act on equality between men and women (Act No. 388 of 2000), as amended by Act No. 396 of 6 June 2002. It notes that the purpose of the Act is to promote gender equality and to combat direct and indirect sex discrimination, and sexual harassment. It notes that section 2(1) of the Act states that every employer, authority or organization shall treat men and women equally in the public administration and in occupation and general activities. The Committee notes the establishment of the Danish Equal Opportunities Board, and the Equal Opportunities Knowledge Centre, in which the principal labour market organizations are represented. The Danish Equal Opportunities Board is competent to examine complaints under this Act, as well as complaints concerning discrimination made under the Act on equal remuneration for men and women (Act

No. 983 of 20 November 2001); the Act on equal treatment between men and women as regards access to employment and maternity leave (Act No. 895 of 10 October 2001); and the Act on equal treatment between men and women in relation to occupational social security schemes (Act No. 775 of 29 August 2001).

The Committee welcomes these initiatives to improve the legislative, administrative and enforcement framework to combat gender discrimination and promote gender equality and requests the Government to provide information on the impact of these initiatives to improve the position of women in the labour market and eliminate discrimination. It looks forward to receiving information on similar measures taken to address ethnic and racial discrimination

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

Dominican Republic (ratification: 1964)

The Committee notes the comments made by the International Confederation of Free Trade Unions (ICFTU), received by the Office on 4 October 2002, which contain information on discrimination on grounds of sex, race, colour and national extraction, and which have been forwarded to the Government. The information received will be examined at the next session of the Committee, together with the Government's responses to these comments and to the direct request made in 2001.

Eritrea (ratification: 2000)

The Committee notes the Government's first report which it will examine in detail at its next session. Noting that the report contains no reply to its previous comments, it must repeat its previous observation which read as follows:

1. The Committee notes that at its 282nd Session (November 2001), the Governing Body of the ILO approved the report of the tripartite committee set up to examine the representation alleging non-observance of Ethiopia of Conventions Nos. 111 and 158, made under article 24 of the ILO Constitution by National Confederation of Eritrean Workers (NCEW). The complaint concerned allegations of deportations of Ethiopians of Eritrean origin and Eritreans legally established and residing and working in Ethiopia in violation of these Conventions. The tripartite committee 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 that it must consider the situation in its broader context, while making it clear that in doing so that as regards the complaint only Ethiopia was bound by Conventions Nos. 111 and 158. The Governing Body invited the Committee of Experts to review the situation in respect to Eritrea when the Government reports on the application of Convention No. 111, which entered into force for Eritrea on 22 February 2001.

2. This Committee follows the Governing Body in welcoming the fact that the Governments of Ethiopia and Eritrea and their social partners have expressed a desire to reach a peaceful solution to the border dispute between the two countries, reaffirming their acceptance of the OAU Framework Agreement and Modalities for its Implementation. The Committee also notes the establishment, under the Algiers Agreement of 12 December 2000, of a claims commission with jurisdiction over claims of deportees and the Governing Body's view that it would be appropriate for the issues raised in the representation to be

dealt with in the claims commission as it has powers to grant monetary and other appropriate relief.

3. In the light of the above, the Committee requests the Government to include in its first report on the application of the Convention, which is due in 2002, information on the measures taken to ensure non-discrimination of 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 respect to 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 (c) the measures taken to provide for an effective right of appeal for those persons that may be accused in future of engaging in activities prejudicial to the security of the State.

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

Ethiopia (ratification: 1966)

The Committee notes that the Government's report contains no reply to previous comments. It must therefore repeat its previous observation which reads as follows:

1. The Committee notes 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 (NCEW). The complaint concerned allegations of deportations of Ethiopians of Eritrean origin and Eritreans legally established and residing and working in Ethiopia in violation of these Conventions (see GB.282/14/5).

2. 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 noted that expulsion from the country would have the effect of discrimination in employment and occupation, in so far as it was based on a ground prohibited under Convention No. 111 and resulted in loss of employment and related benefits, and was not otherwise permitted under the Convention. The Governing Body pointed out that the substantive and procedural protections set forth in *Articles 1 and 4 of the Convention* apply to all workers regardless of their nationality or citizenship and concluded that at least some of the deportations constituted discriminatory acts within the meaning of *Article 1(1)(a)*, and did not meet the requirements of *Article 4*. The Governing Body accordingly 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. It invited the Government of Ethiopia to continue to provide information on the situation of Eritrean workers and employers in Ethiopia in its reports under Conventions Nos. 111 and 158 under article 22 of the ILO Constitution, so that the Committee of Experts can continue to examine this matter (see GB.282/14/5, paragraph 40).

3. This Committee follows the Governing Body in welcoming the fact that the Governments of Ethiopia and Eritrea and their social partners have expressed a desire to reach a peaceful solution to the border dispute between the two countries, reaffirming their acceptance of the OAU framework agreement and modalities for its implementation. The Committee also notes the establishment, under the Algiers Agreement of 12 December 2000, of a claims commission with jurisdiction over claims of deportees and the Governing Body's view that it would be appropriate for the issues raised in the representation to be

dealt with in the claims commission as it has powers to grant monetary and other appropriate relief.

4. Noting that the Government of Ethiopia has reaffirmed its acceptance of the principles enshrined in Conventions Nos. 111 and 158 and its willingness to promote and implement a policy of equality of opportunity and treatment in employment and occupation, the Committee requests the Government to provide in its next report information on: (a) the situation of Eritrean workers and employers in Ethiopia as regards their protection from discrimination based on political opinion and national extraction; (b) the cooperation with the Government of Eritrea 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; (c) the measures taken, in line with any decisions which may be taken by the claims commission, 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; and (d) the measures taken to provide for an effective right of appeal for those persons who may be accused in future of engaging in activities prejudicial to the security of the State.

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

Finland (ratification: 1970)

1. The Committee notes the detailed information contained in the Government's report. It notes the comments attached to the report by the Commission for Local Authority Employers (KT) and the Confederation of Unions of Academic Professionals in Finland (AKAVA). It also notes the information attached to the report by the Confederation of Finnish Industry, the Employers' Confederation of Service Industries in Finland, and the Central Organization of Finnish Trade Unions on their activities undertaken to promote equality in the areas of collective bargaining and enterprise management. The Committee will consider the issues concerning equal pay and the equality allowance under Convention No. 100.

2. The Committee notes the adoption on 11 June 1999 of a new Constitution, which entered into force on 1 March 2000. It notes that article 6(2) provides that "no one shall, without an acceptable reason, be treated differently from other persons on the grounds of sex, age, origin, language, religion, conviction, opinion, health, disability or any other reason that concerns his or her person", which is in accordance with *Article 1 of the Convention*. It notes that article 6(4) states that "equality of the sexes shall be promoted in societal activity and working life, especially in the determination of pay and the other terms of employment, as provided in more detail by an Act". The Committee also notes the adoption on 2 February 2001 of a new Employment Contracts Act (Act No. 55 of 2001), which entered into force on 1 June 2001, replacing Act No. 320 of 1970. It notes that Chapter 2, section 2, provides that "an employer may not without reasonable grounds treat a worker differently due to age, state of health, national or ethnic origin, sexual orientation, language, religion, opinion, family relations, trade union activities, political activities or any other comparable condition". It further notes the Act respecting equality between men and women (Act No. 609 of 1986) was amended on 24 January 2001 to strengthen provisions prohibiting discrimination based on sex. The Committee asks the Government to provide information on the application and enforcement of the newly adopted provisions on the elimination of discrimination in practice.

3. Further to its previous comments, the Committee notes the repeated concern expressed by the AKAVA that sex discrimination in fixed-term employment relationships is still a serious problem and that such jobs are most commonly to be found in the public sector, among young, highly educated women. AKAVA states that 85 per cent of its women members below 30 years of age working for the Government are in fixed-term employment relationships. It also states that the salaries of fixed-term employees are on average much lower than those of permanent employees, and that women's careers suffer from this. AKAVA states that it seems that fixed-term jobs are used deliberately to circumvent job security and to keep down the costs employers have to bear due to family leave.

4. The Committee notes the comments by the Commission for KT, in which it states that the claim made by AKAVA – that employers do not want to take on women of childbearing age – requires confirmation through much more detailed analyses. It considers that fixed-term jobs among women specifically derive from the fact that people are needed to replace workers who are on maternity, parental and care leave. KT states that in fields of employment in which men predominate, leave other than parental leave is taken very much less than in fields of employment in which women predominate and thus there are nowhere near as many replacements needed in the former as in the latter. Noting the various measures taken by the Government to study, analyse and address inequalities in the labour market, the Committee would be grateful if the Government would address the issues raised above concerning discrimination in employment against women of childbearing age and provide information with its next report.

5. Further to previous comments the Committee thanks the Government for the information provided on the procedures and enforcement actions to protect workers against retaliation for making complaints of discrimination. Please continue to provide practical information on the application of the prohibition of retaliation.

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

France (ratification: 1981)

The Committee notes the information contained in the Government's report of 2001 and the information supplied in reply to its previous direct request. It also notes the comments of the French Democratic Confederation of Labour (CFDT) submitted to the Office in December 2001 by the Government.

1. The Committee notes with interest the numerous initiatives that the Government is continuing to take to combat discrimination and to promote equality of opportunity and treatment in employment and occupation between men and women. It particularly notes with interest that Act No. 2001-1066 of 16 November 2001 to Combat Discrimination, which amends section L.122-45 of the Labour Code, introduces the prohibition of both direct and indirect discrimination in employment and occupation and adds the following new prohibited grounds of discrimination: "sexual orientation, age, physical appearance or family name". The Committee notes that section 4(III) of Act No. 2002-303 of 4 March 2002 respecting the rights of the sick and the quality of the health system also amends section L.122-45 of the Labour Code by inserting "genetic characteristics" as a new prohibited ground for discrimination. Section 1 of Act

No. 2001-1066 mentioned above also amends section L.122-45 of the Labour Code and places the burden of proof in discrimination cases on the employer to prove that there has been no breach of the principle of non-discrimination in employment and occupation once the worker has made a *prima facie* showing of discrimination. The Committee also notes new sections L.122-45-1 and L.122-45-2 of the Labour Code which introduce the possibility for trade unions to submit complaints relating to discrimination on behalf of alleged victims.

2. The Committee notes that section 11 of Act No. 2001-1066 of 16 November 2001 to Combat Discrimination also amends section 6 of Act No. 83-634 of 13 July 1983 regulating the rights and obligations of civil servants, stating that the following prohibited grounds of discrimination are applicable to civil servants: “political, trade union, philosophical or religious opinion, origin, sexual orientation, age, family name, state of health, physical appearance, disability or membership or non-membership, real or supposed of an ethnic group of race”. It also notes the amendment to prohibit retaliation against a civil servant for having lodged a complaint, or for having acted as a witness to or reported discriminatory acts.

3. *Sexual harassment.* The Committee notes with interest section 8 of Act No. 2001-397 of 9 May 2001 on occupational equality between men and women, which amends section L.122-46 of the Labour Code by broadening the scope of the prohibition of sexual harassment to protect applicants for jobs and training and to cover harassment not only in cases of dismissal, but also in relation to remuneration, training, reclassification, assignment, qualification, classification, promotion, transfer or contract renewal. The Committee also notes that section L.122-46 of the Labour Code defines sexual harassment as an act by a person intended to obtain favours of a sexual nature for herself/himself or for a third person. Disciplinary measures may be taken against a worker who is found to have committed harassment and employers are obliged to take all the necessary measures to prevent the occurrence of harassment in the workplace. The Committee further understands that section 179 of Act No. 2002-73 of 17 January 2002 respecting social modernization amends Act No. 83-634 of 13 July 1983 regulating the rights and obligations of civil servants, prohibits sexual harassment in the public sector and defines harassment as an act by a person intended to obtain favours of a sexual nature for her or his own advantage or for the advantage of a third person. While the Committee welcomes the strengthening of measures against sexual harassment, it notes the limited definition of sexual harassment and in this respect refers the Government to its General Observation on the Convention.

4. The Committee notes with interest that Act No. 2001-397 on occupational equality between men and women introduces the obligation to negotiate occupational equality issues every third year at the branch level and every second year at the enterprise level. Enterprises with more than 50 employees must make a detailed report on the general situation relating to equality between men and women and, in accordance with Decree No. 2001-832 issued under section 1 of the abovementioned Act of 12 September 2001, the report shall include statistical data disaggregated by sex on employment conditions, remuneration and training. The Act also repeals the prohibition of night work for women and promotes equal representation of men and women workers in professional elections and the elections of *prud’hommes*.

5. With respect to the role of women in social dialogue, the Committee notes the comments submitted by the French Democratic Confederation of Labour (CFDT) that the process of reflection initialized by the debate on the role of women in social dialogue by the Higher Council for Occupational Equality and the adoption of Act No. 2001-397 on occupational equality between men and women form a good starting point, but that the views of the social partners must be taken into account in order to ensure that women enjoy their full rights at all the different levels in social dialogue. The CFDT also emphasizes that re-entering the labour market must guarantee equal opportunities for men and women at all levels. In this respect, the Committee requests the Government to provide information with its next report on the measures taken to ensure the full participation of women in social dialogue.

6. In relation to all the legislative measures mentioned above, the Committee requests the Government to continue to provide detailed information on the effect given in practice to these measures, including copies of reports and studies evaluating the impact of the measures taken, and information on any problems encountered in their application, including any relevant rulings of judicial bodies. It also requests the Government to continue to provide full information on any further initiatives taken, including the adoption of legislation, to improve the situation with regard to equality of opportunity and treatment in employment and occupation for men and women workers and to prevent discrimination on the grounds set out in the Convention.

7. *Discrimination on grounds of race and national extraction.* The Committee notes that section 9 of Act No. 2001-1066 of 16 November 2001 to Combat Discrimination establishes a free telephone line for workers and other persons claiming to have been victims of racial discrimination. Recalling from its previous request that the measures adopted to combat discrimination do not appear to have succeeded in eliminating or reducing acts of discrimination, particularly in access to employment and training, the Committee notes the statement with respect to the integration of immigrants into the French society during the discussions respecting the adoption of Act No. 2000-1066 to Combat Discrimination that first and second generations of immigrants still have not been fully integrated and that a new approach to combating discrimination and promoting integration must be adopted. The Committee requests the Government to provide information with its next report on any analysis or assessment it has undertaken to determine the extent and nature of discrimination based on race, national extraction, colour or religion in employment and occupation, the measures adopted or envisaged under this new approach to combat racial discrimination, promote the principle of non-discrimination in employment and occupation and facilitate the integration of first and second generation immigrants into employment and occupation.

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

Greece (ratification: 1984)

1. The Committee notes with interest the adoption of the revised Constitution of 18 April 2001, in particular article 116(2) which provides that “the adoption of positive measures for promoting equality between men and women does not constitute discrimination on the basis of sex” and that “the State shall attend to the elimination of inequalities actually existing, especially to the detriment of women”. The Committee

looks forward to receiving information on any positive measures taken for promoting equality of opportunity and treatment between men and women with respect to employment and occupation.

2. In its previous observation, the Committee expressed concern over section 12 of Act No. 2713/1999 respecting the Internal Affairs Service of the Greek police which provided justification for the numerical restrictions imposed by Act No. 2226 of 13 December 1994 concerning the percentage of women admitted to the police school (a maximum of 15 per cent) and the fire brigade school (a maximum of 10 per cent). This meant that 85-90 per cent of the posts outside those for which percentages had been fixed, corresponded to functions which, according to section 12, “require such qualities as physical strength, rapidity and endurance which, by common sense and experience, only men possess in view of their biological characteristics”. The Committee was of the opinion that the exclusion of women from 85-90 per cent of the jobs in the police and fire brigade – on grounds that they have not the necessary physical strength and endurance – demonstrated an absence of an in-depth examination of each case on the basis of the individual capacities of applicants and reflects archaic and stereotyped concepts with regard to respective roles and abilities of men and women. The Committee asked the Government to consider removing these restrictions to women and undertake an in-depth re-examination of the “qualities required for a specific job” in the police and fire-brigade services.

3. The Committee notes the Government statement that, following decision 1917/1998 of the State Council, in order to be conform to the Constitution (article 4, paragraph 2, and article 116, paragraph 2) as well as the EU Directive 76/207/CEE, a non-application of the principle of equality between men and women with respect to equal access to employment has to be expressed by a legal provision which states in detail the activities and the tasks concerned and which is established based on common experience and concrete criteria related to the concrete conditions for exercising the posts in question and not to certain posts or activities in general. The Committee notes the explanations by the Government but recalls that the exception of inherent requirements of the job provided under *Article 1, paragraph 2, of the Convention* has to be interpreted restrictively and that distinctions, exclusions or preferences in respect of a particular job based on the inherent requirements thereof should be determined objectively without reliance on stereotyped thinking and negative prejudices about men’s and women’s roles, and really take into account the individual capacities of each candidate for a specific job, rather than being extended to all the jobs in a sector of activity. It may well be in practice that some women will not be able to satisfy the inherent requirements of particular posts in the fire brigade and the police service. But this is a question that must be answered in the description of the individual post and in the qualifications of the candidates without reliance on absolute exclusions. To maintain such exclusions of women for 85-90 per cent of the posts in the services is not in conformity with the Convention.

4. Noting also with some concern that the complaints submitted to the Office of the Ombudsman, copies of which have been supplied by the Government, concerning equal access of men and women to jobs in the public service indicate a prevailing trend towards the exclusion of women to posts such as cleaners and drivers, the Committee urges the Government to undertake an in-depth re-examination of the concept of the “qualities required for a specific job”, as it is currently applied in the police force and

fire brigade. It hopes that such an examination will objectively take into account: (a) the essential requirements inherent in each category of jobs designated by name; (b) the competence of the individual assigned to carrying out such functions; and where possible (c) the reasonable adaptations which are necessary (that is, which would not impose an excessive burden in terms of cost or inconvenience for the operation of the institutions concerned) to enable women who so wish to have access to certain functions in the police and the fire brigade. The Committee requests the Government to provide detailed information in its next report on any measures taken or envisaged in this regard and hopes that the Government will consider removal of the above-mentioned restrictions on the employment of women so as to allow all men and women to compete individually for the posts in question.

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

Guatemala (ratification: 1960)

1. The Committee notes the information provided by the International Confederation of Free Trade Unions (ICFTU) on matters related to the application of the Convention, which were forwarded on 28 January 2002 to the Government, and on which comments have not been received. The ICFTU indicates in its communication that discrimination in employment is common in Guatemala, particularly in the case of women workers who make up the majority of the labour force in export processing zones, where the conditions of work are poor. It indicates that sexual harassment and physical abuse are common and that women workers are generally not unionized, and suffer intimidation and threats of reprisals by employers if they join unions. Furthermore, the ICFTU states that the average period of education for young indigenous persons is 1.3 years, while the same figure for the non-indigenous population is 2.3 years, which the ICFTU interprets as an indication of serious discrimination.

2. The Committee notes that some of the matters raised by the ICFTU are closely related to the issues that it has been raising in previous comments, particularly the situation and conditions of work of women employed in industrial export processing zones. With regard to the period of education of young indigenous persons, it is worth recalling in this context that the institution of primary education for all is one of the fundamental elements of a policy of equality of opportunity and treatment in employment and occupation. In this respect, the positive measures taken to give effect to the national policy referred to in *Article 2 of the Convention* assume special importance. They make it possible to rectify the de facto inequalities affecting members of groups that are at a disadvantage (see the General Survey on equality in employment and occupation, 1988, paragraphs 78 and 82). The Committee hopes that the Government will provide full particulars in its next report on the matters raised above by the ICFTU, as well as on the Committee's previous comments contained in a direct request and an observation, the latter of which read as follows:

1. The Committee observes that for more than ten years it has been pointing out the need to reform the labour legislation in order to effectively ensure equality of opportunity and treatment in employment and occupation. It notes that the relevant provisions have not yet been amended, although the draft Labour Code and draft Labour Procedure Code have been submitted to the Congress of the Republic. Section 14bis of the Labour Code prohibits discrimination based on the grounds of race, religion, political beliefs and economic

situation, but does not cover the other grounds provided for in the Convention (colour, sex, national extraction or social origin). The Committee recalls that, although the Convention allows flexibility as regards the process of formulating the policy on equality and the form in which measures to achieve the principle of equality are applied, establishment of the principle in a country's basic law does not, on its own, amount to an equal opportunities policy. An express guarantee of equality of opportunity and treatment in employment and occupation and a prohibition of discrimination on the grounds set out in the Convention is called for under the Convention. Furthermore, the Committee is of the view that any provisions adopted to give effect to the principle of this instrument should encompass all the grounds set out in *paragraph 1(a) of Article 1 of the Convention*. In this connection, the Committee refers the Government to paragraph 58 of its General Survey on equality in employment and occupation of 1988, and paragraphs 206 to 208 of the Special Survey on equality in employment and occupation of 1996.

2. The Committee observes that the Government's report contains no information on the national policy to promote equality of opportunity and treatment in employment and occupation. The Committee reiterates its request that the Government provide information on the Action Plan for Social Development and the Construction of Peace, 1996-2000, specifically on the practical application and results obtained, together with information on the measures it has taken or plans to take in the future, including any new plans that may have been drawn up to promote equality of opportunity and treatment in employment and occupation.

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

Guinea (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 information contained in the Government's report. Referring to its previous comments concerning the public service, the Committee notes that the Government repeats the indication contained in earlier reports that the Civil Service Act is still in the process of being revised. In this regard, the Committee once again expresses the hope that the Government will amend section 20 of the Order of 5 March 1987 on the general principles of the public service (which prohibits discrimination only on the basis of philosophical or religious views and sex). The Committee recalls that, where provisions are adopted to give effect to the principle of non-discrimination contained in the Convention, they should include all of the grounds set forth in *Article 1(1)(a) of the Convention*.

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

Haiti (ratification: 1976)

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, which contain information concerning discrimination on the grounds of sex and political opinion, respectively. 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 is raising other points in a request addressed directly to the Government.

Hungary (ratification: 1961)

1. The Committee notes with interest the adoption of Act No. XVI of 2001, which amends the Labour Code by introducing the concept of indirect discrimination and prohibiting discrimination on the grounds stipulated in the Convention and the additional grounds of marital and disability status in all matters connected to the employment relationship, including practices preceding the employment relationship. Also, the Labour Code now expressly spells out the principle of equal pay for work of equal value. Noting that section 5(2) exempts from the definition of indirect discrimination any measure that is appropriate and necessary or can be justified by objective circumstances, the Committee hopes this exception will be applied in accordance with the Convention and limited to matters related to the inherent requirements of the job. It invites the Government to provide information on the practical implementation of these new provisions, including information on judicial cases and labour inspection processes.

2. The Committee notes that, except for information regarding the parliamentary investigation into the dismissal of several female employees of higher education institutions, the Government's report contains no reply to its previous comments. It must therefore repeat, in part, its previous observation on the following points:

1. The Committee notes that, at its 275th Session (June 1999), the Governing Body approved the report of the committee designated to examine the representation submitted by the National Federation of Workers' Councils (NFWC) pursuant to article 24 of the ILO Constitution, alleging the Government's non-observance of the present Convention, and of the Employment Policy Convention, 1964 (No. 122). The Governing Body determined that there was insufficient information to permit it to reach any conclusions regarding the issues raised in the representation, including the NFWC's allegations that the Government's enactment of legislation reducing the personnel and social security-related budgets of institutes of higher education had resulted in the dismissal of a disproportionate number of female lecturers and researchers, and it requested the Government to provide additional information on the issues raised in the representation, so that the Committee of Experts could continue to examine the matter.

2. The Committee notes the information provided by the Government in this respect. [...] The Committee therefore requests the Government to indicate whether any measures have been taken or are contemplated to ensure that the exercise of the educational institutions' right of self-governance is carried out in conformity with the principle of non-discrimination.

3. With regard to the impact of the budgetary restrictions on the employment of civil servants employed in institutions of higher education, the Government indicates in its report that, during the period in question, 2,287 teaching staff and 4,311 non-teaching staff were dismissed. Of the total number of persons dismissed, 3,114 were men and 3,443 were women. The Government indicates that 35.6 per cent of the full-time teaching staff in the 1994/95 academic year were female, but that the larger part of those dismissed did not belong to the teaching staff. The Committee recalls that the Governing Body also concluded that "the imposition of a different retirement age on women, particularly where this distinction is used to force women into retirement earlier than the compulsory legal retirement age for their profession, would, if such a practice were verified, constitute discriminatory conduct that has a negative impact on women's access to employment and denies them equality of opportunity and treatment in employment and occupation" (GB.275/7/3, paragraph 43) (275th Session, June 1999). The Committee therefore requests the Government to indicate the number of female teaching staff dismissed during the relevant period, as well as the number of female non-teaching staff dismissed.

4. The Governing Body also requested the Government to provide information on any measures taken or contemplated to ensure that the civil servants dismissed have access to redress through the judicial process, the status of any claims filed and the outcome of those claims. The Government has indicated that the employees who were dismissed have the right to legal redress, but that it does not have details of litigated cases. The Committee expresses its hope that this information will be supplied with the next report.

In addition, a request regarding certain points, including the status of the abovementioned investigation, is being addressed directly to the Government.

Iceland (ratification: 1963)

The Committee notes with interest the adoption of Act No. 96/2000 on the equal status and equal rights of men and women, which extends the existing prohibition of sex-based discrimination and promotes gender equality in all spheres of society. It further notes the establishment of a new administrative and implementing structure, including the Equal Status Bureau responsible for the administration and monitoring of the implementation of the Act; the Equal Status Council responsible for making systematic efforts to equalize the status of women and men in the labour market; the Complaints Committee on Equal Status; and the equal status committees appointed by the local authorities. It also notes the provisions in the law on gender mainstreaming, equal pay for work of equal value, harmonization of occupational and family obligations, sexual harassment, shifting burden of proof from plaintiffs in cases of alleged discrimination, advertisements and education on equality issues. The Committee also notes the adoption of Act No. 95/2000 on maternity/paternity leave and parental leave and Act No. 27/2000 on the prohibition of redundancies due to family responsibilities. The Committee welcomes these legislative and administrative initiatives and requests the Government to provide information in future on their implementation and their impact in improving access to jobs, decision-making posts and conditions of work for both men and women in all regions of the country on the basis of equality.

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

India (ratification: 1960)

1. The Committee notes the report of the Government and the communication received from the International Confederation of Free Trade Unions (ICFTU) concerning equality of opportunity and treatment of women, which was transmitted to the Government on 29 July 2002 for any comments it may wish to make. The Committee takes up this communication and the related information in the report of the Government in its comments below. The Committee also notes the second communication received from the ICFTU dated 2 September 2002 concerning discrimination on grounds of social origin and the Government's reply which was received on 3 December 2002. The Committee will address the matters raised in that communication and the Government's reply at its next session.

2. Referring to the wide gap between male and female education, the ICFTU submits that there is continuing discrimination against girls in respect of access to education. ICFTU further states that the fact that women constitute only a small minority in the formal workforce is an indication of the existing level of discrimination in the

labour market and the lack of opportunities of women to enter formal work. The Committee recalls its previous comments concerning the need to ensure equal participation of women in education and training in order to ensure their equality of opportunity and treatment in employment in occupation. It notes from the provisional results of the 2001 census (Provisional Population Totals, Series 1, Paper 1 of 2001, Web edition) that between 1991 and 2001 male literacy increased from 64.1 per cent to 75.8 per cent, while female literacy increased from 39.3 per cent to 54.2 per cent. The overall male-female gap in literacy rate has thus narrowed from 24.8 per cent to 21.7 per cent (percentages in respect to population seven years and above). In all but one state or union territory female literacy rates have increased faster than that of males, and in six states or union territories the absolute number of female illiterates increased, while those of male illiterates decreased. The Committee acknowledges that according to the provisional results of the 2001 census some progress has been made in promoting female literacy since 1991. It hopes that further measures will be taken to consolidate the positive trend and the results achieved so far, as well as to address the remaining literacy and educational gap between men and women. The Committee requests the Government to provide statistical data on the participation of boys and girls in primary and secondary education (enrolment rates, drop-out rates, illiteracy rates) as well as a copy of the final results of the 2001 census concerning literacy. Recalling once again that employment and work opportunities are invariably linked to education and literacy, the Committee requests the Government to provide detailed information on the measures taken to ensure the equal access of girls to primary and secondary education, particularly in areas where the educational level of women remains very low.

3. Concerning the application of the Convention in respect to self-employed women and women in the informal economy, the Committee notes that measures to achieve de facto equality of women through their economic and social empowerment have been brought together under a National Policy for the Empowerment of Women (2001), which is the result of broad-based consultations under the leadership of the Department of Women and Child Development. The Committee notes that among the policy's objectives are the equal access of women to quality education career and vocational guidance, employment, equal remuneration, strengthening legal systems aimed at eliminating discrimination, mainstreaming a gender perspective in the development process, the extension of training programmes for women in the field of agriculture and microcredit facilities, and the recognition of women's contribution to social-economic development as producers and workers in the formal and informal economy. The Committee requests the Government to provide information on the status of the National Policy and on measures taken to implement it and any results achieved. The Committee reiterates its request to the Government to indicate what agency or agencies are responsible that the rights and principles of the Convention are applied in programmes and projects aiming at the economic and social empowerment of women in the informal economy and of self-employed women. The Government is also requested to provide the detailed results of the 2001 census concerning workers and non-workers, disaggregated by sex, rural or urban, and other available categories.

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

Islamic Republic of Iran (ratification: 1964)

1. The Committee takes note of the information provided by the Government in its detailed report and attached documentation. It also notes the mission report on the second mission undertaken by the Office in March 2002 to monitor the application of the Convention and to provide assistance in its implementation, following the discussion in the Conference Committee on the Application of Standards in June 2001. The Committee also notes that comments from the World Confederation of Labour on the application of the Convention were received in October 2002 and transmitted to the Government. It will examine these comments, and any observations the Government may make, at its next session.

2. *Mechanisms to promote human rights.* Further to its previous comments the Committee notes the information provided on the Islamic Commission on Human Rights including details on the complaints and the outcomes of cases concerning discrimination and the activities of the Commission. It notes that during the period from April to December 2001 the Commission received 29 appeals concerning the right to employment and two appeals concerning women's rights. According to the Commission, the number of persons appealing to the Commission in respect of economic and social issues is increasing. The Government reports that in relation to cases concerning employment the results obtained included job restitution, creation of job opportunities and prevention from breach of employment rights. The Committee asks the Government to continue to provide information on the nature of the cases related to employment discrimination and women's rights as well as on the manner in which they were followed up or resolved. Noting that the Commission also maintains statistics on cases in which religion, including non-recognized minorities such as the Baha'is, or ethnicity is the basis alleged for human rights violations, the Government is also asked to provide information on such cases dealt with by the Commission. The Committee also notes the information on the educational activities carried out by the Commission for judges, law enforcement officers and for the human rights defenders programme.

3. The Committee also notes that in 2001 the Islamic Commission on Human Rights launched a National Action Plan for the Elimination of Discrimination against Ethnic and Religious Minorities. The plan includes measures such as data collection and evaluation, programmes to promote the participation of minorities in problem solving, research and workshops, an assessment of achievement, as well as an annual report to the Islamic Consultative Assembly and the President. The Committee also notes that a first meeting with religious, ethnic and linguistic minorities was held under the action plan in March 2002, in the course of which the role of international instruments, including Convention No. 111, in respect to the human rights of minorities was discussed. The Committee requests the Government to continue to provide information on the work of the Islamic Commission on Human Rights related to minority rights and the implementation of the national action plan on minorities. The Committee would also be grateful to receive copies of the Commission's reports.

4. *Discrimination on the basis of sex.* During the last few years the Committee has been noting with interest the positive trend in the level of women's participation in education and training, though it continues also to note low rates of economic participation of women. Once again the Government is able to report an increase in the rate of participation of girls in primary schools, in technical schools, and in universities.

The access of girls to elementary education over the past five years has risen from 80 per cent to 96 per cent. The Committee notes that in 1997 young women constituted 51 per cent of the university students and by 2001 the rate had reached 61 per cent. It also notes that the number of women's technical and vocational training centres has increased from 41 in 1997 to 120 in 2001. While noting this progress the Committee has and must continue to highlight the importance of translating educational opportunities into employment possibilities. In this regard the Committee notes that in 2001 employment rates of the higher educated women were 79.32 per cent and for men it was 90.93 per cent. Given this gap as well as the increase in the number of women in higher education the Committee requests the Government to provide information on all the measures taken to integrate women graduates into the labour market, such as professional guidance and placement services, and on the employment rates of the recent graduates, including the sectors and occupational activities in which they are employed. Noting the increase in participation rates the Committee requests statistical information on the number of women graduates.

5. The Committee notes that in 2001 the participation of economically active women of the total economically active population was 15.69 per cent – a slight increase over previous years though still very low. The economic participation rate of women was 11.79 per cent in 2001 while the unemployment rate for women was 19.88 per cent compared to 13.17 per cent for men. This was a substantial increase for women while men's unemployment rate was reduced slightly from 1999 and 2000. When employment is broken down by major industry group, women constituted 30.67 per cent of employees in services, 7.85 per cent in manufacturing and 3.51 per cent in agriculture. In government service, women hold 5.5 per cent of the managerial posts. The Committee also notes that a recent development to assist women entering employment has been the expansion of for-profit and non-profit non-governmental organizations and cooperatives, in which women participate heavily. In addition the Committee notes the availability of statistical information disaggregated by sex and recognized religious minorities, which shows that Zoroastrian women had the highest rate of employment, followed by Christians. Both had higher participation rates than Muslim women. Similarly with respect to unemployment rates, Zoroastrian women had the lowest rates followed by Christian, Muslim, Jewish and other women.

6. The Committee notes that the information on the increase in female candidates in the sixth parliamentary election to 504, which represents a 44 per cent increase compared to the previous election. It also notes that a significant part of the increase occurred in the rural areas. The Committee notes the information on the measures taken to introduce women to male-dominated occupations such as the establishment of the first police faculty for women and the new Bill introduced to allow recruitment of women in the disciplinary forces. The Committee hopes to receive further information in the next report on the results obtained in these areas.

7. Further to the Committee's comments, the Government requested technical assistance to facilitate empowerment of women in the labour market and promote job creation for women, including the targeting of university graduates and female heads of households. The Committee notes with interest that an ILO assessment mission on women's employment was undertaken in May 2002, and has recommended a number of activities and projects to be implemented. It notes that the Government has replied positively to these recommendations and has placed priority on a number of them, and

that funding has already been found for the holding of a national Conference on Promoting Women's Employment to be organized jointly with the ILO in the next year. The Committee looks forward to receiving information on the Conference and its results in terms of promoting women's employment and the application of the Convention. It also requests the Government to indicate the follow-up to the other recommendations of the ILO assessment mission as well as any other initiatives taken and their impact on addressing the low level of women's employment as well as the increasing level of unemployment of women.

8. Further to its previous comments concerning the legal restriction on women leaving the country for study without the approval of the husband, the Committee notes with interest the adoption of the Act on Despatching University Students Abroad, approved by Parliament and the Guardian Council in March 2001 which abrogates the restriction on women contained in the 1985 Act of the same name and provides that both women and men should equally enjoy study opportunities abroad. The Committee also notes the approval of the new divorce Act, following its adoption in the Parliament, which, among other measures, allows women to file for divorce. In the view of the Committee measures that enhance the equal status of women in society will have positive effects on progress towards equal opportunity and treatment between men and women in employment and occupation.

9. For many years now the Committee has been pointing to several other issues on which it has raised concern over the existence of legal and administrative provisions which are not in conformity with the Convention. It once again draws the Government's attention to the need to review and repeal the following provisions:

- the obligatory dress code and the imposition of sanctions in accordance with the Act on Administrative Infringements for violations of the code. In this respect, it once again recalls its concern over the negative impact that such a requirement may have on the employment of non-Islamic women in the public sector and reiterates its request for a complete copy of the Act on Administrative Infringements and for information on the application of the Act in relation to the dress code;
- 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 interests of the family or to his or his wife's prestige. As indicated in the past, the extension of this right to women in the 1975 Protection of Family Act does not fully respond to the concerns of the Committee. Noting the Government's commitment, as expressed in its 2000 report on the implementation of the Beijing Platform for Action, to review and modify laws relevant to the human rights of women, the Committee once again expresses the hope that this review will encompass section 1117 of the Civil Code and the Committee's comments thereon. In the meantime, the Government is requested to provide information on the application in practice of these provisions;
- restriction on women judges from issuing verdicts. In this area the Committee can only stress the importance it places on the full participation of women on an equal footing with men in the judicial profession, including in the issuance of judicial verdicts.

10. With reference to the abovementioned provisions, the Committee notes that one of the main projects of the Centre for Women's Participation, which is the office that

reports to the President on women's affairs, is the review of legislation to identify the gaps in protection and changes to be made, and to make proposals in this regard. The changes being targeted will affect the Civil Code, the Labour Code and the Penal Code. The Office was informed during the mission that the labour proposals would concern retirement, part-time work, wages, nursing breaks and social security coverage for those who perform household work. The Centre is also revisiting administrative structures in this regard and will address the right of female judges to issue verdicts. The Committee welcomes the review of these areas and asks the Government to bring its comments to the attention of those conducting the study. It hopes the Government will be able to indicate continued progress in its next report on the results of the review, its recommendations and the measures taken to ensure application of the Convention to this occupation.

11. *Discrimination on the basis of religion.* The Committee notes that as in the past the employment situation of the recognized religious minorities (Christians, Jews, Zoroastrians) is better than the national average. Further to its comments under the Islamic Commission on Human Rights above, the Committee notes from the Government's report that a national effort is under way to counter discrimination against religious minorities. In this respect the Government cites the recent change in compensation awards for personal injuries in order to equalize damages between Muslims and non-Muslims that may be awarded in civil cases. The Committee also notes the functioning of the National Committee for the Promotion of the Rights of Religious Minorities, and the concerns raised by members of this Committee, as reported in the mission report following a meeting with representatives of that Committee, over their participation in public service and in the teaching profession in the various minority schools. The Committee requests the Government to indicate the measures taken to promote equal access of religious minorities to jobs in the public sector as well as the private sector. Noting the number of activities including the plan of action on minorities to combat discrimination and promote integration, tolerance and understanding among the various communities, the Committee requests the Government to continue to provide information including statistical data on the employment situation of the recognized religious minorities. It also requests the Government to provide information on further sessions of the National Committee for the Promotion of the Rights of Religious Minorities since the session held during the Office's last mission.

12. Over the years, the Committee has been concerned about the treatment in education and employment of members of unrecognized religions, in particular the members of the Baha'i faith. The Committee recalls that in the absence of a reference to non-discrimination on the basis of religion in section 6 of the Labour Code, it has been monitoring the situation of religious minorities. In his final report, the Special Representative of the UN Commission on Human Rights on the situation of human rights in the Islamic Republic of Iran (E/CN.4/2002/42), indicated that it had been possible in the past year or so to discern some hopeful signs concerning the treatment of the unrecognized minorities, especially the Baha'is. These signs included the commutation of death sentences, release of prisoners and the decision of the Expediency Council declaring that "all Iranians enjoy the rights of citizenship irrespective of their belief", followed by the removal of the requirement to declare one's religious affiliation when registering a marriage or the birth of a child, or applying for a passport for overseas. Nevertheless the Special Representative understood that the Baha'i community

continues to be subject to harassment and discrimination in the areas of employment and education, among others. In this connection the Committee welcomes the opening of the Open Scientific University for Baha'i students, while noting with regret that Baha'i students still may not attend other universities in the country. The Committee also notes the statistical information on several Baha'i operated and owned businesses throughout the country and the Government's indication that no restrictions for granting loans to these companies exist. The Committee hopes the Government will be in a position to give a fuller picture of the labour market situation of the Baha'i in its next report. The Committee further notes that the Islamic Commission on Human Rights has received appeals from members of the Baha'i community and that in the view of the Commission accommodations of some laws and theological edicts would have to be made in order to solve the problems of this unrecognized minority. The Committee urges the Government to continue to address the existing discrimination of the Baha'i. It hopes the Government will be able to report more progress towards this end in its next report.

13. *Ethnic minorities.* The Committee requests the Government to indicate the measures taken to ensure application of the Convention to members of the ethnic minorities in the country, including the Azeris and the Kurds.

14. *Tripartite consultation.* Referring to its previous comments on the Act to exempt from the application of the Labour Code workplaces and businesses of five or fewer employees and its concerns over the manner in which employees in exempted enterprises, in particular women and minorities, would be protected against discrimination in employment, the Committee notes the collective contract concluded by employers' and workers' organizations concerning these workers employed in the enterprises with five or fewer employees which are exempted from the Labour Code. The collective contract provides for protection of the workers in their contract of employment, terms and conditions of employment, including a requirement of equal pay between men and women, social security and settlement of disputes. Given that the contract does not contain a general non-discrimination clause, the Committee requests the Government to indicate the manner by which the application of the Convention is ensured to workers in establishments of five or fewer employees.

15. In addition to the technical cooperation mentioned above, the Committee welcomes the signing of the Memorandum of Understanding with the ILO for 2002-03 which covers a range of areas in which the ILO will provide assistance, including in formulating policies for creating greater access for women and men to secure productive employment and income opportunities through implementation of the UNDP-funded programme on employment generation, to improve labour market information systems and data collection, and to review labour laws and their compatibility with international labour standards and provide legal drafting assistance. The Committee further notes the statement of the Government that it is committed to continuing to enact reforms, strengthen institutions, fight corruption and discrimination, respect human rights and the rule of law, and spend more money on development of sound policies that provide opportunities to all, and most notably women, without exclusion. The Committee again acknowledges the steps taken by the Government and the intention it expresses to make further progress, while noting equally the problems yet to be overcome. It urges the Government to continue to take action that will result in the elimination of all the existing divergences between the Convention and the national situation, and hopes that

the increasing technical assistance from the ILO will facilitate this process and that the Government will be in a position to report continued progress in its next report.

Iraq (ratification: 1959)

The Committee again notes with regret that the Government's report contains no reply to previous comments. It must therefore draw attention to the points previously made concerning the application of the Convention by Iraq.

1. In its earlier comments, the Committee noted that, since 1992, it has drawn the Government's attention to its obligation under *Article 2 of the Convention*, noting that the Government's previous reports merely cited the provisions of the Iraqi Constitution and national legislation that express the guarantee of equality in employment for all citizens without discrimination on specified grounds in accordance with the Convention. The Committee pointed out over the years that, under *Article 2*, the Government "undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof". As the Committee has noted, the principle of equality before the law may be an element of a national policy, but it cannot in itself constitute a policy within the meaning of *Article 2*. Such a policy implies the establishment of programmes and the implementation of appropriate measures pursuant to *Article 3* of the Convention. The Committee notes that the Government's report once again contains no concrete information in response to its earlier comments relating to the application of *Article 2*. It is therefore compelled once again to request the Government to specify the measures taken to adopt a policy, programme and other measures to implement the legislation and promote equality in employment and occupation.

2. In its previous comments, the Committee had requested information on Iraqi citizens belonging to the country's ethnic, religious and linguistic minorities, particularly the Kurdish and Turkoman minorities. It recalled that, in 1993, the Conference Committee on the Application of Standards had expressed deep concern over the situation of these minorities, asking the Government to provide information on their practical situation and on the manner in which these minorities are guaranteed equality of opportunity and treatment. The Committee regretted that, since that time, the Government has not sent sufficiently specific information permitting the Committee to form an opinion in this regard. The Committee also noted the Concluding Observations of the Human Rights Committee (61st Session, November 1997), which expressed concern regarding the situation of members of religious and ethnic minorities, particularly the Shi'ite people in the southern marshes and the Kurds (CCPR/C/79/Add.84, page 5, paragraph 20). Further, it noted that the United Nations Commission on Human Rights (54th Session, April 1998) called on Iraq to cease immediately repressive practices aimed at Iraqi Kurds, Assyrians, Shi'a, Turkmen, the population of the southern marsh areas, and other ethnic and religious groups (E/CN.4/1998/L.85, pages 3-4, paragraph 3(h)). In this context, the Committee observes that, more recently, the Committee on the Elimination of Racial Discrimination expressed its concern over allegations that the non-Arab population living in Kirkuk and the Khanaqin, especially the Kurds, Turkmen and Assyrians, have been subjected by local Iraqi authorities to measures such as the denial of equal access to employment and

educational opportunities (Concluding Observations, CERD/C304/Add.80 of 12 April 2001, paragraph 12).

3. The Committee regrets to note that, in its most recent report, the Government once again cites the Kurdistan Self-Rule Act No. 33 of 1974 in the context of national legislative texts expressing the principle of equality for all citizens without providing information on the manner in which these provisions are applied in practice. The Self-Rule Act only refers to workers' protection in relation to the Assembly's power to designate self-rule administration officers, stipulating that these should be Kurds or members of other minorities (section 115). The Committee therefore must reiterate its request that the Government provide concrete and specific information on any policies, programmes or measures taken to ensure the application of the principle of non-discrimination to the Kurdish and Turkoman peoples as well as to the Shi'a and Assyrian minorities. It further requests information on the position of minorities in the labour market, their access to employment and occupations, job security and terms and conditions of work.

4. The Committee notes that, in response to its earlier comments, the Government once again states that Decision No. 76 of 1993, suspending the application of resolution No. 480 of 1989, remains in force. The Committee nevertheless recalls once more that Decision No. 76 expressly provides that resolution No. 480 is suspended pending the promulgation of a subsequent resolution which will either repeal or reinstate resolution No. 480. Accordingly, the Committee requests the Government to keep it informed with regard to any action taken concerning this resolution, which prohibits women in the state administration and in the socialist and mixed sectors from working in certain occupations.

5. The Committee understands from the Concluding Observations of the Committee on the Elimination of Discrimination Against Women (A/55/38, 12-30 June 2000) that the Government adopted a national strategy to promote the situation of Iraqi women and established a high-level national committee for the advancement of Iraqi women, headed by the Minister of Labour and Social Affairs, to facilitate its implementation. The Committee would be grateful if the Government would provide information on the activities carried out under the national strategy to promote the employment of women, including employment in non-traditional occupations, and if it would provide information on the progress achieved in this regard. The Committee also reiterates its request that the Government supply statistics reflecting the number of women occupying posts of responsibility in the public sector in proportion to men, and their classifications.

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

Jordan (ratification: 1963)

1. The Committee notes the information in the Government's report. In its previous comments, the Committee had noted that women represented only 35.7 per cent of employees in the public service, and that the majority of women working in the public service were concentrated in categories No. 2 (37.88 per cent were women), No. 3 (54.52 per cent were women) and No. 4 (24.72 per cent were women), while being under-represented in category No. 1 (5.87 per cent were women) and in the higher

categories (0.89 per cent were women). It noted that the majority of women (56.54 per cent) working in the public service had the diploma of college societies, while few had higher level diplomas in comparison with men. It also noted that the majority of women working for the Ministry of Health were nurses while the positions of responsibility were practically all held by men. In light of these figures, the Committee requested the Government to indicate the measures which had been taken or were envisaged with regard to recruitment policy and further training policy (which largely determines promotion policy) to achieve an overall increase in the participation of women in the public service, and particularly at the higher levels.

2. The Committee notes the adoption of the new Civil Service Act No. 55 of 2002 and will examine its contents at its next session, following translation. It notes the Government's explanations with respect to the tasks that correspond to the abovementioned categories 2, 3 and 4, and the Government's statement that it is adopting a policy of non-discrimination in employment on the basis of rules governing the selection and appointment of employees in public service posts. The Government also states that the Civil Service Regulations have given the opportunity to women employees to fill all jobs including high-level and leading posts without restrictions and difference in the requirements needed for jobs and their right to apply for these posts. The Government also declares that the abovementioned statistics prove that there are no discriminatory practices in employment, but indicate the participation of women in accordance with their educational levels and practical experience. Recalling the importance of the State's responsibility in pursuing a policy of equality of opportunity and treatment in respect of employment under its control, the Committee wishes to point out that in order to achieve such equality, it is often necessary to adopt special positive measures to promote equal access of women to employment and occupation; also the prohibition of discrimination is not sufficient in itself for the disappearance of discrimination in practice, even where legal provisions are correctly applied. The Committee, therefore, requests the Government to indicate the targeted measures taken to improve women's educational attainment, technical skills and practical experiences of women, so that they are able to compete on an equal basis with men for all posts in the civil service, 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 the other grounds covered by the Convention. It therefore requests 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 raising related and other points in a request addressed directly to the Government.

Libyan Arab Jamahiriya (ratification: 1961)

The Committee notes the Government's report, as well as the comments provided in reply to comments made by the International Confederation of Free Trade Unions (ICFTU) in October 2000 concerning the situation of sub-Saharan migrant workers in the Libyan Arab Jamahiriya.

1. The Committee recalls that the ICFTU comments alleged that acts of violence, stemming from the anti-black sentiment in the population, had been perpetrated by young Libyans against black Africans, following a decision of the Libyan authorities to take drastic measures against the employment of foreigners. The Committee notes the Government's statement that disputes between citizens of the Libyan Arab Jamahiriya and citizens of other countries have indeed occurred and that those involved had been referred to the judicial authorities in accordance with the law. As regards the measures against the employment of foreigners, the Government states that the labour laws prescribe the manner in which non-citizens should be employed and that numerous foreign workers from African and other countries are employed in the Libyan Arab Jamahiriya. Having work and residence authorization, these foreigners are enjoying, in the Government's view, their full rights, as do their Libyan colleagues, without discrimination. The Government states that the repatriation of some African citizens had been undertaken in full coordination with their respective countries because they resided illegally in the country.

2. The Committee notes this information. Stressing that the Convention provides protection from discrimination to all workers, the Committee is concerned that a climate of anti-black sentiment and racially motivated acts against foreign workers may well have an adverse impact on their employment situation and terms and conditions of employment. It asks the Government to provide information on measures taken to prevent racially motivated violence against foreign workers; to ensure that these workers are not being discriminated against in employment and occupation on the basis of race, national extraction and colour; and to promote tolerance, understanding and respect between Libyan citizens and workers from other African countries. With regard to the issue of outstanding wage payments due to expelled workers, reference is made to the Committee's comments under Convention No. 95.

3. While noting that the Government's report replies to some points raised in the Committee's previous comments, most of the information provided is of a very general nature and has already been received by the Committee. The Government reiterates that discrimination is prohibited in legislation and that in practice there are no complaints about discrimination. The Committee once again recalls that it is concerned over statements to the effect that the Convention is fully applied, particularly when no other details are given on the content and methods of promoting and implementing the national policy on equal opportunity and treatment or on the employment situation of women and men and members of various groups. The Committee also recalls that the absence of complaints concerning discrimination, usually means a lack of awareness and/or insufficient complaint or inspection mechanisms. The Committee therefore once again requests the Government to supply detailed information on the measures taken or envisaged to ensure effective application of the principle of equality of opportunity and treatment in employment and occupation and particularly on the practical effect given to the legislative prohibition against discrimination. Please indicate the measures taken to obtain the cooperation of employers' and workers' organizations in promoting the acceptance and observance of non-discrimination and equality in employment and occupation.

4. *Discrimination on the basis of sex.* The Committee recalls its previous comments concerning the access of women to all types of work and sectors of production, and not only those corresponding to traditional stereotypes of "women's

work”. It notes the Government’s statement that training opportunities are available to women on an equal footing with men in all fields. The Committee again asks the Government to supply statistical data in its next report on women’s participation in training in the various fields of study and on the quantitative as well as qualitative position of women in the labour market. Please also provide copies of reports or studies which illustrate the implementation of the principle of equality of opportunity and treatment between men and women with regard to access to employment and terms and conditions of employment in both the public and private sector. Noting that section 1 of Act No. 8 of 1989 states that women are entitled to assume judicial and public prosecution posts, as well as posts in the judicial administration on the same conditions as those offered to men, the Government is requested to provide any information, including any statistical data, that would allow it to assess the impact of the Act on the equal access of women to posts in this specific field.

Malawi (ratification: 1965)

The Committee notes the information contained in the Government’s report and the attached documentation. It also notes the comments by the International Confederation of Free Trade Unions (ICFTU) of 6 February 2002, the Government’s response to these comments and the ICFTU’s further clarifications of 9 October 2002.

1. In its previous comment the Committee raised its concern over the small percentage of women occupying positions of responsibility in the civil service. In its comments the ICFTU indicates that only 5 per cent of the managerial positions are held by women, and that access to more secure and higher paid employment is greatly restricted for women. The Committee notes that the statistical data supplied by the Government show women’s participation in managerial positions in the civil service to be low but to have increased since 1995 to be 11.02 per cent for positions at the P2/S2 ranks and 10.38 per cent for the P3/S3 ranks. The Committee further notes the Government’s response to the comments made by the ICFTU indicating its commitment, together with the Southern African Development Community (SADC), to reach a target of 30 per cent of women in the political and decision-making structures by the year 2005. Therefore, the Committee asks the Government to indicate the measures taken to reach this target and to supply statistical data on the results obtained.

2. The Committee notes that according to the ICFTU women rural farmers constitute the majority of working poor and face discrimination in access to productive resources that would improve their living and working conditions. It notes that the National Gender Policy 2000-05 states that “women remain largely absent at all levels of policy-making project formulation and management of natural resources and the environment”. However, the Committee also notes the information in the Government’s reply concerning a project by the Freedom Foundation Trust, whose patron is Malawi’s First Lady, with the Malawi Rural Finance Company to provide credit facilities to rural women. The Committee would appreciate receiving further information on this initiative and on any other concrete measures taken or envisaged to enhance equal opportunity and treatment for rural women in productive employment, and on the results achieved by these measures.

3. The Committee notes the information provided in the National Gender Policy 2000-05 that adult female illiteracy is estimated at 71 per cent, while that of men is

52 per cent; that the drop-out rate of girls is still high compared to boys, so that in the final year of primary school only 25 per cent of the students are girls; and that girls still concentrate in stereotyped fields of study such as nursing, teaching, secretarial training and home economics. The Committee also notes the ICFTU comments that point out the low level of education of rural women. The Committee notes the efforts of the Government to correct disparities in education opportunities for girls and boys. It notes with interest the Girls Attainment of Basic Literacy and Education (GAMBLE) programme, the change in policy to allow pregnant girls to go back to school after childbirth, the inclusion of gender training courses for teachers, and the policy to facilitate women's admission to university. The Committee hopes the Government will continue to provide statistical data on women and girls' educational attainment and to indicate the results achieved through the abovementioned programmes. It also requests the Government to indicate whether it envisages taking additional measures to correct de facto inequalities in education which is expected to improve literacy skills of women and to enhance their potential in respect of economic productivity and equal access to training, skill development and jobs.

4. The Committee notes the adoption of the new Employment Act, 2000, which in section 5 bans discrimination "against any employee or prospective employee on the grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, property, birth, marital or other status or family responsibility, in respect of recruitment, training, promotion, terms and conditions of employment, termination of employment or other matters arising out of the employment relationship". The Committee also notes section 2 of the same Act that defines the scope of application of the Act, and requests the Government to indicate the manner in which protection is afforded in law and practice against discrimination in occupation for self-employed persons, for domestic workers, and for members of the armed forces, the prison service and the police. The Committee also asks the Government to indicate the measures taken to promote application of the law in practice, for women and men as well as on the other grounds set forth in the new Act, including with respect to public information, labour inspection and other enforcement activities.

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

Mauritania (ratification: 1963)

1. The Committee continues its follow-up to the recommendations made in 1991 by a committee established by the Governing Body to examine a representation made by the National Confederation of Workers of Senegal (CNTS), under article 24 of the ILO Constitution, alleging failure to apply the Convention, in particular to black Mauritanian workers of Senegalese origin whose employment was adversely affected as a consequence of the conflict with Senegal in 1989. In this context, the Committee is monitoring whether appropriate measures are implemented to compensate for the harm done to Mauritanian nationals who were subjected to discrimination, by reintegrating such persons into their employment and re-establishing their related rights. The Committee recalls that the Government has previously indicated that any worker who can justify any right in connection with his or her former employer has been able to resume the enjoyment of these rights without hindrances and that administrative and

legal means of redress are open to all persons who consider that they suffered prejudice in this field. It also recalls that in previous comments the Committee was able to note that a number of workers affected have recovered their rights in respect to retirement pensions. The Committee had requested information including statistics on the number of workers reinstated, wage arrears payments and appeals introduced by these workers. Noting with regret that the Government's latest report does not contain any new information on this matter, the Committee is thus bound, once again, to reiterate its request to the Government to provide information on the number of affected workers reintegrated in government employment after the event of 1989 and on any administrative and legal appeals lodged who consider that they have suffered prejudice in these areas. It is hoped that the Government takes the necessary measures in the near future. As regards the issue of payment of wage arrears to workers affected, reference is made to the Committee's comments under Convention No. 95.

2. The Committee recalls its concern over the situation of former slaves and their descendants and that it was previously able to note that the Government had taken some specific political and social measures to promote equal access to employment and training of disadvantaged ethnic groups, in particular groups which had been exposed to slavery prior to its abolition. It also recalls its request to the Government to provide statistical or other information on the participation of disadvantaged ethnic or social groups in training and employment. The Committee notes that the Government once again states that it has no statistical information at its disposal about different categories of civil servants as all Mauritians enjoy equality before the law irrespective of their race, origin, sex or religion. The Government is also not able to provide any information on specific measures taken or the impact of such measures on improving the training and employment levels of these ethnic groups. The Committee takes note of the concluding observations of the Committee on the Elimination of Racial Discrimination of 20 August 1999 (CERD/C/304/Add.82) concerning alleged exclusion and discrimination against some groups of the population, including black communities, in respect to access to employment. It draws the attention of the Government to the importance of collecting and analysing statistical data and information so as to be able to plot trends and assess the impact of its national non-discrimination policy. The Committee requests the Government to provide information on measures taken or envisaged to promote equal access of disadvantaged social and ethnic groups, including former slaves and their descendants, to training, employment and occupation, irrespective of their race, colour, or social origin, as well as statistical or other information that would enable the Committee to follow the situation in this respect.

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

Mexico (ratification: 1961)

1. The Committee notes the observation provided by the International Confederation of Free Trade Unions (ICFTU) on matters related to the application of the Convention, and the comments sent by the Government in relation to this observation. The ICFTU states that there exist grave cases of discrimination against pregnant women, particularly in export processing enterprises (*maquiladora* industry), where they are denied leave and other statutory rights related to maternity, or they are compelled to work under hazardous and difficult conditions to dissuade them from continuing

working. The report also indicates that many employers require pregnancy tests prior to the recruitment of women. The ICFTU alleges that in many cases the authorities are accomplices to these practices. The Committee notes the brief reply sent by the Government according to which in law women have the same rights and obligations as men; it also mentions some measures to protect maternity. The Committee notes that the reply from the Government to the comments sent by the ICFTU does not contain information on the situation of women in practice, mainly in export processing zones (the *maquiladora* industry).

2. Furthermore, according to the ICFTU, members of indigenous peoples, who constitute 10 per cent of the population, also continue to suffer problems of discrimination and have an illiteracy rate which is higher than that of the non-indigenous population. The ICFTU indicates that the majority of the members of indigenous communities do not have the opportunity to have access to skilled training courses or productive jobs or employment requiring a certain academic level. The ICFTU also alleges the existence of job advertisements seeking persons under 35 years of age, of light skin and who are physically attractive. The Government has not sent a reply to these comments.

3. The Committee notes that the matters raised by the ICFTU are closely related to the points that it raised in its previous comments. The Committee hopes that the Government will provide full particulars on the matters raised above by the ICFTU, as well as on the Committee's previous comments, which were contained in a direct request and an observation, the latter of which read as follows:

1. The Committee notes the information contained in the Government's report and the comments of the Confederation of Workers of Mexico (CTM) and the Confederation of Industrial Chambers of the United States of Mexico that were received together with the report. It also notes the communication dated 28 September 2001 from the Mexican Union of Electricians respecting the application in Mexico of Convention No. 111 and of the Indigenous and Tribal Peoples Convention, 1989 (No. 169). Noting that the Government's comments on the latter communication have not been received, the Committee will defer its examination of it until its next session in 2002.

2. The Committee refers to its previous comments on the allegations received over various years concerning a series of systematic discriminatory employment practices in export processing zones (the *maquiladora* industry). These practices discriminate against women by requiring pregnancy tests and other discriminatory practices as a condition for access to employment in *maquiladoras*. These practices are also carried out against women already employed in *maquiladoras*. The Committee notes that allegations concerning these discriminatory practices have been the subject of ministerial consultations in the context of the North American Agreement on Labour Cooperation (NAALC). The Committee previously requested the Government to investigate these allegations and, as appropriate, to take measures to bring them to an end. It had also requested information on the measures taken in practice or which were envisaged to investigate, punish and eliminate such practices, which are in violation of sections 133 and 164 of the Federal Labour Act (LFT).

3. The Committee notes the amendment on 14 August 2001 to article 1 of the Constitution setting out the principle of non-discrimination, which reads as follows: "All discrimination shall be prohibited on grounds of ethnic or national origin, gender, age, differences in capacities, social situation, health condition, religion, opinion, preference, civil status or any other characteristic prejudicial to human dignity and which is for the purpose of nullifying or prejudicing the rights and freedoms of the individual." The Government indicates that section 133 of the Federal Labour Act (LFT) provides that it is

prohibited for employers to refuse to accept workers for reasons of age or sex, and that it is through this provision that the LFT regulates admission to employment. It adds that, although Mexican legislation does not specifically cover the issue of discrimination in admission to employment, the Government has taken measures with a view to following up the observations of the Committee of Experts in this regard. The Committee notes the information provided by the Government on the measures of a general nature, including the national consultation initiated by the Secretariat for Labour and Social Insurance, the functions of the Office of the Federal Labour Attorney and the information campaign seeking to promote the integration of women into formal work under conditions of equality of opportunity and treatment. It notes the information campaign carried out by the Secretariat for Labour and Social Insurance targeting indigenous women in urban areas.

4. The Committee notes with interest the adoption of the Act respecting the National Institute for Women, published in the *Diario Oficial* of the Federation on 12 January 2001. It notes that the Institute is currently developing the National Programme for Equality of Opportunity and Non-Discrimination. The Committee would be grateful if the Government would keep it informed of the activities of the Institute relating to the application of the Convention. The Committee also notes the training courses on gender organized in the context of the Plan of Action for More and Better Jobs, and particularly the training workshop on gender for 38 federal and local labour inspectors. Recalling the Government's statement in its previous report that it was planned to extend the Plan of Action to the remaining frontier states, the Committee requests the Government to provide information in this respect in its next report. In this context, the Committee notes the Government's statement that the Federal Labour Inspectorate and the Secretariat for Labour and Social Insurance have carried out inspections concentrating on the issue of discrimination, and particularly in the export processing industry. The Government states that between 1998 and 2000 a total of 27,387 inspections were carried out in enterprises in which 1,133,059 women workers were engaged. The Committee notes, as it has in its previous comments, that these figures refer to women who are already employed and not women at the stage of recruitment or hiring.

5. The Committee notes the Government's statement that the *maquiladora* industry has been one of the most important sources of the creation of jobs for women and that women account for the majority of the workforce in this industry. In view of the high proportion of women employed in the Mexican *maquiladora* industry, the Committee considers that special efforts should be made to ensure that women workers do not suffer discrimination in employment and that they have access to training opportunities and better jobs.

6. The CTM indicates that Chapter 1 of the Constitution of Mexico provides that "the principle of equality for all inhabitants of the country is based in the enjoyment of the fundamental rights established by the Federal Constitution, irrespective of the condition of Mexican or foreign nationality, race, religion or sex". The CTM adds that treatment in relation to employment and occupation and social security is equal in Mexico and that the right to equality is set out in the Federal Labour Act and the social security legislation.

7. The Confederation of Industrial Chambers of the United States of Mexico endorses the comments of the CTM and indicates that Mexican employers agree on compliance with the principles of non-discrimination for and in employment.

8. The Committee once again reiterates that the alleged practices referred to above in paragraph 2 constitute discrimination in employment and occupation on grounds of sex and requests the Government to take appropriate measures to investigate and eliminate such discriminatory practices. In this context, it requests the Government to amend the LFT to explicitly prohibit discrimination based on sex in recruitment and hiring for employment and in conditions of employment. The Committee requests the Government to provide detailed

information in its next report on any measure that has been adopted and the progress achieved in eliminating such discriminatory practices, and it also requests the Government to provide information on the cases lodged with local and federal Conciliation and Arbitration Boards and Mexican courts alleging discrimination on grounds of sex.

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

Mozambique (ratification: 1977)

Noting the enactment of Act No. 5/2002 of 5 February 2002, the Committee notes with interest that section 7 of the Act prohibits discrimination in labour rights, training, career promotion and promotion against workers who are infected with HIV/AIDS. Section 4 of the Act prohibits employers from requiring HIV/AIDS tests of workers or job applicants without their consent. The Committee also notes that these prohibitions are accompanied by sanctions, as provided in sections 12, 13 and 16 of the Act, and asks the Government to supply information in future reports on the application and enforcement of this law in practice.

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

Nepal (ratification: 1974)

1. In its previous observations, the Committee regretted that section 61 of the Civil Service Act, 1993, as well as certain provisions of the Municipality (Working Arrangement) Regulations, 1993, and the Village Development Committee (Working Procedures) Rules, 1994, permitted discrimination in employment on the basis of political opinion by providing that civil service employees may be removed or dismissed from service for participating in partisan politics. The Committee notes the Government's statement that section 61 of the Civil Service Act and the relevant provisions of the other regulations only prohibit civil servants from actively working as members of a political party or from organizing a political party in order to compete with other parties in national politics, while being on the payroll of the Government. The Government further states that the provisions concerned do not prevent civil servants and public employees from having any conviction concerning national politics and that there are unions of civil servants and public employees which strongly express their views in the national political process. The Committee takes due note of these clarifications and requests the Government to continue to provide information on the manner in which the prohibition for civil servants and public employees to participate in partisan politics is applied in practice, including information on instances in which the application of the provisions in question has led to the dismissal of civil servants or public employees.

2. The Committee recalls its previous comments concerning section 10 of the Civil Service Act, 1993, which provides that those found guilty by a court of any criminal offence involving "moral turpitude" cannot be appointed to any post in the civil service, and section 61(2) of the Act which provides that "moral turpitude" constitutes a ground for removal or dismissal from service and disqualification from government service in the future. In respect of section 10 of the Civil Service Act, the Committee notes from the Government's latest report that there is no established list of criminal offences which are considered to involve "moral turpitude", but that the competent court makes such a determination on a case-by-case basis. The Committee asks the Government to continue to provide information in future on the types of cases in which section 10 is applied.

Concerning section 61(2), the Committee understands that a criminal conviction is not necessary for removal or dismissal, but that the determination of whether an act or behaviour constitutes “moral turpitude” is made by the competent court also on a case-by-case basis. The Committee asks the Government to identify the criteria used to determine “moral turpitude” and to provide examples of cases involving exclusions from the civil service on the basis of section 61(2) of the Civil Service Act.

