

**Committee of Experts on the Application
of Conventions and Recommendations
(CEACR)**

Observations 2016

Regional file by country -

ASIA

C105 - Abolition of Forced Labour Convention, 1957 (No. 105)

Observation 2016

Article 1(a) of the Convention. Penal sanctions involving compulsory labour as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system. For a number of years, the Committee has been referring to the following provisions of the Penal Code, under which prison sentences involving an obligation to perform labour may be imposed:

-sections 184(3), 197(1)(a) and 240 concerning, among others, 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; and

-section 221(1), (4) and (5) concerning a person who creates, establishes, organizes or administers an organization in 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 engages in propaganda to promote or attract members to such organization, by whatever means, or who joins such an organization or develops contacts personally or through a third party with such an organization or one of its branches.

The Committee pointed out that the sanctions applied in the above cases fall within the scope of the Convention since they involve an obligation to work in prison and they enforce a prohibition of the peaceful expression of views or of opposition to the established political, social or economic system. A similar situation arises when certain political views are prohibited, subject to penalties involving compulsory labour, as a consequence of the prohibition of political parties or associations. It recalled that the Convention does not prohibit punishment by penalties involving compulsory labour of persons who use violence, incite to violence or engage in preparatory acts aimed at violence. Noting the Government's indication that the matter would be reviewed, the Committee reiterated its hope that these penal provisions would be re-examined in light of the Convention, with a view to ensuring that no sanctions involving compulsory labour may be imposed as a punishment for holding or expressing political or ideological views.

The Committee notes the Government's information in its report that the Penal Code is being revised and that all the provisions, including sections 184(3), 197(1) and 221(1), (4) and (5) of the Penal Code which are inconsistent with the international conventions have been nullified and are no longer in force. ***The Committee expresses the firm hope that the Government will take the necessary measures to ensure that the revision of the Penal Code will take into consideration the Committee's comments thereby ensuring that no sanctions involving compulsory labour may be imposed as a punishment for holding or expressing political or ideological views. The Committee expresses the hope that the revised Penal Code will be adopted in the near future. It requests the Government to provide information on any progress made in this regard.***

C138 - Minimum Age Convention, 1973 (No. 138)

Observation 2016

The Committee notes the Government's first report.

Article 1 of the Convention. National policy and application of the Convention in practice. The Committee notes the Government's statement in its report that despite a serious economic slowdown and pressures on the labour market mainly caused by a reduction in foreign assistance, an increasing number of young entrants to the labour market and lack of job opportunities, further exacerbated by the successful but difficult security and political transitions, Afghanistan remains committed to the full implementation of the Convention and that no specific category of economic activity or employment will be exempted from the minimum age requirement. The Committee also notes the detailed information provided by the Government, in its report under the Worst Forms of Child Labour Convention, 1999 (No. 182) on the implementation of the various measures taken by the Ministry of Labour, Social Affairs, Martyrs and Disabled (MoLSAMD) to prevent child labour, including: the National Child Labour Strategy, 2012 followed by a National Action Plan to prevent child labour in brick kilns; a National Strategy for the Protection of Children at Risk; and a National Strategy for Working Street Children, 2011, with the primary intention of providing support and assistance to children and young persons in the country. The Committee notes, however, that according to an ILO assessment report under the Roads to Jobs (R2) Project, entitled *Child Labour assessment in Balkh and Samangan Provinces*, December 2015, children in Afghanistan are engaged in child labour and often in hazardous conditions, including in agriculture, carpet weaving, domestic work, street work, and brick making. Moreover, according to the findings of the Afghanistan Living Conditions Survey 2013–14 (ALCS), 27 per cent of children between the ages of 5–17 years (2.7 million children) are engaged in child labour with a higher proportion of boys (65 per cent). Of this, 46 per cent are children between 5 and 11 years. At least half of all child labourers are exposed to hazardous working conditions such as dust, gas, fumes, extreme cold, heat or humidity. Moreover, according to the 2011 ILO Rapid Assessment Study on Bonded Labour in Brick Kilns in Afghanistan, 56 per cent of brick makers in Afghan kilns are children and a majority of these are 14 years and below. **Observing with concern that a significant number of children under the age of 14 years are engaged in child labour, of which at least half are working in hazardous conditions, the Committee requests that the Government strengthen its efforts to ensure the progressive elimination of child labour in all economic activities. It requests that the Government provide information on the measures taken in this regard as well as the results achieved.**

Article 2(1) of the Convention. Scope of application. The Committee notes that according to sections 5 and 13 of the Labour Law read in conjunction with the definition of a "worker", the law applies only to labour relations on a contractual basis. The Committee therefore observes that the provisions of the Labour Law do not appear to cover the employment of children outside an employment relationship, such as children working on their own account or in the informal economy. The Committee reminds the Government that the Convention applies to all sectors of economic activity and covers all forms of employment and work, whether or not there is a contractual employment relationship. **The Committee therefore requests that the Government take the necessary measures to ensure that all children, including children working outside an employment relationship such as children working on their own account or in the informal economy, benefit from the protection laid down by the Convention. In this regard, the Committee encourages the Government to review the relevant provisions of the Labour Law in order to address these gaps as well as to take measures to strengthen the capacity and expand the reach of the labour inspectorate to the informal economy with a view to ensuring such protection in this sector.**

Article 7(1) and (3). Minimum age for admission to light work and determination of light work. The Committee notes that section 13(2) of the Labour Law sets 15 years as the minimum age for employment in light work in industries and section 31 prescribes a weekly working period of 35 hours for young persons between 15 and 18 years. The Committee observes that the minimum age for light work of 15 years is higher than the minimum age for admission to employment or work of 14 years specified by Afghanistan. The Committee draws the Government's attention to the fact that *Article 7(1)* of the Convention is a flexibility clause which provides that national laws or regulations may permit the employment or work of persons aged 13–15 years on light work activities which are not likely to be harmful to their health or development and not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received. It may also be recalled that *Article 7(4)* permits member States who have specified a general minimum age for admission to employment or work of 14 years to substitute a minimum age for admission to light work of 12–14 years to that of the usual 13–15 years (see General Survey on the fundamental Conventions, 2012, paragraphs 389 and 391). **In view of the fact that a high number of children under 14 years are engaged in child labour in the country, the Committee requests that the Government regulate light work activities for children of 12 to 14 years of age to ensure that children who in practice work under the minimum age are better protected. The Committee also requests that the Government take the necessary measures to determine light work activities permitted to children of 12 to 14 years of age and to prescribe the number of hours and conditions of such work, pursuant to Article 7(3) of the Convention.**

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

Observation 2016

Articles 3(a) and 7(2)(b) of the Convention. All forms of slavery or practices similar to slavery and effective and time-bound measures. Compulsory recruitment of children for use in armed conflict and providing the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. The Committee notes the Government's information that the Law on prohibiting the recruitment of child soldiers which came into force in 2014, criminalizes the recruitment of children under the age of 18 years into the Afghan Security Forces.

The Committee also notes that according to the report of 20 April 2016 of the United Nations Secretary-General on children and armed conflict (A/70/836-S/2016/360) (Report of the Secretary-General), a total of 116 cases of recruitment and use of children, including one girl, were documented in 2015. Out of these, 13 cases were attributed to the Afghan National Defence and Security forces; five to the Afghan National Police; five to the Afghan Local Police; and three to the Afghan National Army; while the majority of verified cases were attributed to the Taliban and other armed groups who used children for combat and suicide attacks. The United Nations verified, 1,306 incidents resulting in 2,829 child casualties (733 killed and 2,096 injured), an average of 53 children were killed or injured every week. A total of 92 children were abducted in 2015 in 23 incidents.

In this regard, the Committee notes the information contained in the *Children Not Soldiers – Afghanistan Factsheet* of May 2016 from the Office of the Special Representative of the Secretary-General for Children and Armed Conflict regarding the following measures taken by the Government:

- The Government of Afghanistan signed an Action Plan with the United Nations on 30 January 2011 to end and prevent the recruitment and use of children by the Afghan National Security Forces, including the Afghan National Police, Afghan Local Police and Afghan National Army.
- A roadmap to accelerate the implementation of the Action Plan was endorsed by the Government on 1 August 2014.
- The Government endorsed age assessment guidelines to prevent the recruitment of minors.
- In 2015 and early 2016, three additional child protection units were established in Mazar e Sharif, Jalalabad and Kabul, bringing the total to seven. These units are embedded in Afghan National Police recruitment centres and are credited with preventing the recruitment of hundreds of children.

The Committee notes that in February 2016, the Special Representative who visited Afghanistan commended the strong commitment of the Government and the important progress made to end and prevent the recruitment and use of children by the Afghan National Defence and Security Forces (A/70/836-S/2016/360, paragraphs 31 and 32). However, the UN Security Council's Working Group on Children and Armed Conflict, in its conclusions of 11 May 2016 on children and armed conflict in Afghanistan, expressed grave concern over the deteriorating situation of children affected by the conflict, particularly the significant increase in child casualties, the continuing recruitment and use of children in violation of applicable international law, as well as attacks on schools and hospitals, particularly affecting girls' education, by all parties to the conflict (S/AC.51/2016/1, paragraph 4). The Committee expresses its **deep concern** at the situation and the number of children involved in armed conflict. **While acknowledging the difficult situation prevailing in the country, the Committee urges the Government to take immediate and effective measures to put a stop, in practice, to the recruitment of children under 18 years by armed groups and the armed forces as well as measures to ensure the demobilization of children involved in armed conflict. It also urges the Government to take immediate and effective measures to ensure that thorough investigations and robust prosecutions of persons who forcibly recruit children under 18 years of age for use in armed conflict are carried out and that sufficiently effective and dissuasive penalties are imposed in practice. It requests the Government to take effective and time-bound measures to remove children from armed groups and forces and ensure their rehabilitation and social integration. It finally requests the Government to provide information on the measures taken in this regard and on the results achieved.**

Articles 3(b) and 7(2)(b). Use, procuring or offering of children for prostitution and providing the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. The Committee notes from the Report of the Secretary-General on Children and Armed Conflict that concerns remain regarding the cultural practice of *bacha-bazi* (dancing boys), which involves the sexual exploitation of boys by men in power, including the Afghan National Defence and Security Forces' commanders (paragraph 25). It also notes from the UNICEF document of 2015 that according to the 2014 Afghanistan Independent Human Rights Commission's inquiry on *bacha-bazi*, there are many child victims of *bacha bazi*, particularly boys between 10 and 18 years of age who have been sexually exploited for long periods of time. The Committee further notes that the Committee on the Rights of the Child, in its concluding observations of April 2011, expressed deep concern that some families knowingly sell their children into forced prostitution, including for *bacha-bazi* (CRC/C/AFG/CO/1, paragraph 72). **Noting with deep concern the use of children, particularly boys, for prostitution, the Committee urges the Government to take effective and time bound measures to eliminate the practice of bacha-bazi and to remove children from this worst forms of child labour and to provide assistance for their rehabilitation and social integration. It requests the Government to provide information on the measures taken in this regard and on the results achieved.**

Article 7(2). Clauses (a) and (e). Preventing the engagement of children in the worst forms of child labour and taking account of the special situation of girls. Access to free basic education. The Committee notes the Government's statement in its report that as a result of the past three decades of conflict, insecurity and drought, children and youth are the most affected victims, a majority of whom are deprived of proper education and training. The Committee notes from the UNICEF document of 2015 that Afghanistan is among the poorest performers in providing sufficient education to its population. A large number of boys and girls in 16 out of 34 provinces had no access to schools by 2013 due to insurgents' attacks and threats that lead to closure of schools. The United Nations report of 2016 entitled "Education and Health Care at Risk" further states that in addition to barriers arising from insecurity throughout 2015, anti-government elements deliberately restricted the access of girls to education, including closure of girls' schools and ban on girls' education. More than 369 schools were closed partially or completely, affecting at least 139,048 students, and more than 35 schools were used for military purposes in 2015. The Committee finally notes that the Committee on the Elimination of Discrimination against Women (CEDAW), in its concluding observations of 30 July 2013, expressed concern at the low enrolment rate of girls, in particular at the secondary school level, and high dropout rates especially in rural areas owing to a lack of security to and from school. The CEDAW also expressed deep concern at the increased number of attacks on girls' schools and written threats warning girls to stop going to school by non-State armed groups (CEDAW/C/AFG/CO/1-2, paragraph 32). **Recalling that education contributes to preventing the engagement of children in the worst forms of child labour, the Committee urges the Government to take the necessary measures to improve the functioning of the education system and to ensure access to free basic education, including by taking measures to increase the school enrolment and completion rates, both at the primary and secondary levels, particularly of girls.**

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

C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Observation 2016

The Committee notes the observations of the Australian Council of Trade Unions (ACTU) received 1 September 2014 and 31 August 2016. The Committee also notes the observations received on 1 September 2014 and 1 September 2016 from the International Organisation of Employers (IOE) which are of a general nature.

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

The Committee notes the Government's indication that the Productivity Commission's Final Report on Australia's Workplace Relations Framework of 21 December 2015, recommended certain amendments to these provisions. With respect to the provisions of the Competition and Consumer Act prohibiting secondary boycotts, the Government indicates that the Report concluded that these provisions were still required, and should be enforced, particularly in the construction industry. Concerning section 423 of the FWA (on suspension or termination of protected industrial action where the action is causing or threatening to cause significant economic harm to the employer or employees) and section 426 (on suspension of protected industrial action causing significant economic harm to a third party), the Report noted that applications were very rarely successful, and recommended that the term "significant" should be interpreted as "important or of consequence". No recommendations were made concerning section 424(1)(d) of the Act, on the suspension or termination of protected industrial action that is threatening to cause significant damage to the economy, or concerning sections 30J and 30K of the Crimes Act. The Committee also notes the observations of the ACTU that section 424 of the FWA can be used by large employers to have protected industrial action terminated instead of making concessions within the context of collective bargaining.

The Committee notes the conclusions and recommendations of the Committee on Freedom of Association (CFA) in Case No. 2698 (357th Report, paragraphs 213–229) concerning, among others, these provisions of the FWA. It recalls in this respect that the right to strike may be restricted or prohibited only when it is related to essential services in the strict sense of the term, that is services whose interruption would endanger the life, personal safety or health of the whole or part of the population; in the public service only for servants exercising authority in the name of the State; or in situations of acute national or local crisis (only for a limited period and solely to the extent necessary to meet the requirements of the situation) (see General Survey of 2012 on the fundamental Conventions, paragraph 127). With reference to its previous comments, the Committee recalls that a broad range of legitimate strike action could be impeded by linking restrictions on strike action to interference with trade and commerce, and the impact of industrial action on trade and commerce in and of themselves does not render a service "essential". **The Committee once again requests the Government to take all appropriate measures, in the light of its previous comments and in consultation with the social partners, to review the abovementioned provisions of the Fair Work Act, the Competition and Consumer Act and the Crimes Act with a view to bringing them into full conformity with the Convention. In the meantime, the Committee requests the Government to provide detailed information on the application of these provisions in practice.**

State jurisdictions. Queensland. The Committee previously requested that steps be taken to review the provisions of the Industrial Relations Act requiring a ballot of trade union members for authorization of expenditure which exceeds 10,000 Australian dollars (AUD) "for a political purpose", broadly defined. In this respect, the Committee notes with **satisfaction** that pursuant to the Sustainable Planning (Infrastructure Charges) and Other Legislation Amendment Act of 2014, the Industrial Relations Act has been amended and these provisions removed.

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

C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

Observation 2016

The Committee notes the observations of the Australian Council of Trade Unions (ACTU) received on 1 September 2014 and 31 August 2016, concerning issues examined in the present observation and corresponding direct request.

Article 4 of the Convention. Promotion of collective bargaining. Scope of collective bargaining. Fair Work Act. In its previous comments, the Committee noted that section 172(1) of the Fair Work Act (FWA) provides that an enterprise agreement may be made on matters pertaining to the employment relationship, deductions from wages, and the operation of the agreement, and that sections 186(4), 194 and 470–475 of the FWA exclude from collective bargaining as "unlawful terms" any terms relating to the extension of unfair dismissal benefits to workers not yet employed for the statutory period, the provision of strike pay, the payment of bargaining fees to a trade union, and the creation of a union's right to entry for compliance purposes more extensive than under the provisions of the FWA. Section 353 of the FWA prohibits the inclusion of a provision allowing for bargaining services fees in collective agreements and prohibits an industrial association, or an officer, or member of an industrial association from demanding payment of such a fee. The Government indicated in this respect that the prohibition on clauses requiring the payment of bargaining services fees in the FWA reflected the fact that such fees did not pertain to the employment relationship.

The Committee notes that the ACTU once again reiterates its concerns with respect to the restrictions in the FWA on the content of agreements. It also notes the Government's statement that the Productivity Commission undertook an inquiry into the workplace relations framework, and that it is considering the recommendations contained in the Commission's final report released in December 2015. The Committee notes that the Commission's report considered submissions from both workers' and employers' organizations, and recommended that the FWA be amended to specify that an enterprise agreement may only contain terms about permitted matters. The Committee recalls that, legislation or measures taken unilaterally by the authorities to restrict the scope of negotiable issues are often incompatible with the Convention, and that tripartite discussions for the preparation, on a voluntary basis, of guidelines for collective bargaining are a particularly appropriate method of resolving these difficulties (see the 2012 General Survey on the fundamental Conventions, paragraph 215). **The Committee once again requests the Government to review the abovementioned sections of the FWA, in consultation with the social partners, so as to bring them into accordance with the Convention and requests the Government to provide information on the measures taken or envisaged in this regard.**

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

C100 - Equal Remuneration Convention, 1951 (No. 100)

Observation 2016

The Committee notes the observations of the Australian Council of Trade Unions (ACTU) of 22 September 2015.

Article 2 of the Convention. Legislative developments. In its previous comments, the Committee welcomed the adoption of the Workplace Gender Equality Act 2012, under which all non-public sector employers with more than 100 employees must report annually to the Workplace Gender Equality Agency (WGEA) against a set of gender equality indicators, including equal remuneration between women and men. The Government reports that the WGEA received 4,352 reports from more than 11,000 employers in 2014. With the reporting data, the WGEA develops and produces confidential customized benchmark reports to help employers understand their relative performance against different comparison groups and the WGEA provides advice and assistance to employers in relation to promoting and improving gender equality in the workplace. In this regard, the Committee notes the WGEA's Gender Strategy Toolkit which has been developed to help organizations leverage the value of the benchmark data in a strategic, structured and sustainable way. The Committee also notes that the employer is under an obligation to inform its employees and relevant employee organizations that the report has been sent to the WGEA and they have the opportunity to comment on the report to the employer or WGEA. The Committee notes from the Government's report that amendments have been made to the Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 (No. 1) with the aim of streamlining workplace gender equality reporting requirements from the 2015–16 reporting period onwards while still meeting the gender policy objectives of the legislation. The Committee notes the observations made by the ACTU that the amendments water down the reporting requirements under the legislation. According to the ACTU, employers are no longer required to report on: the remuneration of, among others, chief executive officers (CEOs) or equivalent, key management personnel above the CEO and managers employed on a casual basis, the remuneration of workers engaged on the basis of a contract for services (including independent contractors and agency (labour hire) employed staff), or the annualized average full-time components of total remuneration. Furthermore, information relating to the number of applications and interviews conducted, and to the number of requests made and approvals granted for extensions of paid leave, is no longer collected. The Committee notes that the Government and the ACTU indicate that these changes were made in response to difficulties encountered by businesses in complying with the former requirements, and that a working group of stakeholders has been established to identify ways of improving data collection. The Committee emphasizes that the principle of the Convention applies to "all workers". ***The Committee requests the Government to provide information regarding the composition of the working group, the outcome of its discussions and any follow-up action taken. The Committee also requests the Government, in cooperation with the social partners, to evaluate the amendments made to the Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 (No. 1) in light of the Act's objectives and the principle of the Convention.***

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

C155 - Occupational Safety and Health Convention, 1981 (No. 155)

Observation 2016

The Committee notes the observations of the Australian Council of Trade Unions (ACTU), received on 2 September 2015.

Article 8 of the Convention. Model work health and safety (WHS) laws. The Committee notes the Government's indication that Safe Work Australia conducted a review of the model WHS laws over the period 2014–15 to identify ways they could be improved, with particular focus on reducing the regulatory burden, and that a scheduled review will be undertaken in 2016–17. It also notes the observations of the ACTU that Safe Work Australia's commitment "to reducing and eradicating unnecessary over-regulation" will result in a reduction of the workers' protection laid down in the model WHS Act and Regulations. The ACTU states that there is no evidence of over-regulation impeding an employer's ability to provide healthy and safe workplaces given the high level of diseases and injuries. It adds that several proposed changes will undermine access to appropriate training and reduce the capacity of workers' representatives to inquire into aspects of occupational safety and health (OSH). **Recalling that the aim of the national OSH policy, and of the legislation that gives effect to it, shall be to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, by minimizing, so far as it reasonably practicable, the causes of hazards inherent in the working environment, the Committee requests the Government to provide information on the manner in which the most representative organizations of employers and workers are consulted in the review of the model WHS laws, and to provide information on the outcome of these consultations.**

Article 9. Enforcement. The Committee notes the information provided by the Government, following its previous request, concerning penalties in relation to gross negligence or reckless endangerment causing the death or serious injury of a worker. The Committee also notes the observations of the ACTU that a significant improvement is required with respect to the enforcement of laws and regulations concerning OSH. The ACTU states that inspectors do not enforce existing provisions concerning the election and training of health and safety representatives and that the OSH aspects of psychological health are ignored. With respect to New South Wales, the ACTU indicates that in the period 2006–07 to 2013–14 infringement notices in the State dropped significantly from 726 to 69 and that the number of successful safety prosecutions dropped from 300 to 41 over the same period. **The Committee requests the Government to provide information on the measures taken to ensure the enforcement of safety and health laws and regulations, and to provide information on the measures taken specifically in this respect in the State of New South Wales.**

Articles 13 and 19(f). Protection of workers who have removed themselves from situations presenting imminent and serious danger. The Committee previously noted that, while the model WHS Act gives full effect to *Articles 13 and 19(f)* of the Convention, the Occupational Health and Safety Act, 2004 (Victoria), the Occupational Health, Safety and Welfare Act, 1986 (South Australia) and the Offshore Petroleum and Greenhouse Gas Storage (OPGGS) Act, 2006 do not. In this respect, the Committee notes the Government's indication that under the OPGGS Act, workers are protected from dismissal or other prejudicial action by the employer if they have ceased or propose to cease to perform work in accordance with a direction by the health and safety representative. Moreover, with respect to the Occupational Health and Safety Act, 2004 (Victoria), and the Work Health and Safety Act (South Australia), the Government indicates that a health and safety representative can direct that unsafe work cease. With reference to paragraph 151 of its General Survey of 2009 on OSH, the Committee recalls that the protection of workers when they have removed themselves from situations they believe present an imminent and serious danger to their life or health, should not be conditional on the decision of a safety officer or representative. **The Committee requests the Government to take the necessary measures to bring the Offshore Petroleum and Greenhouse Gas Storage Act, 2006, into conformity with the Convention in this respect, and to ensure that steps are taken in this regard with respect to the Occupational Health and Safety Act, 2004 (Victoria), and the Work Health and Safety Act (South Australia).**

Article 21. Absence of expenditure for workers. The Committee previously requested the Government to provide information on the implementation of *Article 21* in Victoria, Western Australia and South Australia. In this respect, it notes the Government's indication that South Australia now implements the model WHS laws, which give effect to *Article 21*. However, with respect to Victoria and Western Australia, the Committee notes the Government's indication that no further measures have been taken on this matter. **The Committee requests the Government to take measures to ensure that in Victoria and Western Australia OSH measures shall not involve any expenditure for workers.**

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

C059 - Minimum Age (Industry) Convention (Revised), 1937 (No. 59)

Observation 2016

Application of the Convention in practice. The Committee had previously noted the various measures and policies introduced by the Government to reduce child labour, including: the National Child Labour Elimination Policy of 2010 and a National Plan of Action for the Elimination of Child Labour; the National Education Policy of 2010; the project on Eradication of Hazardous Child Labour in Bangladesh (Phase III); and the Basic Education for the Hard-to-Reach Urban Working Children. The Committee encouraged the Government to continue its efforts to improve the situation of child labour in the country.

Accordingly, the Committee notes the Government's information in its report that the National Plan of Action for the Elimination of Child Labour 2013–16, focuses on nine strategic interventions including policy implementation, legislation and enforcement, education, prevention of child labour and safety of children engaged in work. The Government also indicates that under the first and second phases of the Eradication of Hazardous Child Labour in Bangladesh project, 40,000 children were withdrawn from child labour through informal schooling, skills-development training and socio-economic empowerment of their parents. The Committee also notes the following information provided by the Government concerning the measures taken for the effective abolition of child labour:

- The Reach Out of School Children project (Phase II), which intends to ensure completion of the primary education cycle, has been implemented in 148 *upazilas* (sub-districts) since 2013. Under this project, 12,857 learning centres were established, through which 3,048,200 children between 8 and 14 years, who have never been to school or who have dropped out of school were provided with basic education.

- A Non-Formal Education Policy and a Non-Formal Education Act 2014 were adopted to facilitate basic education and skills development of working children.

- Several multi-dimensional programmes, such as the Child Sensitive Social Protection project and Services for Children at Risk project are being implemented by the Department of Social Services; and training and rehabilitation centres, day care centres and orphanages have been established to provide basic needs for children at risk.

- A list of 38 types of hazardous work prohibited to children under 18 years of age was adopted in March 2013. This list includes: work in automobile workshops and electrical mechanics; battery recharging; manufacturing of bidi, cigarettes and matches; brick or stone breaking; manufacturing of plastics, soap, pesticides and leather; metal works; welding works; construction works; dyeing or bleaching; weaving; chemical factories; butcheries; the truck, tempo and bus industries; and work in ports and ships.

In addition, the Committee notes the information from the Ministry of Education that the Directorate of Secondary and Higher Education and the Directorate of Technical Education have undertaken different initiatives for engaging children in schools and vocational institutions and these have a massive impact on reducing child labour. These initiatives include: provision of free books; financial assistance in the form of stipends or tuition fees; and awareness-building workshops. The current stipend programmes are being implemented through five different projects of which three are related to secondary education. According to the information provided by the Government, these three projects cover 23,526 schools, and a total of 3,250,563 children (2,187,225 girls and 1,063,338 boys) are beneficiaries. The Committee further notes the Government's information that the net enrolment rate at the primary level increased significantly from 87.2 per cent in 2005 to 97.7 per cent in 2014, with girls' enrolment rate reaching 99.14 per cent. Moreover, the primary school drop-out rate has been reduced from 50.5 per cent in 2005 to 20.9 per cent in 2014. With regard to the statistical information on child labour, the Government report refers to the Child Labour Survey of 2013, which indicates that of the 3.45 million children between 5 and 17 years who are working, 1.7 million children are involved in child labour with the manufacturing sector dominating (33.3 per cent in child labour), followed by agriculture (29.9 per cent) and trading (10.6 per cent). The Committee notes the Government's statement that although eliminating child labour in all sectors remains a big challenge, the Government of Bangladesh is committed to withdrawing children from hazardous work and moving them into formal education. While taking note of the measures taken by the Government, and the improvement in the enrolment rate at the primary level, the Committee must express its **concern** at the high number of children that are still involved in child labour in Bangladesh, particularly in the manufacturing sector. **The Committee therefore urges the Government to strengthen its efforts to eliminate child labour in the sectors covered by the Convention. The Committee requests that the Government continue to provide updated statistical information on the extent of child labour in these sectors, as well as on the practical application of the Convention, including reports of inspection services, number and nature of violations reported and penalties applied.**

Bangladesh

C081 - Labour Inspection Convention, 1947 (No. 81)

Observation 2016

Bangladesh

The Committee recalls the discussion in the Committee on the Application of Standards (CAS) of the International Labour Conference at its 103rd Session (May–June 2014) on the application of the Convention, and the findings contained in the report prepared following the direct contacts mission undertaken in 2015 at the request of the Conference Committee.

Articles 3(1)(a) and (b), 13, 17, 18, 20 and 21 of the Convention. Inspection activities in sectors other than the ready-made garment (RMG) sector. Availability of inspection statistics disaggregated by sector. Publication and communication of annual labour inspection reports necessary to evaluate the effectiveness of the labour inspection system. In its previous comment, the Committee noted that inspection activities appeared to continue to focus on the RMG sector. The Committee notes that the Government provides a certain number of labour inspection statistics in its report, in reply to the Committee's request, including in relation to: (i) the number of workplaces liable to inspection and workers employed therein (*Article 21(c)*); (ii) the number of inspection visits undertaken (*Article 21(d)*); (iii) the number of violations detected; (iv) the number of cases reported to the labour courts; (v) the total amount of penalties imposed (*Article 21(e)*); and (vi) the incidence of industrial accidents (*Article 21(f)*). However, the Committee also notes that disaggregated statistics were not consistently provided as requested by the Committee (for example, the total number of inspection visits undertaken in 2015 were not disaggregated by sector). This does not allow for an informed assessment concerning the adequacy of coverage by the labour inspectorate of other sectors.

While the Committee welcomes these statistics, it also notes that once again, no annual report on labour inspection activities was communicated to the ILO, despite the Government's indication in its last report that such a report would be published soon. In reply to the Committee's previous request to report in detail on the steps taken for the proposed establishment of a register of all workplaces liable to inspection and the workers employed therein, the Government indicates that ILO technical assistance would be helpful in developing such a register. In this respect, the Committee also notes the Government's reference to an interagency working group (composed of the Department of Inspection for Factories and Establishments (DIFE), the Department of Fire Service and Civil Defense (DFSCD), the Directorate of Labour (DOL), the capital development authorities (RAJUK), the Bangladesh Employers Federation (BEF), the Bangladesh Garment Manufacturers and Exporters Association (BGMEA), the Bangladesh Knitwear Manufacturers and Experts Association (BKMEA) and the German Society for International Cooperation (GIZ)) established with a view to compiling a database of relevant information. **The Committee trusts that the annual inspection report will be communicated soon, and that it will contain information on all the subjects listed in Article 21(a)–(g) of the Convention. It also requests that the Government provide more detailed information on the concrete steps taken to establish a register of all workplaces liable to inspection and of the workers employed therein, including those undertaken with ILO technical assistance. The Committee also once again requests that the Government provide detailed information on the implementation of the measures announced in its previous report to improve the collection of inspection data (that is to say, the development of a computer-based reporting mechanism; the development of a revised labour inspection checklist; and the recruitment of staff for the collection, compilation and updating of data).**

Article 3(2). Additional functions entrusted to labour inspectors. The Committee previously recalled, with reference to subsection 124(a) of the Bangladesh Labour Act (BLA) and Rule 113 of the 2015 Bangladesh Labour Rules (BLR, 2015) regulating mediation and conciliation in claims concerning outstanding payments or benefits, as well as with reference to Paragraph 8 of the Labour Inspection Recommendation, 1947 (No. 81), that the functions of labour inspectors should not include the conciliation or arbitration of labour disputes.

In this respect, the Government explains that two separate departments, namely, the DIFE and the DOL are responsible for the enforcement of the BLA, 2006 (as amended). The Government adds that subsection 124(a) of the BLA, 2006 (as amended) entrusts – DIFE labour inspectors with conciliation functions in respect of wages only, and that labour officers of the DOL undertake conciliation and mediation functions in respect of all other matters. **Noting the Government's indication that the conciliation and mediation functions of labour inspectors are limited to the payment of wages and benefits, the Committee requests the Government to provide detailed information on the proportion of time devoted to conciliation and mediation functions by DIFE labour inspectors in 2015 and 2016. The Committee also requests that the Government give consideration to entrusting the mediation and conciliation of individual labour disputes concerning wages and benefits to another public body, such as the DOL.**

Article 6. Status and conditions of service of labour inspectors. In its previous comment, the Committee noted from the direct contacts mission report that the retention of labour inspectors was problematic and that a number of recently recruited labour inspectors had left the DIFE, after having been trained, to take up work with other government services. In this regard, the Committee requested that the Government review the professional profiles and grades of labour inspectors to ensure that they reflect the career prospects of public servants exercising similar functions within other government services, such as tax inspectors or the police.

The Committee notes that the Government indicates, in reply to this request, that labour inspectors enjoy stability of employment, that their basic service conditions are similar to other permanent government employees and that their service rules ensure equality among all labour inspectors in terms of wages and career prospects. **The Committee once again requests that the Government provide information on the wages and benefits, as well as professional grade structure, enjoyed by other government employees exercising similar functions, such as tax inspectors or police officers. The Committee requests that the Government identify the reason for the high attrition rates in the case of labour inspectors so far as it relates to matters other than their conditions of service.**

Article 7. Training of labour inspectors. In its previous comment, the Committee noted with interest that all labour inspectors had received training on a number of subjects, including occupational safety and health (OSH). While noting the general information on training in the Government's report, the Committee notes that the Government has not provided a reply in relation to the Committee's request for specific information on the training provided to labour inspectors following the adoption of the Bangladesh Labour Rules (BLR), 2015. Neither does the Government provide the requested information on whether the Government has given specific attention, in the design of the training programmes for labour inspectors on freedom of association, to its comments under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), so as to ensure that all training is carried out in full conformity with that Convention. **The Committee requests that the Government provide detailed information on the training provided to labour inspectors during the period covered by its next report. It once again requests that the Government provide information on how it has specifically addressed the Committee's comments under Convention No. 87 in the design of the training for labour inspectors on freedom of association.**

Articles 10 and 11. Strengthening of the human and material resources of the labour inspectorate. In its previous comments, the Committee noted the steps taken to strengthen and restructure the labour inspectorate, including by the proposed threefold increase of its human and budgetary resources. In its previous comment, it welcomed the increase in the number of labour inspectors from 43 to 283 (between 2013 and 2015), and noted that the vacant positions were in the process of being filled, including through the request made to the Public Service Commission to recruit 154 additional labour inspectors.

The Committee notes with **regret** that the Government has failed to provide any new information on the progress made in the recruitment of labour inspectors (including those specializing in OSH) and that it has not provided the concrete timeline as requested for the filling of the 575 approved positions and the recruitment of the 800 labour inspectors that the Government had previously committed itself to. However, the Committee welcomes the description provided by the Government concerning the improvement in the material conditions of the labour inspectorate (in particular, the transport facilities now available) and the steady increase in the budget allocation to the DIFE. **The Committee once again requests that the Government fill, without further delay, all of the 575 labour inspection posts that have already been approved, and recruit an adequate number of qualified labour inspectors taking into account the number of workplaces liable to inspection. It requests that the Government continue to provide information on the improvement in the resources and on the material and transport facilities available to the labour inspectorate.**

Articles 12(1), 15(c) and 16. Inspections without previous notice. Duty of confidentiality in relation to complaints. In its previous comment, the Committee noted that in 2014, only 668 of the 25,525 labour inspections carried out in 2014 were unannounced, and expressed the view that, where only 2.5 per cent of all

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inspections are random or complaints-driven inspections undertaken without prior notice, the establishment of a link between the inspection and the existence of a complaint can readily be established, and confidentiality is, in consequence, undermined. Further, it also considered that principally conducting announced inspections may undermine the effectiveness of inspections because problems may be concealed and so remain undetected.

The Committee notes that the Government indicates, in reply to its previous request to enshrine in law a requirement that the existence of a complaint and its source are kept confidential, that the absence of such a provision in the BLA, 2006 (as amended) does not undermine confidentiality in practice. The Committee further notes that the Government has not provided a reply to its previous request for information on the practical steps taken to ensure that a sufficient number of unannounced labour inspections (that is, random or complaints-driven inspections implemented without prior notice) are undertaken so as to ensure that labour inspectors are able to effectively discharge their duty to maintain confidentiality. ***The Committee once again requests that the Government ensure that a sufficient number of unannounced labour inspections are undertaken and requests that the Government provide information on any practical measures taken in this regard. The Committee also requests that the Government codify the duty of confidentiality, either in the Labour Act or in other regulations or guidelines concerning labour inspection, for the purpose of legal clarity.***

Articles 17 and 18. Legal proceedings, effective enforcement and sufficiently dissuasive penalties. In its previous comments, the Committee noted the International Trade Union Confederation's (ITUC) indication that the enforcement of the law remained a serious challenge for a number of reasons. These included the absence of any power in the hands of a labour inspector to impose a fine and the need to report all cases of non-compliance to the courts, the insufficiency of legal staff employed by the Ministry of Labour and Employment and the DIFE and the low level of fines which were too negligible to be dissuasive. The Committee also noted from the direct contacts mission report that sentences of imprisonment were rarely, if ever, imposed.

The Committee notes that the Government once again recalls that the level of fines for certain provisions of the BLA, were increased to 25,000 Bangladeshi taka (BDT) (approximately US\$325) following the 2013 amendments to the Labour Act. In reply to the Committee's request, the Government also indicates that labour inspectors must still refer all cases of non-compliance to the courts and that in 2015, 30,186 labour inspections were carried out and 1,431 cases were filed with the labour courts (including 253 cases concerning OSH and 12 cases concerning child labour). Concerning the Committee's request to provide information on the number of trade union cases referred to the labour courts, the Committee notes the Government's indication that all relevant cases (including cases of anti-union discrimination) were addressed by the DOL who are responsible for conciliation and mediation. In this regard, the Committee observes that cases of anti-union discrimination are not generally appropriate for conciliation or mediation and in any event must not undermine strict enforcement of applicable laws.

Finally, the Committee notes that the Government, once again, does not provide information on any proposed steps directed at improving the effective enforcement of labour law, nor does it provide the requested information on the outcome of cases referred to the labour courts. ***The Committee once again urges the Government to provide information on the measures introduced or envisaged to ensure that penalties for labour law violations are sufficiently dissuasive and that fines are effectively enforced.***

The Committee further urges the Government to provide the previously requested information on the number of violations detected and information on the number of cases filed with the labour courts and the outcome of such cases (the number of infringements found and the amount of any fine imposed, etc.). The Committee once again requests that the Government specify how many legal staff with responsibility for the enforcement of the violations detected are employed at the DIFE.

Articles 2, 4 and 23. Labour inspection in export processing zones (EPZs) and special economic zones (SEZs). In its previous comments, the Committee noted that the Bangladesh Export Processing Zones Authority (BEPZA) remained responsible for securing the rights of workers in EPZs. It noted that counsellors, conciliators and arbitrators of the BEPZA were responsible for handling labour disputes and dealing with unfair labour practices, in addition to the labour courts designated to address labour disputes in EPZs. However, the Committee noted the absence of a labour inspection system (within the meaning provided for under the Convention) in EPZs. It expressed deep concern that the Government had not yet given effect to the 2014 conclusions of the CAS and prioritized amendments to the legislation governing EPZs so as to bring them within the purview of the labour inspectorate. In this respect, the Committee also noted that a separate draft Labour Act for EPZs had been prepared, which according to the observations of the ITUC, gave rise to a number of concerns. These concerns included that enforcement in EPZs would remain vested with the BEPZA and that the powers and functions of the EPZ labour courts and the EPZ Labour Appellate Tribunal established under the draft Labour Act for EPZs would be severely limited in comparison with courts established under the BLA.

The Committee notes that the Government indicates, in reply to its reiterated request to bring the EPZs within the purview of the labour inspectorate, that the Cabinet has approved a comprehensive draft EPZ Labour Act which provides for the enhanced protection of workers in EPZs, and which is in the process of being adopted by Parliament. It also notes the Government's reply, in response to its request concerning the legislation applicable in the proposed SEZs, that SEZs will initially be governed by the EPZ Labour Act. ***The Committee once again expresses the firm hope that the EPZ Labour Act will bring EPZs under the purview of the labour inspectorate as requested by the Conference Committee and the Committee of Experts. The Committee also requests that the Government ensures that SEZs will be brought within the purview of the labour inspectorate.***

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

[The Government is asked to reply in full to the present comments in 2017.]

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C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Observation 2016

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The Committee takes note of the observations provided by the International Organisation of Employers (IOE) received on 1 September 2016, which are of a general nature. The Committee notes the observations from the International Trade Union Confederation (ITUC) received on 1 September 2016. ***The Committee takes notes of the response of the Government to the 2015 ITUC observations and requests the Government to provide its comments on the latest ITUC communication with regard to issues covered by the Convention.***

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 105th Session, May–June 2016)

The Committee notes the discussion that took place in the Conference Committee on the Application of Standards in June 2016 concerning the application of the Convention. The Committee observes that the Conference Committee urged the Government to: (i) undertake amendments to the 2013 Labour Act to address the issues relating to freedom of association and collective bargaining identified by the Committee of Experts, paying particular attention to the priorities identified by the social partners; (ii) ensure that the law governing the export processing zones (EPZs) allows for full freedom of association, including the ability to form employers' and workers' organizations of their own choosing, and to allow workers' organizations to associate with workers' organizations outside the EPZs; (iii) investigate as a matter of urgency all acts of anti-union discrimination, ensure the reinstatement of those illegally dismissed, and impose fines or criminal sanctions (particularly in cases of violence against trade unionists) according to the law; and (iv) ensure that applications for union registration are acted upon expeditiously and are not denied unless they fail to meet clear and objective criteria set forth in the law. The Conference Committee also invited the Government to implement the recommendations of the 2016 high-level tripartite mission together with the social partners. The Committee also takes note of the report of the high-level tripartite mission.

Civil liberties. In its previous comment, the Committee expressed trust that all perpetrators and instigators responsible for violence against trade unionists would be identified, brought to trial and punished so as to prevent the repetition of such acts, and requested the Government to provide information on the outcome of the ongoing trials and investigations, including in relation to the 2012 murder of a trade unionist and the alleged violence against the secretary-general of another trade union. The Committee notes the Government's statement that any reported case of violence against trade unionists is handled by law enforcement agencies in line with the national legislation, but that in situations of violence or vandalism public and private property must be protected and those involved in such acts must be interrogated. The Government adds that measures are taken during such proceedings to avoid any form of harassment or disruption of trade union activities. The Committee ***regrets*** that, despite having replied to the 2015 ITUC observations, the Government does not address the specific incidents of violence against trade unionists alleged therein and fails to provide concrete information on the results of investigations or proceedings in this regard, including in relation to the 2012 murder of a trade unionist. The Committee further notes with ***concern*** the new allegations of specific incidents of violence and use of force against trade unionists in the latest ITUC communication, as well as its general allegations that since 2013, trade union leaders have suffered violent retaliation by their employers, have been harassed and intimidated and that the police routinely fail to carry out credible investigations into such cases of anti-union violence. ***The Committee requests the Government to provide detailed information on the outcome of investigations and trials into serious allegations of violence and harassment, including those reported by the ITUC in its 2015 and 2016 communications.***

In its previous comment, the Committee also noted the development of a helpline for submission of labour-related complaints targeting the ready-made garment (RMG) sector in the *Ashulia* area and requested the Government to provide further information on its expansion into other geographical areas and statistics on its use, the precise nature of the follow-up to calls and the number of cases resolved. The Committee notes the Government's indication that between December 2015 and May 2016, a total of 490 complaints were received through the helpline from RMG sector workers in the targeted area. The Government adds that many complaints were also received from other geographical areas and industrial sectors and that the operation of the helpline should be expanded to all sectors. ***Welcoming this information, the Committee requests the Government to continue to provide information on further expansion of the helpline, as well as statistics on its use, including the precise nature of the follow-up to calls, the number and nature of investigations undertaken and violations found and the number of cases resolved.***

Article 2 of the Convention. The right to organize. Registration of trade unions. In its previous comments, the Committee expressed trust that the online registration system would facilitate resolution of registration applications expeditiously and requested the Government to continue to provide statistics on the registration of trade unions and the specific legislative obstacles invoked for causes of denial. The Committee notes the Government's indication that: (i) the amendment of the Bangladesh Labour Act (BLA) in 2013 simplified the registration process and, up to August 2016, a total of 960 new trade unions have been registered, out of which 385 in the RMG sector, and 21 new trade union federations until August 2016; (ii) from March 2015, when the online registration system was introduced, a total of 512 online applications were received; and (iii) in 2016, the percentage of successful registration applications amounted to 58 per cent in the Dhaka Division and 38 per cent in the Chittagong Division, which presented an increase in comparison to previous years. While taking due note of the reported increase in the percentage of trade unions registered in 2016, the Committee observes that according to this information almost half of trade union applications in the Dhaka Division and almost three quarters of applications in the Chittagong Division have been rejected over the past year. Furthermore, the Committee notes that according to the ITUC, the approval of trade union applications remains at the absolute discretion of the Joint Director of Labour (JDL) and, even when registration is granted, factory management often seeks injunctive relief from courts to stay union registration, thus freezing union activity for several months pending the final hearing on the issue. The Committee also observes that the high-level tripartite mission, which visited Bangladesh in April 2016, noted that the procedure for registration of trade unions and its practical application were heavily bureaucratic and had the likelihood of discouraging trade union registration and of intimidating workers, especially the extensive steps taken by the Ministry of Labour and Employment with respect to name verification (comparison of signatures in the registration application and the employers' list of workers, as well as individual interviews with workers to verify authenticity of their signatures). The report of the mission further observed that the combination of the broad discretionary powers of the JDL when processing applications for registration, the lack of transparency on the reasons for rejection and delays in judicial proceedings have led to an increased rejection of registration requests and a decreasing registration of trade unions over the past few years. ***The Committee requests the Government to provide information on the reasons for which such a high number of registration applications were refused in 2016 and to continue to provide statistics on the registration of trade unions and the use of the online registration application. The Committee further requests the Government to take any necessary measures to ensure that the registration process is a simple formality, which should not restrict the right of workers to establish organizations without previous authorization. In this regard, it recalls the recommendations of the high-level tripartite mission that invited the Government to devise standard operating procedures to render the registration process a simple formal requirement not subjected to discretionary authority and to establish a public database on registration to improve transparency in handling registration applications. The Committee trusts that when taking measures to facilitate the registration process, the Government will take fully into account the Committee's comments, as well as the conclusions of the Conference Committee and the high-level tripartite mission.***

Minimum membership requirements. As regards the existing 30 per cent of the enterprise minimum membership requirement in the BLA, the Committee requested the Government to review sections 179(2), 179(5) and 190(f) of the BLA with the social partners with a view to their amendment and to provide information on the progress made in this regard. ***Regretting*** the absence of Government information on this point, the Committee must again recall its ***deep concern*** that workers are still obliged to meet this excessive requirement for initial and continued union registration; and that unions whose membership falls below this number will be deregistered. ***Emphasizing that such a high threshold for merely being able to form a union and maintain registration violates the right of all workers, without distinction whatsoever, to form and join organizations of their own choosing provided under Article 2 of the Convention, the Committee reiterates its previous request to the Government.***

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The Committee also noted that Rule 167(4) of the Bangladesh Labour Rules appeared to introduce a new minimum membership requirement of 400 workers to establish an agricultural trade union, a requirement which was not set out in the BLA itself. It therefore requested the Government to clarify the implications of this Rule and, if it was shown that it restricted the right to organize of agricultural workers, to modify the Rule so as to align it with the BLA and in any case to lower the requirement to ensure conformity with the Convention. The Committee notes the Government's indication that the 2013 amendment of the BLA provided agricultural workers the right to form trade unions and that Rule 167(4) is applicable to workers engaged in field crop production who can form groups of establishments. According to the Government, any inconsistency with the Convention can be corrected through consultation with the stakeholders. **The Committee requests the Government once again to clarify whether Rule 167(4) of the Bangladesh Labour Rules establishes a minimum membership requirement of 400 workers, and if so, to align it with the BLA and in any event lower it to ensure conformity with the Convention. The Committee requests the Government to report on all developments in this regard.**