3. The Committee recalls the complaint dated 27 July 1998 submitted to UNESCO by the Nepal National Teachers’ Association alleging the murder of 11 teachers and the arrest of 15 others in the context of police action aimed at suppressing Maoist activities. While recognizing the Government’s need to ensure the security of the State, the Committee hopes that the Government will make every effort to avoid taking overly broad measures that negatively impact on the lives and employment of public servants, teachers and all other workers, and that anyone suspected of prejudicing the security of the State will be afforded legal process in accordance with the Convention.

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

New Zealand (ratification: 1983)

1. The Committee notes the detailed information provided by the Government in its report and the attached documentation. It also notes the comments submitted by Business New Zealand and the New Zealand Council of Trade Unions (NZCTU) and the Government’s reply to NZCTU.

2. The Committee notes with interest that the Employment Relations Act (ERA), which entered into force on 2 October 2000, prohibits direct and indirect discrimination against employees by their employers or representatives on the same grounds as those listed in the Human Rights Act (HRA) of 1993 and provides for a personal grievances procedure. The Act also provides protection and remedies in respect to sexual and racial harassment. Employees concerned have the choice of whether to lodge a complaint under the Human Rights Act or to pursue a personal grievance under the ERA. The Committee asks the Government to provide information in its future reports on the practical application of the ERA in respect to non-discrimination and equality, including indications as to the number and nature of personal grievances pursued and their results.

3. With reference to its previous comments encouraging the Government to include the ground of political opinion as a proscribed ground of discrimination, the Committee recalls that the Human Rights Amendment Act 1999 deferred the expiry of section 151 which provided for a temporary exemption for government compliance with the prohibition of discrimination on a number of grounds, including political opinion, to 31 December 2001. It notes with satisfaction that section 151 has now expired and that the prohibition of discrimination in employment on the basis of political opinion and the other grounds listed in section 22 of the HRA, as amended by the Human Rights Amendment Act 2001, now also applies to government employment. Noting from the Government’s report that the State Services Commission and the Ministry of Justice were considering what exemptions, if any, would apply to employment discrimination in the public sector concerning political neutrality of public servants, the Committee asks the Government to provide information on any legislative, administrative or other measures taken in this regard. It also requests the Government to provide information on the practical application of the non-discrimination provisions of the Human Rights Act,

in respect to the public and the private sector, including on the number, nature and results of cases brought under the Act.

4. The Committee trusts that the Government will supply the report on the “Compliance 2001” process that specifies the recommendations made by the Human Rights Commission in accordance with section 5(1)(k) of the Human Rights Act 1993. In this regard, the Committee notes the NZCTU’s request to be consulted by the Human Rights Commission in drafting the National Plan of Action that will be developed in the context of the “Compliance 2001” effort, in order to identify and target significant areas of discrimination. It is the NZCTU’s understanding that such a plan is not solely the Commission’s responsibility but is a consultative and collaborative exercise. The Committee asks the Government to indicate if measures have been taken to obtain the cooperation of workers’ and employers’ organizations for such an exercise. Moreover, noting that both NZCTU and Business NZ are represented in the EEO Advisory Group that advises the Government on the strategies to achieve the EEO Vision, the Committee hopes the Government will continue to provide information on the activities undertaken in cooperation with the workers’ and employers’ organizations to promote greater equality in the labour market.

5. The Committee notes that the NZCTU expresses concern for the fact that trade union membership or activity is not a prohibited ground of discrimination under the Human Rights Act 1993 and it is also excluded from the Employment Relations Act 2000. It reports that the Human Rights Commission had supported extending the prohibited grounds to include trade union membership and activity. The Committee also notes the Government’s reply to NZCTU that states that Part 3 of the Employment Relations Act covers discrimination on the ground of trade union membership through the provisions that regulate freedom of association. In particular, section 7(b) prescribes that “no person may, in relation to employment issues, confer any preference or apply any undue influence, directly or indirectly, on another person because the other person is or is not a member of a union”.

6. Further to its previous observations, the Committee notes with interest the data provided in the Government’s report on the presence of Equal Employment Opportunities (EEO) provisions in collective employment contracts and agreements. The information collected by the Government covers 21 per cent of the labour force, and shows that 17 per cent of the contracts contain EEO provisions and 2 per cent contain explicit provisions relating to Maori. The Committee also notes the EEO Trust Diversity Survey 2000 showing that in the private sector 76 per cent of the employees on both individual and collective employment agreements in the year 2000 are covered by an EEO Policy, 17 per cent by an EEO Plan, and 21 per cent by both. The Committee asks the Government to continue to supply statistical data on the progress achieved in including EEO provisions in contracts and agreements, both in the public and private sectors, and on the impact this policy has had for those workers covered, in respect of achieving equal treatment in access to jobs and in their terms and conditions of employment.

7. The Committee notes the NZCTU’s comments that underline the importance of establishing an Employment Equity Commissioner within the Human Rights Commission, as also stated in Recommendation No. 14 of the tripartite EEO Advisory Group’s report. The Commissioner would improve coordination of EEO legislation and

programmes across both the public and private sectors. It would be charged to develop a EEO minimum code (which brings together all existing EEO-related legislation) and a voluntary EEO code of practice. The Committee requests the Government to indicate the steps it envisages taking in order to give effect to the recommendations of the EEO Advisory Group. Further on EEO policies, the Committee notes the comments of Business NZ that express concern about EEO policies that may prevent employment decisions based on individual merit. It also notes the Government's report that states that EEO policies are to promote proactive and positive measures to ensure that all employment decisions are made on the basis of individual merit, overcoming barriers and discriminatory attitudes and behaviour. The Committee hopes that the Government and the workers' and employers' organizations will continue to work together so that employment decisions will be made on the basis of unbiased assessment of individual merit, overcoming discriminatory direct and indirect practices.

8. The Committee notes with interest tables 4 and 7 in the Government's report on gender and ethnic pay gaps by occupations, and the comments of both NZTCU and Business NZ on this issue. The Committee notes that there is a substantial agreement that a significant component of the gender and ethnic earnings gap is given by professional segregation, with women and Maori and Pacific Island populations still distributed mainly towards lower paid occupations both in the public service and in the private sector. In this regard, the Committee also notes the CERD's concluding observations of 23 August 2002 that express concerns on the continuing disadvantages that Maori, Pacific people and other ethnic communities face in the enjoyment of social and economic rights, such as the right to employment and social welfare (paragraph 11). The Committee requests the Government to continue to provide information on the initiatives taken to promote equality in the labour market for these more vulnerable groups, and in particular to supply information on the activities of the National Advisory Council on the employment of women, on the pay equity project of the Ministry of Women's Affairs, on the project to assist Maori women in self-employment, on the activities of the Ministry of Maori Development and the Ministry of Pacific Island Affairs, and Skill New Zealand.

Norway (ratification: 1959)

The Committee notes with interest the amendments made by Act No. 21 of 14 June 2002 to the Equal Status Act, No. 45 of 9 June 1978, inserting section 1(a) which sets out the obligation of authorities, employers, employers' organizations and trade unions to actively promote gender equality at all levels of society. It notes that in their annual reports enterprises must include information on the actual measures taken and/or envisaged to promote gender equality. The Committee notes that section 3 prohibits direct and indirect discrimination and that direct discrimination is defined as treating men and women differently due to their gender and placing women in an unfavourable position due to pregnancy or childbirth, or treating men or women workers less favourably in cases where they avail themselves of the various types of leave granted to a specific gender. Indirect discrimination is defined as any action appearing to be neutral, but which in practice has the effect of treating one gender less favourably than the other gender. Section 3(a) of the Equal Status Act permits differential treatment to promote gender equality, as well as protective legislation for women in respect of pregnancy, childbirth and breastfeeding and section 8(a) of the Equal Status Act

prohibits sexual harassment. It notes that employers are responsible for both preventing and putting an end to sexual harassment at the workplace. Finally, the Committee notes that under section 16 the burden of proof for direct or indirect gender discrimination is placed on the employer. Noting that the statutory measures strengthen the protection against sex discrimination, the Committee would be grateful if the Government would provide information in future on the application and enforcement of the Equal Status Act and its impact in practice on equality between men and women in employment and occupation.

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

Paraguay (ratification: 1967)

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

Discrimination on the basis of political opinion. In its earlier observation, the Committee noted with interest that, according to the Government's report, section 95 of the Bill on the Status of Civil Servants and Public Employees, which was before the National Parliament, would repeal Act No. 200 of 17 July 1970, which, by stating that "no public official may engage in activities contrary to public order or to the democratic system established by the Constitution", could give rise to discriminatory practices based on political opinion. The Committee notes from the Government's report that to date no Act in respect of public servants has been approved and that three Bills are before the National Parliament, of which one has the approval of the Drafting Committee. Recalling that it has been pointing out since 1985 that the section 34 of the abovementioned Act is in contravention of *Article 1(1)(a) of the Convention*, the Committee again urges the Government to take the measures necessary to repeal Act No. 200 and requests it to continue to provide information in this respect.

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

Philippines (ratification: 1960)

In previous comments the Committee has expressed its concern that employers' preferences in hiring males were not considered to constitute unlawful discrimination due to the lack of any specific legislative prohibition against the practice and an overly broad interpretation of inherent requirements of the job. The Committee notes that section 135 of the Labour Code continues to provide that "favouring a male employee over a female employee with respect to promotion, training opportunities, study and scholarship grants solely on account of their sexes" is unlawful discrimination. Noting that section 135 still does not include a prohibition for such favourable treatment of men over women on account of their sex in *hiring*, the Committee hopes that the Government will soon be in a position to report that women are also protected against discrimination in hiring practices in conformity with the Convention.

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

Poland (ratification: 1961)

1. The Committee notes a communication dated 24 June 2002 by the Trade Union of Agriculture (Samoobrona), alleging non-observance of the Convention by Poland. Samoobrona states that the refusal of the Ministry of Justice of Poland to employ a blind woman as a court recorder constituted discrimination on the basis of disability under *Article 1(1)(b) of the Convention*. The Committee notes that the Government, apparently accepting disability as a ground covered by the Convention under *Article 1(1)(b)*, states that it had informed the applicant concerned of its view that the relevant legislation would not infringe upon the Convention, because a distinction is made in respect of a particular job based on the inherent requirements thereof in accordance with *Article 1(2)* of the Convention. The Government states that the relevant legislation, the Act of 18 December 1998 concerning employees of courts and public prosecutor's offices, did not create the opportunity to employ as a court clerk a person who would be entrusted with the duty of recording of trials only, but that the job description of the position of "court clerk" would include also other clerical functions requiring eyesight.

2. Noting the above statements, the Committee recalls that the exception allowed for in *Article 1(2)* must be interpreted strictly, so as not to result in undue limitation of the protection which the Convention is intended to provide. It also recalls that the concept of a "particular job" refers to a specific and definable job, function or task. Certain criteria may be brought to bear as inherent requirements of a particular job, but they may not be applied to all jobs in a given occupation or sector of activity, and especially in the public service, without coming into conflict with the principle of equality of opportunity and treatment in occupation and employment (1988 General Survey on equality in employment and occupation, paragraph 126). The Committee also recalls the special responsibility of governments to pursue their national policies to promote equality in respect to employment under their direct control (*Article 3(d)*) and the possibility of taking special measures to meet the requirements of disabled persons (*Article 5*). The Committee requests the Government to indicate any measures it has taken to accommodate persons with disabilities in order to facilitate their employment in the public service in accordance with *Article 5* of the Convention.

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

Portugal (ratification: 1959)

The Committee notes the information contained in the Government's report and in the attached documentation, and the comments made by the Confederation of Portuguese Industry (CIP) contained in the report of the Government received in September 2001.

1. Further to its previous comments, the Committee notes the information provided on the supervisory role performed by the Commission for Equality in Employment and Occupation (CITE) in which the social partners are present. It notes an increased number of complaints received by the CITE and notes from the collection of opinions issued by CITE from 1999 to March 2001 that the great majority of opinions again concern discrimination on the grounds of gender, mostly related to violation of laws protecting maternity and paternity rights. The Committee also notes the clarifications provided by CIP and their view that motherhood is not a factor that leads to discrimination in the labour market in that country. Employers are obliged to seek an

opinion from CITE if a dismissal involves a pregnant, post-partum or nursing woman and it is for this reason that there are so many opinions on this issue. The Committee appreciates these indications and indeed notes that CITE has identified other areas of concern including the very low proportion of women in vocational training, the higher percentage of women than men in unemployment, discriminatory job advertisements that perpetuate occupational segregation and lower pay for women than men.

2. In this regard, the Committee notes with interest the legislative, educational and promotional measures taken to eliminate discrimination and to promote equality, including: the adoption of Acts Nos. 116/99 and 118/99 that establish a new system of sanctions for indirect or direct discriminatory practices and the adoption of the National Employment Plan with specific provisions on gender equality; the adoption of Act No. 9/2001, which reinforces the inspection mechanisms and sanctions for sexually discriminatory labour practices by expanding the inspection powers of the Inspectorate General of Labour; the issuance of Order No. 1212/2000, to encourage recruitment in occupations where there is significant gender discrimination; and the adoption of Act No. 10/2001, which obliges the Government to submit to the Assembly of the Republic an annual report on the progress made with equality of opportunity between men and women in employment and vocational training. The Committee hopes that the Government will continue to provide information on the activities of CITE and on the impact and effectiveness of the abovementioned Acts and the employment plan in promoting equality in employment and occupation. It requests information on the manner in which workers' and employers' organizations cooperate in the implementation of these and other activities to achieve equality in employment in law and practice.

3. Further to its previous comments, CIP reiterates the need to repeal expressly the legal provision restricting night work for women that it alleges is negatively affecting collective bargaining and preventing enterprises from introducing flexibility in the organization of working time. The Committee notes the Government's statement that this provision cannot explicitly be repealed since it is no longer in force being contrary to the constitutional principle of equality. It further declares that once there are additional reasons for a comprehensive revision of Legislative Decree No. 409/71, which includes the general ban on night work for women, this provision will certainly be deleted, but no review of such legislation has been scheduled so far. Noting that new legislation regulating night work has been adopted, the Committee hopes the Government will be in a position in the near future to clarify the legislative provisions on night work through the repeal of the prohibition on night work contained in Legislative Decree No. 409/71.

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

Romania (ratification: 1973)

1. The Committee notes that the Ministry of Labour and Social Affairs has elaborated a revised draft law on equality of opportunities between men and women. It notes from the Government's report that the draft prohibits direct and indirect discrimination on the basis of sex, explicitly mentioning sexual harassment. The Committee understands that the draft was adopted by Parliament in 2001. The

Committee also notes the adoption of Act No. 210/1999 concerning paternity leave. The Government is requested to provide copies of the two Acts with its next report. Noting the efforts under way to draft a new Labour Code, which would eliminate inconsistencies between national legislation and international standards as regards equality, the Committee invites the Government to supply information in its next report on the progress made in this regard and to provide a copy of the text as soon as it is adopted.

2. The Committee notes with interest the adoption by the Government of Emergency Ordinance No. 137/2000 on preventing and punishing all forms of discrimination. The Ordinance prohibits discrimination by any natural or legal person, including public institutions, and imposes administrative sanctions for contraventions, unless an act of discrimination is punishable under criminal law. Article 2 defines “discrimination” as encompassing “any difference, exclusion, restriction or preference based on race, nationality, ethnic appurtenance, language, religion, social status, beliefs, sex or sexual orientation, appurtenance to a disfavoured category or any other criterion, aiming or resulting in a restriction or prevention of the equal recognition, use or exercise of human rights and fundamental freedoms in the political, economic, social and cultural field or in any other fields of public life”. The term “disfavoured category” covers categories placed in a position of inequality as opposed to the majority of citizens due to their social origin or a handicap, or persons who are faced with rejection and marginalization due to specific circumstances, including HIV/AIDS infection. Section 2(5) of the Ordinance provides that the elimination of discrimination shall be achieved by means of affirmative action measures and the application of sanctions. The Ordinance contains special provisions on equality in employment and occupation, which prohibit discrimination, *inter alia*, in respect to the conclusion, suspension or modification of employment contracts, remuneration and benefits, training and promotion, and trade union membership (section 6). In addition, discrimination in job advertising or interviews is made punishable as an offence. Under the Ordinance, a National Council for the Prevention of Discrimination is to be established and charged with receiving complaints and sanctioning violations. Victims also have recourse to the courts, where non-governmental human rights organizations can appear as parties in discrimination cases if authorized by the victims concerned. The Committee requests the Government to provide information on the application in practice and the enforcement of Ordinance No. 137/2000, and on any measures taken to bring it to the attention of the workers and the employers. Noting that Parliament approved Ordinance No. 137/2000 in January 2002, the Government is asked to provide a copy of the Ordinance as approved.

3. With reference to its previous comments concerning the equal access of minorities to education and training, the Committee notes the adoption by Parliament of Act No. 151/1999, approving Emergency Ordinance No. 36/1997, which modified and complemented the Act on Education No. 84/1995. The Committee notes that this legislation provides for the right of persons belonging to national minorities to study and receive, upon request, instruction in their mother tongue, at all levels and in all forms of education. The Committee notes the various programmes and activities undertaken to promote education of persons of Roma origin, including the nomination of Roma school inspectors and the employment and training of teaching Roma personnel. It notes that the overall percentage of minority children receiving instructions at the pre-university level in their mother tongue did not change between 1997-98 and 2000-01. However, the

statistical information provided by the Government indicates for the first time that Roma children have actually been instructed in their language (in 1999-2000: 162 children; 2000-01: 89 children), but not in post-secondary education or vocational training. In regard to university education, the Committee notes that in some public universities courses in minority languages are being offered. The Committee requests the Government to provide information on the following issues: (1) measures taken to inform parents of minority children about their right to be taught in their mother tongue or other positive measures to encourage members of national minorities to make use of this possibility; (2) results of any evaluation or research on the impact of the introduction of mother-tongue education through the 1997 and 1999 amendments to the Education Act on the access of minorities to education and employment; (3) measures to promote increased participation of members of minorities in education at the vocational, apprenticeship and post-secondary levels; and (4) targeted action to ensure access to training and education for the Roma, including persons that have dropped out from the educational system. In addition, the Government is asked to continue to provide statistical information on the participation of minorities in education and training, including in their languages.

4. With regard to access of the Roma to employment and particular occupations, the Committee notes a slight increase in the employment rate of Roma between 1999 and 2000. While the overall number of economically inactive persons of Roma origin has decreased slightly between 1999 and 2000, the unemployment rate of Roma has increased to about the same extent. The Committee remains concerned about the still very high percentage of Roma falling into the category of “economically inactive”. It notes in particular that within the Roma population, the percentage of economically inactive persons between 25 and 49 years of age is twice as high as the percentage of such persons in respect to the entire population. With respect to the distribution of Roma workers in the various occupational groups and economic activities, the Committee once again notes the absence of Roma in better paid or higher level jobs and their concentration in certain fields of activity, such as agricultural work, construction or the fishing industry. In light of the above, the Committee stresses that eliminating discrimination against persons of Roma origin in employment and occupation is a task that requires sustained and coordinated efforts of the various competent public and private institutions, in close cooperation with Roma representatives, as well as social partners. In this respect, the Committee notes the adoption by the Government of a “Strategy for improving the conditions of Roma” for the period 2001-10 with a medium-term plan of action covering the years from 2001 to 2004, which is the result of a joint effort of the Government and the representative organizations of Roma. It particularly notes the measures to be implemented under the strategy in the areas of professional training and reorientation, labour market access, job creation, the creation of fiscal incentives for the employment of Roma, awareness raising and equality training for all levels of public administration, as well as various measures to enhance access to education and training. The Committee notes that the plan of action makes specific reference to projects to create jobs for Roma women. The Committee urges the Government to reinforce its efforts to promote a climate of respect and tolerance towards the Roma communities in society, which it considers a precondition to make substantial progress in fighting economic marginalization and exclusion of Roma and their communities, and to supply information on measures taken in this regard. The

Committee requests the Government to provide information on the status of implementation of each of the measures contained in the medium-term plan of action which relate to non-discrimination and equality of opportunity and treatment in employment and education, including concrete results achieved and difficulties encountered. The Government is also requested to continue to provide statistical information on the employment situation of all minority groups.

5. *Measures of redress.* The Committee recalls that, for several years, it has been following up on Recommendations Nos. 6 (requests for medical examinations due to treatment received while in custody, made by persons who went on strike in 1987 and who have been subsequently rehabilitated by the courts) and 18 (rebuilding of the houses destroyed as part of the systematization policy against certain minorities) of the report of the Commission of Inquiry (*Official Bulletin*, Vol. LXXIV, 1991, Series B, Supplement 3). With regard to Recommendation No. 18, the Committee notes from the Government's report that 36 further buildings belonging to national minorities were returned through Ordinance No. 83/1999, which was modified and supplemented by Ordinance No. 101/2000. The Committee also notes that up to ten buildings per religious centre or parish will be returned under Ordinance No. 94/2000. On the basis of Decision No. 1334/2000, which amends Ordinance No. 83/1999 on the restitution of property to communities belonging to national minorities, the Government expects that 37 other buildings, 20 of them belonging to the Jewish community, will be returned. The Committee requests the Government to continue to provide information on the number of outstanding claims for restitution of property and to keep it informed of such restitution of property to the affected persons belonging to national minorities. As regards Recommendation No. 6, the Committee previously noted that section 10 of Act No. 118/1990 had been amended to grant compensation and a number of benefits to persons who have been persecuted for political reasons for taking part in the 1987 events. It noted in particular that the persons concerned are entitled to free access on a priority basis to medical assistance and medicines as well as to have their period of employment taken into account for the period covered for purposes of calculation of benefits. The Committee requested the Government to provide information on the implementation of Act No. 118/1990, as amended, and in particular with regard to requests for medical examinations made by persons who went on strike in 1987 and who have been subsequently rehabilitated by court order. The Committee also asked the Government to continue to provide information on any new compensation that has been granted to persons who took part in the strike of 1987. The Committee hopes that the Government will include the requested information in its next report.

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

Russian Federation (ratification: 1961)

1. The Committee takes note of the promulgation of the new Labour Code adopted by the State Duma on 30 December 2001, which entered into force in February 2002. The Committee notes that section 3 of the Labour Code states that no one may be restricted in his (or her) labour rights and freedoms or receive any kind of advantage, irrespective of gender, race, skin colour, nationality, language, origin, material, social and employment status, age, place of residence, religious beliefs, political convictions

and affiliation or non-affiliation with social associations and of other circumstances not related to an employee's occupational qualifications. With reference to its previous comments concerning the omission of certain grounds, the Committee notes with interest that provisions of the new Labour Code cover all of the grounds of discrimination prohibited by the Convention. The Committee welcomes this development and requests the Government to provide information on the application and impact in practice of the new Labour Code on equality in employment and occupation, as well as on the enforcement of its non-discrimination provisions on all grounds.

2. The Committee recalls that in referring to the "effect" of a distinction, exclusion or preference on equality of opportunity and treatment, *Article 1(1)(a) of the Convention* uses the objective consequences of these measures as a criterion and, thus, covers both direct and indirect discrimination. Indirect discrimination refers to apparently neutral conditions, regulations, criteria or practices, which are applied to everyone, but which in fact result in a disproportionately harsh impact on some persons on the basis of one or more characteristics related to the grounds listed in the Convention. The Committee requests the Government to confirm whether section 3 of the new Labour Code is intended to cover both direct and indirect discrimination as required by the Convention.

3. In this context, the Committee notes the concern of the Committee on the Elimination of Discrimination Against Women at the "deteriorating situation of women in employment, with women's share in highly paid sectors decreasing, and at increasing industrial and occupational segregation, with women constituting the overwhelming majority of the workers in low-paying jobs in health care, education, culture and social security [...] the level of women's pay in the economy as a whole is only 65 per cent of men's; that de facto discrimination against women persists in hiring, especially in the private sector; and, that in the State Service, women constitute 55 per cent of public servants but occupy only 9 per cent of leadership positions and 1.3 per cent of high leadership positions" (CEDAW/C/2002/CRP.3/Add.3 of 28 January 2002). The Committee asks the Government to continue providing information on the measures taken or envisaged to improve the situation of women in the labour market, to promote their access to employment and decision-making positions and to improve their working conditions.

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

Rwanda (ratification: 1981)

1. The Committee notes the Government's report. It notes with interest the Act instituting punishment for offences of discrimination and sectarianism (No. 47/2001) which entered into force on 15 February 2002. Under section 3 of the Act, discrimination is an offence committed through oral or written expression or any act based on ethnic origin, nationality, skin colour, physical features, sex, language, religion or opinion aimed at depriving one or more persons of their rights under the laws in force in Rwanda and under international conventions to which Rwanda is a party. The Government is requested to provide information on the implementation and enforcement of the Act in respect to discrimination in employment and occupation.

2. The Committee also notes that section 12 of the new Labour Code (Act No. 51/2001), which entered into force on 1 March 2002, provides that "any distinction,

exclusion or preference made in particular on the basis of race, colour, sex, religion, or political opinion, which would have the effect of nullifying or impairing equality of opportunity in employment or equality of treatment before the judicial instances in labour disputes, is prohibited". Noting that section 12 covers all the prohibited grounds of discrimination mentioned in *Article 1(1)(a) of the Convention*, except national extraction and social origin, the Committee recalls the importance of prohibiting discrimination on all the grounds laid down in the Convention. Aware of the recent history of the country, the Committee firmly believes that the prevention of and protection from discrimination in employment, particularly on grounds of national extraction, is crucial in promoting national reconciliation and peace. It therefore asks the Government to indicate the reasons for this omission, as well as the manner in which discrimination on grounds of national extraction and social origin are otherwise prohibited in employment in law or practice. It hopes that the Government will consider amending the Act to bring it fully in line with *Article 1(1)(a) of the Convention*. In addition, the Committee is concerned that section 12 could be read and applied in a manner, that would restrict its scope to providing equality before the courts in labour matters. Recalling that the Convention's scope is broad, providing for substantive as well as formal equality of opportunity and treatment in employment and occupation at all stages of employment, including vocational training, recruitment, access to particular occupations, as well as terms and conditions of employment, the Committee requests the Government to clarify the meaning of section 12 of the Labour Code and to provide indications as to its application in practice.

3. Further to its previous comments, the Committee notes that the new Labour Code, through its section 198, formally repeals all prior legal provisions and regulations contrary to the Code, including the Presidential Order of 17 April 1978 which organized the placement of workers and employment supervision. It notes with interest that the requirement for obtaining employment in the private sector of an attestation or certificate of good conduct, lifestyle and morals, which is issued by the communal authorities, has therefore been abolished de jure. As regards the requirement of such an attestation in respect to employment in the public service, the Committee notes with satisfaction that Act No. 22/2002 establishing the general conditions of service of public officials, which entered into force on 1 September 2002 and which replaces the Legislative Decree of 19 March 1974, no longer requires such an attestation in law or practice.

4. Recalling that section 6 of the Presidential Order of 20 December 1976 establishing the conditions of service of personnel in public establishments also provided for the requirement of an attestation or certificate of good conduct, lifestyle and morals in order to be employed in public establishments, the Government is requested to clarify whether this Order is still in force.

5. The Committee recalls its request for information concerning the re-education programme that repatriated persons seeking employment, or those already employed, were required to follow. In this regard, the Committee notes the Government's statement that re-education of all components of the Rwandan society ("*Ingando*") continued in order to strengthen cohesion and to overcome the ethnic and tribal divisions that led to the 1994 genocide, and that re-education was no longer targeted specifically at persons seeking employment or having found work, as was the case in 1998 when there was a massive influx of returning refugees. The Committee notes this information. Noting from the report that no assessment of the impact of the Government's human rights

awareness campaign is yet available, the Committee asks the Government to continue to provide information on any measures taken to promote the rule of law and respect for human rights through awareness-raising activities and human rights education or training, for government officials and the public at large, including relevant activities of the National Commission on Human Rights.

6. With reference to its previous comments concerning exclusion from employment for reasons related to the security of the State, the Committee notes the information provided by the Government that since the liberalization of recruitment nobody had been refused employment because of being suspected of carrying out activities prejudicial to the security of the State. Recalling that the Government had previously stated that the labour administration was no longer responsible for conducting investigations concerning persons suspected of carrying out such activities, the Committee reiterates its request to the Government to indicate the measures which have been taken to ensure that a person cannot be refused employment for reasons related to the security of the State except within the limits prescribed by *Articles 1 and 2* of the Convention, and subject to the right of appeal set out in *Article 4*.

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

Sierra Leone (ratification: 1966)

The Committee notes with regret that the Government's report has not been received for the past seven years. 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 (ratification: 1993)

The Committee notes the Government's report and the communication concerning the application of the Convention submitted by the International Confederation of Free Trade Unions (ICFTU) on 16 November 2001 alleging the existence, in practice, of discrimination in employment and occupation on the basis of sex and race.

1. *Discrimination on the basis of race or national extraction.* In its comments, the ICFTU states that unemployment is significantly higher among the Roma than among other groups of the population and that the problems concerning their integration into wider society starts at a very young age, with many Roma children attending special schools for mentally retarded children due to their different language background. The Government states that problems of integrating Roma into the labour market stem from the low level of education of some groups of Roma and that the Ministry of Education had developed the programme "Conception of Upbringing and Education of Roma Children and Pupils" with the aim of eliminating educational gaps between Roma and other children. The Committee, with some concern, understands from the Government's report that the Government appears to perceive the current serious employment situation of the Roma merely as a consequence of their generally low level of education. In this respect, the Committee recalls that the UN Committee on the Elimination of All Forms of Racial Discrimination (CERD) had in fact expressed concern regarding discrimination against members of the Roma community, including with regard to opportunities for recruitment and employment (CERD/C/304/Add.110) and that the European Commission against Racism and Intolerance (ECRI) was of the opinion that discrimination – both in the labour market and in other areas of life such as education – played a large part in the disadvantaged position of Roma in the labour market (CRI (2000) 25, paragraph 33). The Committee therefore requests the Government to provide in its next report full information on the measures taken with respect to improving the situation of Roma and their communities, including as regards education and training, access to skill development, vocational guidance, placement services and jobs as well as activities directed to labour market institutions and society at large to promote respect, tolerance and understanding between the Roma communities and the other parts of the population.

2. *Discrimination on the basis of sex.* In its comments, the ICFTU draws attention to the findings of the UN Committee on the Elimination of Discrimination Against Women (CEDAW) regarding the overemphasis on legislative protection and cultural promotion of traditional roles of women, as well as the highly segregated labour market. The Committee notes from the Government's initial report on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/1990/5/Add. 49, paragraph 28, of July 2001) that the share of women in the economically active

population decreased from 46.4 per cent in 1996 to 44.9 per cent in 1999. According to the Government, the concentration of women in the healthcare and education sectors continued to be a problem and the educational and qualification potential of women was not utilized. As stated in that report, the highest concentration of women is among lower administrative staff and a significant segment of the unqualified labour force is female. The Committee also notes the establishment in 1999 of the Department for Equal Opportunities within the Ministry of Labour, Social Affairs and Family, which is carrying out training and education on gender equality. It recalls that the National Action Plan for Women (1997) had as a main objective to promote the development and employment possibilities for women with limited professional opportunities such as Roma women, disabled women and women living in small villages. Noting that no reply was provided by the Government to the Committee's previous comments concerning discrimination on the basis of sex, the Committee is bound to reiterate its request to the Government to provide information on the measures that have been taken and how effective they have been to facilitate the access of women to a wide range of occupational training and employment opportunities, including statistical information on labour market participation disaggregated by sex, sector and occupation.

3. The Committee notes the entry into force of a new Labour Code (Act No. 311/2001). According to section 1 of the "fundamental principles" introducing the Code, natural persons shall have the right to work and the free choice of employment, to fair and satisfying working conditions and to protection against unemployment. These rights are to be enjoyed "without any sort of restriction and direct or indirect discrimination on grounds of sex, marital and family status, race, colour of skin, language, age, state of health, belief and religion, political or other convictions, trade union activity, national or social origin, national or ethnic group affiliation, property, lineage or other status, with the exception of cases provided by law, or in the case of a tangible reason for the performance of the work consisting in aptitudes or requirements and the nature of work which the employee is to perform". Such a prohibition of discrimination is also contained in Part I (General provisions), section 13, of the Code. The Committee notes with interest that these provisions cover all the grounds of discrimination prohibited by the Convention and explicitly refer to indirect discrimination, which is further defined in section 13(2). The Committee also notes with interest that the new Code provides victims of discrimination with two courses of redress for complaints concerning discrimination, and shifts the burden of proof to the employer who "shall be obliged to prove that no violation of the principles of equal treatment has occurred". The Committee also notes Act No. 90/2001 amending the Constitution of the Slovak Republic to establish the institution of Public Defender of Rights (Ombudsman). The Committee requests the Government to provide information on the implementation of the non-discrimination provision in practice, any discrimination claims brought under the Code and any relevant administrative or judicial decisions.

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

Slovenia (ratification: 1992)

The Committee notes the information provided by the Government in its report and the comments submitted by the International Confederation of Free Trade Unions

(ICFTU) on 14 May 2002 concerning the application of Convention No. 100 and this Convention with respect to women and the Roma.

1. The Committee notes the ICFTU comments on the gap between male and female wages across the economy, mostly because senior positions and positions with high remuneration tend to be filled by men. The Committee also notes the Government's information on the measures taken in the framework of the Employment Policy Programme implemented by the Employment Service of Slovenia (EES). It notes that they succeeded in lowering the unemployment rate to 12.2 per cent in 2000 and that 50.7 per cent of the registered unemployed persons are women. However, it notes that neither women nor national minorities are on the list of the target groups of the Employment Policy Programme and that data on the gender structure of participation in the employment and training programmes have not been collected. Further, the Committee notes the data provided in the Statistical Yearbook 2000 of the Republic of Slovenia, in particular table 13.6 on the average monthly gross earnings by level of professional skill by activity and by sex. It notes that men's average gross earnings are higher than women in all sectors of activity, and that in most sectors of activities, the lower the level of education, the higher the difference in earnings between men and women. In particular, the Committee notes sharp differences in the sectors of public administration, education and health and social work, which traditionally employ a large proportion of women. It also notes that the Government acknowledges that de facto equality between women and men cannot be achieved merely by means of legislation, but that it also requires affirmative action. Therefore, the Committee asks the Government to supply information on any measures envisaged or undertaken to enhance equality of opportunity and treatment of specific disadvantaged groups, namely women and national minorities. In particular, it asks the Government to indicate the positive measures undertaken to improve women's opportunities through technical training and vocational guidance, and their equal treatment in access to jobs and in their terms and conditions of employment. It further asks the Government to continue to supply statistical data on employment and remuneration disaggregated by sectors of activity, by sex and if possible, by level of responsibility.

2. The Committee notes the ICFTU's indication that women continue to be under-represented in political decision-making posts. In this regard, it notes the information in the Government's report on the recently increased presence of women in political life. It notes that in the 2000 election 12 women were elected deputies (13.3 per cent), in comparison with the 1996 election when only seven women were elected. It also notes that three women became ministers (20 per cent). Further, it notes the efforts of the Office for Equal Opportunities (former Women's Policy Office) that implemented a twofold strategy: at the regional level, it set up a network of coordinators that encouraged women to participate in politics and run as candidates; at the national level, it developed a network of experts, representatives of women's groups and political parties to develop new approaches for increasing women's participation in decision-making positions. The Committee hopes the Government will continue to promote women's participation in decision-making posts since, despite such progress, women's participation is still low.

3. The Committee notes the ICFTU's statement that Roma suffer disproportionately higher unemployment than other groups, and in many areas are essentially absent from the formal labour force. The Committee notes the Government's

efforts to address the participation of Roma in employment and occupation by the “public works programmes” undertaken by two municipalities together with the Employment Service of Slovenia, aiming at training Roma as construction workers for public works. The Government indicates that these programmes were successful in creating better living conditions for Roma families, providing Roma with training and employment opportunities and contributing to their socialization. It also notes a second form of public programmes in primary schools. Nevertheless, the Committee notes the Government’s data that show that almost two-thirds of the Roma live on social security benefits, 13 per cent have full-time work, and the rest live on casual or seasonal work. Therefore, the Committee asks the Government to supply information on whether it plans to extend the “public works programmes” to other municipalities or other sectors of activity and on any other positive measures contemplated or taken to target specifically the Roma and correct this *de facto* inequality of opportunity and treatment. Please also supply information on any measure undertaken to improve the level of educational attainment among Roma children to enable them to prepare better for entry into employment.

4. The Committee notes the adoption of the Labour Relations Act of 24 April 2002, which prohibits discrimination on all the grounds set forth in the Convention, as well as on the basis of age, health condition and special needs, membership of a trade union, social background, civil or financial status, sexual orientation or any other personal circumstances. It also notes with interest that it specifically prohibits indirect discrimination that “may be assumed if the effect of apparently neutral provisions, criteria and practice, is such that they are disadvantageous to persons of certain sex, race, age, medical condition or disability, religious or other conviction, sexual orientation or national origin, unless such provisions, criteria and practice are objectively justified appropriate and necessary”. Further, the Act shifts the burden of proof in sex discrimination cases, expressly bans discrimination in job advertisements, provides for the principle of equal remuneration for men and women and the employer’s responsibility for providing a working environment free from “undesired treatment of sexual nature, including undesired physical, verbal or non-verbal treatment or other sexually based behaviour”. Nothing that the Act will enter into force on 1 January 2003, the Committee asks the Government to provide information on the implementation of the Act in its next report.

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

Spain (ratification: 1967)

In its previous comments, the Committee referred to discrimination in employment and occupation on grounds of race, colour, religion and national extraction. While noting the information provided by the Government in its report on the measures adopted by the Labour and Social Security Inspectorate to resolve the problems which had arisen in the agricultural sector with regard to foreign workers in the provinces of Murcia, Alicante and Almería, the Committee notes that no information was supplied on awareness-raising measures and the promotion of social integration of minorities. The Committee therefore once again requests the Government to provide information on the measures that have been taken with a view to raising public awareness of the problem of

discrimination on grounds of race, colour, religion and national extraction, as well as any affirmative action taken or envisaged to promote the integration of Moroccan workers and other minorities and ethnic groups into the social and economic life of Spain. The Committee trusts that the Government will take the necessary measures to guarantee tolerance, understanding and respect by the population for these groups and that it will provide detailed information on such measures in its next report. The Committee also requests the Government to provide information on the statistical surveys undertaken in the labour market with a view to analysing the impact of its policy on the situation experienced by Moroccan workers and other minorities in the various sectors of the economy, their access to vocational guidance and training measures, their admission to employment, their conditions of work and their distribution at the various occupational levels.

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

Sudan (ratification: 1970)

1. The Committee refers to its previous comment, in which it noted the adoption of a new Constitution, which prohibits discrimination on grounds of race, sex and religion. In that comment, it drew the Government's attention to the absence of a formal prohibition of any form of discrimination on the grounds of political opinion, national extraction, colour and social origin. It also noted the adoption of a number of other legislative texts, including the 1997 Labour Code, which does not contain provisions respecting non-discrimination in employment and occupation. The Committee notes the Government's statement, in its very brief report, that the provision in the Labour Code covering "workers as any person, male or female" means without discrimination and thus assures the absence of discrimination on any grounds. The Committee once again recalls the importance of defining and prohibiting discrimination in law on all grounds of discrimination contained in *Article (1)(1)(a) of the Convention*. Therefore the Committee urges the Government to take the necessary measures to prohibit in law and practice discrimination in employment, occupation and training on all the grounds covered by the Convention and to indicate the measures it has taken to this end.

2. The Committee noted in its previous comments that, while the establishment in the Constitution of the principle of equality of opportunity and treatment and the judicial protection of victims of discrimination represents an important stage in the implementation of this principle, they cannot on their own constitute a national policy within the meaning of *Article 2* of the Convention. The implementation of a policy of equality of opportunity and treatment also presupposes the adoption of specific measures designed to correct inequalities observed in practice. Indeed, the promotion of equality of opportunity and treatment in employment and occupation as required by the Convention is not aimed at a stable situation which can be definitively attained, but at a permanent process in the course of which the national equality policy must continually be adjusted to the changes that it brings about in society. While the Convention leaves it to each country to intervene according to the methods which appear to be the most appropriate, taking into account national circumstances and customs, the effective application of the national policy of equality of opportunity and treatment requires the implementation of appropriate measures and programmes to promote equality and

correct de facto inequalities which may exist in training, employment and conditions of work. The Committee once again requests the Government to take the necessary measures, as set out in *Article 3(a), (b), (c), (d) and (e)* of the Convention, inter alia, with a view to guaranteeing the effective application of the Convention.

3. The Committee again requests the Government to indicate in its next report the measures that have been taken for the active promotion of equality of opportunity and treatment in vocational training and employment for all categories of workers, and particularly those who are most vulnerable in view of their social status, such as women and certain ethnic minorities (for example, the Nuba in central Sudan) and other marginalized social groups.

4. The Committee once again recalls that, under the terms of the Public Order Act of 1996, Muslim women are liable to be beaten or whipped if their dress is deemed to be indecent or if they go out in the street after nightfall, which considerably restricts their freedom of movement. Since these restrictions will necessarily have a negative impact on the training and employment of women, the Committee again requests information on the measures that have been taken or are envisaged to ensure equality of access for men and women to jobs of their own choosing. In this respect, it once again urges the Government to provide in its next report a copy of the instructions on the dress code of what women must wear in public places, including at their workplace.

5. The Committee notes with regret that the Government has not replied to the question that it raised concerning the impact of the Passports and Immigration Act, 1970, which, among other things, requires the approval of the husband or guardian for women who wish to travel abroad. Since travel abroad may prove to be necessary in the context of training or a job, the Committee once again asks the Government to indicate whether a woman still must obtain the approval of her husband or guardian when she must travel abroad for professional or educational reasons.

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

Switzerland (ratification: 1961)

The Committee notes the Government's report and the attached documentation, including the documentation submitted by the Confederation of Swiss Employers on their own activities to promote gender equality and harmonization of work and family life.

The Committee notes article 8 of the new federal Constitution which entered into force on 1 January 2000 providing that no one shall be subjected to discrimination on account of his or her origin, race, sex, age, language, social position, way of life, religious, philosophical or political convictions, or any physical, mental or psychological disability. Article 8(2) states that men and women have equal rights and that the law shall provide for their de jure and de facto equality, particularly in the family, in education and at the workplace. The Committee notes from the Government's third report submitted under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (CERD C/351/Add.2) that article 8 codifies the jurisprudence on equality of the Federal Court, thus reinforcing legal protection from discrimination. The Committee welcomes the extension of grounds and the extension of

scope to cover all persons and not only Swiss citizens in conformity with the Convention. The Government is requested to provide in its future reports information on the implementation and impact of this new constitutional provision, including any legislative initiatives and judicial decisions.

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

Turkey (ratification: 1967)

The Committee notes the Government's report, as well as the comments of the Turkish Confederation of Employers' Associations (TISK) and the Confederation of Progressive Trade Unions of Turkey (DISK).

1. TISK states that female employment has increased in the private sector in recent years, while DISK indicates that the problems related to discrimination against women, as previously raised by the Committee, still exist. The Committee notes the statistical information for the year 2000 provided by the Government according to which the level of female literacy and labour force participation remains very low. Noting that the number of illiterate women is still around four times higher than that of men, the Committee observes that illiteracy is not only a problem in rural areas, with 2.4 million illiterate persons out of 6 million living in the cities. The overall labour force participation rate of men is at 73.1 per cent, while that of women is as low as 25.5 per cent. In 2000, female unemployment in urban areas was at 13.1 per cent as compared to 7.9 per cent for male unemployment. The Committee requests the Government to continue to provide statistical data on the situation of women in education and employment and information on measures taken to ensure equality of opportunity and treatment of women in employment and occupation.

2. *Discrimination on the basis of sex and religion.* The Committee recalls the communication dated 9 May 1999 of the Workers' House of the Islamic Republic of Iran, a workers' organization, which stated that a female legislator wearing an Islamic headscarf was treated in a discriminatory manner when she was forced from the hall of the Grand National Assembly without being sworn in. The comments received from the Workers' House also alleged discrimination in regard to the ban on wearing of headscarves at universities, academic centres and by public servants. The Committee observed that the requirement that public servants and university students uncover their heads would in fact disproportionately affect women wearing headscarves, possibly impairing or precluding altogether their right to equal access to education and employment due to their religious practices. It moreover drew attention to the particular significance the ban on headscarf takes on when viewed in the light of the low level of education of women and their low level of participation in the work force.

3. In this context, the Committee notes section 56 of the Standing Orders of the Grand National Assembly which states that "in the House, the members of Parliament, the members of the Turkish Senate, the ministers, the officials of the Grand National Assembly Organization and other public officials shall be required to wear jackets and ties. Ladies shall wear suits". The Committee notes that this dress code does not preclude the wearing of headscarves by female legislators and it hopes the Government will take the necessary measures to ensure equal access of women to take up their posts in the

Grand National Assembly, irrespective of their sex and religious practice which are unrelated to the inherent requirements of the job.

4. As concerns the ban on wearing headscarves of civil servants in public buildings, the Committee notes that section 5(a) of the Regulations on Dress Code for the Personnel of Public Institutions and Establishments of 16 July 1982 provides that women's heads shall always be uncovered. The regulation applies broadly to all civil servants, personnel under contract and temporary employees and blue-collar workers employed in institutions covered by the general and additional budgets, local administrations, institutions with floating capital and public economic enterprises, as well as bodies and establishments attached to them (section 2). As regards the prohibition of wearing headscarves in universities, the Committee notes the judgement of the Constitutional Court of 7 March 1989 concerning Act No. 3511 of 10 December 1988 amending the Act on universities. In its judgement, the Court declared unconstitutional certain provisions of Act No. 3511 which, as an exception to the general prohibition of covering heads on the premises of universities, allowed the wearing of headscarves for religious reasons. The Court's reasoning is mainly based on the supremacy of the principle of secularism in the Turkish constitutional order, whereas the provisions in question were also found to be in violation of the principle of equality and the right to freedom of conscience and belief. According to the Court, the laws of a secular State had to be free of any religious content in order to protect democracy and fundamental rights. Wearing headscarves in universities would exert pressure on women not covering their heads and was unduly favouring one particular group. According to the Constitutional Court, it was not possible to allow the wearing of Islamic headscarves at the present time in order to secure equality and freedom of conscience and thought for all.

5. In respect of the above, while noting the complexity of the situation, the Committee reiterates its concern that the current broad prohibition for students and civil servants from wearing head coverings may lead to situations incompatible with the principle of equality as envisaged by the Convention. As stated previously, such a requirement would in fact disproportionately affect Muslim women, possibly impairing or precluding altogether their right to equal access to education and employment, due to their religious practices. The Committee deems it necessary to recall that the Government has undertaken to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality and treatment in respect to employment and occupation, with a view to eliminating any discrimination, including on the basis of sex and religion. The Committee also recalls that, in order to be permissible under the Convention, any distinction or exclusion that has the effect of nullifying or impairing equality of opportunity and treatment in employment and occupation must be based on the inherent requirements of a particular job. The Government is therefore requested to consider ways and means to promote and ensure equal access of Muslim women to employment in the civil service irrespective of their religious practice, and to keep the Committee informed of any development concerning this matter. Recalling that the access of women to education is one of the factors determining their participation in the labour force and that the general level of education of women and their labour force participation in Turkey remains very low, the Committee also requests the Government to provide information on measures taken or envisaged to ensure that all women, including Muslim women and girls, enjoy their

equal rights to education, including at the university level. The Committee once again requests the Government to provide statistical information on the numbers of women who have been precluded from attending university or from obtaining or maintaining jobs in the public service, due to the ban on headscarves.

6. *Position of public servants dismissed or transferred during the period of martial law.* The Committee refers to its previous comments concerning the reinstatement of victims of discrimination based on political grounds under Martial Law Act No. 1402. The Committee had requested information on the reasons why 753 of the transferred civil servants and 202 of the transferred public employees who had applied for reinstatement had not been returned to their jobs. Subsequently, the Government stated that those who were not reinstated in their jobs either did not apply or no longer met the requirements of the job due to prison sentences handed down under the Penal Code. Recalling its request to the Government to supply detailed information on the percentage of the 955 transferred employees that were not reinstated due to the imposition of prison sentences, indicating for each employee the nature of the criminal charges brought and the penalties imposed, the Committee notes the Government's statement to the effect that the information requested was not available in the records of the relevant ministries and establishments. The Committee reiterates its request and hopes that the Government will make every effort to obtain the necessary information and to provide it to the Committee with its next report.

7. *Amendments to Martial Law Act No. 1402.* The Committee notes that the Government's report contains no new information concerning the need to repeal or amend section 3(d) of Martial Law Act No. 1402. The Committee recalls that section 3(d) of that Act vests martial law commanders with broad discretionary powers to transfer workers and public employees to other areas. In the view of the Committee, this could lead to discrimination in employment on the basis of political opinion in contravention of the Convention. The Committee has previously expressed its hope that appropriate changes would be made so as to ensure that measures intended to safeguard the security of the State are sufficiently defined and delimited so as not to lead to discrimination. Recalling the Government's assurances that the right to appeal concerning section 3(d) of Act No. 1402 exists pursuant to article 125 of the Constitution and to Act No. 2577 concerning the procedures of administrative trials, the Committee once again requests the Government to provide statistical information on the number of appeals that have been lodged over the application of section 3(d) of Act No. 1402 and their outcomes.

8. *Security investigations.* The Committee recalls its previous comments on resolution No. 90/245 of 8 March 1990 of the Council of Ministers and section 1 of Act No. 4045 of 26 October 1990 concerning security investigations. It was concerned that the broad scope of the provisions contained therein may lead to discrimination in employment and occupation on the basis, inter alia, of political opinion. In this context, the Committee notes the adoption of the Regulations on Security Investigations and Investigation of Records of 14 February 2000, which replace the regulations on the same subject as contained in resolution No. 90/245 of 8 March 1990. The Committee notes that security investigations and investigations of records are limited to personnel to be employed in units and departments of ministries and public institutions and bodies holding classified information or documents, as well as personnel to be employed in the Turkish armed forces, in the security and intelligence organizations, and in prison and

detention centres. The Government is requested to provide indications as to which units, departments and functions in ministries and other public institutions have been determined, under section 6 of the Regulations, as units and departments holding classified information. The Committee also asks the Government to explain the meaning and content of the clause “any connection with the police forces and intelligence units” which is a common element of the terms “security investigations” and “investigation of records” as contained in section 4(f) and (g). The Committee notes that a “security investigation” includes, *inter alia*, an assessment whether the person has engaged in “destructive or separatist activities” or has acted in contravention of Act. No. 5816 on offences committed against Atatürk or of the principles and reforms of Atatürk (sections 4(g) and 11(c)). It notes with interest that the meaning of “destructive and separatist activities” has been limited to “activities aiming to violate the indivisible integrity of the State with its territory and nation and to endanger the existence of the State and the republic or to destroy fundamental rights and freedoms” (section 4(k)). It requests the Government to provide information on how this provision is applied in practice, including indications as to the number and nature of cases involving an exclusion from employment or transferral resulting from the application of section 11(c) in connection with section 4(g) and (k). The Committee also wishes to receive a copy of the duty instructions, under section 12(e) of the Regulations, of the authorities authorized to investigate. Overall, the Committee observes that progress has been made in enhancing the precision of certain terms contained in the previous legislation and in limiting the scope of security investigations. However, the Committee emphasizes the continuing need to ensure that the measures taken by the authorities authorized to request and conduct security investigations are in practice in line with the requirements of the Convention.

9. *The 1991 Anti-Terrorism Act.* The Committee recalls its previous comments on the broad definitions of terrorism in section 1 of this Act and the offence of propaganda contained in section 8. It expressed concern that the definitions used would not appear to lay down sufficient criteria upon which protection against imprisonment, based on political opinion or some other ground mentioned in the Convention, would be ensured. The Committee previously noted the introduction of the element of intent in section 8, thus restricting broad interpretations and the possibility of discrimination and the Government’s statement that section 1 limits the definition of terrorism to violent acts. However, the Committee noted the fact that journalists have been convicted under the Anti-Terrorism Act for expressing their opinions. As the Committee understands that relevant legislative changes have occurred, it requests the Government to provide detailed information on any changes concerning the Anti-Terrorism Act or other legislation that would further restrict the possibility of journalists, writers and publishers being deprived of their employment or occupation for expressing their political opinion. The Committee once again asks the Government, in order to avoid any ambiguity, to consider revising section 1 of the Act to ensure that no provision of the Act would lead to a conviction for expressing political opinions by non-violent means. The Committee also requests the Government to continue to provide information on the number, nature and outcomes of cases under the Act involving convictions pronounced against journalists, writers and publishers.

10. *Non-discrimination on other grounds.* The Government reiterates that equality of all Turkish citizens before the law is guaranteed under Turkish legislation and that

they face no discrimination whatsoever as far as their statutory rights are concerned. The Government also states that present-day Turkey contains a multitude of ethnic, religious and cultural elements and that different ethnic identities, including the Kurdish, are acknowledged and accepted. The Committee recalls that while legislative provisions on equality and non-discrimination are an important element of a national equality policy in accordance with *Article 2* of the Convention, they cannot constitute by themselves such a policy. The Convention provides for the elimination of discrimination in law and practice and, to this end, requires proactive measures towards achieving equality of opportunity and treatment of all workers. In this connection, the Committee notes the information provided by the Government on the projects to promote educational opportunities and employment carried out by the South-eastern Anatolia Project Regional Development Administration, including for nomadic/semi-nomadic communities. Noting from information available to it that recent reforms have introduced the possibility of private schools teaching in languages other than Turkish, the Committee asks the Government to provide information on this reform and on any other measures adopted or envisaged to promote equality in employment and occupation, irrespective of race, colour, national extraction and social origin.

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

Uruguay (ratification: 1989)

The Committee notes the information sent in the Government's report in reply to comments made by the Inter-Trade Union Assembly-National Workers' Convention (PIT-CNT) concerning instances of discrimination based on sex in the National Administration of Electricity Plants and Distribution (UTE). The Committee notes the Government's statement that the women workers who filed a complaint for discrimination with the General Labour Inspectorate, thus exhausting the administrative procedures, appealed to the Labour Court, which ruled against them, dismissing their claim on formal grounds. The Committee recalls that the PIT-CNT has alleged that, because special security standards were applied to women, women workers received smaller amounts than men when they collected voluntary redundancy benefits. The Committee requests the Government to provide information on the criteria applied to determine the amounts awarded to workers under the UTE's retirement incentive plan for 2001 and 2002.

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

Venezuela (ratification: 1971)

The Committee notes the comments of the International Confederation of Free Trade Unions (ICFTU), received on 22 November 2002, which contain information concerning discrimination on the ground of sex. The comments have been forwarded to the Government and the Committee will address them, together with any reply the Government may wish to make thereon, at its next session.

1. The Committee notes the constitutional reform of 15 December 1999 and the inclusion of the prohibition of discrimination in employment for political reasons as a constitutional right in article 89(5). Section 26 of the Organic Labour Act of 27 November 1990, as amended on 29 June 1997, already prohibited discrimination in

conditions of employment on, among other grounds, political affiliation; however the Committee recognizes that raising the right of non-discrimination for political reasons to the constitutional level, thereby affording it legal primacy, supplements the above protection with a view to guaranteeing equality of opportunity and treatment in employment and occupation. The Committee requests the Government to provide information on the manner in which this right is guaranteed by means of judicial decisions.

2. The Committee notes with interest the adoption of the Act on equality of opportunities for women, of 25 October 1999, guaranteeing women the full exercise of their rights, and the development of their personality, aptitudes and capacities. The Act establishes the obligation of the State, among other entities, to guarantee equal training, equality of opportunity in employment in the public and private sectors, to promote the participation of women in the productive sector in both the informal and structured economy in urban and rural areas, and to promote services to prevent the double or triple working day. The Act establishes the National Institute for Women as a permanent body responsible for determining and coordinating policies and matters related to the condition and situation of women. The Act also creates the institution of the National Attorney for the Defence of Women's Rights to ensure compliance with provisions relating to women's rights. The Committee requests the Government to provide information on the application of this Act in practice and on the effectiveness and operation of the institutional machinery that has been established. The Committee refers to this point in greater detail in a direct request.

3. With regard to its request on the manner in which discrimination in employment and occupation is prohibited on grounds of national extraction, the Committee recalls the importance of adopting legislative protection against discrimination on all grounds set out in the Convention as well as taking measures to promote equality of opportunity and treatment. The Committee hopes that the prohibition of discrimination on grounds of national extraction will be introduced into the Organic Labour Act and the draft Bill on the system for employment and labour development, thereby covering all the grounds laid down in the Convention.

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

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In addition, requests regarding certain points are being addressed directly to the following States: *Algeria, Angola, Antigua and Barbuda, Argentina, Australia, Austria, Azerbaijan, Bangladesh, Belarus, Belgium, Belize, Benin, Bolivia, Bosnia and Herzegovina, Botswana, Bulgaria, Burundi, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, Côte d'Ivoire, Cuba, Cyprus, Czech Republic, Denmark, Dominica, Dominican Republic, Ethiopia, Finland, France, Gabon, Georgia, Germany, Greece, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Hungary, Iceland, India, Indonesia, Italy, Jamaica, Jordan, Kazakhstan, Kuwait, Lebanon, Lesotho, Liberia, Madagascar, Malawi, Mali, Malta, Mauritania, Mexico, Republic of Moldova, Mongolia, Morocco, Mozambique, Nepal, Niger, Norway, Philippines, Poland, Portugal, Romania, Russian Federation, Rwanda, Saint Lucia, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Slovakia, Slovenia, Spain, Sudan, Swaziland, Sweden,*

Switzerland, Tajikistan, Togo, Tunisia, Turkey, Ukraine, United Kingdom, Uruguay, Venezuela, Yemen, Zambia, Zimbabwe.

Convention No. 112: Minimum Age (Fishermen), 1959

Liberia (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:

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.

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In addition, a request regarding certain points is being addressed directly to *Suriname*.

Convention No. 113: Medical Examination (Fishermen), 1959

Liberia (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.

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In addition, requests regarding certain points are being addressed directly to the following States: *Croatia, France, Guatemala, Guinea, Russian Federation*.

Convention No. 114: Fishermen's Articles of Agreement, 1959

Cyprus (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 comments made over several years the Committee has asked the Government to provide information on the measures taken with a view to the adoption of legislation on articles of agreement giving effect to the provisions of the Convention. The Committee notes the Government's indication in its report of November 2000 that the Department of Merchant Shipping of the Ministry of Communications and Works of Cyprus has completed the preparation of the ship's articles as well as the relevant regulations and that they are in the process of being approved by the Council of Ministers. Recalling also the large number of fishing vessels registered in Cyprus that belong to foreign owners as well as the large number of non-Cypriot fishermen employed therein, the Committee hopes that these legal provisions and regulations will be adopted in the near future and that the Government will report on all the measures taken to give full effect to the provisions of the Convention.

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

Liberia (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.

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In addition, a request regarding certain points is being addressed directly to *Peru*.

Convention No. 115: Radiation Protection, 1960*Brazil* (ratification: 1966)

The Committee notes that the Government's report indeed does not reply to its previous comments. 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 2003.]

Ghana (ratification: 1961)

The Committee takes note of the Government's last report. With reference to its previous comments, the Committee draws the Government's attention to the following points that urgently need to be addressed by the Government in order to comply with the provisions of the Convention.

1. The Committee notes the Radiation Protection and Safety Guides, GRPB – G1 to G5, adopted in 1995 and 1998 respectively containing provisions on the qualification and certification of radiation protection personnel (GRPB – G1), the notification and authorization by registration or licensing, exemptions and exclusions (GRPB – G2), dose limits (GRPB – G3), inspection (GRPB – G4), and the safe use of X-rays (GRPB – G5). The Committee notes that the provisions to be found in the guides enclose substantive provisions which respond to a number of the requirements set forth in the provisions of the Convention. It notes, however, the Government's indication, confirmed by the prefaces to these guides, that the Radiation Protection and Safety Guides are only supporting documents and therefore do not have any legal, thus binding, effect. In this regard, the Committee recalls its comments, which it had made for more than 15 years, explaining that non-binding guides do not suffice for the application of the Convention. In order to ensure effective protection of workers, regarding their health and safety, against ionising radiation, as provided for in *Article 3, paragraph 1, of the Convention*, the Government must take the necessary measures by means of laws or regulations, which do not leave it to the discretion of the employer whether or not he puts into operation the provisions contained therein. The Committee therefore again urges the Government to take the necessary measures to ensure effective protection of workers against ionising radiations, in compliance with the provisions of the Convention. In this context, the Committee refers to the Government's declarations, contained in its reports since 1968, that a Bill, entitled the Radiation Protection Bill, to give legal effect to the provisions of the guides was under preparation. The Committee had noted in its previous comments that the adoption of the Bill has been postponed because of reorganization measures taken following a change of the Government. The Committee observes that the Government does not refer any more to this Bill in its report. The Committee accordingly requests the Government to indicate whether it continues to envisage the adoption of this Bill, or whether the legislative process has been renounced. The Committee moreover notes that, according to the Government's indications, the Radiation Protection and Safety Guide, GRPB – G3, contains the BSS dose limitation system for occupational exposure to ionising radiation. However, as this text has not been available to the Committee, it has not been in a position to examine its content in order to assess the extent to which this text would apply *Articles 3 and 6, paragraph 1, of the Convention*, even though this Guide does not have force of law. The Committee accordingly again strongly suggests that the Government take the necessary steps to ensure that the text designed to give effect to the Convention, for which the preparations started more than 30 years ago, is adopted in the near future. The Committee requests the Government to keep the Office informed on any progress made in this regard.

2. *Article 8.* The Committee notes the Government's indication that the annual dose limit, established in the Radiation Protection and Safety Guide, GRPB – G3, is

5 mSv for members of the public. The Committee recalls paragraph 14 of its 1992 general observation under the Convention, in which it refers to the dose limits for exposure adopted in 1990 by the International Commission on Radiological Protection (ICRP), since they reflect the current knowledge which is the determining factor for the establishment of the dose limits for the different categories of workers (*Article 3, paragraph 1, and Article 6, paragraph 2, of the Convention*). The ICRP fixes the annual dose limit for the general public at 1 mSv. In view of this fact, the Committee hopes that the Government will take the necessary measures to reduce the annual dose limit for exposure to ionising radiations of the public from 5 mSv to 1 mSv.

3. *Article 12*. The Committee notes the Government's indication, according to which pre-employment medical examinations and subsequent medical examinations have to be carried out for workers exposed to ionising radiation in the course of their work. As to the periodicity of the medical examinations during the employment, the Government specifies that medical examinations are required every six months if the exposure exceeds 6 mSv. The Committee requests the Government to indicate the legal basis providing for the indicated medical examinations of workers.

4. *Article 13(b)*. The Committee notes the Government's indication that the licensee/registrant of an authorization for using ionising radiation is required to notify to the Radiation Protection Board any incident that might lead to an overexposure requiring protective action and the steps taken to bring the situation under control. The Government is asked to indicate the legal basis.

5. Further to its previous comments, the Committee notes that the following provisions of the Convention are not even covered by the Radiation Protection and Safety Guides: *Article 13(a) and (d)* (circumstances under which, due to the nature and/or degree of exposure, workers shall undergo appropriate medical examinations, necessary remedial action to be taken by the employer on the basis of the technical findings and the medical advice); and *Article 14* (provision of alternative employment to radiation workers who have already received an effective dose beyond which they would suffer a detriment considered to be unacceptable). The Committee urges the Government to take the necessary measures to address these matters through regulations that are enforceable.

6. Finally, the Committee requests the Government to supply a copy of the Radiation Protection and Safety Guide, GRPB – G3, on dose limits.

The Committee reiterates its firm hope that the Government will make every effort to take the necessary action without any further delay.

Nicaragua (ratification: 1981)

The Committee notes with satisfaction that the National Commission on Atomic Energy (CONEA) adopted in May 1998 the Regulations concerning Technical Protection against Ionizing Radiations, giving effect to the provisions of the Convention, and in particular to *Article 3, paragraph 1, Article 6, paragraph 2, and Article 7 of the Convention*.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Belize, Brazil, Ecuador, Hungary, Nicaragua, Slovakia, Tajikistan*.

Convention No. 118: Equality of Treatment (Social Security), 1962*Bolivia* (ratification: 1977)

Article 2, paragraphs 1(i) and 2, and Article 6 of the Convention. In reply to the Committee's previous comments relating to section 51 of Supreme Decree No. 22578 of 13 August 1990, the Government indicates that under the terms of the Bolivian legislation, family allowances include the prenatal allowance, the birth allowance, the nursing allowance and the funeral allowance. The Committee notes this information. It is however bound to draw the Government's attention to the fact that these allowances do not fully respond to the concept of family benefit and family allowances within the meaning of the above Articles of the Convention. It also recalls that, in accordance with *Article 40* read in conjunction with *Article 1(e)* of Convention No. 102, of which Part VII (Family benefit) was accepted by Bolivia when ratifying that Convention, the contingency covered is responsibility for the maintenance of children, with the term "child" meaning a child under school-leaving age or under 15 years of age. In these conditions, the Committee once again expresses the hope that the Government will be able to re-examine the situation with a view to re-establishing a scheme of family benefit which complies with Part VII of Convention No. 102, and that, in doing so, full account will be taken of Convention No. 118, and particularly of *Article 6*, which specifies that each Member, which, like Bolivia, has accepted the obligations of the Convention in respect of family benefit, shall guarantee the grant of family allowances both to its own nationals and to the nationals of any other Member which has accepted the obligations of the Convention for that branch, in respect of children who reside on the territory of any such Member, under conditions and within limits to be agreed upon by the Members concerned. The Committee once again wishes to draw the Government's attention to the possibility of having recourse to the technical assistance of the Office.

Central African Republic (ratification: 1964)

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 recalls that it has been commenting since 1968 on the issue of restrictions on payment abroad of employment injury benefit and old-age benefit, and that the matter has also been discussed on several occasions at the Conference Committee, the last one being in June 1993. On that occasion, the Government stated that it had prepared the necessary draft to amend the legislation and that it wished to receive ILO technical assistance in this respect. In its report of 1997, the Government again referred to the draft texts under preparation. However, no mention of this text is made in the Government's latest report received in August 2001, which indicates only that the Committee's comments have been transmitted to the General Directorate of the Central African Social Security Office (OCSS). The Committee regrets to note that no new measure affecting the application of the Convention has been taken by the Government. In these circumstances, the Committee again expresses the hope that the changes to the legislation mentioned by the Government since 1993 will be finalized and adopted in the very near future, by laws, regulations or other means, without the need for further reminders to be given to the Government. The Committee trusts that changes will be effected in legislation with a view to ensuring that full effect be given to the Convention with regard to the following points.