Articles 2 and 3. Right to organize, elect officers and carry out activities freely. For a number of years, the Committee had requested the Government to review the following provisions of the BLA to ensure that restrictions on the exercise of the right to freedom of association and related industrial activities are in conformity with the Convention and to indicate steps taken to this effect: scope of the law (sections 1(4), 2(49) and (65), and 175); restrictions on organizing in civil aviation and for seafarers (sections 184(1), (2) and (4), and 185(3)); restrictions on organizing in groups of establishments (section 183(1)); restrictions on trade union membership (sections 2(65), 175, 185(2), 193 and 300); interference in trade union activity (sections 196(2)(a) and (b), 190(e) and (g), 192, 229(c), 291 and 299); interference in trade union elections (sections 196(2)(d) and 317(d)); interference in the right to draw up their constitutions freely (section 179(1)); excessive restrictions on the right to strike (sections 211(1), (3), (4) and (8), and 227(c)), accompanied by severe penalties (sections 196(2)(e), 291, and 294–296); excessive preferential rights for collective bargaining agents (sections 202(24)(c) and (e), and 204); and cancellation of trade union registration (section 202(22)) as well as excessive penalties (section 301). The Committee **deeply regrets** that the Government has once again failed to provide information on the steps taken to review the abovementioned provisions of the BLA and notes that the Government simply indicates that the review of the BLA in 2013 involved tripartite consultations with workers and employers, as well as the ILO, and that both the BLA and the Bangladesh Labour Rules were framed in a manner to better fit the socio-economic conditions of the country. **The Committee, also noting the conclusions of the Conference Committee, urges the Government, in consultation with the social partners, to review and amend the mentioned provisions to ensure that restrictions on the exercise of the right to freedom of association are in conformity with the Convention.**

Bangladesh Labour Rules. In its previous comment, the Committee also raised a number of issues concerning the conformity of the Bangladesh Labour Rules with the Convention. The Committee noted with concern that Rule 188 provided a role for the employer in the formation of the election committees to conduct the election of worker representatives to participation committees in the absence of a union. The Committee also noted that Rule 202 restricted, in a very general manner, the actions that can be taken by trade unions and participation committees, and that there was no rule providing appropriate procedures and remedies for unfair labour practice complaints. Observing the Government's commitments undertaken within the framework of the implementation of the European Union, United States and Bangladesh Sustainability Compact, the Committee requested the Government to indicate steps taken to ensure that workers' organizations were not restricted in the exercise of their internal affairs and that unfair labour practices were effectively prevented. The Committee also requested the Government to clarify the impact of Rule 169(4) (eligibility for membership to the union executive committee), which refers to the notion of permanent workers, on the right of workers' organizations to elect their officers freely. The Committee notes the Government's indication that its commitments undertaken within the Sustainability Compact are regularly monitored and that any intervention in the exercise of internal affairs or unfair labour practices is notified immediately. The Committee also notes, as indicated by the ITUC, that Rule 190 prohibits casual workers, apprentices, seasonal and subcontracted workers from voting for the worker representatives to participation committees, and Rule 350 gives the Director of Labour broad powers to enter union offices to inspect the premises, books and records and to question any person about the fulfilment of the union's objectives. In this regard, the Committee recalls that the rights under the Convention are granted to all workers without distinction or discrimination of any kind, including to apprentices, temporary and subcontracted workers; and that the autonomy, financial independence, protection of the assets and property of organizations are essential elements of the right to organize administration in full freedom (supervision is compatible with the Convention only when it is limited to the obligation of submitting annual financial reports, verification based on serious grounds to believe that the actions of an organization are contrary to its rules or the law and verification called for by a significant number of workers; it would be incompatible with the Convention if the law gave authorities powers to control which go beyond these principles, or which over-regulate matters that should be left to the trade unions themselves and their bylaws – see General Survey of 2012 on the fundamental Conventions, paragraphs 109–110). **In the absence of concrete information from the Government on the issues raised, the Committee requests the Government to undertake any necessary measures to ensure that, under the Bangladesh Labour Rules, workers' organizations are neither restricted nor subject to interference in the exercise of their activities and internal affairs, that unfair labour practices are effectively prevented and that all workers, without distinction whatsoever, may participate in the election of representatives.**

Article 5. The right to form federations. The Committee had previously noted the Government's indication that section 200(1) of the BLA, which sets the requirement of the minimum number of trade unions to form a federation to five, was a result of tripartite consensus and requested the Government to provide information on the right of trade unions to form federations, including on the number of federations formed since the amendment of the BLA and as to whether any complaints have been made in relation to the impact that this provision has had on the right of workers' organizations to form the federation of their own choosing. The Committee notes the Government's indication that since the amendment of the BLA in 2013 until August 2016, 21 new trade union federations have been registered.

Right to organize in EPZs. In its previous comments, the Committee urged the Government once again to resubmit the law governing the EPZs for full consultations with the workers' and employers' organizations in the country with a view to enacting new legislation for the EPZs in the near future, which would be fully in conformity with the Convention. The Committee notes the Government's indication that: (i) up until June 2016, out of 409 eligible enterprises in the EPZs, referendums were held in 304 enterprises, and workers in 225 enterprises opted to form a workers' welfare association (WWA); (ii) WWAs are actively performing as collective bargaining agents and from January 2013 to December 2015 submitted 260 charters of demands, which were all settled amicably and concluded by the signing of agreements; (iii) after a wide range of consultations with the elected worker representatives in the EPZs, investors and other relevant stakeholders, adoption of a comprehensive Bangladesh EPZ Labour Act is at the final stage – the draft Act was approved by the Cabinet and is in the process of adoption by Parliament; and (iv) the opinions put forward by the social partners were addressed within the limits of the socio-economic conditions in the country in conformity with international labour standards. While recognizing that the draft EPZ Labour Act represents an effort to provide the zones with protection similar to that provided outside the zones and in many areas reproduces the provisions of the BLA, the Committee observes that the sections concerning freedom of association and unfair labour practices mainly transpose into the draft the EPZ Workers' Association and Industrial Relations Act (EWWAIRA) of 2010, which has been addressed by this Committee for a number of years due to its non-conformity with the Convention and that, according to the ITUC, workers' representatives were not consulted in the process. Further observing that the scheme of industrial relations in the EPZs is more restrictive than the one outside the zones under the BLA, the Committee notes that the following provisions of the draft EPZ Labour Act are not in conformity with the Convention: the imposition of a trade union monopoly at enterprise and industrial unit levels (sections 94(2) and 106); excessive minimum membership and referendum requirements to create a WWA – 30 per cent of workers have to demand formation of a WWA, 50 per cent of eligible workers have to cast a vote in the referendum and more than 50 per cent of the votes cast must be in favour of formation of a WWA (sections 95(1), 96(2)–(3)); prohibition to establish a WWA during one year after a failed referendum (section 98); interference of the Zone Authority in internal union affairs: formation of a committee to draft the constitution (section 99(2)); approval of funds from an outside source (section 100(2)); approval of WWAs constitutions (section 101); organization and conduct

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of elections to the Executive Council of WWAs (sections 97(1) and 109(1)); approval of the Executive Council (section 110), and determination of the legitimacy of a WWA (section 119(c)); restriction of WWA activities to zones thus banning any engagement with actors outside the zones, including for training or communication (section 108(2)); legislative determination of the tenure of the Executive Council (section 111); elimination of the possibility for WWAs to join together in a federation (section 108(3) and the deletion of previous draft section 113); possibility to deregister a WWA at the request of 30 per cent of eligible workers even if they are not members of the association (section 115(1)); prohibition to establish WWAs during one year after the deregistration of a previous WWA (section 115(5)); cancellation of a WWA on grounds which do not appear to justify the severity of the sanction (section 116(1)(c) and (e)–(h)); prohibition to function without registration (section 118); prohibition of strike or lock-out for four years in a newly established industrial unit and imposition of obligatory arbitration (section 135(9)); excessive penalties, including imprisonment, for illegal strikes (sections 160(1) and 161); severe restrictions on the exercise of the right to strike – possibility to prohibit strike or lock-out after 15 days or at any time if the continuance of the strike or lock-out causes serious harm to productivity in the Zone or is prejudicial to public interest or national economy (section 135(3)(4)); prohibition of activities not specified in the Constitution and prohibition of any connection with any political party or any non-governmental organization (section 177(1)–(2)); the power of the Zone Authority to exempt any employer from the provisions of the Act making the rule of law a discretionary right (section 182); excessive requirements to form an association of employers (section 121); prohibition of an employer association to maintain any relation with another association in another zone or beyond the zone (section 121(2)); and excessive powers of interference in employers' associations' affairs (section 121(3)). The Committee also notes that section 199 provides the possibility for the Zone Authority to establish regulations, which may further restrain the right of workers and their organizations to carry out legitimate trade union activities without interference, and that Chapter XV on administration and labour inspection, including the maintenance of counsellor-cum-inspector under the supervision of the Zone Authority, run counter to the notion of independent government authority to apply the laws fairly. In light of these considerations, the Committee is of the view that the mentioned provisions of the draft EPZ Labour Act would need to be significantly amended or replaced in order to be brought into conformity with the Convention. **Recalling that both the Conference Committee and the high-level tripartite mission requested the Government to ensure that any new legislation for the EPZs allows for full freedom of association, including the right to form free and independent trade unions and to associate with the organizations of their own choosing, and emphasizing the desirability of a harmonization of the labour law throughout the country which would ensure that the rights, inspection, judicial review and enforcement are equal for all workers and employers, the Committee requests the Government to address all the issues noted, encouraging it to consider replacing Chapters IX, X and XV of the draft Act by Chapter XIII of the BLA (as revised in line with the Committee's comments), thereby providing equal rights of freedom of association to all workers and bringing the EPZs within the purview of the labour inspectorate (Chapter XX of the BLA). The Committee requests the Government to provide information on any measures taken to bring the draft EPZ Labour Act into conformity with the Convention.**

In its previous comment, the Committee requested the Government to indicate which labour laws were applicable to Special Economic Zones (SEZs) and ensured the rights under the Convention. Noting the Government's indication that pending the enactment of a new law, the EWWAIRA is applicable to these zones, the Committee expresses **concern** at the fact that the EWWAIRA, which has been repeatedly addressed by the Committee due to its non-conformity with the Convention, is rendered applicable to other designated economic zones, rather than seeking to guarantee full freedom of association rights to all workers under a common legal regime. **In view of its comments concerning the draft EPZ Labour Act and of concerns raised as to the limitation of freedom of association rights through the proliferation of special legal regimes, the Committee invites the Government to reconsider the adoption of a separate labour law for the SEZs and to opt instead for the application of the BLA, as revised in line with the Committee's comments. The Committee trusts that, irrespective of the legislation applicable, all freedom of association rights under the Convention will be fully guaranteed to workers in SEZs.**

In view of the above, the Committee once again recalls the critical importance which it gives to freedom of association as a fundamental human and enabling right and expresses its firm hope that significant progress will be made in the very near future to bring the legislation and practice into conformity with the Convention.

[The Government is asked to reply in full to the present comments in 2017.]

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C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

Observation 2016

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Articles 1 and 3 of the Convention. Adequate protection of workers against acts of anti-union discrimination. The Committee notes with **concern** the observations of the International Trade Union Confederation (ITUC) submitted under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), alleging numerous instances of anti-union discrimination, slowness of the labour inspectorate in responding to such allegations and the lack of adequate sanctions in practice, as well as a serious lack of commitment to the rule of law in this respect. The Committee also notes the conclusions of the high-level tripartite mission that visited Bangladesh in April 2016, which noted with concern the numerous allegations of anti-union discrimination and harassment of workers, including dismissals, blacklisting, transfers, arrests, detention, threats and false criminal charges combined with insufficient labour inspection, lack of remedy and redress and delays in judicial proceedings. The Committee further recalls that the Conference Committee, when examining the individual case of Bangladesh under Convention No. 87 in June 2016, urged the Government to investigate as a matter of urgency all acts of anti-union discrimination, ensure the reinstatement of those illegally dismissed, and impose fines or criminal sanctions (particularly in cases of violence against trade unionists) according to the law. In light of these considerations, the Committee trusts that all complaints of anti-union discrimination will be dealt with expeditiously and effectively. **The Committee requests the Government to continue to provide training and capacity building to labour officers to bolster their capacity to inquire into allegations of anti-union discrimination and ensure adequate protection in this respect. The Committee requests the Government to provide statistics on the number of complaints filed, their follow-up in the labour inspectorate, including time taken to resolve them, the remedies imposed, including the number of cases of reinstatement with or without back pay, the number of remedies accepted by employers versus appealed to judicial proceedings, time taken for judicial proceedings and the percentage of cases where employers' appeals succeed, and sanctions ultimately imposed following full proceedings.**

Protection of workers in export processing zones (EPZs) against acts of anti-union discrimination. The Committee had previously requested the Government to reply to the 2011 ITUC allegations of an increase in anti-union discrimination and expressed trust that the national mechanisms would be bolstered, including with an online database, so that workers could confidently report such acts. It also requested the Government to provide: the available statistics concerning complaints of anti-union discrimination, their follow-up and sanctions imposed; information on the role of counsellors-cum-inspectors; and the Bangladesh Export Processing Zones Authority (BEPZA) circular on section 62(2) of the EPZ Workers' Welfare Association and Industrial Relations Act (EWWAIRA). The Committee notes the Government's indication that: (i) to address allegations of unfair labour practices and handle labour disputes, conciliators, arbitrators, 60 counsellors-cum-inspectors, seven labour courts and one labour appellate tribunal are active in the EPZs; (ii) any aggrieved party, including individual workers and job-separated workers, have the right to file a case before the labour courts; (iii) since their establishment in 2011, a total of 161 cases were filed before the EPZ labour courts, out of which 86 were settled and there are currently no complaints of anti-union discrimination pending; and (iv) BEPZA carries out intensive training programmes on issues related to sound industrial relations, grievance handling procedures and social dialogue. **Observing the discrepancy between, on the one hand, the ITUC's allegations of numerous acts of anti-union discrimination and, on the other, the Government's indication that there are currently no complaints pending in this regard, the Committee once again requests the Government to consider setting up a publicly accessible database in order to render the treatment of anti-union discrimination complaints more transparent; to clarify the role of counsellors-cum-inspectors in addressing such complaints; and to provide the BEPZA circular on the application of section 62(2) of the EWWAIRA. The Committee further requests the Government to continue to provide statistics on the number of anti-union discrimination complaints brought to the competent authorities, their follow-up and the remedies and sanctions imposed.**

The Committee also requested the Government to provide information on the outcome of the judicial proceedings concerning the dismissed workers who were charged with illegal activities (Case No. 345/2011, Chief Judicial Magistrate Court, Dinajpur). The Committee notes the Government's statement that all the main issues of the conflict have been resolved through tripartite agreement, that there is currently no unrest or grievance of the workers and that Case No. 345/2011 is still pending. **The Committee requests the Government to provide information on the outcome of the case once the judgment has been rendered.**

Article 2. Lack of legislative protection against acts of interference. For several years, the Committee had requested the Government, in consultation with the social partners, to review the Bangladesh Labour Act (BLA) with a view to including adequate protection for workers' organizations against acts of interference by employers or employers' organizations, which would also cover acts of financial control of trade unions or trade union leaders and acts of interference in internal affairs. The Committee notes the Government's statement that the 2013 amendment of the BLA was a tripartite process resulting in consensus, that its implementation and enforcement following the adoption of the 2015 Bangladesh Labour Rules requires sufficient time and space and that while legal reform is a continuous process, it should be in line with the industrial development of a country. Observing that the high-level tripartite mission was alerted to alleged close links between factory owners, on the one hand, and government members, parliamentary members and local political figures, on the other, often resulting in interference in trade union affairs, the Committee **regrets** that no effective action has been taken to address the Committee's concerns. **Therefore, the Committee reiterates its previous request that the Government take the necessary measures to enact legislation as soon as possible to provide adequate protection for workers' organizations against acts of interference by employers or employers' organizations.**

Lack of legislative protection against acts of interference in the EPZs. The Committee observes that a similar legislative lacuna exists in both the EWWAIRA and the draft EPZ Labour Act, neither of which contains a comprehensive protection against acts of interference in trade union affairs. **The Committee, therefore, requests the Government to take the necessary measures, in consultation with the social partners, to review the relevant legislation in this respect.**

Article 4. Promotion of collective bargaining. In its previous comments, the Committee requested the Government to indicate how section 202(a) of the BLA, which enables unions and employers to contact experts for assistance in collective bargaining, was applied in practice and whether there have been any disputes in respect of such experts under section 202(a)(2) of the BLA. **Noting the Government's indication that no cases of disputes have been observed in this regard, the Committee requests the Government once again to provide information on the practical application of section 202(a)(1) of the BLA.**

Referring to sections 202 and 203 of the BLA, the Committee requested the Government to consider, with the social partners, the necessary measures to ensure that collective bargaining could effectively take place at all levels and to continue to provide statistics on the number of collective agreements concluded at the industry, sector and national levels. The Committee notes the Government's indication that there is no restriction on the settlement of disputes and other issues through bipartite negotiation or conciliation at the industry, sector and national levels, that as of August 2016, 358 elections for collective bargaining agents were held in 15 sectors (ready-made garment (RMG) sector: 311; tea sector: one; shrimp sector: 16; other sectors: 30) and that there are instances of collective bargaining in the RMG, tea and shrimp sectors. The Committee further notes the information provided by the Government to the high-level tripartite mission, indicating that while collective bargaining generally took place at the factory level, there were strong trade unions in the leather and tea sectors, some of which had negotiated branch-level collective bargaining agreements. The Committee, however, notes that the high-level tripartite mission also received information alleging the absence of a legislative basis for branch-level collective bargaining, the lack of social dialogue and only a limited number of functioning collective bargaining agreements. **Welcoming the Government's openness towards higher-level collective bargaining, the Committee requests it once again to consider, in consultation with the social partners, amending sections 202 and 203 of the BLA in order to clearly provide a legal basis for collective bargaining at the industry, sector and national levels. The Committee requests the Government to continue to provide statistics on the number of higher-level collective agreements concluded, the areas of industry to which they apply and the number of workers covered, and invites the Government to encourage collective bargaining at all levels.**

The Committee also requested the Government to provide its comments on the ITUC's concern that section 205(6)(a) of the BLA, which provides that workers' representatives in the participation committees will run activities related to workers' interests in an establishment where there is no trade union and until

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a trade union is formed, could undermine trade unions and usurp their role, and requested it to indicate any measures taken to ensure that participation committees are not used in this manner. The Committee notes that, according to the Government, the BLA does not restrict the formation of trade unions and the participation committees are not alternate but complementary to trade unions and, therefore, do not undermine trade union activities. **The Committee trusts that should any concrete allegations of participation committees undermining trade unions be brought to its attention, the Government will take the necessary measures to remedy the situation.**

Promotion of collective bargaining in the EPZs. In its previous comments, the Committee requested the Government to transmit a few representative examples of collective bargaining agreements concluded in enterprises in the EPZs. The Committee notes the Government's indication that: (i) up until June 2016, referendums had been held in 304 out of 409 eligible enterprises in the EPZs and workers in 225 enterprises had opted to form workers' welfare associations (WWAs), which have been registered and are actively performing as collective bargaining agents; and (ii) from January 2013 to December 2015, the WWAs submitted 260 charters of demands, all of which were settled amicably and concluded by the signing of agreements, thus demonstrating the workers' right to collective bargaining. **The Committee regrets, however, that the Government failed to provide copies of such agreements and, therefore, requests it once again to provide examples of collective bargaining agreements concluded in the EPZs and to continue to provide statistics in this regard.**

The Committee also requested the Government to indicate progress made with regard to the revision of the EWWAIRA and the manner in which workers in the EPZs could be brought under the coverage of the BLA. The Committee notes the Government's statement that after a wide range of consultations with the social partners and other relevant stakeholders, a comprehensive draft Bangladesh EPZ Labour Act was approved by the Cabinet and is in the process of adoption by the Parliament. The Committee observes, however, that in relation to matters of unfair labour practices and collective bargaining (Chapter X), the draft Act mainly reflects the text of the EWWAIRA. **Emphasizing the desirability of providing equal protection to workers in the EPZs and outside the zones in terms of the right to organize and bargain collectively, the Committee hopes that the Government, in consultation with the social partners, will pursue its efforts in this regard.**

Articles 4 and 6. Collective bargaining in the public sector. For a number of years, the Committee urged the Government to take the necessary legislative or other measures to end the practice of determining wage rates and other conditions of employment of public servants not engaged in the administration of the State by means of simple consultations in government-appointed tripartite wages commissions, so as to favour free and voluntary negotiations between workers' organizations and employers or their organizations. In its last comment, the Committee requested the Government to provide statistics on the number and nature of collective agreements concluded in the public sector, including the number of workers covered. The Committee notes the Government's indication that: (i) public sector employees are outside the scope of the BLA and there are no tripartite commissions in purely public enterprises, which only consist of two parties – the employees and the Government; (ii) wages and other benefits in the public sector are determined under free and open discussions and voluntary negotiations within the Wage Commission for the officers and employees employed in the Republic or the Wage and Productivity Commission for public sector enterprises. The Committee recalls that all workers, with the only possible exception of the armed forces, the police and public servants engaged in the administration of the State, should enjoy the right to free and voluntary collective bargaining. **The Committee requests the Government to provide further details on the manner in which organizations of public servants not engaged in the administration of the State can bargain collectively and copies of any agreements reached.**

[The Committee requests the Government to reply in full to the present comments in 2017.]

C144 - Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)

Observation 2016

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

Effective tripartite consultations required by the Convention. The Government indicates that it has constituted the Tripartite Consultative Council (TCC) which is composed of 60 members having equal representation from employers' organizations, workers' organizations and Government. The Committee notes with interest that at the TCC meeting held on 30 July 2013, the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185), and the Maritime Labour Convention, 2006 (MLC, 2006), were recommended for ratification. **The Committee invites the Government to provide a report containing more detailed information on the effective consultations held by the Tripartite Consultative Council on the matters relating to international labour standards covered by the Convention. It also invites the Government to provide in its next report information on the progress made towards ratification of Convention No. 185 and the MLC, 2006 (Article 5(1)(c) of the Convention). The Committee also invites the Government to re-examine some other unratified Conventions with the social partners, in particular the Minimum Age Convention, 1973 (No. 138), which is deemed a fundamental Convention; the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Employment Policy Convention, 1964 (No. 122), which are deemed governance Conventions; and the Indigenous and Tribal Peoples Convention, 1989 (No. 169), whose ratification would result in the immediate denunciation of the Indigenous and Tribal Populations Convention, 1957 (No. 107).**

Unratified Conventions on occupational safety and health. Following the tragic events resulting from the Rana Plaza building collapse in April 2013 and the Tazreen factory fire in November 2012, the Committee notes the National Tripartite Plan of Action on Fire Safety and Structural Integrity in the ready-made garment sector in Bangladesh signed on 25 July 2013 and notes the ILO programmes developed with the tripartite partners. It recalls that in the Tripartite Statement of Commitment, adopted in Dhaka on 15 January 2013, the social partners in Bangladesh expressed the need to respect and promote the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), the Occupational Safety and Health Convention, 1981 (No. 155), and other relevant standards such as the Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121). **The Committee invites the Government and the social partners to take advantage of the tripartite consultation procedures required by the Convention to achieve progress towards the application and ratification of the instruments of the ILO relevant to the framework for occupational safety and health.**

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

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

Cambodia

C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Observation 2016

Cambodia

The Committee notes the observations of the International Organisation of Employers (IOE), received on 1 September 2016, which are of a general nature. The Committee further notes the observations made by the International Trade Union Confederation (ITUC) received on 1 September 2016, which denounce that a large number of trade union leaders and activists have been charged with criminal offences for union activities since 2014, as well as that an increasing number of injunctions and requisition orders against trade unions and workers have been granted in labour disputes to restrict trade union activities and industrial actions. At least 114 injunctions and requisition orders have allegedly been granted since 2014, in particular in the garment industry and the tourism sector. The ITUC further protests against the persistent use of violence by the police against workers during protest actions. **The Committee notes with concern the seriousness of these allegations and requests the Government to provide its comments on the observations submitted by the ITUC, and in particular detailed information on the specific cases mentioned.**

The Committee takes note of the comments of the Government in reply to the previous allegations from the ITUC, Education International (EI) and the National Educators' Association for Development (NEAD) of violence against trade unionists, harassing lawsuits against trade union leaders and activists, impediments to the registration of new independent trade unions, and intimidation against teachers joining trade unions (in particular police intimidation during the national Congress of the NEAD in September 2014). The Committee observes that, while it continues to object to the allegation of blockage to the registration of new trade unions, the Government indicates that most cases presented previously have been resolved through the existing legal procedures and that the competent authorities have been working closely with all the parties concerned to ensure full compliance with the national laws and regulations and the Convention.

Follow-up to the discussion of the Committee on the Application of Standards (International Labour Conference, 105th Session, May–June 2016)

The Committee notes the discussion that took place in the Conference Committee on the Application of Standards in June 2016 concerning the application of the Convention by Cambodia. The Committee notes that, in its conclusions, the Conference Committee requested the Government to: (i) ensure that freedom of association can be exercised in a climate free of intimidation and without violence against workers, trade unions or employers, and act accordingly; (ii) ensure that the Trade Union Law is in full conformity with the provisions of the Convention and engage in social dialogue, and with the technical assistance of the ILO; (iii) ensure that teachers and civil servants are protected in law and practice consistent with the Convention; (iv) undertake full and expeditious investigations into the murders of and violence perpetrated against trade union leaders and bring the perpetrators as well as the instigators of these crimes to justice; and (v) ensure that the Special Inter-Ministerial Committee keeps the national employers' and workers' organizations informed on a regular basis of the progress of its investigations. The Committee also notes that the Conference Committee invited the Government to accept a direct contacts mission before the next International Labour Conference in order to assess progress. **The Committee welcomes the Government's acceptance of the direct contacts mission and trusts that the mission will take place in the near future.**

Trade union rights and civil liberties

Murders of trade unionists. With regard to its long-standing recommendation to carry out expeditious and independent investigations into the murders of trade union leaders Chea Vichea, Ros Sovannareth and Hy Vuthy, the Committee had previously noted the Government's indication that a special Inter ministerial Commission for Special Investigations was established in August 2015 to ensure thorough and expeditious investigations of these criminal cases. The Committee notes from the Government's report that the Inter ministerial Commission for Special Investigations held its first meeting on 9 August 2016 and adopted measures with regard to its functioning, which include the use of electronic communication for reporting on progress made by each member of the Commission and regular meetings every three months to review progress made for each case. With regard to its previous recommendation that the Special Inter-ministerial Commission keeps the national employers' and workers' organizations informed on a regular basis of the progress of its investigations, the Committee notes from the conclusions of the Committee on Freedom of Association in its examination of Case No. 2318 (380th Report, November 2016) that a tripartite working group attached to the Secretariat of the Commission has also been established in order to allow the employers' and workers' organizations to provide information in relation to the investigation and to provide their feedback on the findings of the Commission. While the Committee duly notes the measures described, it must express its **concern** with the lack of concrete results concerning the investigations requested despite the time that has elapsed since the setting up of the Inter-ministerial Commission. **Recalling the need to conclude the investigations and to bring to justice the perpetrators and the instigators of these crimes in order to end the prevailing situation of impunity in the country with regard to violence against trade unionists, the Committee urges the competent authorities to take all necessary measures to expedite the process of investigation, and firmly requests the Government to keep the social partners duly informed of developments and to report on concrete progress in this regard to the direct contacts mission.**

Incidents during a demonstration in January 2014. In its previous observation, the Committee requested the Government to provide information on any conclusions and recommendations reached by the three committees set up following the incidents that occurred during the strikes and demonstrations of 2–3 January 2014 which resulted in serious violence and assaults, death, and arrests of workers as well as alleged procedural irregularities in their trial. In its report, the Government reiterates that the strike action turned violent and that the security forces had to intervene in order to protect private and public properties, and to restore peace. The Government further indicates that the three committees have been transformed and assigned more specific roles and responsibilities: (i) the Damages Evaluation Commission concluded that the total amount of damages is not less than US\$75 million including damages on public and private properties in Phnom Penh and some other provinces; (ii) the Veng Sreng Road Violence Fact-Finding Commission concluded that the incident was a riot instigated by some politicians by using the minimum wages standards as the propaganda, and did not fall under the definition of a strike action under international labour standards since demonstrators blocked public streets at midnight, hurled burning bottles of gasoline and rocks at the authorities and destroyed private and public properties; and (iii) the Minimum Wages for Workers in Apparel and Footwear Section Study Commission was transformed into the existing Labour Advisory Committee, which is tripartite and advises on promoting working conditions including minimum wage setting. The Committee notes, however, that ITUC maintains that the committees established to investigate into the incidents were not credible, that an independent investigation into the events is still necessary and that those responsible for the acts of violence – which led to the death of 5 protesters and the wrongful arrest of 23 workers – must be held accountable. Noting the divergent views expressed by the Government and the ITUC on the handling of these incidents, the Committee must express its **deep concern** at the acts of violence which resulted in the death, injury and arrest of protesters following originally a labour dispute demonstration, and the absence of information from the Government in this regard. **The Committee, recalling that the intervention of the police should be in proportion to the threat to public order and that the competent authorities should receive adequate instructions so as to avoid the danger of excessive force in trying to control demonstrations that might undermine public order, urges the Government to provide specific information, as well as the findings of the Commissions, with regard to the circumstances leading to the death, injury and alleged wrongful arrests of protesters, and on any measures taken as a result of the conclusions reached by the three mentioned Commissions.**

Legislative issues

Law on Trade Union (LTU). In its previous observation, while noting that the Government had further revised the draft Trade Union Law and had submitted it to the Council of Ministers, the Committee expressed the hope that the draft law would be adopted in the very near future and would be in full conformity with the provisions of the Convention. The Committee notes the Government's indication that the LTU was promulgated on 17 May 2016 and that during the drafting period from 2008 to 2016, a series of bipartite, tripartite, multilateral and public consultations have been conducted, and the technical comments of the ILO have been integrated in the final draft. The Government however points out that despite all efforts the Law does not provide full satisfaction to the social partners: (i) the employers are not satisfied with the minimum threshold before a trade union can be established; and (ii) the workers are dissatisfied with the scope of the

law, which excludes civil servants. The Committee further notes the concerns raised by the ITUC on a number of provisions of the Law on Trade Union. **The Committee requests the Government to provide its comments to the issues raised by the ITUC.**

Article 2 of the Convention. Right of workers and employers, without distinction whatsoever, to establish and join organizations. Section 3 of the LTU: Scope of the law. Noting that under this section, the law covers all persons who fall within the provisions of the labour law, the Committee requests the Government to indicate how the judges of the judiciary and domestics or household servants, who are excluded from the scope of the labour law by virtue of its section 1, are fully ensured their rights under the Convention. Moreover, the Committee requests the Government to indicate whether workers in the informal economy fall under the scope of the LTU or how they are ensured their trade union rights under the Convention.

The Committee recalls that the right to establish and join occupational organizations should be guaranteed for all public servants and officials, 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 (see General Survey of 2012 on the fundamental Conventions, paragraph 64). The Committee notes the Government's indication that civil servants appointed to a permanent post in the public service are ensured their freedom of association rights through section 36 of the Common Statutes for Civil Servants, and that teachers in particular are ensured these rights through section 37 of the Law on Education. The Committee understands that these provisions refer to the rights of association under the Law on Associations and Non-Governmental Organizations. Following its review of this law, the Committee considers that some provisions contravene freedom of association rights of civil servants under the Convention, by subjecting the registration of their associations to the authorization of the Ministry of Interior which is contrary to the right to establish organizations without previous authorization under *Article 1* of the Convention. Moreover, this law lacks provisions recognizing to civil servants' associations the right to draw up constitutions and rules, the right to elect representatives, the right to organize activities and formulate programmes without interference of the public authorities, or the right to affiliate to federations or confederations, including at the international level. **Therefore, the Committee must once again urge the Government to take appropriate measures, in consultation with the social partners, to ensure that civil servants – including teachers – who are not covered by the LTU, are fully ensured their freedom of association rights under the Convention, and that the legislation is amended accordingly.**

The Committee is making other comments on the LTU in a direct request and trusts that the Government will address them, in full meaningful consultation with the social partners and taking into account their observations, in order to bring the law into line with the provisions of the Convention. In this regard the Committee recalls to the Government the possibility to continue to benefit from the technical assistance of the Office. Moreover, the Committee requests the Government to report on the implementation of the LTU.

Application of the Convention in practice

Independence of the judiciary. In its previous observation, the Committee requested the Government to indicate any progress on the drafting of a guideline on the operation of the Labour Court and the Labour Chamber, and to provide information on the progress made in their establishment and operation. In its reply, the Government indicates that, with the technical assistance and financial support of the Office, the Law on Labour Procedure of the Labour Court is still in the drafting process. The Government has benefited from experiences from other countries, such as Singapore, Japan and Australia, and expects to consult the social partners on the draft law at the end of the year to reflect the needs for a labour dispute settlement system which is quick, free and fair. **The Committee trusts that the Government will take all necessary measures to complete expeditiously the adoption of the Law on Labour Procedure of the Labour Court, in full consultation with the social partners, in order to ensure the effectiveness of the judicial system as a safeguard against impunity, and an effective means to protect workers' freedom of association rights during labour disputes.**

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

C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

Observation 2016

The Committee notes the observations submitted by the International Trade Union Confederation (ITUC), received on 1 September 2016, which denounce an overall situation where employers ignore reinstatement awards by the Arbitration Council with impunity and the absence of legal sanctions against employers' acts of anti-union discrimination and dismissals. According to the ITUC, at least 867 union leaders and workers have been dismissed from 38 companies since 2014 for joining a trade union or for taking part in labour protests. Specific cases concerning the garment industry, the airport sector and a bus company are mentioned in this regard. The ITUC further denounces the persistent use of violence by the police against workers during the protest actions in these cases. **The Committee notes with concern the seriousness of these allegations and requests the Government to provide its comments on the observations submitted by the ITUC, and in particular detailed information on the specific cases mentioned.**

The Committee takes due note of the promulgation of the Law on Trade Unions in May 2016. **The Committee notes the concerns raised by the ITUC in relation to the implementation of the Law and requests the Government to provide its comments thereon.** The Committee also draws the Government's attention to its comments on a number of provisions of the Law in relation to the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

The Committee notes the comments from the Government in reply to allegations made in September 2014 by the ITUC, Education International (EI) and the National Educators' Association for Development (NEAD) on serious acts of anti-union discrimination, particularly in the context of increased use of fixed-duration contracts, against public sector and other workers on account of their trade union membership or activities, as well as the denial of the right to collective bargaining for teachers and civil servants. The Government refers to the recent promulgation of the Law on Trade Unions in May 2016 as a key text for ensuring better protection for trade unions and their officers. Furthermore, the Government states that the Ministry of Labour and Vocational Training had directly contacted the Cambodian Labour Confederation seeking more information on the alleged dismissals of trade union leaders and that it intends to work closely with the social partners with a view to reviewing the cases and to provide information in this regard. **Noting the Government's commitment to address the cases of anti-union discrimination in a collaborative manner in the framework of the new Law on Trade Unions, the Committee requests the Government to report fully on developments towards their resolution, including on the outcome of judicial or administrative proceedings.**

Articles 1 and 3 of the Convention. Adequate protection against anti-union discrimination. In its previous observation, the Committee had urged the Government to ensure adequate protection against all acts of anti-union discrimination, dismissals and other prejudicial acts against trade union leaders and members, including sufficiently dissuasive sanctions. In its reply, the Government indicates that during the process of adoption of the Law on Trade Unions, relevant stakeholders were consulted and solutions were integrated into the Law with regard to the specific protection of trade union leaders against acts of anti-union discrimination, and that the Ministry of Labour and Vocational Training will endeavour to ensure that this protection is ensured. The Committee notes, however, the ITUC's observations according to which the penalties provided for under the Law on Trade Unions for anti-union practices by employers (Chapter 15 of the Law) are too low (a maximum of 5 million riels, equivalent to US\$1,250) and may not be sufficiently dissuasive. In this regard, the Committee recalls that the effectiveness of legal provisions prohibiting acts of anti-union discrimination depends not only on the effectiveness of the remedies envisaged, but also the sanctions provided which should be effective and sufficiently dissuasive (see the 2012 General Survey on the fundamental Conventions, paragraph 193). In the present case, the Committee is of the view that fines for unfair labour practices provided for in the Law on Trade Unions may be a deterrent for small and medium-sized enterprises, but would not appear to be so for high-productivity and large enterprise cases. **The Committee, therefore, invites the Government to assess, in consultation with the social partners, the dissuasive nature of sanctions to be introduced into the Law on Trade Unions or any other relevant law in order to protect against anti-union discrimination practices. The Committee requests the Government to provide information on any development in this regard.**

Article 4. Recognition of trade unions for purposes of collective bargaining. In its previous observation, the Committee had addressed the means of determining representativeness for the purposes of collective bargaining. The Committee duly notes that, according to sections 54 and 55 of the Law on Trade Unions the most representative organization status within the enterprise or the establishment confers an exclusive right to collective bargaining to the organization concerned. In order to acquire this status, the trade union shall meet certain criteria, including having as members at least 30 per cent of the total of workers in the enterprise or establishment where there is one trade union. Where there are several unions, the most representative organization should have received the highest support rate of at least 30 per cent of the total number of workers. In the event that none of the unions in the enterprise received 30 per cent of support, a specific election is organized towards this goal. The Committee further observes that in the event of multiple local workers' unions in an enterprise or establishment failing to meet all the criteria stipulated or to secure the most representative status, the negotiation of a collective agreement should be carried out within a bargaining council defined under section 72 of the Law. **Noting the Government's statement that by lowering the threshold to the present level of 30 per cent, the Law encourages the increase of collective agreements, the Committee invites the Government to assess the impact of the implementation of the Law on Trade Unions by providing in its next report statistics on: (i) the number of representative organizations identified based on their having secured at least 30 per cent of workers' support without an election, and the number of collective agreements concluded by these representative organizations; and (ii) the number of separate elections organized based on no union having secured 30 per cent support, and the number of collective agreements concluded by the organizations so elected. The Committee further requests the Government to specify in the requested statistics, the sectors, and the number of workers covered by collective agreements concluded and disaggregate the information on a calendar year basis.**

Articles 4, 5 and 6. Right to collective bargaining of public servants not engaged in the administration of the State. In its previous observation, the Committee encouraged the Government to take the necessary steps to ensure that the right to collective bargaining is guaranteed in law and practice to public servants not engaged in the administration of the State, including teachers. In its reply, the Government indicates that civil servants are governed by the Law on the Common Statute of Civil Servants and, therefore, the Law on Trade Unions is not applicable to them. However, personnel employed by government institutions under contractual basis – who are governed by the Labour Law – fall under the scope of the Law on Trade Union. The Committee is bound to recall that, in addition to the armed forces and the police, only public servants "engaged in the administration of the State" (for example, in some countries, public servants in government ministries and other comparable bodies, and ancillary staff) may be excluded from the scope of the Convention. All other persons employed by the Government, by public enterprises or by autonomous public institutions, should benefit from the guarantees provided for in the Convention and, therefore, enjoy collective bargaining rights by virtue of Article 6 of the Convention. **The Committee, therefore, urges the Government to take the necessary measures, in consultation with the social partners, to ensure that public servants not engaged in the administration of the State, including teachers, who are governed by the Law on the Common Statute of Civil Servants and the Law on Education with regard to their right to organize, enjoy collective bargaining rights under the Convention. The Committee requests the Government to report on any measures taken or envisaged in this regard.**

The Committee trusts that the Government will make every effort to address its comments, in full consultation with the social partners, and will report on measures taken or envisaged to bring the law and practice into line with the requirements of the Convention.

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

C100 - Equal Remuneration Convention, 1951 (No. 100)

Observation 2016

Articles 1(b) and 2 of the Convention. Work of equal value. Legislation. In its previous comments, the Committee noted that section 46 of the Labour Law of 1994 and section 11 of the Labour Contract Law 2007 refer to “equal pay for equal work”, which is narrower than the principle of the Convention because it does not encompass the concept of “work of equal value”. The Committee notes the Government’s indication in its report that the Labour Contract Law was revised in December 2012 to regulate the term “equal pay for equal work” and that since 2012 it has adopted regulations implementing this principle. The Committee also notes that the Government understands the term “work for equal value” to mean “equal pay for equal work”, as put forward in the Notice on the Description of Certain Regulations of Labour Law issued by the Ministry of Labour in 1994, which provides that “the employer shall pay the same remuneration to employees who perform the same work, offer the same amount of labour and make the same contribution”. In this respect, the Committee considers that the definition of “equal pay for equal work” in the Labour Law, the Labour Contract Law as well as the 1994 Notice on the Description of Certain Regulations of Labour Law do not sufficiently encompass the principle of “work of equal value” set out in *Article 1(b)* of the Convention. The Committee emphasizes once again that the concept of “work of equal value” lies at the heart of the fundamental right of equal remuneration for men and women for work of equal value, and the promotion of equality. Due to historical attitudes and stereotypes regarding women’s aspirations, preferences and capabilities, certain jobs are held predominantly or exclusively by women (such as in caring professions) and others by men (such as in construction). Often “female jobs” are undervalued in comparison with work of equal value performed by men when determining wage rates. The concept of “work of equal value” is fundamental to tackling occupational sex segregation in the labour market, which exists in almost every country, as it permits a broad scope of comparison including, but going beyond, equal remuneration for “equal”, “the same” or “similar” work, and also encompasses work that is of an entirely different nature, which is nevertheless of equal value (see 2012 General Survey on the fundamental Conventions, paragraph 673). ***The Committee urges the Government to take specific steps to give full legislative expression to the principle of equal remuneration for men and women for work of equal value, so that it covers not only situations where men and women perform the same work but also encompasses work that is of an entirely different nature, which is nevertheless of equal value, and to provide information in this regard.***

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

China - Hong Kong Special Administrative Region

C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Observation 2016

The Committee notes the observations of the International Organisation of Employers (IOE) received on 27 November 2013 and 1 September 2016, which are of a general nature.

The Committee notes the observations from the International Trade Union Confederation (ITUC) received on 31 August 2016 concerning the application of the Convention, including the alleged arrest of Mr Yu Chi Hang, organizing secretary of the Hong Kong Confederation of Trade Unions (HKCTU), after leading a demonstration to demand improvements in workers' rights; and the alleged dismissal of all workers (coach drivers) prior to an announced strike coupled with the hiring of replacement labour. **The Committee requests the Government to provide its comments on these allegations.** It also notes the Government's comments on the 2013 ITUC and HKCTU observations.

Article 2 of the Convention. Right of workers to establish organizations of their own choosing without previous authorization. The Committee had previously noted the proposals to implement article 23 of the Basic Law which, among others, would allow for the proscription of any local organization which was subordinate to a mainland organization, the operation of which had been prohibited on the grounds of protecting the security of the State; and had considered that those proposals could impede the right of workers and employers to form and join the organization of their own choosing and to organize their administration and activities free from interference by the public authorities. The Committee notes that the Government reiterates that: (i) it has a constitutional duty to protect national security and to enact laws which are in accordance with article 23 of the Basic Law; (ii) its current priorities are to deal with the various social and livelihood issues; (iii) when the legislative exercise will be taken forward, the Government will fully consult the community in order to achieve a broad-based consensus on the legislative proposals; and (iv) any legislative proposal drawn up will be consistent with the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, as applied to the Hong Kong Special Administrative Region, and the relevant provisions of the Basic Law protecting various rights and freedoms. **Expressing the firm hope that the Government will ensure that any new legislation will take due account of the Committee's comments and be in line with the Convention, the Committee requests the Government to continue to provide information on any developments in relation to the legislative proposals implementing article 23 of the Basic Law, including on broad-based consultations held with the social partners in this regard.**

The Committee welcomes the statistics supplied by the Government according to which, as at 31 May 2016, the number of trade unions was 886, representing an increase of 19.4 per cent in the last ten years.

China - Hong Kong Special Administrative Region

C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

Observation 2016

China - Hong Kong Special Administrative Region

The Committee notes the observations from the International Trade Union Confederation (ITUC) received on 31 August 2016 referring to matters being examined by the Committee, and alleging violations of the Convention in practice, such as anti-union dismissals and violations of collective bargaining rights. The Committee also notes the observations from the Hong Kong Confederation of Trade Unions (HKCTU) received on 1 September 2016 concerning the application of the Convention. **The Committee requests the Government to provide its comments on these observations.** It notes the Government's comments on the 2013 ITUC and HKCTU observations.

Article 1 of the Convention. Adequate protection against acts of anti-union discrimination. In its previous comments, the Committee had noted the Government's reference to the drafting of an amendment that would empower the Labour Tribunal to make an order of reinstatement/re-engagement in cases of unreasonable and unlawful dismissal without the need to secure the employer's consent, and had reiterated its hope that the bill, which had been under examination since 1999, would be adopted without further delay. The Committee notes that the Government indicates that: (i) it fully recognizes the importance of protecting the workforce against acts of anti-union discrimination and is committed to safeguarding the rights of workers in this respect; (ii) the Government does not, and will not, tolerate contravention of the law by employers or persons acting on their behalf; (iii) high priority is accorded by the Government to investigating complaints on suspected anti-union discriminatory acts; and (iv) the effectiveness of the Government's effort is, to a certain extent, reflected by the low number of such complaints received each year. In this regard, the Committee observes that according to the HKCTU the low number of complaints and the even lower number of successful litigation cases against employers (not more than two since 1997) evidence the virtual deprivation of protection against anti-union discrimination in Hong Kong. The Committee notes that the Government announced that it has introduced in March 2016 the Employment (Amendment) Bill 2016 into the Legislative Council (LegCo), and that, as at the end of the period under review, the Bill was under the scrutiny of LegCo. The Committee notes however that, according to the HKCTU observations, the fine foreseen in the Bill for refusal to comply with a reinstatement order amounted to only 50,000 Hong Kong dollar (HKD) (US\$6,410) and that, following an attempt to amend the Bill to double the fine, the decision was taken to withdraw the Bill so that it can be discussed anew by the Labour Advisory Board. **The Committee expects that the Bill, which has been under examination for 17 years, will be adopted without any further delay so as to give legislative expression to the principle of adequate protection against acts of anti-union discrimination and will be effectively enforced in practice. It requests the Government to indicate any progress achieved in this respect.**

Article 4. Promotion of collective bargaining. The Committee recalls that its previous comments referred to the need to strengthen the collective bargaining framework, in particular in the light of the low levels of coverage of collective agreements, which were not binding on the employer, and the absence of an institutional framework for trade union recognition and collective bargaining. The Committee notes the Government's indications that: (i) collective bargaining, if it is to be effective, should be voluntary; collective bargaining compelled by law might not be conducive to yielding results as in voluntary negotiation; (ii) the Legislative Council has voted down motion debates on calls for compulsory collective bargaining five times in 1998, 1999, 2002, 2009 and 2013; (iii) employers and employees or their respective organizations are free to negotiate and enter into collective agreements on the terms and conditions of employment, and where its conciliation service is used, the Labour Department encourages employers and employees to draw up agreements on the terms and conditions of employment agreed upon by both sides; (iv) voluntary negotiation between employers and employees underpinned by the conciliation service has contributed to harmonious industrial relations: in 2014 and 2015, the average number of working days lost owing to strikes was only 0.04 and 0.03 respectively per 1,000 non-government salaried employees and wage earners; (v) collective agreements have been reached on issues relating to the terms and conditions of employment in certain industries or trades including printing, construction, public bus, air transport, food and beverage processing, pig-slaughtering and elevator maintenance; (vi) measures appropriate to local conditions have been taken to promote voluntary and direct negotiations between employers and employees or their respective organization, for instance: the Labour Department produced a variety of promotional materials; organized various seminars and talks to promote effective labour management communication and a company-visit-cum-sharing session for representatives of trade associations, employers and employees' unions of various industries; at enterprise level, by encouraging employers to maintain effective communication and consult on employment matters; and at industry level, via the tripartite committees, which meet regularly and conduct discussions on issues of mutual concern (such as amendments to the Employment Ordinance), and actively provide views (for example, to the statutory Minimum Wage Commission).