Article 4 (branch (g)) (Employment injury benefit). Section 27 of Act No. 65-66 of 24 June 1965 on industrial accident compensation should be supplemented by an express provision that in the case of a victim of an occupational injury who was a national of a State which has accepted the obligations of the Convention concerning employment injury benefit, his dependants (survivors), even if they were resident abroad at the time of the victim's death and continue to reside abroad, shall receive survivor's benefits, if it is proved that they were actually dependants at the time of his death.

Article 5 (branch (e)) (Old-age benefit). The national legislation should be amended to provide for payment of old-age benefit in case of residence abroad, both to nationals of the Central African Republic and to nationals of any other member State that has accepted the obligations of the Convention concerning branch (e).

Article 6 of the Convention. Section 1 of Act No. 65-57 of 3 June 1965 on family benefits needs to be amended so as to provide express guarantees, both for nationals of the Central African Republic and to nationals of any other Member which has accepted the obligations of the Convention for *branch (i)* concerning family benefits, for payment of family benefits for children residing on the territory of such other Member, under conditions and within limits to be agreed upon by the Members concerned. (To date, the countries which have accepted the obligations for *branch (i)* are: Bolivia, Cape Verde, France, Guinea, Ireland, Israel, Italy, Libyan Arab Jamahiriya, Mauritania, Norway, Netherlands, Tunisia, Uruguay and Viet Nam).

The Committee draws the Government's attention to the availability of technical assistance of the Office.

Democratic Republic of the Congo (ratification: 1967)

Article 5 of the Convention (Payment of benefits abroad). In reply to the Committee's previous comments, which it had been making for several years, the Government recalls that section 50(7)(a) of the Legislative Decree on Social Security of 1961 allows the suspension of benefits where the beneficiary resides abroad, subject to the obligations assumed under international agreements. The Government states in this respect that the reciprocity agreements concluded by the Democratic Republic of the Congo with other countries do not contain discriminatory provisions, and that where workers who are nationals of other countries fulfil the conditions required under these agreements, they benefit from treatment that is equal to that of Congolese workers. It is envisaged that transfers of social security benefits will take place in accordance with the agreements in force establishing financial arrangements between the two contracting parties. For example, an administrative arrangement related to the general social security agreement provides for a financial arrangement between the central banks of contracting countries for the payment of benefits. Efforts are currently being made to conclude general social security agreements with certain African countries, such as Angola, Tanzania, Zambia and Zimbabwe. However, the Government indicates that no agreement is currently available for the good reason that no ratifications of the agreement have yet been registered. In the absence of such agreements, the necessary measures to transfer benefits will have to be made by common agreement between the interested parties.

The Committee wishes to remind the Government in this respect that, by ratifying the Convention and accepting its obligations for the invalidity, old-age and employment injury branches, the Government has undertaken to guarantee provision of the respective benefits both to its own nationals and to the nationals of any other Member which has

accepted the obligations of the Convention for the branches in question, and to refugees and stateless persons, *even in the absence of reciprocity agreements or bilateral social security agreements*. The Committee therefore trusts that, while awaiting the conclusion of bilateral agreements, the Government will take unilateral measures to guarantee in law and practice the provision of benefits abroad for its own nationals and for the nationals of the countries following in relation, respectively, to *branch (d)* (invalidity benefit): Brazil, Cape Verde, Ecuador, Egypt, France, Iraq, Italy, Jordan, Kenya, Libyan Arab Jamahiriya, Madagascar, Mauritania, Mexico, Netherlands, Philippines, Rwanda, Syrian Arab Republic, Tunisia, Turkey and Venezuela; *branch (e)* (old-age benefit): Barbados, Brazil, Central African Republic, Guinea, Iraq, Israel, Italy, Kenya, Libyan Arab Jamahiriya, Mauritania, Mexico, Netherlands, Philippines, Rwanda, Syrian Arab Republic, Tunisia, Turkey and Venezuela; *branch (g)* (employment injury benefit): Bangladesh, Barbados, Brazil, Cape Verde, Central African Republic, Denmark, Ecuador, Egypt, Finland, France, Germany, Guinea, Iraq, Ireland, Israel, Italy, Jordan, Libyan Arab, Jamahiriya, Madagascar, Mauritania, Mexico, Netherlands, Pakistan, Philippines, Rwanda, Suriname, Sweden, Syrian Arab Republic, Tunisia, Turkey, Uruguay and Venezuela. The Committee would be grateful if the Government would forward the present comments to the Commission for the Reform of Social Security established by Ministerial Order No. 12/CAB-MIN/TPS/AR/KF/038/2002 of 23 February 2002, the text of which was provided by the Government with its report on the application of Convention No. 102, in view of the fact that the above Commission is entrusted with updating the draft Social Security Code and other legislative texts, and for issuing opinions and views on any matter relating to social security.

Articles 7 and 8. In reply to the Committee's previous comments, the Government indicates in its report that, with a view to the participation of the Democratic Republic of the Congo in a scheme for the maintenance of acquired rights and rights in course of acquisition, efforts are being made in the context of the conclusion of general social security agreements with African countries with which the Democratic Republic of the Congo shares borders or is developing various forms of cooperation. The Government indicates that such an agreement was signed by the Democratic Republic of the Congo in 1979 and by Zambia in 1987, but has not been ratified, while Angola, Zimbabwe and the United Republic of Tanzania are still at the negotiating stage. In view of the fact that, according to this information, the process of negotiation described by the Government has already lasted over 20 years without achieving any results in terms of agreements that have been ratified and applied in the countries in question, the Committee would be grateful if the Government would indicate the measures which have been taken or are envisaged to complete the process that has been set in motion as rapidly as possible.

France (ratification: 1974)

Article 3, paragraph 1, of the Convention, branch (d) (Invalidity benefit). The Committee notes with satisfaction that, according to the information and legislation provided by the Government, following the adoption of sections L.816-1 and L.821-9 of the Social Security Code (section 42 of Act No. 98-349 of 1998), entitlement to the supplementary allowance of the National Solidarity Fund (FNS) and the allowance for disabled adults is now available to persons of foreign nationality possessing one of the residence permits or other documents regularizing their stay in France, notwithstanding

the provisions of sections L.815-5 and L.821-1 of the Social Security Code, which subject this entitlement to the conclusion of reciprocity agreements. The Committee also notes with interest the list of the abovementioned residence permits and other documents provided by the Government (sections D.816-3 and D.821-8, read in conjunction with section D.115-1).

Article 4, paragraph 1, branch (d) (Invalidity benefit) and branch (f) (Survivors' benefit). 1. With reference to its previous comments, the Committee notes with satisfaction that section L.311-7 of the Social Security Code (section 41 of Act No. 98-349 of 1998) has abolished the requirement of residence in France for foreign workers and their dependants for the provision of old-age insurance benefits including, according to the information provided by the Government, survivors' pensions, in accordance with *Article 4, paragraph 1, of the Convention (branch (f))*.

2. With regard to invalidity benefit, the Committee notes, from the information contained in the Government's report, that residence requirements continue to be imposed on foreign workers; however, in the event of the subsequent transfer of the beneficiary's residence to a State not bound to France by an agreement, the invalidity pension is not suspended if the beneficiary can be supervised at the medical and administrative levels. The Committee recalls that, under the terms of *Article 4, paragraph 1, of the Convention*, equality of treatment as regards the grant of benefits shall be accorded without any condition of residence. The Committee therefore hopes that the Government will be able to re-examine the issue and take the necessary measures to ensure the application of this provision of the Convention with regard to *branch (d) (Invalidity benefit)* in both law and practice in all cases in which the insured person was entitled to the benefit of the social security system in France and fulfilled the general conditions for entitlement to invalidity benefit at the time of the contingency.

Furthermore, the Committee requests the Government to provide detailed information on the conditions under which supervision of the beneficiary of an invalidity pension is carried out in the absence of mutual administrative arrangements with the beneficiary's country of residence. Please also provide statistics on the number of cases in which the provision of invalidity pensions abroad has been refused on the ground that it is impossible to supervise the beneficiary.

Guinea (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:

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.

Iraq (ratification: 1978)

The Committee notes with regret that in place of the detailed report requested, the Government has once again limited itself to presenting a report identical to those already communicated in 1993, 1994, 1997, 1998 and 2000. In these circumstances, the Committee trusts that the Government will not fail to supply a detailed report for examination at its next session, which will contain detailed answers to its previous observation, which read as follows:

Article 5 of the Convention (Provision of benefits abroad). Referring to its previous comments concerning the application of this provision of the Convention, the Committee notes the information contained in the Government's report as well as the discussions which took place in the Conference Committee in 1994. The Committee recalls that for several years it has been asking the Government to indicate the measures taken or contemplated with a view to removing numerous restrictions concerning payment of benefits abroad for Iraqi nationals as well as foreign nationals, contained in section 38 of the Workers' Pension and Social Security Law No. 39 of 1971 and in Instruction No. 2 of 1978 regarding payment of social security pensions to insured persons leaving Iraq, which are contrary to this provision of the Convention. In this respect, the Committee notes from the Government's report that the situation has remained unchanged. The Government's last report mainly reproduces the information contained in its previous report and in the statements made by the Government representative during the discussion of this case in the Conference Committee in 1993 and 1994, according to which, rules concerning the payment of benefits abroad are of a purely procedural nature and do not constitute restrictions on the payment of benefits conflicting with the Convention. The Committee refers in this respect to the request it is addressing directly to the Government in which it reviews in detail the effect on the application of the Convention of section 38 of the Workers' Pension and Social Security Law No. 39 of 1971 and Instruction No. 2 of 1978 respecting the payment of social security pensions to persons who leave Iraq.

The Committee nevertheless notes, from the information supplied in the report and in the Conference Committee in 1994 by the Government representative, that the Government confirms its intention to study the possibility of modifying the national legislation and to pay benefits due to foreign workers, including Egyptian workers, who left Iraq in 1990, once the economic embargo imposed on Iraq is lifted, and after the release of Iraq's frozen assets in foreign banks and the improvement of Iraq's economic situation. In view of the fact that no payment of benefits abroad has yet been made, the Committee cannot but once again urge the Government to adopt in the near future measures ensuring the provision of long-term benefits in the case of residence abroad for Iraqi nationals and for nationals of other countries which have accepted the obligations of the Convention in respect of the branch in question, as well as for refugees and stateless persons, and to remove the restrictions in this respect in the light of the more detailed comments contained in the Committee's direct request.

Italy (ratification: 1967)

The Committee notes the detailed information provided by the Government and the observations made by the Italian General Confederation of Labour (CGIL) and the

Italian General Confederation of Commerce, Tourism and Services (*Confcomercio*). It would like to draw the Government's attention to the following points.

1. *Articles 3, 4 and 10, paragraph 1, of the Convention.* (a) The Committee notes from the information provided by the Government and the CGIL that seasonal workers, who – by virtue of section 5, paragraph 3(b), of Legislative Decree No. 286 of 25 July 1998 (*Testo unico*) – are entitled to a temporary work permit for not more than six or, in special cases, nine months, are no longer covered by the unemployment insurance and family benefit schemes. However, their employer is obliged to pay his share of the corresponding contributions to the National Fund for Migration Policies which provides welfare services to non-Community workers (sections 25 and 45 of Legislative Decree No. 286).

In this respect, the Committee is bound to refer to *Articles 3 and 4, paragraph 1*, of the Convention under which nationals of a member State which has also ratified the Convention shall be granted equality of treatment with Italian nationals as regards both coverage and the right to benefits in respect of every branch of social security for which Italy has accepted the obligations of the Convention, without any condition of residence. As Italy has accepted the obligations of the Convention for branches (h) – unemployment benefit and (i) – family benefit, the Committee hopes that the Government will indicate in its next report the measures taken or envisaged to ensure that seasonal workers who are not nationals of a member State of the European Union or the European Economic Area, but are nationals of a State which has ratified the Convention (Bangladesh, Barbados, Bolivia, Brazil, Cape Verde, Central African Republic, Democratic Republic of the Congo, Ecuador, Egypt, Guinea, Guatemala, Iraq, India, Israel, Jordan, Kenya, Libyan Arab Jamahiriya, Madagascar, Mauritania, Mexico, Pakistan, Philippines, Rwanda, Suriname, Syrian Arab Republic, Tunisia, Turkey, Uruguay, Venezuela), as well as refugees and stateless persons, are also granted access to unemployment and family benefits under the same conditions which apply to Italian nationals.

(b) The Committee also notes from the above information that non-Community women workers, in the case of births occurring after 1 July 2000, are entitled to maternity benefit provided by the INPS only if they hold a residence card. The Committee understands from section 9 of Legislative Decree No. 286 of 25 July 1988, that a residence card can only be obtained after at least five years of legal residence in Italy. Such a condition is contrary to *Articles 3 and 4, paragraph 1*, of the Convention. The Committee would like the Government to indicate in its next report the measures taken or contemplated to ensure that the maternity benefits provided by the INPS are granted to non-nationals covered by *Article 3, paragraph 1*, of the Convention, as well as to refugees and stateless persons, under the same conditions as for nationals.

(c) The Committee notes from the information provided by the Government and the CGIL that foreigners residing in Italy who are not nationals of one of the member States of the European Union or the European Economic Area are, by virtue of section 80(19) of the 2001 Finance Act, No. 388 of 2000, no longer entitled to certain benefits such as the benefits for civilian invalids, the blind and deaf mutes, the social allowance (*l'assegno sociale*), the maternity benefit provided by the communes and the benefit for households with at least three children unless they are holders of a residence card.

The Committee observes that all the abovementioned benefits, although means-tested, are nevertheless social security benefits within the meaning of the Convention. It recalls that under *Article 1(b)* of the Convention, the term “benefits” refers to all benefits, grants and pensions, including any supplements or increments and that, in accordance with *Article 2*, the Convention covers all branches of social security. The Convention therefore applies to all social security benefits whether they are financed by contributions or by the general tax system. Only public assistance is excluded from the scope of the Convention under *Article 10, paragraph 2*.

(d) *Paragraph 2(a) to (c) of Article 4* of the Convention, however, provides some flexibility with regard to the principle of equality of treatment, by allowing the national legislation to submit *non-contributory benefits* within the meaning of *Article 2, paragraph 6(a)*, of the Convention, i.e. “benefits other than those the granting of which depends either on direct financial participation by the persons protected or the employer, or on a qualifying period of occupational activity”, to a condition of length of residence, which shall not exceed a period of six months for maternity benefit and unemployment benefit; five consecutive years for invalidity or survivors’ benefit; and ten years, including five consecutive years, for old-age benefit. It therefore appears that the requirement imposed upon non-Community foreign nationals to hold a residence card for certain non-contributory benefits can be considered as acceptable under *Article 4, paragraph 2(b) and (c)*, in the case of the benefit for civilian invalids, the blind and deaf mutes, as well as the social allowance (*assegno sociale*). On the other hand, such a requirement may not be acceptable under the Convention for maternity benefit provided by the communes and benefit for households with at least three children since, under *Article 4, paragraph 2*, no condition of residence specific to foreign nationals can be imposed for family benefits, and the residence requirements admissible for maternity benefit is only six months. The Committee therefore requests the Government to indicate in its next report the measures it has taken or envisaged to ensure full application of the Convention on this point.

(e) The Committee notes that the supplementary contribution of 0.5 per cent payable by non-Community migrant workers to a special fund in the INPS was abolished with effect from January 2000.

2. As regards the provision of social security benefits in case of residence abroad (*Articles 5 to 8* of the Convention), the Committee refers to the request it is addressing directly to the Government.

Libyan Arab Jamahiriya (ratification: 1975)

With reference to the comments that it has been making for many years on Conventions Nos. 102, 118, 121, 128 and 130, which have been ratified by the Libyan Arab Jamahiriya, the Committee draws the Government’s attention to Part I of its observation on Convention No. 102.

With regard to Convention No. 118, the Committee notes with regret that, instead of the detailed report that the Government should have submitted in 2001, it has once again sent the same text of the reply prepared by the technical commission responsible for preparing the necessary replies to the observations made by the Committee of Experts, which it had already provided in 1995 and 1997. The Committee recalls that the Government has not provided any new or substantial information since the first

examination of this case by the Conference Committee in 1992, despite the assurances given by the Government representative during the second discussion of this case in June 1999, when the Conference Committee expressed deep concern at the persistence of serious discrepancies between the Convention and national law and practice, despite the time which had passed. The Committee therefore hopes that a detailed report will be submitted by the Government for examination at its next session in November-December 2003 and that it will contain full replies to its previous observation, which read as follows:

I. *Article 3, paragraph 1, of the Convention (read in conjunction with Article 10).* (a) In its previous observations, the Committee noted that section 38(b) of the Social Security Act No. 13 of 1980 and Regulations 28 to 33 of the Pension Regulations of 1981 provide that non-Libyan residents receive only a lump sum in the event of premature termination of work, whereas nationals are guaranteed, under section 38(a) of Act No. 13, the maintenance of their wages or remuneration. The Committee emphasized that this difference in treatment is contrary to the provisions of the Convention. In its reply, the Government explains that unless the period during which contributions have been paid is considered as a period of contribution under a social security agreement concluded between the Government and the State of which the contributor is a national, the latter is only entitled to a lump sum due to the fact that the residence permit as a foreign worker is linked to the contract of employment, and the worker has to leave the country when the contract ends. The Committee notes this information. It once again emphasizes the importance of eliminating the difference in treatment between Libyan nationals and foreign workers in the event of the premature termination of their work. It hopes that the Government will take all the necessary measures for this purpose in the near future.

(b) The Government indicates in its report that section 5(c) of the Social Security Act allows foreign workers engaged in the public administration to affiliate on a voluntary basis to the social security scheme, which provides them with many contractual benefits that are more advantageous than social security benefits. Moreover, section 8(b) of the Social Security Act, covering non-Libyan self-employed workers, provides that affiliation may only be on a voluntary basis, unless there is an agreement concluded with the country of which the workers are nationals, as most people in this category are not residents of the Libyan Arab Jamahiriya and pay contributions to the social security system in their respective countries. The Committee notes this information. It recalls again that where the subscription of nationals to the social security scheme is compulsory, as in the Libyan Arab Jamahiriya, the subscription of certain categories of foreign workers to the social security scheme on a voluntary basis only is contrary to the principle of equality of treatment as provided by the Convention (subject to any agreement drawn up between the Members concerned under *Article 9* of the Convention). The Committee hopes once again that the Government will take the necessary measures in the very near future to bring the legislation into conformity with the Convention on this point.

II. Furthermore, the Committee notes with regret that the Government's report does not contain any information in reply to the other matters raised in its previous observations. It is therefore bound to draw the Government's attention once again to these matters.

1. Under the terms of Regulation 16, paragraphs 2 and 3, and Regulation 95, paragraph 3, of the Pensions Regulations of 1981, and without prejudice to special social security agreements, non-nationals who have not completed a period of ten years' contributions to the social security scheme (years that may be supplemented, where appropriate, by years of contributions paid to the social insurance scheme) are entitled neither to an old-age pension nor to a pension for total incapacity due to an injury of non-occupational origin. Furthermore, Regulation 174, paragraph 2, of the above Regulations seems to imply *a contrario* that this qualifying period is also required for pensions and

allowances due to survivors of the deceased person by virtue of Title IV of the Regulations, when death is due to a disease or an accident of non-occupational origin. Since such a qualifying period is not required for insured nationals, the Committee recalls that the above provisions of the Pension Regulations of 1981 are incompatible with *Article 3, paragraph 1*, of the Convention. It hopes that the Government will indicate the measures that it has taken or is envisaging to give effect to this provision of the Convention.

2. Regulation 161 of the Pension Regulations of 1981 provides that pensions or other monetary benefits *may* be transferred to beneficiaries resident abroad subject, where appropriate, to the agreements to which the Libyan Arab Jamahiriya is a party. The Committee recalls that, in accordance with *Article 5* of the Convention (read in conjunction with *Article 10*), each Member which has ratified the Convention *must* guarantee both to its own nationals and to the nationals of any other Member that has accepted the obligations of the Convention in respect of the branch in question, as well as to refugees and stateless persons, when they are resident abroad, the provision of invalidity benefits, old-age benefits, survivors' benefits, death grants and employment injury pensions. The Committee considers that the strict application of *Article 5* of the Convention is all the more necessary in the light of the mass expulsions which have taken place in the past of foreign workers from the national territory. It hopes that the Government will indicate in its next report the measures which have been taken or are envisaged to give effect to this basic provision of the Convention in both law and practice.

[The Government is asked to supply full particulars to the Conference at its 91st Session and to reply in detail to the present comments in 2003.]

Mauritania (ratification: 1968)

The Committee notes the Government's report of 2001, which only contained partial replies to its previous comments. It notes, however, 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 full particulars on the following points.

Article 5 of the Convention. The Committee notes that section 66(2) of the Act of 3 February 1967 provides that benefits are suspended where the beneficiary is not resident in Mauritania, except in the case of reciprocity agreements or international conventions. The Committee recalls that, under the terms of *Article 5* of the Convention, each Member which has accepted the obligations of the Convention for one or more branches of social security shall guarantee both to its own nationals and to the nationals of any other Member which has accepted the obligations of the Convention for the branch or branches in question, when they are resident abroad, provision of invalidity benefits, old-age benefits, survivors' benefits and employment injury pensions. It requests the Government to indicate the manner in which the payment of benefits is guaranteed in practice in the case of residence abroad both to Mauritians and to nationals of countries which have accepted the obligations of the Convention for any one or more of these branches of social security in the absence of a bilateral agreement.

Articles 7 and 8. The Committee notes that the Government's report does not contain any information on the measures taken for the maintenance of acquired rights and rights in course of acquisition for Mauritians who had to leave the country following the events of 1989. It would be grateful to be provided with information on the measures taken in this respect (particularly with regard to old-age pensions).

[The Government is asked to report in detail in 2003.]

Tunisia (ratification: 1965)

Article 5 of the Convention. With reference to its previous comments, the Committee recalls that section 49 of Decree No. 74-499 of 27 April 1974 respecting the old-age, invalidity and survivors' schemes in the non-agricultural sector and section 77 of Act No. 81-6 of 12 February 1981 to organize social security schemes in the agricultural sector provide that the grant of the above benefits to *nationals of Tunisia* is subject to the applicant residing in Tunisia at the date on which the application is made, although this requirement is lifted for *foreign nationals* of countries which are bound to Tunisia by a bilateral or multilateral social security agreement.

In reply, the Government states that, on the basis of the above provisions, the requirement of residence in Tunisia for the grant of pensions is also lifted for Tunisian nationals in the event of the assignment of a Tunisian worker to an enterprise based in a country with which Tunisia has concluded a social security agreement, or in the event of a temporary stay in the country of origin of the worker and her or his dependents. In view of the fact that cases of assignment or temporary stay abroad are not mentioned in the provisions referred to by the Government, the Committee would be grateful if the Government would indicate by virtue of which provisions of laws or regulations the residence requirement is lifted in the above cases and provide a copy of them. However, with regard to the requirement for Tunisian nationals to be resident in Tunisia at the time on which the application for benefit is made, the Government indicates that the Committee's comments will be taken into consideration in the revision of the texts in question. The Committee therefore once again hopes that the Government will endeavour to take the necessary measures to ensure, in accordance with *Article 5* of the Convention, that *Tunisian nationals*, in the same way as the nationals of any other State which has accepted the obligations of the Convention for the corresponding branch, and not only those covered by a reciprocal scheme under bilateral or multilateral social security agreements, are guaranteed the provision of long-term benefits in case of residence abroad, without any restriction and regardless of whether they are resident in Tunisia at the time of the application or when the pension is due.

Turkey (ratification: 1974)

With reference to its previous observation, the Committee notes the information provided in the Government's report for the period from 1 June 1999 to 31 May 2001, as well as the comments made by the Confederation of Turkish Trade Unions and the Turkish Confederation of Employer Associations communicated by the Government together with its report.

1. *Article 3, paragraph 1, of the Convention.* In reply to the Committee's previous comments that it has been making for over 20 years, the Government refers to Council of Ministers' Decree No. 619 issued in October 2000, which has abolished the provisions excluding foreign nationals from the scope of the self-employed persons' insurance scheme and has amended section 24, subsection II-B, of Act No. 1479 of 2 September 1971 to that effect. Though this Decree has been subsequently annulled by the decision of the Constitutional Court of 31 October 2000, the Government indicates that in order to fill the legal gap which would prejudice public interest, this Decree and the amendments to Act No. 1479 have been re-established in force during the reporting period. Furthermore, to honour its commitment to bring the national legislation into

conformity with the Convention, the Government has prepared the draft bill which has abrogated section 3, subsection II-A, of Social Insurance Act No. 506 of 1964, which subordinates participation of foreign workers in invalidity, old-age and survivors' insurance schemes to a written request on their part, and has introduced the provisions bringing foreign workers under the compulsory coverage of the statutory insurance scheme. According to the report, the draft bill was expected to be enacted by the Turkish Grand National Assembly in the course of 2001.

The Committee notes this information with interest. It also notes that the Confederation of Turkish Trade Unions, in its new communication dated 15 June 2001, stressed that no legislative provisions have as yet been issued with a view to eliminating the incompatibilities with the Convention highlighted by the ILO Committee of Experts in its previous comments. The Committee therefore trusts that, in order to bring the abovementioned provisions of the national legislation into conformity with *Article 3, paragraph 1*, of the Convention, the Government will spare no effort to ensure prompt adoption of the draft bill prepared by it, as well as the enactment of Council of Ministers' Decree No. 619 into law.

2. *Article 10, paragraph 1*. The Committee has long been calling the attention of the Government to the need to adopt an express provision to include refugees and stateless persons in the scope of Act No. 506 of 1964 and Act No. 1479 of 1971. In reply, the Government states that all refugees regularly residing in Turkey are accorded the benefit of all insurance programmes, and those who do not reside in the country regularly but work under a contract of employment are insured compulsorily. As in its previous report, the Government does not explain the situation of stateless persons in Turkey. The Committee recalls that it has found no provisions in the Turkish social security legislation which would expressly make it applicable to refugees or stateless persons. On the contrary, as pointed out under point 1 above, being foreign nationals, refugees would not enjoy the compulsory social insurance coverage under the present legislation, which still needs amendment in this respect. The Committee would therefore once again express the hope that, in amending the legislation in question and to avoid any ambiguity in law, the Government will not fail to make it expressly applicable also to refugees and stateless persons.

3. In addition, the Government indicates in its report that Unemployment Insurance Act No. 4447 passed through the Parliament in 1999 and entered into force in its entirety as from March 2000. The Act stipulates that foreign nationals shall benefit from the provisions of the Act on the basis of reciprocity. The Turkish Confederation of Employer Associations recalled in this respect that, when Convention No. 118 was being ratified, reservations were registered for only two of the nine branches of insurance covered by the Convention, namely unemployment insurance and family allowances. The Confederation considers that, with the adoption of the Unemployment Insurance Act, Turkish legislation is now in line with the Convention in this respect. The Committee notes this information with interest. It wishes to draw the Government's attention to *paragraph 4 of Article 2* of the Convention, according to which each Member which has ratified this Convention may subsequently notify the Director-General of the ILO that it accepts the obligations of the Convention in respect of one or more branches of social security not already specified in its ratification.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Bolivia, Cape Verde, Central African Republic, Egypt, France, Guinea, Iraq, Israel, Italy, Kenya, Libyan Arab Jamahiriya, Rwanda.*

Convention No. 119: Guarding of Machinery, 1963

Algeria (ratification: 1969)

The Committee notes from the Government's report that due note had been taken by the Government of its previous observation. It notes the adoption of two decrees (Executive Decree No. 2000-253 of 23 August 2000 on the establishment, organization and functioning of the National Institute for the Prevention of Occupational Risks, and Executive Decree No. 01-341 of 28 October 2001 providing for the composition, powers and functioning of the National Committee for the Approval of Standards of Efficiency of Products, Devices and Installations of Protection), which the Government indicated as measures that strengthened the legislative means in the domain. While noting these legal and institutional measures taken, the Committee would like to point out that there is still the need to take specific technical measures to give effect to various provisions of the Convention. It recalls that this question has been the subject of its comments for a long period of time. It would therefore urge the Government to take the necessary measures with a view to give effect to the following provisions of the Convention.

1. *Article 2, paragraphs 3 and 4, of the Convention.* The Committee recalls that section 8 of Act 88-07 of 26 January 1988 which prohibits the manufacture, exhibition, putting up for sale, sale, import, hire or transfer in any other manner of machinery or parts of machinery that do not correspond to current national and international health and safety standards does not determine the machinery that is considered to be dangerous, nor the parts thereof which are likely to present danger, in accordance with the requirements of *paragraphs 3 and 4 of Article 2* of the Convention. It recalls that it had noted that the provisions of Executive Decree No. 90-245 of 18 August 1990 applicable to gas pressure machinery and of Executive Decree No. 90-246 of 18 August 1990 applicable to steam pressure machinery, met the requirements of *Article 2* of the Convention, but that similar measures of general application to machinery covered by the Convention as a whole were needed. In this regard the Committee wishes to reiterate its previous comments that the objective of *Article 2* of the Convention is to guarantee that machines are safe before they reach the user, whereas the provisions of Executive Decree No. 91-05 of 19 January 1991 respecting general safety provisions concern the guarding of machinery once it is in use.

The Committee again draws the attention of the Government to paragraphs 73 et seq. of its 1987 General Survey on safety and the working environment where it indicates that it is essential for the effective application of *Part II* of the Convention that national legislation designate those parts of machinery that present danger and require appropriate guarding (paragraph 82) and that, until there has been a determination of the machinery and parts thereof that present danger, the prohibition of the sale, hire, transfer in any other manner and exhibition of machinery contained in *Article 2* of the Convention remains ineffective. The Committee recalls its previous reference to paragraph 85 of the 1987 General Survey to indicate that the definition of dangerous

machinery and parts thereof should as a minimum cover all those parts enumerated in *Article 2* of the Convention.

2. *Article 4*. Further to its previous comments, the Committee notes the Government's reply that the responsibility referred to in paragraph 2 of the Committee's previous comments was provided for in section 37 of Act No. 88-07 of 26 January 1988 which prescribed sanctions in cases of violations of sections 8, 10 and 34 of the same Act. The Committee recalls once again that, while section 8 of Act No. 88-07 prohibits the manufacture, exhibition, putting up for sale, sale, import, hire or transfer in any other manner of machinery that is dangerous, with a view to its use, section 10 of the same Act explicitly lays down the responsibilities of only those who are involved in the manufacture, importation, the cession, and use of the machinery and not of the vendor, the person letting out on hire or transferring the machinery in any other manner, or the exhibitor, and their respective agents. The Committee once again refers to paragraphs 164-175 of its 1987 General Survey on safety and the working environment, in which it observes that the general prohibition from manufacturing, selling, hiring or transferring in any other manner machinery which is dangerous is inadequate if it is not accompanied by a provision explicitly requiring these provisions to be applied to the manufacturer, vendor, the person letting out on hire or transferring the machinery in any manner or their respective agents, in order to comply with *Article 4* of the Convention which expressly establishes the responsibility of these persons, and to avoid any ambiguity. The Committee urges the Government to take the necessary measures to ensure that the responsibility of the categories of persons mentioned in *Article 4* are explicitly established in national legislation as well as the sanctions applicable in case of violation of such explicitly established responsibility.

3. *Articles 6 and 7*. Further to its previous comments concerning the responsibility of the employer, the Committee notes the Government's reply that section 38 of Act No. 88-07 provides for this. The Committee notes that the provisions of Act No. 88-07, including section 38, do not fully reply to its previous comments that the use of machinery, any parts of which, including the point of operation, is without appropriate guards, is not prohibited. It reiterates its previous indications that sections 40-43 of Executive Decree No. 91-05, while requiring the dangerous parts of machines to be guarded, do not expressly prohibit the use of machines, the dangerous parts of which are not guarded. The Committee refers again to paragraph 180 of its 1987 General Survey on safety and the working environment, where it is stated that *Article 6, paragraph 1*, of the Convention is formulated as a general prohibition to be included in the national legislation and that, in order to observe this provision, it is not enough to require the guarding of machines which are used, without at the same time requiring that the use of machines without appropriate guards is forbidden. The Committee wishes to reiterate the need for the legislation to be clear that the obligation to ensure compliance with this prohibition rests on the employer, in accordance with *Article 7* of the Convention.

Central African Republic (ratification: 1964)

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:

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.

Democratic Republic of the Congo (ratification: 1967)

The Committee notes the Government's report. It recalls with regret that for over 30 years it has been requesting the Government to take the necessary measures to give effect to the provisions of *Articles 2 to 4 of the Convention*.

In its last report, the Government indicates that Ministerial Order No. 0057/71 of 20 December 1971, issuing regulations respecting safety at the workplace, gives effect to the provisions of the Convention. However, this text, which was provided by the Government in 1973, has already been examined by the Committee. It concluded that this Ministerial Order only partially gave effect to the provisions of the Convention and, since 1974, it has been requesting the adoption of a text setting forth the prohibition, as required by the Convention, of the sale, hire, transfer in any other manner and exhibition of machinery of which the dangerous parts are without appropriate guards.

The Committee notes that the Government refers in its report to a new draft Labour Code containing provisions prohibiting the sale, hire, exhibition or transfer in any other manner of machinery of which the dangerous parts are without appropriate guards, accompanied by provisions setting forth penalties. It also notes that the procedures for dealing with violations of this prohibition are to be determined by order. In its previous reports, the Government has referred on several occasions to a draft order respecting the guarding of machinery and to the revision of the Labour Code, in the context of which provisions designed to give effect to the above Articles of the Convention were to be adopted. The Committee understands that the new draft Labour Code is the result of the revision which was previously envisaged and confirmed by Government representatives during the ILO's technical advisory mission in 1997. In view of the fact that the Committee has for nearly 30 years been pointing out the need to take measures, either by legislative or any other appropriate means, to give effect to the above provisions of the Convention, it trusts that the Government will in the near future adopt the text of the above Labour Code and of the Order and that it will provide copies thereof with its next report.

Ghana (ratification: 1965)

The Committee notes that the Government's report does not contain a reply to its previous comments. It is therefore bound to repeat its observations on the measures which should be adopted to give effect to the provisions of the Convention in all branches of economic activity in the country.

Articles 1 and 17 of the Convention. In the comments that it has been making for many years, the Committee has drawn the Government's attention to the fact that the Factories, Offices and Shops Act, 1970, and the Mining Regulations, 1970, only give effect to the Convention in a limited number of sectors of economic activity. Certain branches of activity, such as agriculture, forestry, road and rail transport and shipping, are not covered by it. In its report for the period ending 30 June 1993, the Government stated that the issue had been referred to the tripartite National Advisory Committee on Labour which was to make recommendations for the adoption of appropriate measures to give effect to the Convention in the above sectors. The Committee recalls in this respect that the Government has been indicating, at least since 1986, that it would refer the Committee's observations to the tripartite National Advisory Committee on Labour for examination with a view to the adoption of the necessary measures.

The Committee notes that once again in its last report the Government has not provided any new information. It once again requests the Government to provide detailed information on the measures taken to ensure the guarding of machinery in all branches of economic activity, and particularly in agriculture, forestry, road and rail transport and shipping.

Guatemala (ratification: 1964)

The Committee notes with interest the information contained in the Government's reports, including the national plan on occupational safety and health in Guatemala.

Further to its previous comments based on the earlier observations of the Latin American Central of Workers (CLAT) alleging violations of the Convention in a given enterprise where machinery was being used which was dangerous to the life and health of workers, the Committee had reiterated its earlier request for information on the practical application of the Convention, including extracts of inspection reports, and information on the number of workers covered by the relevant legislation, the number and nature of the infringements recorded and the number, nature and causes of the accidents that had occurred (*point V* of the report form). The Committee notes the information that, in 2000, 4,127 regular inspection visits were conducted, covering 1,494 workers (708 men and 786 women), and a total of 871 infringements involving accidents to 442 men and 429 women were registered. In 2001, a total of 6,346 regular inspection visits were made covering a total of 1,715 workers (764 men and 971 women), and 779 infringements involving accidents affecting 355 men and 424 women, and 667 cases of administrative sanctions were registered concerning 328 men and 339 women. In 2002, 1,094 regular inspection visits were made covering 657 workers (333 men and 324 women), and 129 infringements involving accidents affecting 64 men and 65 women were recorded. The Committee requests the Government to continue providing such information on the practical application of the Convention with its future reports.

Jordan (ratification: 1964)

The Committee notes with interest the adoption of Regulation No. 43 of 1998 concerning safety and protection from industrial equipment, and at workplaces, which includes general provisions aimed at protecting workers against mechanical, electrical, and chemical hazards arising from industrial and mechanical machines. The Committee also notes the information about section 5 of Law on Imports and Exports No. 21 of 2001 and item 5 under Instruction No. 1 of 1999 governing other conditions affecting the import of machines which do not have a direct bearing on the application of the following provisions of the Convention that were the object of the Committee's previous comments.

Article 2 of the Convention. Further to its previous comments, the Committee notes that section 6(c) of Regulation No. 43 of 1998 prohibits the acquisition, sale, hire, transport of machines and tools whose dangerous parts are not provided with sufficient guards. The Committee would be grateful if the Government would indicate whether the competent authority has determined, and the extent of this determination, to prohibit by national laws or regulations or to prevent by other equally effective measures the transfer in any other manner and the exhibiting of machinery the dangerous parts of which are without appropriate guards.

Article 4. Further to its previous comments, the Committee notes that neither the Labour Code nor Regulation No. 43 of 1998 provide for the obligation to ensure compliance with *Article 2* of the Convention to be with the vendor, the person letting out on hire or transferring the machinery in any other manner, or the exhibitor, or their respective agents, where appropriate, with the manufacturer when he/she sells machinery, lets it out on hire, transfers it in any other manner or exhibits it.

Madagascar (ratification: 1964)

1. The Committee notes that, according to the report provided by the Government, the change that has occurred at the level of the Constitution adopted on 15 March 1998 (Constitutional Act No. 98-001 of 8 April 1998) does not modify the general principles of the Constitution of 1992. It also notes that no other changes have occurred in the provisions of the law and regulations that are in force and that the former texts remain in force in so far as the implementing texts of the Labour Code (Act No. 94-029 of 25 August 1995) and the Occupational Safety, Health and the Working Environment Code (Act No. 94-027 of 17 November 1994) have not yet been published.

The Committee also notes the adoption of Decree No. 99-130 of 17 February 1999 respecting the organization and operation of the Advisory Technical Committee on Occupational Safety, Health and the Working Environment, section 10 of which provides that the measures for the application of the Decree are to be, as necessary, determined by order issued by the Minister responsible for labour and social protection. The Committee requests the Government to keep it informed of the measures adopted with a view to the application of the above text.

2. The Committee therefore notes with regret that the Government's report does not reply to its previous comments. It recalls that for many years it has been urging the Government to adopt texts implementing the Occupational Safety, Health and the Working Environment Code in order to give 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 *Article 2, paragraphs (2) and (3)*, are without appropriate guards must be prohibited, and that the obligation to ensure compliance with these provisions must rest on the vendor, the person letting out on hire or transferring the machinery in any other manner, or the exhibitor, as well on the manufacturer when he sells machinery, lets it out on hire, transfers it in any other manner or exhibits it.

The Committee once again hopes that the Government will not fail to adopt the above implementing texts and will provide a copy of the adopted texts.

Morocco (ratification: 1974)

Article 11 of the Convention. The Committee recalls its numerous previous comments in which it drew the attention of the Government to the need to take measures to ensure that a worker may not use or be required to use machinery without the guards provided being in position, and that no worker may make such guards inoperative. The Committee notes from the Government's report that the draft Labour Code which is under discussion in Parliament, had been made to take into account the observations made by the Committee, and that a copy of the regulations will be provided to the ILO once the draft Labour Code is adopted. The Committee recalls that it has been making these comments for over 25 years, and that pending a resolution of the differences delaying the adoption of the draft Labour Code, the Government had indicated in 1998 that it would propose to the competent authorities a separate text that would take into account the comments of the Committee of Experts. The Committee reiterates its trust that the Government will shortly take the necessary measures for the adoption of the relevant provisions, if necessary by means of a separate regulatory text, and that a copy of the adopted text will be sent to the ILO.

Article 17. Further to its previous comments, the Committee notes from the Government's report that the prohibition of the sale, hire, or transfer in any other manner and exhibition of such machines had been taken into consideration in the draft Labour Code. The Committee recalls that, in its previous comments, it had drawn the attention of the Government to the lack of any detailed measures to ensure the application of the provisions of the Convention to machinery used in agriculture, and urged the Government to take the necessary measures, possibly in the draft Labour Code which has been before the Parliament for a number of years, or in a separate regulatory text, pending the adoption of the draft Labour Code. It reiterates its trust that the Government will shortly take the necessary measures for the adoption of the relevant provisions, if necessary by means of a separate regulatory text, and that a copy of the adopted text will be forwarded to the Office.

Part V of the report form. The Committee notes the information that in the context of international cooperation, the Ministry of Employment had organized training courses for inspectors and physician labour inspectors on occupational safety and health. It notes further that, jointly with the Royal Government of Belgium, three training sessions were organized in 2002 on the prevention of occupational accidents and that three other sessions were planned for 2003. It also notes the information that with the assistance of the ILO, a seminar on the situation of the working environment was organized during 2001, and that with GIT Inter (France), seminars on the prevention of occupational risks

in the building industry were organized. The Committee wishes to encourage the Government to continue its efforts in this direction and to keep the Office informed of all developments in this regard.

[The Government is asked to reply in detail to the present comments in 2003.]

Sierra Leone (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.

Turkey (ratification: 1967)

The Committee notes the Government's report indicating the adoption by the Grand National Assembly of Turkey (TBMM) of Framework Law No. 4703 for harmonizing national legislation with the Community legislation (*Acquis Communautaire*) which came into force on 11 January 2002, and of the promulgation in the Official Gazette on 5 June 2002 of the Safety of Machinery Implementing Regulations prepared following Decisions Nos. 1/28 and 2/97 of the Turkey-EU Association Council. The Committee would be grateful if the Government could provide copies of the said Law and Regulations.

The Committee notes the Government's replies to its previous comments based on the observations made by the Turkish Confederation of Employer Associations (TISK) and the Confederation of Turkish Trade Unions (TÜRK-İŞ). The Committee also notes the comments made by TÜRK-İŞ relating to the application of *Articles 17 and 15 of the Convention*.

1. *Article 17*. The Committee notes the Government's report does not reply to its previous comments requesting the Government to take the necessary measures to extend the scope of the 1983 Regulations on Guarding of Machinery, which were applicable only to the commercial and industrial sectors, to all sectors of the economy including

agriculture, air and sea transport. It also notes the comments made once again by TÜRK-İŞ that the main problem in the application of the Convention was that agriculture and air and sea transportation fields were not covered within the scope of application of the Regulations of 1983, which it indicated should be amended to cover the entire economy. The Committee would like to reiterate its hope that the Government will shortly take the necessary steps in order to give full effect to the Convention in all branches of economic activity.

2. *Article 15 and Part V of the report form.* Further to its previous comments, the Committee notes the Government's reply that inspections carried out by the Labour Inspection Department of the Ministry of Labour and Social Security were based on the provisions of the implementing Regulations on Guarding of Machinery of 1983 and the Labour Act No. 1475. The Government indicates that, according to the Labour Inspection General Report, out of the 3,268 inspected industrial accidents, 1,107 were caused by machinery and looms, and that constituted 34 per cent of the total number of industrial accidents. The same report also indicated that out of the said 1,107 industrial accidents, 307 of them (28 per cent) occurred in the metal industry sector alone. The Committee also notes the information that, during the inspections carried out, various training activities were performed in raising the awareness of both employers and employees of health hazards, and that seminars were conducted by the Near and Middle-East Labour Training Centre where papers prepared by inspectors were presented. In this regard, the Committee notes the comments made once again by TÜRK-İŞ which indicate that the provisions of the 1983 Regulations were not effectively implemented due to the continuous expansion of the undeclared economy in the country as was noted by the International Labour Conference at its 90th Session. The Committee would like to reiterate its request to the Government for details on the steps taken to ensure that appropriate inspection is carried out in all sectors of economic activity including the undeclared or informal sector. Please continue to provide information on the practical application of the Convention, including any difficulties encountered as well as information on the results of inspections carried out.

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In addition, requests regarding certain points are being addressed directly to the following States: *Azerbaijan, Denmark, Dominican Republic, Ecuador, Finland, Guinea, Kuwait, Niger, Norway, Paraguay, Russian Federation, Ukraine.*

Information supplied by *Malaysia* and *Switzerland* in answer to a direct request has been noted by the Committee.

Convention No. 120: Hygiene (Commerce and Offices), 1964

Costa Rica (ratification: 1966)

The Committee takes note of the Government's last reports. It notes that the Government's reports reiterate the information on the legal provisions that apply the Convention, whose conformity with the requirements set forth by the Convention had already been noted by the Committee. The Committee however observes that the Government does not refer to the issue raised in its previous comments, which focused largely on the comments made by the Association of Customs Officials (Asociación

Sindical de Empleadores Publicos Aduaneros-ASEPA) observing that customs employees (*aduaneros*), by virtue of the Executive Decree No. 231116-MP could be transferred, because of the nature of their functions, to different places of the country, and if the need arises, without any time limits. In some cases, they can be exposed to heat, cold, dust, humidity, noise, toxic gases, and small and uncomfortable places. They can likewise be exposed to eye strain, bruises, burns and other risks. The Committee, with reference to the provisions of Convention No. 120, recalled that, under *Article 1 of the Convention*, the provisions are to apply to trading establishments; establishments, institutions and administrative services in which the workers are mainly engaged in office work; and, in so far as they are not subject to national laws or regulations or other arrangements concerning hygiene in industry, mines, transport or agriculture, any departments of other establishments, institutions or administrative services in which departments the workers are mainly engaged in commerce or office work. The Committee further noted that under *Article 17* of the Convention, workers shall be protected by appropriate and practicable measures against substances, processes and techniques which are obnoxious, unhealthy or toxic, or for any reason harmful. The Committee notes again that the Government has not provided yet its view on the matters raised by ASEPA. The Committee, while noting the period of time elapsed since ASEPA has supplied its comments, requests the Government to indicate the measures taken to improve the working conditions as regards the hygiene of customs workers. It further urges the Government to include in its next report the information as required on the application of the Convention to customs workers.

Guinea (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 takes note of the information provided by the Government in response to its previous observation.

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.

Jordan (ratification: 1965)

1. The Committee takes note of the Government's reports. It notes the adoption of the new Labour Code, Act No. 8 of 1996. With reference to its previous comments, the Committee notes with satisfaction that pursuant to article 78, paragraph (a)(ii), of the Labour Code, workers must be provided with the necessary personal protective equipment to protect them against occupational hazards and occupational diseases, which thus applies *Article 17 of the Convention*.

2. The Committee further notes the Government's indication that, according to article 33 of the Constitution, the Convention became applicable as part of Jordanian law after its ratification. The Committee recalls that, while in general provisions of ILO Conventions are not self-executing, *Article 4* of the Convention expressly requires the adoption of laws and regulations at national level to ensure the application of the elementary hygiene measures set forth in Part II, and that, in accordance with *Article 6* of the Convention, appropriate measures were necessary to provide for the enforcement of such laws or regulations.

3. In view of this fact, the Committee draws the Government's attention to the need to adopt measures to give effect to the following Articles of the Convention.

4. *Article 1 of the Convention*. The Committee notes that article 3 of the Labour Code excludes, inter alia, government and municipal officers (subparagraph (a)) from its scope of application. The Committee recalls that, by virtue of *Article 1, subparagraph (b)*, of the Convention, the provisions of the Convention apply to establishments, institutions and administrative services in which the workers are mainly engaged in office work. The Committee accordingly requests the Government to indicate the measures taken or envisaged to ensure that the Convention is applied to all workers, including public employees, who work in establishments, institutions and administrative services in which they are mainly engaged in office work.

5. *Article 7*. With regard to the maintenance requirements of work premises, the Government refers to article 78, paragraph (a)(ii), and article 82 of the Labour Code. The Committee however notes that article 78, paragraph (a)(ii), of the Labour Code obliges the employer to provide workers with protective equipment against the hazards of work and the risks of occupational diseases, and that article 82 of the Labour Code obliges the workers to respect the rules, regulations and decisions pertaining to accident prevention, occupational safety and health and the use and maintenance of the relevant equipment. The Committee ventures to point out that *Article 7* of the Convention requires that all work premises and the equipment of such premises are to be properly maintained and kept clean. Since the above cited provisions do not apply this provision of the Convention, it requests the Government to indicate the measures taken or contemplated prescribing that all premises used by workers, and the equipment of such premises, must be properly maintained and kept clean.

6. *Articles 8, 9, 10, 11, 12, 13, 14, 15, 16, and 18*. The Committee notes the Government's indication that article 79 of the Labour Code requiring the minister responsible to issue, upon consultation with the competent official bodies, instructions prescribing the measures to be taken in all or any establishments to protect workers and

establishments against work hazards and occupational diseases (subparagraph (a)); the equipment and material to be provided for the protection of workers from health hazards and occupational diseases and the prevention thereof (subparagraph (b)); and the conditions and standards to be met in industrial establishments to provide an environment free of any pollution, excessive noise and vibration or any potential health hazards for workers, in accordance with adopted international standards (subparagraph (c)). In this respect, the Committee notes the Government's indication that the instructions to implement article 79 of the Labour Code are not issued yet, but that the Government will not fail to supply a copy of the instructions as soon as they are published. The Committee trusts that the implementing ministerial instructions will be issued in the near future to give effect to the provisions of the following Articles of the Convention, which have been subject to comments for a number of years: *Article 8 (sufficient ventilation of work premises); Article 9 (suitable lighting); Article 10 (comfortable and steady temperature at the workplace); Article 11 (layout and arrangement of workstations in a way that there is no harmful effect on worker's health); Article 12 (supply of wholesome drinking water); Article 13 (sufficient and suitable washing facilities and sanitary conveniences); Article 14 (sufficient and suitable seats); Article 15 (suitable facilities for changing, leaving and drying clothes); Article 16 (appropriate standards of hygiene for underground and windowless premises), and Article 18 (reduction of noise and vibration at the workplace)*. The Committee hopes that the instructions will also ensure, in accordance with *Article 4(b)* of the Convention, that such effect as may be possible and desirable under national conditions will be given to the provisions of the Hygiene (Commerce and Offices) Recommendation, 1964 (No. 120).

The Committee requests the Government to provide information on any progress achieved in this respect, and to supply a copy of the relevant instructions as soon as they are promulgated.

Madagascar (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 notes the information provided by the Government in its report.

1. *Article 14 of the Convention.* The Committee notes section 16 of Order No. 889 of 20 May 1960, and the information provided by the Government in this respect. In accordance with section 16 of the above Order, suitable seats are only supplied to women workers. The Committee recalls once again that *Article 14* of the Convention provides that seats shall be supplied for all workers, without distinction on grounds of sex. The Committee notes the Government's statement indicating that it "will examine the possibility of extending this clause to all workers, without distinction on grounds of sex". The Committee trusts that the Government will take the necessary measures as soon as possible to extend the scope of section 16 of Order No. 889, so that it also covers male workers.

2. *Article 18 of the Convention.* The Committee notes the Government's indication in its report that no regulations have been adopted to give effect to this Article of the Convention, but that the Government will take this provision of the Convention into account when bringing the legislation up to date. In this respect, the Committee recalls that it has been drawing the Government's attention for over 29 years to the fact that there are no specific laws or regulations giving effect to *Article 18* of the Convention. The Committee

once again hopes that the Government will take the necessary measures in the near future to give effect to this Article of the Convention, which provides that noise and vibrations likely to have harmful effects on workers shall be reduced as far as possible.

3. The Committee notes with interest that the documentation centre of the National School of Magistrates and Clerks (ENMG), established in 1997, is preparing a compilation of case law on the decisions of the judicial tribunals on matters related to the application of the Convention. The Committee therefore requests the Government to provide information on any progress achieved in the preparation of the above compilation and to provide a copy as soon as it is published.

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

Paraguay (ratification: 1967)

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

1. The Committee notes with satisfaction the provision of section 227, paragraphs 1 and 5, of Decree No. 14390 of 1992, determining minimum and maximum standards of temperature and humidity with regard to the climate and nature of work, applying *Article 10 of the Convention*. It also notes with satisfaction that the provisions of sections 231 and 232 of the abovementioned Decree concerning the reduction of noise and vibrations give full effect to *Article 18* of the Convention.

2. The Committee further notes with satisfaction the adoption of the new Penal Code whose section 205 stipulates that the exposure of persons in dangerous workplaces is considered as a punishable act.

3. *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.

Senegal (ratification: 1966)

The Committee notes the information supplied by the Government in its latest reports. It notes in particular the information concerning the draft Decree on general hygiene and safety measures, which, according to the Government, give effect to *Articles 14 and 18 of the Convention* concerning suitable seats for workers and measures to be taken to reduce noise and vibration at the workplace, on which the Committee has been commenting for more than 20 years. It also notes that, according to the Government, it has not been possible to finalize the draft Decree owing to last-minute technical problems, although in its report for 1992 the Government indicated that the draft had already been submitted to the President of the Republic for signing. The Committee notes in this connection that, according to the Government, the Ministry of Labour office in charge of occupational medicine, hygiene and safety has assumed new powers in the area of human resources in order to deal with these technical problems, which still exist. The Committee therefore expresses the hope that in the near future the

problems preventing the adoption of the draft Decree will be overcome so that the legislative process may be completed and full effect given to the Convention.

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In addition, requests regarding certain points are being addressed directly to the following States: *Algeria, Azerbaijan, Denmark, Djibouti, Finland, Ghana, Iraq, Italy, Poland, Russian Federation, Sweden, Switzerland, Tunisia, Ukraine, Venezuela, Viet Nam.*

Convention No. 121: Employment Injury Benefits, 1964
[Schedule I amended in 1980]

Bolivia (ratification: 1977)

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.

[The Government is asked to reply in detail to the present comments in 2003.]

Guinea (ratification: 1967)

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

1. *Article 8 of the Convention.* The Committee notes with interest the Government's statement that in 1992 the National Social Security Fund together with the National Occupational Medicine Service revised the list of occupational diseases, increasing it from 13 to 29 items, thus aligning it with the list appended to Schedule 1 of the Convention, as amended in 1980. The Committee asks the Government to provide a copy of the list, indicating whether it is now in force.

2. *Article 15(1).* In answer to the Committee's previous comments, the Government indicates that, in accordance with the provisions of section 111 of the Social Security Code, periodical payments for employment injury are converted into a lump sum when the permanent incapacity is at most equal to 10 per cent. The Committee recalls, however, that its comments concerned the possibility of converting the benefit granted in the event of employment injury in the circumstances provided for in sections 114 (conversion after expiry of a five-year period) and 115 of the Social Security Code (conversion into a lump sum of part of the periodical payment at the request of the person concerned). The Committee again expresses the hope that the necessary measures will be taken to ensure that in all these cases periodical payments may be converted into a lump sum only in exceptional cases and with the consent of the victim where the competent authority has reason to believe that the lump sum will be utilized in a manner which is particularly advantageous for the injured person.

3. *Articles 19 and 20.* The Committee notes the Government's reply. It notes however that the Government's report does not contain the statistical information requested which the Committee needs so that it can determine whether the amount of benefits paid in the event of temporary incapacity, permanent incapacity and death of the breadwinner, reaches the level prescribed by the Convention. In these circumstances the Committee once again asks the Government to indicate whether it avails itself of *Article 19* or of *Article 20* of the Convention in establishing that the percentages required by Schedule 2 of this instrument have been reached, and to provide the statistical information required by the report form adopted by the Governing Body under *Article 19* or *20*, depending on the Government's choice.

4. *Article 21.* In answer to the Committee's comments, the Government states that it has increased the benefits so as to ensure better coverage for victims of occupational accidents; furthermore, studies are under way with a view to a further increase in order to take fuller account of the economic context. The Committee notes this information. In view of the importance it attaches to this provision of the Convention which establishes that the rates of employment injury benefits must be reviewed to take account of trends in the cost of living and the general level of earnings, the Committee hopes that the Government's next report will contain information on the amount of the increases already established and that it will not fail to provide all the statistics required by the report form under this Article of the Convention.

5. *Article 22(2).* The Committee once again expresses the hope that the Government will be able to take the necessary measures to ensure that, in all cases where employment injury benefits are suspended and particularly in the cases provided for in sections 121 and 129 of the Social Security Code, part of these benefits will be paid to the dependants of the person concerned in accordance with the provisions of this Article of the Convention.

6. The Committee notes the Government's statement that the provisions of the Conditions of Service of the Public Service give public servants and their families full

satisfaction as regards social coverage. It once again asks the Government to provide the text of the provisions of the above Conditions of Service dealing with compensation for employment injury with its next report.

7. Lastly, the Committee asks the Government in its future reports to provide information on any progress made in the revision of the Social Security Code, to which the Government referred previously.

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

Libyan Arab Jamahiriya (ratification: 1975)

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 Government is asked to report in detail in 2003.]

Senegal (ratification: 1966)

1. *Article 21 of the Convention (adjustment of long-term benefits).* In reply to the Committee's previous comments concerning the adjustment of periodical payments, the Government attaches to its report a table on the wage trends serving as a basis for the calculation of periodical payments for employment injury from 1973 to 2001, which indicates the threshold and ceiling wage levels set by inter-ministerial order each year. The Committee also notes from the Government's report on Convention No. 102 that, since 1999, following a general increase in wages, periodical payments have been increased by 6 per cent. In order to be able to assess this adjustment fully, the Committee hopes that the Government's next report will contain, in addition to the updated table in question, statistical data for the whole period since 1999 on trends in the cost of living index and the general increase in wages in the country, as well as trends in benefit levels (average benefit per beneficiary and benefit for a standard beneficiary), as requested under *Article 21* of the Convention in the report form adopted by the Governing Body.

2. With reference to its previous comments, the Committee regrets to note that, despite the promise made by the Government in its report in 1999, neither the previous report nor the present report contain statistical data on the scope and level of benefits, as requested in the report form under *Articles 4 and 19 or 20* of the Convention. The Committee trusts that the Government will make every effort to provide this information in its next report.

[The Government is asked to report in detail in 2004.]

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Bolivia, Libyan Arab Jamahiriya, Yugoslavia.*

Convention No. 122: Employment Policy, 1964

Bolivia (ratification: 1977)

1. The Committee notes the Government's report, received in June 2002, in which it refers briefly to the process known as National Dialogue 2000, which led to the preparation of a Poverty Reduction Strategy Paper. This dialogue has also led to consensus on health, education, land ownership and support for the productive infrastructure. As a consequence, in June 2001, the international financial institutions made arrangements allowing Bolivia to benefit from the Enhanced Initiative for Heavily Indebted Poor Countries (HIPC), under which Bolivia benefited from a considerable lightening of the debt service (in the order of 2 billion US dollars until 2020). Indeed, some 58.6 per cent of the population of Bolivia is currently living below the poverty threshold. The Committee asks the Government to provide information in its next report on any measures taken to promote the objectives of full and productive employment set out in the Convention in the implementation of the Bolivian Poverty Reduction Strategy. In this respect, the Committee emphasizes the importance of having available statistical information on the size and distribution of the labour force, and on the nature and extent of unemployment, as an essential basic stage in pursuing an active employment policy, within the meaning of *Articles 1 and 2 of the Convention*.

2. The Government also refers in its report to the National Emergency Employment Plan (PLANE), launched in November 2001, the purpose of which is to create 73,000 temporary jobs over a period of two years. The Committee trusts that in its next report the Government will be in a position to describe the results achieved by PLANE in the creation of productive employment. Please also continue providing information on the results of the other projects undertaken to create lasting employment through micro-enterprises in the rural sector.

3. The Committee once again requests the Government to refer in its next report to matters relating to the coordination of education and vocational training policies with the employment policy, which is essential to ensure that all workers have opportunities to acquire the necessary training to find a suitable job and to make use of their training and skills in such employment.

4. *Article 3.* In reply to its previous comments, the Government states in its report that consultations were held only within the framework of National Dialogue 2000. The Committee recalls that the consultations required by the Convention must cover the measures to be adopted in relation to the employment policy with a view to taking fully into account the experience and views of the persons consulted and also to securing their full cooperation in formulating and enlisting support for such policies. Consultations with representatives of the persons affected must include, in particular, representatives of employers and workers, as well as representatives of other sectors of the active population, such as those who work in the rural sector and the informal sector. The Committee trusts that the Government will include in its next report the information

requested in the report form under *Article 3* of the Convention on the consultations required in relation to the employment policy.

5. *Part V of the report form.* The Committee notes with interest the proposals for employment and social protection policies and programmes made by the ILO Multidisciplinary Advisory Team and would be grateful if the Government would indicate in its next report the action taken as a result of the technical assistance provided by the Office with a view to promoting the application of the Convention.

Finland (ratification: 1968)

The Committee notes the Government's detailed and comprehensive report for 1 June 2000 to 31 May 2002, and the appended documents and information supplied in response to the 2001 observation. The Committee notes in particular the detailed information provided concerning overall and sectoral development policies.

1. *Articles 1 and 2 of the Convention.* The Government states that unemployment decreased from 9.8 per cent in 2000 to 9.1 per cent in 2001. The rate of employment rose to 67.7 per cent in 2001, but was expected to decrease slightly in 2002. However, structural unemployment remains high, as indicated by labour shortages; and significant regional differences persist. The number of long-term and recurring unemployed remains high, particularly among youth and older workers, but the inflow is decreasing. The employment rate for women rose to 65.4 per cent in 2001, while unemployment fell to 9.7 per cent. However fixed-term contracts remain prevalent among women workers and the labour market remains largely segregated by gender.

2. The Government states that the Ministry of Labour established a working group in December 2000 to prepare for the "second wave" of the basic reform of public labour market policy. The working group published a report in January 2001, which set out basic targets. The Action Plan for 2001 included the goals of raising the employment rate, improving the functioning of the labour market, improving the strategy for strengthening workers' skills, and addressing the changing age structure of the workforce. The Action Plan for 2002 added the goal of improving the system of lifelong learning, and the Government aims to reach an employment rate of 70 per cent in 2003. The Committee would appreciate receiving further information in future reports on the extent to which these goals were attained.

3. *Article 3.* The Committee notes the information provided concerning tripartite consultations on employment policies, and that the Confederation of Unions for Academic Professionals in Finland (AKAVA) considers that tripartism is well respected in Finland.

Lastly, the Committee again notes the following comments supplied by the social partners:

- The Central Organization of Finnish Trade Unions (SAK) considers that active labour market policy in Finland is insufficient, in light of the fact that expenditures have been reduced for training and subsidized employment. Furthermore, SAK believes that the support provided to the long-term unemployed should be better tailored to their needs.
- The Finnish Confederation of Salaried Employees (STTK) states that the Government should focus on new measures for labour market training,

apprenticeships and other subsidized employment. It opposes structural changes that may violate collective agreements on wages and salaries. It is concerned that restricted use of subsidized employment may exclude jobseekers with reduced employment potential from the labour market. It is also concerned that the use of electronic placement services may prevent some jobseekers from using the service. Lastly, STTK considers that the training system should be monitored better for quality.

- AKAVA stresses that the continued improvement of employee skills is the key to overcoming recruitment problems. In its view, the financing of adult vocational education is becoming an important issue in light of the growing needs of highly trained workers; training should be made more flexible for working adults; and new ways should be found for employers to contribute more to the cost of training. In reply, the Government states that the Ministry of Education has established a committee to study funding proposals for training.
- For its part, the Commission for Local Authority Employers (KT) thinks that the main problem in the Finnish labour market is high unemployment of youth and older workers, and high unemployment in certain regions. It points out that the ageing workforce means that there will be labour shortages in the long term.
- SAK and STTK also expressed concern about the labour market with regard to immigrants, in particular the level of skills demanded.

The Committee trusts that in its next detailed report, the Government will also include information on the follow-up given to these comments.

Guinea (ratification: 1966)

The Committee notes that the Government's report has not been received. It must therefore repeat its 2001 observation which read as follows:

In reply to the comments that the Committee has been making for several years, the Government states in a brief report received in August 2000 that, once the process of implementing the national employment policy has been completed, it will report on the declaration and pursuit of an employment promotion policy. It also indicates that, following an ILO mission, a number of areas have been identified for concentration of policies. The ILO Office and the Multidisciplinary Advisory Team in Dakar indicate that a programme entitled "Component of the formulation of the national employment policy" (CFPN), a steering committee and a National Employment Promotion Agency (AGUIPE) have been established. Despite the difficulties of implementation, a framework document for employment policy has also been drawn up. In addition, the ILO has provided the Government with assistance for the establishment of an investment unit for labour-intensive projects (HIMO unit). The Labour and Employment Statistical Information Network (RISET) has undertaken a diagnostic study of the system of information on employment and training. Moreover, the Committee notes that in December 2000, the World Bank and the International Monetary Fund decided that Guinea could apply for a debt reduction plan under the Heavily Indebted Poor Countries (HIPC) Initiative. The resulting resources will have to be allocated to priority areas defined by the Government in a detailed strategic framework to combat poverty, which has to be established after broad consultation with civil society. The Committee therefore requests that the Government describe in its next report the action taken as a result of the assistance received from the ILO in relation to employment policy and to indicate any particular difficulties which have been encountered in achieving the established employment objectives, in the framework of a coordinated

social policy and in consultation with the representatives of the persons affected, in accordance with *Articles 1, 2 and 3 of the Convention*. Please also provide copies of reports, studies or surveys, as well as detailed and disaggregated statistics such as to facilitate the evaluation of the situation, level and trends of employment, unemployment and underemployment. The Committee would appreciate receiving any other information on the extent to which the employment objectives established by the programmes implemented with the cooperation of the ILO and within the detailed strategic framework to combat poverty have been achieved.

Honduras (ratification: 1980)

1. The Committee notes a new detailed report from the Government, received in August 2002, which contains full particulars on the matters raised in the report form. The Committee notes with interest the establishment, by virtue of Executive Decree No. PCM-016-2001 of 31 October 2001, of the Economic and Social Council, the principal objective of which is to serve as a forum for social dialogue and consultation for the analysis and approval of proposals related to the dimension, continuity and form of wage and employment policies with a view to promoting and increasing the competitiveness of enterprises at the global level, as well as training and improving the quality of working life of men and women. The Committee also notes with interest that the Office's Multidisciplinary Advisory Team has responded to a request from the Government for the inclusion of the labour dimension into the Poverty Reduction Strategy (PRS). Following tripartite consultations, the ILO submitted recommendations to the Economic and Social Council to provide guidance for the measures adopted within the framework of the PRS. These recommendations included the following: undertaking a permanent analysis of the impact on employment of the various policies and programmes adopted in the economic and social fields; promoting public labour-intensive investment programmes; decentralizing resources to support small and micro-enterprises; ensuring that basic education is free of charge in practice; making progress towards a more relevant and effective vocational training policy adapted to the needs of the market and promoting equity for the most marginalized labour force, which is in the informal sector and the rural economy; and pursuing a policy of the modernization, integration and decentralization of employment services. The Committee hopes that in its next report the Government will refer to the action taken as a result of these recommendations, which will make a significant contribution to the full application of *Articles 1, 2 and 3 of the Convention*.