Observing that the promotional measures at industry-level are limited to the tripartite committees, the Committee reiterates that the principle of tripartism, which is particularly appropriate for the regulation of questions of a larger scope (drafting of legislation, formulating labour policies), should not replace the principle enshrined in the Convention of autonomy of workers' organizations and employers (or their organizations) in collective bargaining on conditions of employment. Furthermore, noting that the Government mentions on several occasions the measures "taken to promote voluntary and direct negotiations between employers and employees or their respective organizations", the Committee recalls that where there exists a representative trade union and it is active within the enterprise or branch of activity concerned, the authorization for other workers' representatives to bargain collectively not only weakens the position of the trade union, but also undermines the right to collective bargaining. In light of the HKCTU observations that negotiated collective agreements are not implemented and that employers generally refuse to recognize unions for the purposes of collective bargaining, the Committee recalls that the principle of negotiation in good faith, which is derived from *Article 4* of the Convention, encompasses the recognition of representative organizations and the mutual respect of the commitments made and the results achieved through bargaining. **The Committee requests the Government, in consultation with the social partners and in line with the above considerations, to step up its efforts to take effective measures, including of a legislative nature, in order to encourage and promote free and voluntary collective bargaining in good faith between trade unions and employers and their organizations.**

Article 6. Collective bargaining in the public sector. The Committee had previously requested the Government to indicate the different categories and functions of the civil servants so as to identify which of them are engaged in the administration of the State. The Committee notes that the Government reiterates that: (i) all civil servants are engaged in the administration of the Government and thus excluded from the application of the Convention, as they are responsible for formulating policies and strategies, as well as performing law enforcement and regulatory functions, and that every civil servant, irrespective of his or her grade or rank contributes to the administration of the State; and (ii) it has established an elaborate three-tier staff consultation mechanism through which staff representatives are extensively consulted on the terms and conditions of employment. The Committee also notes the Government's indication that: (i) in the process for determining matters for consultation, staff representatives may submit demands and put forward counter-proposals in response to Government offers; and (ii) various independent bodies, such as the Standing Commission on Civil Service Salaries and Conditions of Service, provide impartial advice to Government after having taken into account the views expressed by staff and management.

The Committee recalls that a distinction must be drawn between, on the one hand, public servants who by their functions are directly employed in the administration of the State (for example, in some countries, public servants in government ministries and other comparable bodies, and ancillary staff), who may be excluded from the scope of the Convention and, on the other hand, all other persons employed by the government, by public enterprises or by autonomous public institutions, who should benefit from the guarantees provided for in the Convention (for instance, employees in public enterprises, municipal employees and those in decentralized entities, and public sector teachers). The Committee recalls that only public servants engaged in the administration of the State may be excluded from the scope of the Convention and that the establishment of simple consultation procedures for public servants instead of real collective bargaining procedures is not sufficient. **The Committee requests the Government to ensure that public servants not engaged in the administration of the State, including teachers and employees in public enterprises, enjoy the right to collective bargaining, and to provide information in this respect.**

China - Hong Kong Special Administrative Region

C144 - Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)

Observation 2016

The Committee notes the observations made by the Hong Kong Confederation of Trade Unions (HKCTU), received on 1 September 2016, in which the HKCTU expresses its continued concerns regarding ineffective consultation in relation to the current electoral system for representation on the Labour Advisory Board (LAB), the designated body for tripartite consultations within the meaning of the Convention. The HKCTU maintains that, despite being the second largest trade union confederation in the country, it continues to be excluded from the LAB as a result of the electoral system in place, and in contravention of the provisions of the Convention.

Articles 2(1) and 5(1) of the Convention. Effective tripartite consultations. The Government indicates in its report that the LAB's Committee on the Implementation of International Labour Standards (CIILS) was consulted on all the reports to be submitted under article 22 of the ILO Constitution and on all replies to this Committee. The Government further indicates that the report covering the activities of the LAB for 2015–16 will be available by mid-2017. **The Committee requests the Government to continue to provide up-to-date information on the nature and content of the consultations held on the matters concerning international labour standards covered by the Convention.**

Article 3(1). Election of representatives of the social partners to the Labour Advisory Board. The Government reaffirms its commitment to ensuring effective tripartite consultations on labour matters, as well as its understanding that the most representative organizations of employers and workers as defined in the Convention should be free to choose their representatives for purposes of tripartite consultations. The Government indicates that the method of electing employee representatives involves all registered employee unions with the right of freedom of association, including those affiliated to the HKCTU, and that all enjoy the same right to nominate candidates to the LAB and to vote through secret ballot. The Government therefore considers that the current electoral method strictly follows the principle of free choice by trade unions, is transparent and widely accepted in the labour sector, and is most suited to local conditions. The Government explains that representatives of employers and employees participate equally in various committees under the auspices of the LAB, and that members from different trade union groups, including the HKCTU, have been appointed to participate in some of these committees to give advice on labour matters.

In contrast, the HKCTU considers the electoral system to be unjust. It notes that the LAB has six employee representatives, five of whom were elected by registered trade unions, with a sixth appointed ad personam by the Government. Union votes are counted with equal weight regardless of size of membership according to the principle of "one union, one vote". Moreover, voters are allowed to vote for a slate of five candidates in one ballot, hence the securing of more than half of the votes would allow a slate of five candidates to win all five seats. The HKCTU maintains that this electoral system is unjust and has prevented it from being elected to the LAB, despite its status as the second largest trade union confederation, representing over 195,000 workers from 95 affiliates. In 2014, the HKCTU informed the Chief Executive of the Hong Kong Special Administrative Region Government of the system's shortcomings, challenging the composition of the LAB. Subsequently, in 2015, the HKCTU pointed out the system's drawbacks to the Commissioner of Labour and recommended replacing the electoral system with one which would take into account the membership of trade unions and allow for proportional representation. The current electoral system, however, remains in place.

The Committee recalls that the term "most representative organizations of employers and workers", as provided for in *Article 1* of the Convention, "does not mean only the largest organization of employers and the largest organization of workers". In its 2000 General Survey on tripartite consultations, paragraph 34, the Committee refers to Advisory Opinion No. 1 of the Permanent Court of International Justice, dated 31 July 1922, in which the Court established that the use of the plural of the term "organizations" in Article 389 of the Treaty of Versailles referred to both organizations of employers and workers. Based on this opinion, the General Survey clarified that the term "most representative organizations of employers and workers" does not mean only the largest such organization. If in a particular country there are two or more organizations of employers or workers which represent a significant body of opinion, even though one of them may be larger than the others, they may all be considered to be "most representative organizations" for the purpose of the Convention. The Government should endeavour to secure an agreement of all the organizations concerned in establishing the tripartite procedures (2000 General Survey on tripartite consultations, paragraph 34). The Committee is concerned that, under the process of voting for a slate of labour organization candidates described by the HKCTU, there is a risk that the second largest trade union confederation in the country may have been excluded from meaningful participation within the most representative organization of workers. **Recalling its previous observations in this regard, the Committee calls upon the Government to make every effort, together with the social partners, to ensure that tripartism and social dialogue are promoted and strengthened so as to facilitate the operation of the procedures which ensure effective tripartite consultations (Articles 2(1) and 5(1) of the Convention). It requests the Government to provide information on all measures taken or envisaged to ensure the HKCTU's meaningful participation as part of the consultative process within the most representative organization of workers. The Committee requests the Government to report on the results thereof.** [The Government is asked to reply in full to the present comments in 2017.]

China - Macau Special Administrative Region

C081 - Labour Inspection Convention, 1947 (No. 81)

Observation 2016

Article 3(1) and (2) of the Convention. Cooperation with the police in combating illegal work. In its previous comments, the Committee noted with concern that inspection staff of the Labour Affairs Bureau (DSAL) continued to be involved in joint operations with the police to combat illegal work. It notes that in its report the Government reaffirms that inspection staff only assist the police in checking the papers of employed persons or by acting as eyewitnesses, but that they are not involved in the investigation, arrest, or transfer of those cases to the public prosecutor's office, and that there is a clear distinction between the functions of the police and the DSAL. The Government states that the involvement of the inspection staff in these operations does not interfere with the performance of their duties to ensure the protection of the rights of workers. In this regard, the Committee would like to stress, once again, that the involvement of inspection staff in joint operations with the police is not conducive to the relationship of trust that is essential to ensuring the cooperation of both employers and workers. Workers in a vulnerable situation may not be willing to cooperate with the labour inspection services if they fear negative consequences for example being fined, losing their job or being expelled from the country. The Committee repeats its **concern** that inspection staff are assisting the police in the detection of non-documented workers.

The Government further indicates that the DSAL refers cases to the public prosecutor's office in the event that employers refuse to comply with their obligations towards workers concerning outstanding wages or compensation. The Committee notes that the Government provides statistics on the penalties imposed on employers and outstanding wages paid to workers, but that this information concerns all workers and is not disaggregated in relation to those workers who were detected to be working without the required work permit.

The Committee, once again, urges the Government to take the necessary measures to ensure that labour inspection staff are no longer involved in joint operations with the police. The Committee also, once again, requests that the Government provide statistical information on legal proceedings instituted, penalties imposed and the enforcement of outstanding rights of undocumented migrant workers (including outstanding wages and other benefits from their employment relationship).

C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Observation 2016

The Committee notes the observations of the International Organisation of Employers (IOE) received on 1 September 2016, which are of a general nature. The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee notes the observations on the application of the Convention submitted by the International Trade Union Confederation (ITUC) in a communication received on 1 September 2014, in particular, interference by the Government in trade union activities in the gaming sector. **The Committee requests the Government to provide its comments thereon.** The Committee also notes the Government's reply concerning migrant workers wherein it indicated that both local workers and non-Macao resident workers enjoy the same legal guarantees with regard to freedom of association.

Article 2 of the Convention. Right to organize of part-time workers and seafarers. The Committee recalls from its previous comments that sections 3.3(2) and 3.3(3) of the Labour Relations Act excluded seafarers and part-time workers from its scope of application and that it had emphasized the need to adopt legislative frameworks that would allow these categories of workers to exercise the rights enshrined in the Convention. The Committee notes the Government's indication that the Seafarers' Labour Relations Law has been developed and is still under discussions. With regard to part-time workers, the Government indicates that, in 2013, employers' and workers' representatives discussed through the Standing Committee for Coordination of Social Affairs (CPCS) the framework for proposed regulations on part-time work and further indicates its intention to submit the regulations before the Legislative Assembly at an early date. The Committee notes the Government's indication that, while the two bills are specially drafted to take account of the special nature of seafarers' and part-timers' employment relations, in principle the Labour Relations Act is applicable to those workers in terms of their basic rights to associate freely and organize and join trade unions. **The Committee trusts that any new legislative or regulatory framework concerning seafarers and part-time workers will expressly grant them the rights enshrined in the Convention. It requests the Government to provide information on concrete steps taken in this regard.**

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

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

China - Macau Special Administrative Region

C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

Observation 2016

The Committee notes the observations made by the International Trade Union Confederation (ITUC) in communications dated 1 September 2013 and 31 August 2014. **The Committee requests the Government to provide its comments thereon.**

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

Scope of application of the Convention. The Committee had previously requested the Government to provide information on the measures taken for the establishment of a legal system of labour relationship for employees working part-time and seafarers who do not fall within the scope of the Labour Relations Act (section 3.3(2) and (3)). The Committee notes that the Government indicates in its report that pending the entry into force of the special regime for part-time workers and seafarers, the provisions of the Labour Relations Act shall apply to these categories of employees. It further notes the Government's indication that it is undertaking legislative studies in relation to establishing special labour relationship regimes for part-time workers and seafarers. **The Committee trusts that any new framework will allow these categories of workers to exercise their right to organize and to bargain collectively. It requests the Government to provide information on any development in this regard.**

Article 1 of the Convention. Adequate protection against acts of anti-union discrimination. The Committee had previously noted that sections 6 and 10 of the Labour Relations Act prohibit any acts of discrimination against workers due to their union membership or the exercise of their rights, and that section 85(1)(2) provides for sanctions in case of violation of these provisions (from 20,000 to 50,000 Macau patacas (MOP) equivalent to US\$2,500–6,200). Considering that these fines might not be sufficiently dissuasive, particularly for large enterprises, the Committee had previously requested the Government to indicate the measures taken or envisaged to strengthen the existing sanctions in order to be more efficient in cases of anti-union discrimination. The Committee notes with **regret** that no information has been provided by the Government in this respect. **It therefore reiterates its request.**

Article 2. Adequate protection against acts of interference. The Committee had previously noted that sections 10 and 85 of the Labour Relations Act did not explicitly prohibit all acts of interference as described in Article 2 of the Convention, nor guaranteed adequate protection to workers' organizations against acts of interference by employers or their organizations by means of dissuasive sanctions and rapid and effective procedures. The Committee therefore requested the Government to take the necessary measures to amend the legislation so as to include express provision for rapid appeal procedures, coupled with effective and dissuasive sanctions against acts of interference in order to ensure the application in practice of this Article. The Committee **regrets** that no information has been provided by the Government in this respect. **It therefore reiterates its request.**

Articles 1, 2 and 6. Protection of public servants against acts of anti-union discrimination and interference. The Committee had previously noted that according to sections 89(1)(n) and 132 of the General Provisions on the Personnel of the Public Administration in Macao, public servants have the right to take part in trade union activities, but that this law does not contain any provision against anti-union discrimination and interference. Thus, the Committee had requested the Government to indicate which provisions afford to public servants adequate protection against acts of anti-union discrimination and interference and that in the event that there is no such protection, to take the necessary measures to amend the legislation accordingly. The Committee notes that while indicating that public servants do enjoy the right of association by virtue of the above legislative provisions, the Government provides no information as to the protection afforded to public servants against acts of anti-union discrimination and interference. **The Committee therefore reiterates its previous request.**

Article 4. Absence of provisions on collective bargaining in the private and public sectors. The Committee had requested the Government to take the necessary measures to ensure the full application of Article 4 of the Convention and to indicate any development concerning the adoption of the Act on the Fundamental Rights of the Unions or any provision regulating the right to collective bargaining in the private sector. The Committee notes the Government's indication that the draft law was once again defeated and that significant disagreement still exists on the issue of collective bargaining. The Government indicates that once the general social consensus will be reached regarding the legislation on trade union rights and collective bargaining, it will immediately begin the relevant legislative procedure, making efforts to consult all relevant parties when preparing any policy and measures concerning labour, and that it will continue to ensure the effective implementation of labour standards through active intervention and coordination between parties.

The Committee notes that the Government provides no information on the measures taken to recognize collective bargaining in the public sector.

The Committee further notes that the Government commits itself to work under the existing legislation to protect the rights of employees and to promote the implementation of the Convention.

The Committee once again requests the Government to take the necessary measures in the very near future to ensure the full application of Article 4 both in the public and private sectors and to provide information on any legislative development in this regard.

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

The Committee notes the observations from the International Organisation of Employers (IOE) received on 1 September 2016, which are of a general nature. The Committee notes the observations provided by the International Trade Union Confederation (ITUC) in a communication received on 1 September 2016 referring to matters under examination by the Committee. It also notes the observations from Education International (EI) and the Fiji Teachers' Union (FTU) received on 6 September 2016 concerning the delay in setting up labour courts, which is penalizing teachers who are waiting for their cases to be heard. **The Committee requests the Government to provide its comments thereon.**

Complaint made under article 26 of the Constitution of the ILO for non-observance of the Convention. The Committee recalls that a complaint under article 26 of the ILO Constitution alleging the non-observance of the Convention No. 87 by Fiji, had been submitted by a number of Workers' delegates at the 2013 International Labour Conference, and was declared receivable; that a Tripartite Agreement was signed on 25 March 2015 by the Government, the Fiji Trades Union Congress (FTUC) and the Fiji Commerce and Employers' Federation (FCEF); and that the Government was requested to accept a tripartite mission to review the ongoing obstacles to the submission of a Joint Implementation Report (JIR) and consider all matters pending in the article 26 complaint. The Committee takes note of the report of the ILO tripartite mission that visited Fiji from 25 to 28 January 2016 and warmly welcomes the signature by all three parties on 29 January 2016 of the JIR, as well as the adoption on 10 February 2016 of the Employment Relations (Amendment) Act 2016 introducing the changes agreed to in the JIR. The Committee is pleased to note the progress which has given rise to the Governing Body decision that the article 26 complaint would not be referred to a commission of inquiry, and that the procedure be closed. **The Committee requests the Government to continue to provide information on the developments in relation to the follow-up given to the JIR and the 2016 amendment of the Employment Relations Promulgation (ERP).**

The Committee notes the conclusions and recommendations of the Committee on Freedom of Association in Case No. 2723 drawing the legislative aspects of the case to the attention of the Committee of Experts (378th Report, paragraph 271).

Trade union rights and civil liberties. The Committee recalls that in its previous comments it had noted with satisfaction that the sedition charges brought against Mr Daniel Urai (President of the FTUC) four years ago, had been dropped, and expressed the strong hope, that the remaining charges against Mr Urai, of unlawful assembly on the grounds of failure to observe the terms of the Public Emergency Regulations (PER), would equally be dropped without delay. The Committee notes that the Government indicates that the matter was set for mention on 30 March 2015 to fix a trial date and provides no more up-to-date information. Noting the Government's statement that all past and pending charges against Mr Urai were brought in relation to the commission of separate criminal offences and not in relation to his trade union membership, the Committee observes that the conduct of trade union meetings is a key trade union activity and that it had previously considered the meeting permit requirements laid down in the now repealed PER contrary to the Convention. **The Committee once again urges the Government to take the necessary measures to ensure that the remaining charges against Mr Urai are immediately dropped.** The Committee also notes that the Government confirms that the charges against Mr Nitendra Goundar, a member of the National Union of Hospitality, Catering and Tourism Industries Employees, are still pending and that his case would be called for mention on 20 June 2016 in the Nadi Magistrates Court. **The Committee requests the Government to provide details as to the nature of the charges brought against Mr Goundar and to take measures to drop them should they be related to trade union activities.**

Legislative issues

Article 2 of the Convention. Right of workers to establish and join organizations of their own choosing. The Committee recalls that, in its previous comments, it had welcomed the repeal of Essential National Industries Decree No. 35 of 2011 (ENID) by the 2015 amendment of the ERP, while observing that section 191BW provides that the ENID is repealed except to the extent saved by new Part 19 of the ERP. Having noted the issues relating to the creation of bargaining units that had been raised during the ILO direct contacts mission in 2014, and noting the concerns expressed during the ILO tripartite mission in 2016 that the 2015 amendment of the ERP perpetuated a number of elements of the ENID, particularly as regards the continued existence of bargaining units, the Committee warmly welcomes that, in line with the JIR signed on 29 January 2016, the Employment Relations (Amendment) Act 2016 eliminates the concept of bargaining units from the ERP and allows workers to freely form or join a trade union (including an enterprise union) under the ERP.

The Committee notes that the ITUC states that, although the parties agreed in the JIR that the Employment Relations Advisory Board (ERAB) will continue its work in reviewing labour laws including the ERP matrix so as to ensure compliance with ILO Conventions ratified by Fiji, the matter has been sitting in the ERAB without much progress due to the fact that the ERAB now comprises 31 mostly new members (ten worker, ten employer and ten government representatives plus the chairperson), and that the worker and employer representatives are chosen by the Government and not wholly nominated by the most representative employers' and workers' organizations (FTUC and FCEF). The Committee observes that similar issues arise, according to the ITUC, with respect to the nominations to the workers' and employers' panels feeding into the composition of the Arbitration Court. The ITUC indicates that four ERAB government representatives have been included in the employers' panel and that many representatives on the workers' panel are unknown to the FTUC. The Committee considers that the right to participate in national tripartite bodies, and the right to nominate delegates to international bodies should remain the prerogative of representative national workers' and employers' organizations. **Referring as well to its comments under the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), the Committee requests the Government to provide information on the composition of the ERAB and the Arbitration Court, and to explain the manner in which the representative national workers' and employers' organizations have been able to determine their representatives.**

The Committee had previously urged the Government: (i) to re-register the trade unions that had been deregistered by virtue of section 6 of the ENID; and (ii) to implement the recommendation of the ERAB to reinstate the resolution of the disputes that had been discontinued by section 26 of the ENID. The Committee notes that, as agreed by the parties in the JIR, the Employment Relations (Amendment) Act 2016 provides that: (i) any trade union which was deregistered as a result of the ENID shall be entitled to apply to be registered again in accordance with the ERP and shall not be required to pay any registration fees provided, however, that the trade union must apply for registration within seven days from the date of commencement of this provision; and (ii) individual grievance cases filed by employees with the Employment Tribunal, which had been discontinued under the ENID and the 2011 ERP Amendment Decree, are hereby reinstated and shall be determined by the Arbitration Court. Concerning the first point, the Committee notes the Government's indication that the Office of the Registrar of Trade Unions did not re-register any trade unions as records showed that deregistration did not occur. **Recalling that trade unions were required to re register under the ENID, the Committee requests the Government to indicate whether the registration of trade unions that did not re-register or were not re registered under the ENID is being considered valid in essential national industries.** As regards the second point, the Committee notes that the ITUC indicates that the Arbitration Court is still not operational, although the Government has committed to operationalize it in the near future and the Court has claimed to begin preliminary hearings on 19 September 2016. **Observing that the negative effects of the ENID on the trade union movement still persist, the Committee hopes that the Government will accelerate the operationalization of the Arbitration Court so as to ensure the expeditious adjudication of the reinstated individual grievances.**

Furthermore, the Committee had previously noted that the following issues previously raised were still pending after the adoption of the Employment Relations (Amendment) Act 2015 and notes that they have not been addressed by the Employment Relations (Amendment) Act 2016: denial of right to organize to prison guards (section 3(2)); and excessively wide discretionary power of the Registrar in deciding after consultation whether or not a union meets the conditions for registration under the ERP (section 125(1)(a) as amended). **Noting the Government's indication that ERAB meets monthly to review labour laws to ensure compliance with ratified ILO Conventions, the Committee, with reference to its earlier comments, once again requests the Government to review the abovementioned provisions of the ERP, in accordance with the agreement in the JIR and in consultation with the representative national workers' and employers' organizations, with a view to their amendment, so as to bring the legislation into full conformity with**

the Convention.