2. The Committee notes that the open unemployment rate in San Pedro Sula (the economic centre of Honduras) rose to 7.4 per cent in 2001 (compared with 6.9 per cent in 1999), which is the highest level of unemployment in the past 14 years. The Committee notes the various measures which have been taken to promote employment including, for example, the establishment of agricultural export zones (Decree No. 233-2001), as well as the measures intended to promote sustainable rural and local development. The Committee would be grateful if the Government would continue to provide information on the jobs created as a result of the various measures referred to in its report. In particular, please indicate the manner in which the action taken by the National Vocational Training Institute, the National Vocational Technical Education Centre and the measures adopted under the Framework Act for integrated youth

development have given rise to an improvement in the coordination of education and training policies with prospective employment opportunities.

3. The Committee notes that in 2001 a total of 36 enterprises related to export processing zones closed, resulting in the loss of 25,591 jobs. In view of the high number of women workers who have been affected by the recession in the export processing sector, the Committee would be grateful if the Government would provide information in its next report on employment trends in the sector and the measures that have been adopted for the reintegration in the labour market of the men and women workers affected.

Iraq (ratification: 1970)

The Committee notes that the Government, in its report received in June 2002, repeats the brief statement already sent in its previous communication. The Committee again asks the Government to provide information which will enable it to ascertain to what extent an active policy of promoting full, productive and freely chosen employment is formulated and applied in the framework of a coordinated economic and social policy and in consultation with all the persons affected, in accordance with *Articles 1, 2 and 3 of the Convention*. The Committee expresses the hope that the Government will not fail to submit a detailed report that responds to all of the points raised in the report form adopted by the Governing Body.

Italy (ratification: 1971)

The Committee notes the information provided by the Government in July 2001 in reply to its observation of 2000, and the detailed report received in November 2002.

1. *Articles 1 and 2 of the Convention*. The Government states in its report that between January 2000 and January 2001 there was an increase in GDP of around 3 per cent, resulting in the creation of 656,000 new jobs. The positive results include a reduction in the unemployment rate which, for the first time in the past decade, fell below 10 per cent. The reforms carried out have created a conducive environment for the occupational integration of women, young persons and long-term unemployed. The report also included detailed information on the measures adopted to promote the employment of elderly workers and persons with disabilities. While employment increased in all regions, employment in the Mezzogiorno rose at a slower rate. The measures adopted in practice to combat youth unemployment in the Mezzogiorno include apprenticeship training, contracts combining work and training, as well as vocational guidance and training. These programmes are designed to bring young persons into direct contact with the world of work. Approximately 20,000 apprentices were trained between 1998 and 1999, with the Government's objective consisting of the training of around 70,000 young persons in 2000. The unemployment rate for young persons fell slightly from 33.8 per cent in 1998 to 31.1 per cent in 2000. The Committee also notes that despite the rise in employment that occurred as a consequence of the labour market reforms introduced since the mid-1990s, employment and participation rates are low, particularly in the South, and among young people, women and people above the age of 55. The Committee would be grateful if the Government would include in its next report information on the measures taken to avoid the risk of developing a dual labour market, particularly in view of the increase in atypical forms of employment,

and to implement structural reforms particularly to improve the coordination of education and training policies with prospective employment opportunities.

2. The Government also refers in its report to various legislative initiatives (for the implementation of European Community Directives, provisions respecting illegal work and budgetary laws) relating to labour policy. The Committee would be grateful if the Government would continue providing information in its next report on the manner in which the labour market measures have contributed to the achievement of the objectives of full and productive employment, as set out in the Convention.

3. The Government states that the activity rate of women is the highest achieved up to the present, but that it proposes to promote further the participation of women in the labour market by means of training services and special placement services, as well as through measures to improve the balance between work and life. The percentage of unemployed women fell from 16.1 per cent in 1998 to 14.5 per cent in 2000. Nevertheless, the possibilities for women to obtain stable employment with a permanent contract continued to be lower than those of men. The Committee would be grateful to continue receiving information on the measures adopted to increase the employment of women and the results achieved.

4. The Committee notes that the Government intends to reform the public employment service with European Union funds to facilitate the achievement of its commitments under the European Employment Strategy. The Committee would be grateful if the Government would also include information in its next report on the progress achieved in reforming the public employment service.

5. *Article 3.* The Committee notes the observations made by the General Confederation of Industry (CONFINDUSTRIA), which were attached to the Government's report. CONFINDUSTRIA refers to the information available on the national employment plans issued annually by the Governments of Member States of the European Communities. CONFINDUSTRIA emphasizes the systematic and decisive role played by the social partners in determining labour policies and that this role has to be fulfilled in compliance with the rules of social dialogue. In this respect, the Committee trusts that the Government will include updated information in its next report on the consultations that have been held with the representatives of employers' and workers' organizations with a view to taking fully into account their experience and views and securing their full cooperation in formulating and enlisting support for the employment policy.

Jordan (ratification: 1966)

The Committee notes the Government's reports, received in August 2000 and September 2002. It notes with particular interest the document on Poverty Alleviation for a Stronger Jordan: A Comprehensive National Strategy, published in May 2002 and the detailed 2001 statistical survey on employment and unemployment appended to the Government's last report.

1. *Articles 1 and 2 of the Convention.* The Committee notes that one approach that has been proposed in the poverty alleviation strategy is the development of work opportunities for the poor by working within communities to promote local jobs that are effective in improving individual situations and contributing to community development. The Committee also notes with interest that the document expressly cites the ILO

Declaration of Philadelphia, and in particular the statement that “poverty anywhere constitutes a danger to prosperity everywhere”. A reduction in the Government’s role in the facilitation of job creation is listed as a goal of the National Strategy, which envisages the creation of a public/private partnership among leaders of private industry and responsible ministries for the purpose of examining options and incentives for job creation. The Committee would appreciate receiving further information on the follow-up given to the recommendations made in the poverty alleviation strategy.

2. The Committee notes that the unemployment rate was 14.7 per cent in 2001 (women workers being the most affected). Only 9.3 per cent of women were employed (as compared to 56.6 per cent of male workers). The Committee requests the Government to continue to include in its next report data concerning the size and distribution of the labour force, and the nature and extent of unemployment and underemployment, both in the aggregate and as they affect particular categories of workers, such as women and young persons. Please also indicate how the data collected have been used as a basis for deciding on employment policy measures within the framework of a coordinated economic and social policy.

3. The Committee notes that employment is to be created in the Aqaba free zone, the telecommunications and tourist industries and the qualified industrial zones, and would appreciate receiving details of progress in this area and the results obtained in terms of job creation.

4. The Committee notes the promulgation of Act No. 58 of 2001 on the Council on technical and vocational education and training and the measures envisaged by the Ministry of Education for the period 1999-2003 referred to in the report received in August 2000. The Committee encourages the Government to include in its next report information on the outcome of the measures taken to coordinate education and training with prospective employment opportunities.

5. The Committee notes the promulgation of Act No. 21 of 1999 regulating employment offices and requests the Government to provide information in its next report on the contribution made by the employment offices to employment creation and human resources development.

6. *Article 3.* The Government mentioned in the report received in August 2000 that committees composed of employers and workers are constituted when the authorities implement the social and economic policies. A social and economic council was created by the King in order to update the economic policy. The Committee requests the Government to supply details in its next report on the manner in which representatives of the persons affected are consulted concerning employment policies, with reference both to consultations with representatives of employers’ and workers’ organizations and to consultations with representatives of the rural and informal sectors. Please also indicate any consultations with employers’ and workers’ organizations held in order to implement the employment measures envisaged under the poverty alleviation strategy.

Kyrgyzstan (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 1997 direct request, which read as follows:

1. The Committee notes that section 15 of the Law on Employment of the Population provides for the compilation of statistics on the labour market and employment problems. Please describe the measures taken or envisaged in application of this provision in order to collect and analyse data on the characteristics and trends in job offers and demands which are necessary to implement an active employment policy. Please continue to provide information on the activities of employment placement services.

2. The Committee notes that, among the principles which should guide the Government's action, the Law on Employment of the Population provides that the employment policy must be coordinated with other economic and social policies. Please indicate how, in application of this provision, the measures to be adopted with a view to promoting full, productive and freely chosen employment are determined and reviewed regularly "in the framework of a coordinated economic and social policy", in accordance with *Articles 1 and 2 of the Convention*. In particular, please indicate the manner in which the measures taken with the support of the International Monetary Fund, the World Bank and other development banks for carrying out the structural reforms necessary for the transition to a market economy contribute to the promotion of employment.

3. The Committee notes with interest that particular attention is paid by the employment services to the categories of workers such as women, young persons, older workers and handicapped persons who are most affected by the transition process towards a market economy. Please continue to supply information on the specific training and placement measures for persons who have particular difficulty in finding and retaining employment. Please also describe the training and retraining measures for workers affected by structural reforms. Please supply any assessment of the contribution of public works programmes to lasting integration of their beneficiaries into employment. Please supply particulars on the nature and scope of measures for promoting small and medium-sized enterprises, as well as on the development of industry in rural areas in order to provide jobs for young persons.

4. *Article 3*. The Committee notes that the Government indicates that to date there has been no real cooperation between trade unions, employers and government bodies. It notes, however, that the Government refers to the agreement concluded each year between the Government and the Council of the Trade Union Federation on economic and social issues. The Committee recalls, furthermore, that whereas section 21 of the Law on the Employment of the Population gives trade unions the right to participate in formulating employment policy and legislation in this sphere, a similar right is not explicitly recognized for employers' organizations. In this connection, the Committee recalls that under this provision of the Convention the representatives of employers and workers must be consulted on an equal footing concerning employment policies "with a view to taking fully into account their experience and views and securing their full cooperation in formulating and enlisting support for such policies". In addition, in view of the proportion of the active population, it would seem appropriate to include workers in the rural sector and the informal sector also in these consultations. The Committee would be grateful if the Government develop these relationships and would describe in its next report the manner in which the consultation of all the "persons affected" is assured in practice, as required by this important provision of the Convention.

Libyan Arab Jamahiriya (ratification: 1971)

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

Mongolia (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 1996 direct request, which read as follows:

1. The Committee recalls that, under *Article 1 of the Convention*, the employment policy shall aim at ensuring that there is work for all who are available for and seeking work. In this respect, it would be grateful if the Government would describe the measures that have been taken or are envisaged to facilitate access to employment services by all persons who are seeking employment. Please continue to supply information on the number of persons who are placed in employment by the employment services.
2. The Committee notes that the Government's Plan of Action has the objective of progressively reducing the unemployment rate to under 5.8 per cent by the year 2000 and between 3.5 and 4 per cent in 2010. The National Unemployment Reduction Programme adopted for this purpose provides for the creation of 120,000 job opportunities and for the training or retraining of 160,000 people. The Committee notes the statement that the employment policy formulated in the framework of this programme will have to be associated with structural, investment and social and economic policy. The Committee requests the Government to describe in its next report, as requested in the report form adopted by the Governing Body, the manner in which the measures adopted under the general economic policy contribute to combating unemployment. Please, in particular, describe the impact that privatizations have had or are expected to have on employment. Please also indicate the measures adopted to coordinate education and training policies with prospective employment opportunities.
3. The Committee notes the information on the jobs that have been created through the provision of preferential loans by the Employment Fund, and on the organization of public works. It notes with interest that technical assistance has been received from the competent ILO multidisciplinary advisory team in this respect. It requests the Government to continue supplying information on the implementation of the various employment creation and training measures, and particularly on measures that are specially intended for categories of the population that are identified as being particularly vulnerable, such as women with family responsibilities, young persons and persons with disabilities (see also *Part V of the report form*).
4. The Committee notes the statement that economic and social policies, including employment and industrial relations, are the subject of tripartite social dialogue. With reference to its previous requests, it asks the Government to describe the manner in which representatives of the persons affected are consulted in practice concerning employment policies, as required by *Article 3* of the Convention. Please describe the procedures and institutions established for this purpose.

Netherlands (ratification: 1967)

The Committee notes the information contained in the Government's report for the period 1 June 2000 to 1 June 2002 in reply to its previous direct request, and the appended reports.

1. *Article 1 of the Convention.* The Government states that it is continuing its efforts to reduce long-term unemployment and to increase the participation rates of targeted groups such as older workers and women. In line with these objectives, employment increased by 2.4 per cent in 2000, and was expected to rise by 1.75 per cent in 2001. Employment rates for men rose from 76.3 per cent in 1999 to 77.1 per cent in 2001; for women, they rose from 51.9 per cent to 53.4 per cent. The activity rate for women also rose, from 54.8 per cent in 1999 to 56.1 per cent in 2001. General unemployment decreased, from 4.1 per cent in 1999 to 3.4 per cent in 2001, with a particularly large decrease in unemployment for ethnic minorities from approximately 16 per cent in 1998 to about 10 per cent in 2000. Underemployment also dropped, from 200,000 in 1998 to 105,000 in 2000. Job losses were concentrated in non-construction manufacturing, transport and communications, while job growth was mainly in health care, social services and non-commercial services.

2. The Committee notes with interest that in response to the "decreasing competitive position in industry", the Minister of Labour and State Secretaries have called for "investment-oriented collective labour agreements", which establish a relationship between responsible pay increases, qualitative investments and flexible pay structures (Summary of the Social Memorandum, 2002, p. 3). It would appreciate being kept informed of the outcome of this effort.

3. The Committee notes that the participation rate of older workers remains low. However, the Government has drafted a Bill on equal treatment on grounds of age in employment, occupation and vocational training, and has established an Older Worker Taskforce to change perceptions of older workers. It would appreciate receiving further information on the outcome of these and other efforts to increase the participation rates of older workers.

4. *Article 2.* The Committee notes the detailed and informative evaluations of existing policies and programmes, in particular the "Dutch Experiences with the European Employment Strategy". Please continue to supply such information, in particular, any follow-up action taken in light of the findings of these and other evaluations.

New Zealand (ratification: 1965)

The Committee notes the information contained in the Government's detailed and well-organized report for the period 1 June 2000 to 31 May 2002.

1. *Article 1 of the Convention.* The Government states that in the year to September 2001 employment has been at an all time high, and all ethnic groups have experienced employment growth. Labour market participation also has gone up, in particular for older workers. GDP grew by 2.2 per cent for the year to September 2001. Solid economic growth has also led to robust growth in employment: unemployment fell from 6.4 per cent in March 2000 quarter to 5.4 per cent in March 2001 quarter and 5.3 per cent in March 2002 quarter.

2. Concerning training, including training of youth, the Committee notes the Government's intention to focus on foundation skills and sustainable employment. This will include focusing eligibility for training on lack of foundation skills and difficulty in finding and sustaining employment. The Committee recalls the importance of ensuring broad access to training and lifelong learning and would appreciate receiving further information on the results of measures taken. Please also indicate the measures taken or envisaged to ensure access to training for those who do not lack foundation skills.

3. The Committee notes with interest that the welfare system has been replaced by a programme entitled "From Social Welfare to Social Development". This programme aims to increase skill levels and move more people into paid work through local partnerships and individualized assistance. It also notes that the Government has committed to moving more people with disabilities into the open labour market, and has developed some programmes aimed at reaching this objective. The Committee would appreciate receiving more information on the outcome of these programmes.

4. *Articles 2 and 3.* The Committee notes with interest the information contained in the attached annexes, which indicate that policies and programmes are evaluated in substantial detail, using a variety of criteria and with wide consultation. It also notes the development of the Employment Evaluation Strategy, which aims to improve the utility of administrative databases for evaluation, develop standard definitions and measures, measure the impact of employment interventions, and evaluate cost-effectiveness. It looks forward to receiving in future reports policy and programme evaluations based on this systematic approach.

5. *Article 3.* The Committee notes the comments sent by Business New Zealand. Business New Zealand emphasizes the importance of sustainable economic growth for employment promotion. Present growth in employment is due, in its opinion, to strong economic growth resulting from external factors. The current growth in inflation casts doubt on the future prospects for economic growth. Business New Zealand is also concerned that potential liability for stress or fatigue-related action against an employer may result in increased discrimination against people with disabilities. Lastly, it notes that the high compliance costs imposed on employers discourages self-employed persons from expanding and hiring others, and considers that the current Government tends to discount the views of the productive sector. The Committee trusts that the next Government report will also include information on the issues raised by Business New Zealand.

Peru (ratification: 1967)

1. With reference to its previous comments, the Committee notes the detailed information sent by the Government in September 2002. In a persistently unfavourable context for job creation (with registered unemployment increasing from 8.5 to 9.3 per cent in 2001 and underemployment from 45.5 to 46.4 per cent in Metropolitan Lima), the Committee notes from the comprehensive information provided the various programmes being implemented by the Government including an evaluation of their impact. According to this information, the Action for Youth Programme has enabled more than 2,000 workers to be placed in jobs in the space of two years. In 2002, the Self-employment and Micro-enterprises Programme has generated 7,084 jobs. The Women's Employment Consolidation Programme (PROFECE) which has brought together a total

of 13,664 members of “labour supply groups” (GOOLS) and enterprises in search of employees with a view to assisting women with few resources to find jobs. These activities have allowed more than 28,000 temporary jobs to be created and has enabled women workers to be trained in technical courses on production and management. The urban work programme *A trabajar urbano* is intended to generate temporary jobs for the unemployed in urban areas, particularly people living in poverty or extreme poverty (more than 70,000 four-month temporary jobs are expected in 2002). A rural employment programme *A trabajar rural* has also been established with financing from the Compensation and Social Development Fund. The Committee notes with interest the information on the activities at municipal level to develop local economies. The Committee notes that the Government has received technical assistance from the Office in devising and implementing programmes for the creation of productive employment. The Committee recalls that the Convention requires that the Government declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment. The policy must be decided on and kept under review in coordination with a social policy (*Articles 1 and 2 of the Convention*). Accordingly, the Committee asks the Government to indicate in its next report how account has been taken of the impact on employment of the measures taken to promote economic development (investment policy, budgetary and monetary policy, trade policy and prices, incomes and wages policy). The Committee would also be grateful to receive an evaluation of the results achieved by the various programmes, as this would assist in determining how to overcome difficulties in attaining the objectives of full and productive employment established in the Convention.

2. Since 1998, the Committee has been asking the Government to send information on the impact on employment of the privatization and restructuring of the telecommunications sector. The Committee notes in this connection the new observations received in July 2002 from the World Federation of Trade Unions (WFTU), which were sent to the Government in August 2002. The WFTU cites dismissals by a telephone company which have allegedly made the unemployment and social problems in Peru more acute. The Committee notes the information sent by the Government in its report suggesting that the privatization of the telecommunications sector has allowed employment to rise and that it is predicted that a considerable number of jobs will be created in the medium term. The Committee points out that where privatization that might lead to dismissals is undertaken, account should be taken of the instruments on termination of employment adopted by the Conference in 1982 which aim to achieve a balance between protection of the worker in the event of redundancy and the necessary flexibility of the labour market (see General Survey on protection against unjustified dismissal, 1995). Regarding Convention No. 122, the Committee has observed that a wider dialogue in civil society is one of the linchpins of sustainable economic growth in an era of globalization of markets. An essential element in successfully opening economies is the minimization of the risks that some economic policy measures may entail for certain categories of workers (see paragraphs 52 and 53, General Report, 2000). Accordingly, the Committee again draws attention to the importance of the consultations required by *Article 3* of the Convention which requires consultations of the representatives of all persons affected by employment policy “with a view to taking fully into account their experience and views and securing their full cooperation in formulating and enlisting support for such policies”. The Committee trusts that the

consultations on employment policy will lead to positive outcomes for the workers affected by the changes in the economy and that in its next report the Government will provide up-to-date information on the employment situation in the telecommunications sector.

3. The Committee recalls that in its previous comments it already pointed out that, with most of the economically active population being in the informal and rural sectors, the consultations on employment policy ought necessarily to include representatives from those sectors. The Committee requests that the Government provide specific information in its next report on the consultations held in connection with employment policy with representatives of both the formal and the informal sectors of the labour market.

Portugal (ratification: 1981)

1. The Committee notes the information contained in the Government's reports for the periods June 2000 to May 2002, as well as the attached documents and statistics. It also notes the comments sent by the General Confederation of Portuguese Workers (CGTP-IN) and the General Workers' Union (UGT).

2. *Articles 1 and 2 of the Convention.* The Committee notes the detailed disaggregated statistics on trends in the labour market. The active population grew at an annual rate of 1.4 per cent to the first quarter of 2002, and employment increased by 1.1 per cent. The activity rate for the same period increased slightly to 51.8 per cent, while the employment rate decreased slightly to 68.6 per cent. Unemployment rose slightly to 4.4 per cent overall, with 3.7 per cent for men and 5.3 per cent for women. Long-term unemployment fell by 5.7 per cent, with an 8.8 per cent decrease for women. However, there was also significant growth in the use of temporary contracts. Growth of employment was mainly in services and construction, while employment declined in agriculture and industry.

3. The Government also provides information on: the review of the National Employment Plan (PNE) in 2001; the impact of the European Employment Strategy (EES); various programmes; and an evaluation of the services provided by the employment centres. In light of the reviews, the Government intends to maintain the direction set out in the PNE of 2001 and the EES. The PNE will be closely linked to the Lifelong Learning Strategy. The objectives for the near future include improving the quality of employment and social protection, and adapting labour legislation to improve productivity and competitiveness. The Government has also prioritized combating illegal employment and monitoring the use of fixed-term contracts. The Committee notes this information and would appreciate being kept informed of the impact of the measures adopted in the framework of a coordinated economic and social policy, to implement an active employment policy in the sense of the Convention.

4. *Article 3.* The Committee notes that the review of the PNE involved the social partners. It also notes the statement by the UGT confirming the contribution of the social partners, in particular to new legislation on various subjects related to employment promotion; and the confirmation of the CGTP-IN that the EES is developed on a tripartite basis. Please continue to provide detailed information on the manner in which representatives of all groups concerned, including rural and informal economy workers,

are consulted on the formulation, implementation and review of employment policies and programmes.

5. The UGT considers that, despite the efforts of the Government, structural problems still persist in employment and training. Problems persist with young jobseekers entering the labour market, in particular skilled youth. For less skilled youth, training is not sufficiently available. Older workers do not have access to retraining, increasing their likelihood of being unemployed long-term. The UGT stresses the need for continuous training, guaranteed access to training for all workers, and ensuring that training is relevant to the skills demanded in the labour market. Lastly, the UGT draws attention to the problems of regional differences in employment.

6. The CGTP-IN notes the decline in employment in various sectors of the economy. It is also concerned about the increase in unemployment for women and continued gender segregation by sector and occupation. It questions the success of the Government's active labour market policies and training measures, and notes that some of the recommendations that came out of the reviews were not followed up. Lastly, the CGTP-IN supports the general strategy of the Government concerning lifelong learning, but questions the logic of restricting evening classes in light of the objective of equality of opportunity.

7. The Committee notes these detailed observations of the UGT and the CGTP-IN, as well as the Government's replies, which were incorporated in its report. Recalling that the Committee, at the 89th Session of the Conference, June 2001, asked the Government to continue making efforts, in consultation with the social partners, to improve the general level of training for employment and the match between workers' skills and jobs available, the Committee would appreciate receiving more details in future reports concerning ways in which the Government and the social partners have addressed the matters noted in this observation.

Uganda (ratification: 1967)

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

Ukraine (ratification: 1968)

The Committee notes the information contained in the Government's report for the period to 31 May 2002.

1. *Article 1 of the Convention.* The Government states that the active population engaged in economic activity increased from 54.9 per cent in 1999 to 56.1 per cent in 2000; unemployment decreased from 11.7 per cent in 2000 to 11.1 per cent in 2001, and the ratio of jobseekers to registered vacancies decreased from 11:1 in May 2001 to 8:1 in June 2002. In addition, involuntary part-time employment and administrative leave decreased. The Committee would appreciate receiving further information on measures taken to promote the use of the state employment service, and any additional measures taken to reduce involuntary part-time and administrative leave, including involuntary extended unpaid maternity leave.

2. The Committee notes the enactment of Law No. 3076-III of 7 March 2002 on the State Programme of Employment of the Population for 2001-04. The Government states that the state programme emphasizes more efficient operation of special economic zones. It also supports establishment of small businesses, encourages employers to create new jobs, and supports enterprise initiatives of the unemployed through providing optional lump sum payment of unemployment benefits. The Committee would appreciate receiving further details on how enterprises are supported, in particular, what technical support and training is provided to micro and small enterprises. Please also

provide further information on any other programmes designed to overcome regional disparities in employment.

3. The Committee notes with interest the Government's efforts to expand skills development through the use of new methods and technologies. It would appreciate receiving further information on the outcome of these changes, such as the percentage of participants who subsequently obtain lasting employment. Please also provide further information on how participants are selected for training. The Committee also notes with interest the formation of the All-Ukraine Rehabilitation Centre for People with Disabilities, in cooperation with the ILO, and looks forward to receiving further information on progress made in promoting employment for people with disabilities. Lastly, the Committee notes the various programmes to promote youth employment, and requests further information on their outcome, as well as information on any programmes aimed at promotion of employment for women and other vulnerable groups, such as older workers.

4. *Article 2.* The Committee notes that the state programme closely links employment policy and economic policy and would be grateful if the Government would supply more detailed information on how employment policy is coordinated with economic and social policy, and how policies and programmes are kept under review.

5. *Article 3.* The Committee notes the comments provided by the Federation of Unions of Ukraine (FPU) that were forwarded by the Office to the Government in May 2002. FPU states that the Law on the state programme on employment is ineffective. No new policies have been introduced; administrative leave is still a serious problem; and the number of registered unemployed is projected to rise from 3.68 per cent in 2001 to 4.42 per cent in 2004. Furthermore, there is a substantial gap between the percentage of registered unemployed (3.7 per cent in 2001) and the statistical estimate based on the ILO definition of unemployed (over 11 per cent for the same period). FPU also indicates that there has been no effort to stimulate job creation, and that the number of economically active persons continues to decline. FPU points out that the high proportion of women among the unemployed (63.7 per cent) demonstrates the persistence of gender discrimination in the labour market. Lastly, FPU considers that despite the provisions of the Law, collaboration with the social partners remains poor. The Committee would appreciate receiving further information on any action taken by the Government on the matters raised by FPU. Please also provide detailed information on the manner in which employers' and workers' organizations, and representatives of other concerned groups, such as rural and informal sector workers, are consulted in the formulation, implementation and review of employment policies and programmes.

Uruguay (ratification: 1977)

The Committee notes the Government's detailed report received in September 2002. It further notes the comments of the Inter-Union Assembly of Workers – National Convention of Workers (PIT-CNT) on matters related to the application of the Convention, received in the Office on 14 October 2002. The comments by the PIT-CNT as well as the information communicated by the Government's report will be examined together by the Committee at its next session.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Azerbaijan, Barbados, Bosnia and Herzegovina, Cambodia, Cameroon, Chile, China, China (Hong Kong Special Administrative Region), Comoros, Cyprus, Czech Republic, Djibouti, Ecuador, Guatemala, Iceland, India, Islamic Republic of Iran, Republic of Korea, Latvia, Madagascar, Republic of Moldova, Papua New Guinea, Paraguay, Senegal, Slovenia, Sudan, Tajikistan, Thailand, Tunisia, United Kingdom, Zambia.*

Convention No. 123: Minimum Age (Underground Work), 1965

Requests regarding certain points are being addressed directly to the following States: *Cameroon, Mongolia, Rwanda, Uganda.*

Information supplied by *Cyprus* in answer to a direct request has been noted by the Committee.

Convention No. 124: Medical Examination of Young Persons

Requests regarding certain points are being addressed directly to the following States: *Kyrgyzstan, Tajikistan.*

Convention No. 125: Fishermen's Competency Certificates, 1966

Sierra Leone (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.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Djibouti, France.*

Convention No. 126: Accommodation of Crews (Fishermen), 1966

Requests regarding certain points are being addressed directly to the following States: *Azerbaijan, Sierra Leone, Spain, Tajikistan, Ukraine.*

Information supplied by *Djibouti* in answer to a direct request has been noted by the Committee.

Convention No. 127: Maximum Weight, 1967*Chile* (ratification: 1972)

The Committee notes the Government's last report and the information supplied by the Government in reply to its previous comments. In response to the Committee's preceding observation the Government indicates that no regulations have been issued under the Labour Code. The Committee again accordingly draws the Government's attention to the following points on which it has focused for several years.

1. *Article 3 of the Convention.* The Committee notes from the list of legislation, contained in the Government's report, that Presidential Decree No. 655 of 7 March 1941, issuing general regulations on occupational safety and health, is still in force. Section 57 fixes the maximum weight of a load that may be transported by a single male worker at 80 kg. In contrast, Circular No. 30 of 4 December 1985, issued by the Director of Labour and communicated to the Regional Directors of Labour and the Regional and Communal Labour Inspectors, which lays down instructions on the maximum weight that may be manually transported by workers, establishes a maximum weight of 55 kg for the manual transport of loads by a single worker. Noting the divergent maximum weight values of the above two texts, the Committee would consider that the Circular, contrary to the Presidential Decree, does not have a legal thus binding character. The Committee accordingly hopes that the maximum weight value suggested in the Circular is applied in practice in the country, for, as the Committee had already noted in 1988, it would give effect to *Articles 3, 4 and 7, paragraph 2*, of the Convention. The Committee however urges the Government to adopt regulations that will provide for clear limits for the different categories of workers concerning the maximum weights in load lifting and carrying. In this context, the Committee again notes the Government's indication that, in view of the adoption of regulations to be issued under the Labour Code, the different actors involved in the drafting process support different maximum weight limits. The Superintendent of Social Security, through its medical department, proposed that the maximum weight limit for the transport of loads by a single worker should be set at 50 kg, whereas the Chilean Safety Association, being one of the mutual benefit societies of employers that administers social assistance in the field of employment injury, proposed to establish a maximum weight limit of 55 kg. The Occupational Health Department of the Ministry of Health, which the Government had consulted, considered that the provisions of sections 187 and 202 of the Labour Code of 1994 were insufficient to ensure the application of measures provided for by the Convention. The Minister concluded that the regulations concerning the basic health and environment conditions in workplaces have to be amended to enable the incorporation of provisions concerning the ergonomic risks to which workers are exposed. In this respect, the Committee notes that the National Ergonomic Commission, in its 202nd session of 29 November 2000, has approved and published in the *Official Gazette* of 15 December 2000, the classification of 1,371 occupational activities of which 1,249 have been determined as heavy and 122 have been qualified as not being heavy. Among the 1,249 activities that have been qualified as heavy, a number of them involve the lifting and carrying of loads. The Government indicates that the loads to be transported during that work have a weight of 61 kg and above. In view of these facts, the Committee expresses its firm hope that, while the maximum weight limits proposed of both the Chilean Safety Association and the Superintendent of Social Security would comply with the maximum weight

recommended in paragraph 14 of the Maximum Weight Recommendation, 1967 (No. 128), the Government will soon adopt regulations to lower considerably the existing maximum weight limits applied in the country, in order to fully apply this provision of the Convention.

2. Moreover, the Committee recalls that it has raised a certain number of points concerning other provisions of the Convention. The Government however has not provided any information in this regard. Recalling these questions, the Committee expresses its firm hope that the Government will take the necessary action in the very near future, and that the next report of the Government will indicate the progress achieved in this respect.

Article 6. The Committee has noted section 8 of Circular No. 30 of 4 December 1985 providing for the use of mechanical devices for the transportation of loads in excess of 55 kg. The Committee again recalls that, while this represents an improvement over the previous weight limit of 80 kg required for the use of such mechanical devices, *Article 6* of the Convention calls for the universal use of suitable technical devices whenever possible and irrespective of the weight of the loads to be transported. The Committee hopes that the Government, in the framework of its indicated legal action, will take the necessary measures to give full effect to this Article of the Convention.

Article 7, paragraph 1. The Committee has noted that Circular No. 30 does not contain a provision to limit the assignment of women and young workers to the manual transportation of loads other than light loads. The Committee accordingly reiterates its hope that the Government will take the necessary measures to this end in the framework of its above-indicated legislative action.

Article 7, paragraph 2. The Committee has noted that section 4 of the above Circular No. 30 prescribes in general terms that the maximum weight of loads for women and young workers shall be substantially less than that permitted for men, without specifying maximum weight limits. The Committee trusts that the Government will take the necessary measures to fix appropriate maximum weight limits for women and young workers, in order to fully apply this Article of the Convention.

Madagascar (ratification: 1971)

Further to its previous comments, the Committee notes the information provided by the Government.

Article 3 of the Convention. The Committee recalls that, since the ratification of the Convention by Madagascar, it has been emphasizing that the laws and regulations in force in the country do not give effect to this provision of the Convention. The Committee also recalls that for a number of years the Government has been undertaking to adopt the necessary measures to bring the laws and regulations concerned into conformity with the Convention. It notes that, in accordance with the indications provided by the Government in its last report, the Ministry of the Public Service, Labour and Social Legislation has prepared an inter-ministerial order setting the maximum weight for the manual transport of any load by a single male adult worker at 55 kg or 50 kg, in accordance with the Convention. This draft order has been forwarded to the Ministries of Industry, Trade and Transport, where it is currently under discussion with a view to its approval.

The Committee notes the Government's statement that the Convention is neither applied nor given effect in the country unless an order setting the maximum weight is in force. The Committee therefore trusts that the draft order referred to above will be adopted in the very near future to give full effect to the provisions of the Convention.

The Committee hopes that the Government's next report will indicate the adoption of the above order and it requests the Government to provide a copy of the order when it has been promulgated.

Tunisia (ratification: 1970)

The Committee notes the Government's report and the information sent in reply to its previous comments. It draws the Government's attention to the following points.

1. *Article 3 of the Convention.* Ever since the adoption of the Ministerial Order of 5 May 1988 determining the maximum permissible weight to be carried by a single worker, the Committee has been pointing out that 100 kg, the weight which may regularly be carried by a single worker, considerably exceeds the maximum of 55 kg advocated by Article 14 of the Maximum Weight Recommendation, 1967 (No. 128). The Committee has observed several times that consistent handling of such weights is liable to endanger the health and safety of workers. The Committee took note of the statement made by the Government in its report of 1997 that it would inform the Office of the results of the work done by the committee set up to revise the abovementioned Order in the light of the Committee's comments as soon as it was completed. Moreover, in its report of 1999, the Government referred to a meeting held on 26 May 1999 by the committee in charge of revising the above Order which had examined ways and means of harmonizing the provisions of the Order with those of the Convention. The Government stated its intention of sending the results to the Office in its next report. In its last report, the Government states that a draft order to amend the Order of 5 May 1988, determining the maximum weight that may be handled by a single worker, has been drafted and that it reflects the comments the Committee has been making over the years. Furthermore, there has been consultation on the draft between the ministerial departments concerned and workers' and employers' organizations. The results of the consultations will be submitted to the committee in charge of revising the Order. Since it has been raising this matter for many years, the Committee cannot but reiterate the hope that the draft order amending the Order of 5 May 1988 will be adopted promptly and that the Government will be in a position to state in its next report that the amendments to the Order of 5 May 1988 have brought the legislation into line with the Convention.

2. *Article 7, paragraphs 1 and 2.* For a certain number of years, the Committee has been pointing out that under section 2 of the Order of 5 May 1988, the maximum permissible weight of loads to be transported manually by women aged 18 years or older was 25 kg. It drew the Government's attention to a publication by the ILO: *Maximum weights in load lifting and carrying* (Occupational Safety and Health Series, No. 59, Geneva, 1988), in which it is indicated that 15 kg is the limit recommended from an ergonomic point of view of the admissible load for occasional lifting and carrying by women aged between 19 and 45 years. The Committee again notes that for several years the Government has been stating its intention to revise the Order of 5 May 1988 determining the maximum load that may be handled by a single worker, and hopes that the revised order will comprise an amendment to that effect so as to ensure that the

manual transport by women of light loads is limited in so far as possible to loads not exceeding 15 kg. The Committee hopes that the Government's next report will contain information on measures giving full effect to the Convention.

Venezuela (ratification: 1984)

The Committee notes the Government's report in response to its comments. It further notes the adoption of the regulations concerning the Labour Law, Decree No. 3.235 of 20 January 1999. With reference to its previous comments, the Committee would draw the Government's attention to the following points.

1. *Article 3 of the Convention.* In its earlier comments, the Committee noted section 122 of the Labour Act and section 6 of the Basic Act on prevention, working conditions and the working environment, 1986, providing, respectively, for conditions of employment which are suitable to the worker's physical and mental capabilities. The Committee further noted that section 223, subsection 2 of the Regulations on Occupational Health and Safety, 1973, prescribes 50 kg as the permissible maximum weight the worker may transport on his shoulders. Since the above Regulations apply to the industrial sector, the Committee requested the Government to supply information on the application of the Regulations on Occupational Health and Safety in the non-industrial sector. The Committee notes the Government's indication that pursuant to section 7 of the Basic Act on prevention, working conditions and the working environment, 1986, the provisions of this Act apply as well to the non-industrial sector such as commerce and agriculture. With regard to the Regulations on Occupational Health and Safety, 1973, the Committee observes that pursuant to section 1, the Regulations have been adopted to address the safety and health conditions in the industrial sector, which appears to exclude other sectors of economic activities from its scope of application, such as, for example, the sector of transport or agriculture. The Committee therefore requests the Government to indicate the measures taken or envisaged to ensure that the permissible maximum weight limit of 50 kg established under section 223, subsection 2, of the above Regulations will be applied as well in the non-industrial sector such as transport, commerce and agriculture.

In addition, the Government refers to the statistics supplied with its report showing the violation of legislation and regulations in the field of occupational safety and health for different types of work reported by the labour inspectorate for the months of January to September 1998. The Committee observes that the statistics do not contain indications on violations of laws or regulations regarding the manual transport of loads. The Committee therefore requests the Government to specify whether violations of laws or regulations regarding the manual transport of loads have not been reported by the labour inspectorate, or whether the compliance with legislation concerning the manual transport of weights was not the subject of the labour inspections carried out.

2. *Article 7. (a) Young persons.* With regard to its previous comments, where the Committee noted section 112 of the Labour Act and section 25 of the Act respecting young persons, which respectively prohibit the employment of young persons under 18 years of age in "work beyond their strength or such as to prevent or retard their normal physical development" and in "any work which is likely to be dangerous to their health, life or mortality". In this respect, it noted that sections 79 and 80 of the Regulations on Occupational Health and Safety, 1973, establish a list of industries and types of work

that are dangerous or unhealthy, and prohibit the employment of young persons in such work. It requested the Government to supply information concerning the meaning of the terms “work beyond their strength” and “dangerous to their health”, as well as texts of relevant legal provisions, and whether such expressions include the manual transport of loads. The Committee notes the Government’s indication that the meaning of the terms “work beyond their strength” and “dangerous to their health” is derived from the information indicating the “causes of risk”, contained in the tables annexed to section 79 of the Regulations on Occupational Health and Safety. The types of risk inherent in each kind of work determines why the work is considered dangerous and unhealthy. The Government adds that the Minister of Labour has the possibility to supplement, through resolutions, other categories of work to these tables. The Committee observes that the tables to section 79 of the Regulations on Occupational Health and Safety, at present, do not refer to the manual transport of loads. It appears therefore to the Committee that the manual transport of loads is not considered as dangerous or unhealthy work under the provisions of the Regulations on Occupational Health and Safety and thus, does not prohibit the employment of young persons under the age of 18 years therein.

With regard to restrictions in employment of young persons, the Government refers again to section 189 of the Regulations on Occupational Health and Safety, 1973, prohibiting the performance of certain types of work by young persons below the age of 18 years, because they involve risks to health and safety. Among the work prohibited to young person of less than 18 years, is the loading and unloading of ships, regardless whether the work is manual or mechanical. In this respect, the Committee notes the Government’s indication that the new regulations to implement the Labour Act, Decree No. 3.235 of 20 January 1999, contrary to the Government’s intention to amplify therein the employment restrictions of young persons under the age of 18 years, do not contain provisions related to those of the Regulations on Occupational Health and Safety, 1973. The Government further indicates that the issue of restrictions of employment of minors is still to be addressed, and that it will be dealt with in the near future. The Committee hopes that the Government will soon adopt laws or regulations concerning the restriction of employment of minors, indicating types of work that involve the manual transport of loads which young persons are prohibited from performing because they have been determined as “work beyond their strength” and “dangerous to health”.

(b) *Women.* Further to its previous comments concerning restrictions of the employment of women in the manual transport of loads, the Committee notes the Government’s indication that it has taken note of the ILO publication, *Maximum weights in load lifting and carrying* (Occupational Safety and Health Series, No. 59, Geneva, 1988), and that it will inform the Committee once the issue has been regulated. The Committee hopes that the Government will review section 223 of the Regulations on Occupational Health and Safety prescribing a limit of 20 kg for the manual transport of women, in the light of the recommendations contained in the above ILO publication, according to which 15 kg is the limit, recommended from an ergonomic point of view, of the admissible load for the occasional lifting and carrying for a women aged between 15 and 45 years. The Committee requests the Government to communicate a copy of the respective legislative texts as soon as they are adopted.

(c) With regard to the establishment of separate maximum weight limits for male young workers and male adult workers, the Committee noted in its previous comments the Government’s indication that, while its present legislation on the matter does not

establish separate maximum weight restrictions for male young workers and adults, the current legal situation has been noted, and the Government would prepare the corresponding regulations. The Committee notes the Government's indication that, since the new regulations to implement the Labour Act do not focus on the matter, the measures required in this respect will be taken in due time. The Committee accordingly reiterates its hope that the Government will soon take the appropriate measures to establish permissible maximum weight limits to be transported manually by young workers, and that the maximum weight limits will be substantially lower than for adults. To this effect, the Committee invites the Government to refer to the ILO publication, *Maximum weights in load lifting and carrying* (Occupational Safety and Health Series, No. 59, Geneva, 1988), indicating also the permissible maximum weight limits to be transported manually by young workers according to their age and sex. The Committee requests the Government to supply a copy of the text of the relevant regulations once it has been adopted.

3. *Article 5.* With regard to the practical application of section 222 of the Regulations on Occupational Health and Safety requiring the employer to instruct his workers in methods and standards of industrial safety, the Government refers to the Manual on Standards and Procedures concerning Occupational Health and Safety, which was issued by the enterprise Movilnet specialized in portable telephones and, as such, part of the National Company of Telephones in Venezuela (CANTV). The Committee notes that Part NYP-006 addresses the transport of loads through mechanical devices such as cranes and provides recommendations on the safe use of the mechanical devices and machines used for the transport. However, guidelines on the manual transport of loads are not included in the above Manual. The Committee accordingly requests the Government to supply information on the practical application of section 222 of the Regulations on Occupational Health and Safety with regard to training, instructions and notices which are provided to workers assigned to the manual transports of loads.

4. *Article 8.* The Committee requests the Government to provide information on the consultations conducted pursuant to sections 8 and 9 of the Basic Act on prevention of accidents, working conditions and the working Environment of 1986, within the National Council on Prevention of Accidents and Health and Safety at Work, which is the body responsible for controlling that the standards contained in the Basic Act on prevention of accidents, working conditions and the working environment, 1986, as well as the standards contained in other regulations issued under this Act, are observed.

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In addition, requests regarding certain points are being addressed directly to the following States: *Costa Rica, Republic of Moldova, Panama, Portugal.*

Convention No. 128: Invalidity, Old-Age and Survivors' Benefits, 1967

Bolivia (ratification: 1977)

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.

[The Government is asked to reply in detail to the present comments in 2003.]

Libyan Arab Jamahiriya (ratification: 1975)

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 Government is asked to report in detail in 2003.]

Switzerland (ratification: 1977)

Part II (Invalidity benefit), Article 12 of the Convention (in relation with Article 32, paragraph 1(e)). The Committee notes the Government's reply to its previous comments and requests it to refer to the observation that it is making concerning the application by Switzerland of Convention No. 102.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Czech Republic, Libyan Arab Jamahiriya, Netherlands, Slovakia, Sweden.*

Information supplied by *Switzerland* in answer to a direct request has been noted by the Committee.

Convention No. 129: Labour Inspection (Agriculture), 1969*Burkina Faso* (ratification: 1974)

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 Government's report for the period ending in May 2000, in which the latter indicates that agricultural undertakings are subject to labour inspection supervision on the same basis as industrial or commercial enterprises and that no particular problems are encountered in this regard. The Committee notes, however, that the Government has not supplied the information requested in previous comments, and hopes that it will not fail to supply them in its next report.

1. *Articles 9, paragraph 3, and 14, of the Convention.* The Committee would be grateful if the Government would supply details on the periodicity and content of the training seminars and workshops for labour inspectors concerned with the agricultural sector as well as the impact of evolution in the global numbers of inspectors on the number of inspections carried out in agricultural undertakings.

2. *Articles 15 and 21.* The Committee requests the Government to supply details on the practical effects of the recent decentralization of labour services on the frequency of inspections and to specify the manner in which the provisions of Decree No. 95-395 of 29 September 1995 regarding the allowances made to labour inspectors who are concerned with agriculture and consequently have specific transport requirements. The Government is requested in particular to provide information on the manner in which transport expenses of labour inspectors concerned with agriculture are defined and reimbursed.

3. *Labour inspection and child labour.* Referring to its 1999 general observation, the Committee would be grateful if the Government would supply information on the measures taken or contemplated to develop inspection activities in regard to application of legal provisions relating to the employment of children and young persons in agricultural undertakings.

El Salvador (ratification: 1995)

The Committee notes the Government's report in reply to its previous comments. It also notes the comments made by the Inter-Union Commission of El Salvador (CATS-CTD-CGT-CTS-CSTS-CUTS) on the application of the Convention, received by the ILO on 13 September 2002 and forwarded to the Government on 19 November 2002. The Committee proposes to examine the Government's report and the clarifications which it is requested to provide on the matters raised by the inter-union organization during its next session in 2003.

Finland (ratification: 1974)

The Committee notes the Government's replies to its previous comments. It notes the point of view of the Central Organization of Finnish Trade Unions (SAK) concerning the inadequacy of the financial and human resources of the labour inspection services in relation to the needs in the fields of occupational safety and health and the implementation of enterprise-level collective agreements. According to the SAK, the lack of inspectors and inspections already referred to under Convention No. 81 hampers labour inspection in agriculture.

The Government indicates that the situation is reasonably good in view of the fact that less than 3 per cent of the agricultural workforce is in an employment relationship and, over the past few decades, the profitability of agriculture has been poor, with the result that small enterprises have not been able to hire workers and agricultural work has been carried out at the family level. The Committee hopes that, in order to be able to assess the effectiveness of labour inspection in agricultural enterprises, the Government will not fail to ensure that, in accordance with *Article 26 of the Convention*, an annual report will be communicated on the work of the inspection services in agriculture, containing precise information on the matters set out in *points (a) to (g) of Article 27*.

Guatemala (ratification: 1994)

Referring also to its observation under Convention No. 81 on labour inspection in industrial and commercial establishments, the Committee takes note of the Government's report, its partial responses to its previous comments, documents transmitted in the annexes, as well as the text of Decree No. 18-2001 amending the Labour Code. It also notes the comments made by the Trade Union Federation of Public Employees (FENASTEG) and by the Trade Union Workers of Guatemala (UNSITRAGUA), communicated by the Government in relation to the application of the present Convention and Convention No. 81. The Committee notes that the Government does not respond to the points raised by these organizations. Noting that its comments on Convention No. 81 concern, *mutatis mutandis*, the application of provisions of the present Convention, the Committee would be grateful to the Government if it would communicate relevant information on labour inspection in agriculture, and in particular on the following provisions of the Convention: *Article 9, paragraph 3* (appropriate training for labour inspectors in agriculture); *Article 15* (transport facilities and measures to reimburse labour inspectors in agriculture for travel expenses in rural areas); and *Articles 12 and 24* (cooperation between inspection services in agriculture and government services).

Furthermore, the Committee takes note of a comment by UNSITRAGUA that labour inspectors in agriculture are confronted by a very specific difficulty in the exercise of their function, namely the inability to communicate with agricultural workers in certain regions who do not speak the national language. The Committee considers that it is indispensable for labour inspectors to be able to communicate in a sufficient manner with the employers and workers they cover to ensure a minimum effectiveness of their inspection visits, both of a preventive and enforcement nature, as well as in the provision of information and technical advice. It therefore requests the Government to take all necessary measures to resolve this linguistic problem, for example by supplying labour inspectors with interpreters or other appropriate means of communication and to transmit any relevant information regarding such measures to the Committee.

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

Malawi (ratification: 1971)

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

The Committee 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*.

Uruguay (ratification: 1973)

The Committee notes the Government's report, its replies to previous observations, and the documents supplied with its report. The Committee also notes the observations of the National Workers' Convention (PIT-CNT), which were transmitted by the Government on 30 September 2002. The Committee notes that the observations of the PIT-CNT concern questions examined in its previous observations and on which the Government has communicated information in its report.

The Government is asked to communicate additional information regarding certain points raised by the PIT-CNT for examination by the Committee at its next session.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Argentina, Belgium, Denmark, Guatemala, Madagascar, Malta, Republic of Moldova, Spain*.

Convention No. 130: Medical Care and Sickness Benefits, 1969

Bolivia (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.

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

Libyan Arab Jamahiriya (ratification: 1975)

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 Government is asked to report in detail in 2003.]

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In addition, requests regarding certain points are being addressed directly to the following States: *Czech Republic, Libyan Arab Jamahiriya, Slovakia.*

Convention No. 131: Minimum Wage Fixing, 1970

Brazil (ratification: 1983)

The Committee notes that the Government's report replies only partially to its previous comments. It must therefore repeat its previous observation which read as follows:

In its previous comments, further to the observations made by the National Union of Labour Inspectors (SNAIT) to the effect that the Government did not comply with the obligations set out in *Article 4, paragraph 2, of the Convention* to consult the representative organizations of employers and workers on the adjustment of the minimum wage, the Committee requested the Government to indicate the consultations which were conducted prior to fixing of the minimum wage by the Provisional Resolutions, specifying the organizations of employers and workers which were consulted and the outcome of the consultations. The Committee also requested the Government to indicate the measures taken or contemplated to ensure prior and effective consultation of the organizations of employers and workers concerned in decisions relating to minimum wages, in accordance with *Article 4, paragraph 2*.

The Government reiterates the information given in its previous report to the effect that representative organizations of employers and workers are consulted and heard constantly, but that the final decision concerning the index is the responsibility of the executive authority after analysis of the impact on the public finance because of the consequences regarding unemployment benefits and allowances for needy and disabled persons. The Government also indicates that, in fixing the amount of the minimum wage it takes into account the basic needs of workers and their families. It also recalls that it consulted employers' and workers' representatives in various forums and tripartite committees.

The Committee requests the Government to indicate the employers' and workers' organizations that have been consulted in the aforementioned tripartite forums and committees.

Lastly, the Government indicates that the trade unions can negotiate a basic wage through collective bargaining or arbitration, and this basic wage constitutes a form of minimum wage payable to categories of workers represented by a trade union organization which is party to a collective agreement providing for such a basic wage. This wage is a minimum wage payable to a particular category of workers, as opposed to a general minimum wage applicable to all categories of workers.

The Committee notes this information and requests the Government to provide information in its future reports on the effectiveness of the procedures for consulting employers' and workers' organizations for fixing the minimum wage. The Committee hopes that the Government will provide, in accordance with *Article 2, paragraph 1*, of the Convention, read in conjunction with *Article 5 and point V of the report form*, general information on the application of the Convention in practice, in particular: (i) changes in the minimum wage in force; (ii) available statistics on the number and categories of workers covered by minimum wage regulations, particularly those covered by minimum wages fixed by collective agreement; and (iii) the results of inspections carried out (for example, violations observed, sanctions imposed, etc.).

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

Latvia (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:

Further to its previous comments the Committee notes with interest the information supplied by the Government in its report according to which:

- the Latvian Free Trade Union Federation (LBAS) concluded two general agreements with the Latvian Employers' Confederation on minimum remuneration for work on 27 April 1998 and on 5 May 1999;
- 22 agreements covering 30 per cent of wage-earners have been concluded between sectorial trade unions and sectorial associations of employers which fix guarantees of minimum remuneration for work of a much higher level than the national minimum monthly wage.

The Committee takes note of the Government's information that, in the period of time from 1990 to 1998, the rise of consumer prices (inflation) has been almost twice as rapid as the rise of workers' remuneration. The Committee therefore hopes that the Government will continue providing information on the fixing and adjustment of minimum wages and on the measures adopted or envisaged to ensure the direct participation of representatives of organizations of employers and workers concerned, on an equal basis, in the machinery for fixing or adjusting minimum wages.

The Committee raises other points in a direct request 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 (ratification: 1971)

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

The Committee notes 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.

Sri Lanka (ratification: 1975)

The Committee notes the information contained in the Government's report in reply to its previous comments, the observations by the Lanka Jathika Estate Workers' Union and those by the Employers' Federation of Ceylon concerning the application of the Convention.

I. Determination of minimum wages in the plantation sector

1. In its previous observation the Committee requested the Government to provide information on progress made in developing the wage structure in the plantations sector and to provide copies of wage board decisions fixing minimum wages in this sector and of relevant collective agreements. It also requested the Government to comment on the considerations submitted by the Lanka Jathika Estate Workers' Union to the effect that satisfactory national minimum wage fixing machinery should be established in the country in view of the exceptionally low minimum wages in some sectors, where wages have not been adjusted since 1972.

2. In reply to its observation on minimum wages in plantations and to the comments by the Lanka Jathika Estate Workers' Union on this matter, the Government indicates that minimum wages in the plantations sector are determined from time to time by four tripartite wages boards. It further indicates that workers and their representative organizations may conclude collective agreements with employers and that the social partners make use of this possibility in the plantations sector. The Government also appends to its report copies of current collective agreements in the sector.

3. With regard to the observations made by the Lanka Jathika Estate Workers' Union, the Government points out that, due to difficulties in convening meetings, the wages boards in the tobacco and cinnamon sectors have become inoperative since 1972 and 1980. In the Government's opinion, the wages boards' function is satisfactory except in these two sections where low wages were fixed some three decades ago. Lastly, the Government indicates that the Ministry of Employment and Labour is exploring the possibility of having uniform conditions for each sector: plantations; manufacturing; agriculture; and services.

4. The Committee requests the Government to send all available information on the results of the measures taken to introduce uniform conditions for each sector, including plantations, agriculture and services, and on the adoption of minimum wages that may be deemed to satisfy the needs of workers and their families. In particular, the Government is asked to specify the current levels of minimum wages in the tobacco, cigar manufacturing, docks and ports, graphite, and cinnamon sectors, where unsatisfactory functioning has made the wage boards inoperative and where the last wage adjustments go back as far as 1972 in some cases. The Committee recalls in this connection that under *Article 4* of the Convention, the Government must create and maintain machinery whereby minimum wages for the groups of wage earners covered can be fixed and adjusted from time to time, in consultation with the representative organizations of employers and workers concerned. It also draws the Government's attention to the provisions of *Article 3* of the Convention under which the elements to be taken into consideration in determining the level of minimum wages must, so far as possible and appropriate, include the needs of workers and their families, taking into

account the general level of wages in the country, the cost of living and the relative living standards of other social groups.

II. Extension of the coverage of the minimum wage fixing machinery to workers in specific sectors

5. In reply to the Committee's observations concerning extension of the coverage of the national minimum wage fixing machinery to workers in specific sectors, the Government indicates in its report that most workers in the private sector are covered by the minimum wage system pursuant to the Wages Board Ordinance and the Shop and Office Employees Act. It also indicates that domestic employees working in systems established by custom or tradition and all other employees carrying on activities in sectors such as fishing, where there are no wage boards or remuneration tribunals established under the Shop and Office Employees (regulation of employment and remuneration) Act, are nonetheless still excluded from the national systems of minimum wages, no measures having been taken to establish minimum wage fixing machinery for these categories of workers. The Government indicates at the same time that the machinery has been extended to four new sectors and that the Ministry of Employment and Labour is exploring the possibility of introducing uniform conditions in every sector.

6. The Employers' Federation of Ceylon refers to the conclusion of collective agreements by the social partners which provide for wages which are actually higher than the minimum fixed by the wages boards.

7. The Lanka Jathika Estate Workers' Union refers to its earlier comments in which it suggested that there should be a satisfactory minimum national wage set for the entire country. It further observes that the collective agreement in force in the plantations sector covers only workers in the state-owned plantations managed by private management companies.

8. The Committee notes with interest that the scope of protection under the national minimum wage fixing machinery has been extended and asks the Government to keep it informed of any future developments concerning the plan under study at the Ministry of Employment and Labour for introducing uniform conditions in each sector, including plantations, agriculture and services. The Committee once again recalls the importance, already pointed out in its General Survey of 1992 on minimum wages, of the obligation to extend the coverage of national minimum wage fixing systems, and expresses the hope that the Government will be in a position to provide information in future reports on the extension of the protection afforded by its national machinery to groups of workers as yet unprotected and whose coverage would be appropriate under the terms of the Convention.

9. The Committee requests to send to the Office its comments on the observations by the Lanka Jathika Estate Workers' Union on the collective agreement which purportedly applies only to state-owned plantations managed by private management companies.

III. Article 5, read in conjunction with Part V of the report form

10. With regard to the statistical information on the number of workers covered by minimum wages set in collective agreements, the Committee notes the information from the Government to the effect that there are currently no data available as to the number

of workers covered by each collective agreement. The Committee hopes that in its next report the Government will be able to supply information concerning, inter alia: (i) the prevailing minimum wage rates; (ii) available data on the numbers and categories of workers covered by the minimum wage provisions, and the number of workers covered by collective agreements; and (iii) the results of inspections (for example, the number of infringements recorded, penalties imposed, etc.).

Uruguay (ratification: 1977)

The Committee notes the Government's report and the extensive and repeated comments submitted by the Inter-Trade Union Assembly – Workers' National Convention (PIT-CNT).

*I. Elements to be considered in fixing and adjusting minimum wage rates
(Articles 3 and 4, paragraph 1, of the Convention)*

1. The Committee notes with regret that, despite its repeated observations, the Government has still not taken the necessary steps to fulfil its obligations under the Convention. In its report, the Government indicates that, in the interests of greater competitiveness and aligning of prices with those of its main partners in MERCOSUR, its policy has been to simplify markets and the factors of production and make them more flexible. Wage fixing by sector of economic activity by the tripartite bodies established in the Wage Councils Act has been abandoned in favour of wage negotiation at enterprise level. The Executive nevertheless retains responsibility for setting the national minimum wage by administrative decision and the minimum wages of rural workers and domestic workers. The Government indicates that the national minimum wage was fixed without reference either to cost-of-living studies or to economic factors, and that its value has declined in recent years in terms of purchasing power. On the basis of the prices of goods and services in the country and studies on household income and expenditure, the Government estimates that the level of the national minimum wage is somewhere between the indigence threshold and the poverty threshold and is sufficient to meet the most basic needs of workers but not those of their families. With regard to families, the Government indicates that workers on the minimum wage in the public sector and the private sector are entitled to family allowances amounting to 16 per cent of the national minimum wage for each dependent child.

2. Noting that there has been no significant change regarding the application of the Convention, the PIT-CNT reiterates its previous comments. It observes that most workers are of the view that there is no minimum wage that meets the criteria of this provision of the Convention, since where there are no collective agreements, the applicable minimum wage is the national one, fixed unilaterally by decree. According to the above organization, the Government's assertion that the minimum wage is fixed "in reference largely to minimum rates which are applied only for the purpose of calculating social security, professional rates, etc.", shows that the minimum wage takes little account of social reality and is so inadequate as to be non-existent. The above organization also asserts that it can be inferred from the Government's statements that macroeconomic measures to reduce inflation rates are incompatible with minimum wage fixing by free collective bargaining.

3. The Committee is most concerned by the failure to comply with the provisions of the Convention and its implications for some 875,000 workers and their families whose wages are fixed by administrative decision. It recalls that the ratification of a Convention entails adopting legislative and regulatory measures which must be strictly applied in practice. In the present case, conformity with the Convention means that the minimum wage established in the country must, pursuant to *Article 3*, as far as is possible and appropriate, take into consideration the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits and the relative living standards of other social groups, as well as economic factors. Furthermore, the minimum wage must be adjusted from time to time, in accordance with *Article 4, paragraph 1*. While sympathetic to the Government's goals of a more competitive economy and price levels in line with those of its main partners in MERCOSUR, the Committee is nonetheless of the view that the pursuit of competitiveness must not be to the detriment of the Government's obligations under an international Convention which has been ratified and is in force, and even less to the detriment of minimum wages, which set the minimum standards of living for workers. The Committee notes that, according to the Government, the national minimum wage is by no means representative of the amount earned by someone entering the labour market since no workers are willing to work full time for such a low wage. It observes that such a situation could not arise if, as the Convention requires, account was taken of the real needs of workers and their families in terms of basic commodities and minimum expenditure on education, health and food. The Committee therefore urges the Government to adopt without delay all the measures required to bring national law and practice into line with the spirit and letter of the Convention and to fix the minimum wage taking into consideration, inter alia, the elements set out in *Article 3* of the Convention so as to determine a level of minimum wages that is fair, as the Uruguayan constitution itself prescribes.

II. Failure to consult fully with representative organizations of employers and workers concerned on the establishment, operation and modification of minimum wages (Article 4, paragraph 2)

4. The Committee recalls that it has been pointing out for years that the national minimum wage and the minimum wages of rural workers and domestic workers are set unilaterally by the Government and that it has accordingly reminded the Government repeatedly that, in connection with the establishment, operation and modification of the wage-fixing machinery, it has an *obligation to consult* representative organizations of employers and workers concerned or, where no such organizations exist, representatives of employers and workers concerned, as prescribed by *Article 4, paragraph 2*.

5. The Government indicates in its report that the tripartite system for establishing minimum wages at branch level established by the Wages Council Act has been abandoned in favour of collective or individual wage bargaining preferably at the enterprise level, in which the minimum wages set by the Executive in the various economic sectors must nevertheless be observed. In its last report, the Government states that the *national minimum wage* was fixed by the Executive without consulting employers' or workers' organizations. Regarding the fixing of the *minimum wage for domestic work* the Government indicates that it was impossible to organize consultations, there being no employers' or workers' organizations in this sector. Lastly,

with regard to agriculture, the Government indicates that there are only representative organizations of employers in the agricultural and livestock sectors and a few organizations of workers in certain subsectors such as citrus fruits, sugar and tobacco, but none in the stock-raising sector. The Government adds that effective consultations with a view to fixing a *minimum wage applying to all rural workers* being difficult to organize in such circumstances, the only option was to notify the minimum wage to the one third-level central union, i.e. the PIT-CNT, and the three second-level employers' organizations.

6. In its latest observations the PIT-CNT reiterates that in all instances where there is no collective agreement, the applicable minimum wage is the national one fixed by decree without consultation of organizations of employers and workers. It further asserts that such organizations do exist even if they do not have state protection for the exercise of their rights. It further states that not only has the Government not sought to encourage collective bargaining, it has also left the labour-related variables of economic adjustment to market forces in an attempt to do away with bargaining and protection of fundamental rights. It adds that the State has introduced a series of restrictions based on macroeconomic considerations without having consulted the occupational organizations concerned.

7. The Committee can but refer to its previous observations in which it recalled that the problem of the unilateral fixation by the Executive of the minimum wage for these categories has persisted for years, and in which it noted the Government's argument, repeated time and again, that there are no organizations sufficiently representative of such workers. The Committee also notes in this connection the PIT-CNT's assertion that such organizations do exist, although they have no state protection for the exercise of their rights. The Committee wishes once again to recall and emphasize that, under *Article 4, paragraph 2*, of the Convention, full consultation with organizations of employers and workers *concerned* is an obligation which applies both when determining the scope of the minimum wage system and in operating and modifying the wage-fixing machinery. The fact that there are no workers' or employers' organizations in a subsector of the economy affords no grounds for non-compliance with the obligation to consult; in such circumstances the obligation could be met by consultation of higher-level organizations of employers and workers concerned, such as federations. The Committee therefore expresses the firm hope that the Government will be in a position to indicate without further delay the measures taken to ensure *full consultation with representative organizations of employers and workers concerned* for the purpose of fixing the national minimum wage and the minimum wages of rural workers and domestic workers and any other workers in the private sector to whom the provisions on minimum wages apply.

8. According to the PIT-CNT, as well as ignoring national and international rules concerning collective bargaining, the Government also fails to encourage bargaining, invoking macroeconomic reasons and stabilization plans or policies which involve placing restrictions on minimum wage fixing by means of bargaining. The Committee notes in this connection that, according to the Government, in sectors with a widespread culture of collective bargaining such as the construction sector, the Executive can extend the collective agreement to the entire branch by means of regulations.

9. In view of the fact that minimum wages are fixed unilaterally and are very low, and that the system of tripartite councils convened by the Executive has been abandoned in favour of collective or individual bargaining, preferably at enterprise level, the Committee requests the Government to provide with its next report detailed information on the number and categories of workers whose wages are fixed by collective bargaining, together with information on the number of collective agreements concluded by enterprise and by branch, including in the public sector, indicating the sectors and the numbers of workers covered.

10. Lastly, the Committee asks the Government to provide information on the measures adopted to ensure consultation with organizations of workers and employers or, where no such organizations exist, the workers and employers concerned, in fixing the national minimum wage and the minimum wages of rural workers and domestic workers.

[The Government is asked to supply full particulars to the Conference at its 91st Session and to reply in detail to the present comments in 2003.]

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Azerbaijan, Egypt, Iraq, Latvia, Niger, Portugal, Swaziland, United Republic of Tanzania, Zambia.*

Convention No. 132: Holidays with Pay (Revised), 1970

Cameroon (ratification: 1973)

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.

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Requests regarding certain points are being addressed directly to the following States: *Czech Republic, Germany, Italy, Spain, Switzerland.*

Convention No. 133: Accommodation of Crews (Supplementary Provisions), 1970

Liberia (ratification: 1978)

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

The Committee 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. The Committee urges the Government to submit the report for the attention of 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.

The Committee also notes the comments made by the Norwegian Union of Marine Engineers (NUME), previously transmitted to the Government for reply, that allege non-observance by Liberia of Convention No. 92 and Convention No. 133. The Committee asks the Government to provide its response to these comments in its next report.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Azerbaijan, Guinea, Nigeria, Russian Federation, Ukraine.*

Information supplied by *France* in answer to a direct request has been noted by the Committee.

Convention No. 134: Prevention of Accidents (Seafarers), 1970*France* (ratification: 1978)

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:

The Committee notes that the Government's reports of 1999 and 2000 do not contain replies to its previous comments. It must therefore repeat its previous observation dealing with the following points.

1. Further to its previous comments concerning the application of *Article 4, paragraph 3(c), (g) and (i)* (provisions concerning the prevention of occupational accidents to seafarers caused by machinery, anchors, chains and lines, and the supply of personal protective equipment), and *Article 5* (clear indication of the obligation of shipowners and seafarers to comply with the provisions concerning the prevention of accidents) of the *Convention*, the Committee notes the provisions of a draft decree amending Decree No. 84-810 of 30 August 1984 relating to the protection of human life at sea, lodging on board ship and prevention of pollution, transmitted to the Council of State, and to a draft order amending the Order of 23 November 1987 on safety of vessels which, once they are adopted, would give effect to the provisions of the Convention in question. The Committee hopes that the texts mentioned will be adopted very soon and that the Government will supply copies once they are adopted.

2. *Articles 6, paragraph 4, and 9, paragraph 2.* The Committee reminds the Government that appropriate measures shall be taken to bring to the attention of seafarers copies or summaries relating to accident prevention measures and to bring to their attention information concerning particular hazards, for instance, by means of official notices containing relevant instructions. The Committee requests the Government to indicate the measures taken to give effect to these provisions of the Convention.

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

[The Government is asked to reply in detail to the present comments in 2003.]

Nigeria (ratification: 1973)

The Committee notes that the Government's report states that the Ministry of Labour is exploring actions to be taken in conjunction with the Ministry of Transport and does not reply to previous comments. It must therefore repeat its previous observation which read as follows:

Article 2 of the Convention. In its previous comments, the Committee requested the Government to supply copies of relevant extracts of reports of inquiry into occupational accidents, as well as samples of statistics compiled in conformity with the provisions of this Article, drawing the attention of the Government to the obligation of the competent authority to ensure that, in accordance with *Article 2, paragraphs 1 and 2*, of the Convention, all occupational accidents are adequately reported, that comprehensive statistics shall not be limited to fatalities or to accidents involving the ship, and that statistics of accidents are kept and analysed. Taking into account the Government's indication that accidents on board ships had been reported only when the ship sustained structural damage or when there had been loss of life or serious injury, the Committee earlier expressed the hope that records of minor accidents kept by private and government shipping companies would be integrated into reporting procedures and statistics.

The Committee notes that no such information has been provided by the Government. It asks the Government to indicate measures taken to give effect to this Article and to supply copies or relevant extracts of reports of inquiry into occupational accidents, as well as samples of statistics compiled in accordance with the provisions of the Convention.

Article 3. In its previous comments, the Committee, taking into consideration the Government's indication that the necessary measures would be undertaken for research to be conducted into the causes and prevention of accidents aboard Nigerian ships, expressed the hope that such research would be carried out and that the Government would provide detailed information on progress made in this respect.

Since no information has been supplied on this subject in the Government's latest report, the Committee, once again, asks the Government to supply such information on any research undertaken into general trends and hazards revealed by statistics, in order to provide a sound basis for the prevention of accidents which are due to particular hazards specific to maritime work.

Articles 4 and 5. In its previous comments, the Committee requested the Government to supply information concerning provisions adopted or contemplated in order to prevent occupational accidents and covering the specific field of stage and mooring ropes (*Article 4(3)(h)*) as well as the various matters listed in *Article 4(3)(a), (b), (c), (d) and (i)*. The Committee notes the Government's indication in its latest report that the Merchant Shipping (Life-saving Appliances) Rules 1967 provide for occupational accident prevention standards and deal extensively with *Article 4* of the Convention. The Committee would be grateful if the Government would supply details of provisions related to the prevention of occupational accidents of seafarers which are required by virtue of the above-mentioned subparagraphs of *Article 4* and to specific obligations of shipowners and seafarers in this respect under *Article 5*.

Article 7. The Committee asked the Government to supply a copy of a statutory instrument establishing the responsibility of national surveyors and engineers, who are crew members, to conduct inspection on board ship, and duties of a safety or accident committee on board, chaired by the Master, with the Chief Engineer, the Chief Officer, the Second Engineer and the Radio Officer as members.

Since such an instrument has not been furnished with the Government's latest report, the Committee again requests the Government to supply a copy of any provisions which have been made to give effect to this Article.

Articles 8 and 9. In previous comments the Committee asked the Government to provide details concerning the tripartite establishment and implementation of programmes for the prevention of occupational accidents (*Article 8*) and the inclusion of instruction in accident prevention and health protection in the curricula of vocational training institutions for all categories and grades of seafarers (*Article 9, paragraph (1)*).

Since such information has not been supplied with the Government's latest report, the Committee again requests the Government to provide information on: (i) programmes which have been undertaken for the prevention of occupational accidents, indicating the manner in which the cooperation and participation of shipowners, seafarers, and their organizations are assured; and (ii) measures ensuring the inclusion, as part of the instruction in professional duties of all categories and grades of seafarers, of instruction in the prevention of accidents and in the protection of health in employment.

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

United Republic of Tanzania (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:

Further to its previous comments, the Committee notes with regret from the Government's report that the appropriate measures referred to by the Government in its previous report have not been adopted due to financial constraints and due to circumstances beyond its control. The Committee recalls that since 1990, it has been raising the question of the need for the Government to take measures to give effect to the provisions of the Convention. It is bound to underline the obligations that sovereign governments that ratify Conventions have to adopt all laws, regulations and the practical provisions to apply them. The Committee wishes to draw the Government's attention to the ILO's code of practice on accident prevention on board ship at sea and in port as well as to the inspection of labour conditions on board ship: Guidelines for procedure (Prevention of occupational accidents, pages 42 to 51) which provide useful guidance in giving effect to the provisions of the Convention. The Committee urges the Government to adopt the necessary measures to give effect to the Convention. It wishes to also invite the Government to consider seeking the technical assistance of the Office in addressing the matters raised in its previous comments, which read as follows:

Article 1, paragraph 3, of the Convention. In its previous comment, the Committee has noted that, according to the Government's report, the provisions of the Convention are applied by means of the Factories Ordinance (Cap. 297) and the Dock Rules 1692 GN 444 (issued under section 55 of the Factories Ordinance). However, the Committee notes that the provisions cited by the Government are only applicable to the processes of loading and unloading ships in ports and harbours (section 58 of the Factories Ordinance and section 2 of the Dock Rules). The Committee is bound to note that the Convention is applicable to all accidents to seafarers arising out of or in the course of their employment, such as accidents arising on open sea. The Committee refers in this context to its remarks below concerning *Article 4* of the Convention.

Article 2, paragraph 4. The Committee takes note of the indication of the Government in its report that in the case of the accident of the "MV Bukoba" a formal investigation was undertaken. The Committee also reminds the Government that investigations according either to section 7 of the Accidents and Occupational Diseases Notification Ordinance or section 266(I) of the Merchant Shipping Act, of 1967 are optional whilst the Convention provides for mandatory investigations into the causes and circumstances of occupational accidents resulting in loss of life or serious personal injury. Consequently, the Committee hopes that the Government will indicate in its next report the measures adopted or envisaged to apply this provision of the Convention.

Articles 3 and 8. Referring to its previous comments, the Committee recalls that there are no specific provisions in the legislation respecting the prevention of industrial accidents and occupational diseases. This issue is only covered in part by the Dock Rules of 1962 and the Factories Ordinance (Cap. 297) of 1950. The Government indicated in its previous report that these two instruments were being revised in view of the need to undertake research on the general situation as regards industrial accidents and the risks that are peculiar to maritime employment and to establish accident prevention programmes and implement them with the cooperation of organizations of shipowners and seafarers. The Committee observes that due to financial constraints, the Government is not able to carry out the mentioned revision. The Committee hopes that the Government will be in a position in the near future to

revise the national legislation in order to bring it into conformity with the provisions of the Convention.

Article 4, paragraphs 2 and 3(b), (h) and (i). The Committee noted the Government's indications that no provisions have been adopted with a view to preventing accidents which are peculiar to maritime employment, and on its intention to revise the national legislation in this respect. The Committee notes that this revision has not been carried out due to circumstances beyond control. The Committee hopes that this revision will be carried out without delay and requests the Government to inform it of any development in the situation in this respect.

Article 6, paragraph 3. The Committee has previously noted the information on the Government's intention to train the inspection and enforcement authorities so that they are familiar with maritime employment and its practices. The Committee observes that due to financial constraints the training project was not carried out. The Committee hopes that the Government will be able to adopt the necessary measures to give effect to this provision of the Convention and that the training courses for the abovementioned authorities will be implemented in the near future.

Article 6, paragraph 4. In its previous report, the Government reported that, when the legislation is revised, taking into account the need to incorporate provisions on the prevention of accidents to seafarers, copies of these provisions will be brought to the attention of seafarers. The Committee requests the Government to indicate the manner in which it envisages bringing to the attention of seafarers copies or summaries of the provisions in question.

Articles 8 and 9. The Government indicated in its report that although no information is available, instructions were provided wherever guest lecturers from relevant institutions were invited to lecture at institutes such as, among others, the Occupational Health and Safety of the Factory Inspectorate in the Department of Labour. In addition, according to the Government's report received in 1990, Bandari College, situated in Dar es Salaam, is a vocational training centre where seafarers of all categories can be instructed and informed of risks to their health and safety. The Committee recalls that these Articles of the Convention provide for the implementation of programmes for the prevention of occupational accidents by the competent authority with the active cooperation of shipowners' and seafarers' organizations or their representatives and other appropriate bodies, and for the establishment of national or local joint accident prevention committees or ad hoc working parties made up of representatives of the social partners.

Please indicate whether instruction in the prevention of accidents and the protection of health in employment is included in vocational training programmes and whether seafarers are provided with instruction on a regular basis.

The Committee expresses once again the firm hope that the Government will be able to supply information in its next report on the measures which have been taken expressly to bring its legislation into conformity with the Convention.

[The Government is asked to reply in detail to the present comments in 2003.]

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In addition, a request regarding certain points is being addressed directly to *Kenya*.

Convention No. 135: Workers' Representatives, 1971*General*

The Committee recalls that Convention No. 135 completes the two ILO fundamental Conventions Nos. 87 and 98 in the area of freedom of association by dealing with additional questions. The Governing Body has included it in the list of Conventions whose ratification should be promoted and has requested information on the obstacles and difficulties that might prevent or delay its ratification by States. In this respect, the Committee wishes to emphasize that this Convention aims – given the effective recognition of freedom of association in accordance with the principles of Conventions Nos. 87 and 98 – to guarantee the actual presence in the enterprise of workers' representatives, regardless of whether they originate in trade unions or have been elected, and for those member States with a system of dual channel implementation as far as the presence of the elected representatives does not undermine the rights of the trade union representatives. It emerges from the reports of States of very different traditions and levels of development, that the open nature of the Convention which does not aim only to protect the representatives but also to facilitate the exercise of their functions, has not given rise to difficulties in its implementation. The evolution of industrial relations in the last 30 years in an increasingly cooperative and decentralized context, demonstrates the usefulness and constant relevance of this Convention.

Brazil (ratification: 1990)

The Committee notes the information sent by the Single Confederation of Workers (CUT) in a communication of 10 October 2002, raising questions on the application of the Convention. The Committee requests the Government to send its observations in this respect as regards the content of the Convention so that it may examine these questions at its next meeting.

Costa Rica (ratification: 1977)

The Committee notes the Government's report.

In its previous observation, the Committee noted that the number of trade union representatives protected was small (section 367 of the Labour Code extends this protection to one leader for the first 20 workers unionized and one for every additional 25 workers up to a maximum of four). The Committee had expressed the view that it would be appropriate to extend protection to a larger number of representatives notwithstanding the possibility of ensuring satisfactory general protection for all workers against acts of anti-union discrimination. It asks the Government to provide information in its next report on any developments in this area.

In its report, the Government refers to a bill which extends and improves protection against anti-union discrimination.

The Committee reiterates the comments it made in 2001 in its examination of the application of Convention No. 98 in connection with the above bill (to amend several provisions of the Labour Code) submitted, within the framework of the tripartite consensus, to the Legislative Assembly, and which read as follows:

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 discharged by the employer and summary proceedings before the judicial authorities with compulsory time limits to ascertain the reasons for the dismissal, with severe penalties for refusal to reinstate the worker where justified grounds are not found to exist. It is explicitly provided that, in the situations described above, dismissal without due cause as provided in the Labour Code shall be void (that is, subject to compensation) as already established in the case law of the Constitutional chamber.

The Committee notes that this matter too is being examined in a tripartite committee. It expresses the firm hope that the bill – which it notes with interest – will be adopted in the very near future, and requests the Government to keep it informed on this matter.

Iraq (ratification: 1972)

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

With regard to the application of *Article 2 of the Convention*, the Committee had noted with interest that section 27(7) of the Trade Union Organization Act No. 52 of 1987 provides for the trade union executive committee members to have time off in order that they may devote themselves to trade union activities and that section 138(1) of the Labour Code stipulates that workers' representatives be fully released from work to carry out their functions in labour inspection committees. The Committee again requests the Government to provide copies of the agreements concluded by trade unions and employers to which the Government had referred in its previous report and which would afford facilities to workers' representatives.

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

Jordan (ratification: 1979)

The Committee takes note of the Government's report. It also notes the information on the content of a number of collective agreements. It observes, however, that the information refers largely to the advantages enjoyed by workers and contains little to show that currently *workers' representatives* in enterprises have facilities under collective agreements allowing them to carry out their duties promptly and efficiently.

Since at present the only facility granted by law to workers' representatives is paid leave of 14 days to attend courses, the Committee requests the Government to take the necessary steps to ensure that trade union representatives are granted facilities enabling them to carry out their trade union duties rapidly and efficiently. The Committee furthermore recalls that full effect can be given to the Convention *inter alia* by provisions in the law or in collective agreements. The Committee points out in this connection that the Workers' Representatives Recommendation, 1971 (No. 143), lists examples of such facilities: time off from work to attend trade union meetings, congresses, etc.; access to all workplaces in the undertaking, where necessary; access to the management of the undertaking, as may be necessary; distribution to workers of publications and other written documents of the union; access to such material facilities and information as may be necessary to carry out their duties, etc.

The Committee notes that, according to the Government's report, the Ministry of Labour is endeavouring to encourage workers' and employers' organizations to include most of the provisions of this Convention in their collective agreements. Since the collective agreements appear not to make provision for such facilities, however, the Committee requests the Government to take steps to amend the legislation so as to ensure that workers' representatives are granted facilities enabling them to carry out their duties rapidly and efficiently. It also asks the Government to keep it informed of any measures adopted.

Netherlands (ratification: 1975)

The Committee notes the information provided in the Government's report. The Committee notes with satisfaction that article 670, paragraph 5, of Book 7 of the Civil Code as amended by the Flexibility and Security Act (*Bulletin of Acts and Decrees* 1998, 300), now affords legal protection not only to members of works councils but also to trade union representatives and affiliates by prohibiting their dismissal for anti-union reasons.

The Committee notes the observation on the application of the Convention made by the Netherlands Trade Union Confederation (FNV) dated 4 November 2002 and requests the Government to send its comments in this respect. The Committee notes also that these comments refer also to Convention No. 98 and will be dealt with in the framework of the examination of its application.

Sri Lanka (ratification: 1976)

The Committee notes the Government's report. It also notes the comments made by the Employers' Federation of Ceylon (EFC) and by the Lanka Jathika Estate Workers' Union (LJEWU).

Article 1 of the Convention. In its previous observation, the Committee trusted that a draft Bill which was being examined would ensure an effective protection of workers' representatives. The Committee notes that the Industrial Disputes Act of 1967 has been amended by the Industrial Disputes (Amendment) Act No. 56 of 1999. In this respect, the Committee notes with satisfaction that this Act contains provisions (reproduced in the Government's report): (1) prohibiting acts of anti-union discrimination (including dismissal) because of union affiliation or union activities; and (2) considering these acts as punishable offences.

The Committee requests the Government to send the complete text of this new amending Act indicating the sanctions applicable in case of infringement, in particular, in relation to trade union activities in the enterprise.

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

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Australia, Austria, Burundi, Chad, Chile, Finland, Gabon, Rwanda, Sri Lanka, Turkey, Yemen, Yugoslavia*.

Information supplied by *Estonia, Lesotho* and *Lithuania* in answer to a direct request has been noted by the Committee.

Convention No. 136: Benzene, 1971*Bolivia* (ratification: 1977)

1. The Committee notes that the Government does not reply to the comments it has formulated in its previous observation. The Committee nevertheless notes the Government's indication that it is not in a position to provide the information requested by the Committee and which is required under the report form to the Convention, since the General Direction of Occupational Hygiene and Welfare, responsible for carrying out inspections in industrial enterprises, does not dispose of this information. This is due to the fact that the necessary inspections have not been carried out in the designated industries because of shortcomings in technical material to measure the emission of benzene.

2. Taking due note of the Government's indications, the Committee ventures to remind the Government that its previous observation concerned the necessity to adopt the necessary measures to apply the provisions of the Convention, for no measures have been adopted yet concerning the protection of workers against the hazards of poisoning arising from their exposure to benzene. The Committee accordingly once again draws the Government's attention to the need to adopt measures in order to give effect to the main provisions of the Convention, in particular: *Article 1(b) of the Convention* (the protective measures elaborated must apply not only to benzene but also to products the benzene content of which exceeds 1 per cent by volume); *Article 2* (whenever harmless or less harmful substitute products are available they shall be used instead of benzene or products containing benzene); *Article 4, paragraphs 1 and 2* (prohibition of the use of benzene and products containing benzene in certain work processes at least making use of benzene as a solvent or diluent, except where the process is carried out in an enclosed system or there are other equally safe methods); *Article 6, paragraphs 1, 2, and 3* (measures shall be taken to prevent the escape of benzene vapour into the air of places of employment, and concentration of benzene in the air of the places of employment must not exceed a ceiling value of 25 parts per million; directions must be issued on carrying out the measurement of the concentration of benzene in the air of places of employment); *Article 7, paragraph 1* (work processes involving the use of benzene or of products containing benzene shall, as far as practicable, be carried out in an enclosed system); *Article 11, paragraphs 1 and 2* (prohibition to employ pregnant women, nursing mothers and young persons under 18 years of age in work processes involving exposure to benzene or products containing benzene). The Committee trusts that the Government will take the necessary measures in the near future to give effect to the provisions of the Convention.

3. *Article 9*. The Committee noted in its previous comments that the draft regulations concerning medical services included, as part of the general routine, medical examinations prior to employment, during employment and thereafter. To the Committee's understanding, the medical examinations the Government referred to were not provided for under specific legislation, but were carried out by the "Superintendency of Occupational Health" and recorded on forms established by the Ministry of Labour for notification of occupational accidents. The Committee recalled the Government that this Article of the Convention requires specific medical examinations prior to employment and periodically thereafter for all workers to be employed in work

processes involving exposure to benzene or products containing benzene, to assess their fitness for such employment. The Committee, in absence of any further information provided by the Government in this respect, requests the Government to indicate whether the draft regulations concerning medical services have been adopted in the meantime, and, if so, to indicate whether the provisions contained in the draft regulations have been aligned in a manner to ensure that the required examinations are carried out to guarantee the application of this Article of the Convention.

The Committee urges the Government to adopt the necessary measures, without any further delay, to give effect to the provisions of the Convention. It firmly hopes that the next report of the Government will contain information on the adoption of a legal text concerning the protection of workers against the hazards of poisoning arising from their exposure to benzene.

Morocco (ratification: 1974)

The Committee notes the Government's report. It notes the Government's indication that the draft Decree on benzene designed to give effect to the provisions of the Convention is still under examination by the competent authorities. In this respect, the Committee states that the Government had already indicated in its report for 1992 that the draft Decree, reflecting the Committee's comments, had been prepared by the Ministry of Labour to supplement the legislation concerning occupational exposure to benzene. This draft Decree had been finally submitted for comments to the organizations of employers and workers concerned, after the Conference Committee had discussed the case in 1993 already for the second time. The Committee thus notes with deep concern that the adoption of the above draft Decree is pending for almost ten years. The Committee is therefore bound to urge the Government once again to take the necessary action to adopt the above Decree in the near future and, that it will give full effect to the Convention and particularly will meet the requirements set forth in *Article 8, paragraph 1, of the Convention* to ensure effective protection through the provision of adequate means of personal protection against the risk of absorbing benzene through the skin for workers who may have skin contact with liquid benzene or liquid products containing benzene. It further hopes that the Decree provides for the consultation of the most representative organizations of employers and workers with regard to the granting of temporary exemptions by the Labour Inspector under section 502 of the draft Decree, in conformity with *Article 3* of the Convention. The Committee trusts that the Government will do its utmost to this end and that it will inform the Committee, in its next report, on the progress achieved in this regard.

[The Government is asked to reply in detail to the present comments in 2003.]

* * *

In addition, a request regarding certain points is being addressed directly to *Slovakia*.

Convention No. 137: Dock Work, 1973*Netherlands* (ratification: 1976)

1. The Committee notes the Government's report received in August 2002 which contains information in reply to comments made by the Netherlands Trade Union Confederation (FNV) in a communication concerning the 2002 General Survey on dock work. In November 2002, the FNV commented on the information contained in the Government's report.

2. In paragraph 123 of its 2002 General Survey, the Committee noted the concern expressed by the FNV at the unilateral decision taken by employers in the port of Rotterdam to withdraw from the system of registration, although it had been established by collective agreement several years before. According to the FNV, negotiations were stalled by the intransigence of the employers, who no longer wanted the responsibility for keeping the registers.

3. In its report, the Government stated that the social partners in the port of Rotterdam carried out the registration of dockworkers themselves until 2000 in accordance with *Article 3, paragraph 1, of the Convention*. The Government also stated that dockworkers are currently registered with their individual employers. Further, that the *Stichting Samenwerkende Havenbedrijven* (SHB) (Foundation of Cooperative Dock Companies), a labour pool of surplus workers that has become commercial, and also registers the dockworkers employed by them. As the registration of dockworkers in the Netherlands is based on agreements between the social partners, the Government, after signals from the FNV, took the initiative of bringing the social partners from the port of Rotterdam together with a view to their reaching a consensus about the way in which the Convention should be applied. The Government considers that the issue should be solved within the industry and that a solution should be sought by the social partners in the framework of the foundation created for the port of Rotterdam, *Onderwijs en Opleidingsfonds* (Educational and Training Foundation). The Government acknowledges that it has a duty and a responsibility to support employers and workers in their efforts to find agreements concerning compliance with the Convention. Furthermore, the Government refers to the general regulations on unemployment (the *Wet Structuur Uitvoeringsorganisatie Werk en Inkomen* (SUWI), the Work and Income (Implementation Structure) Act and the *Centra voor Werk en Incomen* (Centres for Work and Income)) which aims to assist workers who fall outside the labour market to rejoin it as quickly as possible.

4. In its responding comments, the FNV asserts that the real situation before 2000 was that an employers' organization kept a register of dockworkers and that the trade unions were not involved or informed about workers included in the register. The FNV was and still is interested in government support which can contribute to finding agreement on a solution involving workers and employers. If, however, employers are not interested in finding that kind of solution, the FNV asks the Government to find an alternative way to comply with *Article 3* of the Convention. The FNV indicates readiness to play a part in an alternative solution, if the Government so wishes. The FNV expressed the opinion that the measures laid down in the Convention offer better protection than the current national social security legislation.

5. The Committee recalls that, under *Article 3* of the Convention, registers have to be established and maintained for all occupational categories of dockworkers, in a manner to be determined by national law or practice. In hiring, registered dockworkers must be given priority but, in return, they have to make themselves available for work (*Article 3, paragraph 3*, of the Convention). However, the Convention does not require any particular form of register. Since the form of the register is to be determined by national law or practice, there are many options, often depending on local circumstances (paragraph 120 of the 2002 General Survey). The Committee also recalls that, in conformity with *Article 2, paragraph 1*, of the Convention, the national policy should encourage all concerned to provide permanent or regular employment for dockworkers and that in any event they should be assured minimum periods of employment or a minimum income.

6. The Committee trusts that the Government's next report will contain information on the progress made by the Government and the social partners in reaching a consensus about the way in which the Convention should be applied in the port of Rotterdam. The Committee would also appreciate receiving a general appreciation of the manner in which the Convention is applied (*Part V of the report form*).

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

United Republic of Tanzania (ratification: 1983)

The Committee notes with regret that the Government's report has not been received for the sixth consecutive year. 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 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 near future.

Uruguay (ratification: 1980)

The Committee notes the Government's report for the period ending May 2002. In reply to the direct request of 1998, the Government states that the National Administration of Stevedoring Services (ANSE) was abolished by section 33 of Emergency Act No. 17243 of 29 June 2000. Employees with one year's service at the ANSE are being redeployed in the Ministry of Labour and Social Security, a subprogramme having been established under the General Inspectorate of Labour and Social Security. The Committee recalls that Act No. 16246 of 8 April 1992 already abolished the monopoly over port services, thus allowing their provision by private firms or operators as well and introducing free competition in this sector. In that connection, the Committee requested the Government to provide information on the employment conditions of dockworkers employed on a casual basis by private stevedore companies (under the authority of the ANSE) and, more specifically, the measures taken to assure minimum periods of employment or minimum income for this category of workers in accordance with *Article 2, paragraph 2, of the Convention*. In view of the reforms introduced since 2000, the Committee would be grateful if the Government would indicate how the "national policy" required by *Article 2* encourages all concerned to provide permanent or regular employment for dockworkers, and the measures taken to prevent or minimize any detrimental effects of the reforms on permanent or regular employment for dockworkers.

Articles 3 and 4. The Government states that no registers of dockworkers have been established by the National Ports Administration (ANP), although there are operational categories, but not covered by a registration system. The Committee would be grateful if the Government would indicate how it intends to give effect to these provisions of the Convention.

Parts III and V of the report form. The Committee again asks the Government to provide general information on the practical application of the Convention and, to that end, to send extracts from reports by the authorities responsible for enforcing laws and regulations, including particulars of the numbers of dockworkers under the authority of the ANP and of those employed by private companies.

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

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Afghanistan, Australia, Egypt, Guyana, Nicaragua, Norway, Poland, Portugal, Romania.*

Convention No. 138: Minimum Age, 1973*Antigua and Barbuda* (ratification: 1983)

Article 2, paragraphs 1 and 3, of the Convention. In its previous comments, the Committee drew the Government's attention to the fact that the provisions of the national legislation respecting the minimum age for admission to employment or work were not in conformity with the age specified by the Government when ratifying the Convention. Indeed, although the Government had specified the minimum age of 16 years when ratifying the Convention, section E3 of the Labour Code provides that no

child shall be employed or shall work in a public or private agricultural or industrial undertaking or in any branch thereof, or on any ship, while the term “child”, by virtue of section E2 of the Labour Code, means a person under the age of 14 years. The Committee has noted on several occasions that amendments to the Labour Code of 1975 were under examination with a view to bringing the minimum age for admission to employment or work into conformity with the minimum age specified when ratifying the Convention and with the compulsory school-leaving age which, under section 43(1) of the Education Act of 1973, is 16 years of age. The Committee notes that in its last report the Government refers once again to the draft amendment, without indicating whether it has in practice been adopted. The Committee therefore requests the Government to take the necessary measures to amend section E2 of the Labour Code so as to define a child as a person under the age of 16 years, which would bring the minimum age for admission to employment or work envisaged in the national legislation into conformity with the minimum age specified by the Government when ratifying the Convention.

Article 4, paragraph 2. The Committee notes that section E3 of the Labour Code provides that the prohibition upon the employment or work of children, that is persons under the age of 14 years (section E2), does not apply to any undertaking or ship on which only members of the same family are employed, to members of a recognized youth organization who are engaged collectively in such employment for the purposes of fund-raising for such organization, nor to a child who is working together with adult members of her or his family on the same work and at the same time and place. It requests the Government to indicate the measures that it envisages taking to ensure that the categories of workers indicated above are not excluded from the protection afforded by the Convention and to describe current practice with regard to these categories, in accordance with these provisions of the Convention.

The Committee trusts that the Government will be able to provide information in the very near future on the measures taken to give effect to the Convention on these points.

The Committee is drawing the Government’s attention to other matters in a direct request.

Azerbaijan (ratification: 1992)

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

The Committee recalled that the minimum age of 16 years was specified under *Article 2, paragraph 1, of the Convention* as regards Azerbaijan. It noted with regret that the new Labour Code in article 42(3), allows a person who has reached the age of 15 to be part of an employment contract; article 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 pointed out again 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 again asks the Government to indicate the measures taken or envisaged, pursuant to its declaration under *Article 2*, to ensure that access to employment of children of 14 and 15 years of age may be allowed exceptionally, only for work that meets 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.

Bolivia (ratification: 1997)

Employment of children aged below 14 years under apprenticeship contracts

Article 6 of the Convention

Minimum age

In its previous comment, the Committee noted that section 58 of the General Labour Act excludes apprentices from the general prohibition of employment of children aged below 14 years, and is thus at variance with *Article 6* of the Convention, according to which the minimum age for employment of children as part of a training programme is 14 years. The Committee asked the Government to indicate the measures taken or envisaged to ensure that children aged below 14 years would not be employed as apprentices.

In its report, the Government indicates that in practice, children of less than 14 years of age can be admitted to apprenticeships, and also refers to this in the part of its report concerning the exclusions allowed under *Article 4* of the Convention.

Article 4 of the Convention states that, in so far as necessary, the competent authority, after consultation with the organizations of employers and workers concerned, where such exist, may exclude from the application of this Convention limited categories of employment or work in respect of which special and substantial problems of application arise (*paragraph 1*), and that the competent authority must list in its first report any categories which may have been excluded, giving the reasons for such exclusion.

The Committee notes, first, that the Government did not indicate in its first report that apprentices would be excluded from the application of the minimum age provisions, and second, that such an exclusion would have been inadmissible, given that the minimum age of 14 years for employment of minors as part of an apprenticeship is expressly stated in a specific provision of the Convention, namely, *Article 6*, according to which the minimum age for employment in undertakings as part of a training programme is 14 years.

Conditions of apprenticeship

The Committee also noted sections 8 and 28 of the General Labour Act, according to which “the apprenticeship contract is one under the terms of which the employer is obliged to provide practical instruction through work, paid or unpaid, on a trade or skill, for a fixed period which may not exceed two years. This provision includes trade apprenticeships and activities involving the use of machinery”.

Article 6 of the Convention stipulates the conditions of such an apprenticeship, namely, that it must be an integral part of a course of education or training for which a school or training institution is primarily responsible, a programme of training mainly or entirely in an undertaking, which programme has been approved by the competent

authority, or a programme of guidance or orientation designed to facilitate the choice of an occupation or of a line of training. The purpose of such conditions is to prevent apprenticeship contracts from being used to employ children of 14 years of age under conditions and for wages that are below established standards. Moreover, in this case, the children concerned are under 14 years of age.

The Committee notes that in implementation of the provisions of sections 58 and 28 of the General Labour Act, children aged below 14 years can work as apprentices, with or without pay, under conditions that fall short of those set out in *Article 6* of the Convention. The Committee hopes that the Government will take the necessary measures to ensure that the provisions of the Convention are applied with regard to the minimum age for employment under apprenticeship contracts and the conditions of such employment.

Dangerous work

The Committee notes that according to section 28 of the General Labour Act, apprenticeship contracts can be concluded for activities involving the use of machinery. Given that such contracts can be concluded with children aged below 14 years, the Committee requests the Government to provide information on such activities, and recalls that the Convention prohibits employment in occupations which by their nature and the conditions in which they are performed can pose risks to the health of young people aged below 18 years.

The Committee hopes that the Government will take the necessary measures to fix at 14 years the minimum age for admission to apprenticeship, to establish, through consultations with the employers' and workers' organizations concerned, the conditions under which such work can be performed, and to prohibit employment of apprentices to do dangerous work.

Child labour in rural areas

The Committee notes that, under the terms of section 1 of Regulating Decree No. 224 of 23 August 1943, agricultural workers are not covered by the provisions of the General Labour Act.

Given that children in rural areas make up a high proportion of working boys and girls, according to data given in the Plan of Action for the progressive elimination of child labour produced by the Inter-Institutional Commission for the Elimination of Child Labour, the Committee hopes that the Government will take the necessary measures to ensure that the Convention is applied to minors working in rural areas, in particular with regard to the minimum age for employment and protection from employment in dangerous work. The Committee hopes that the Government will provide information on this question.

Dominican Republic (ratification: 1999)

The Committee takes note of the Government's first report and of the communication dated 30 September 2002 from the International Confederation of Free Trade Unions (ICFTU) containing comments on the observance of the Convention; a

copy of these comments was transmitted to the Government on 25 November 2002 for any comments which it might wish to make on the questions raised.

El Salvador (ratification: 1996)

The Committee takes note of the Government's report and of the communication dated 13 September 2002 from the Inter-Union Commission of El Salvador (CATS-CTD-CGT-CTS-CSTS-CUTS) containing comments on the observance of the Convention; a copy of these comments was transmitted to the Government on 19 November 2002 for any comments which it might wish to make on the questions raised.

Germany (ratification: 1976)

Article 2, paragraphs 1 and 2, of the Convention. The Committee notes with satisfaction the amendment, by the Act of 23 March 2002, of the Seafarers Act of 26 July 1957, raising the minimum age for the employment of young persons on board seagoing vessels from 15 to 16 years (section 94(1)), with effect from 1 June 2002. The Committee understands that the prohibition of employment also covers, under section 94(1), young persons who remain in compulsory schooling where it continues beyond the age of 16 years. The Committee also notes that section 94(2) of the above Act prohibits the employment of young persons aged from 16 to 18 years in a number of hazardous types of work, which it enumerates.

Article 7, paragraph 3. The Committee also notes with satisfaction that, following its previous comment in which it requested the Government to provide information on the existence of an ordinance to be made under section 5(4)(a) of the Young Persons (Employment Protection) Act, of 12 April 1976, which provides that the federal Government shall define light work more precisely in an ordinance, the Government provided a copy of the Ordinance of 23 June 1998 respecting the protection of children at work, which enumerates the types of light work which may be performed by children over 13 years of age and young persons who remain in compulsory schooling.

The Committee is raising another point in a request addressed directly to the Government.

Guatemala (ratification: 1990)

The Committee takes note of a communication from the International Confederation of Free Trade Unions (ICFTU) dated 10 January 2002, containing certain comments on the application of the Convention. A copy of this communication was transmitted to the Government on 28 January 2002 for any comments which it might wish to make regarding matters raised in it. To date the Office has not received the Government's comments. While waiting for the Government's reply, the Committee refers to the ICFTU communication in the comments below.

In its communication, the ICFTU states that child labour is very widespread in Guatemala. The ICFTU refers to government statistics which indicate that about 821,875 children between the ages of seven and 14 years are economically active, most of them in agriculture or in informal urban activities such as shining shoes or street entertainment. Children are also involved in begging.

In its communication the ICFTU adds that child workers are often exploited and work in the worst conditions. Safety and health legislation is non-existent and many children work in highly dangerous activities, such as manufacturing fireworks or in quarries. The ICFTU emphasizes that the fireworks industry is particularly dangerous, and children are often seriously injured or killed in accidents. According to the ICFTU, although most of these activities take place in family-run workshops, about 10 per cent of the children work in factories, where they perform the most dangerous tasks, such as measuring out explosives.

The Committee requests the Government to communicate its comments on the ICFTU's statements.

Kenya (ratification: 1979)

The Committee notes with interest the Children Act, 2001, section 2 of which defines "child" as any human being under the age of 18 years. It notes that the second part of the Act, entitled "Safeguards for the rights and welfare of the child", addresses the protection of the child against 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 (section 10(1)); the protection of the child against recruitment and participation in armed conflicts (section 10(2)); the protection of the child against any other form of exploitation including sale, trafficking or abduction by any person (section 13(1)); and the protection of the child against sexual exploitation and use in prostitution (section 15). The Committee notes that, under the terms of section 20 of the Act, where any person wilfully or as a consequence of culpable negligence infringes any of the provisions of sections 5 to 19 such person shall be liable to imprisonment not exceeding 12 months or to a fine of 50,000 shillings, or both. The Committee also notes that, by virtue of section 22(1) of the Act, if any person alleges that any of the provisions of sections 4 to 19 (inclusive) of the Act has been, is being or is likely to be contravened in relation to a child, then without prejudice to any other action that is lawfully available in this respect, that person may apply to the High Court for redress on behalf of the child.

The Committee also notes the ratification by Kenya on 7 May 2001 of the Worst Forms of Child Labour Convention, 1999 (No. 182).

With reference to its previous comments, the Committee notes the information provided by the Government representative to the Committee on the Application of Standards of the Conference in 2001 that the Government had given up its draft amendment to section 2 of the Employment Act, 1976, to define the term "child" as a person under 15 years, instead of under 16 years of age, which would have had the effect of lowering the minimum age for admission to employment or work to 15 years. It notes that in its last report the Government confirms that it is no longer considering this amendment and that it will maintain the legislation in conformity with the Convention.

In its previous observation, the Committee noted the information provided by the Government that the Employment Act of 1976 (Chapter 226) and the Employment (Children) Rules of 1977 would be revised in the framework of a general revision of the labour legislation. The Committee once again requests the Government to provide information on the progress made with this revision, and on the other points that it raised.

Article 2, paragraphs 1 and 3, of the Convention. 1. The Committee notes, with regard to the extension of the minimum age for admission to employment or work beyond industrial enterprises, that the Government representative informed the Conference Committee on the Application of Standards in 2001 that the Task Force established to review 23 chapters of the labour legislation would duly take into account this suggestion and that the Task Force would be given up to the end of December this year at the latest to complete its work. The Committee notes that in its last report the Government states that it has made proposals to the Task Force with a view to extending the legislation respecting the minimum age for admission to employment or work to other sectors of the economy. The Committee recalls that it has been drawing the Government's attention for many years to the fact that section 25(1) of the Employment Act, read in conjunction with section 2 of the Act, limits the application of the minimum age for admission to employment or work to industrial enterprises. It therefore expresses the firm hope that the Government will be in a position to provide information in its next report on the measures taken by the Task Force to extend the application of the minimum age for admission to employment or work to all sectors of the economy.

2. In its previous comments, the Committee noted that the Ministry of Education was preparing draft legislation to make primary education compulsory. The Committee notes that in its last report the Government states that this draft legislation has still not been adopted. It notes that section 7(2) of the Children Act, 2001, provides that every child shall be entitled to free basic education which shall be compulsory, in accordance with article 28 of the United Nations Convention on the Rights of the Child. The Committee notes that these provisions do not specify precisely the age at which compulsory schooling ceases. It notes the information contained in the 1998/1999 Child Labour Report, 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", provided in the same year, indicating that compulsory primary school is for children from 6 to 13 years of age. There accordingly appears to be a difference of one or more years in Kenya between the age of completion of compulsory schooling (13 or 14 years of age) and the minimum age for admission to employment or work (16 years). The Committee recalls that, under Paragraph 4 of the Minimum Age Recommendation, 1973 (No. 146), "full-time attendance at school or participation in approved vocational orientation or training programmes should be required and effectively ensured up to an age at least equal to that specified for admission to employment in accordance with *Article 2* of the Minimum Age Convention, 1973." In this context, the Committee requests the Government to provide information on the progress achieved with the above draft legislation, indicating the age of completion of compulsory schooling.

3. The Committee notes that section 10(5) of the Children Act, 2001, defines the term "child labour" as any situation where a child provides labour in exchange for payment. It notes that according to the 1998/1999 Child Labour Report referred to above, most of the children who work, or 78.7 per cent, work in family agricultural activities or enterprises and are not paid. The majority of children who work are therefore excluded from the definition of child labour contained in section 10(5) of the Children Act, 2001. Furthermore, according to the same report, 1.6 per cent of children work on their own account. The Committee therefore requests the Government to take the necessary measures to secure to these children the protection afforded by the

Convention by amending the definition of child labour contained in section 10(5) of the Children Act, 2001.

Article 2, paragraph 1, and Article 3. 4. The Committee noted in previous comments, under *Article 7*, 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 permit should be renewed annually. The Committee wishes to emphasize 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*, which are mandatory, as Kenya has not availed itself of any of the flexibility clauses contained in *Articles 4 and 5*. The Committee notes 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 is 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 therefore requests the Government to take the necessary measures to repeal the above provisions as soon as possible.

Article 7. 5. The Committee recalls that, with regard to light work: firstly, *Article 7, paragraph 1*, only provides for the possibility of admitting young persons of at least 13 years of age to light work, whereas the Employment (Children) Rules, 1977, do not limit the age of children who may thus be employed; secondly, *Article 7, paragraphs 1 and 3*, only authorize the employment of children who have not reached the general minimum age on light work (that is work which is not likely to be harmful to their health or development, nor to prejudice their attendance at school or their capacity to benefit from the instruction received), and that such work must be determined by the competent authority, whereas the above Rules do not limit the employment of children under the legal age to light work, but only refer to the conditions mentioned in paragraph 4 above; thirdly, also under *Article 7, paragraph 3*, the competent authority shall prescribe the number of hours during which and the conditions in which such employment or work may be undertaken. The Committee therefore expresses the firm hope that the Government will take the necessary measures on the occasion of the revision of the national labour legislation to bring its laws and regulations into full conformity with the Convention on each of these points.

Article 3. 6. The Committee has noted above 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. However, the Committee notes that despite its reiterated comments for many years, and despite the fact that the Government admitted in its 1990 report the need to determine,

after consultation with the organizations of employers and workers concerned, the types of employment or work covered by *Article 3, paragraph 1*, no measure has yet been taken to this effect. It therefore expresses the firm hope that the tripartite national Task Force, after consultations with the organizations concerned, will determine the types of work to be prohibited for young persons under 18 years of age, in accordance with the Government's previous indications. The Committee also notes that section 10(4) of the Children Act, 2001, provides that the Minister shall make regulations in respect of periods of work and legitimate establishments for such work by children above the age of 16 years. The Committee requests the Government to indicate whether the work referred to consists of hazardous work, as it seems to imply. If so, it 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 between the ages of 16 and 18 years engaged in these types of work are to be fully protected and that the young persons must have received adequate specific instruction or vocational training in the relevant branch of activity, in accordance with *Article 3, paragraph 3*.

Part V of the report form. 7. The Committee notes with interest the detailed information contained in the 1998/1999 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 the statistics reporting 1.9 million children between the ages of five and 17 years who work, including children working without pay. It notes that, according to the statistics, the majority of working children are between the ages of ten and 14 years (43.6 per cent). The majority of working children have not completed primary education (76.8 per cent). Of children who work, 38.5 per cent work more than 14 hours a week, and 25.6 per cent work between 25 and 41 hours a week. A total of 78.7 per cent of working children are in family farms and enterprises and are not paid, although 18.5 per cent are paid and 1.6 per cent work on their own account. The majority of children who work are in agriculture, fishing and domestic service. The Committee notes the information on the children engaged in hazardous work (fishing and construction). It notes that 1.3 million working children do not attend school and that 588,400 combine school and work. The Committee requests the Government to continue providing information on the application of the Convention in practice.

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

Malawi (ratification: 1999)

The Committee takes note of the Government's reports.

The Committee further notes 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 notes 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 alleges 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 adds 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 indicates 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 TTAWU have signed a similar agreement with the Tobacco Association of Malawi at national level. The ICFTU concludes that relating to child labour: “little concrete progress has yet been made”.

2. In its reply, the Government recalls 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 declares 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 have recently signed a Memorandum of Understanding according to which the Norwegian Government will 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 declares that practical efforts are made by people in government or in the private sector to remove the child labour vice in the economy. It explains 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 refers 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 refers 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 recalls 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 observes 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 requests 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 addresses a direct request to the Government on other points.

Mauritius (ratification: 1990)

The Committee takes note of comments of the International Confederation of Free Trade Unions (ICFTU) on the application of the Convention in Mauritius, contained in a communication dated 24 October 2001 and transmitted to the Government on 6 November 2001, and of the Government's reply to these comments, contained in a communication dated 26 August 2002. In its comments, the ICFTU referred to a statement of the Ministry of Child Development, according to which 2,000 children between the ages of 12 and 14 were economically active in 1998. The ICFTU also stated that child labour was prevalent on Rodrigues Island, where many children work in homes, shops and on farms.

The Committee notes that, according to the Government's comments, systematic inspection visits are carried out at undertakings and places of work, covering both the formal and informal sectors of employment, on average twice a month. It notes, however, from the Government's comments and the statistical tables annexed to its report, that, although some children have been found working every year in several undertakings and despite the figures estimated at 1,800 in the year 2000, the number of children from 12 to 14 years of age in employment, only warnings have been sent to the offenders, among which there were only two written warnings in Mauritius (137 verbal warnings in Mauritius and two in Rodrigues Island), and no cases of prosecutions were recorded. According to the Government, employment of children, whenever detected, is stopped forthwith and the offenders are warned verbally, or in writing, prosecution being envisaged in instances of recurrence or persistence. Concerning the situation in Rodrigues Island, the Government states that, though child labour, especially in sectors such as shops, woodworking workshops, animal rearing and household work, cannot be completely eradicated without entailing an uncomfortable social situation and unfavourable economic implications for most Rodrigan families, the present system of inspection for the detection of child employment and regular contacts with employers have yielded positive and satisfactory results in as much as the number of children in employment has been considerably curbed.

The Committee notes that the Government points out the following difficulties in tackling the problem: children employed in shops and taverns work on and off in different places, lessening the possibility of detection; no inspections are carried out in the household sector, where child labour is probably more prominent than elsewhere; children engaged in animal rearing are difficult to locate as animals are taken to pastures found on mountain sides and valleys.

While taking note of these difficulties, the Committee nevertheless points out that the number of children working, in breach of the national provisions on minimum age and the Convention, require 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 cases of violation. The Committee hopes that the Government will take the necessary measures and provide information on the progress achieved.

The Committee also addresses a direct request to the Government concerning other points.

Slovenia (ratification: 1992)

Article 2, paragraph 1, of the Convention. The Committee notes with satisfaction the provisions of article 219 of the Employment Act setting the minimum age for employment on board ship at 16 years of age.

Article 6. In its previous comments, the Committee has noted the explanation by the Government in its report that the minimum age for work done in educational and training programmes is specified at 14 years of age, by special regulations which govern the contents of educational programmes and not by the Labour Relations Act. It has requested the Government to send a copy of provisions regulating the minimum age for work with training purposes and to supply information on their practical application. The Committee notes with satisfaction the provisions of article 214(6) of the Employment Act according to which apprentices, pupils and students who have reached the age of 14 may follow practical education with an employer within the framework of education programmes.

The Committee also addresses a direct request to the Government concerning other points.

Tajikistan (ratification: 1993)

The Committee notes with regret that, for the third consecutive year, the Government's report has not been received. It is therefore bound to repeat its previous observations:

The Committee recalled that the minimum age of 16 years for admission to employment or work was specified under *Article 2, paragraph 1, of the Convention* as regards Tajikistan. It noted, however, that section 174 of the new Labour Code (Act of 15 May 1997) only prohibits the employment of persons under the age of 15 in contrast to the previous Code which fixed the minimum age of 16 years. The Committee recalled that the lowering of the existing minimum age is contrary to the principle of the Convention, which is to raise the minimum age as provided by *Articles 1 and 2(2)*. It also recalled that *Article 7* of the Convention allows, as an exception, the employment or work of persons 13 to 15 years of age on only light work which is not likely to be harmful to their health or development and not such as to prejudice their attendance at school. Other than such light work, work done by children under 16 years of age, must be prohibited. Therefore, the Committee again asks the Government to indicate the measures taken or envisaged, pursuant to its declaration under *Article 2*, to ensure that access to employment of children of 15 years of age may be allowed, exceptionally, only for work meeting the criteria set out in *Article 7*.

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

Uruguay (ratification: 1977)

The Committee notes the observations made by the PIT-CNT (Inter-Trade Union Assembly – Workers' National Convention) on the application of the Convention that were transmitted by the Government in a communication dated 30 September 2002.

Night work of young persons aged 16

According to the PIT-CNT, the National Institute for Minors (INAME), the authority for youth policy matters, has adopted resolutions authorizing the night work of young persons aged 16, in breach of the provisions 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 Directorate of the INAME authorizes the departmental directions of the interior of the country and the Inspection, Training and Labour Market Integration Division of Montevideo to deliver temporary individual permits (for a period of up to three months between 15 December and 15 March) authorizing young persons aged 16 to work between 10 p.m. and 12 p.m., provided that the activity neither interferes with their course of education nor jeopardizes their moral or physical safety. In addition, the prior consent of the father or guardian or other person in charge of the young person needs to be obtained. The PIT-CNT also indicates that such authorizations have been granted since 1977, when for the first time the enterprise “Gauchito de Oro S.A. McDonald’s Uruguay” was granted an authorization to employ on its premises in Punta del Este, Maldonado and Piriapolis, young persons aged between 16 and 18 years to perform night work until 12 p.m. The PIT-CNT deems the authorizations granted for the night work of young persons aged 16 to be illegal and in breach of the Night Work of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 79) and the Minimum Age Convention, 1973 (No. 138).

Article 3 of the Convention

Under *Article 3* of the Convention, the minimum age for admission to any type of employment 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 (*Article 3(1)*); the competent authority or national laws or regulations shall determine, after consultation with the organizations of workers and employers concerned, these dangerous types of work (*Article 3(2)*); and the competent authority or national laws or regulations may, after consultation with the organizations of workers or employers concerned, authorize employment or work as from the age of 16 years on condition that the health, safety and morals of the young persons concerned are fully protected (*Article 3(3)*).

National legislation establishes in section 6 of Decree No. 852/71 that, for the purposes of the prohibition of night work of children over 14 and below 18 years, the night period may not be shorter than 12 consecutive hours, including the interval between 10 p.m. and 6 a.m.

According to the PIT-CNT, national legislation has recognized the hazardous nature of night work and therefore prohibited it for young persons under 18 years, precisely in recognition of the major physical and psychological damage, the difficulties and dangers of the way to and from the place of employment, and the family problems. According to the PIT-CNT, the hazardous nature of night work is aggravated in Uruguay by the great precarity of transport at night and the danger for the morals of young persons due to the fact that the authorizations have been granted for places which by their nature of tourist sites present problems of prostitution. Given the pronounced

“hardness” and hazards of night work, the best for the young person is the absolute prohibition provided in the national legislation.

The Committee notes that, while the Convention provides the possibility of employing young persons of 16 years of age in hazardous work, this requires both a guarantee that their health, safety and morals are fully protected, and the prior consultation of workers’ and employers’ organizations. According to the PIT-CNT “the resolution lacks a legal base and is in breach of Decree No. 852/71, it being pointed out that no account was taken of the need for prior consultations with workers’ and employers’ organizations which it is mandatory to hold in order to determine the exceptions to the prohibition of night work of young persons”. Likewise, no account was taken of the opinion of the legal sector of the INAME, which, when consulted about the legality of the request of McDonald’s Uruguay, considered that under the law in force, the INAME could not accede to the request of McDonald’s in granting an authorization for persons under 18 years to work at night. Also, the Direction of the Taxes and Fines Department declared in January 2000 that “the resolution of the Directorate was illegitimate”.

The Committee hopes that the Government will take the necessary measures to ensure the protection of young persons against night work, strictly prohibited in national legislation, and thus classified as hazardous work.

The Committee further notes that Uruguay has ratified the Worst Forms of Child Labour Convention, 1999 (No. 182).

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Antigua and Barbuda, Azerbaijan, Bolivia, Botswana, Cyprus, Egypt, Equatorial Guinea, Georgia, Germany, Greece, Guatemala, Iraq, Jordan, Kenya, Republic of Korea, Kuwait, Libyan Arab Jamahiriya, Luxembourg, Malawi, Mauritius, Slovakia, Slovenia, Sweden, Tajikistan, Tunisia, Zambia.*

Convention No. 139: Occupational Cancer, 1974

Requests regarding certain points are being addressed directly to the following States: *Afghanistan, Argentina, Croatia, Denmark, Finland, Germany, Guinea, Hungary, Iceland, Iraq, Italy, Norway, Sweden, Switzerland, Syrian Arab Republic, Venezuela.*

Convention No. 140: Paid Educational Leave, 1974

Guinea (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 near future.

United Kingdom (ratification: 1975)

1. The Committee notes the Government's report for the period ending May 2000, containing useful information in reply to its previous observations.

2. The Committee had noted the comments of the Trades Union Congress (TUC) to the effect that the contract of employment of young workers should stipulate their right to education and training in view of the fact that the little paid educational leave negotiated collectively tends, in practice, to benefit non-manual workers in the professional categories. In its latest report, the Government states that since 1998 it has adopted a series of laws and regulations which provide for the granting to young workers of time for study or training to acquire a national vocational qualification at level 2 which, according to the Government, is the minimum level of qualification required to benefit from sustained employability. The Government also mentions the implementation of measures to assist apprenticeship for young workers aged between 16 and 24 years. The Committee recalls that, under the terms of the Convention, it is the responsibility of the Government to formulate and apply a national policy designed to promote the granting of paid educational leave with a view to contributing to the objectives set out in *Article 3 of the Convention* and that in this respect workers must be able to benefit, among others, from paid educational leave for the purpose of "training at any level" (*Article 2(a)*). It requests the Government to provide detailed information in its next report on the manner in which the national policy ensures the granting of paid educational leave to young workers for each of the objectives set out in *Article 2* of the Convention. To this end, the Government is requested to include extracts from reports, studies and inquiries, and statistics showing the effect given in practice to this policy and the number of workers granted paid educational leave.

3. The TUC's comments also referred to the restriction placed by the 1989 Employment Act on the possibilities of granting leave for the purposes of trade union education. The Committee wishes once again to recall that such leave, as envisaged in *Article 2(c)* of the Convention, should, under the terms of *Article 3(b)*, be designed to contribute "to the competent and active participation of workers and their representatives in the life of the undertaking and of the community". Also noting the information provided by the Government concerning the recent establishment of the Union Learning Fund (ULF), the Committee requests it to indicate in its next report the manner in which it is ensured that the granting of leave for purposes of trade union education is not reserved solely for trade union representatives.

4. Finally, the Government enumerates various programmes giving effect to the principle of lifelong learning, including the establishment of a learning network distributed through new information technologies (*learn/direct*). The Committee hopes

that the Government's next report will contain detailed information on the effective application of these programmes. In this respect, the Government is also invited to provide extracts from reports, studies and inquiries, and the available statistical data.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Afghanistan, Azerbaijan, Chile, Czech Republic, Guyana, Slovakia, Slovenia, Sweden, United Republic of Tanzania.*

Information supplied by *Germany* in answer to a direct request has been noted by the Committee.

Convention No. 141: Rural Workers' Organisations, 1975

Afghanistan (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:

In its previous comments the Committee recalled that, under *Article 3, paragraph 2, of the Convention*, rural workers' organizations are to be independent and voluntary in character and to remain free from all interference, coercion or repression. In this regard, the Committee noted with concern that several provisions of the Labour Code conferred prerogatives on the single trade union designated by name as "the Central Council of the DRA's Trade Unions", particularly in respect of the preparation of legislation and appointments to certain jobs (section 148(2) and section 3(4) of the Code). Furthermore, it noted that the objects of the Code included the consolidation of labour discipline and the implementation of production plans (section 1(4) of the Code).

The Committee had noted the information provided by the Government concerning the role of cooperatives generally under the Cooperative Law of 1981 and the voluntary nature of their membership, free from any form of coercion or pressure. It also noted that, due to the special conditions prevailing in the country, the Government had had difficulty collecting information from the concerned organizations. The Government was nevertheless requested to provide, in its next report, a copy of the recent statutes of the Peasants' Cooperative Union of Afghanistan and to provide statistical information concerning the number of its members as soon as this is available.

The Government is requested to indicate, in its next report, any measures taken to encourage rural workers' organizations to play their role in economic and social development free from all interference of any sort as a result of this cooperation.

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

Costa Rica (ratification: 1991)

The Committee notes the Government's report.

1. *Necessity to reflect in the text of the Labour Code the ruling that section 14(c) of the Labour Code* (exclusion from the scope of the Labour Code, and consequently from the exercise of trade union rights, of workers in agricultural and stock-raising enterprises permanently employing no more than five workers) and *section 376(b)* (prohibition of the right to strike in the public sector and in the agricultural, stock-raising and forestry sectors) *are unconstitutional*, with a view to eliminating any ambiguity.

The Committee notes with interest that the latest updated version of the Labour Code (March 2001) reflects the ruling that the above provisions are unconstitutional, which renders them inapplicable.

2. *Free access of trade union representatives to plantations.* The Committee emphasized the importance that it attaches to the freedom of access of trade union representatives to plantations and trusted that the Government would take measures to guarantee this right. In its report, the Government indicates that it endorses the importance that the Committee affords to this matter and reiterates that the administrative directive issued by the Ministry of Labour on 18 January 1999, ordering labour inspectors to remain vigilant with regard to the collective rights of workers, including the right of assembly of workers and their leaders, remains in force.

The Committee requests the Government to consider supplementing this administrative directive by a text which sets out more clearly the right of trade union representatives to have access to farms and plantations and to meet with workers. The Committee also requests the Government to provide information on the complaints received and/or reported by the Ministry of Labour concerning violations of trade union rights in the agricultural sector, and particularly with regard to the question of the access of trade union representatives to farms and plantations.

El Salvador (ratification: 1995)

The Committee notes the Government's report.

It also notes the comments of 12 September 2002 sent by the Inter-Union Committee of El Salvador on the application of the Convention and requests the Government to send its observations thereon.

Guatemala (ratification: 1989)

The Committee notes the Government's report and the comments made by the Trade Union Confederation of Guatemala (UNSITRAGUA) on the application of the Convention, which were forwarded by the Government with its report.

With reference to its previous comments, the Committee notes with satisfaction the repeal by Legislative Decree No. 18-2001 of 14 May 2001 of the prohibition of strikes or work stoppages by agricultural workers during harvests (section 243(a) of the Labour Code).

India (ratification: 1977)

The Committee takes due note of the information provided in the Government's report and recalls that its earlier comments referred to:

- (1) refusal of the Government of Maharashtra to negotiate with muster assistants (workers that provide water and medical facilities at worksites) employed through the Employment Guarantee Scheme;
- (2) alleged inadequate pay and service conditions of female workers employed in the state government's "Integrated Child Development Scheme";
- (3) working conditions and wages of forest and brick-making workers.

Muster assistant

In previous comments, the Committee had requested the Government to provide the text of the Supreme Court's decision regarding the notification issued by the Government to the effect that muster assistants were not covered under the Industrial Disputes Act (IDA), 1947, or the Trade Unions Act, 1948. The Government indicates that the Supreme Court's decision, rendered on 15 March 2002, has confirmed the position of the government of Maharashtra. The Committee once again requests the Government to provide it with the text of the Supreme Court's decision.

The Committee also notes that the state Government of Maharashtra has started the process of absorbing the muster assistants in services, on regular government/Zilla Parishad posts, which are of equal pay. The Committee nevertheless recalls its previous comments in which it considered that muster assistants were persons engaged in related occupations in a rural area as defined by *Article 2 of the Convention*. In this respect, the Committee notes with concern that the Supreme Court has confirmed the position that muster assistants are not covered by the IDA or the Trade Unions Act. It therefore requests the Government to indicate, in its next report, the legislation which governs the rights of muster assistants under the Convention, in particular as concerns the right to carry out activities in defence of their socio-economic interests. Furthermore, the Government is requested to indicate the steps taken to promote the widest possible understanding of the need to further the development of rural workers' organizations, including for muster assistants, as provided for under *Article 6* of the Convention.

*Female workers employed in the state government's
"Integrated Child Development Scheme"*

In its previous observation, the Committee requested the Government to specify the impact of the awareness camps on the creation and growth of strong and independent associations for women employed in the state government's "Integrated Child Development Scheme" (a scheme aimed at the holistic development of pregnant and nursing mothers) and how it promotes the widest possible understanding of the need to further the development of female workers in this scheme and of the contribution these associations can make to improve employment opportunities for women and conditions of work and life in rural areas. The Committee notes the Government's proposition to double the existing amount of honorarium that is given to the female workers in the Integrated Child Development Scheme (ICDS). The Committee also notes the Government's position that the role envisaged in ICDS for these female workers is such that it would not be appropriate to compare them with regular employees/workers. The Committee, however, is still of the opinion that the ICDS participants are rural workers covered by the "related occupations" as defined by *Article 2* of the Convention, which states that "the term 'rural worker' means any person engaged in agriculture, handicrafts or a related occupation in a rural area, whether as a wage earner or, subject to the provisions of paragraph 2 of this Article, as a self-employed person such as a tenant, sharecropper or small owner-occupier". The Committee once again requests the Government to specify the impact of the awareness camps on the creation and growth of strong and independent associations for those employed in the ICDS, as provided in *Article 4*.

Forest and brick-making workers

With regard to the working conditions and wages of forest and brick-making workers, the Committee had previously requested the Government to provide information on the possibility of those workers to form strong and independent organizations to improve their working conditions, and the measures envisaged by the Government to facilitate this objective. The Committee notes the Government's report which contains information on the general situation of the forest and brick-making workers, and which indicates the relevant legislation that is applicable to those workers, including the basic labour laws. While noting the Government's indication on the working conditions and wages of these workers, the Committee requests the Government to indicate the specific legislative provisions which ensure the rights of forest and brick-making workers to form strong and independent organizations to improve their working conditions, and to provide any statistics available in respect of the number of such organizations, the number of workers covered and any collective agreements which may have been concluded in this sector.

Finally, the Committee requests the Government to continue to keep it informed of all measures taken or envisaged to facilitate the establishment and growth, on a voluntary basis, of strong and independent organizations of rural workers.

Philippines (ratification: 1979)

The Committee notes the Government's report.

It notes in particular the Government's indication that the Labour Code Review Project is still ongoing. Recalling the particular difficulties facing rural workers' organizations in assembling their members scattered around the country in a great number of islands to elect their union leaders by direct ballot, the Committee once again trusts that the necessary measures will be taken in the very near future to amend Rule II(3)(d) of Book V of the Labour Code and section 241(c) and (p), which imposes the organization of direct members into locals and chapters and direct elections by secret ballot of local and national officers, under penalty of dissolution or officer expulsion, in order to ensure that workers' organizations may elect their representatives without interference by the public authorities. It requests the Government to transmit a copy of any proposed revisions of the Labour Code so that it may examine their conformity with the Convention.

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In addition, requests regarding certain points are being addressed directly to the following States: *Brazil, Burkina Faso, Finland, Guatemala, Mali*.

Convention No. 142: Human Resources Development, 1975*Slovakia (ratification: 1993)*

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 1999 direct request, which read as follows:

The Committee notes the information contained in the Government's simplified report pertaining to legislation generally governing the application of the Convention. It requests the Government to submit a detailed report on all the points requested in the report form for the Convention, including information on the practical application, in order for the Committee to evaluate fully the application of the Convention.

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

Turkey (ratification: 1993)

The Committee notes the information contained in the Government's report, received in September 2001, which included comments by the Confederation of Progressive Trade Unions (DISK), the Confederation of Turkish Trade Unions (TÜRK-İŞ) and the Turkish Confederation of Employers' Associations (TISK).

Article 1 of the Convention. The Committee notes the information supplied in reply to previous comments, and the examples provided in its report on the application of the Employment Service Convention, 1948 (No. 88).

Article 1, paragraph 5. The Committee notes with interest that the number of occupations for which training is offered has increased from 89 in 1999-2000 to 109 in 2000-01. There has also been a steady growth in the number of training centres. However, the number of apprentices dropped by 25 per cent between 1999 and 2001. The Committee would appreciate receiving further information on efforts made to encourage people in need of training to take advantage of these expanding services. It also notes the comments of DISK concerning the lack of training programmes to accommodate people with disabilities. In addition, it notes the ratification of the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159), and hopes that the Government's first report for this Convention will contain full information on its application, including information on the number of training participants with disabilities.

Article 3, paragraph 1. The Committee notes DISK's allegation that vocational guidance is provided to only a limited number of children and young people. The Committee requests further information on progress made in gradually extending the system of vocational guidance to all children, young persons and adults, including people with disabilities.

Article 3, paragraph 3, in conjunction with Article 5. In reply to comments made by TÜRK-İŞ in 1998, the Government states that workers receive training on labour law, including collective agreements, which is provided through apprenticeship training centres. Furthermore, if TÜRK-İŞ is unsatisfied with the content of the curriculum, it is able to participate in provincial committees established to coordinate local vocational training activities.

For its part, TÜRK-İŞ repeats its previous comments and adds that workers' organizations are not actively involved in formulation of policies and programmes of vocational training and the curricula of training institutions. The Committee would appreciate receiving further information on the manner in which workers' organizations are encouraged to participate in the formulation and implementation of policies and programmes of vocational guidance and vocational training, particularly in the light of

the newly established Turkish Labour Institute and the restructuring of the employment services, which provide a substantial amount of training.

Lastly, the Committee notes with interest the information supplied by TISK concerning a joint project between the Education Foundation of Metal Industrialists' Union (MESS) and the Turkish Metalworkers' Union, to ensure that workers are provided with the opportunity to develop their skills and to increase productivity. The group collective agreements contain provisions pertaining to how the unions are to use leave for trade union meetings and educational leave. A similar educational foundation has been established by the Turkish Building and Installation Contractors' Union. The Committee would appreciate being kept informed of such cooperative efforts to develop human resources.

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In addition, requests regarding certain points are being addressed directly to the following States: *Algeria, Azerbaijan, Egypt*.

Convention No. 143: Migrant Workers (Supplementary Provisions), 1975

Requests regarding certain points are being addressed directly to the following States: *Cameroon, Uganda*.

Convention No. 144: Tripartite Consultation (International Labour Standards), 1976

Chad (ratification: 1998)

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 2000, which read as follows:

The Committee notes the Government's first two reports on the application of the Convention. The Government indicates therein that the provisions of the Convention were complied with even before it was ratified and that employers' and workers' organizations are consulted regularly in accordance with the obligations incumbent on a member State of the ILO. The Committee wishes to indicate, however, that this information of a general nature does not allow it to appreciate fully the effect given to the various provisions of the Convention. It therefore requests the Government to supply with its next report more complete and detailed information on the application of all the Articles of the Convention, taking duly into account the questions asked under each of them in the report form.

Côte d'Ivoire (ratification: 1987)

The Committee notes the Government's report received in September 2002, and the information sent in response to its observation of 2000. The Committee again states that the tripartite committee – established in 1995 – has not yet met during the period covered, that its members are being selected and that the consultations on ILO-related matters were carried out in the Labour Advisory Committee. The Committee trusts that the Government will do its utmost to ensure that the tripartite committee on ILO-related

matters starts work and that it will be in a position to specify in its next report the procedure for choosing the members of the tripartite committee (*Article 3 of the Convention*), the arrangements for the provision of administrative support for the consultations and for any necessary training of participants in the procedures (*Article 4*), and the consultations held on each of the subjects covered by the Convention (*Article 5*).