Article 3. Right of organizations to elect their representatives in full freedom, organize their activities and formulate their programmes. The Committee had previously observed that, pursuant to section 185 of the ERP as amended in 2015, the list of industries considered as essential services now includes the services listed in Schedule 7 of the ERP, the essential national industries declared under the former ENID and the corresponding designated companies, as well as the whole of the public service (that is government, statutory authorities, local authorities and government commercial companies). The Committee welcomes that, according to the JIR, the tripartite partners agreed to invite the Office to provide technical assistance and expertise to assist the ERAB to consider, gauge and determine the list of essential services and industries. The Committee also notes that the Committee on Freedom of Association asked the Office to provide as soon as possible the requested technical assistance in respect of the list of essential services and industries, and requested the Government to keep it informed of any developments in this regard. **Noting the Government's indication that it has sought technical assistance and advice from the Office, the Committee requests that, as soon as the technical assistance has been provided, the Government supply information on any developments regarding the modification of the list of essential services.**

The Committee had previously noted that the following issues previously raised were still pending after the adoption of the Employment Relations (Amendment) Act 2015 and notes that they have not been addressed by the Employment Relations (Amendment) Act 2016: obligation of union officials to be employees of the relevant industry, trade or occupation for a period of not less than three months (section 127(a) as amended); prohibition of non-citizens to be trade union officers (section 127(d)); interference in union by-laws (section 184); excessive power of the Registrar to request detailed and certified accounts from the treasurer at any time (section 128(3)); provisions likely to impede industrial action (sections 175(3)(b) and 180); and compulsory arbitration (sections 169 and 170; section 181(c) as amended; new section 191BS (formerly 191(1)(c)); and penalty in form of a fine in case of staging an unlawful but peaceful strike (sections 250 and 256(a)). Furthermore, the Committee had previously noted with concern the following additional discrepancies between the provisions of the ERP, as amended in 2015, and the Convention, and observes that they have not been addressed by the Employment Relations (Amendment) Act 2016: provisions likely to impede industrial action (section 191BN); penalty of imprisonment in case of staging a (unlawful or possibly even lawful) peaceful strike in services qualified as essential (sections 191BQ(1), 256(a), 179 and 191BM); excessively wide discretionary powers of the Minister with respect to the appointment and removal of members of the Arbitration Court and appointment of mediators, calling into question the impartiality of the dispute settlement bodies (sections 191D, 191E, 191G and 191Y); compulsory arbitration in services qualified as essential (sections 191Q, 191R, 191S, 191T and 191AA). In light of the abovementioned expanded list of essential services, the Committee reiterates that these restrictions, while not providing for an outright prohibition of industrial action, cover a broad range of the economy, and that the cumulative effect of the established system of compulsory arbitration applicable to "essential services", and the accompanying harsh penalties involving imprisonment, is to effectively prevent or repress industrial action in these services. **In the absence of information provided by the Government in relation to the above provisions, and noting the Government's indication that ERAB meets monthly to review labour laws to ensure compliance with ratified ILO Conventions, the Committee, with reference to its earlier comments, once again requests the Government to take measures to review the abovementioned provisions of the ERP, in accordance with the agreement in the JIR and in consultation with the representative national workers' and employers' organizations with a view to their amendment, so as to bring the legislation into full conformity with the Convention.**

Public Order (Amendment) Decree. The Committee notes that, according to Fiji Constitutional Process (Amendment) Decree No. 80 of 2012, the suspension of the application of section 8 of the Public Order Act, as amended by Public Order (Amendment) Decree No. 1 of 2012 (POAD), which placed unjustified restrictions on freedom of assembly, is no longer valid. The Committee also notes that, according to the report of the ILO tripartite mission, the FTUC criticized the adverse effects of the POAD on legitimate union activities, including meetings, whereas the Solicitor-General considered that the POAD only applied to public meetings and did not normally concern trade union meetings. The Committee considers that permission to hold public meetings and demonstrations, which is an important trade union right, should not be arbitrarily refused. **The Committee urges the Government to take measures to bring section 8 of the POAD into line with the Convention by fully repealing or amending this provision so as to ensure that the right to assembly is freely exercised.**

Electoral Decree. The Committee previously noted that section 154 of Electoral Decree No. 11 of 27 March 2014 as amended provides that the Fiji Elections Office (FEO) shall be responsible for the conduct of elections of all registered trade unions, and firmly hoped that any supervision of elections of employers' or workers' organizations would be carried out by an independent body. The Committee notes the election guidelines supplied by the Government, and observes that, as signalled by the ITUC, section 17(8) of the Electoral Decree provides that the decision of the Electoral Commission on any complaint from the decision of the Supervisor shall be final and shall not be subject to any further appeal to or review by any court, tribunal or any other adjudicating body. **The Committee expects that the Government will not unduly interfere in trade union elections taking due account of the organizations' constitution and by-laws, and requests the Government to take measures to ensure that any decision of the FEO may be subject to judicial review, so as to give effect to the right of workers' and employers' organizations to elect their representatives in full freedom.**

Constitution of the Republic of Fiji of 2013. The Committee recalls that in its previous comments it had noted with deep concern that the rights relating to freedom of association enshrined in the new Constitution (articles 19 and 20) are subject to broad exceptions and limitations for the purpose of regulating trade unions, collective bargaining processes and "essential services and industries, in the overall interests of the Fijian economy and the citizens of Fiji", which could be invoked to undermine the underlying rights. The Committee observes that the Government, in response to its previous request to provide information on any court judgments interpreting these constitutional provisions, refers to certain judicial decisions concerning international law in general but not the Convention in particular. **In light of the ITUC's continuing concerns that these limitations could potentially be interpreted to permit very broad restrictions on the fundamental right to freedom of association, the Committee trusts that the Government will provide information on court judgments, if any, interpreting articles 19 and 20 relating to freedom of association, which the Committee hopes will be applied in full conformity with the provisions of the Convention.**

Political Parties Decree. The Committee recalls that, in its previous comments, it had noted that, under section 14 of the 2013 Political Parties Decree, persons holding an office in any workers' or employers' organization are banned from membership or office in any political party and from any political activity, including merely expressing support or opposition to a political party; and that sections 113(2) and 115(1) of the Electoral Decree prohibit any public officer from conducting campaign activities, and any person, entity or organization that receives any funding or assistance from a foreign government, intergovernmental or non-governmental organization to engage in, participate in or conduct any campaign (including organizing debates, public forums, meetings, interviews, panel discussions, or publishing any material) that is related to the election; and had requested information in this regard. The Committee notes that the Committee on Freedom of Association (CFA) requested the Government to take measures to review section 14 of the Political Parties Decree, in consultation with the representative national workers' and employers' organizations, with a view to its amendment so as to ensure respect for the principles enunciated in the CFA's conclusions. The Committee notes that the Government confines itself to indicating that it has undertaken reforms including of the voting system to create transparent rules of governance and that the provisions seek to ensure the political neutrality of public officers, which include trade union officers. Noting the Government's indication that trade union officials in Fiji have recently contested general elections and that most of them were unsuccessful and have returned to their former trade union positions, the Committee further notes that the Political Parties Decree goes very far in prohibiting any expression of political support or opposition by officers of employers' or workers' organizations. **The Committee, therefore, once again requests the Government to take measures to review the above provisions accordingly, in consultation with the representative national workers' and employers' organizations, with a view to their amendment.**

C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

Observation 2016

The Committee notes the observations provided by the International Trade Union Confederation (ITUC) in a communication received on 1 September 2015 referring to matters under examination by the Committee. It also notes the observations of the Fiji Mine Workers' Union (FMWU) received in January 2016 and the observations from Education International (EI) and the Fiji Teachers' Union (FTU) received on 6 September 2016 concerning the lack of consultation with this union in regard to wages and terms and conditions of employment of teachers. **The Committee requests the Government to provide its comments on the latter observations.** The Committee also notes the Government's comments on the 2014 observations made by the ITUC, the Fijian Teachers Association (FTA) and the FMWU.

Article 1 of the Convention. Adequate protection against acts of anti-union discrimination. With reference to the long-standing dispute in relation to the Vatukoula Mining Company (concerning the refusal to recognize a union and the dismissal of striking workers over 17 years ago), the Committee recalls that, in its previous comments, it had noted the Government's indication that the Vatukoula Social Assistance Trust Fund (VSATF) had been established to benefit around 800 recipients through money grants and assistance for relocation, small and micro-enterprise development and education for dependants. The Committee had requested the Government to supply detailed information on the measures taken to compensate the persons concerned and to continue to engage with the FMWU representatives with a view to the implementation of a mutually satisfactory settlement.

The Committee notes the Government's indication that: (i) it has initiated steps in adopting an interest-based mediation process in its effort to resolve this case through amicable settlement; (ii) the mediation process is composed of three stages: research and collating information in a chronological order, analysis of these documents to identify the interests of the parties, and face-to-face meetings with the executives of the FMWU; (iii) all three stages of the mediation process have been completed; and (iv) the Government is currently formulating suitable proposals for best settlement options. The Committee notes that the FMWU confirms in its 2016 observations the initiation of a mediation process in 2015. **The Committee expects that, after 26 years, this long-standing dispute which has caused great hardship to the dismissed workers will finally and equitably be resolved through the implementation of a mutually satisfactory settlement. It requests the Government to supply detailed information on the outcome of the mediation process, on the follow-up measures taken to compensate the persons concerned in an expeditious and effective manner, and in relation to the VSATF fund. It also invites the FMWU to provide information on any developments in this regard.**

Article 4. Promotion of collective bargaining. The Committee recalls that its previous comments concerned several provisions of the Essential National Industries Decree, 2011 (ENID) which were not in conformity with the Convention. The Committee warmly welcomes: (i) the Tripartite Agreement signed on 25 March 2015 by the Government, the Fiji Trades Union Congress (FTUC) and the Fiji Commerce and Employers' Federation (FCEF) acknowledging the review of labour laws including the Employment Relations Promulgation (ERP) to be conducted under the Employment Relations Advisory Board (ERAB) to ensure compliance with ILO core Conventions; (ii) the repeal on 14 July 2015 of the ENID through the adoption of the Employment Relations (Amendment) Act No. 10 of 2015; (iii) the signature by all three parties on 29 January 2016 of the Joint Implementation Report (JIR); and (iv) the adoption on 10 February 2016 of the Employment Relations (Amendment) Act of 2016 introducing the changes agreed to in the JIR.

Noting the concerns expressed during the 2016 ILO tripartite mission about the persisting negative impact of the ENID after its repeal, the Committee warmly welcomes that the Employment Relations (Amendment) Act, 2016, eliminates the concept of bargaining units from the ERP. It notes however with **regret** that the abrogation by the ENID of the collective agreements in force which it had considered contrary to *Article 4*, has not been addressed. The Committee notes that, at its meeting in June 2016, the Committee on Freedom of Association requested the Government to devise ways as to how to address this issue, taking into account that, according to the report of the ILO tripartite mission, there was awareness of the complainants of the difficulty of revalidating the collective agreements in extenso in view of the passage of time and readiness to envisage the possibility to reactivate the collective agreements negotiated prior to the ENID solely as base documents, with variations in terms and conditions to be renegotiated. **The Committee requests the Government to engage in consultations with the representative national workers' and employers' organizations with a view to exploring a mutually satisfactory solution and to provide information on any progress achieved in this respect.**

Compulsory arbitration. The Committee notes the following cases foreseen in the Employment Relations (Amendment) Act No. 10 of 2015 in which the Secretary shall notify the Minister and the Chair of the Arbitration Court that a trade dispute exists, which then gives rise to compulsory conciliation or arbitration: (i) in cases of refusal to negotiate upon collective bargaining notice (section 191Q(3)); and (ii) at the request of any party if no collective agreement has been concluded after 90 days and if the Secretary considers mediation unlikely to achieve results (section 191(R)), or if no results have been achieved after 14 days of consultation/mediation (section 191(S)). Moreover, section 191AA(b) and (c) provides that the Arbitration Court shall, inter alia, have cognizance of a trade dispute where a trade union or an employer party to the dispute makes a request in writing to the Secretary that the trade dispute be submitted to arbitration; or where the Minister directs that the trade dispute be submitted to arbitration. The Committee recalls that compulsory arbitration is contrary to the voluntary nature of collective bargaining and is only acceptable in relation to public servants engaged in the administration of the State (*Article 6* of the Convention), essential services in the strict sense of the term and acute national crises. **The Committee requests the Government to take measures to review the provisions of the ERP, in accordance with the agreement in the JIR and in consultation with the representative national workers' and employers' organizations, with a view to their amendment so as to bring the legislation into full conformity with the Convention.**

C144 - Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)

Observation 2016

Article 5(1) of the Convention. Effective tripartite consultations. The Government provides in its report information on the activities of the Employment Relations Advisory Board (ERAB), indicating that its membership has been expanded to allow for enhanced inclusiveness and increased representation. The Committee, referring to the observations of the International Trade Union Confederation (ITUC) on Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), notes the ITUC's indication that the worker and employer representatives are chosen by government and not wholly nominated by the most representative employers' and workers' organizations, Fiji Trade Union Congress (FTUC) and the Fiji Commerce and Employers Federation (FCEF). The ERAB is the tripartite forum through which the social partners consult on employment-related issues and advise the Minister of Employment, Productivity and Industrial Relations. The Government indicates that the ERAB has committed to meet monthly to continue the review of the country's labour laws to ensure compliance with the ILO Conventions ratified by Fiji. It adds that this forum also presents an opportunity to harness the ERAB mechanism to maintain social dialogue and as a means of implementing real change and labour reform. With respect to matters concerning international labour standards, the Committee notes that tripartite consultations were held with respect to unratified Conventions and Recommendations to which effect has not yet been given (*Article 5(1)(c)*). **The Committee requests the Government to continue to provide information on the outcome of tripartite consultations held on each of the matters concerning international labour standards covered by Article 5(1) of the Convention: consultations on replies to questionnaires concerning items on the agenda of the Conference and comments on proposed texts to be discussed at the Conference (*Article 5(1)(a)*), proposals made to the competent authorities in connection with the submission of instruments adopted by the Conference (*Article 5(1)(b)*), the re-examination of unratified Conventions and Recommendations to which effect has not yet been given (*Article 5(1)(c)*), preparation of reports on the application of ratified Conventions (*Article 5(1)(d)*), and proposals for the denunciation of ratified Conventions (*Article 5(1)(e)*). The Government is also requested to continue to provide information on the activities of the Employment Relations Advisory Board with respect to matters covered by the Convention. The Committee further requests the Government to explain the manner in which the representative national workers' and employers' organizations have been able to determine their representatives.**

The Committee recalls that, at the 104th Session of the International Labour Conference in June 2015, the application of the Convention by India was discussed by the Committee on the Application of Standards (CAS), which requested detailed information from the Government in relation to the issues discussed. In this respect, the Committee previously observed with concern that most of the questions raised by the CAS had remained unanswered. The Committee notes that the Government provides replies in the present report in relation to some of the requests made by the CAS and the Committee.

Legislative reforms. In its comment published in 2011, the Committee noted the Government's reference to the proposed re-examination of labour laws in order to ensure a "hassle-free" industrial environment and put an end to malpractices by inspection staff ("Ending Inspector Raj"). The Committee also noted the concerns raised by the International Trade Union Federation (ITUC) that the legislative bills introduced as of 2014 would have far-reaching consequences for labour inspection. While the Committee noted that the Government had not provided the explanations requested by the CAS on the impact of the proposed amendments to labour laws and regulations on the labour inspection system, it nevertheless welcomed that it had sought technical assistance from the ILO in relation to some draft labour laws being reviewed in the legislative reform. The Committee also reminded the Government of the request made by the CAS to ensure, in consultation with the social partners, that the amendments to the labour laws undertaken at the central and state levels comply with the provisions of the Convention, and encouraged the Government, with reference to its previous comments concerning the Factories Act and the Dock Workers (Safety, Health and Welfare) Act, to bring these laws into conformity with the requirements provided for in *Articles 12(1)(a) and 18 of the Convention*.

The Committee notes that, in reply to the Committee's reiterated request for information concerning the proposed legislative initiatives in relation to labour inspection, the Government indicates in its report that the proposed draft legislation is at a very preliminary stage, as consultations with interested stakeholders, including tripartite constituents and the ILO are ongoing. The Government provides a table containing information on the tripartite meetings held in 2015 in relation to the draft Small Factories Bill, 2015, the draft Labour Code on Wages and the draft Labour Code on Industrial Relations and indicates that, in view of the ongoing consultations, it would be premature for the Government to affirm its position in relation to the proposed draft legislation. **The Committee requests the Government, in line with the 2014 conclusions of the CAS, to ensure, in consultation with the social partners, that the amendments to the labour legislation comply with the principles of the Convention, and that the current legislative reform brings the national law into conformity with its requirements, where it is not yet in conformity with these principles.**

The Committee requests the Government to provide information on the laws that are currently being revised, the tripartite consultations undertaken, and the progress made with the drafting, approval and submission of laws to Parliament. It also requests the Government to provide a copy of any legislative texts that have been adopted. The Committee finally requests that the Government continue to avail itself of ILO technical assistance in the ongoing legislative reform.

Articles 12, 16 and 17 of the Convention. Labour inspection reform, including the implementation of a computerized system to randomly determine the workplaces to be inspected. In its previous comment, the Committee noted the information provided by the Government on the introduction of a computerized system, which randomly determined which labour inspector would visit which factory based on information gathered from risk assessments. It noted the concerns raised in relation to this system by the Centre of Indian Trade Unions (CITU), which observed that labour inspectors no longer had the power to decide on the workplaces to inspect, and the ITUC, which observed that employers were notified in advance of inspections and penalties could only be imposed after an inspector had issued a written order and given the employer additional time to comply. The ITUC further indicated that the decision to rename inspectors as facilitators also implied that enforcement was not part of the objectives of the labour inspection system.

The Committee notes that the Government indicates that the computerized system has substantially improved the effectiveness of inspections, and has resulted in an increased number of inspections visits and improved enforcement activities (although, according to the Government, the relevant results need time to materialize). It also notes the Government's explanations as requested by the Committee, on the criteria for the initiation of labour inspections, that there are four different types of inspections. First, "emergency inspections" are immediately carried out in the event of fatal or serious accidents, strikes and lockout, etc. Secondly, "mandatory inspections" are carried out during a period of two years in workplaces where "emergency inspections" were previously carried out and which are therefore entered as high-risk workplaces in the system. Thirdly, "inspections approved by the Central Analysis and Intelligence Unit (CAIU)" are carried out in workplaces with prima facie evidence of labour law violations (the CAIU takes a decision to enter such workplaces in the system on the basis of information gathered through labour inspection reports, the information contained in self-assessments, complaints and other sources). Fourthly, "operational inspections" are carried out in workplaces that are categorized as low risk, a certain number of which have to be carried out every year, which are randomly selected by the system.

In reply to these observations made by the CITU concerning the absence in the hands of labour inspectors of any power to initiate an inspection of their own accord to undertake inspections, the Government indicates that the system for the random selection of low-risk workplaces for inspections was introduced to avoid labour inspectors undertaking inspections on the basis of criteria other than a risk of non-compliance in workplaces (such as their own convenience or flawed, biased or arbitrary judgments). In reply to these observations of the ITUC concerning the prior notification of inspection visits, the Government explains that "emergency inspections" and "inspections approved by the CAIU" are carried out without prior notice, whereas "mandatory inspections" and "operational inspections" are carried out with or without prior notice upon decision by the regional head inspector. The Government adds that the decision to carry out inspections with or without prior notice is based on objective criteria (such as the practical need in some cases to give time to employers to prepare certain records and documents). The Committee notes that the Government has not provided a reply in relation to the other observations made by the ITUC concerning the possibility to initiate enforcement activities only after having given employers time to rectify a labour law violation. **The Committee requests the Government to ensure that the free initiative of labour inspectors to undertake labour inspections where they have reason to believe that a workplace is in violation of legal provisions or where they believe that workers require protection (Article 12(1)(a) and (b)), is still possible in the new system. The Committee also once again requests that the Government provide information on the measures taken, in law and practice, to ensure that labour inspectors have the discretion under Article 17(2) to initiate prompt legal proceedings without previous warning, where required. Noting the Government's indication that the number of inspections has increased and the enforcement activities have been enhanced, the Committee also requests the Government to provide relevant statistics to corroborate these statements.**

Articles 10, 16, 20 and 21. Availability of statistical information on the activities of the labour inspection services to determine their effectiveness and coverage of workplaces by labour inspection at the central and state levels. The Committee notes that, once again, no annual report on the work of the labour inspection services has been communicated to the ILO, nor has the Government provided the detailed statistical information as requested by the CAS. While the Committee welcomes the efforts made by the Government to provide information on the activities of the labour inspection services at the central and state levels aggregated in relation to ten different laws, in relation to 19 states (information for the same period of time was previously communicated by the Government in relation to 11 states), this information nevertheless does not allow the Committee to make an informed assessment on the application of *Articles 10 and 16* in practice. The Committee notes that even basic statistical information in relation to the number of labour inspectors has not been provided, and recalls the previous observations made by the ITUC that, in many cases, the labour inspection services continued to be extremely understaffed. In this context, the Committee welcomes the Government's indication that it is willing to seek technical advice from the ILO with a view to the establishment of registers of workplaces liable to inspection and the preparation of the annual labour inspection report. **The Committee encourages the Government to take the necessary steps to ensure that the central authority publishes and submits to the ILO an annual report on labour inspection activities containing all the information required by Article 21 in relation to the central and state levels. Noting the Government's intention to seek technical assistance for the establishment of registers of workplaces at the central and state levels and the annual labour inspection reports, the Committee encourages this endeavour, hopes that such assistance will be provided and requests the Government to provide information on any progress made in this regard.**

The Committee requests the Government in any event to make an effort to provide statistical information that is as detailed as possible on the activities of the labour inspection services, including as a minimum, information on the number of labour inspectors in the different states, and the number of inspections undertaken at central and local levels.

Articles 10 and 16. Coverage of workplaces by labour inspections. Self inspection scheme. In its previous comments, the Committee noted the observations made by the CITU and the Bharatiya Mazdoor Sangh (BMS) which observed that there was an absence of any mechanism for the verification of information supplied through the self-certification scheme (which requires employers employing more than 40 workers to submit self-certificates). The Committee notes that self-assessments are among the sources of information used by the CAIU to draw a conclusion on a prima facie evidence of labour law violations, and a decision to enter the relevant workplace in the system for an inspection visit to be carried out. The Committee notes that the Government has not provided the requested explanation as to the arrangements for verification of the information supplied by employers making use of self-certification schemes. **The Committee once again requests the Government to provide information on how the information submitted through self-certificates is verified by the labour inspectorate. Noting that the Government has not provided the requested information on private inspection services, the Committee also once again requests the Government, in line with the 2015 conclusions of the CAS, to provide information on the OSH inspections undertaken by certified private agencies, including the number of inspections, the number of violations reported by such agencies, and compliance and enforcement measures taken.**

Articles 2, 4 and 23. Labour inspection in special economic zones (SEZs) and the information technology (IT) and IT-enabled services (ITES) sectors. In its previous comments, the Committee noted the Government's indication that very few inspections had been carried out in the SEZs and in the IT and ITES sectors. It also noted the Government's indication that while enforcement powers may be delegated to the Development Commissioner (a senior government employee) under the Special Economic Zones Rules, 2006, this does not weaken the enforcement of the labour law in any manner and has only been done in certain cases. On the other hand, it noted the observations made by the ITUC that trade unions in SEZs were largely absent in view of anti-union discrimination practices and that working conditions were poor, and that enforcement powers had been delegated to the Development Commissioners in several states (their central function of which is to attract investment).

The Committee notes that the Government has still not provided the detailed information on labour inspections in SEZs as requested by the CAS and the Committee, but that it has provided information in relation to the application of ten laws in four SEZs (previously this information was provided in relation to three SEZs). The Committee notes that in the absence of any comprehensive statistics, an assessment of the effective application of the labour law legislation in the SEZs and the IT and ITES sectors is not possible. **The Committee therefore once again requests the Government to provide detailed statistical information on labour inspections in all SEZs (including on the number of SEZs and the number of enterprises and workers therein, the number of inspections carried out, offences reported and penalties imposed, and industrial accidents and cases of occupational disease reported).**

The Committee also once again requests the Government to specify the number of SEZs in which enforcement powers have been delegated to Development Commissioners. In accordance with the request made by the CAS, the Committee once again requests the Government to review, with social partners, the extent to which delegation of inspection powers from the Labour Commissioner to the Development Commissioner in SEZs has affected the quantity and quality of labour inspections, and communicate the outcome of this review. The Committee also requests the Government to provide information on the number of workplaces in the IT and ITES sectors, and the inspections carried out in these sectors.

Articles 12(1)(a) and (b), and 18. Free access of labour inspectors to workplaces. The Committee notes that the Government has once again not provided the detailed information requested by the CAS on compliance with Article 12 of the Convention with regard to access to workplaces in practice, to records, to witnesses and other evidence, as well as the means available to compel access to such. Moreover, it notes that the Government has not provided the requested statistics on the denial of such access, steps taken to compel such access, and the results of such efforts. **The Committee once again requests the Government to provide this information.**

C090 - Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90)

Observation 2016

Articles 2(1) and 3(1) of the Convention. Period during which night work is prohibited for persons under 18 years. In the comments it has been making for many years, the Committee has pointed out that section 70(1A) of the Factories Act, 1948 as amended in 1987, prohibits the night work of adolescents under 17 years of age between 7 p.m. and 6 a.m., that is for a period of 11 consecutive hours, which is inconsistent with Article 2(1) of the Convention. The Committee also observed that the period of night work of 12 consecutive hours is prohibited only to children under 15 years of age, pursuant to section 71(b) of the Factories Act and does not cover adolescents between 15 and 18 years of age. Noting with regret that, despite the request which it had repeatedly made for several years, no measures had been taken to give effect to the Convention on this point, the Committee urged the Government to take the necessary measures without delay to ensure that the Factories Act is amended in line with Articles 2(1) and 3(1) of the Convention.