Gabon (ratification: 1988)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its observation of 1998, which read as follows:

The Committee notes the Government's report and the information that it contains in reply to its previous direct request. It also notes the comments made by the Free Federation of Energy, Mining and Allied Enterprises (FLEEMA) and the Gabonese Confederation of Free Trade Unions (CGSL).

The Committee notes the information provided in the Government's report on the consultations held on each of the points set out in *Article 5, paragraph 1, of the Convention*. It notes in particular that, in accordance with *point (b)* of the above paragraph, the Home Work Convention, 1996 (No. 177), as well as various instruments adopted at the last Maritime Session of the International Labour Conference, have been submitted to the competent authority or authorities. Noting that the FLEEMA, in its comments, alleges that the Safety and Health in Mines Convention, 1995 (No. 176), and Recommendation No. 183 have not been submitted to the competent authority, the Committee wishes to recall on this point that it stated in its 1982 General Survey (paragraph 109) that the Convention goes beyond the obligation to submit stipulated in article 19 of the ILO Constitution and requests the Government to consult the representative organizations before finalizing the proposals to be submitted to the competent authority or authorities in relation to the Conventions and Recommendations which have to be submitted to them. In the light of these explanations, the Government is requested to make the comments that it considers appropriate on the observations of the FLEEMA.

Finally, with regard to the application of *Article 6*, the Committee notes the Government's reply to the observation made by the Gabonese Confederation of Free Trade Unions alleging the absence of consultations on the appropriateness of issuing an annual report on the working of the procedures provided for in the Convention. The Government states that budgetary restrictions have prevented the establishment of a tripartite consultation body for the purposes set out in the Convention, which has been the major contributing factor to this situation. The Committee requests it to provide information in future reports on any development relating to this subject and hopes that such consultations will be held in the near future.

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

Sao Tome and Principe (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 1997 direct request, which read as follows:

Article 4, paragraph 2, of the Convention. The Government is asked to provide information, if appropriate, on any arrangements taken or envisaged for the financing of any necessary training of participants on the procedures provided for in the Convention.

Article 5. The Committee asks the Government to provide particulars of the consultations held on each of the matters set out in *paragraph 1* including information on their frequency and to indicate the nature of all reports or recommendations made as a result of the consultation.

Article 6. The Committee asks the Government to send a copy of any reports issued on the working of the procedures provided for in the Convention.

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

Sierra Leone (ratification: 1985)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its observation of 1995, which read as follows:

The Committee notes that the Joint Consultative Committee has met several times to debate the new labour legislation. It wishes to recall that the tripartite consultations referred to in the Convention are essentially designed to promote the implementation of international labour standards and concern, in particular, the matters defined and set out in *Article 5, paragraph 1, of the Convention*. The Committee therefore requests the Government to supply full and detailed information on any tripartite consultations held, including their frequency, on the subject of:

- (a) government replies to questionnaires concerning items on the agenda of the International Labour Conference and government comments on proposed texts to be discussed by the Conference;
- (b) the proposals to be made to the competent authority or authorities in connection with the submission of Conventions and Recommendations pursuant to article 19 of the Constitution of the International Labour Organization;
- (c) the re-examination at appropriate intervals of unratified Conventions and Recommendations to which effect has not yet been given, to consider what measures might be taken to promote their implementation and ratification as appropriate;
- (d) questions arising out of reports to be made to the International Labour Office under article 22 of the Constitution of the International Labour Organization;
- (e) proposals for the denunciation of ratified Conventions.

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

Turkey (ratification: 1993)

Further to its previous comments, the Committee notes the detailed information provided by the Government in its report for the period ending May 2001. The Committee notes the indication that the Government will supply in future reports all relevant information on the consultations held in the Economic and Social Council on subjects covered by the Convention.

The Committee notes that the Government regularly supplies with its reports on the application of the Convention copies of the observations received from the representative organizations. The Government's last report was accompanied by observations made by the Confederation of Progressive Trade Unions (DISK) and the Turkish Confederation of Employers' Associations (TISK). In its communication, TISK indicates that tripartite consultations are carried out most frequently through written

communications and once again welcomes the Government's efforts over the past few years to promote dialogue and tripartite consultation. However, in its communication, the DISK regrets that the Government has ceased to hold consultations in the tripartite consultation committee established in 1998, in which the matters covered by the Convention had been discussed. DISK hopes that the tripartite consultation committee will become operational once again and encourages the Government to take the necessary measures to make it a permanent body.

The Government is requested to provide any comments that it considers appropriate with regard to the observations made by DISK and TISK, and particularly to indicate whether it envisages making the tripartite consultation committee operational once again.

United Kingdom (ratification: 1977)

1. The Committee notes the Government's report received on 21 September 2001 and the comments on the application of the Convention by the Trades Union Congress (TUC) which were forwarded to the Government by the Office on 20 November 2001. In its report, the Government recalls that, following the 1993 discussion in the Conference Committee, it modified the procedures previously agreed upon between the parties as regards the reports submitted under article 22 of the Constitution on the application of ratified Conventions. It is the practice of the Government to forward copies of the reports, including all observations and direct requests arising from previous reports, to the TUC and to the Confederation of British Industry (CBI) for comment before they are sent to the ILO. Any observation received by the Government from either organization is then forwarded to the ILO. The Government expresses its satisfaction with the system, agreed to by all parties. However, it regrets that occasionally, due in part to the heavy reporting schedule and the desire to keep to the ILO's reporting timetable, reports have been forwarded to the TUC and the CBI at the same time as being sent to the ILO. The Government indicates that it is making every effort to ensure that this practice is kept to an absolute minimum.

2. In its comments, the TUC states that in view of the range of issues requiring substantive tripartite discussion, and the range of levels of agreement about them, it wrote to the Secretary of State for Employment and Education in July 2000 suggesting that it would be an opportune moment to establish a National Tripartite ILO Committee and pointing out that this is a common practice in many member States. The Government rejected the suggestion, stating that it believes the current consultative procedures are adequate. The TUC adds that informal meetings are held occasionally. The pre-conference tripartite delegation meeting has, for the past decade, discussed agenda items only superficially, and has been focused mainly on practical arrangements without substantive tripartite consultation on policy matters. The Government does not provide a forum for the formulation of a common tripartite response to ILO requests for information, questionnaires or regular tripartite reporting on the application of Conventions. In conclusion, the TUC regrets that social partners are still without a formal tripartite forum in which the ILO matters that fall under the purview of the Convention can be discussed.

3. In its 2000 General Survey, the Committee pointed out the very flexible wording of the provisions contained in *Article 2 of the Convention* which leave

considerable latitude to Members with regard to the choice of consultation procedures, while Recommendation No. 152 provides a non-exhaustive and indicative list of ways in which consultations might be undertaken (including a committee specifically constituted for questions concerning ILO activities). The nature and form of the procedures are to be determined in each country in accordance with national practice, after consultation with the representative organizations (paragraphs 52-54).

4. As it also recalled in its 1993 observation, the Committee has highlighted in the 2000 General Survey that in order to be “effective”, consultations must take place before final decisions are taken, irrespective of the nature or form of the procedures adopted. The important factor 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 (paragraph 31).

5. The Committee notes that at its 90th Session (June 2002), the Conference adopted a resolution concerning tripartism and social dialogue in which it emphasized, inter alia, that social dialogue and tripartism have proved to be valuable and democratic means to address social concerns, build consensus, help elaborate international labour standards and examine a wide range of labour issues on which the social partners play a direct, legitimate and irreplaceable role. It also notes that the TUC has for a long time been calling for a revision of the operation of the procedures that give effect to the Convention. The Committee trusts that the Government and the social partners will examine the manner in which the Convention is applied and that the Government’s next report will contain indications on any measures taken in order to continue developing effective tripartite consultation in the sense of the Convention.

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In addition, requests regarding certain points are being addressed directly to the following States: *Algeria, Chile, China* (Macao Special Administrative Region), *Colombia, Denmark, Grenada, Guinea, Guyana, Iraq, Kenya, Republic of Korea, Republic of Moldova, Nigeria, Slovakia, United Republic of Tanzania, Trinidad and Tobago, Uganda*.

Convention No. 145: Continuity of Employment (Seafarers), 1976

Requests regarding certain points are being addressed directly to the following States: *France, Hungary, Sweden*.

Convention No. 146: Seafarers’ Annual Leave with Pay, 1976

Requests regarding certain points are being addressed directly to the following States: *Iraq, Spain*.

Convention No. 147: Merchant Shipping (Minimum Standards), 1976*Japan (ratification: 1983)*

Article 2(a)(i) and (e) of the Convention. (Conventions listed in the Appendix to Convention No. 147 but not ratified by Japan.)

Convention No. 53, Article 3, paragraph 1. The Committee notes that once again the Government's report does not reply to the concerns which have been raised since 1988 concerning the problem of non-certificated seafarers engaged in coastal navigation and who perform watch duty under the supervision of a certificated officer. The Government continues to refer in its report to the consultations held with organizations of shipowners and seafarers with a view to resolving this issue concerning the safety of navigation, without however providing the information requested by the Committee in its previous comments with regard to the progress achieved in the context of these consultations and the changes that have been made or are envisaged at the legislative level to bring the national laws and regulations into conformity with the Convention.

The Committee is therefore bound to recall the comments of the All Japan Seamen's Union of January 1995 relating to the dangers of: (i) allowing solo navigational watch by unlicensed crew; and (ii) having very few crew members on board vessels of less than 700 gross tonnes and excessive hours of work which, according to this organization, directly and indirectly cause many maritime accidents related to problems of keeping watch using unlicensed crew members.

The Committee recalls the principle that no person shall be engaged to perform the duties of officer in charge of the watch without being in possession of a certificate of competency, and it refers to paragraphs 82 to 90 of its 1990 General Survey on labour standards on merchant ships, in accordance with which *Article 2(a)(i)* and *Article 2(e)* read together reveal a dual undertaking: (i) "to have laws or regulations laying down standards in relation to the competency of the crew so as to ensure the safety of life on board ship"; and (ii) "to ensure that seafarers (crew members) employed on ships registered in the territory are properly qualified or trained for the duties for which they are engaged, due regard being had to Recommendation No. 137". In Paragraphs 18 and 19, the Recommendation calls for special attention to be given to the ability of seafarers to navigate and handle new types of ships safely, for familiarization and upgrading courses for seafarers to be organized to enable them to increase and widen their technical skills, and the release of seafarers for training periods ashore, with persons in a supervisory position on board ship being encouraged to take an active part in promoting such training.

The Committee therefore expresses concern at the situation existing in Japan with regard to the performance of watch duties in the merchant navy by non-certificated seafarers under the supervision of a certificated officer. It reiterates the comments contained in its previous observation in 1997, in which it recalled that certain safety standards covering the most dangerous aspects of maritime navigation cannot be dealt with in an approximate or equivocal manner. The degree of compliance with such standards cannot be altered when so doing could reasonably result in considerable loss of life. The Committee therefore once again requests the Government to: (i) report on the progress of the on-going consultations between the Government, shipowners and seafarers' organizations with a view to achieving a negotiated solution; and (ii) indicate

the legislative changes which have either been adopted or are envisaged so as to bring the national legislation into compliance with the Convention. It also requests the Government to indicate any other measures which have been taken to ensure that safety on board vessels is not jeopardized.

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

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In addition, requests regarding certain points are being addressed directly to the following States: *China* (Hong Kong Special Administrative Region), *Israel*, *Japan*, *Liberia*, *Morocco*, *United States*.

Convention No. 148: Working Environment (Air Pollution, Noise and Vibration) Convention, 1977

Brazil (ratification: 1982)

The Committee notes the comments communicated by the *Sindicato dos Trabalhadores nas Indústrias Químicas, Petroquímicas e Afins de Triunfo* (SINDIPOLO). These comments are treated in conjunction with the Government's reply under Convention No. 161. On the other hand, the Committee notes that the Government's report contains no reply to its previous comments. It must therefore repeat its previous observation which read as follows:

The Committee notes the observations made by the Trade Union of Workers in enterprises of Telecommunication, Postal, Telegraphic and other similar Telephonic Operators in the State of Rio de Janeiro (SINTTEL-RJ) as well as the reply given by the Government to these observations.

The trade union refers to many occupational accidents in the enterprise TELEMAR due to the very high levels of noise or sound pressure. Moreover the said enterprise has had great difficulty in negotiating collective agreements with the union as can be seen from the two unfinished collective agreements. It requests that the risks to which the workers are exposed be investigated and that in the event that, after inspection of the workplace, it is found that any environmental factor, be it physical, chemical or biological, exceeds the limits fixed in the NR-15, it requests that measures be taken in accordance with sections 189 and 190 of the Consolidation of the Labour Laws (CLT).

The Committee notes from the annexes the information sent by the union regarding the types of occupational accidents and diseases and the functions of those who sustained them. It appears that most of the posts involved technical or operational functions (telephone operators, commercial and service staff, staff dealing with installation and repair work) and their accidents and diseases resulted in varying degrees of hearing problems and loss. Moreover, TELEMAR had suddenly eliminated the ten-minute break and the result has been increasing auditory lesions and loss in working capacity. Prior to the privatization of the activity an ergonomic study had indicated that work breaks were a way of minimizing such risks. In their view TELEMAR is not respecting the standards of NR-17 on the occupational safety and health of workers nor has it taken part in the round-table discussion with the Regional Delegation of Labour (DRT).

The Committee notes from a medical report annexed to these observations of the union that medical condition of the upper part of the body involving tendonitis, back problems, and other physical pain resulting from repetitive tasks, the use of equipment not adapted to the work, and other ergonomic and working environmental causes were noted.

These conditions were progressive and at times resulting in invalidity. The consequences are serious not only for the workers but also for the enterprises. Women workers were among the ones most affected. This report indicates that even though definitive cures were hard to come by treatment included physiotherapy, anti-inflammation treatment, immobilization, rest, and surgery. The application of NR-17 of the Order No. 3214 was being progressively introduced in enterprises with a view to preventing and controlling these effects.

The Committee notes the Government's reply, which conveys information relating to the results of inspection visits conducted at TELEMAR during the months of August, September and October of 1999. The same enterprise was also inspected last in the month of May (2000). These visits revealed that there were 9,690 workers employed of which 3,101 were women. The medical and safety and health staff of the enterprise were contacted during the visits and no violations of the principles of the Convention were uncovered. It notes that it was only one local of the enterprise and not the branches of the enterprise that was actually visited. The Committee notes from the actual reports of the visits that various irregularities such as failure to present documents (only ten out of the 22 medical certificates were produced) were noted and notification given to the enterprise including cases involving varying degrees of hearing problems and loss were noted. After examination of 22 workers and one ex-worker, nine workers were considered to have conditions suggestive of minor hearing loss due to high levels of noise in accordance with the provisions of Order 19/98 of MTE. Two workers of the enterprise were given certificates of disability due to loss of hearing due to high levels of noise. Another two or three workers of the enterprise continue to be followed up by a team of TELEMAR medical doctors. While the cases of two other workers have turned out not to be cases of hearing loss two other ones await conclusions.

The Committee would be grateful if the Government would continue to provide further information on the evolution of the situation of occupational safety and health of workers with respect to noise in the various branches of the enterprise TELEMAR, including reports on inspection visits conducted, statistics on occupational accidents and diseases, contraventions, and measures taken to correct them.

In addition, in its earlier observations, the Committee had noted the observations communicated by the Trade Union of Workers in the Civil Construction Industry, supported by the Trade Union of Mine and Metallurgy Workers (SINDIMINA), the Trade Union of Clothing and Textile Industry Workers (SINDITEXTIL), the Trade Union of Water Industry Workers, the Trade Union of Bakers and Pastry Cooks, the Trade Union of Port Workers (SINDIPESE), the Trade Union of Security Company Workers and the Trade Union of Oil Workers (SINDIPETRO), all workers' organizations in the state of Sergipe, which alleged that the regional delegate of the Ministry of Labour prohibits inspectors from being accompanied by workers' representatives. These comments appear to highlight the seriousness of the situation denounced in 1993 by the representatives of the workers' organizations, in that they indicate the existence of a policy on the part of the employers to prevent labour inspections, and the more so when the inspectors are accompanied by workers' representatives. This question was the object of a 1995 observation by the Committee. The Committee had noted, in its observation of 1997, the Government's reference to a draft standard instruction submitted to the National Labour Council, with a view to solving this problem. In its 1998 report the Government indicated that the "draft standard instruction" sent to the National Labour Council had been shelved on the grounds that the field covered by this regulation should be subject to collective bargaining and that the pertinent legislative measures would be adopted subsequently. The Government therefore indicates the adoption of Order No. 03 of 7 February 1998, issued by the Secretariat of Occupational Safety and Health (SSMT), which, under section 1(1) of Regulation No. 1, 1.7(c), IV(d), allows workers' representatives to accompany inspectors on visits related to the enforcement of legal and regulatory texts on occupational safety and

health. In its report, the Government adds that this Order is applied throughout the entire territory.

The Committee observes that the Order cited (No. 03 of 7 February) was adopted in 1988, and not in 1998, and was published in the *Official Journal* of 10 March 1988. The Committee thus understands that the problems highlighted by the workers' organizations did not arise from the absence of a regulation, but from the failure to apply and respect a regulation, both by the employers and, more seriously, by a representative of the Government. The Committee therefore urges the Government to supply information on the measures adopted or envisaged to guarantee, under the terms of Order No. 03 of 7 February 1988 of the Secretariat of Occupational Safety and Health, that workers' representatives may accompany inspectors on their inspection visits related to the enforcement of occupational safety and health legislation and regulations, in application of the provisions of *Article 5, paragraph 4, of the Convention*, as well as information on the measures adopted in respect of the representatives of the state (the regional delegate of the Ministry of Labour) to ensure respect both for national legislation and for the provisions of the Convention.

The Committee therefore hopes that the Government will provide all information relating to the measures adopted to resolve all the abovementioned problems raised by the workers' organization.

The Committee is also addressing a request on a number of other questions relating to the application of the Convention directly to the Government.

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 2003.]

Ecuador (ratification: 1978)

1. The Committee notes the Government's reply to its previous comments based on the comments made by the Latin American Central of Workers (CLAT), the National Union of Workers of the Telephone, Annotation and Revision Services of the Ecuadorian Telecommunications Institute (IETEL) "17 May", affiliated to the CLAT, and the Ecuadorian Confederation of United Class Organizations of Workers (CEDOC) concerning information on the application in practice of measures under Ministerial Agreement No. 136 of 23 February 1999 intended to afford protection to workers and supervisors in the telephone services against occupational hazards arising out of environmental noise and pollution such as those setting the normal working day at four and a half hours per day. It notes that the Government maintains that despite the Agreement of the Ministry of Labour and Human Resources No. 136 of 23 February 1999, which fixed the normal working day for telephone operators and supervisors at four and a half hours per day, during collective bargaining the workers obtained extensions to such limits of their own free will. The Committee would be grateful if the Government would provide copies of the said collective agreements voluntarily agreed to by the unions extending the normal working day beyond those set out in Agreement No. 136 of 1999. It would also be grateful if the Government would give its views as to the impact of such agreements on the safety and health of the workers of the sector, in view of the limits set by Agreement No. 136 of 23 February 1999.

2. The Committee has requested, on several occasions, that the Government adopt the necessary measures to give effect to a certain number of Articles of the Convention. The Committee notes that the Government once again refers to sections of the Labour

Code (sections 42, 416, 418, 441 and 443) that do not address the specific requirements of the said Articles of the Convention. The Committee wishes to indicate that as the provisions of the Convention are not, in principle, self-executing, upon ratification of the Convention, the Government is obliged to adopt all necessary legislative, regulatory and practical measures on the following provisions of the Convention.

Article 6, paragraph 2, of the Convention. Further to its previous comments, the Committee notes the Government's response that sections 416 and 418 establish the employer's responsibility in respect of the prevention of risks, and that the committees that assess risks can determine the responsibilities in the event of joint work in order to avoid occupational accidents or diseases. Moreover, it is the responsibility of all employers, without exception, irrespective of the fact that there may or may not be more than one employer at a workplace, to meet the requirements of section 42 of the Labour Code, without prejudice to the responsibility of each employer. The Committee would like to point out, however, that there are no procedures prescribed for the requirements of this paragraph of *Article 6* of the Convention that employers are required to collaborate whenever two or more of them undertake activities simultaneously at one workplace. It hopes the Government will soon take the necessary measures to ensure that such collaboration is required of employers whenever they are undertaking work simultaneously at one workplace.

Article 8, paragraphs 1 and 3. Air Pollution and Vibration. The Committee notes from the Government's report that there is no progress to report on the matters raised under these paragraphs of *Article 8* of the Convention. It therefore reiterates its previous hope for the establishment, by the Inter-Institutional Committee on Occupational Safety and Health, and under section 63 of the Safety and Health Regulations, of exposure limits for corrosive, irritating and toxic substances, by adopting the standards elaborated with respect to such substances by the American Conference of Governmental Industrial Hygienists. Please indicate the measures taken in this regard.

Article 10. The Committee notes that there is no progress made regarding its previous comments under this Article of the Convention. It must therefore reiterate its hope that the Government will shortly take the necessary measures to establish guidelines or instructions concerning the type of personal protective equipment (e.g. double-layer gloves specially designed to prevent transmission of vibration through the hands, shoes with soles that absorb vibration transmitted by the ground, etc.) to be provided to workers exposed to vibration, based on section 55.8 of the Safety and Health Regulations (Executive Decree No. 2393 of 13 November 1986). Please indicate the measures taken in this regard.

Article 11, paragraph 1. Further to its previous comments, the Committee notes that this is met by integral inspections, and particularly those carried out by the Occupational Safety and Health Department, but that there has been no information available on the reports of these inspections. The Committee wishes to recall its previous comment where it had noted that the Safety and Health Regulations provided for periodic medical examination of workers exposed to dangerous substances and excessive noise. It reiterates its request to the Government to indicate the measures taken to ensure that workers who may be assigned to work involving exposure to air pollution, noise or vibration are provided with medical examinations prior to their assignment to such work

and to indicate the periodicity determined by the competent authority for the medical examinations to be provided to workers exposed to air pollution, noise or vibration. Please provide all indications in this regard.

Article 12. The Committee notes that there is no progress made on matters raised in its previous comments under this Article of the Convention. It must therefore reiterate its request to the Government to indicate the measures taken or envisaged to ensure that the use of processes, substances, machinery and equipment involving exposure to air pollution, noise or vibration are notified to the competent authority.

[The Government is asked to reply in detail to the present comments in 2003.]

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In addition, a requests regarding certain points are being addressed directly to the following States: *Brazil, Denmark, Ghana, Guinea, Iraq, Kyrgyzstan, Malta, Niger, Russian Federation.*

Convention No. 149: Nursing Personnel, 1977

Requests regarding certain points are being addressed directly to the following States: *Guinea, Jamaica, Kyrgyzstan, Latvia, United Republic of Tanzania.*

Convention No. 150: Labour Administration, 1978

Requests regarding certain points are being addressed directly to the following States: *Democratic Republic of the Congo, Dominican Republic, Jamaica, Republic of Korea, Malawi, Zimbabwe.*

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

Requests regarding certain points are being addressed directly to the following States: *Colombia, Mali, Turkey.*

Convention No. 152: Occupational Safety and Health (Dock Work), 1979

Requests regarding certain points are being addressed directly to the following States: *Congo, France, Guinea, Iraq.*

Convention No. 153: Hours of Work and Rest Periods (Road Transport), 1979

Ecuador (ratification: 1988)

The Committee notes the information provided in the Government's report. The Government again states that the necessary measures to give effect to the Convention have not yet been taken. It refers, in a general way, to binding decisions of the Community of Andean States on international affairs preventing member States from regulating the same subject separately for their own countries. The Committee notes that

since the entry into force of the Convention for Ecuador in 1989, the Government has given various and changing explanations as to why the national legislation has not been adjusted to the requirements of the Convention. Despite repeated offers for technical assistance and two ILO missions discussing the issue with the Government, no progress has been made. The Committee repeats its proposal to make use of ILO technical assistance and once again urges the Government to ensure compliance of national law and practice in national and international road transport with the provisions of the Convention.

In this respect, the Committee notes that the Labour Code of 12 June 1997 contains special regulations on the working conditions in private and public transport enterprises (sections 322-336; and also sections 10, 311 and 313 of the Labour Code). These special provisions appear to exclude the application of the general provisions on working time and rest periods, laid down in sections 47-68 of the Labour Code, in so far as they regulate the same subject especially for transport workers and employees.

Referring, in particular, to sections 330 and 331 of the Labour Code, the Committee points out that in view of the precedence of these provisions over the general working-time provisions of the Labour Code, section 47, paragraph 1, providing for an eight-hour work day and section 50, paragraph 2, of the Code, according to which Saturdays and Sundays are legal weekly holidays, appear not to be applicable. Indeed, sections 330 and 331 explicitly render unnecessary any need of determining, in the employment contract, a maximum duration of work and leave it to the discretion of the employer to authorize, in certain circumstances, more than eight hours of work per day, including on Sundays, Saturday afternoons and public holidays. Moreover, section 331 of the Labour Code, which leaves the decision on hours of work entirely to the discretion of transport entrepreneurs, appears to permit the entrepreneur to evade the authorization procedure in respect of work on Saturday afternoons and Sundays, as laid down in section 52 of the Labour Code.

In this respect, the Committee once more refers to the communication of the Ecuadorian Central of Class Organizations (CEDOC), dating back to 1994, which points to problems of observance of rest periods in road transport, due to the absence of a control mechanism for working time, leaving it to the entrepreneur and the employed driver to have breaks according to distance driven or frequency of journeys. The Government is again invited to comment on these observations.

In view of the aforementioned points, the Committee cannot but maintain its view that the Labour Code in its current form does not ensure conformity with the main provisions of the Convention such as those on hours of work, compulsory breaks, maximum total driving time or daily rest. It hopes that the Government will, as a matter of urgency, undertake the necessary efforts to bring national law and practice into line with the provisions of the Convention.

[The Government is asked to supply full particulars to the Conference at its 91st Session and to report in detail in 2003.]

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In addition, requests regarding certain points are being addressed directly to the following States: *Iraq, Switzerland, Uruguay*.

Convention No. 154: Collective Bargaining, 1981

Switzerland (ratification: 1983)

The Committee notes the observations of the Union of Swiss Trade Unions (USS) dated 15 February and 11 October 2002 on the application of the Convention in Switzerland, and requests the Government to supply its comments in this respect.

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In addition, requests regarding certain points are being addressed directly to the following States: *Colombia, Gabon, Uganda*.

Convention No. 155: Occupational Safety and Health, 1981

Brazil (ratification: 1992)

The Committee notes the information provided by the Government in its last report. It notes with interest the various laws and regulations enclosed which have a direct and indirect bearing on the application of the provisions of the Convention, and the statistical information on occupational accidents. The Committee would like to draw the Government's attention to the following points.

1. The Committee notes the Government's reply to its previous comments based on the observations made by the Democratic Federation of Shoemakers of the State of Rio Grande do Sul and the Union of Workers in the Shoe Industry of Dois Irmãos and MRRO Reuter, which had denounced publicly the employers of the sector (the Brazilian Association of the Shoe Industry) for having put pressure on the federal Government to withdraw the classification as category three of the risk of the sector. The unions had indicated that, while seeking such withdrawal of the classification of risk of the sector, workers were not permitted to go away from their workplaces to rest rooms, humiliation imposed on workers by displaying publicly on walls the pictures of those who were absent from work due to illness, making workers work all day on Saturdays, threatening with dismissal of those refusing to work at night and on Saturdays.

2. In its reply, the Government indicates that the enterprises Calçados Maide Ltda, Dois Irmãos Ltda, Industria de Calçados Wirth Ltda, and H. Kuntzler Cia. Ltda, were inspected on several occasions during the period 1996 to 2000. It states that inspections were carried out regularly and companies were gradually improving their working conditions. The Government states that the information provided by the regional departments of Rio Grande do Sul, the state in which these undertakings were located, indicated that the irregularities identified previously were eliminated. The Government referred to an event held in Rio Grande do Sul on 28 October 1999, which it said was a success and had spin-off effects, including the initiation of discussion of the new Regulatory Standard No. 4 on the specialist service in occupational safety and health (SEST), currently under tripartite discussion prior to the drafting of a new law. This standard was to provide for the establishment of the collective SEST, for which a pilot project was already in operation, and its task was to guarantee good working conditions for particular groups of undertakings linked geographically and economically. One such

pilot project was taking place in the region in which the abovementioned enterprises were located. It indicated that the collective SEST in Novo Hamburgo, RS, was fully operational.

3. In respect to the alleged change of classification of the level of risk in enterprises in the footwear sector without prior consultations with workers' representatives, the Government states that since 1996 the Ministry of Labour had not amended any regulatory standards without the consent of the Standing Tripartite Commission with equal representation of parties (Comissão Paritária Permanente) that was set up pursuant to Ordinance No. 393. Representatives of the trade union federations participated in the Commission, which might not be to the liking of trade unions that were not members of the federations.

4. Concerning the comments of the trade union according to which the employers in the footwear sector had brought pressure to bear on the federal Government to change the category of risk from the third to the second classification, the Committee notes the Government's statement that the National Classification of Economic Activities specified four "levels of risk" for enterprises by branch of activity. The footwear industry was classified at a level of risk "3", with the relevant legal ramifications. More recently the criterion of grading of risks for enterprises that was complained about, has been dropped by the Ministry of Labour and Employment. The new NR-5 on internal accident prevention commissions (CIPA), and NR-4 on specialist services in occupational safety and medicine, classified undertakings by economic sector and on that basis determined the size of the commissions, thus ceasing the use of the "level of risk" criterion complained about. The "level of risk" continued to be used for purposes of defining occupational accident insurance contributions, for welfare purposes and was defined on statistical criteria divided into three grades ("1", "2" and "3") with the footwear industry falling into the "big risk" level "2".

5. Please indicate, in practical terms, the implications for the occupational safety and health situation for workers in the footwear industry. The Committee would be grateful if the Government would continue to provide information on the results of inspection visits in the footwear industry and in particular enterprises mentioned above.

6. The Committee notes the information provided by the Government in reply to its observation of 2000 based on the comments submitted earlier by the Union of Workers from the Marble, Granite and Lime Industry of the State of Espírito Santo (SINDIMARMORE). The Government states that the Ministry of Labour and Employment had adopted a number of measures regarding the working conditions in the mining, marble and granite sector with the intention of reducing the mortality rate resulting from industrial accidents in the sector. Among these it indicated the establishment of the National Standing Sub-Commission for Marble and Granite (SPNMG), with the objective of improving the working conditions in the sector. The Sub-Commission, made up of two workers' representatives, two employers' representatives and two government representatives, has been taking important decisions with the participation of the Ministry of Labour. Another measure referred to by the Government was the creation of an Internet page listing fatalities in the sector, together with broad tripartite discussion of joint action to be taken to reduce accidents. The Government also indicates the establishment of the Special Group to Support Inspection (GEAF), made up of inspectors assigned to the mining branch, and entrusted with the

task of structuring strategic inspection procedures in the sector. Furthermore, annual macro-regional goals have been laid down for inspection and activities in states with extensive mining activity, in particular Minas Gerais, Espírito Santo and Bahia, with priority being given to the introduction of special inspection activities in the sector. The Government states that the continued activities conducted by the Ministry in the mining sector had produced positive results. The Government recalls that the Ministry of Labour and Employment had set itself the goal of reducing fatal industrial accidents by 40 per cent during the 1998-2003 period, and that, while there was an overall reduction of 23 per cent during the 1998-2000 period, a 50 per cent reduction was achieved in the mining sector. The Government considered that the rate remained high and that efforts continued to reduce it.

7. The Committee would be grateful if the Government would continue to provide information on the measures taken and results attained in improving the overall occupational safety and health of those working in the mining, marble and granite sector of activity, and in particular in reducing fatalities resulting from industrial accidents.

8. The Committee recalls that in one of its previous comments, it had requested the Government to provide information on the following points:

- in respect of the points raised by the Union of Fishermen of Angra dos Reis and, in view of the Government's intention to modify the inspection services so as to increase the effectiveness of the control of specific risks inherent in certain occupational activities, the Committee had requested the Government to pay special attention to the question of workers employed in the fisheries sector and the monitoring of their safety and health condition and to indicate the progress made in this respect;
- in respect to the comments made by the Federal Union of Public Service Workers of the State of Goiás (SINDSEP-GO), the Committee had requested the Government to supply detailed information on the manner in which effect is given to the provisions of the Convention in the Ministry of Agriculture Laboratories in the State of Goiás and in other enterprises where workers are exposed to the risk of poisoning by chemical and biological substances and agents;
- in respect to the functioning of the inspection services responsible for the enforcement of laws and regulations concerning occupational safety and health and the working environment, the Committee had requested the Government for information on progress attained in respect of the implementation of the Convention given the Government's statement that a pluri-annual plan had been drawn up (1996-99) with a view, inter alia, to providing indications for the labour inspection services on new occupational safety and health control methods, in collaboration with research and study institutes, and to monitor working conditions and environment in urban and rural undertakings.

Convention No. 156: Workers with Family Responsibilities, 1981*France* (ratification: 1989)

The Committee notes the information contained in the Government's report and the comments made by the French Democratic Confederation of Labour (CFDT) and the French Confederation of Christian Workers (CFTC).

1. Further to its previous observation expressing concern over the lack of protection against discrimination based on family responsibilities, the Committee notes with satisfaction the adoption on 16 November 2001 of Act No. 2001-1066 to combat discrimination, and in particular its section 1, which amends section L.122-45 of the Labour Code, prohibiting both direct and indirect discrimination in respect of remuneration, training, reclassification, assignment, qualification, classification, promotion, transfer or contract renewal against workers due to their family situation. It further notes that the Act also amends section L.122-45 of the Labour Code respecting the burden of proof, so that when a worker with family responsibilities presents facts from which it may be presumed that direct or indirect discrimination has occurred, it is for the defendant to prove that there has been no breach of the principle of non-discrimination. The Committee also notes that Act No. 2001-1066 inserts new sections L.122-45-1 and L.122-45-2 into the Labour Code, introducing the possibility for trade unions to submit discrimination complaints on behalf of alleged victims. The Committee requests the Government to provide information with its next report on complaints that have been lodged with respect to workers with family responsibilities and on the actions taken by employers' and workers' organizations to facilitate the reconciliation of work and family life.

2. The Committee notes that section 55 of Act No. 2001-1246 of 21 December 2001 on the financing of social security amends sections L.122-25-4 and L.122-26 of the Labour Code, introducing more flexible provisions on family leave to encourage fathers to make greater use of their entitlement to parental leave. The Committee requests the Government to indicate with its next report the use made by fathers of parental leave.

3. The Committee notes with interest the legislative amendments introducing the possibility for workers with family responsibilities to take leave or reduce their working time to care for a child, parent or a person reaching the end of their life, to care for a child suffering an illness, accident or serious disability, and the right of night workers with family responsibilities to transfer to day work when night work is incompatible with the care to be provided for a child or for another dependent person. The Committee is addressing a request directly to the Government on the application of these provisions in practice.

4. The Committee notes the comments made by the CFDT under Convention No. 111 that, as part of the process to combat discrimination, it is necessary to ensure that adequate childcare facilities are made available so that both parents are able to fully exercise an occupational activity. The Committee requests the Government to provide information with its next report on any measures taken to provide adequate childcare facilities to facilitate workers' reconciliation of work and family duties.

5. The Committee notes that the Government's report once again does not contain a reply to its earlier comments on the matters raised by the CFTC concerning allowances in terms of career development and continuity of social protection. The Committee

therefore reiterates its earlier request and hopes that the Government will provide an answer to this comment with its next report.

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

Japan (ratification: 1995)

The Committee notes the comments from the Japan National Hospital Workers' Union (JNZWU/ZEN-IRO), received on 15 August 2002. The comments have been forwarded to the Government and the Committee will address them together with any comments the Government might have thereon, at its next session. In addition, the Committee repeats its previous observation, which read as follows:

The Committee takes note of the information contained in the Government's report. It also notes the comments made by the Japan National Hospital Workers' Union (JNHWU/ZEN-IRO), the Telecommunication Workers' Unions (TSUSHINROUSO) and the Japanese Trade Union Confederation (JTUC-RENGO), as well as the Government's response.

1. *Article 2 of the Convention.* JTUC-RENGO indicates that the Convention is not applied in Japan to workers with fixed-term contracts and it recommends that the application of the Convention be extended to this category of workers. In its comments, JNHWU/ZEN-IRO notes that wage-based workers (*chingin-shokuin*) employed in Japanese hospitals are excluded from the coverage of the Child Care Leave Act. JNHWU/ZEN-IRO indicated in its 17 October 2000 comments that regular personnel in state-run hospitals enjoy paid leave to care for injured, sick or elderly family members, but that this benefit is not extended to wage-based workers. In its communications of 16 August and 22 August 2001, JNHWU/ZEN-IRO states that discriminatory treatment of wage-based workers in Japanese hospitals continues.

2. In its recent comments, JNHWU/ZEN-IRO points out that the Government has introduced a draft bill to the 151st Diet session which would modify the national legislation on childcare and nursing care leave, inter alia, to extend the application of the childcare leave law to those workers who are employed de facto on a permanent basis due to repeated renewals of their employment contracts. In this regard, the Committee notes the *FY2000 Annual Report on the State of Formation of a Gender-equal Society and Policies to be Implemented in FY2001 to Promote the Formation of a Gender-equal Society* ("FY2000 Annual Report") supplied by the Government. The FY2000 Annual Report indicates that the draft bill submitted in February 2001 would: (1) incorporate welfare provisions for workers raising children and caring for family members; (2) prohibit disadvantageous treatment of workers due to their use of childcare or family care leave; (3) raise the age of children targeted by measures entitling workers to reduce working hours; and (4) provide for nursing leave.

3. With regard to coverage of the Convention, the Committee recalls that *Article 2* of the Convention states that it applies to "all branches of economic activity and all categories of workers". As the Committee observed in paragraph 46 of its General Survey of 1993 on workers with family responsibilities, the phrasing of the Convention was intended to cover all workers, "whether in full-time, part-time, temporary or other forms of employment, and whether they are in waged or unwaged employment". Therefore, the Committee welcomes the draft law, noting that its adoption would extend the right to childcare and nursing leave to additional categories of workers. In this regard, the Committee would be grateful if the Government would supply information concerning any measures taken or contemplated to extend application of the provisions of the Convention to part-time workers, workers on

fixed-term contracts and wage-based workers. The Committee expresses the hope that the draft bill will be adopted in the near future and requests the Government to supply a copy of the Act once it is adopted.

4. *Article 3.* The Committee notes initiatives taken by the Government to promote equality of opportunity and treatment for workers with family responsibilities, including the approval in December 2000 of the Basic Plan for Gender Equality, which includes the objective of supporting men's and women's efforts to harmonize work with their family and community life. The Committee requests the Government to provide information on the measures taken or envisaged to implement the objectives of the Basic Plan relevant to the Convention.

5. *Article 4(a). Personnel transfers to remote workplaces.* JTUC-RENGO states that company regulations frequently require full-time workers in Japan to remain available to work overtime hours or to transfer to a different workplace. In its previous observation, the Committee had noted the comments of JTUC-RENGO (dated 29 October 1999), as well as those of TSUSHINROUSO (dated 17 October 2000) regarding the transfer of workers with family responsibilities to remote workplaces. TSUSHINROUSO's comments concern the transfer of workers employed by the Nihon Telephone and Telegraph (NTT) and allied companies. According to TSUSHINROUSO, the transfers have placed great strains on the employees' lives, particularly on their ability to manage their family responsibilities and balance those responsibilities with their work lives. Replying to TSUSHINROUSO's comments, the Government indicates that adequate rules should be negotiated between employers and employees before personnel are transferred to a distant workplace, and that such rules should, to the extent possible, define the areas and conditions of the transfers, taking measures to reduce the burden of the transfer on the worker. The Committee notes that similar concerns were raised in the 17 October 2000 comments of JNHWU/ZEN-IRO, which presented several examples of workers allegedly forced to resign from their jobs as a result of being transferred to distant workplaces without their consent. In all the cases presented, while the Government indicates that the workers' family responsibilities were considered by the employer, it appears that the workers' objections were overlooked because the transfers were considered to constitute recognition of the workers' experience and abilities.

6. The Committee notes that concerns regarding the practice of transferring employees to distant workplaces without prior consultation are also raised in the recent comments of JNHWU/ZEN-IRO (dated 22 August 2001), which refer to the results of a survey on personnel transfers conducted in April 2001 by the Kanto-Shinetsu Regional Council of JNHWU/ZEN-IRO. Out of 89 hospital and sanatorium workers who had undergone transfers, the majority (89 per cent) indicated that there had been no consultation or announcement from the employer prior to transfer. Twenty per cent of those surveyed indicated that the transfers required them to live away from their families. In its previous comments dated 17 October 2000, JNHWU/ZEN-IRO noted that forced transfers to distant workplaces are frequently imposed upon staff, disregarding the will of the employees concerned. According to JNHWU/ZEN-IRO, workers are thereby forced to choose between accepting the transfer and being separated from their families, refusing the transfer and risk being dismissed, or simply quitting the job. The Government has not yet responded to these comments.

7. The Committee recalls that Paragraph 20 of Recommendation No. 165 encourages employers to consider family responsibilities when transferring workers from one locality to another. The Committee notes that the fact that a transfer may represent recognition of a worker's capabilities or even a promotion is not dispositive of whether the worker is able or willing to accept a transfer, as the worker's family responsibilities may preclude him or her from moving to a different workplace. The Committee considers 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 weight along with the business reasons underlying the transfer proposal. The Committee also points out that a worker's acceptance of a transfer in the past does not signify that the worker is able or willing to accept a transfer to a distant workplace at another stage of his or her life, as family circumstances can, and frequently do, change. In this context, the Committee points out that one of the objectives of the Convention is to promote the ability of workers with family responsibilities to balance their family and work life. As a necessary corollary, this would 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 expresses the hope that the practice of imposing transfers on workers will be reviewed and brought into greater conformity with the requirements of the Convention.

8. *Article 4(b)*. The Committee notes with interest that childcare and family leave benefits have been raised from 25 per cent of the worker's wage to 40 per cent as of January 2001. The Committee also notes the measures taken by the Government to facilitate the taking of childcare leave, including assistance to employers replacing employees on childcare leave and placing the employee in the same position after the leave, exemptions from payment of insurance premiums and year-end bonuses paid to employees on childcare leave. JTUC-RENGO points out that the measure providing for exemptions from payment of insurance premiums does not extend to workers on family care leave. The Committee asks the Government to keep it informed of any measures taken or contemplated to extend application of these provisions to workers on family care leave.

9. *Article 5*. In its comments of 17 October 2000, JNHU/ZEN-IRO states that in-house nurseries at national hospitals are not adequately staffed as required by the Child Welfare Act. It further states that the Ministry of Health, Labour and Welfare has not allocated sufficient fund for in-house childcare facilities, but has instead commissioned the Mutual Aid Association to administer those services. In reply, the Government states that the management of these facilities, established by the Second Mutual Aid Association of the Ministry of Health, Labour and Welfare, is commissioned to the Childcare Facilities Management Council; that it is taking all measures possible under present conditions; and that these services are not considered as services that the Government is obligated to provide. The Committee notes this information. It recalls that *Article 5(b)* of the Convention requires the Government to take all measures compatible with national conditions and possibilities to develop or promote 'community services, public or private, such as childcare and family services and facilities'. The Committee would be grateful if the Government would continue to supply information on the measures taken or envisaged to promote the application of *Article 5(b)* in regard to childcare services and facilities.

10. *Article 8*. The Committee refers to its previous observation noting the communication received from JTUC-RENGO on 29 October 1999, which expressed concerns over the lack of protection in Japanese legislation against termination of employment due to family responsibilities. In its communication, JTUC-RENGO had indicated that there was a divergence between the protection provided under *Article 8* of the Convention and Japanese law. Responding to the concerns raised by JTUC-RENGO, the Government indicates that protection against dismissal on the basis of family responsibilities is covered by section 1(3) of the Japanese Civil Code. The Government also notes that sections 10 and 16 of the Child Care and Family Leave Act No. 107 of 9 June 1995, prohibit an employer from dismissing an employee because he or she has requested to take or has taken such leave. In this regard, the Committee notes that section 1(3) of the Civil Code

appears to provide general protection to persons against abuses of their rights, without specifying either workers with family responsibilities or protection from termination of employment. Moreover, the Committee notes that the protection from dismissal provided by Act No. 107 is narrower than that contemplated by *Article 8* of the Convention, as it is directed only at the issue of dismissal due to requesting or taking childcare or family care leave, not to dismissal due to family responsibilities generally. Further, Act No. 107 appears to exclude daily labourers and workers on fixed-term contracts from coverage. The Committee requests the Government to indicate whether there are any judicial decisions interpreting the legal provisions referred to and, if so, to supply copies of any such decisions. In addition, the Committee asks the Government to provide information in its next report on any measures taken to ensure that *Article 8* is applied in national law and practice.

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

[The Government is asked to report in detail in 2003.]

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In addition, requests regarding certain points are being addressed directly to the following States: *Bolivia, El Salvador, France, Japan.*

Convention No. 158: Termination of Employment, 1982

Gabon (ratification: 1988)

The Committee notes the Government's report and the information provided in response to its previous observation.

1. The Committee recalls that for many years it has been commenting on the policy of "gabonization" of jobs and its implementation in accordance with the provisions of the Convention. In its observation of 2001, the Committee noted the national pact on employment concluded in June 2000 between the Employers' Confederation of Gabon (CPG), the Trade Union Confederation of Gabon (COSYGA) and the Free Trade Union Confederation of Gabon (CGSL), under which: enterprises operating in Gabon encourage the economic integration or reintegration of Gabonese jobseekers by systematically substituting them, wherever possible, for any foreign workers who are laid off, resign or reach the age of retirement; and for the purpose of "gabonization" all posts held by foreigners may be filled by Gabonese. The Committee recalled its previous comments to the effect that, by virtue of *Article 2*, the Convention applies to all salaried workers and that, although nationality is not mentioned in *Article 5* among the factors which do not constitute valid grounds for dismissal, the protection afforded by the other Articles, particularly *Articles 8 and 9*, applies both to foreigners and to nationals. The Committee stressed the need for implementation of the gabonization policy to be consistent with the provisions of *Article 4*, which establish that grounds for dismissal must be valid and related to the worker's capacity for the job or conduct, or based on the operational requirements of the enterprise, establishment or service.

In its report received in September 2002, the Government indicates that the policy of gabonization is implemented with discernment and encourages the occupational integration of nationals while settling at the time of hiring the conditions for the

employment and departure of foreign workers, in compliance with section 2 of Decree No. 00663/PR/MTPS of 5 July 1972. As a result, very few complaints have been filed against dismissals of foreigners.

The Committee notes the Government's reply. It still has concerns, however, as to whether at the implementation of the policy of gabonization of jobs is consistent with the provisions of the Convention. The guarantees cited by the Government may not be adequate to afford the protection of foreign workers required by *Article 4 of the Convention*. It trusts that the Government will take all necessary steps to ensure that, in the absence of any valid concerns mentioned in *Article 4*, the gabonization of a job may not be cited as a valid concern for dismissal within the meaning of the Convention.

The Committee will accordingly devote close attention to the next report of the Government in which it hopes to find practical information on the application of the provisions of the Convention, and particularly information on the number of complaints against dismissals of foreign and national workers, the results thereof, the nature of the redress granted and the average time needed for a ruling to be handed down and the number of dismissals, if any, linked to implementation of the National Employment Pact (*Part V of the report form*).

2. *Article 8, paragraph 2*. With reference to the provisions of sections 296-298 of the Labour Code under which a decision by the labour inspectorate to allow dismissal of a staff delegate may be challenged in the administrative courts, the Committee notes the Government's reply that there seems to be no obstacle to the impugning of a decision by the labour inspectorate to authorize individual or collective dismissals on economic grounds.

3. *Article 9, paragraph 3*. The Committee also notes that the Government refers to an order of 27 June 1988 of the Libreville court of appeal and states that the labour tribunal has the authority to ascertain whether decisions by the labour inspector to authorize individual or collective dismissals on economic grounds are well founded.

[The Government is asked to report in detail in 2004.]

Republic of Moldova (ratification: 1997)

The Committee notes the information contained in the Government's detailed report for the period ending August 2001, including information provided in response to previous comments concerning *Articles 7, 9, 10, 11, 12 and 13(2) of the Convention*. It would appreciate receiving further information on the following points.

Article 2, paragraphs 2(a) and 3, of the Convention. With reference to previous comments, the Government states that section 26 of the Collective Agreement for 2001 allows for fixed-term contracts only when the work is of a temporary nature, or is a limited task, or is seasonal, or is work in the public service, or at the request of the worker, or in other cases permitted by law. section 16 of the Labour Code also permits the conclusion of special limited-term contracts in certain conditions. The Committee requests further information on any of the other cases permitted by law which are not listed above as well as on the safeguards which exist to prevent abuse of fixed-term contracts, and the percentage of the workforce covered by fixed-term contracts.

Articles 4 and 5. The Committee notes the list of valid reasons for dismissal provided by the Government in response to previous comments. It requests further information on whether section 263 of the Labour Code, which permits the establishment of other reasons, has been utilized.

Article 13, paragraph 1(b). The Committee notes the information provided by the Government on section 45(2) of the Labour Code and the collective agreements for 2001. It again requests information on whether employers are obliged to provide workers' representatives with the opportunity to consult on measures to be taken to avert or to minimize the terminations, and measures to mitigate the adverse effects of any terminations on the workers concerned.

Part V of the report form. The Committee notes that there were 627 cases filed concerning unjustified dismissal and in 442 cases the workers were subsequently reinstated. The Committee would appreciate continuing to receive information on the manner in which the Convention is applied in practice.

Turkey (ratification: 1995)

1. The Committee notes the information contained in the Government's report, received in September 2001, which includes comments by the Confederation of Trade Unions of Turkey (TÜRK-İŞ), the Confederation of Progressive Trade Unions (DISK) and the Turkish Confederation of Employers' Associations (TISK).

2. The Committee recalls the conclusions of the Conference Committee discussion in 2001, which expressed the firm hope that in the very near future the Government would be in a position to confirm real progress in the application of the Convention. In its report, the Government states that the Bill to amend Act No. 1475, which was the subject of previous comments of the Committee, has been withdrawn. A commission composed of, inter alia, three representatives of TISK, and one worker representative from each of the unions TÜRK-İŞ, the Confederation of Turkish Labour Real Trade Unions (HAK-IS) and DISK, was established to draw up a new draft. The Government lists in its report the basic provisions of the new draft which aims to give full effect to the provisions of the Convention. The Committee notes this information. It again draws the Government's attention to the conclusions approved by the Governing Body at its 278th Session (November 2000) concerning the representation alleging non-observance of the Convention, as well as its 2000 observation, and requests a copy of the new legislation once it is adopted. It also notes the comments of TÜRK-İŞ, DISK and TISK pertaining to the new draft, and will consider them when the legislation is received.

3. The Committee notes that no information has been supplied concerning amendment of the Maritime Labour Act (No. 854) and the Journalists Labour Act (No. 5953) to give full effect to the provisions of the Convention. It again requests information on progress made in this respect.

4. Lastly, the Committee notes the information supplied by the Government in reply to previous comments under *Article 12 of the Convention*.

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In addition, requests regarding certain points are being addressed directly to the following States: *Cameroon, Democratic Republic of the Congo, Latvia, Uganda*.

Convention No. 159: Vocational Rehabilitation and Employment*Kyrgyzstan* (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 near future.

Sao Tome and Principe (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 1997 direct request, which read as follows:

Article 3 of the Convention. In its report the Government indicates that disabled persons have access to training centres and to work centres. Please indicate how such centres are organized and how they operate, together with the categories of disabled persons which have access to them. In addition, please indicate any other measures taken or envisaged to promote employment opportunities for disabled persons on the free labour market.

Article 5. Please indicate according to which methods the representative organizations of employers and workers and the representative organizations of disabled persons are consulted on the implementation of the national vocational rehabilitation and employment policy for these persons, in accordance with the provisions of this Article.

Article 7. Please indicate the services introduced to ensure vocational rehabilitation and employment for categories of disabled persons other than the children who are blind or suffer from poliomyelitis mentioned in the report.

Article 8. Please explain the measures taken or envisaged to promote the establishment and development of vocational rehabilitation and employment services for disabled persons in rural areas and isolated communities.

Article 9. Please indicate the measures taken to guarantee the training and availability of counsellors in respect of vocational rehabilitation and employment for disabled persons.

Part III of the report form. The Government refers to the different authorities which are entrusted with the application of laws and administrative regulations. Please indicate the apportionment of powers between each of these authorities and the methods by which this application is ensured.

Part V. Please provide information on the practical application of the Convention, in particular statistics and extracts from reports, studies or inquiries on the matters covered by the Convention (for example, as regards particular areas, sectors of activity or categories of disabled workers).

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

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In addition, requests regarding certain points are being addressed directly to the following States: *Croatia, Guinea, Republic of Korea, Madagascar, Mali, Slovakia, Trinidad and Tobago, Zimbabwe.*

Convention No. 160: Labour Statistics, 1985

Requests regarding certain points are being addressed directly to the following States: *Kyrgyzstan, Lithuania, Tajikistan.*

Convention No. 161: Occupational Health Services, 1985*Brazil (ratification: 1990)*

The Committee notes the comments made by the Union of the Workers from the Chemical, Petrochemical and Related Industries of Triufo/RS (SINDIPOLO) relating to the petrochemical enterprise Petroflex industry and Commerce S.C., and the replies made by the Government, in the context of the application by Brazil, of Convention Nos. 148, 155, 161, 170 and 174. The Committee has decided to deal with these comments under Convention No. 161.

The Union refers to the case of a worker who had suffered a heart attack while working for an enterprise, KS Kondorfer and Silva, which was a subcontractor of Petroflex, manipulating barrels weighing 200 kg full of chemical products in an area of work that was classified as a warehouse for chemical products. No assistance was available from Petroflex and the first assistance was provided far away from the workplace, where he was helped by other workers and taken by an outside ambulance service, and without being accompanied by a medical doctor of Petroflex. Neither the national standards of the Labour Code (CLT) and the regulations (NRs), nor those of the ILO were met in the subcontracted out activity of Petroflex where the situation was inadmissible in the context of high-risk activity. The main failures were the lack of pre-employment medical examinations, non-issuance of the declaration of occupational accident (CAT), and lack of adequate safety practices and drills and technical studies regarding the workplace. The Union pointed out that while workplace irregularities and accidents, including a fire in July 1995, were increasing, Petroflex was dismantling its technical staff, including in the area of occupational safety and health. It deplored the conditions of work of those working in subcontracting enterprises and it had even brought various cases before the negotiating table with Petroflex. Petroflex had refused outside interference in its management model. The Union blamed the deterioration of the conditions of work and more particularly of occupational safety and health in this major enterprise on factors such as its privatization, and the introduction of new management models (resignations, subcontracting and industrial automation).

For its reply, the Government indicated that it had relied upon data from the Federal Labour Inspection Service (SFIT), the communications of occupational accidents (CATs) made by the enterprise, and labour inspection reports for occupational safety and health. According to the communication from the Federal Labour Inspection Service, the enterprise had been inspected on 12 occasions during the period 1997-2002, and six of these concerned occupational safety and health. In 1998, three visits of inspection revealed irregularities of failure to inspect, initially, periodically and on extraordinary occasions, a pressure container, failure to secure the guards of a rolling bridge, failure to prevent hazards, failure to determine and signal to workers hazards, prohibitions, safety duties and procedures to be followed in cases of accidents, and failures relating to fixed guards on machines and equipment. In 2000 two visits of inspection were made which revealed workers entering workplaces and working without the foreseen safety precautions being respected, and the failure to adopt preventive occupational safety and health measures by the subcontracting enterprises. In 2002 one inspection visit was conducted which revealed the failure to carry out medical examinations of those returning back to work, failure to elaborate the required report on

the safety measures taken during the year, failure to anticipate, recognize, evaluate and consequently control occupational risks that occur or could exist in the working environment, taking into account the need to protect the environment and natural resources, and failure to provide adequate guards for machines and equipment with repetitive action which present risks to the operator, failure to provide appropriate safety devices for starting them.

In respect of the death on 21 November 2000 of the employee of the enterprise KS Kondorfer and Silva, a subcontractor of Petroflex, the Government submitted the accident investigation report which confirmed death as a result of a heart attack while the victim was at work manoeuvring and moving barrels weighing 200 kg. According to this report, the worker suffered the heart attack at 1.30 p.m. approximately and arrived at a medical centre by ambulance at 2.10 p.m. where he received help until 3.15 p.m. when death was pronounced. The report also indicated that the enterprise KS Kondorfer and Silva did not present proof of a pre-employment medical examination of the worker, and that it had not made an ergonomic analysis of work that resulted in the accident to adapt the work to the worker and to meet requirements of maximum weight that may be lifted, transported and discharged by an individual.

The Government's report indicated that an analysis of the occupational accident reports (CATs) for the period between February 2000 and April 2002 confirmed that 38 indicated Petroflex as the employer or place of accident. More than two-thirds of these CATs (26) had subcontractors as employers. Ten out of 38 CATs involved absence from work, and none of them involved absence from work of more than 60 days. The Government's report indicated that these CATs did not constitute the total of CATs.

The Committee would be grateful if the Government could continue to provide information regarding occupational accidents occurring in the enterprises concerned, including the subcontracting enterprises, and information on the measures taken to ensure that there is better compliance with occupational safety and health standards which will hopefully reduce the occupational accident rate in the sector of activity.

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

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In addition, requests regarding certain points are being addressed directly to the following States: *Benin, Brazil, Slovenia*.

Convention No. 162: Asbestos, 1986

Croatia (ratification: 1991)

1. The Committee takes notes of the observations made by the Association of Workers Affected by Asbestosis – Vranjic – on the application of the Convention and the documentation annexed. The comments were communicated to the Government on 13 September 2002.

2. The comments of the association of workers concern the use of asbestos by the “Salonit” factory, owned until 1998 by the Croatian State, and its harmful effects both on the workers exposed to it and the population in the vicinity. The association of workers considers in particular that a total lack of information of the workers concerning the

toxic effects of asbestos and a complete absence of adequate preventive and protective measures have caused so far the death of more than 200 workers and people living in the vicinity of the “Salonit” factory which currently employs 250 workers with an annual production volume of approximately 25,000 tons. According to the association of workers, the competent Croatian authorities and the employers are not respecting the international standards for the safe use of asbestos. The association refers in particular to the following Articles of the Convention by stating that:

- (a) *Article 12.* The increased concentration of asbestos dust in the air, stated and recorded by the regional safety at work inspectorate on 7 and 8 June 2000, is a consequence of the employer’s non-compliance with the standards spelled out by this Article of the Convention to prohibit in general the spraying of all forms of asbestos, and to concede only derogations in exceptional cases under the condition that the health of workers is not placed at risk.
- (b) *Article 14.* The employer failed to label the containers used for the storage of asbestos and products containing asbestos, and, at the same time, the workers concerned are not properly informed about the risks inherent in the production process of asbestos.
- (c) *Article 18.* The work clothing provided to the workers at the factory is only simple work clothing and does not correspond to the requirements for special protective clothing. In addition, while the employer does not take any action for appropriate cleaning of workers’ clothing as well as to put into function the existing washing facilities, the clothing of workers remains in continued contact with asbestos and workers exposed do not take a shower after work. The workers however, due to the lack of information, are not conscious of the necessity to wear special protective clothing to be cleaned in an appropriate manner and to take a shower after work.
- (d) *Article 19.* With regard to the handling of waste containing asbestos, the necessary precautions to prevent the release of asbestos dust are not taken during transport, and the asbestos waste is illegally stored in a place which is located in the immediate neighbourhood of the vicinity, the beverage factory and the main source of drinking water to the city of Split.
- (e) *Article 22.* The employer neglects his duties to ensure the provision of proper information through internal regulations or instructions or labels to workers exposed or likely to be exposed to asbestos with regard to health hazards related to their work. The only information available to the workers is contained in a workers’ brochure of the factory on the health risks caused by the inhalation of asbestos dust. The information contained therein however is misleading, since it declares, contrary to the published findings of the World Health Organization (WHO), that there is no proven correlation between cancer and the intake of asbestos through drinking water and food. Moreover, although the inspection services already revealed in its inspection report of 2000 a number of deficiencies with regard to, inter alia, the lack of protective measures taken against the release of asbestos-cement dust, and the lack of indications and announcements at the workplace concerning the noxious properties of asbestos, the employer has not yet taken any remedial action. Moreover, the employer continues to fail to inform the workers concerned on the toxic and harmful effects inherent in their exposure to asbestos.

The Committee urges the Government to communicate comments as soon as possible on the observations made by the Association of Workers Affected by Asbestosis – Vranjic, and will supply full information on the manner in which the Convention is applied in law and in practice.

The Committee is addressing a request directly to the Government concerning certain matters.

[The Government is asked to supply particulars to the Conference at its 91st session and to reply in detail to the present comments in 2003.]

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In addition, requests regarding certain points are being addressed directly to the following States: *Bolivia, Cameroon, Croatia, Cyprus, Norway, Sweden, Uganda*.

Convention No. 163: Seafarers' Welfare, 1987

Requests regarding certain points are being addressed directly to the following States: *Czech Republic, Mexico*.

Convention No. 164: Health Protection and Medical Care (Seafarers), 1987

Requests regarding certain points are being addressed directly to the following States: *Czech Republic, Mexico, Sweden*.

Information supplied by *Finland* in answer to a direct request has been noted by the Committee.

Convention No. 165: Social Security (Seafarers) (Revised), 1987

A request regarding certain points is being addressed directly to *Hungary*.

Convention No. 166: Repatriation of Seafarers (Revised), 1987

Requests regarding certain points are being addressed directly to the following States: *Mexico, Spain*.

Convention No. 167: Safety and Health in Construction, 1988

A request regarding certain points is being addressed directly to *Iraq*.

Convention No. 169: Indigenous and Tribal Peoples, 1989

Argentina (ratification: 2000)

1. The Committee notes the Government's first report and its annexes. It regrets to note that the Government's brief report only provides information on certain of the Articles of the Convention, and that it does not include the information necessary in a first report to enable the Committee to carry out a detailed examination, such as copies

of any relevant national and provincial legislation. It also does not indicate the employers' and workers' organizations to which a copy of the report was communicated. In addition, it was received after the beginning of the Committee's session, too late to be examined in detail this year.

2. The Committee notes that in September 2001, the Congress of Argentinian Workers (CTA) sent detailed observations on the application of the Convention, which were forwarded by the Office to the Government in October 2001. Noting that the Government's report does not refer to any of the points raised by the CTA in its observations, the Committee requests the Government to provide information in this respect, and particularly on the points indicated below, which are examined in greater detail in a request addressed directly to the Government.

3. With reference to the legislation, the CTA indicates that the Constitution of 1994 introduced an amended regulation relating to indigenous peoples, recognizing the ethnic and cultural pre-existence of indigenous peoples and their collective ownership and possession of lands, among other provisions. Nevertheless, Act No. 23302 respecting indigenous policy and support for aboriginal communities dates from 1985 and the majority of the national and provincial laws on this subject are earlier than the constitutional reform and have not been brought into conformity with the Convention.

4. *Article 1 of the Convention.* With regard to the self-identification of indigenous peoples, the CTA points out that both the national and provincial legislation, as well as the census forms, contain criteria which are not in compliance with the Convention and it calls for indigenous peoples to be consulted for the formulation of questions which would guide the census of indigenous peoples.

5. The CTA alleges that numerous problems arise in the recognition of indigenous peoples, principally with regard to the granting of legal personality, due to long and complex procedures.

6. *Articles 6, 7 and 15.* The CTA alleges the absence of consultations with indigenous peoples through representative institutions in general, and particularly in connection with the exploration and exploitation of natural resources.

7. *Land.* The CTA states that the forms of ownership set out in the Civil Code, which is of Roman law origin, are inadequate for recognition of the ownership and possession of ancestral lands, and that the way they are applied results in indigenous peoples' losing most of the claims they lodge for land rights.

8. The CTA also makes comments on other Articles of the Convention, which will be examined by the Committee together with the Government's next report.

9. The Committee notes another communication from the CTA, received in November 2002, indicating among other information that a Bill has been submitted to the Senate establishing the Programme of Basic Social Infrastructure for Indigenous Communities. It requests the Government to provide a copy of this Bill and to indicate the consultations held in accordance with *Article 6* of the Convention.

10. The Committee requests the Government to report in detail before 30 September 2003, so that its report can be examined during the Committee's next session. It also hopes that the Government will communicate a copy of its report to employers' and workers' organizations.

Bolivia (ratification: 1991)

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 2003.]

Colombia (ratification: 1991)

1. The Committee recalls that at its 282nd Session (November 2001) the Governing Body adopted a report (document GB.282/14/3, available through the ILOLEX database on the ILO's web page at <http://www.ilo.org>), concerning a representation alleging the non-observance by Colombia of the present Convention, made under article 24 of the Constitution. The representation alleged that the Government had not complied with the Convention's requirement of consultation with the indigenous peoples concerned, in particular the Emberra Katio people, in the construction and operation of the Urrá hydroelectric dam. It was alleged that irreparable harm was caused to these indigenous peoples by the construction of this project; and that Decree No. 1320 which was adopted to regulate consultations, was itself adopted without adequate consultations. Other allegations were also made, including that a process of petroleum exploration was carried out that affected the U'wa indigenous people, again without adequate prior consultation. The Committee concluded, on the basis of the information submitted to it, 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*". It recommended that the Government be requested to amend the legislation concerned, and that it improve the consultation procedures to come into conformity with the Convention's requirements. It also asked the Government to provide information to the present Committee on a wide range of issues related to consultations with indigenous

peoples when planning and carrying out development projects that affect them, land rights and mineral exploitation in particular.

2. The Committee notes the voluminous report and appendices received from the Government shortly before its session, which the Committee unfortunately was unable to examine for the present session. It notes that this report provides information both in reply to the Governing Body report on the representation and to the present Committee's previous comments on the application of the Convention more generally, though the Committee has not been able to examine whether the Government's report replies fully to the questions put to it. It requests the Government to send further information, if necessary, on any additional developments under the Convention in good time for it to be examined in detail at the Committee's next session.

Denmark (ratification: 1996)

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 Sulinerimik Inuussutissarsiuqartut 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 (ratification: 1998)

1. The Committee notes with interest the Government's first report, which it will examine in a direct request. It nevertheless notes that the report received refers almost exclusively to legislative texts, and it requests the Government to provide more complete information on the situation in practice in its next report.

2. It notes the report submitted to the Governing Body by a tripartite committee set up to examine a representation made by the Ecuadorian Confederation of Free Trade Union Organizations (CEOSL) alleging non-observance by the Government of Ecuador of certain provisions of the Convention. This report was adopted by the Governing Body in November 2001 (document GB.282/14/2).