The Committee notes the Government's indication that the Child Labour (Prohibition and Regulation) Amendment Act of 2016, (Child Labour Amendment Act of 2016) which amended the Child Labour Prohibition and Regulation Act of 1986 (Child Labour Act of 1986) came into force on 1 September 2016. The Committee notes with **satisfaction** that the Child Labour Amendment Act of 2016 contains provisions prohibiting night work by children under the age of 18 years. Section 3(1) of the Child Labour Act of 1986 as amended by section 5 of the Child Labour Amendment Act of 2016 prohibits the employment of a child in any occupation or process and section 2(ii) of the Child Labour Act of 1986 as amended by section 48(a)(ii) of the Child Labour Amendment Act of 2016 defines a child as a person who has not completed his fourteenth year of age. Moreover, Section 7(4) of the Child Labour Act of 1986 as amended by section 11 of the Child Labour Amendment Act of 2016 states that no adolescent shall be permitted or required to work between 7 p.m. and 8 a.m., which includes a period of 13 consecutive hours. An "adolescent" is defined under section 4(a)(i) of the Child Labour Amendment Act of 2016 as a person who has completed his fourteenth year of age but has not completed his eighteenth year. The Committee further notes that according to section 14(3) of the Child Labour and Prohibition Act of 1986 whoever fails to comply with or contravenes any provisions of this Act shall be punished with simple imprisonment or a fine of up to ten thousand rupees (approximately US\$150). **The Committee requests the Government to provide information on the application in practice of the provisions related to night work of children under the age of 18 years contained in the Child Labour (Prohibition and Regulation) Amendment Act of 2016.**

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The Committee notes the Government's report. It also takes note of the observations of the International Trade Union Confederation (ITUC) received on 31 August 2014 as well as the joint observations of the Confederation of Indonesian Prosperity Trade Union (KSBSI) and the Indonesian Migrant Workers Union (SBMI) received on 10 July 2015.

Articles 1(1), 2(1) and 25 of the Convention. 1. Trafficking in persons. Prevention and law enforcement. In its previous comments, the Committee urged the Government to strengthen its efforts to prevent, suppress and combat trafficking in persons and to provide information on the measures taken to effectively enforce Act No. 21/2007 on trafficking in persons, including the number of investigations and prosecutions carried out and penalties imposed.

The Committee notes from the Government's report the following court rulings issued for the offences under Act No. 21/2007 related to trafficking in persons: three years imprisonment and a fine for a person convicted under section 10 (helping or attempting to commit trafficking in persons); four years imprisonment and a fine for a person convicted under section 11 (planning and committing trafficking in persons); and one year imprisonment and a fine for a person convicted under section 19 (falsification of documents to facilitate trafficking in persons). The Government also refers to various initiatives undertaken to prevent trafficking in persons. These include the establishment of 305 Women and Child Service Units by the Indonesian National Police to handle cases of abuse against women and children, including trafficking; and the preparation and publication of a guideline for police on handling of cases of trafficking in persons. Additionally, the Committee notes from a report of 2014 by the International Organization for Migration (IOM) that in 2013, the IOM together with the Government provided training to a total number of 31,343 officials from the police, immigration, army, prosecutors and local government on people smuggling and migration issues.

However, the Committee notes that according to the 2013 report of the project entitled "Protecting and Empowering Victims of Trafficking in Indonesia" implemented in cooperation with the United Nations Trust Fund for Human Security, Indonesia is a major source country for women, children and men who are subjected to trafficking for sexual exploitation and forced labour, with estimates on the number of victims ranging from 100,000 to 1 million persons annually. The Committee notes with **concern** the high number of persons who are trafficked annually from Indonesia and, at the same time, the very low number of persons prosecuted and punished for the offences related to trafficking in persons. **The Committee therefore urges the Government to ensure that all persons who engage in trafficking and related offences are subject to thorough investigations and prosecutions, and requests it to continue to provide information on the number of judicial proceedings initiated, as well as on the number of convictions and penalties imposed. It also requests the Government to strengthen its efforts to prevent, suppress and combat trafficking in persons, and to continue to provide information on the measures taken in this regard.**

Protection and reintegration of victims. In its previous comments, the Committee noted the Government's indication that it has established an Anti-trafficking in Persons Task Force in 21 provinces and 72 districts/cities whose responsibilities, pursuant to section 4 of Presidential Decree No. 69/2008, include monitoring the progress of the measures taken for the protection, rehabilitation, repatriation and social integration of victims of trafficking.

The Committee notes from the Government's report that the responsibilities of the Anti-trafficking in Persons Task Force include identifying victims of trafficking and providing them with assistance such as medical and legal assistance as well as family tracing, repatriation and social reintegration. The Government also indicates that the Ministry of Social Affairs has established 20 Protection Home and Trauma Centres, 25 Child Social Protection Homes and one Women Social Protection Home which provide social rehabilitation services to victims of trafficking. The Committee notes that the Committee on the Rights of the Child, in its concluding observations of 10 July 2014, expressed concern that the Anti-trafficking in Persons Task Force was not sufficiently effective and that many districts are still not covered by the task force (CRC/C/IDN/CO/3-4, paragraph 75). **The Committee requests the Government to take the necessary measures to improve the functioning of the Anti-Trafficking in Persons Task Force in order to provide appropriate protection and assistance to victims of trafficking and to facilitate their subsequent reintegration into society. It also requests the Government to continue to provide information on the specific measures taken in this regard. The Committee further requests the Government to provide information on the number of victims of trafficking who are benefiting from the services of the Task Force as well as from the protection homes established by the Ministry of Social Affairs.**

2. Vulnerability of migrant workers to forced labour. Law enforcement and monitoring. The Committee previously noted that the Government continued to take measures to improve the protection of Indonesian migrant workers against situations amounting to forced labour, such as providing information to potential migrants on working abroad and on their rights as migrant workers; establishing task forces for the prevention of non-procedural departures of migrant workers in 14 border areas; registering prospective workers both online and at the district offices of the Department of Manpower; conducting direct monitoring of private recruitment agencies by the National Agency for the Placement and Protection of Indonesian Migrant Workers (BNP2TKI) and the Ministry of Manpower and Transmigration (MoMT) with a view to preventing exploitation; and issuing a Ministerial Decree on placement fees payable by migrant workers, to protect migrant workers from illegal financing practices.

The Committee notes that the ITUC indicates that Indonesian migrants seeking overseas employment in domestic work are required to apply through government-approved private recruitment agencies as stipulated under section 10 of Law No. 39/2004 concerning the Placement and Protection of Indonesian Overseas Workers. In its observations, the ITUC, along with the KSBSI, express extreme concern at the high incidence of exploitation and forced labour in the migration process and the Government's failure to properly regulate, monitor and punish both recruitment agencies and brokers who are working on their behalf and violating Laws Nos 39/2004 and 21/2007. The ITUC refers to the study conducted in 2013 by the Indonesian Migrant Workers Union (SBMI) and Amnesty International which found that some recruitment agencies routinely subject migrant workers to forced labour practices. The study indicates that the majority of migrant workers interviewed were deceived concerning a substantial aspect of their employment terms, and many faced high recruitment fees and subsequent debt. Moreover, their identity documents were confiscated by the recruitment agencies until the recruitment fees were paid in full. Finally, the freedom of movement of these migrant workers were restricted and they were subject to compelled unpaid work during their training period at the training centres as well as to verbal, physical and sexual abuses. The ITUC states that given that the Indonesian government is directly responsible for running the Final Pre-Departure Programme, which all migrants are required to attend after they have received all the necessary documents for the job placement, there can be no justification for the current situation in which migrant workers regularly leave the country without the legally required documentation. The ITUC alleges that the Government has not taken appropriate measures for the effective enforcement of the provisions of Law No. 39/2004 and that there is little evidence of the Indonesian authorities investigating or imposing effective sanctions against recruitment agencies for not complying with their responsibilities under the legislation. In this regard, the ITUC indicates that the only data available with regard to sanctions issued for violating Law No. 39/2004 was in 2011, whereby 28 recruitment agencies had their licenses revoked in 2011.

The Committee notes the Government's information that the new Regulation No. 3 of 2013 on the Protection of Migrant Workers Abroad sets out a protective framework for migrant workers during pre-placement, placement and post placement periods. According to the Government's report, Regulation No. 3 of 2013 provides for administrative and technical protection during the pre-placement period, which involves: compliance with the document of placement; determination of the cost of placement; determination of the terms and conditions of employment; socialization and dissemination of information; and implementation of pre-departure briefing on the working conditions and workers' rights and complaints mechanisms. The protection during placement includes consular assistance and the provision of legal aid. Moreover, the post-placement protection for migrant workers includes provision for their safe return to their area of origin; transportation costs; medical insurance claims; and the provision for health care, physical and mental rehabilitation services. The Government also states that it has imposed administrative sanctions for violations of several provisions of Law No. 39/2004 in the form of written warnings, the temporary termination in part or entire business activities of migrant workers' placement centres; and permit revocation. In 2015, the Ministry of Manpower revoked the operational permits of 18 placement agencies.

While taking due note of the measures taken by the Government, the Committee recalls the importance of taking effective action to ensure that the system of

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recruitment and employment of migrant workers does not place the workers concerned in a situation of increased vulnerability, particularly where they are subjected to abusive practices such as retention of passports, non-payment of wages, deprivation of liberty and physical and sexual abuse. Such practices might cause their employment to be transformed into situations that could amount to forced labour. ***The Committee therefore urges the Government to strengthen its efforts to ensure that migrant workers are fully protected from abusive practices and conditions that amount to the exaction of forced labour, and to provide information on the measures taken in this regard. It also urges the Government to take the necessary measures to ensure the effective application of Law No. 39/2004 and Regulation No. 3 of 2013 and to provide information on the number of violations reported, investigations, prosecutions and the penalties imposed. The Committee requests the Government to provide information on the number of licensed and permitted recruitment agencies operating in Indonesia as of January 2017, as well as the number of these agencies that have been found in violation of the above legislation.***

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

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C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Observation 2016

Indonesia

The Committee notes the observations of the International Organisation of Employers (IOE) received on 1 September 2016, which are of a general nature. The Committee further notes the observations of the IOE and the Indonesian Chamber of Commerce and Industry (APINDO) received on 30 August 2016. The Committee also notes the observations received on 31 August 2016 from the International Trade Union Confederation (ITUC). **The Committee requests the Government to provide its comments on the new allegations raised in the latest ITUC communication, as well as on the joint observations of the IOE and the APINDO.**

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 105th Session, May–June 2016)

The Committee notes the discussion that took place in the Conference Committee on the Application of Standards (hereinafter the Conference Committee), in June 2016 concerning the application of the Convention. The Committee observes that the Conference Committee, expressing its deep concern regarding numerous allegations of anti-union violence and limitations on the rights protected by the Convention by national legislation, urged the Government to: ensure that workers are able to engage freely in peaceful actions in law and practice without sanctions; with regard to violence against trade unionists by private actors or public officials, ensure the immediate establishment of independent judicial inquiries to determine responsibility and to punish those responsible. The Conference Committee further urged that the Government should investigate allegations of police inaction in the face of these violent acts and ensure that those who failed to carry out their official duty to protect workers from harm are sanctioned; institute adequate measures to prevent the repetition of such acts by means of appropriate measures such as education and training of the police, as well as police accountability; amend or repeal the relevant sections of the Penal Code to avoid the arbitrary arrest and detention of trade unionists; pass implementing legislation to extend the right to freedom of association to civil servants; ensure that if a trade union is suspended or dissolved this decision may be appealed to an independent judicial body and the order suspended until appeals are exhausted; and accept a direct contacts mission (DCM) to develop a roadmap to implement these conclusions.

The Committee notes with *interest* the Government's acceptance of a DCM, which visited the country from 2 to 7 October 2016, and the Committee will review the developments noted in the mission's conclusions and recommendations in relation to the matters raised in the Committee's previous comments and by the Conference Committee. It notes from the DCM report that the members were encouraged by the repeated desire expressed by all to rebuild mutual trust and confidence among the social partners and shares the hope that the reconvening of the National Tripartite Council will enable the parties to develop a constructive and conducive industrial relations climate to the benefit of all in Indonesia. In this regard, the Committee welcomes the Government's response to the recommendations of the DCM and in particular its commitment to optimize the National Tripartite Council to examine and resolve industrial issues.

Trade union rights and civil liberties. The Committee previously requested the Government to provide its comments on the 2011, 2012 and 2014 ITUC allegations concerning violence and arrests in relation to demonstrations and strikes, and to carry out investigations in this regard. The Committee further notes the latest communication from the ITUC which alleges that another lawful and peaceful protest was dispersed with water cannons and tear gas and for which workers continue to face criminal charges. According to the ITUC, peaceful demonstrations in other parts of the country were similarly disrupted. On the question of criminal charges, the Committee notes with *interest* the Government's indication in response to the DCM recommendations that the Panel of Judges of Central Jakarta District Court has decided that the 23 unionists who were involved in demonstration action in October 2015 are free of charges.

The Committee further notes the detailed information provided by the Government in its report, as well as the lengthy discussions with all parties concerned in relation to the 2013 demonstrations, as reflected in the DCM report. This information included the advance measures taken to prevent incidents of violence arising during demonstrations, deeply regrettable violence against workers and follow-through prosecution of some individuals. The Committee further notes from the DCM report that the workers' organizations were not satisfied with the steps taken so far and that their complaints concerning the role of the police were not followed up on. The Committee also notes from the IOE and APINDO communication that the violent incident in 2013 concerned a clash between labour groups and ordinary citizens due to the social disturbance created by the demonstrations, while clashes with the police in 2014 concerned a chaotic and anarchic situation. They further refer to unlawful activities that often accompany demonstrations, such as factory sweeping, destruction of property and blocking of public transport infrastructure. APINDO indicates that while it does support the implementation of the Convention, including the workers' peaceful freedom of expression, it considers that the actions taken in these cases were not peaceful.

Finally, the Committee notes from the Government's response to the DCM recommendations its statement that an investigation was carried out by the Security and Profession Division of the Metro Jakarta Police into the allegations of police inaction and that it was found that the Bekasi Police addressed the demonstration in accordance with standard operating procedures. **The Committee requests the Government to provide a copy of the police report.** Further observing the diverse information provided in relation to the incidents described above, the Committee notes that some of these matters were recently examined by the Committee on Freedom of Association (see Case No. 3176, 380th Report, paragraphs 590–634). **The Committee, noting from the DCM report the indications that the Indonesian National Police would follow up on any complaints that had not yet been responded to, requests the Government to ensure that all complaints are fully addressed and that such inquiries enable the facts to be fully clarified, responsibility determined, the punishment of those responsible, and appropriate compensation for any damages suffered so as to prevent the repetition of such incidents.** The Committee further underlines the recommendation in the DCM report that the 2005 Police Guidelines on the conduct of police in handling law and order in industrial disputes be used as a basis for full consultations with all stakeholders, led by the Ministry of Manpower, in order to socialize the Guidelines, ensure their implementation and consider their review. **The Committee requests the Government to provide information on the steps taken in this regard.**

As regards the Committee's previous requests to the Government to take the necessary measures to repeal or amend sections 160 and 335 of the Penal Code, respectively on "instigation" and "unpleasant acts" against employers, the Committee notes with *interest* from the DCM report that the reference to unpleasant acts in section 335 was declared unconstitutional and annulled by the Constitutional Court in 2013 and that this decision and other relevant decisions were fully taken into account in the current revision. The Committee further notes the draft provisions cited in the Government's report and the explanations given to the meaning of the word "incitement" with respect to the intention to commit a criminal act. **The Committee requests the Government to provide a copy of the revised Penal Code once it is adopted.**

Article 2 of the Convention. Right to organize of civil servants. In its previous comments, the Committee requested the Government to guarantee the freedom of association of civil servants, pursuant to section 44 of Act No. 21 of 2000 concerning trade unions, through issuing the implementing regulations called for in the Act. The Committee notes from the Government's reply to the DCM recommendations that it was still in the process of formulating the national regulation on the civil servants' right to organize, under the coordination of the Ministry of Empowerment of State Apparatus and Bureaucracy Reform. **The Committee underlines once again the importance of giving effect to the right to freedom of association of civil servants and reminds the Government that the technical assistance of the Office is available in this regard.**

Article 3. Right of workers' organizations to organize their activities. The Committee previously pointed to a number of shortcomings in relation to the exercise of the right to strike, in particular concerning: (i) the manner of determining failure of negotiations (section 4 of Ministerial Decree No. KEP.232/MEN/2003); (ii) the issuance of back-to-work orders prior to the determination of the illegality of the strike by an independent body (section 6(2) and (3) of Ministerial Decree No. KEP.232/MEN/2003); (iii) the extensive time period accorded to mediation and conciliation procedures (Industrial Relations Dispute Settlement Act No. 2 of 2004); and (iv) the criminal conviction for violation of certain provisions in relation to the right to strike (section 186 of Manpower Act No. 13 of 2003).

The Committee notes with *interest* the information provided by the Government that the reference to sections 137 and 138 (concerning strikes) in section 186 on sanctions has been declared by the Constitutional Court to be not legally binding and, therefore, the sanction provision is no longer available.

As regards the review of Ministerial Decree No. KEP.232/MEN/2003, the Committee notes the Government's indication that the back-to-work orders referred to in section 6 concern instances of illegal strike action. It also notes the circumstances for determining the failure of negotiations after a deadlock in negotiations

lasting 14 days.

The Committee requests the Government to provide information on the number of interest disputes referred to conciliation and mediation, the average time period for such procedures and to indicate the number of interest disputes referred to the industrial court for a final determination without the consent of both parties and any relevant information on the circumstances of such cases.

Article 4. Dissolution and suspension of organizations by the administrative authority. The Committee previously noted that if union officials violate section 21 (failure to inform the Government of changes in union constitution or by-laws within 30 days) or section 31 (failure to report financial assistance from overseas) of the Trade Union Act, serious sanctions can be imposed under section 42 of the same Act (revocation and loss of trade union rights or suspension), and requested the Government to indicate the measures taken to: (i) repeal the reference to sections 21 and 31 in section 42 of the Trade Union Act; and (ii) ensure that organizations affected by dissolution or suspension by the administrative authority have a right of appeal to an independent judicial body, and that such administrative decisions do not take effect until that body issues a final decision. The Committee notes from the DCM report that these provisions have not been invoked to revoke a union record number, that any such decisions are subject to appeal before the State Administrative Court and that they did not appear to be among the priority concerns of the union. The Committee further notes the Government's response to the DCM recommendations that this provision only concerns the suspension of a record number (which would appear to deregister the union), and that dissolution can only be carried by the union members in accordance with its by-laws, where the enterprise no longer exists and all obligations have been fulfilled to the workers and if it is so declared by the court. The Committee nevertheless expresses its **concern** that dissolution, or even suspension of a union, constituting as they do extreme forms of interference by the authorities in the activities of trade union organizations, could be invoked due simply to a failure to inform a change in a statute or the receipt of overseas financial assistance. **The Committee requests the Government to provide information on any measures taken to ensure that unions may not be dissolved or suspended simply due to delays in informing of constitutional changes or foreign aid, as well as on any use of this authority.**

C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

Observation 2016

Articles 1 and 2 of the Convention. Adequate protection against acts of anti-union discrimination and employer interference. The Committee previously requested the Government to take steps to amend the legislation to ensure comprehensive protection against anti-union discrimination, providing for effective procedures that may impose sufficiently dissuasive sanctions against such acts. It also requested the Government to provide practical information in this regard and a copy of Decree No. 03 of 1984 of the Minister of Manpower. The Committee notes the Government's indication that, after conducting a review of the Trade Union Act, it is considered that there is no urgency to revise the Act. **Emphasizing the importance of ensuring effective protection against acts of anti-union discrimination and interference, and sufficiently dissuasive sanctions to prevent repetition of such acts, the Committee requests the Government to provide statistics with its next report on the number of complaints of anti-union discrimination and interference filed with: (a) the police; (b) the labour inspectorate; and (c) the courts, as well as the steps taken to investigate these complaints, the remedies and sanctions imposed, as well as the average duration of proceedings under each category.**

Article 2. Adequate protection against acts of interference. The Committee's previous comments concerned the need to amend section 122 of the Manpower Act so as to discontinue the presence of the employer during a voting procedure held in order to determine which trade union in an enterprise shall have the right to represent the workers in collective bargaining. The Committee notes that the Government reiterates that the employer is only present during the vote to ensure that those voting are actually workers, and that the employer's presence does not affect the voting. The Government adds that no complaints have been submitted to it by workers in this regard. The Committee considers that this point is related to the need to ensure effective mechanisms for addressing complaints of interference in trade union internal affairs mentioned above and observes that there are other mechanisms that may be used to ensure that only eligible workers vote without creating an environment that may be considered to be intimidating. **The Committee requests the Government to provide information on the steps taken when next reviewing the Manpower Act to amend this provision so as to ensure that workers may carry out their activities without undue interference from the employer.**

Article 4. Promotion of collective bargaining. In its previous comments, the Committee had requested the Government to take measures to amend sections 5, 14 and 24 of Act No. 2 of 2004 concerning industrial relations dispute settlement, which enables either of the parties to an industrial dispute to file a legal petition to the Industrial Relations Court for final settlement of the dispute if conciliation or mediation has failed. The Committee notes that the Government reiterates that Act No. 2 of 2004 provides for industrial relations dispute settlement through arbitration, conciliation or mediation (in case of failure of conciliation or mediation, any of the parties may bring the case to the Industrial Court). The Committee observes that the ability of one of the parties, as per sections 5, 14 and 24 of Act No. 2 of 2004, to refer the dispute to the Court if settlement cannot be achieved through conciliation or mediation, constitutes compulsory arbitration. While noting the indication in the Government's report that the Act did not affect negotiations within the sense of *Article 4* of the Convention, it also observes that the Act refers to four types of industrial disputes, including interest disputes, which also appear to be covered by the abovementioned sections. **Emphasizing that compulsory arbitration at the initiative of one party in an interest dispute does not promote voluntary collective bargaining, the Committee requests the Government to review sections 5, 14 and 24 of Act No. 2 of 2004 with the social partners concerned so as to ensure that recourse to compulsory arbitration to resolve an interest dispute can only be invoked in the case that both parties agree, or in the case of public servants engaged in the administration of the State (Article 6 of the Convention), essential services in the strict sense of the term and acute national crises. It further requests the Government to provide information on the number of cases referred to compulsory arbitration by only one party to the dispute and the circumstances involved in those cases.**

Recognition of organizations for the purposes of collective bargaining. The Committee previously commented on section 119(1) and (2) of the Manpower Act, according to which, in order to negotiate a collective agreement, a union must have membership equal to more than 50 per cent of the total workforce in the enterprise or receive more than 50 per cent support in a vote of all the workers in the enterprise. The Committee also notes that, if the relevant union does not obtain 50 per cent support in such a vote, it may once again put forward its request to engage in collective bargaining after a period of six months. **The Committee requests the Government to provide information in its next report on the manner in which collective bargaining is conducted in enterprises where no union represents 50 per cent of the workers.**

Time limit for collective bargaining. The Committee previously noted the Government's indication that collective agreements must be concluded within 30 days after the beginning of negotiations, and requested the Government to ensure the application of the principles concerning the free and voluntary exercise of collective bargaining. The Committee notes from the Government's latest report that negotiation may continue beyond 30 days if both parties wish to continue.