3. The representation alleged principally the failure to hold consultations through appropriate procedures, and particularly through the representative institutions of 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. The tripartite committee found, among other conclusions, that *Articles 2, paragraphs 1 and 2(b), 6, 7 and 15, paragraph 2, of the Convention* imply the obligation to develop a process of prior consultation with the indigenous peoples of the country before taking measures that might affect them directly, such as the exploration or exploitation of hydrocarbons, which may affect indigenous communities. Noting that the oil companies held consultations only with certain groups of the Shuar with a view to obtaining their consent to oil exploration, the tripartite committee also pointed out that the principle of representativity is a vital component of the obligation of consultation. The Governing Body therefore: (a) requested the Government to apply fully *Article 15* of the Convention; that it establish prior consultations in cases of exploration and exploitation of hydrocarbons that could affect indigenous and tribal communities; and that it ensure the participation of the peoples concerned in the various stages of the process, as well as in environmental impact studies and environmental management plans; and (b) urged the Government, in seeking solutions to the problems that still affect the Shuar people as a result of the oil exploration and exploitation activities in the zone of "Block 24" (when this case arose), to contact the representative institutions or organizations, including the Independent Federation of the Shuar People of Ecuador (FIPSE), for the purpose of establishing and maintaining a constructive dialogue which will allow the parties concerned to find solutions to the situation facing this community.

4. Further to the recommendations of the tripartite committee, the Committee of Experts requests the Government to report in detail on the effect given to the recommendations of the tripartite committee, and in particular on: (1) the measures taken or envisaged to remedy the situations that gave rise to the representation, taking into account the need to establish an effective mechanism for prior consultation with indigenous peoples, as provided in *Articles 6 and 15* of the Convention, before undertaking or authorizing any programme for the exploration or exploitation of the resources pertaining to their lands; (2) the measures taken or envisaged to ensure that the required consultations are carried out in compliance with the provisions of *Article 6*, particularly as regards the representativity of the indigenous institutions or organizations consulted; and (3) the progress achieved 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, administration and conservation of said resources and in the benefits

from the oil-producing activities, as well as their perception of fair compensation for any damage caused by exploration and exploitation in the zone. The Committee regrets that, despite the fact that the Government provided a brief second report on the Convention, which was received in September 2002, it does not contain information on the recommendations approved by the Governing Body, and it requests the Government to provide this information in its next report.

Honduras (ratification: 1995)

1. The Committee notes the Government's last report. It regrets to note that, in general, the Government does not reply to the questions raised by the Committee in its previous comments, nor does it attach copies of the legislation, accords and projects requested. The Committee draws the Government's attention once again to the fact that the report does not contain detailed information on the current situation with regard to the obligations undertaken, nor does it provide a clear appreciation of the application of the Convention in law and practice. It hopes that in its next report the Government will provide the necessary information so that the Committee can undertake a detailed examination of the application of the Convention.

2. *Article 107 of the Constitution.* The Committee notes that the report does not contain information on article 107 of the Constitution, to which it referred in its previous observation. The Committee once again requests the Government to indicate whether the proposal to amend this article is being maintained and, furthermore, whether legislation to implement the article has been adopted or whether there is any draft legislation to implement the article permitting the acquisition of lands along the coast by private individuals which, as indicated by the Committee, has generated opposition among indigenous groups who consider that this would damage their rights to the lands that they traditionally occupy. If such legislation has been adopted, or if draft legislation in this respect is under examination, please provide a copy and indicate the manner in which the indigenous peoples occupying the lands affected by it have been consulted.

3. The Committee once again requests the Government to provide copies of any agreements concluded with indigenous peoples in Honduras and their representative organizations since the entry into force of the Convention, and to indicate the current situation with regard to the obligations deriving from such agreements.

4. The Committee recalls that it referred previously to allegations that non-indigenous owners were threatening the safety of indigenous peoples occupying their ancestral lands. It hopes that the Government will adopt the necessary measures to safeguard their rights, including those of ownership and possession, to the lands traditionally occupied by indigenous peoples and that it will provide information on this matter.

[The Government is asked to report in detail in 2003.]

Paraguay (ratification: 1993)

1. The Committee notes the Government's report received in 2001 and the attached documentation. It notes that the report does not provide information on all the questions raised by the Committee in its previous comments and it requests it to supply detailed information in its next report on the situation in practice. The Committee urges

the Government to reply in particular to the points relating to land rights raised in a request that is being addressed directly to it.

2. The Committee also notes the communication from the National Federation of Workers (CNT), in the preparation of which the indigenous organization Tierraviva for Indigenous Peoples in the Chaco participated, and which was received on 1 August 2001 and forwarded to the Government on 27 August 2001. The Committee regrets to note that the Government has not supplied comments on this communication.

3. According to the CNT, on 30 April 2001 the executive authority submitted to the Congress of the Nation, a bill governing the functioning of entities responsible for the national indigenous policy, which would repeal the Indigenous Communities Charter, adopted by Act No. 904/81, and consequently it would abolish the Paraguayan Indigenous Institute (INDI). The CNT states that the above Bill constitutes a serious retrogression in the protection of the right of indigenous peoples and alleges the non-compliance by the Government with its obligation to consult indigenous peoples prior to initiating the legislative process for the formulation of the Bill, in violation of *Article 6 of the Convention*. The CNT attaches to its communication, among other documents, the statement by the Coordinator of Indigenous Leaders of the Bajo Chaco and the Indigenous Network, presented to Parliament and the executive authority. This statement rejects the bill referred to above and demands the application of *Article 6* of the Convention so that the State and the organizations of indigenous peoples can work on a bill which benefits the peoples concerned, and does not violate their rights.

4. The Committee draws the Government's attention to the fact that the spirit of consultation and participation constitutes the cornerstone of Convention No. 169 on which all of its provisions are based. *Article 6, paragraph 1*, sets out the obligation of states which ratify the Convention to "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". The Committee therefore hopes that the Government will indicate the manner in which the peoples concerned were consulted before proceeding to any amendment of Act No. 904 and before adopting any legislative or administrative measures which may affect them directly. It also hopes that, when holding such consultations the Government will take into account the fact that the Convention requires them to be held through appropriate procedures and the representative institutions of the peoples concerned. The Committee requests the Government to provide information on the measures adopted in this respect and on their outcome. It also requests it to provide a copy of any new legislation adopted, as well as of any draft legislation prepared following consultations with the peoples concerned.

5. The Committee also refers to a communication sent by the World Confederation of Labour (WCL) in October 1997 under Convention No. 29, indicating that the working conditions of indigenous persons in ranches suggest an extensive practice of forced labour for the repayment of debts contracted in ranch shops for the purchase of basic foodstuffs and other products of primary necessity at inflated prices, and that wages are not paid or are paid only at the end of the contract, meaning that the workers have to become indebted to survive, and are also ill-treated. The Government states that the Ministry of Justice and Labour sent out communications in May 2000 to various bodies of the State to inform them of the communication and the comments made by the

Committee and to indicate the importance that the Government attaches to the issue of forced labour. The Ministry of Labour proposed in August 2000 that inspections be undertaken in ranches in the Chaco and the INDI placed at the disposal of the Ministry persons with experience of the subject. The Committee nevertheless notes that the Government's report does not provide information on the effect given to this proposal. It hopes that in its next report the Government will be in a position to indicate whether inspections were actually undertaken, their results and, where appropriate, the measures adopted or proposed and the progress achieved.

Peru (ratification: 1994)

1. The Committee notes the Government's report sent in reply to its observation of 2000, which dealt only with observations presented by a workers' organization on 3 August 1999 under article 23 of the Constitution, and the Government's report of 9 May 2000 responding to those observations. The Committee points out that its comments on the broader issues covered by the observation and direct request of 1998 are still valid and would be grateful if in its report due in 2003 the Government would reply to the 1998 comments made as well as to the ones in this observation.

2. The Committee noted previously that according to the Central Confederation of Workers of Peru (CUT), Supreme Decree No. 017-99-AG of 3 June 1999 expropriated 111,656 hectares of the ancestral lands of the indigenous community of Santo Domingo de Olmos in the province of Lambayeque and the land taken was adjudicated to private investors for a hydroelectric project. According to the CUT, neither the community nor its members were compensated for the confiscation of the lands. The Committee also noted that, in reply to the CUT's communication, the Government indicated that the inclusion of the 111,656 hectares in the project did not amount to expropriation and that, in the event of the titling of that area, the Community's rights would not be affected since section 5 of the abovementioned Decree safeguards third parties' ownership rights.

3. The Committee notes that, in reply to a question it raised in its observation of 2000 on efforts to demarcate the community's ancestral lands, the Government indicates that the Special Project for the Titling of Lands (PETT), created under the basic law of the Ministry of Agriculture (Legislative Decree No. 25.902) and regulated by Supreme Decree No. 064-2000, has responsibility nationwide for the physical and legal clarification of rural property belonging to individuals, which was expropriated and adjudicated for the purposes of agrarian reform, and of available uncultivated lands ("eriazas") suitable for crops/livestock belonging to the State for transfer to the private sector. According to the report, the rural property clarification process formalizes in law rural lands, peasant and indigenous communities and uncultivated lands by means of rural land registers established nationwide. It further indicates that the indigenous community of Santo Domingo de Olmos possesses all the technical elements it needs for registration and can start the procedure by registering the 360,808 hectares which are not in dispute, but that one legal element is missing, namely, a registration of its legal personality in the public record.

4. The Government's report for 2001 repeats that the case is not one of expropriation and that the community's property rights are safeguarded in the case it holds a title.

5. In examining these issues, the Committee has taken note of the laws and regulations governing agricultural land, namely, the Civil Code, Act No. 26.505 of 17 July 1995 on private investment in economic activities carried on in the national territory and the lands of peasant and indigenous communities, and its regulations, approved by Supreme Decree No. 011-97-AG of 12 June 1997. It notes that section 7 of the regulations provides that uncultivated lands (“eriazas”) suitable for farming means lands which are not used owing to lack of water or excess water, and section 9 establishes that uncultivated lands (“eriazas”) suitable for farming are in the domain of the State except for those for which a private or communal property title exists. The Committee further notes that the Ministry of Agriculture keeps an inventory of the uncultivated lands referred to in section 7 and monitors compliance with the contracts adjudicating such lands. Furthermore, the same Decree establishes (section 4) as uncultivated land 111,656 hectares to which the Olmos community asserts ancestral rights, and provides (section 5) for the said land to be registered to the Olmos Special Hydroenergy Irrigation Project. While noting the Government’s statement that the expropriation process has not continued, the Committee points out that lands to which an indigenous community is claiming ancestral rights have been incorporated in the domain of the State and adjudicated to private parties without any compensation being granted.

6. The Committee notes that the registration in the domain of the State and subsequent adjudication to the private sector of lands to which indigenous people claim ancestral rights, raises questions as to the conformity of this procedure with *Articles 13 and 14 of the Convention*. It will therefore examine the claim that the Olmos community has ancestral rights to the disputed lands in the light of those Articles of the Convention.

7. The Committee notes that *Article 13, paragraph 1*, of the Convention refers to lands which the peoples concerned occupy or otherwise use, while *Article 14, paragraph 1*, establishes that “the rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognized”, and *paragraph 2*, of the same Article requires governments to take steps as necessary to identify those lands. The Committee already established, in a comment of 1998 on the application of the Indigenous and Tribal Populations Convention, 1957 (No. 107), that under the Convention traditional occupation conferred a right to the land, whether or not such a right was recognized. In examining whether there was traditional occupation of the lands in question, the Committee also noted that the peasant community of Olmos possesses four resolutions recognizing the lands: resolution of 9 May 1544 by Blasco Núñez de Vela, Viceroy of Peru; resolution of 22 April 1550 by Pedro de la Gasca, President of the “Audiencia de los Reyes” (Kings’ Court); resolution of 13 April 1578, by Francisco Toledo, Viceroy of Peru; and supreme resolution No. 086 of 4 August 1931 by the Ministry of Development recognizing the peasant communities of Olmos as indigenous peoples. The first three resolutions recognize the rights over the land and were registered by a notary public in 1847, 1948 and 1974. The Committee will not go into their validity in law as titles of property, but takes note of them in so far as they show the existence of traditional occupation and the will of the Olmos community not to forego their rights over the disputed lands, having striven for centuries to obtain recognition of them. The Committee also noted the complaint submitted by the President of the peasant community of Olmos on 24 July 1999 which was sent by the CUT.

8. The Committee notes that the information at its disposal shows that there was traditional occupation, although it is not possible to determine whether it covered all the

lands in question. The Committee observes that, according to the map provided by the CUT, the disputed area appears to be located in the centre of the lands traditionally occupied by the Olmos community. It notes with concern that, according to the CUT, the 111,656 hectares are strategic for the communities and that much of the remaining area is constituted by hills and is subject to water problems. The Committee recalls that in 1999, the year in which the above Decree was issued, the Convention was already in force, and that in paragraphs 14 and 15 of its observation of 1998, it already expressed concern that Act No. 26,505 might facilitate the dispersion of communal lands.

9. The Committee accordingly points out that what the Government refers to as “incorporation in the domain of the State” constitutes, in so far as there was traditional occupation, a denial of the rights of ownership and possession established in *Articles 13 to 15* of the Convention, regardless of the procedure used. The Committee notes that the Olmos indigenous community is claiming the return of its lands, if not now at some time in the future. The Committee asks the Government to take the necessary steps, in accordance with *Article 14, paragraph 2*, of the Convention, to identify as *Article 6* prescribes, the lands which they traditionally occupy, in consultation with the peoples concerned. The Committee hopes that, having done so, the Government will then take the appropriate steps to ensure, in accordance with *Article 14, paragraph 2*, of the Convention, the effective protection of their rights of ownership and possession, including to the 111,656 hectares in question, as appropriate.

10. More generally, the Committee is concerned that Act No. 26,505, its implementing regulations and the related legislation may impair the rights of indigenous peoples to the lands they traditionally occupy. It requests the Government to take appropriate steps to prevent lands traditionally occupied by indigenous peoples from being registered in the domain of the State, and to facilitate the prompt titling of such lands. The Committee hopes that in its next report the Government will send information on the measures adopted and on progress made.

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

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Argentina, Denmark, Ecuador, Honduras, Paraguay, Peru*.

Convention No. 170: Chemicals, 1990

Norway (ratification: 1993)

The Committee notes the Government’s reply to its previous comments based on the observations made by the Norwegian Federation of Oil Workers’ Union (OFS) concerning the marketing and selling, by the Jotun paint company, of a product containing isocyanates, without sufficient labelling and information to protect users. It notes that the Ministry of Labour and Government was dealing with the reporting of Jotun to the police. The Government further indicates that it was not aware of whether the Federation of Offshore Workers’ Trade Unions has access to the statements by the Petroleum Directorate and the Directorate of Labour Inspection. With respect to verification of Jotun’s compliance with the marking/labelling requirements, the Government states that it has inspected hazard-marking/labelling and health,

environment and safety data sheets for chemicals containing isocyanate from Jotun, and found the chemicals in question were satisfactorily marked/labelled.

The Committee notes the adoption of the text of Act No. 4 of 4 February 1997 on worker protection and working environment (Working Environment Act), as amended by Act No. 117 of 21 December 2001, as well as the text of the Regulations on Protection against Exposure to Chemicals at the Workplace (Chemicals Regulations) of 30 April 2001, which entered into force on 5 May 2001. The Committee will examine these texts with a view to dealing with the matters raised in the requests addressed directly to the Government which dealt with *Articles 6, paragraph 3, and 7, paragraph 3(2); Article 9, paragraph 2; Article 10, paragraph 3; Article 11; Article 12(a) and (d); Article 13, paragraph 1(a); Article 15(c); Article 17; Article 18, paragraphs 2 and 4; and Article 19, of the Convention.*

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Burkina Faso, China, Sweden, Zimbabwe.*

Convention No. 172: Working Conditions (Hotels and Restaurants), 1991

Requests regarding certain points are being addressed directly to the following States: *Barbados, Cyprus.*

Convention No. 173: Protection of Workers' Claims (Employer's Insolvency) Convention, 1992

Requests regarding certain points are being addressed directly to the following States: *Madagascar, Zambia.*

Convention No. 176: Safety and Health in Mines, 1995

Requests regarding certain points are being addressed directly to the following States: *Germany, Ireland.*

Convention No. 178: Labour Inspection (Seafarers), 1996

Requests regarding certain points are being addressed directly to the following States: *Morocco, Norway.*

Convention No. 179: Recruitment and Placement of Seafarers, 1996

Requests regarding certain points are being addressed directly to the following States: *Finland, Morocco.*

Convention No. 181: Private Employment Agencies, 1997

Requests regarding certain points are being addressed directly to the following States: *Albania, Finland, Morocco, Netherlands, Panama, Spain.*

Convention No. 182: Worst Forms of Child Labour, 1999

Dominican Republic (ratification: 2000)

The Committee takes note of the communication dated 30 September 2002 from the International Confederation of Free Trade Unions (ICFTU) containing comments on the observance of the Convention; a copy of these comments was transmitted to the Government on 25 November 2002 for any comments which it might wish to make on the questions raised.

El Salvador (ratification: 2000)

The Committee takes note of the Government's reports and of the communication dated 13 September 2002 from the Inter-Union Commission of El Salvador (CATS-CTD-CGT-CTS-CSTS-CUTS) containing comments on the observance of the Convention; a copy of these comments was transmitted to the Government on 19 November 2002 for any comments which it might wish to make on the questions raised.

Mauritius (ratification: 2000)

The Committee notes the communication dated 24 October 2001 of the International Confederation of Free Trade Unions (ICFTU) submitting observations on the application of the Convention, and the Government's comments on these observations dated 26 August 2002. The Committee notes that the contents of the ICFTU's observations fall within the scope of Convention No. 138 on minimum age. It therefore refers to its comments under this Convention.

Mexico (ratification: 2000)

The Committee has noted the Government's first report received on 25 September 2002 and a communication dated 13 March 2002 from the International Confederation of Free Trade Unions (ICFTU), containing comments on the observance of the Convention. A copy of the ICFTU communication was transmitted to the Government on 18 July 2002 for any comments which it might wish to make on the questions raised therein.

In its comments, the ICFTU alleged that child labour law sets the minimum age for admission to employment or work at 14 years, which would be fairly well observed in the formal sector, principally in large and medium-sized companies. However, the enforcement of this minimum age of 14 years would be less adequate in small companies and in agriculture and, particularly, in the informal sector. The ICFTU referred to some recent reports which would suggest a total of approximately 5 million working children, 2 million of whom are under 12 years old. The majority of working children work for or with their parents and relatives, often in agriculture or informal urban activities such as vending. Some children are occupied as beggars.

In its communication, the ICFTU also alleged that the Government, in cooperation with UNICEF, has been undertaking efforts to address child labour, including in urban informal work and through increased access to education. In 1992, the number of years of free, obligatory school education was increased from six to nine. However, the scale of the problem remains huge. Only six out of ten primary-school children actually complete school. The ICFTU indicated that the national education authority reported that 1.7 million school-aged children are unable to receive an education because their poverty forced them to work. The ICFTU also indicated that in the particular case of indigenous children, access to education is very poor, because education is generally available only in Spanish and many indigenous families would speak only their native languages. The incidence of child labour is relatively higher than for the non-indigenous population.

In its response to the comments made by the ICFTU dated 26 November 2002, the Government has indicated that this year it has presented the first report on the application of the Convention. While noting this indication, the Committee requests the Government to reply to the comments made by the ICFTU.

United States (ratification: 1999)

1. The Committee has taken note of the Government's first report. In its previous observation, the Committee took note of a communication dated 11 September 2001 of the International Confederation of Free Trade Unions (ICFTU), submitting comments on the observance of the Convention. In its communication, the ICFTU alleged, inter alia, that an underfunded labour inspectorate and inadequate penalties for employers who violate the law mean that legally established labour standards covering child labour are inadequately enforced. It indicated that, notwithstanding the fact that agriculture is both dangerous and employs the largest share of children working in the United States, child labour laws governing minimum age, working hours, and overtime pay do not apply to agriculture. The ICFTU alleged that children are often unprotected from harmful pesticides and between 400 and 600 children working in agriculture suffer work-related injuries that are reported each year. In addition, between 1992 and 1996, 59 children lost their lives while working in agriculture. The Committee requested the Government to present its comments on these and other allegations made by the ICFTU.

2. The Committee has noted the Government's detailed supplemental report with its comments on the communication of the ICFTU. The Committee notes the concern expressed by the Government that, while the Government's first report arrived late, the Committee's previous observation referred only to the communication of the ICFTU and not to the Government's report. The Committee also notes the Government's comments in response to the allegations in the communication of the ICFTU. The Government cites statistics in the Department of Labor's June 2000 *Report on the Youth Labor Force* to challenge the contention that agriculture employs a proportionally larger number of children than other industries. In commenting on the study referred to in the communication of the ICFTU, the Government questions the validity of estimates of the number of children working illegally that are gleaned from the Current Population Survey (CPS) – a monthly survey of households prepared by the U.S. Census and the Bureau of Labor Statistics – because of what it considers to be the generality of the CPS and the lack of high-quality data for children younger than age 14. The Committee also notes that, in its reply to the ICFTU allegations of an underfunded labour inspectorate

and inadequate penalties, the Government describes what it considers to be a much more comprehensive enforcement strategy including the aims of targeted enforcement, compliance education and outreach, partnerships, and heightened public awareness, and it cites statistics which it says demonstrate that its strategy is making a difference.

Articles 1, 2, 3(d) and 4 of the Convention

3. The Committee notes that, in its comments on determining, under *Article 4* of the Convention, what constitutes hazardous types of work for purposes of *Article 3(d)* of the Convention, the Government refers back to its first report to, as it states, describe “the manner in which the United States has made and continues to review this determination”. In that report, the Government indicated that “two federal laws enforced by the Secretary of Labor are the primary means of establishing the principles of *Article 3(d)*”. It identified these as the Fair Labor Standards Act (FLSA), 29 U.S.C. sections 201 et seq., and the Occupational Safety and Health Act (OSH Act), 29 U.S.C. sections 651 et seq. The Government also referred to an inter-agency agreement with the National Institute for Occupational Safety and Health (NIOSH), an agency within the U.S. Department of Health and Human Services, of April 1999, as one of the means by which the types of work it has determined to be hazardous for children under *Article 3(d)* are “periodically reviewed and amended as necessary”, in accordance with *Article 4(3)* of the Convention.

The Fair Labor Standards Act

4. The Committee notes that the Fair Labor Standards Act of 1938 (FLSA), and its implementing regulations, regulates the types of jobs, number of hours, and times of day that children can work and provides the overall framework for regulating the employment of child workers. The child labour provisions of the FLSA are contained in section 12 (29 U.S.C. section 212(a-d)). Section 12 prohibits the employment of “oppressive child labor” in commerce or in the production of goods for commerce, or in any enterprise so engaged (29 U.S.C. section 212(c)). Enterprises with an annual volume of sales of less than US\$500,000 are exempt (29 U.S.C., section 203(s)(1)). The FLSA defines oppressive child labour, in part, as a condition of employment in occupations which the Secretary of Labor finds and, by order, declares to be “particularly hazardous for the employment of children ... or detrimental to their health or well-being” (29 U.S.C. section 203(l)). The Secretary of Labor has, by regulation, designated such occupations and types of work or work activities in 28 “hazardous occupation orders” – 17 relating to non-agricultural employment and a separate category of 11 orders for agricultural employment (29 C.F.R. Part 570, Sub-parts E and E-1). For hazardous work activities in non-agricultural occupations, the FLSA establishes a minimum age of 18, whereas for employment in agriculture, the FLSA sets a minimum age of 16 (29 U.S.C. section 213(c)(2)).

5. The Committee notes that, among others, a specific exemption from the child labour provisions of the FLSA is made for a child working in agriculture on a family farm, that is, a farm “owned or operated by his or her parent or by someone standing in the place of the parent” (29 U.S.C. section 213(c)(1)(A)(i)). Thus, the hazardous occupation orders relating to the employment of children under 16 years of age in agriculture do not cover employment of children on family farms (29 U.S.C. section

213(c)(2); 29 C.F.R. section 570.70(b)). Employment in agriculture is also exempt from the statute's restrictions on work hours (29 U.S.C. section 213(b)(12), (13)).

2002 NIOSH report: Recommendations to the U.S. Department of Labor for Changes to Hazardous Orders

6. In its initial and supplemental reports, the Government indicates that, as part of its obligation under *Article 4(3)* to periodically re-examine the list of the types of work determined to be hazardous for children, the U.S. Department of Labor's Wage and Hour Administration entered into an inter-agency agreement with the National Institute for Occupational Safety and Health (NIOSH) to conduct research on "safety and health risks for children, with particular emphasis on issues relevant to child labor regulations". NIOSH is the federal agency responsible for conducting research and making recommendations for the prevention of work-related disease and injury. The Institute is part of the Centers for Disease Control and Prevention (CDC). The CDC is an agency of the US Department of Health and Human Services. The Government indicates that the agreement contemplated that the research conducted and overseen by NIOSH would, among other things, address "the adequacy of existing hazardous occupation orders under the FLSA and the potential for new orders". In its supplemental report, the Government indicates that NIOSH released its report on *Recommendations to the U.S. Department of Labor for Changes to Hazardous Orders* in July 2002.

7. The Committee takes notes of this report, which is dated 3 May 2002. In summarizing the purpose of its study, NIOSH states: "The Fair Labor Standards Act (FLSA), largely unchanged in decades, defines work activities prohibited for young workers through 28 Hazardous Orders (HOs) for non-agricultural and agricultural occupations ... The HOs in non-agricultural occupations were established between 1939 and 1963. The agricultural HOs were established in 1970. There have been significant changes in the workplace and advancement in knowledge about occupational safety and health hazards that are not reflected in the existing HOs. The need to update the HOs has been recognized by the Department of Labor [citations omitted] and numerous researchers and advocates." The report notes a recommendation for such periodic reviews made recently by the National Research Council/Institute of Medicine in its report, *Protecting Youth at Work*: "The U.S. Department of Labor should undertake periodic reviews of its hazardous orders in order to eliminate outdated orders, strengthen inadequate orders, and develop additional orders to address new and emerging technologies and working conditions. Changes to the hazardous orders should be based on periodic reviews by the National Institute for Occupational Safety and Health of current workplace hazards and the adequacy of existing hazardous orders to address them."

8. The NIOSH report states that "the DOL responded to the above charge" by requesting that NIOSH prepare a report based on a review of data and the scientific literature and provided funding to support the effort. The primary data sources used by NIOSH were the Census of Fatal Occupational Injuries, the Survey of Occupational Injuries and Illnesses, the National Electronic Injury Surveillance System, and the Current Population Survey. The report indicates that, in addition, hundreds of scientific articles and reports were reviewed. NIOSH states that its report "makes recommendations specific to HOs that define prohibited occupations ... NIOSH

recognizes the need to better protect the health and safety of working youth, and provides this report to assist the DOL in aligning child labor regulations with current knowledge about occupational safety and health. NIOSH offers its continued support to work closely with DOL to ensure that child labor regulations provide adequate protections for working youth and to initiate research into those areas of risk where insufficient data currently exist to guide rule-making”.

9. In a summary of its findings, NIOSH reports that it “found justification for all of the existing HOs [hazardous orders]. Review of available data and scientific evidence found that work currently prohibited by HOs continues to pose risks for death, serious injury and disabling health conditions. NIOSH proposes several types of revisions to HOs: better definition of prohibited activities, incorporation of associated legislative provisions, and in some cases, removal of current exemptions. Additionally, NIOSH makes recommendations to expand several HOs to include similar work with comparable or greater risk. In a couple of cases, NIOSH concluded that revisions of existing HOs may be warranted, to allow use of currently prohibited equipment which appears to be associated with relatively minor injuries”. The Committee notes that, for existing hazardous occupation orders, NIOSH recommends that only seven of the 28 orders (four of the 17 orders for non-agricultural occupations and three of the 11 orders for agricultural employment) be retained, and that the other 75 per cent be revised to expand the prohibitions or to redefine them more broadly.

10. The report indicates that NIOSH “recommends the development of several new HOs to protect youth from especially hazardous work not adequately addressed in the existing regulations. The recommended HOs encompass work associated with deaths and severe injuries of youth, work with especially high fatality rates, and work associated with disabling health occupations. In several instances, NIOSH recommends extending prohibitions now in place for agricultural occupations to similar tasks in non-agricultural occupations, e.g., pesticide handling, work in confined spaces, and tractor operation”. NIOSH recommends new hazardous occupation orders that would prohibit the following types of work: commercial fishing occupations; construction occupations; work in refuse occupations; water transportation industries; work in scrap and waste materials industry; farm product raw materials wholesale trade industry; railroad industry; work at heights; operating a tractor (for non-agricultural occupations); operating heavy machinery (for non-agricultural occupations); welding; work inside confined spaces (for non-agricultural occupations); work involving powered conveyors (in manufacturing industries); pesticide handling (in non-agricultural occupations); work with potential exposure to lead; work with potential exposure to silica dust; and work requiring the use of respiratory protection.

2002 NIOSH report: Minimum age for work in hazardous occupations in agriculture and exemptions from the FLSA

11. In describing the scope of its study, NIOSH specifically notes that it “does not address statutory issues such as the minimum age for work in HOs and exemptions from the FLSA ... Many deaths and serious injuries occur among youth not covered by the FLSA”. With regard to agricultural employment, the report states: “Thirty-five percent of the young workers killed over the 1992-1997 period lost their lives in agricultural production jobs”. The report states further (page 12) that “more than half of the 162 deaths in agriculture [during the period 1992-1997] occurred on family farms ... Youth

15 to 17 years of age working in agriculture appeared to have over four times the risk for fatal injury of youth workers in other industries”.

12. The report states:

Despite the well-documented hazards and consistently high rates of injury and fatalities, youth in agricultural workplaces are afforded less protection than youth in non-agricultural occupations. This is true even with respect to the same hazards, such as machinery. In fact, the current distinctions between HOs for agricultural and non-agricultural occupations are frequently artificial, given that the same machinery, activities, and exposure are often present in both settings. Yet the minimum age for similar hazardous work in agriculture is 16, compared to 18 in non-agricultural occupations. For the six year period 1992-1997, there were 39 deaths of youth 16-and 17-years of age in agricultural production [citation omitted]. Changes to HOs could not be expected to impact these young worker injury deaths since they are exempt from the FLSA, unlike most other types of family businesses. It is not possible for NIOSH to determine from the CFOI [Census of Fatal Occupational Injuries] research file provided by BLS [Bureau of Labor Statistics] the numbers of agricultural production deaths of youth less than 16 years of age that would not be covered by the FLSA because the youth was working on the family farm. A previous analysis of CFOI by BLS researchers suggested that more than half of the farming-related deaths of youth less than 18 years of age occurred on farms owned by the victim's families.

1998 Report of the General Accounting Office

13. The Committee takes note of the August 1998 report to Congress of the U.S. General Accounting Office (GAO), entitled *Child Labor in Agriculture: Changes Needed to Better Protect Health and Educational Opportunities* (GAO/HEHS-98-193). The GAO is an independent and non-partisan government agency that evaluates federal programmes, audits federal expenditures, and issues legal opinions. The GAO advises Congress and the heads of executive agencies about ways to make government more effective and responsive. In its report the GAO, like NIOSH, has recognized the particular hazards of agricultural employment for child workers: “Agriculture is a hazardous industry, with one of the highest rates of injuries, fatalities, and lost workdays for employees generally. Available data indicate that although the relative number of injuries of children working in agriculture is not as high as that for those working in other industries, the severity tends to be greater and these children have a disproportionate number of fatalities. Although a number of data sources document injuries and illnesses to children working in agriculture, methodological constraints result in estimates that may understate injuries to and fatalities of these children.”

14. The GAO explained in practical terms the impact of the FLSA provisions that exempt, or apply less protection to, child labour in hazardous agricultural employment:

... 60 years after FLSA was passed, although it covers children working in both agriculture and other industries, children working in agriculture are legally permitted to work at younger ages, in more hazardous occupations, and for longer periods of time than children working in other industries. For example, ... a 16-year-old may not operate a power saw in a shop or a forklift in a warehouse but may operate either on a farm. ... Children as young as 16 may work in agriculture in any capacity, including in some occupations declared hazardous by the Secretary of Labor ... In non-agricultural industries, children generally may not perform such tasks until age 18. Furthermore, in agriculture, parents do not have to adhere to hazardous occupation requirements, which means a parent may allow his or her 7-year-old to operate a power saw or drive a tractor, although a parent would not

be able to allow his or her 7-year-old to operate a similar machine in a non-agricultural setting.

15. The Committee notes that the GAO includes, as a “matter for congressional consideration”, the following as one of its recommendations: “Considering the evolutionary changes that are transforming the agricultural industry and the increased emphasis on the safety, health, and academic achievement of children, the Congress may wish to formally re-evaluate whether FLSA adequately protects children who are hired to work as migrant and seasonal farmworkers.”

Pending Legislative Amendments (Federal)

16. The Committee notes with interest that, in 2001, several legislative amendments to the FLSA were introduced in the 107th Congress to accord greater protection to child workers in hazardous employment. S. 869, the Children’s Act for Responsible Employment of 2001 (The CARE Act), among other things, raises, from 16 to 18 years old the minimum age for engaging in hazardous agricultural employment, and it limits the exemptions for agriculture to those children employed outside of school hours by a specified family member on that member’s farm. H.R. 2239, the Children’s Act for Responsible Employment of 2001 (The CARE Act), is similar to s. 869. The Young American Workers’ Bill of Rights, H.R. 961, among other things, amends the limitation on the scope of coverage to employers with a certain sales volume, and it requires employers to obtain work permits for all children age 18 or under who are still in school.

17. The Committee also notes with interest, in relation to the NIOSH review, the Government’s indication that “the Department [of Labor] has already begun to implement many of the changes urged in the report and is reviewing others”, and that it will report further on these developments in its next report.

18. The Committee hopes that the provisions of the Fair Labor Standards Act and its implementing orders and regulations, as they relate to hazardous child labour, will be amended in the light of the Government’s NIOSH and GAO reviews and recommendations, and that the Government will report on the action it has taken to this end.

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

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Hungary, Togo, United States*.

II. Observations on the application of Conventions in non-metropolitan territories

(articles 22 and 35, paragraphs 6 and 8, of the Constitution)

A. General observation

Denmark

Faeroe Islands

The Committee notes with regret that for many years the reports due have not been received. It expresses the hope that in future the Government will not fail to discharge this obligation under the ILO Constitution.

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In addition, requests regarding certain points are being addressed directly to the following States: *Denmark* (Greenland), *United Kingdom* (British Virgin Islands, Gibraltar, St. Helena).

B. Individual observations

Convention No. 8: Unemployment Indemnity (Shipwreck), 1920

France

French Southern and Antarctic Territory

For many years, the Committee has been drawing the Government's attention to the fact that the legislation applicable to vessels registered in the French Southern and Antarctic Territory, namely the Overseas Labour Code of 1952 and Chapter VI of Act No. 96-151 of 1996 respecting the registration of vessels in the Territory, contain no provisions regarding the indemnity to be paid to seafarers in the event of shipwreck.

In this respect, the Government indicates in the information provided in June 2002 that it is considered that the provisions of the Convention are of direct application and that individual articles of agreement would therefore include the unemployment indemnity guaranteed by the Convention. The Government adds that the obligation to provide this indemnity could nevertheless usefully be considered in the context of a proposed amendment of the Overseas Labour Code, based on the provisions of the Act of 15 February 1929. An order issued by the highest administrator of the French Southern and Antarctic Territory would then establish the procedures for the implementation of this obligation.

The Committee notes this information. On the subject of the direct application of the Convention, it does not appear to the Committee that its provisions are of such a nature as to be self-executing, that is, formulated in terms allowing their immediate application in national law. On the contrary, their application requires the adoption of

laws or regulations. The Committee considers that it would be desirable for legislative measures or regulations to be adopted so as to give full effect to the provisions of the Convention in the French Southern and Antarctic Territory, as was done for Metropolitan France with the adoption of the Act of 15 February 1929 establishing an unemployment indemnity for seafarers in the event of the seizure, shipwreck or declaration of unseaworthiness of a vessel, and the circular implementing the Act. The Committee hopes that the Government will take advantage of the fact that amendments are envisaged to the Overseas Labour Code in order to take the necessary measures, as suggested in its report. It requests the Government to provide information on any progress achieved in this respect.

Convention No. 9: Placing of Seamen, 1920

Denmark

Faeroe Islands

The Committee notes with regret that since 1997 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 1993 direct request, which read as follows:

The Committee notes the information provided by the Government in reply to its earlier comments. It notes, in particular, the adoption of Act No. 17 of 10 March 1992 by which an unemployment insurance system and an employment service have been set up in the Faeroe Islands. It also notes the Government's statement to the effect that the placement service is free of charge and covers all occupational fields, including seafarers.

The Committee would be grateful if the Government would supply, in its next report, information, statistical or otherwise, concerning the placement of seafarers (e.g. the number of applications received, the number of vacancies notified, the number of persons placed), as required by the report form under *Article 4 of the Convention*. Please also indicate whether the directorate appointed to manage and to have responsibility for unemployment insurance and assignment of work (section 15 of the abovementioned Act) includes representatives of shipowners and seamen and, if not, how effect is given or proposed to be given to *Article 5* (constitution of advisory committees consisting of an equal number of representatives of shipowners and seamen to advise on matters concerning the carrying on of employment offices for seamen).

Convention No. 10: Minimum Age (Agriculture), 1921

Requests regarding certain points are being addressed directly to the following States: *France* (French Guiana), *United Kingdom* (British Virgin Islands).

Information supplied by *Australia* (Norfolk Island) and *France* (French Polynesia, Guadeloupe, Martinique and St. Pierre and Miquelon) in answer to a direct request has been noted by the Committee.

Convention No. 14: Weekly Rest (Industry), 1921

Requests regarding certain points are being addressed directly to the following States: *Denmark* (Greenland), *France* (French Guiana, French Polynesia, Guadeloupe, Martinique, New Caledonia, Réunion, St. Pierre and Miquelon).

Convention No. 16: Medical Examination of Young Persons (Sea), 1921

Requests regarding certain points are being addressed directly to the following States: *Denmark* (Faeroe Islands), *United Kingdom* (Bermuda).

Convention No. 17: Workmen's Compensation (Accidents), 1925

Requests regarding certain points are being addressed directly to the *United Kingdom* (Jersey, St. Helena).

Convention No. 26: Minimum Wage-Fixing Machinery, 1928

Requests regarding certain points are being addressed directly to the following States: *United Kingdom* (British Virgin Islands, Montserrat).

Convention No. 29: Forced Labour, 1930

Requests regarding certain points are being addressed directly to the following States: *France* (French Polynesia) *Netherlands* (Aruba), *United Kingdom* (Anguilla, Gibraltar, Montserrat, St. Helena).

Convention No. 33: Minimum Age (Non-Industrial Employment), 1932

Information supplied by *France* (French Polynesia, St. Pierre and Miquelon) in answer to a direct request has been noted by the Committee.

**Convention No. 42: Workmen's Compensation
(Occupational Diseases) (Revised), 1934**

France

St. Pierre and Miquelon

Ever since this Convention was declared applicable to St. Pierre and Miquelon in 1974, the Committee has been drawing the attention of the Government to the need to supplement the legislation applicable to this territory in respect of the compensation of occupational diseases (including Decree No. 57245 of 24 February 1957 on the compensation and prevention of employment accidents and occupational diseases in overseas territories, as amended), so as to include a schedule of occupational diseases, in accordance with *Article 2 of the Convention*. Indeed, the orders envisaged in section 44 of Decree No. 57245 above, which were to enumerate the morbid manifestations of

acute or chronic poisoning presented by workers habitually exposed to certain toxic agents, have never been issued.

The Committee notes that in its last report the Government confines itself to indicating once again that the system for the compensation of employment accidents and occupational disease is specific to the archipelago of St. Pierre and Miquelon. It recalls that the Convention, in enumerating for each of the diseases appearing in the schedule annexed to *Article 2* the trades and industries liable to give rise to these diseases, is intended to relieve workers in the trades and industries concerned of the burden of proving that they have actually been exposed to the risk of the specific disease. In these conditions, the Committee trusts that the Government will not fail to take all the necessary measures to supplement the legislation applicable to St. Pierre and Miquelon as soon as possible with a schedule of occupational diseases, including at least the diseases enumerated in the schedule annexed to *Article 2* of the Convention.

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In addition, a request regarding certain points is being addressed directly to *Australia* (Norfolk Island).

Convention No. 44: Unemployment Provision, 1934

France

French Polynesia

For many years, the Committee has been drawing the Government's attention to the need to adopt regulations establishing arrangements to give effect to the principle of assistance to persons who are involuntarily unemployed, as set out in section 48 of Act No. 86-845 of 17 July 1986 and section 18 of Resolution No. 91-029 AT of 24 July 1991 respecting placement and employment. In its last report, the Government states that on 8 February 2001 the Assembly of French Polynesia adopted Resolution No. 2001-22 APF establishing work of general interest (CIG). This work of general interest is intended to provide an allowance in exchange for work by any worker who has involuntarily lost her or his employment and who is fit for work and is seeking work, as well as for any person over 30 years of age who has been unemployed for over six months. The Government adds that this allowance, which is not subject to any qualifying period or waiting period, is granted for a period of eight months.

The Committee takes note of this information. It notes that the CIG, which forms part of a series of employment assistance measures, has the objective of allowing the recruitment of workers who have involuntarily lost their jobs and of providing them with an allowance when they perform work for a recruiting entity (private sector enterprise, administrative service, public establishment, commune or association). The Committee recalls that, to give effect to the Convention, an unemployment protection scheme has to be established ensuring to persons who are involuntarily unemployed either a benefit, an allowance, or a combination of benefit and allowance, in accordance with *Article 1, paragraph 1, of the Convention*. The Committee notes, from the information provided by the Government, that Resolution No. 2001-22 APF establishing work of general interest does not appear to correspond in nature to the system envisaged by the Convention in *Article 1, paragraph 2*, under which the scheme may be a compulsory insurance scheme,

a voluntary insurance scheme, a combination of compulsory and voluntary insurance schemes, or a compulsory or voluntary insurance scheme combined with a complementary assistance scheme. Furthermore, under the terms of *Article 2* of the Convention, the scheme under which allowances are paid has to cover all the persons to whom the Convention applies, namely all persons habitually employed for wages or salary. In this respect, the information provided by the Government does not indicate that any person who is involuntarily unemployed could automatically benefit from an allowance within the context of the CIG. The Committee also wishes to draw the Government's attention to *Article 9* of the Convention, under which the right to receive an allowance may be made conditional upon the acceptance of employment consisting of relief works organized by a public authority. In these conditions, the Committee hopes that the Government will be able to re-examine this matter and that it will indicate the measures which have been taken or are envisaged to give full effect to the Convention. It recalls in this respect that the Convention is not intended to protect all persons seeking employment, but only those who have lost their employment. In this context, the terms of *Article 6* of the Convention allow the right to receive benefit or allowance to be made conditional upon the completion of a qualifying period.

Convention No. 55: Shipowners' Liability (Sick and Injured Seamen), 1936

Requests regarding certain points are being addressed directly to the *United States* (American Samoa, Guam, Puerto Rico, United States Virgin Islands).

Convention No. 58: Minimum Age (Sea) (Revised), 1936

A request regarding certain points is being addressed directly to *France* (French Southern and Antarctic Territories).

Convention No. 81: Labour Inspection, 1947

Requests regarding certain points are being addressed directly to the *Netherlands* (Aruba, Netherlands Antilles), *United Kingdom* (Isle of Man, Jersey).

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

Netherlands

Aruba

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

Article 3 of the Convention. 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 a Government's previous report 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. 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 principle of freedom of association and 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.

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In addition, requests regarding certain points are being addressed directly to the following States: *France* (French Southern and Antarctic Territories), *Netherlands* (Netherlands Antilles), *United Kingdom* (Jersey).

Convention No. 92: Accommodation of Crews (Revised), 1949

A request regarding certain points is being addressed directly to *Denmark* (Faeroe Islands).

Convention No. 94: Labour Clauses (Public Contracts), 1949

Netherlands

Aruba

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

With reference to its previous comments, the Committee noted the Government's indication in its previous report to the effect that conditions of work of the workers employed by public contractors fall within the scope of labour legislation. The Committee points out that the application of the general labour legislation to the workers employed by public contractors does not release the Government from the obligation to take necessary steps to ensure, in accordance with *Article 2, paragraphs 1 and 2, of the Convention*, that public contracts to which the Convention applies in pursuance of *Article 1*, contain labour clauses guaranteeing the workers concerned conditions of labour (including wages) which are not less favourable than those established for work of the same character in the trade or industry concerned in the same district.

The Committee therefore requests the Government to take the necessary measures to give effect to the above provisions of the Convention. When formulating these measures, please also take into account the following provisions of the Convention.

Article 2(3). Consultation with the organizations of employers and workers concerned for the determination by the competent authority of the terms of the clauses to be included in contracts and any variation thereof.

Article 2(4). Measures to ensure that persons tendering for contracts are aware of the terms of the labour clauses.

Article 4(a) and (b). Measures to bring to the notice of the persons concerned the laws, regulations or other instruments giving effect to the Convention; the definition of the persons responsible for compliance with these regulations; the posting of notices at workplaces so as to inform the workers of their conditions of work; and the keeping of adequate records of the time worked by and the wages paid to the workers.

Article 5. The sanctions applicable in the event of failure to observe the labour clauses and measures to enable the workers concerned to obtain the wages due.

Part V of the report form. The Committee also requests the Government to supply information on the practical application of the Convention and to supply, if possible, copies of public contracts containing labour clauses, and extracts of reports by the inspection services 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. 95: Protection of Wages, 1949

Requests regarding certain points are being addressed directly to the following States: *France* (New Caledonia), *United Kingdom* (Montserrat).

Convention No. 97: Migration for Employment (Revised), 1949

Requests regarding certain points are being addressed directly to the *United Kingdom* (Anguilla, Jersey).

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

Requests regarding certain points are being addressed directly to the *United Kingdom* (Bermuda, Jersey).

Convention No. 100: Equal Remuneration, 1951

Requests regarding certain points are being addressed directly to the following States: *France* (French Guiana, French Polynesia, Guadeloupe, Martinique, New Caledonia, Réunion, St. Pierre and Miquelon), *New Zealand* (Tokelau), *United Kingdom* (Gibraltar).

Convention No. 101: Holidays with Pay (Agriculture), 1952

Netherlands

Aruba

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

Article 7, paragraph 3, of the Convention. The Committee would recall that this provision of the Convention calls for payment in respect of holidays to include the cash equivalent of payment in kind in cases where the normal wages include payments in kind. Please indicate whether such payments in kind are made for agricultural workers in Aruba normally and, if so, the measures taken to ensure that these workers receive the cash equivalent of such payments in respect of their holiday pay.

Article 11. The Government is requested to include in future reports information on the approximate number of workers employed in agricultural undertakings and related

occupations in Aruba and to supply any collective agreements which might affect the conditions under which they are granted annual holidays with pay.

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

Convention No. 102: Social Security (Minimum Standards), 1952

A request regarding certain points is being addressed directly to the *United Kingdom* (Isle of Man).

Convention No. 105: Abolition of Forced Labour, 1957

A request regarding certain points is being addressed directly to the *Netherlands* (Aruba).

Convention No. 106: Weekly Rest (Commerce and Offices), 1957

Requests regarding certain points are being addressed directly to the following States: *Denmark* (Greenland), *France* (French Guyana, French Polynesia, Guadeloupe, Martinique, New Caledonia, Réunion, St. Pierre and Miquelon), *Netherlands* (Netherlands Antilles).

Convention No. 111: Discrimination (Employment and Occupation), 1958

Requests regarding certain points are being addressed directly to the following States: *France* (French Polynesia, French Southern and Antarctic Territories, Martinique, New Caledonia, St. Pierre and Miquelon), *New Zealand* (Tokelau).

Convention No. 121: Employment Injury Benefits, 1964

A request regarding certain points is being addressed directly to the *Netherlands* (Aruba).

Convention No. 122: Employment Policy, 1964

Requests regarding certain points are being addressed directly to the following States: *Denmark* (Greenland), *France* (New Caledonia, St. Pierre and Miquelon), *Netherlands* (Netherlands Antilles), *United Kingdom* (Isle of Man).

Convention No. 127: Maximum Weight, 1967*France**New Caledonia*

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.

Convention No. 129: Labour Inspection (Agriculture), 1969

France

French Guiana

Further to its previous observation, the Committee notes the Government's brief report, in which it indicates that a total of four inspections were carried out in agricultural enterprises. This derisory figure can be explained by the fact that 90 per cent of the 5,318 farmers officially registered practise subsistence farming and do not employ any employees declared as such, with the remaining 10 per cent being composed of sharecroppers of Indo-Chinese origin. According to the Government, inspection of the latter would be objectively difficult in view of the linguistic barriers, their remoteness and their refusal to accept legal constraints. The Committee recalls that the scope of the Convention, in accordance with *Article 1, paragraph 1*, covers undertakings and parts of undertakings engaged in cultivation, animal husbandry, forestry, horticulture, the primary processing of agricultural products by the operator or any other form of agricultural activity and that, under the terms of *paragraph 3* of the same Article, it is the responsibility of the competent authority, in any case in which it is doubtful, to determine whether an undertaking or part of an undertaking is covered by the Convention. It also draws the Government's attention to the value of ensuring agricultural undertakings are inspected as often and as thoroughly as necessary, within the meaning of *Article 21 of the Convention*, with a view to verifying precisely the actual composition of the agricultural workforce in relation to the declarations made to the administration and thereby detecting any cases of unlawful employment.

In accordance with *Article 6, paragraph 1*, which defines the functions of the system of labour inspection in agriculture, inspections should cover issues such as hours of work, wages, weekly rest, holidays, safety, health and welfare, the employment of women, children and young persons, and other connected matters, in so far as such provisions are enforceable by labour inspectors (*point (a)*).

It is also the responsibility of the labour inspection system to supply technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions (*point (b)*) and to bring to the notice of the competent authority defects or abuses not specifically covered by existing legal provisions and to submit to it proposals on the improvement of laws and regulations (*point (c)*).

The Committee notes that the population covered by the provisions of the Convention is excluded from the scope of the inspection system without any legal provision justifying this exclusion. The Government is requested to take the necessary measures for the implementation of the provisions of the Convention, in accordance with the formal undertaking made when ratifying the instrument, and to provide the relevant information. The Committee hopes that detailed information, as required by *Article 27* on each of the matters set out in *points (a) to (g)*, will be published and forwarded to the ILO, in accordance with the provisions of *Article 26*.

Réunion

The Committee notes the Government's reports received in 2001 and 2002 and observes that they do not contain replies to the questions raised in its observation of 2000. The Committee is therefore bound to reiterate its previous request, which read as follows:

The Committee notes the general information supplied in the Government's report according to which labour inspection in agriculture operates on the basis of the same legislative provisions as in metropolitan France in regard, particularly, to the aspects covered by *Articles 1, 4, 8, 9, 10, 11 and 12 of the Convention*. The Committee notes, however, in the same report that, although the evolution of practices and legislative and regulatory provisions increases the trend towards application of the same rules to agricultural employees in the overseas departments as in the metropolitan territory, a number of issues remain unanswered in regard to the organization of the inspection system. The Committee notes in fact that the complexity of the system prevents any possibility of ascertaining its effectiveness. The absence of information for assessment seems to be explained by the lack of defined objectives in the subject. The Committee notes in particular that, according to the Government, conditions of recruitment and training for labour inspectors are identical to those for their metropolitan counterparts and that specific duties are organized at national level, in both initial training and further training. However, no training has been held since 1985 in the department, which entails, at least, failure to execute *Article 9(2)*, in the territory of Réunion. The Government indicates, furthermore, that the inspection situation for application of *Articles 14 to 20* and *Articles 22 to 26* is the same as that prevailing in industry and that, in regard to the application of *Article 27* concerning the content of the annual inspection report, which should be published and transmitted by the competent authority in accordance with *Article 26*, the particular nature of labour organization in Réunion does not make it possible statistically to separate information pertaining to the supervision of agriculture from that of industry and trade. The Committee notes that no report has been received concerning inspection activities in general, with the result that it cannot fulfil its duty of supervising the application of the Convention. With reference to its previous comments, the Committee therefore reminds the Government once again that the reports on the application of the present Convention transmitted to the ILO under article 22 of the ILO Constitution shall contain: (i) information on the legislative provisions and other measures affecting the application of the Convention; (ii) replies to the questions in the report form on the application of the Convention; (iii) information on the

transmission of copies of the report to the representative organizations of employers and workers; (iv) any comments received from these organizations; and (v) the reply to any comments made by the Committee concerning the application of the Convention.

Reminding the Government once again that the declaration of the application of an international labour Convention to a non-metropolitan territory involves the commitment to fulfil the obligations set out in the Convention, the Committee therefore requests the Government to take all the necessary measures as soon as possible for the application of the provisions of this Convention, not only in law but also in practice, and to provide information in its next report on the measures taken in practice for this purpose. It also trusts that the annual reports on the inspection services will be published and transmitted to the ILO, in accordance with *Article 26*, and that they will contain the information required on all the subjects enumerated in *Article 27*.

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In addition, a request regarding certain points is being addressed directly to *France* (New Caledonia).

Convention No. 131: Minimum Wage Fixing, 1970

A request regarding certain points is being addressed directly to *France* (New Caledonia).

Convention No. 133: Accommodation of Crews (Supplementary Provisions), 1970

Requests regarding certain points are being addressed directly to the *United Kingdom* (Bermuda, Gibraltar).

Information supplied by *France* (French Guiana, French Southern and Antarctic Territories, Guadeloupe, Martinique, Réunion) in answer to a direct request has been noted by the Committee.

Convention No. 135: Workers' Representatives, 1971

Requests regarding certain points are being addressed directly to the *Netherlands* (Aruba) and the *United Kingdom* (Gibraltar).

Convention No. 137: Dock Work, 1973

Netherlands

Aruba

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 1994 direct request, which read as follows:

The Committee takes note of the adoption of the revised Stevedoring Ordinance No. 49 of 1991. It would be grateful if the Government would supply, in its next report, additional information on the following points.

Article 1, paragraph 2, of the Convention. The Government indicates in its previous report received in 1991 that it usually communicates with employers' and workers' organizations on matters concerning the definitions of "dockworkers" and "dock work". Please describe in more detail the arrangements made for revising these definitions in the light of new methods of cargo handling and their effect on the various dockworker occupations, as required under this Article.

Articles 3 and 4. The Government indicated in its previous report that national legislation in force (section 2(j) of the 1946 Act) provided for the registration for all occupational categories of dockworkers. The Committee observes that the new Ordinance No. 49 of 1991 does not contain a provision of that kind. It would be grateful if the Government would clarify whether registers are established and maintained for all occupational categories of dockworkers and, if it is the case, whether arrangements have been made for the periodic review of the strength of such registers. Please also describe, in the latter case, the measures instituted to prevent or minimize detrimental effects on dockworkers when a reduction in the strength of a register becomes necessary.

Article 6. The Committee notes the provisions of Ordinance No. 49 relating to safety, health and welfare of dockworkers. It observes, however, that the Ordinance contains no provisions concerning vocational training of dockworkers. The Committee therefore asks the Government to indicate whether any measures have been taken with a view to ensure that appropriate vocational training provisions apply to dockworkers, in accordance with this Article.

Part V of the report form. The Committee would be grateful if the Government would continue to supply information concerning the practical application of the Convention, including for instance extracts from reports of the competent authorities and particulars on the number of dockworkers on any registers maintained under *Article 3*, and of variations in their numbers, if available.

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

Convention No. 140: Paid Educational Leave, 1974

Netherlands

Aruba

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 points raised in its 1998 direct request, which read as follows:

The Committee notes that the Government states in its second report on the application of the Convention that no new measures have been adopted to give effect to these provisions. It recalls that, in this regard, under *Article 5 of the Convention*, the means by which provision is made for the granting of paid educational leave may include national laws and regulations, collective agreements, arbitration awards, or such other means as may be consistent with national practice. The Committee requests the Government to provide information in its next report in respect of the measures taken or envisaged to this effect.

The Committee trusts that this report will also contain detailed information on the points raised in its previous direct request which were in respect of the following points:

The Committee notes the concise information supplied by the Government in its first report on the application of the Convention. It notes the provisions applying to public servants, under which educational leave is granted for the purpose of passing examinations and officials are granted sufficient income during study assignments abroad. It notes that the period spent on such study assignments may or may not qualify as service for the assessment of pension claims, entitlement to leave and pay increments, depending on the degree to which the interests of the service are affected by the study assignment. The Committee recalls in this connection that under *Article 11* of the Convention a period of paid educational leave shall be assimilated to a period of effective service for the purpose of establishing claims to social benefits and other rights deriving from the employment relation.

With regard to the private sector, the Government indicates in its report that paid educational leave in this sector is regulated through collective bargaining and collective agreements. The Committee would be grateful if in its second report the Government would provide detailed information on collective agreements which provide for the granting of paid educational leave. Please supply also relevant extracts of such agreements.

More generally, the Committee asks the Government to provide full information in its second report on the effect given to each provision of the Convention under each question in the report form. Please specify, in particular, how the policy to promote the granting of paid educational leave for the purposes laid down in *Articles 2 and 3* was formulated in association with employers' and workers' organizations and education and training establishments, in accordance with *Article 6*.

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

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In addition, a request regarding certain points is being addressed directly to the *United Kingdom* (Anguilla, Jersey).

Convention No. 142: Human Resources Development, 1975

Requests regarding certain points are being addressed directly to the following States: *France* (French Guiana, Guadeloupe), *Netherlands* (Aruba).

Convention No. 144: Tripartite Consultation (International Labour Standards), 1976

Netherlands

Aruba

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

The Committee takes note of the denunciation, recorded on 19 June 2002, of the acceptance of the obligations of the Labour Inspection (Agriculture) Convention, 1969 (No. 129), on behalf of Aruba. As the Committee already recalled in its observation of 1999, 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. In its General Survey on tripartite consultation the Committee pointed out that, to be effective, consultations must be held prior to the Government’s final decision (paragraph 31). The Committee expressed regret that the representative workers’ organizations were able to voice their reservations regarding denunciation of the acceptance of the obligations of Convention No. 129 on Aruba’s behalf only by submitting observations on the Government’s report on the application of the Convention transmitted to them by the Government pursuant to articles 23, paragraph 2, and 35, paragraph 6, of the ILO Constitution. The Committee trusts that the Government will take due account of its comments so as ensure that, in future, the items listed in Article 5, paragraph 1, of the Convention are subject to effective consultations, in particular within Aruba’s tripartite committee on matters regarding ILO activities. Lastly, the Committee asks the Government to provide in its next report all the information required by the report form under Articles 5 and 6 and Parts V and VI.

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In addition, a request regarding certain points is being addressed directly to France (New Caledonia).

Convention No. 145: Continuity of Employment (Seafarers), 1976

Netherlands

Aruba

The Committee again notes with regret that since 1994 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 comments formulated in December 1995, which read as follows:

The Committee recalls the Government’s statement to the effect that there are no merchant shipping undertakings in Aruba. It hopes that the Government will not fail to supply a detailed report on the application of the Convention in conformity with the report form, which will include, in particular, information on the following points:

Article 2, paragraphs 1 and 2, of the Convention. Please describe measures taken to encourage all concerned to provide continuous or regular employment for seafarers. Please indicate the minimum periods of employment or the minimum income or monetary allowance assured to seafarers and describe the manner in which they are assured.

Part III of the report form. Please indicate the authority or authorities responsible for the application of the laws and regulations mentioned in the Government’s first report received in 1991.

Part V of the report form. Please give a general appreciation of the manner in which the Convention is applied in Aruba, including for instance extracts from reports of the authority or authorities referred to under *Part III* above and, if available, particulars of the number of seafarers and of variations in their number during the period covered by the report.

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

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In addition, a request regarding certain points is being addressed directly to *France* (French Guiana, Guadeloupe, Martinique, Réunion, St. Pierre and Miquelon).

Convention No. 146: Seafarers' Annual Leave with Pay, 1976

Information supplied by *France* (St. Pierre and Miquelon) in answer to a direct request has been noted by the Committee.

Convention No. 147: Merchant Shipping (Minimum Standards), 1976

France

French Southern and Antarctic Territories

Article 2 of the Convention. In its most recent report, the Government indicates that although Convention No. 147 is not directly applicable to the French Southern and Antarctic Territories, any developments in law concerning the conditions of work of seafarers of Metropolitan France and the Overseas Departments are generally reflected in the *contracts* of seafarers employed on board ships registered in these Territories. The Committee recalls that the Government, in a letter to the Director-General dated 13 June 1990, communicated its decision, in accordance with article 35 of the Constitution of the ILO, to extend the application of Convention No. 147 to these Territories, and that under the terms of the Convention, each Member which ratifies this Convention undertakes, among other things, *to have laws or regulations* and to exercise effective jurisdiction or control over ships which are registered in its territory in respect of safety standards, appropriate social security measures, and shipboard conditions of employment and shipboard living arrangements. The Convention also contains other provisions requiring ratifying States to ensure by means of inspections that ships registered in their territory are in conformity with the applicable international labour standards which they have ratified. The Committee recalls the decision to extend to the French Southern and Antarctic Territories all the Conventions listed in the appendix to Convention No. 147, except the Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55), and the Sickness Insurance (Sea) Convention, 1936 (No. 56), for which the French authorities have undertaken to enact legislation broadly equivalent to the provisions of one or other of these two Conventions. The Committee notes, however, that despite the extension, the applicability of these instruments remains relative, since the Overseas Labour Code established by Act No. 52-1322 of 15 December 1952, which is applicable to all crew members without distinction, was not complemented by Orders of the *Administrateur supérieur* of the French Southern and Antarctic Territories implementing its provisions in areas of fundamental importance to the safety of ships and their crews, such as the form and content of the employment contract, the minimum wage, the duration of work, rest periods or trade union rights. The Committee notes that this also applies to Act No. 96-151 of 26 February 1996 concerning the registration of ships in the French Southern and Antarctic Territories for which, as far as the Committee is aware,

the Council of State Decrees needed for its implementation have not been adopted. The Committee is furthermore concerned at the de facto existence of different social security systems for French seafarers (or those of comparable status) and non-resident foreign personnel serving on board ships registered in the Territories, who are covered by special provisions under the “Interim Instruction” No. 56GM/1 of 3 May 1996 of the Maritime Affairs Department, which establishes the rules for applying the conditions of employment in force on board such ships to foreign seafarers. The Committee notes lastly that non-resident foreign seafarers working on ships registered in the French Southern and Antarctic Territories do not enjoy the social security protection provided by the *Etablissement national des invalides de la marine*, unlike their French counterparts on the same ships. The Committee notes that this legal deficiency is prejudicial above all to this category of seafarer – non-resident foreign seafarers recruited to work on ships registered in the French Southern and Antarctic Territories who, in addition, suffer discrimination by being employed under conditions that differ from those applied to French crew members.

The Committee requests the Government to reply to the questions which it raised in its previous observation, and hopes that the Government will soon be able to report on measures taken or envisaged with a view to adopting or effectively applying the Convention, including by adopting the necessary implementing texts and by carrying out appropriate inspections to ensure that national laws and regulations are in conformity with the present Convention.

United Kingdom

Bermuda

Article 2(a), (d), (e) and (f) of the Convention. In its previous observation, the Committee requested the Government to take the necessary legislative measures in relation to *hours of work*. In this respect, it requests the Government to indicate whether the Merchant Marine (Safe Manning, Hours of Work and Watchkeeping) Regulations, 1997, are applicable to Bermuda, in which case it refers the Government to its comments addressed previously to the United Kingdom. The Committee also notes the adoption of the Employment Act, which entered into force in March 2001, governing labour relations and establishing a statutory working week. The Government is requested to indicate whether this new legislation is applicable to seafarers and, if so, to clarify the manner in which it interacts with the provisions contained in the Bermuda Merchant Shipping Act, 1979, and with the regulations issued thereunder, as well as with the above Regulations of 1997. The Committee also requests the Government to provide with its next report a copy of the Employment Act and any implementing legislation relating to the scope of Convention No. 147.

Furthermore, the Committee had requested the Government to ensure substantial equivalence with the provisions of *Convention No. 73* with regard to the *medical examination of seafarers* and to adopt equivalent legislation. It notes that the Government’s reports do not reply to these concerns. The Government’s report of 1995 indicated that it would take all measures to respond to the United Kingdom legislation, although the Government states in its report for 1997 that there has been no change in this respect, without giving fuller information in its later reports. While awaiting new

information on the organization of medical examinations, the Committee once again requests the Government to take all the necessary measures to bring its internal law into substantial equivalence with the provisions of the Convention with regard to the medical examination of seafarers with a view to ensuring that seafarers aged from 18 to 40 years are covered by the requirement to undergo a medical examination every two years (*Article 5, paragraph 1*, of the Convention), and not every five years as currently required under the Merchant Shipping (Medical Examination) Regulations, 1986.

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

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *France* (New Caledonia), *United Kingdom* (Bermuda).

Convention No. 148: Working Environment (Air Pollution, Noise and Vibration), 1977

A request regarding certain points is being addressed directly to the *United Kingdom* (Anguilla).

Information supplied by the *United Kingdom* (Guernsey) in answer to a direct request has been noted by the Committee.

Convention No. 149: Nursing Personnel, 1977

Requests regarding certain points are being addressed directly to *France* (French Guyana, Réunion).

III. Observations concerning the submission to the competent authorities of the Conventions and Recommendations adopted by the International Labour Conference
(article 19 of the Constitution)

Afghanistan

The Committee trusts that, when the national circumstances permit, the Government will provide information with regard to the submission to the competent authorities of the instruments adopted by the Conference since 1985 (71st, 72nd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 87th, 88th and 89th Sessions).

Albania

The Committee notes with interest that the ratification of Conventions Nos. 177 and 178 was registered on 24 July 2002. It further notes that the Government forwarded to the Office the instrument of ratification of Convention No. 183. The Committee trusts that the Government will provide soon the indications required by the Memorandum of 1980 on the submission to the People's Assembly of the Republic of Albania of the pending instruments adopted by the Conference at its 84th (Maritime) Session (October 1996) and of all the instruments adopted at the 78th, 79th, 80th, 81st, 82nd, 86th and 89th Sessions.

Algeria

In its previous observation, the Committee noted the information provided by the Government in September 2001 indicating that detailed reports concerning the Conventions and Recommendations adopted at the 83rd and 84th Sessions had been transmitted to the Ministry of Foreign Affairs for communication to the General Secretariat of the Government and submission to the officers of the National People's Assembly. The Committee hopes that the Government will soon be in a position to indicate that all instruments adopted at the 83rd, 84th (Conventions Nos. 178, 179 and 180, Recommendations Nos. 185, 186 and 187 and the Protocol of 1996 to the Merchant Shipping (Minimum Standards) Convention, 1976), 85th, 86th, 88th and 89th Sessions of the Conference have been submitted to the People's National Assembly.

Angola

The Committee notes the information provided by the Government in December 2002 indicating that the Conventions and Recommendations adopted by the Conference at its 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th and 89th Sessions were submitted to the Permanent Committee of the Council of Ministers. It further recalls the statement by a Government representative to the Conference Committee in June 2001 indicating that information on the submission to the National Assembly of the instruments adopted by the Conference for several years will be provided to the ILO when the submission procedure has been completed. It recalls its previous observations and once again

requests the Government to provide all the information required in the questionnaire at the end of the Memorandum of 1980 on the submission to the National Assembly of all the instruments (Conventions, Recommendations and Protocols) adopted by the Conference since 1991 (78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th and 89th 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 and 89th Sessions).

2. The Committee further notes that Armenia has been a Member of the Organization since 26 November 1992. It recalls that under article 19 of the Constitution of the International Labour Organization, every Member undertakes to bring the instruments adopted by the International Labour Conference before the authority or authorities within whose competence the matter lies, “for the enactment of legislation or other action”. The Governing Body of the International Labour Office has adopted a Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities, asking for particulars about this question. The Committee hopes that the Government will provide all the information required by the questionnaire at the end of the Memorandum about the competent authority, the date on which the instruments were submitted and the proposals made by the Government on the measures which might be taken with regard to the instruments that have been submitted.

3. The Committee urges the Government, in the same way as the Conference Committee, to make every effort to comply with the constitutional obligation of submission and recalls that the Office can provide assistance to overcome this serious delay.

Bangladesh

1. The Committee recalls that the ratification of Convention No. 182 was registered on 12 March 2001. Further to its previous comments, the Committee notes that the Tripartite Consultative Council has 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 (June 1998). It recalls that, in accordance with article 19, paragraph 6(b), of the Constitution of the Organization, each Member undertakes to bring the Recommendations adopted by the Conference before Parliament. Even in the case when it is decided not to apply the 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). It 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, 187) and the 85th Session (Recommendation No. 188) as well as all of the other instruments adopted at the 81st, 82nd, 83rd and 86th Sessions.

2. Please also provide the relevant information with regard to the submission of the instruments adopted by the Conference on maternity protection at the 88th Session (May-June 2000) and on safety and health in agriculture at the 89th Session (June 2001).

Belize

The Committee recalls the statement by a Government representative at the Conference Committee in June 2001 indicating that his country was committed to working on outstanding submissions. The Committee hopes that the Government will take measures in order to fulfil its constitutional obligation to submit and will supply information on the submission to the competent authorities of the instruments adopted by the Conference at 12 sessions held between 1990 and 2001 (77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th and 89th Sessions).

Bolivia

The Committee notes that Convention No. 182 is currently under examination by the Chamber of Senators. 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 and 89th Sessions of the Conference). The Committee, in the same way as the Conference Committee, urges the Government to spare no effort in complying 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 notes again, as stated by the Government representative at the Conference Committee (June 2001), 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 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 and 89th Sessions). In the light of these historical circumstances, the Committee again invites the Government, together with the Office, to study ways in which the submission of 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. 128-130, 149-151, 156 and 157, as well as the other instruments adopted at the 52nd, 78th, 79th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th and 89th Sessions of the Conference.

Burkina Faso

The Committee notes with interest that the instruments adopted by the Conference at its 82nd, 83rd, 84th, 85th, 86th and 87th Sessions were submitted to the National Assembly Foreign Affairs and Defence Committee on 24 October 2000. They were then submitted to the plenary of the National Assembly on 28 November 2000. The Committee recalls that the ratification of Conventions Nos. 144 and 182 was registered on 25 July 2001. The Committee welcomes this progress and asks the Government to send the information required by the Memorandum of 1980 concerning the submission to the National Assembly of the instruments adopted at the 88th and 89th Sessions of the Conference.

Burundi

The Committee notes that the ratification of Convention No. 182 was registered on 11 June 2002. In its observation of 2000, the Committee noted the reports on the submission to the President of the Republic on 20 September 2000 of the Conventions and Protocols adopted by the Conference at its 82nd, 83rd, 84th and 85th Sessions. The Recommendations adopted at the 82nd, 83rd and 84th Sessions of the Conference, and Recommendation No. 189 adopted at the 86th Session, were not mentioned in the submission reports. It requests 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 at its 82nd, 83rd, 84th, 85th, 86th, 88th and 89th Sessions.

Cambodia

1. The Committee notes the statement by the Government representative at the Conference Committee (June 2002) indicating that his Government would do its best to replace the administrative staff and meet its obligation to submit the instruments adopted by the Conference to the competent authorities. It refers to its previous comments and recalls that the instruments adopted by the Conference at its 55th (Maritime) Session (October 1970), and at the sessions held from June 1973 to June 1994 (58th (Convention No. 137 and Recommendation No. 145), 59th to 63rd, 64th (Convention No. 151 and Recommendation No. 159), 65th to 81st Sessions) have not been submitted to the competent authorities. In the light of the historical circumstances of the country, the Committee once again invites the Government, with assistance from the Office, to study ways in which the submission of the abovementioned instruments to Parliament could be carried out so as to ensure compliance with this essential constitutional obligation.

2. The Committee reiterates its hope that the Government will soon 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 89th Sessions of the Conference, held from 1995 to 2001.

Cameroon

The Committee notes that the ratification of Convention No. 182 was registered on 5 June 2002. It also notes the statement by the Government representative to the Conference Committee (June 2002) that Conventions Nos. 183 and 184 had been

submitted to the competent authorities. However, the Committee has not received the information required by the Memorandum of 1980 on the submission to the National Assembly of the above two Conventions. It notes that Cameroon continues to experience a delay of several sessions with regard to the submission to the competent authorities of the instruments adopted by the Conference. It refers to its previous observations and once again requests the Government to spare no effort in meeting 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 2001, that is at its 69th, 70th, 71st, 72nd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th and 89th 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, 87th, 88th and 89th Sessions). It reminds the Government that it may seek assistance from the Office in order to fulfil this essential constitutional obligation.

Central African Republic

The Committee notes that submission to the National Assembly of instruments adopted by the Conference at 14 sessions, particularly since 1988 (75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th and 89th Sessions) has not been made. It hopes that the Government will take appropriate steps to bring itself up to date with 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 2001 (80th, 81st, 82nd, 83rd, 88th and 89th 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 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*).

Colombia

The Committee notes 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 and 89th 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 previous observation, the Committee noted the steps taken by the Government, with the Office's technical and material 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 and 89th Sessions).

Congo

1. The Committee notes that the ratification of Convention No. 182 was registered on 29 April 2002. It notes that Congo has continued to experience delays for several sessions with regard to the submission to the competent authorities of the instruments adopted by the Conference. The Committee 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 2001 (77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th and 89th Sessions of the Conference).

2. In the same way as the Conference Committee, the Committee of Experts urges the Government to spare no effort in discharging 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.

Costa Rica

The Committee notes that in October 2001 the instruments on safety and health in agriculture, adopted by the Conference at its 89th Session, were submitted to the Higher Labour Council. The Government has also indicated that Conventions Nos. 177, 178, 179, 180, 181 and 184 have been submitted and are currently being examined by the Legislative Assembly. The Committee welcomes the progress achieved by the Government in complying with the constitutional obligation of submission.

Democratic Republic of the Congo

The Committee notes with interest 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. With reference to its previous comments, it 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 and 89th 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 instruments outstanding 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 and 89th 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 instruments referred to. The Committee reminds the Government, as did the Conference Committee, that it may seek technical assistance from the competent units of the Office.

Dominica

The Committee notes 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 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 and 89th Sessions) have been submitted to the House of Assembly.

El Salvador

The Committee notes that the instruments adopted by the Conference at its 89th Session have been forwarded to the organizations of employers and workers represented on the Higher Labour Council. In its previous observations, the Committee requested information on the submission to the Congress of the Republic of the instruments

adopted at the 62nd, 65th, 66th, 68th, 70th, 82nd, 83rd, 84th, 85th, 86th and 88th Sessions of the Conference, and the remaining instruments adopted at 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 provide information on the submission to the Congress of the Republic of all the instruments that are pending.

Equatorial Guinea

The Committee refers to its previous observation and 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 and 89th Sessions.

Eritrea

The Committee notes with interest that the Government has submitted to the National Assembly, on 10 November 2001, the Conventions and Recommendations adopted by the Conference from 1994 to 2001 (81st-89th Sessions). It asks the Government to provide information on the submission to the National Assembly of the Protocol to the Labour Inspection Convention, 1947, adopted by the Conference at its 82nd Session (June 1995) and of the Protocol to the Merchant Shipping (Minimum Standards) Convention, 1976, adopted at the 84th (Maritime) Session (October 1996).

Fiji

The Committee notes that the ratification of Conventions Nos. 87, 100, 111 and 182 was registered on 17 April 2002. It again asks the Government to communicate the information concerning the submission to the competent authorities of the instruments adopted by the Conference at its 83rd, 84th, 85th, 86th, 88th and 89th Sessions, as required by the questionnaire at the end of the Memorandum of 1980.

Gabon

The Committee notes the Government's reply to its previous comments 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 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 and 89th Sessions of the Conference.

Gambia

1. The Committee notes again that the ratification of Convention No. 182 was registered on 3 July 2001. It 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 about this question. The Committee hopes that the Government will provide soon 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 and 89th Sessions).

2. The Government may deem it useful to consider appropriate forms of ILO assistance in this area.

Georgia

1. The Committee notes that the ratification of Conventions Nos. 88, 181 and 182 was registered in 2002. It asks the Government to indicate whether the instruments adopted by the Conference at its 80th, 81st, 82nd, 83rd, 84th, 88th and 89th Sessions have been submitted to Parliament.

2. The Committee refers to its observation of 2001 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 regrets to note that the Government has not replied to its comments for many years. The Committee hopes that the Government will indicate in the near future that the instruments adopted by the Conference since 1994, at the 81st, 82nd, 83rd, 84th, 85th, 86th, 87th, 88th and 89th Sessions, have been submitted to the competent authorities. The Committee, in the same way as the Conference Committee, urges the Government to spare no 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.

Guatemala

1. The Committee notes that the instruments adopted by the Conference at its 88th and 89th Sessions were submitted to the Congress of the Republic in May 2002.

2. In a communication received in June 2002, the Government indicated that consultation procedures have been initiated to comply with the submission to the Congress of the Republic of certain instruments that are pending. The Government expressed the conviction that it would be provided with technical assistance by the standards specialist in the multidisciplinary advisory team in San José (Costa Rica). The Committee trusts that the Government will receive the required assistance so as to be in a position to provide 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 (June 1988) (Convention No. 168 and Recommendation No. 176), the 77th Session (June 1990) (Conventions Nos. 170 and 171, Recommendations Nos. 177 and 178, and the Protocol of 1990), the 78th Session

(June 1991) (Convention No. 172), the 80th Session (June 1993) (Convention No. 174), the 81st Session (June 1994) (Convention No. 175), the 84th (Maritime) Session (October 1996) (Conventions Nos. 178 and 180, Recommendations Nos. 185, 186 and 187, and the Protocol of 1996), the 85th Session (June 1997) (Recommendation No. 188) and the 86th Session (June 1998) (Recommendation No. 189).

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, 87th, 88th and 89th Sessions of the Conference.

Guinea-Bissau

1. The Committee notes that in May 2002 the Ministry of Public Administration and Labour submitted to the Council of Ministers for consideration a number of Conventions and Recommendations, including Conventions Nos. 177 and 183 (83rd and 88th Sessions, respectively). It hopes that the Government will shortly announce the date on which the abovementioned Conventions were submitted to the People's National Assembly.

2. In October 2002, in response to the previous observation, the Government pointed out that the Conventions adopted at the 79th, 80th, 81st and 85th Sessions of the Conference had already been submitted to the competent authorities, but noted that some instruments had not been submitted because they were not available in Portuguese. The Committee hopes that it will be possible to overcome this difficulty with technical assistance from the relevant unit of the Office. It trusts that the Government will be able to report soon that the instruments not yet submitted (79th-83rd, 85th, 86th and 88th Sessions: Recommendations Nos. 180-184, 189 and 191, Protocol of 1995; all the instruments adopted at the 84th (Maritime) Session (October 1996) have been submitted to the People's National Assembly.

3. The Committee also requests the Government to provide information on the submission to the People's National Assembly of the health and safety in agriculture instruments adopted at the 89th Session (June 2001).

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 2001 (76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 87th, 88th and 89th 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 could be fulfilled.

India

The Committee notes the information provided by the Government in September 2002 indicating that the formalities to place the ILO Conventions and Recommendations before the Upper and Lower Houses of Parliament have been completed, but due to certain procedural problems the papers could not be laid. The Committee recalls its previous comments and trusts that the Government will indicate soon that the instruments adopted at the 78th, 79th, 80th, 81st, 82nd, 87th, 88th and 89th Sessions of the Conference have been submitted to the Upper and Lower Houses of Parliament.

Kazakhstan

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 1993 (80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 87th, 88th and 89th Sessions).

2. The Committee further 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 about this question. The Committee hopes that the Government will provide all the information requested by the questionnaire at the end of the Memorandum about the competent authority, the date on which the instruments were submitted and the proposals made by the Government on the measures which might be taken with regard to the instruments that have been submitted.

3. The Committee urges the Government, in the same way as the Conference Committee, to make every effort to comply with the constitutional obligation of submission and recalls that the Office can provide technical assistance to overcome this serious delay.

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 and 89th Sessions).

2. The Committee further notes that Kyrgyzstan has been a Member of the Organization since 31 March 1992. It recalls that under article 19 of the Constitution of the International Labour Organization, every Member undertakes to bring the instruments adopted by the International Labour Conference before the authority or authorities within whose competence the matter lies, “for the enactment of legislation or other action”. The Governing Body of the International Labour Office has adopted a Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities, asking for particulars about this question. The Committee hopes that the Government will provide all the information requested by the questionnaire at the end of the Memorandum about the competent authority, the date on which the instruments were submitted and the proposals made by the Government on the measures which might be taken with regard to the instruments that have been submitted.

3. The Committee urges the Government, in the same way as the Conference Committee, to make every effort to comply with the constitutional obligation of submission and recalls that the Office can provide technical assistance to overcome this serious delay.

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 at the 82nd, 83rd, 84th, 85th, 86th, 87th, 88th and 89th Sessions of the Conference have been submitted to the competent authorities.

Latvia

In its 2001 observation, the Committee noted the steps taken by the Government in order to submit the instruments on maternity protection adopted by the Conference at its 88th Session. The Committee again asks the Government, as did the Conference Committee, to communicate the information required in the Memorandum of 1980 regarding the submission to Parliament (Seimas) of the instruments adopted by the Conference since 1992 (79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 87th, 88th and 89th Sessions).

Madagascar

The Committee notes a communication received from the Government in January 2002 stating that a submission document pertaining to the Conventions and Recommendations adopted by the Conference at its 71st, 75th, 77th, 78th and 88th Sessions has been prepared, and that the Government envisaged ratifying Convention No. 172. The Committee refers to its previous comments and reiterates the hope that the Government will be in a position to provide the required information on the submission to the National Assembly 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.

Malawi

In reply to the Committee's previous direct request, the Government has forwarded a copy of a memorandum to the President from the Ministry of Labour and Vocational Training of 5 August 2002 on the adoption by the International Labour Conference of certain instruments at its 82nd, 84th 85th, 86th, 88th and 89th Sessions. The Committee also notes that the Head of State has expressed the wish to incorporate the provisions of these instruments into national law and that the Government will await the guidance of the Tripartite Labour Advisory Council. The Committee notes that, in accordance with article 19, paragraphs 5 and 6, of the Constitution of the Organization, every Member undertakes to bring the instruments adopted by the Conference before Parliament. Even when it is decided not to ratify a Convention or a Protocol or to apply a Recommendation, governments have the obligation to submit the instruments to Parliament. A principal objective of the ILO Constitution in this regard is that the instruments adopted by the Conference are brought to the knowledge of the public through their submission to a parliamentary body. Discussion in a deliberative assembly (or at least the information of the National Assembly) can constitute an important factor in the complete examination of a question and the improvement of the measures taken at the national level with regard to the instruments adopted by the Conference, as explained in the Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities adopted by the ILO Governing Body in 1980. The Committee trusts that the Government will take the necessary measures to examine this matter in order to ensure full compliance with the obligation of submission established in article 19 of the ILO Constitution and that it will also report on the submission to the National Assembly of the instruments adopted by the Conference at its 82nd, 83rd, 84th, 85th, 86th, 88th and 89th Sessions.

Mali

In reply to its previous comments, the Government indicates that the pending instruments have all been analysed and that recommendations will be made to the future National Assembly at the time of their submission. The Committee 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, 88th and 89th Sessions of the Conference.

Mauritania

The Committee notes with interest that, on 15 September 2002, the Government submitted to the National Assembly the Conventions and Recommendations adopted by the Conference at its 83rd, 84th, 85th, 88th and 89th Sessions. The Committee welcomes this progress and hopes that the Government will also continue to take the necessary measures to provide information on the submission to the National Assembly of the instruments adopted at the 81st (Convention No. 175 and Recommendation No. 182), 82nd (Protocol of 1995), 83rd (Convention No. 177), 84th (Protocol of 1996) and 86th (Recommendation No. 189) Sessions.

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 2001 (82nd, 83rd, 84th, 85th, 86th, 88th and 89th Sessions).

Nigeria

The Committee notes that the ratification of Conventions Nos. 111, 138 and 182 was registered on 2 October 2002. It further notes the information provided by the Government in August 2002 indicating that the Federal Ministry of Labour has elaborated with the technical assistance of the ILO multidisciplinary team a global submission document to be discussed within the National Labour Advisory Council and the Federal Executive Council of Ministers. The document will then be tabled before the National Assembly for information and possible ratification. The Committee hopes that the Government will soon be in a position to provide the information requested by the questionnaire at the end of the 1980 Memorandum on the submission to the National Assembly of all the instruments adopted by the Conference since 1993 (80th, 83rd, 84th, 85th, 86th, 88th and 89th Sessions).

Pakistan

1. The Committee recalls the information provided by the Government in September 2001 according to which the instruments adopted by the Conference at its 88th Session have not been submitted to the competent authority, as the process of consultation has not yet been completed. In reply to previous observations, the Government indicated that the instruments adopted by the Conference have been submitted to the competent authority. As regards other instruments, the Government was consulting the workers' and employers' organizations, provincial governments, as well as concerned federal ministries, in order to incorporate their views in the summary to be submitted to the competent authority.

2. In its previous observations, the Committee noted that the Government had stated that the instruments adopted by the Conference at its 83rd Session had been submitted to the competent authority, i.e. the Cabinet. It recalls that the expression "competent authorities" used in article 19 of the Constitution of the Organization is intended to refer to a legislative and not to a ratifying authority. 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 national authority should normally be the legislature (see Part I of the 1980 Memorandum).

3. The Committee also recalls that the obligation of governments to submit the 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 and Recommendations to the competent authorities.

4. The Committee 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 at the 81st, 82nd, 83rd, 84th, 85th, 86th, 88th and 89th Sessions of the Conference have been submitted to the competent authority within the meaning of article 19 of the Constitution of the Organization.

Rwanda

1. In its previous observation, the Committee noted the information provided by the Government indicating that the procedure for the submission to the competent authority of the instruments on maternity protection adopted at the 88th Session of the Conference was under way since October 2000.

2. In reply to its previous comments, the Government indicated that, in accordance with the provisions of the 1991 Constitution and the Arusha Peace Agreement of 1993, the President of the Republic, following a decision by the Council of Ministers, ratifies international public or private law treaties, conventions and agreements and transmits them to the National Assembly as soon as the interests and security of the State so permit. The Government therefore specified that, in the case of international labour Conventions, the body for submission in Rwanda is the Council of Ministers, which is an executive body. The Committee recalls that the obligation of submission to the competent authorities concerns all the instruments adopted by the Conference without exception and without distinction between Conventions, Recommendations and Protocols (Part II, "Extent of the Obligation to Submit" of the Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities, adopted in 1980 by the Governing Body), although only Conventions and Protocols are open to ratification. Furthermore, the principal objective of the Constitution of the Organization was, and still is, that the instruments adopted by the Conference are brought to the knowledge of the public through their submission to a parliamentary body. Even where the power to ratify, as appears to be the case in Rwanda, is held by the executive, it is in conformity with the obligation of submission established by article 19, paragraphs 5 and 6, of the Constitution of the Organization to arrange for the examination of the instruments adopted by the Conference by a deliberative body. Submission, or at least formal transmission, to the National Assembly can constitute an important factor in the complete examination of the question and a possible improvement of the measures taken at the national level to give effect to the instruments adopted by the Conference.

3. In November 2002, the Government indicated that it had taken due note of the observations and that it would inform the Office of the measures taken to that end. The Committee reiterates its hope that the Government will take the necessary measures to ensure that this matter is re-examined, possibly in consultation with the competent services of the Office, with a view to achieving full compliance with the obligation of submission set out in article 19 of the Constitution of the Organization. The Committee requests the Government also to report on the submission to the National Assembly of the instruments (Conventions, Recommendations and Protocols) adopted at the 80th, 82nd, 83rd, 84th, 85th, 86th, 88th and 89th Sessions of the Conference.

Saint Lucia

The Committee refers to its previous observations and notes 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 2001 (i.e. 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 and 89th Sessions) and provide in this respect the indications requested by the questionnaire at the end of the Memorandum of 1980. The Committee also recalls that the Conference Committee has expressed again its hope that Saint Lucia would, in the near future, send reports containing information relating to the submission of the instruments adopted by the Conference to Parliament. Thus, the Committee again requests the Government to take the necessary measures to ensure full compliance with the constitutional obligation to submit.

Saint Vincent and the Grenadines

1. The Committee refers to its previous direct requests 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 and 89th 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 1980 Memorandum.

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 and 89th 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 recalls the information provided by the Government in December 2000 concerning the detailed reports prepared by the Ministry of Labour relating to the submission to Parliament of the instruments adopted by the Conference at its 79th, 80th, 81st, 82nd, 83rd, 84th, 85th and 86th Sessions. The reports were transmitted to the General Secretariat of the Government and, after their adoption by the Council of Ministers, it is for the President of the Republic to submit them to Parliament. The instruments on maternity protection adopted at the 88th Session of the Conference (May-June 2000) were transmitted for their opinion to other competent ministries and to the Social Security Fund. Furthermore, a Government representative informed the Conference Committee (June 2001) that it was only after the legislative elections in May 2001 that a new National Assembly had been elected and that all the submissions would be carried out in the near future in accordance with the commitments assumed. The Committee hopes that the Government will be in a position to indicate in the near future

the date on which the instruments adopted by the Conference at the nine sessions mentioned above (79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th and 88th Sessions) were actually submitted to Parliament. Please also indicate if the instruments on safety and health in agriculture adopted by the Conference at its 89th Session (June 2001) were submitted to Parliament.

Sierra Leone

The Committee trusts that, when the national circumstances permit, the Government will be in a position to fully report on the submission to Parliament of the instruments adopted by the Conference since October 1976 (Convention No. 146 and Recommendation No. 154 adopted at the 62nd Session and the 63rd, 64th, 65th, 66th, 67th, 68th, 69th, 70th, 71st, 72nd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 87th, 88th and 89th Sessions).

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 and 89th 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 could be fulfilled.

Somalia

The Committee trusts that, when the national circumstances permit, the Government will provide information on the submission to the competent authorities with regard to the instruments adopted by the Conference since October 1976 (63rd, 64th, 65th, 66th, 67th, 68th, 69th, 70th, 71st, 72nd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 87th, 88th and 89th Sessions).

South Africa

The Committee would be grateful if the Government would provide information concerning the submission to the competent authorities of the instruments adopted by the Conference at its 83rd, 84th, 85th, 86th, 88th and 89th Sessions.

Spain

The Committee recalls a communication from the Government in June 2001 in which it indicated that it has completed the internal processing of certain instruments adopted by the Conference at its 75th, 80th, 81st, 83rd, 84th and 86th Sessions. The competent authorities have endorsed the taking note of the instruments on nursing personnel, adopted at the 63rd Session (Convention No. 149 and Recommendation No. 157). The Committee refers to its previous observations and once again hopes that the Government will be in a position to indicate in the near future that certain instruments

adopted at the 63rd Session (Convention No. 149 and Recommendation No. 157) and the 75th Session (Convention No. 168 and Recommendation No. 176), and the instruments adopted at the 80th, 81st, 83rd, 84th, 86th, 88th and 89th Sessions of the Conference have indeed been submitted to the Cortes.

Sudan

The Committee recalls the communication received in October 2000 indicating that the instruments adopted by the Conference at its 87th Session were submitted to the competent authorities and that Conventions Nos. 138 and 182 were both in the process of ratification. It further notes the information provided by the Government in November 2001 and 2002 indicating that the instruments adopted by the 88th and 89th Sessions of the Conference have been submitted to the Council of Ministers. The Committee hopes that, when national circumstances so permit, the Government will indicate that the instruments adopted by the Conference between 1994 and 2001 (81st, 82nd, 83rd, 84th, 85th, 86th, 88th and 89th Sessions) were also submitted to the National Assembly (*Majlis Watani*).

Suriname

The Committee notes the information provided by the Government representative at the Conference Committee (June 2002) indicating that the Ministry of Labour would communicate with the Office of the President on this matter. After tripartite consultations at the Labour Advisory Board and their examination by the Council of Ministers, it is up to the President to submit the instruments adopted by the Conference to the National Assembly. In September 2002, the Government reported that the instruments adopted by the Conference at its 89th Session were approved by the Council of Ministers and will be forwarded to the State Council before their submission to the National Assembly. The Committee notes that the Government has not provided information on the submission to the National Assembly of all the instruments adopted by the Conference at its nine sessions held between 1994 and 2001. It refers to its previous observations and recalls, as did the Conference Committee, that the Office is in a position to provide the necessary technical assistance so that the essential obligation to submit the instruments adopted by the Conference to the National Assembly could be fulfilled.

Swaziland

The Committee refers to its previous observations 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, 88th and 89th Sessions of the Conference.

Syrian Arab Republic

The Committee notes the statement by the Government representative to the Conference Committee (June 2002). It refers once again to letter No. 618 of 2 June 2001, in which the President of the Council of Ministers authorized the Ministry of Social

Affairs and Labour to submit the pending matters to the competent authorities. It also refers to the comments that it has been making for several years, including its observation of 1999, 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 from 1984 to 2001 (70th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 87th, 88th and 89th Sessions), have actually been submitted to the People's Assembly (*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.

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 2001 (66th, 67th, 68th, 72nd, 74th, 75th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th and 89th Sessions).

2. The Committee also recalls that in previous observations it had 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 delay.

Thailand

The Committee asks the Government to provide information in relation to the submission to the competent authorities of the instruments adopted by the Conference since 1996 (83rd, 84th, 85th, 86th, 88th and 89th Sessions).

The former Yugoslav Republic of Macedonia

The Committee notes with regret that the Government has not sent the information concerning the submission to the competent authorities of the instruments adopted at the 83rd, 84th, 85th, 86th, 87th, 88th and 89th Sessions of the Conference.

Turkmenistan

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 1994 (81st, 82nd, 83rd, 84th, 85th, 86th, 87th, 88th and 89th 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 about this question. The Committee hopes that the Government will provide all the information requested by the questionnaire at the end of the Memorandum about the competent authority, the date on which the instruments were submitted and the proposals made by the Government on the measures which might be taken with regard to the instruments that have been submitted.

3. The Committee urges the Government, in the same way as the Conference Committee, to make every effort to comply with the constitutional obligation of submission and recalls that the Office can provide technical assistance to overcome this serious delay.

Uganda

In its 2001 observation, the Committee noted that a Cabinet memorandum was being prepared in order to submit the instruments on maternity protection adopted by the Conference at its 88th Session. It 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 and 89th Sessions.

Uruguay

The Committee refers to its previous comments and would be grateful if the Government would provide additional information on the submission of Convention No. 176 and Recommendation No. 183, adopted at the 82nd Session of the Conference (June 1995), and the submission to the General Assembly of the instruments adopted at the 80th, 83rd, 85th, 86th, 88th and 89th Sessions of the Conference.

Uzbekistan

1. The Committee notes with regret that the Government has not communicated information on the submission to the competent authorities of the instruments adopted by the Conference since 1993 (80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 87th, 88th and 89th Sessions).

2. The Committee further notes that Uzbekistan has been a Member of the Organization since 31 July 1992. It recalls that under article 19 of the Constitution of the International Labour Organization, every Member undertakes to bring the instruments adopted by the International Labour Conference before the authority or authorities within whose competence the matter lies, “for the enactment of legislation or other action”. The Governing Body of the International Labour Office has adopted a Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities, asking for particulars about this question. The Committee hopes that the Government will provide all the information requested by the questionnaire at the end of the Memorandum about the competent authority, the date on which the instruments were submitted and the proposals made by the Government on the measures which might be taken with regard to the instruments that have been submitted.

3. The Committee urges the Government, in the same way as the Conference Committee, to make every effort to comply with the constitutional obligation of

submission and recalls that the Office can provide technical assistance to overcome this serious delay.

Venezuela

1. The Committee notes the information provided by the Government in October 2002 indicating that it proposes to bring itself up to date with the delayed draft texts for submission, which will have to be submitted as a block to the National Assembly. The draft text for the submission of the instruments on safety and health in agriculture, adopted by the Conference at its 89th Session, is also being prepared.

2. The Committee recalls that it requested information on the submission to the Congress of the Republic of the remaining instruments adopted at the 75th Session (Convention No. 168 and Recommendation No. 176), the 77th Session (Convention No. 171 and Recommendation No. 178, and the Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948), and the 82nd Session (the Protocol of 1995 to the Labour Inspection Convention, 1947) of the Conference.

3. The Committee notes once again that information is also missing on the submission to the Congress of the Republic of the instruments adopted at the 71st (Convention No. 161), 74th (Conventions Nos. 163, 164, 165 and 166, and Recommendation No. 174), 78th (Convention No. 172), 79th, 80th, 81st, 83rd, 84th, 85th, 86th, 87th and 88th Sessions of the Conference. The Committee once again hopes that the substantial delay in complying with the obligation of submission will be resolved in the near future.

Zambia

1. The Committee recalls that the instruments adopted by the Conference since 1996 were submitted to Cabinet. It notes that the expression “competent authorities” used in article 19 of the Constitution of the Organization is intended to refer to a legislative and not to a ratifying authority. In the Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities, adopted in 1980, the ILO Governing Body has indicated that the competent national authority should normally be the legislature (see Part I of the 1980 Memorandum).

2. The Committee also recalls that the obligation of governments to submit the 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 the instruments adopted by the Conference to the competent authorities.

3. The Committee notes that the Government has not communicated any new information regarding the steps taken to submit to the legislature the instruments adopted by the Conference and trusts that the Government will report soon on the measures taken to ensure full compliance with the obligation to submit established in article 19 of the Constitution of the Organization. It asks the Government to indicate that the instruments adopted at the 83rd, 84th, 85th, 86th, 88th and 89th Sessions of the Conference have been submitted to the National Assembly.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Antigua and Barbuda, Argentina, Austria, Azerbaijan, Bahamas, Bahrain, Barbados, Belgium, Benin, Botswana, Canada, Chile, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Cyprus, Denmark, Dominican Republic, Ecuador, Estonia, Ethiopia, France, Germany, Ghana, Guyana, Honduras, Hungary, Iceland, Islamic Republic of Iran, Iraq, Ireland, Jamaica, Jordan, Kenya, Kiribati, Republic of Korea, Kuwait, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya, Luxembourg, Malaysia, Malta, Mexico, Morocco, Mozambique, Myanmar, Namibia, Nepal, New Zealand, Niger, Oman, Panama, Papua New Guinea, Paraguay, Peru, Poland, Portugal, Qatar, Russian Federation, Saint Kitts and Nevis, Saudi Arabia, Seychelles, Slovenia, Sri Lanka, Sweden, Switzerland, Tajikistan, Togo, Trinidad and Tobago, Tunisia, United Kingdom, Yemen.*

APPENDICES

**Appendix I. Table of reports received on ratified
Conventions as of 13 December 2002**
(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.

**Appendix II. Statistical table of reports received on ratified
Conventions as of 13 December 2002**
(article 22 of the Constitution)

| Conference year | Reports requested | Reports received at the date requested | | Reports received in time for the session of the Committee of Experts | | Reports received in time for the session of the Conference | |
|--|-------------------|--|-------|--|-------|--|-------|
| 1932 | 447 | – | | 406 | 90.8% | 423 | 94.6% |
| 1933 | 522 | – | | 435 | 83.3% | 453 | 86.7% |
| 1934 | 601 | – | | 508 | 84.5% | 544 | 90.5% |
| 1935 | 630 | – | | 584 | 92.7% | 620 | 98.4% |
| 1936 | 662 | – | | 577 | 87.2% | 604 | 91.2% |
| 1937 | 702 | – | | 580 | 82.6% | 634 | 90.3% |
| 1938 | 748 | – | | 616 | 82.4% | 635 | 84.9% |
| 1939 | 766 | – | | 588 | 76.8% | – | |
| 1944 | 583 | – | | 251 | 43.1% | 314 | 53.9% |
| 1945 | 725 | – | | 351 | 48.4% | 523 | 72.2% |
| 1946 | 731 | – | | 370 | 50.6% | 578 | 79.1% |
| 1947 | 763 | – | | 581 | 76.1% | 666 | 87.3% |
| 1948 | 799 | – | | 521 | 65.2% | 648 | 81.1% |
| 1949 | 806 | 134 | 16.6% | 666 | 82.6% | 695 | 86.2% |
| 1950 | 831 | 253 | 30.4% | 597 | 71.8% | 666 | 80.1% |
| 1951 | 907 | 288 | 31.7% | 507 | 77.7% | 761 | 83.9% |
| 1952 | 981 | 268 | 27.3% | 743 | 75.7% | 826 | 84.2% |
| 1953 | 1 026 | 212 | 20.6% | 840 | 75.7% | 917 | 89.3% |
| 1954 | 1 175 | 268 | 22.8% | 1 077 | 91.7% | 1 119 | 95.2% |
| 1955 | 1 234 | 283 | 22.9% | 1 063 | 86.1% | 1 170 | 94.8% |
| 1956 | 1 333 | 332 | 24.9% | 1 234 | 92.5% | 1 283 | 96.2% |
| 1957 | 1 418 | 210 | 14.7% | 1 295 | 91.3% | 1 349 | 95.1% |
| 1958 | 1 558 | 340 | 21.8% | 1 484 | 95.2% | 1 509 | 96.8% |
| As a result of a decision by the Governing Body, detailed reports were requested as from 1959 until 1976 only on certain Conventions. | | | | | | | |
| 1959 | 995 | 200 | 20.4% | 864 | 86.8% | 902 | 90.6% |
| 1960 | 1 100 | 256 | 23.2% | 838 | 76.1% | 963 | 87.4% |
| 1961 | 1 362 | 243 | 18.1% | 1 090 | 80.0% | 1 142 | 83.8% |
| 1962 | 1 309 | 200 | 15.5% | 1 059 | 80.9% | 1 121 | 85.6% |
| 1963 | 1 624 | 280 | 17.2% | 1 314 | 80.9% | 1 430 | 88.0% |
| 1964 | 1 495 | 213 | 14.2% | 1 268 | 84.8% | 1 356 | 90.7% |
| 1965 | 1 700 | 282 | 16.6% | 1 444 | 84.9% | 1 527 | 89.8% |
| 1966 | 1 562 | 245 | 16.3% | 1 330 | 85.1% | 1 395 | 89.3% |
| 1967 | 1 883 | 323 | 17.4% | 1 551 | 84.5% | 1 643 | 89.6% |
| 1968 | 1 647 | 281 | 17.1% | 1 409 | 85.5% | 1 470 | 89.1% |
| 1969 | 1 821 | 249 | 13.4% | 1 501 | 82.4% | 1 601 | 87.9% |
| 1970 | 1 894 | 360 | 18.9% | 1 463 | 77.0% | 1 549 | 81.6% |
| 1971 | 1 992 | 237 | 11.8% | 1 504 | 75.5% | 1 707 | 85.6% |
| 1972 | 2 025 | 297 | 14.6% | 1 572 | 77.6% | 1 753 | 86.5% |
| 1973 | 2 048 | 300 | 14.6% | 1 521 | 74.3% | 1 691 | 82.5% |
| 1974 | 2 189 | 370 | 16.5% | 1 854 | 84.6% | 1 958 | 89.4% |
| 1975 | 2 034 | 301 | 14.8% | 1 663 | 81.7% | 1 764 | 86.7% |
| 1976 | 2 200 | 292 | 13.2% | 1 831 | 83.0% | 1 914 | 87.0% |

Appendices

| 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 | |
|--|-------------------|--|-------|--|-------|--|-------|
| As a result of a decision by the Governing Body (November 1976), detailed reports were requested as from 1977 until 1994, according to certain criteria, at yearly, two-yearly or four-yearly intervals. | | | | | | | |
| 1977 | 1 529 | 215 | 14.0% | 1 120 | 73.2% | 1 328 | 87.0% |
| 1978 | 1 701 | 251 | 14.7% | 1 289 | 75.7% | 1 391 | 81.7% |
| 1979 | 1 593 | 234 | 14.7% | 1 270 | 79.8% | 1 376 | 86.4% |
| 1980 | 1 581 | 168 | 10.6% | 1 302 | 82.2% | 1 437 | 90.8% |
| 1981 | 1 543 | 127 | 8.1% | 1 210 | 78.4% | 1 340 | 86.7% |
| 1982 | 1 695 | 332 | 19.4% | 1 382 | 81.4% | 1 493 | 88.0% |
| 1983 | 1 737 | 236 | 13.5% | 1 388 | 79.9% | 1 558 | 89.6% |
| 1984 | 1 669 | 189 | 11.3% | 1 286 | 77.0% | 1 412 | 84.6% |
| 1985 | 1 666 | 189 | 11.3% | 1 312 | 78.7% | 1 471 | 88.2% |
| 1986 | 1 752 | 207 | 11.8% | 1 388 | 79.2% | 1 529 | 87.3% |
| 1987 | 1 793 | 171 | 9.5% | 1 408 | 78.4% | 1 542 | 86.0% |
| 1988 | 1 636 | 149 | 9.0% | 1 230 | 75.9% | 1 384 | 84.4% |
| 1989 | 1 719 | 196 | 11.4% | 1 256 | 73.0% | 1 409 | 81.9% |
| 1990 | 1 958 | 192 | 9.8% | 1 409 | 71.9% | 1 639 | 83.7% |
| 1991 | 2 010 | 271 | 13.4% | 1 411 | 69.9% | 1 544 | 76.8% |
| 1992 | 1 824 | 313 | 17.1% | 1 194 | 65.4% | 1 384 | 75.8% |
| 1993 | 1 906 | 471 | 24.7% | 1 233 | 64.6% | 1 473 | 77.2% |
| 1994 | 2 290 | 370 | 16.1% | 1 573 | 68.7% | 1 879 | 82.0% |
| As a result of a decision by the Governing Body (November 1993), detailed reports on only five Conventions were exceptionally requested in 1995. | | | | | | | |
| 1995 | 1 252 | 479 | 38.2% | 824 | 65.8% | 988 | 78.9% |
| As a result of a decision by the Governing Body (November 1993), reports are henceforth requested, according to certain criteria, at yearly, two-yearly or five-yearly intervals. | | | | | | | |
| 1996 | 1 806 | 362 | 20.5% | 1 145 | 63.3% | 1 413 | 78.2% |
| 1997 | 1 927 | 553 | 28.7% | 1 211 | 62.8% | 1 438 | 74.6% |
| 1998 | 2 036 | 463 | 22.7% | 1 264 | 62.1% | 1 455 | 71.4% |
| 1999 | 2 288 | 520 | 22.7% | 1 406 | 61.4% | 1 641 | 71.7% |
| 2000 | 2 550 | 740 | 29.0% | 1 798 | 70.5% | 1 952 | 76.6% |
| 2001 | 2 313 | 598 | 25.9% | 1 513 | 65.4% | 1 672 | 72.2% |
| 2002 | 2 368 | 600 | 25.3% | 1 529 | 64.5% | | |

**Appendix III. List of observations made by
employers' and workers' organizations**

**Appendix IV. Information supplied by governments
with regard to the obligation to submit the instruments
adopted by the International Labour Conference
to the competent authorities
(31st to 89th Sessions of the Conference, 1948-2001)**

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 |
| Albania | 31-49, 83, 84 (C178; R186), 85, 87 | 78, 79, 80, 81, 82, 84 (C179; C180; P147; R185; R187), 86, 88, 89 |
| Algeria | 47-56, 58-72, 74-82, 87 | 83, 84, 85, 86, 88, 89 |
| Angola | 61-72, 74-77, 87 | 78, 79, 80, 81, 82, 83, 84, 85, 86, 88, 89 |
| Antigua and Barbuda | 68-72, 74-82, 87 | 83, 84, 85, 86, 88, 89 |
| Argentina | 31-56, 58-72, 74-83, 87, 89 | 84, 85, 86, 88 |
| Armenia | – | 80, 81, 82, 83, 84, 85, 86, 87, 88, 89 |
| Australia | 31-56, 58-72, 74-89 | – |
| Austria | 31-56, 58-72, 74-88 | 89 |
| Azerbaijan | 79 (C173), 80-82, 85-87 | 79 (R180), 83, 84, 88, 89 |
| Bahamas | 61-72, 74-84, 86-87 | 85, 88, 89 |
| Bahrain | 63-72, 74-87 | 88, 89 |
| 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 |

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| 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) |
|--------------------------|--|--|
| Barbados | 51-56, 58-72, 74-88 | 89 |
| Belarus | 37-56, 58-72, 74-89 | – |
| Belgium | 31-56, 58-72, 74-75, 77-87 | 76, 88, 89 |
| Belize | 68-72, 74-76, 87 | 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 88, 89 |
| Benin | 45-56, 58-72, 74-85, 87 | 86, 88, 89 |
| Bolivia | 31-56, 58-72, 74-79, 87 | 80, 81, 82, 83, 84, 85, 86, 88, 89 |
| Bosnia and Herzegovina | 87 | 80, 81, 82, 83, 84, 85, 86, 88, 89 |
| Botswana | 64-72, 74-87 | 88, 89 |
| 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 |
| Bulgaria | 31-56, 58-72, 74-89 | – |
| Burkina Faso | 45-56, 58-72, 74-87 | 88, 89 |
| 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 |
| 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 |
| 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 |
| Canada | 31-56, 58-72, 74-88 | 89 |
| Cape Verde | 65-72, 74-81, 87 | 82, 83, 84, 85, 86, 88, 89 |
| Central African Republic | 45-56, 58-72, 74, 87 | 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 88, 89 |
| 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 |

Appendices

| 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) |
|----------------------------------|---|---|
| China | 31-56, 58-72, 74-89 | – |
| Colombia | 31-56, 58-72, 74, 75 (C167; R175; R176), 76-78, 79 (R180), 80, 81 (C175), 87 (C182) | 75 (C168), 79 (C173), 81 (R182), 82, 83, 84, 85, 86, 87 (R190), 88, 89 |
| Comoros | 65-72, 74-78 | 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89 |
| 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 |
| Costa Rica | 31-56, 58-72, 74-88, 89 (C184) | 89 (R192) |
| Côte d'Ivoire | 45-56, 58-72, 74-82 | 83, 84, 85, 86, 87, 88, 89 |
| Croatia | 80-85, 87 | 86, 88, 89 |
| Cuba | 31-56, 58-72, 74-88 | 89 |
| Cyprus | 45-56, 58-72, 74-87 | 88, 89 |
| 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, 74-87 | 88, 89 |
| 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 |
| Dominica | 68-72, 74-79, 87 | 80, 81, 82, 83, 84, 85, 86, 88, 89 |
| Dominican Republic | 31-56, 58-72, 74-88 | 89 |
| Ecuador | 31-56, 58-72, 74-88 | 89 |
| Egypt | 31-56, 58-72, 74-89 | – |
| 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 |
| Equatorial Guinea | 67-72, 74-79, 84, 87 | 80, 81, 82, 83, 85, 86, 88, 89 |

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| 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) |
|---------------|---|---|
| Eritrea | 80-81, 82 (C176; R183), 83, 84 (C178; C179; C180; R185; R186; R187), 85-89 | 82 (P081), 84 (P147) |
| Estonia | 79-88 | 89 |
| Ethiopia | 31-56, 58-72, 74-87 | 88, 89 |
| Fiji | 59-72, 74-82, 87 | 83, 84, 85, 86, 88, 89 |
| Finland | 31-56, 58-72, 74-89 | – |
| France | 31-56, 58-72, 74-83, 87 | 84, 85, 86, 88, 89 |
| 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 |
| Germany | 34-56, 58-72, 74, 75 (C167; R175), 76, 80-89 | 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 |
| Greece | 31-56, 58-72, 74-89 | – |
| Grenada | 66-72, 74-80 | 81, 82, 83, 84, 85, 86, 87, 88, 89 |
| 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 |
| Guinea | 43-56, 58-72, 74-83 | 84, 85, 86, 87, 88, 89 |
| 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 |
| Guyana | 50-56, 58-72, 74-85, 87-88 | 86, 89 |
| 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 |
| Honduras | 39-56, 58-72, 74-85, 87-88 | 86, 89 |
| Hungary | 31-56, 58-72, 74-87 | 88, 89 |
| Iceland | 31-56, 58-72, 74-87 | 88, 89 |

Appendices

| 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) |
|----------------------------------|--|---|
| India | 31-56, 58-72, 74-77, 83-86 | 78, 79, 80, 81, 82, 87, 88, 89 |
| Indonesia | 33-56, 58-72, 74-89 | – |
| Islamic Republic of Iran | 31-56, 58-72, 74-83, 85, 87-89 | 84, 86 |
| Iraq | 31-56, 58-72, 74-84, 85 (C181), 86-87 | 85 (R188), 88, 89 |
| Ireland | 31-56, 58-72, 74-87 | 88, 89 |
| Israel | 32-56, 58-72, 74-89 | – |
| Italy | 31-56, 58-72, 74-89 | – |
| Jamaica | 47-56, 58-72, 74-87 | 88-89 |
| Japan | 35-56, 58-72, 74-89 | – |
| Jordan | 39-56, 58-72, 74-88 | 89 |
| Kazakhstan | – | 80, 81, 82, 83, 84, 85, 86, 87, 88, 89 |
| 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 |
| Kiribati | – | 88, 89 |
| Republic of Korea | 79-89 | – |
| Kuwait | 45-56, 58-72, 74-76, 78-79, 80 (C174), 81-85, 87-88 | 77, 80 (R181), 86, 89 |
| Kyrgyzstan | – | 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89 |
| Lao People's Democratic Republic | 48-56, 58-72, 74-81 | 82, 83, 84, 85, 86, 87, 88, 89 |
| Latvia | 79 (C173), 80 | 79 (R180), 81, 82, 83, 84, 85, 86, 87, 88, 89 |
| Lebanon | 31-56, 58-72, 74-89 | – |
| Lesotho | 51-53, 66-72, 74-81, 82 (C176, R183), 83-87 | 82 (P081), 88, 89 |
| 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 |

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| 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) |
|------------------------|---|---|
| Libyan Arab Jamahiriya | 35-56, 58-72, 74-82, 87 | 83, 84, 85, 86, 88, 89 |
| Lithuania | 79-89 | – |
| Luxembourg | 31-56, 58-72, 74-88 | 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 |
| Malawi | 49-56, 58-72, 74-81, 87 | 82, 83, 84, 85, 86, 88, 89 |
| Malaysia | 41-56, 58-72, 74-88 | 89 |
| Mali | 44-56, 58-72, 74-78, 82-83, 84 (C178; C179; C180; R185; R186; R187), 87 | 79, 80, 81, 84 (P147), 85, 86, 88, 89 |
| Malta | 49-56, 58-72, 74-89 | – |
| 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 |
| Mauritius | 53-56, 58-72, 74-89 | – |
| Mexico | 31-56, 58-72, 74-88 | 89 |
| Republic of Moldova | 79-89 | – |
| Mongolia | 52-56, 58-72, 74-81, 87 | 82, 83, 84, 85, 86, 88, 89 |
| Morocco | 39-56, 58-72, 74-81, 82 (C176; R183), 83-87 | 82 (P081), 88, 89 |
| Mozambique | 61-72, 74-82, 87 (C182) | 83, 84, 85, 86, 87 (R190), 88, 89 |
| Myanmar | 31-56, 58-72, 74-88 | 89 |
| Namibia | 78-87 | 88, 89 |
| Nepal | 51-56, 58-72, 74-81, 83, 85, 87 | 82, 84, 86, 88, 89 |
| Netherlands | 31-56, 58-72, 74-89 | – |
| New Zealand | 31-56, 58-72, 74-88 | 89 |
| Nicaragua | 40-56, 58-72, 74-89 | – |
| Niger | 45-56, 58-72, 74-82, 87 | 83, 84, 85, 86, 88, 89 |
| Nigeria | 45-56, 58-72, 74-79, 81-82, 87 | 80, 83, 84, 85, 86, 88, 89 |
| Norway | 31-56, 58-72, 74-89 | – |

Appendices

| 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) |
|----------------------------------|---|--|
| Oman | 81-89 | – |
| Pakistan | 31-56, 58-72, 74-80, 87 | 81, 82, 83, 84, 85, 86, 88, 89 |
| Panama | 31-56, 58-72, 74-87 | 88, 89 |
| Papua New Guinea | 61-72, 74-87 | 88, 89 |
| Paraguay | 40-56, 58-72, 74-84, 87 | 85, 86, 88, 89 |
| Peru | 31-56, 58-72, 74-83, 85-87 | 84, 88, 89 |
| Philippines | 31-56, 58-72, 74-89 | – |
| Poland | 31-56, 58-72, 74-89 | – |
| Portugal | 31-56, 58-72, 74-87 | 88, 89 |
| Qatar | 58-72, 74-89 | – |
| Romania | 39-56, 58-72, 74-89 | – |
| Russian Federation | 37-56, 58-72, 74-88 | 89 |
| Rwanda | 47-56, 58-72, 74-79, 81, 87 | 80, 82, 83, 84, 85, 86, 88, 89 |
| Saint Kitts and Nevis | 87 | 83, 84, 85, 86, 88, 89 |
| Saint Lucia | 67 (C154; R163), 68 (C158; R166), 87 | 66, 67 (C155; C156; R164; R165), 68 (C157; P110), 69, 70, 71, 72, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 88, 89 |
| Saint Vincent and the Grenadines | 86, 87 | 82, 83, 84, 85, 88, 89 |
| San Marino | 69-72, 74-89 | – |
| Sao Tome and Principe | 68-72, 74-76 | 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89 |
| Saudi Arabia | 61-72, 74-88 | 89 |
| Senegal | 44-56, 58-72, 74-78, 87 | 79, 80, 81, 82, 83, 84, 85, 86, 88, 89 |
| Seychelles | 63-72, 74-88 | 89 |
| 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 |
| Singapore | 50-56, 58-72, 74-89 | – |
| Slovakia | 80-83, 86-89 | 84, 85 |

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| 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), 87-88 | 84 (C178; C180; P147; R185; R186; R187), 85, 86, 89 |
| Solomon Islands | 74 | 70, 71, 72, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89 |
| Somalia | 45-56, 58-72, 74-75 | 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89 |
| South Africa | 31-50, 81-82, 87 | 83, 84, 85, 86, 88, 89 |
| 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 |
| Sri Lanka | 31-56, 58-72, 74-87 | 88, 89 |
| Sudan | 39-56, 58-72, 74-80, 87 | 81, 82, 83, 84, 85, 86, 88, 89 |
| Suriname | 61-72, 74-80 | 81, 82, 83, 84, 85, 86, 87, 88, 89 |
| Swaziland | 60-72, 74-81, 82 (C176; R183), 83, 87 | 82 (P081), 84, 85, 86, 88, 89 |
| Sweden | 31-56, 58-72, 74-87 | 88, 89 |
| Switzerland | 31-56, 58-72, 74-88 | 89 |
| Syrian Arab Republic | 31-56, 58-65, 67-69, 71-72, 74-76 | 66, 70, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89 |
| Tajikistan | 81-83, 86 | 84, 85, 87, 88, 89 |
| 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 |
| Thailand | 31-56, 58-72, 74-82, 87 | 83, 84, 85, 86, 88, 89 |
| The former Yugoslav Republic of Macedonia | 80-82, 87 | 83, 84, 85, 86, 88 |
| Togo | 44-56, 58-72, 74-87 | 88, 89 |
| Trinidad and Tobago | 47-56, 58-72, 74-88 | 89 |
| Tunisia | 39-56, 58-72, 74-89 | – |
| Turkey | 31-56, 58-72, 74-89 | – |
| Turkmenistan | – | 81, 82, 83, 84, 85, 86, 87, 88, 89 |

Appendices

| 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) |
|----------------------|--|--|
| Uganda | 47-56, 58-72, 74-80, 87 | 81, 82, 83, 84, 85, 86, 88, 89 |
| Ukraine | 37-56, 58-72, 74-89 | – |
| United Arab Emirates | 58-72, 74-89 | – |
| United Kingdom | 31-56, 58-72, 74-88 | 89 |
| United States | 31-56, 58-60, 66-72, 74-89 | – |
| Uruguay | 31-56, 58-72, 74-79, 81, 82 (P081), 84, 87 | 80, 82 (C176; R183), 83, 85, 86, 88, 89 |
| Uzbekistan | – | 80, 81, 82, 83, 84, 85, 86, 87, 88, 89 |
| Venezuela | 31-56, 58-70, 71 (C160; R170; R171), 72, 74 (R173), 75 (C167; R175), 76, 77 (C170; R177), 78 (R179), 80, 82 (C176; R183) | 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 |
| Viet Nam | 33-56, 58-63, 80-89 | – |
| Yemen | 49-56, 58-72, 74-87, 88 (C183), 89 (C184) | 88 (R191), 89 (R192) |
| Yugoslavia | 89 | – |
| Zambia | 49-56, 58-72, 74-82, 87 | 83, 84, 85, 86, 88, 89 |
| Zimbabwe | 66-72, 74-89 | – |

**Appendix V. Overall position of member States
as of 13 December 2002**

| Sessions of the ILC | Number of States in which, according to information supplied by the government: | | | ILO member States at the time of the session |
|---|--|--|---|---|
| | all the instruments have been submitted | some of the instruments have been submitted | none of the instruments have been submitted | |
| <i>All the instruments adopted between the 31st and the 50th Sessions have been submitted to the competent authorities by member States</i> | | | | |
| 51st (June 1967) | 116 | 1 | | 117 |
| 52nd (June 1968) | 117 | | 1 | 118 |
| 53rd (June 1969) | 120 | 1 | | 121 |
| 54th (June 1970) | 119 | 1 | | 120 |
| 55th (October 1970) | 117 | 1 | 2 | 120 |
| 56th (June 1971) | 120 | | | 120 |
| 58th (June 1973) | 121 | 2 | | 123 |
| 59th (June 1974) | 124 | | 1 | 125 |
| 60th (June 1975) | 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) | 139 | 2 | 8 | 149 |
| 72nd (June 1986) | 140 | | 9 | 149 |
| 74th (September 1987) | 137 | 1 | 11 | 149 |

Appendices

| Sessions of the ILC | Number of States in which, according to 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 | |
| 75th (June 1988) | 131 | 7 | 11 | 149 |
| 76th (June 1989) | 134 | | 13 | 147 |
| 77th (June 1990) | 125 | 4 | 18 | 147 |
| 78th (June 1991) | 124 | 3 | 22 | 149 |
| 79th (June 1992) | 126 | 4 | 26 | 156 |
| 80th (June 1993) | 127 | 3 | 37 | 167 |
| 81st (June 1994) | 123 | 3 | 45 | 171 |
| 82nd (June 1995) | 110 | 12 | 51 | 173 |
| 83rd (June 1996) | 105 | 1 | 68 | 174 |
| 84th (October 1996) | 90 | 11 | 73 | 174 |
| 85th (June 1997) | 97 | 4 | 73 | 174 |
| 86th (June 1998) | 92 | | 82 | 174 |
| 87th (June 1999) | 148 | 2 | 24 | 174 |
| 88th (May-June 2000) | 66 | 1 | 108 | 175 |
| 89th (June 2001) | 43 | 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 88th (May-June 2000) and 89th (June 2001) Sessions. The period of 12 months provided for the submission to the competent authorities of the instruments on maternity protection adopted at the 88th Session expired on 15 June 2001, and the period of 18 months on 15 December 2001.

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 will expire on 21 December 2002.

This summarized information consists of communications which were forwarded to the Director-General of the International Labour Office after the closure of the 90th Session of the Conference (Geneva, June 2002) and which could not therefore be laid before the Conference at that session.

¹ This summary relates to the instruments adopted at the following sessions of the Conference:

88th Session (2000)

Maternity Protection Convention (No. 183);

Maternity Protection Recommendation (No. 191).

89th Session (2001)

Safety and Health in Agriculture Convention (No. 184);

Safety and Health in Agriculture Recommendation (No. 192).

Albania. The Government has forwarded the instrument of ratification of Convention No. 183 to the Office.

Argentina. The Parliament is examining the ratification of Convention No. 184.

Australia. The instruments adopted at the 88th and 89th Sessions of the Conference were submitted to the House of Representatives and the Senate of the Parliament of the Commonwealth of Australia on 14 May and 11 December 2002, respectively.

Bahrain. The instruments adopted at the 88th Session of the Conference have been submitted to a competent authority.

Barbados. The instruments adopted at the 88th Session of the Conference were submitted to the Parliament on 28 November 2000.

Belarus. The instruments adopted at the 88th and 89th Sessions of the Conference were submitted to the House of Representatives of the National Assembly on 29 August 2001 and 10 October 2002, respectively.

Bulgaria. The ratification of Convention No. 183 was registered on 6 December 2001. The Council of Ministers decided on 28 June 2002 to propose that the National Assembly should note the instruments adopted at the 89th Session of the Conference.

Canada. The instruments adopted at the 88th Session of the Conference were submitted to the House of Commons and the Senate on 29 November and 4 December 2001, respectively.

China. The instruments adopted at the 88th and 89th Sessions of the Conference were submitted to the State Council and to the Permanent Commission of the National People's Congress on 11 April 2001 and 1 March 2002, respectively.

Costa Rica. The instruments adopted at the 88th and 89th Sessions of the Conference have been submitted to the Legislative Assembly.

Cuba. The competent authorities have noted and approved the ratification of Convention No. 183.

Czech Republic. The instruments adopted at the 88th and 89th Sessions of the Conference were submitted to Parliament on 26 June 2001 and 2 July 2002, respectively.

Dominican Republic. The instruments adopted at the 88th Session of the Conference were submitted to the National Congress on 20 September 2000.

Ecuador. The instruments adopted at the 88th Session of the Conference were submitted to the National Congress on 2 October 2001.

Egypt. The instruments adopted at the 88th and 89th Sessions of the Conference were submitted to the People's Assembly on 24 September 2000 and 30 October 2001, respectively.

Eritrea. The Conventions and Recommendations adopted from the 81st to the 89th Sessions of the Conference were submitted to the National Assembly on 10 November 2001.

Estonia. The instruments adopted at the 88th Session of the Conference were submitted to Parliament on 24 April 2001.

Finland. The instruments adopted by the Conference at its 88th and 89th Sessions were submitted to Parliament on 1 June 2001 and 25 November 2002, respectively.

Germany. The instruments adopted at the 88th and 89th Sessions of the Conference were submitted to the Bundestag and the Bundesrat on 21 February 2001 and 28 February 2002, respectively.

Greece. The instruments adopted at the 88th and 89th Sessions of the Conference were submitted to the Greek Chamber of Deputies on 1 November 2001 and 8 April 2002, respectively.

Guatemala. The instruments adopted at the 88th and 89th Sessions of the Conference were submitted to the Congress of the Republic on 27 May 2002.

Guyana. The instruments adopted at the 88th Session of the Conference were submitted to Parliament on 25 March 2002.

Honduras. The instruments adopted at the 88th Session of the Conference were submitted to the National Congress on 8 May 2002.

Indonesia. The instruments adopted at the 88th and 89th Sessions of the Conference were submitted to the House of Representatives on 12 February and 9 September 2002, respectively.

Islamic Republic of Iran. The instruments adopted at the 88th Session of the Conference have been submitted to the Islamic Consultative Assembly.

Israel. The instruments adopted at the 88th and 89th Sessions of the Conference were submitted to the Knesset on 17 December 2000 and 23 June 2002, respectively.

Italy. The ratification of Convention No. 183 was registered on 7 February 2001. The instruments adopted at the 89th Session of the Conference were submitted to the Chair of the House of Representatives and of the Senate.

Japan. The instruments adopted at the 88th and 89th Sessions of the Conference were submitted to the Diet on 29 May 2001 and 14 June 2002, respectively.

Jordan. The instruments adopted at the 88th Session of the Conference have been submitted to a competent authority.

Republic of Korea. The instruments adopted at the 88th and 89th Sessions of the Conference have been submitted to the National Assembly.

Kuwait. The instruments adopted at the 88th Session of the Conference have been submitted to a competent authority.

Lebanon. The instruments adopted at the 88th and 89th Sessions of the Conference were submitted to the National Assembly on 31 August 2001 and 25 October 2002, respectively.

Lithuania. The instruments adopted at the 88th and 89th Sessions of the Conference were submitted to the Seimas on 22 October 2001 and 27 September 2002, respectively.

Luxembourg. The instruments adopted at the 88th Session of the Conference were submitted to the Chamber of Deputies on 27 September 2001.

Malaysia. The instruments adopted at the 88th Session of the Conference have been submitted to Parliament.

Malta. The instruments adopted at the 88th and 89th Sessions of the Conference were submitted to the House of Representatives on 28 May and 22 October 2001, respectively.

Mauritania. The instruments adopted at the 88th and 89th Sessions of the Conference were submitted to the National Assembly on 15 September 2002.

Mauritius. The instruments adopted at the 88th and 89th Sessions of the Conference were submitted to the National Assembly on 20 November 2001 and 26 November 2002, respectively.

Mexico. The instruments adopted at the 88th Session of the Conference were submitted to the Senate on 13 November 2000.

Republic of Moldova. The ratification of Convention No. 184 was registered on 20 September 2002. The instruments adopted at the 88th Session of the Conference were submitted to Parliament on 15 June 2001.

Morocco. The Government is in the process of ratifying Convention No. 183.

Myanmar. The instruments adopted at the 88th Session of the Conference were submitted to a competent authority on 29 June 2000.

Namibia. The instruments adopted at the 88th Session of the Conference were submitted to the National Assembly on 8 November 2001.

Netherlands. The instruments adopted at the 88th and 89th Sessions of the Conference were submitted to Parliament on 11 October 2001.

New Zealand. The instruments adopted at the 88th Session of the Conference were submitted to the House of Representatives on 21 November 2001.

Nicaragua. The instruments adopted at the 88th and 89th Sessions of the Conference were submitted to the National Assembly in July and October 2001, respectively.

Niger. On 28 May 2002, the Ministry of the Public Service and Labour forwarded to the Ministry of Foreign Affairs, Cooperation and African Integration the reports submitting Conventions Nos. 177, 181 and 183 for ratification. The Government has indicated that it envisages ratifying Convention No. 183.

Norway. The instruments adopted at the 88th and 89th Sessions of the Conference were submitted to the Storting (Parliament) on 27 April 2001 and 14 June 2002, respectively.

Oman. The instruments adopted at the 88th and 89th Sessions of the Conference have been submitted to a competent authority.

Philippines. The instruments adopted at the 88th and 89th Sessions of the Conference were submitted to the House of Representatives and the Senate on 9 April and 15 November 2001, respectively.

Poland. The instruments adopted at the 88th and 89th Sessions of the Conference were submitted to the Sejm on 21 February 2001 and 7 February 2002, respectively.

Qatar. The instruments adopted at the 88th and 89th Sessions of the Conference have been submitted to a competent authority.

Romania. The ratification of Convention No. 183 was registered on 23 October 2002. The instruments adopted at the 89th Session of the Conference were submitted to the House of Representatives and the Senate in February 2002.

Russian Federation. The instruments adopted at the 88th Session of the Conference were submitted to the State Duma of the Federal Assembly on 28 May 2001.

San Marino. The instruments adopted at the 88th and 89th Sessions of the Conference were submitted to the Great and General Council on 10 December 2001.

Saudi Arabia. The instruments adopted at the 88th Session of the Conference have been submitted to a competent authority.

Seychelles. The instruments adopted at the 88th Session of the Conference were submitted to the National Assembly on 4 June 2001.

Singapore. The instruments adopted at the 88th and 89th Sessions of the Conference were submitted to Parliament on 4 July 2001 and in July 2002, respectively.

Slovakia. The ratifications of Conventions Nos. 183 and 184 were registered on 12 December 2000 and 14 June 2002, respectively.

Slovenia. The instruments adopted at the 88th Session of the Conference were submitted to Parliament on 11 January 2001.

Switzerland. The instruments adopted at the 88th Session of the Conference have been submitted to Parliament.

Trinidad and Tobago. The instruments adopted at the 88th Session of the Conference were submitted to the House of Representatives and the Senate on 13 September 2000.

Tunisia. The instruments adopted at the 88th and 89th Sessions of the Conference were submitted to the House of Representatives on 8 November 2000 and 6 November 2001, respectively.

Turkey. The instruments adopted at the 88th and 89th Sessions of the Conference were submitted to the Grand National Assembly on 15 December 2000 and 10 December 2001, respectively.

Ukraine. The instruments adopted at the 88th and 89th Sessions of the Conference were submitted to the Supreme Council on 10 September 2001 and 9 April 2002, respectively.

United Arab Emirates. The instruments adopted at the 88th and 89th Sessions of the Conference have been submitted to a competent authority.

United Kingdom. The instruments adopted at the 88th Session of the Conference were submitted to Parliament on 5 November 2001.

United States. The instruments adopted at the 88th and 89th Sessions of the Conference were submitted to the Senate and the House of Representatives on 19 October 2001 and 2 April 2002, respectively.

Viet Nam. The instruments adopted at the 88th and 89th Sessions of the Conference were submitted to the National Assembly on 24 April 2001 and 21 May 2002, respectively.

Yemen. Conventions Nos. 183 and 184 were submitted to the House of Representatives.

Yugoslavia. The instruments adopted at the 89th Session of the Conference have been submitted to the Federal Assembly.

Zimbabwe. The instruments adopted at the 88th and 89th Sessions of the Conference were submitted to Parliament on 25 October 2001 and 25 October 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. Index to comments made by the Committee, by country