Federations and confederations. The Committee previously noted the Government's indication that there has been no report of federations or confederations of trade unions having signed collective agreements, and requested it to ensure that such information is publicly available and to continue to provide information concerning collective agreements signed by federations or confederations. The Committee notes that the Government refers in its latest report to enterprise bargaining which is only for the parties at the enterprise level. The Committee further notes the recommendation in the report of the direct contacts mission, which visited the country within the framework of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the recommendation supported by the social partners for consideration of a pilot exercise for the promotion of collective bargaining, accompanied by capacitated mediators and access to industrial courts or arbitrators, as appropriate. The Committee further notes from the Government's response that it welcomes the recommendation of the direct contacts mission for a pilot exercise promoting collective bargaining in Bekasi and that it looks forward to discussing the modalities. **The Committee requests the Government to provide information on the progress made in this regard, including on the impact on collective bargaining at the sectoral and regional levels, and the results of this pilot exercise.**

Export processing zones (EPZs). In its previous observations, the Committee had repeatedly requested the Government, pursuant to allegations of violent intimidation and assault of union organizers, and dismissals of union activists in the EPZs, to provide information on the number of collective agreements in force in the EPZs and the percentage of workers covered, as well as on the number of complaints of anti-union discrimination and employer interference in EPZs and the relevant investigation and remediation measures. While noting the Government's reiteration that it is still in coordination with the relevant parties on this matter, the Committee **deeply regrets** that this information is not yet available as it would assist the Government in analysing the challenges that might occur in EPZs. **The Committee once again requests the Government to provide data concerning the number of collective agreements in EPZs and workers covered by them, as well as on the number of complaints of anti-union discrimination and employer interference in EPZs and the relevant investigation and remediation measures.**

C100 - Equal Remuneration Convention, 1951 (No. 100)

Observation 2016

Article 1(b) of the Convention. Equal remuneration for work of equal value. Legislation. For a number of years, the Committee has been asking the Government to improve the application of the Convention, including by reviewing Law No. 13/2003 concerning Manpower (Manpower Act), with a view to giving legal expression to the principle of the Convention. In this regard, the Committee had noted that the Manpower Act, read together with the Explanatory Notes on the Law, only provided, in general terms, for equal opportunity (section 5) and equal treatment (section 6) without discrimination based on sex, and considered that such general provisions, while important, were not sufficient to give effect to the Convention, as they do not include the concept of “work of equal value”. The Committee notes the Government’s indication that Regulation No. 78 of 2015 on Wages – which implements section 97 of the Manpower Act (regarding orders on decent income, wage policy and wages protection) – repeals Government Regulation No. 8 of 1981 providing in section 3 that in determining wages, employers shall not discriminate between men and women for work of equal value. While welcoming that section 11 of Regulation No. 78 of 2015 provides that “every worker is entitled to equal wage for work of equal value”, the Committee notes that the provision is now formulated in more general terms and no longer refers to non-discrimination between men and women. **The Committee asks the Government to provide information on the manner in which sections 5 and 6 of the Law No. 13/2003 on Manpower and section 11 of Regulation No. 78 of 2015 are being applied in practice, including any violations specifically concerning the principle of equal remuneration for men and women for work of equal value detected by, or brought to the attention of, the labour inspection services, and any action taken to remedy those violations. The Committee also asks the Government to provide information on any administrative or judicial decisions applying the principle of the Convention. The Committee encourages the Government to consider, as soon as the opportunity arises, reviewing and amending the Manpower Act to give explicit legislative expression to the principle of equal remuneration for men and women for work of equal value, and to provide information on any consultations held with the social partners to this end.**

Articles 1 and 2. Gender pay gap. In its previous observation, the Committee had requested the Government to provide information on measures taken to reduce the gender pay gap and promote the participation of women in a wider range of jobs at all levels. The Committee notes from the ILO Database of Labour Statistics (ILOSTAT) that while the gender gap in nominal monthly earnings of employees decreased overall in 2015, with improvements shown in occupations such as health associate professionals and nursing, the gender gap in nominal monthly earnings of employees remained significant in occupations where women are significantly represented, such as domestic helpers, cleaners and launderers (44 per cent); agriculture, forestry and fishery labourers (36.8 per cent); and teaching and teaching associate professionals (31.7 per cent). In this regard, the Committee notes from the ILO brief on “Indonesia: Trends in wages and productivity January 2015” that low-wage workers also tend to be disproportionately female. Regarding measures to reduce the gender pay gap, the Committee notes the Government’s indication that the National Level Equal Employment Opportunity (EEO) Task Force has issued a National Strategic Action Plan for 2013–19, which provides for public awareness raising; capacity-building measures including research and data collection on equality and non-discrimination; training of stakeholders; and the establishment of EEO Task Forces at the provincial and district or city levels. The Committee also notes that the “Gender Neutral Pay Equity Guidelines at the Workplace” were published in 2014, and that tripartite technical training on pay equity was conducted in four regions during 2014 and 2015 with the assistance of the ILO. Referring to its comments on the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), concerning occupational gender segregation in the labour market, the Committee recalls that such occupational segregation is often one of the underlying causes of inequalities in pay between men and women. It notes that the Government does not provide information on any specific measures taken or envisaged to promote women’s access to a wider range of jobs, including those that lead to higher levels of pay. **The Committee encourages the Government to continue its efforts to promote the principle of the Convention and to broaden the scope of the educational and capacity-building activities targeting relevant government agencies and workers and employers and their organizations to promote the principle of the Convention, and to provide information on measures taken in this regard. It further requests the Government to provide information on the implementation of the National Strategic Action Plan for 2013–19, including specific measures taken at both national and provincial levels in collaboration with employers’ and workers’ organizations, to formulate, promote and implement programmes aimed at further reducing the gender pay gap and improving women’s participation in a wider range of jobs, including those with higher levels of pay. The Committee also asks the Government to provide up-to-date statistics on the distribution of men and women in various economic sectors and occupations and their corresponding earning levels, in both the public and private sectors, to enable the Committee to assess the evolution of the gender pay gap over time.**

Article 2(2)(a). Discriminatory provisions with respect to benefits and allowances. For more than ten years, the Committee has been drawing the Government’s attention to the fact that section 31(3) of Law No. 1/1974 concerning Marriage, which identifies the husband as the head of the family, may have a discriminatory impact on women’s employment-related benefits and allowances due to the fact that women in the workforce are assumed to be either single or seeking a supplementary income, and are often not entitled to family allowances. The Committee notes the Government’s very general reply that section 6 of the Manpower Act prohibits employers from engaging in discrimination based on sex. **The Committee urges the Government to take specific measures to ensure that women do not face direct or indirect discrimination in law or in practice with respect to family allowances and employment-related benefits, and to provide specific information on the progress made in this regard.**

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

C105 - Abolition of Forced Labour Convention, 1957 (No. 105)

Observation 2016

Article 1(a) of the Convention. Imposition of penalties involving compulsory labour as a punishment for expressing views opposed to the established political, social or economic system. 1. *Penal Code.* In its previous comments, the Committee noted that sections 154 and 155 of the Criminal Code establish a penalty of imprisonment (involving compulsory labour) for up to seven years and four-and-a-half years, respectively, for a person who publicly gives expression to feelings of hostility, hatred or contempt against the Government (section 154) or who disseminates, openly demonstrates or puts up a writing containing such feelings, with the intent to give publicity to the contents or to enhance the publicity thereof (section 155). It also noted that the Constitutional Court, in its ruling on case No. 6/PUU-VI/2007, found sections 154 and 155 of the Criminal Code to be contrary to the Constitution of 1945. The Committee further noted that, in ruling No. 013-022/PUU-IV/2006, the Constitutional Court found that it was inappropriate for Indonesia to maintain sections 134, 136bis and 137 of the Criminal Code (respecting deliberate insults against the President or the Vice-President), since they negate the principle of equality before the law, diminish freedom of expression and opinion, freedom of information and the principle of legal certainty. The Constitutional Court stated that the new draft text of the Criminal Code must not include similar provisions. Noting the Government's statement that it was in the process of amending the Criminal Code, the Committee requested the Government to take into account the above rulings of the Constitutional Court, as well as the comments of the Committee, so as to ensure that no prison sentence entailing compulsory labour can be imposed on persons who express certain political views or opposition to the established political, social or economic system.

The Committee notes the Government's indication that amendments to the Criminal Code are still ongoing. Moreover, the Committee takes due note of the Government's statement that with the decision of the Constitutional Court, sections 154 and 155 of the Criminal Code do not have any binding legal force.

Noting that the Government has been referring to amendments to the Criminal Code since 2005, the Committee urges the Government to take the necessary measures to ensure their adoption in the near future, taking into account the rulings of the Constitutional Court. It requests the Government to provide information on any progress made in this regard and to provide a copy of the amendments once adopted.

2. *Law No. 27 of 1999 on the Revision of the Criminal Code.* In its earlier comments, the Committee noted that under section 107(a), (d) and (e) of Law No. 27 of 1999 on the Revision of the Criminal Code (in relation to crimes against state security), sentences of imprisonment may be imposed upon any person who disseminates or develops the teachings of "Communism/Marxism-Leninism" orally, in writing or through any media, or establishes an organization based on such teachings, or establishes relations with such an organization, with a view to replacing *Pancasila* as the State's foundation. It noted the Government's statement that Law No. 27 of 1999 cannot be amended due to the mandate stated in Law No. I/MPR/2003, on the status of legislative provisions. Section 2 of Law No. I/MPR/2003 states that Decree No. XXV/MPRS/1966 (which relates to the dissolution of the Communist Party of Indonesia, the prohibition of the Indonesian Communist Party and the prohibition of activities to disseminate and develop a Communist/Marxist-Leninist ideology or doctrine) shall remain valid, and shall be enforced with fairness and respect for the law. Recalling 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 as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system, the Committee urged the Government to take the necessary measures to bring section 107(a), (d) and (e) of Law No. 27 of 1999 into conformity with the Convention.

The Committee notes with **regret** that despite raising this issue since 2002, the Government has not taken any measures in this regard. The Government report reiterates that the citizens of Indonesia enjoy freedom of expression, but sanctions in the form of imprisonment shall be imposed only where such expression endangers the national stability. Moreover, compulsory work is not imposed on all prisoners. However, the Committee notes that, pursuant to sections 14 and 19 of the Criminal Code and sections 57(1) and 59(2) of the Prisons Regulations, sentences of imprisonment involve compulsory prison labour. The Committee reminds the Government that the Convention does not prohibit punishment by penalties involving compulsory labour of persons who use violence, incite to violence or engage in preparatory acts aimed at violence, but sanctions involving compulsory labour fall within the scope of the Convention where they enforce a prohibition of the expression of views or of opposition to the established political, social or economic system (General Survey on fundamental Conventions, 2012, paragraph 303). **The Committee therefore urges the Government to take the necessary measures to bring section 107(a), (d) and (e) of Law No. 27 of 1999 into conformity with the Convention, by clearly restricting the scope of these provisions to situations connected with the use of violence, or incitement to violence, or by repealing sanctions involving compulsory labour thereby ensuring that persons who peacefully express political or ideological views opposed to the established political, social or economic system cannot be sentenced to a term of imprisonment which includes the obligation to work. It encourages the Government to pursue an examination of these provisions within the ongoing revision of the Criminal Code and to provide information on any progress made in this regard.**

3. *Law No. 9/1998 on freedom of expression in public.* The Committee previously noted that Law No. 9/1998 on freedom of expression in public imposes certain restrictions on the expression of ideas in public during public gatherings, demonstrations, parades, etc, and that sections 15, 16 and 17 of the Law provide for the enforcement of those restrictions with penal sanctions "in accordance with the applicable legislation". It noted the Government's statement that, pursuant to section 17 of the Law, persons who violate section 16 (concerning the public expression of opinion in contravention of the applicable legislation) shall be punished in accordance with the criminal legislation in force. Moreover, the Committee noted that Law No. 9/1998 provides some limitations on expression, including that notification must be submitted to the police three days before certain activities (such as the expression of opinions in public or activities such as rallies or demonstrations), and that pursuant to section 15, the act of expressing public opinion can be disbanded if it fails to meet this requirement.

The Committee notes the Government's information in its report that sections 15, 16 and 17 of Law No. 9/1998 shall be enforced if protests and demonstrations are conducted against the rules and procedures indicated under sections 6 to 11 of this Law, in order to maintain public order. The Government indicates that so far, demonstrations are carried out in accordance with the procedures laid down under Law No. 9/1998. The Committee draws the Government's attention to the fact that the range of activities which must be protected under *Article 1(a)* of the Convention, from punishment involving compulsory labour, comprises the right of association and of assembly, through which citizens seek to secure the dissemination and acceptance of their views and which may also be affected by measures of political coercion (General Survey on fundamental Conventions, 2012, paragraph 302). **The Committee therefore requests the Government to provide information on the application in practice of sections 15, 16 and 17 of Law No. 9/1998, including the number and nature of offences, particularly relating to the cases where sentences of imprisonment have been imposed.**

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

C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

Observation 2016

Articles 2 and 3 of the Convention. Equality of opportunity between men and women. The Committee recalls its previous comments, in which it noted that women were under-represented in leadership and management positions and that informal employment was high in sectors where women were highly represented. The Committee notes that, according to the latest labour force survey data provided by the Government, as of February 2016, the labour force participation rate of women was 52.71 per cent while that of men was 83.46 per cent. Women continued to be mainly employed in the education services (61.21 per cent); health services and social activities (66.47 per cent); and accommodation, food and drink providing services (55.83 per cent). Further, the Committee notes from the ILO Database of Labour Statistics (ILOSTAT) that in 2015 the representation of women in senior and middle management remained low (20.8 per cent); that women were predominantly employed in domestic and other cleaning work (74 per cent) but remained under-represented in the electricity and gas sector (8.8 per cent); also more women than men were working as own-account and contributing family workers (54 per cent). Regarding employment in the public sector, the Committee notes from the data provided by the Government that, as of December 2014, women represented 48.63 per cent of public officials, and that among those employed women represented 37.24 per cent of regular staff (*Fungsional Umum/Staff*) and 59.92 per cent of government workers fulfilling specific functions (*Fungsional Tertentu*). In this regard, the Committee notes the Government's indication that the National Task Force on Equal Employment Opportunities (EEO) has issued a National Strategic Action Plan for 2013–19, and that it has organized workshops and forums; produced materials for the media; revised the EEO Guidelines; conducted research and collected data; and established EEO pilot projects in several regions at the district level. **The Committee requests the Government to continue to take specific measures, in cooperation with the social partners, to address the significant occupational segregation of men and women in the labour market, and provide information on the results achieved, including with respect to the implementation of the Strategic Action Plan for 2013–19 issued by the National Task Force on Equal Employment Opportunities. Recalling again the important role of the State in pursuing the national equality policy in the public sector, in accordance with Article 3(d) of the Convention, the Committee asks the Government to provide detailed information on measures taken to promote gender equality in the public sector, including measures to improve the representation of women among regular staff. The Committee requests the Government to continue to provide detailed statistical information on the distribution of men and women in various posts and occupations in the public service.**

Article 3(e). Access to vocational training and guidance. In its previous comments, the Committee has noted that despite the progress made in education, with participation rates of men and women almost reaching parity, gender segregation in skills training appeared to persist. It notes from the statistics provided by the Government that gender segregation in vocational training courses continues, with more men than women participating in training for construction, electronics, and mechanics. The Committee notes, however, that generally more women than men have participated in training to increase productivity such as management and entrepreneurial skills. In this regard, the Government indicates that measures such as job fairs and training programmes have been taken to increase access of women to vocational training, and that an award for “Best Company in Employing Female Workers” has been given annually. **The Committee asks the Government to take further measures to promote women's access to a wider range of vocational training courses and occupations, including those in which men traditionally participate and those leading to opportunities for advancement, and provide information on the results achieved. The Committee further requests the Government to continue to provide detailed statistical information, disaggregated by sex, on the labour force participation rates in the various sectors and occupations in the formal and informal economy, and on the number of men and women participating in vocational training specifying the type of courses attended.**

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

C095 - Protection of Wages Convention, 1949 (No. 95)

Observation 2016

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2016, by which it alleges that, according to the Labour Department statistics, 752,856 complaints have been filed from March 2015 to March 2016, including 555,755 wage disputes. The ITUC also specifies that the said figures under-represent the actual entity of the issue, since many workers do not complain out of fear of being dismissed. **The Committee requests the Government to provide its comments in this respect.**

Article 11 of the Convention. Wages as privileged debts. The Committee previously noted the observations made in 2014 by the ITUC, alleging that an amendment had been proposed to section 37 of the Labour Code – which stipulates that workers shall be paid regularly and in full on a biweekly or monthly basis – that would result in the unpaid wages no longer being categorized as preferred debt. In this connection, the Committee notes that the Government indicates in its report that the amendment referred to by the ITUC has not yet been approved and that, should it come into force, more appropriate legal instruments would be provided on a tripartite basis and under the supervision of the Supreme Labour Council in order to protect the workers' right to be compensated. The Committee recalls that *Article 11* of the Convention provides that, in the event of bankruptcy or judicial liquidation of an undertaking, the workers employed therein shall be treated as privileged creditors.

Article 12. Payment of wages at regular intervals. The wage arrears situation. In its observations made in 2014, the ITUC had alleged that more than 1 million workers were not paid on time – according to multiple media reports – and that some employers did not pay the wages for as long as five years, making it impossible for the workers to afford the bare necessities of life. In this respect, the Committee notes the Government's statement that the media may reflect the news on the basis of undocumented and inaccurate data sources and, consequently, some of the numbers and figures provided by the ITUC are considered to be unreliable. Furthermore, the Government indicates that several measures have been taken in order to tackle the wage arrears situation in the country, such as: (i) the creation of the Supreme Economic Council and national taskforce, with the aim of monitoring economic development and production promotion; and (ii) the granting of low interest banking facilities to enterprises facing production and economic difficulties, provided that unpaid wages are prioritized.

Furthermore, the Committee requested the Government to take measures to improve the system of data collection in order to better cope with the wage arrears crisis. The Committee notes the Government's reference to the troubled units identification software, which aims at identifying, monitoring and collecting information of enterprises that face economic disruption and/or non-payment of workers' legal claims and entitlements. The Committee also notes that the Government reiterates its wish to avail itself of the technical assistance of the International Labour Office for the purpose of implementing the Convention. The Committee hopes that the technical assistance required would be provided in the near future. **The Committee requests the Government to take all the necessary measures to ensure that wages are paid at regular intervals.**

C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Observation 2016

The Committee notes the observations of the International Organisation of Employers (IOE) received on 1 September 2015, which are of a general nature. In its previous comments, the Committee had been commenting upon the need to modify a number of provisions of the Trade Unions and Employer Organisations Act and the Industrial Relations Code. Welcoming that certain matters were addressed in the Draft Employment and Industrial Relations Code 2013, which had been technically reviewed by the Office, and noting that the labour law reforms were being considered by the Decent Work Agenda Steering Committee, the Committee expected that all its comments, would be fully taken into account in the process and requested the Government to provide information on any developments as regards the adoption of the draft legislation.

The Committee notes the adoption of the Employment and Industrial Relations Code (EIRC) in 2015 and notes with **satisfaction** that, in line with its previous comments: (i) section 24(2)(a) of the EIRC lowers the minimum membership requirement for the registration of an employers' organization from seven to five members; (ii) section 19(1) of the EIRC guarantees the right of trade unions and employers' organizations to elect their representatives; and (iii) sections 124, 125, 127 and 128 of the EIRC introduce time frames to encourage an expedient dispute settlement procedure.

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

C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

Observation 2016

In its previous comments, the Committee had been raising the need to modify a number of provisions of the Trade Unions and Employer Organisations Act and the Industrial Relations Code. Noting that the Draft Employment and Industrial Relations Code, 2013, had been technically reviewed by the Office, and that the labour law reforms were being considered by the Decent Work Agenda Steering Committee, the Committee expected that all its comments would be fully taken into account in the process and requested the Government to provide information on any developments as regards the adoption of the draft legislation.

The Committee notes the adoption of the Employment and Industrial Relations Code (EIRC) in 2015 and notes with **satisfaction** that, in line with its previous comments: (i) sections 18(2)–(4), 101(1)(c) and (2) in conjunction with section 152, as well as sections 107(2)(e) and (4)–(6) prohibit anti-union discrimination and provide for penal sanctions in the form of imprisonment or fines as well as procedures to ensure protection against such acts; (ii) sections 18(2)–(4) and 22 prohibit interference in the establishment or functioning of a union or employers' organization and provide for penal sanctions in the form of imprisonment or fines to ensure protection against such acts; and (iii) sections 60–73 recognize the right to collective bargaining and contain procedural requirements to support the exercise of the right to collective bargaining.

Articles 1 and 2. Adequate protection against acts of anti-union discrimination and interference. In order to enable it to assess whether adequate protection against acts of anti-union discrimination and interference is provided in practice, the Committee requests the Government to supply detailed information on the number of complaints of anti-union discrimination and employer interference brought to the various competent authorities, the average duration of the relevant proceedings and their outcome, as well as the types of remedies and sanctions imposed in such cases.

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

C019 - Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)

Observation 2016

Article 1 of the Convention. Equality of treatment of migrant workers. For a number of years, the Committee has been pointing to the fact that the national legislation does not guarantee equality of treatment between national workers and workers from countries party to the Convention, and their dependants, which leave the Republic of Korea following an employment injury. Pursuant to sections 57 and 58 of the Industrial Accident Compensation Insurance Act (IACIA), the disability pension of foreign workers, which leave the Republic of Korea, is terminated and converted into a lump sum whereas Korean national transferring their residence abroad are allowed to continue receiving their employment injury pensions. The Government indicates in its report that this measure was introduced, following an amendment to IACIA, as it would be difficult to manage changes in the eligibility of recipients living abroad. **The Committee asks the Government to explain why the payment of benefits and keeping of records is not considered problematic in the case of Korean nationals residing abroad but only with respect to foreign nationals. Recalling that under Article 4 of the Convention, ratifying States undertake to afford each other mutual assistance with a view to facilitating the execution of their respective laws and regulations on workmen's compensation, the Committee invites the Government to seek to collaborate with the social security administrations of other countries party to the Convention with a view to concluding the necessary practical arrangements for the payment of employment injury pensions to beneficiaries who transfer their residence to these countries.**

In addition, the Committee points out that, according to the IACIA, following a conversion of a pension into a lump sum, the latter is equivalent to about four and a half years of regular annuity payments, whereas the good practice and the most advanced ILO standards recommend that the lump sum should represent the actuarial equivalent of the corresponding periodical payment. Applying the same formula for all foreign workers victims of employment injury regardless of their age can indeed result in substantial losses compared to the benefits that a disabled worker would receive if they continued regular periodical benefits. **The Committee therefore asks the Government to take measures aimed at re-establishing equality of treatment between national and foreign workers in accordance with the Convention by amending sections 57 and 58 of the IACIA accordingly.**

Part V of the report form. Supervision and enforcement of the application of the Convention in practice. Referring to its previous comments, the Committee **welcomes** the Government's indication that efforts are under way to improve the industrial accidents reporting system and to introduce a criminal offence for cases in which employers would intentionally cover up industrial accidents. **The Committee hopes that, in its next report, the Government will be in a position to provide details as regards these improvements and any new legal provisions aimed at securing better compliance with the national legislation on employment injury, particularly in cases where the employer has failed to report the industrial accident or to comply with the duty to sign and seal application letters for workers' compensation.**

[The Government is asked to reply in full to the present comments in 2018.]

Malaysia

Articles 1(1), 2(1) and 25 of the Convention. 1. *Vulnerable situation of migrant workers with regard to the exaction of forced labour, including trafficking in persons.* The Committee previously noted the observations submitted by the International Trade Union Confederation (ITUC) in 2013, concerning the situation and treatment of migrant workers in the country which exposes them to abuse and forced labour practices, including: working for long hours; underpayment or late payment of wages; false documentation or contract substitution on arrival; and retention of passports by the employers (an estimated 90 per cent of employers allegedly retain the passports of migrant workers). In this regard, the Committee noted the Government's indication in its report as well as during the discussion in June 2014 of the Committee on the Application of Standards, regarding certain measures taken to protect migrant workers, such as the establishment of a Special Enforcement Team (SET) to enhance enforcement activities to combat forced labour issues; conducting nationwide awareness raising on the Minimum Wages Order of 2012 in order to prevent labour exploitation of migrants; signing of Memoranda of Understanding (MoU) with eight countries of origin (Bangladesh, China, India, Indonesia, Pakistan, Sri Lanka, Thailand and Viet Nam) in order to regulate the recruitment of migrant workers; and signing of a separate MoU on the recruitment and placement of domestic workers with the Government of Indonesia. The Committee requested the Government to continue to take measures to ensure that migrant workers, including migrant domestic workers, are fully protected from abusive practices and conditions that amount to forced labour.

The Committee notes the Government's information, in its report, regarding the measures taken by the Department of Labour to protect migrant workers including, the establishment of a mechanism of recruitment of foreign workers on a government to government (G to G) basis in order to prevent human trafficking and other forced labour practices. The Government states that the G to G mechanism of recruitment of foreign workers will not involve agents, third parties, middle men, private employment agencies or other recruitment agents of both countries, but shall be conducted through the departments appointed by the two countries. The Committee further notes the Government's information that it has signed a G to G MoU with the Government of Bangladesh. Moreover, the Government also introduced a standard bilingual Contract of Employment for all foreign workers as well as a Standard Operating Procedure which requires the employers to pay wages to workers through their bank account and to obtain insurance coverage for foreign workers. The Government also indicates that the SET conducts routine inspections and investigates complaints related to forced labour. According to the data provided by the Government, from 2012 to 2015, the SET carried out 57 investigations related to forced labour concerning 181 victims, and in six cases, penalties of fines ranging from 6,000 to 120,000 Malaysian ringgit (MYR) (MYR1 equivalent to US\$0.26) were imposed on the convicted persons.

The Committee notes that according to the Report of the United Nations Special Rapporteur on trafficking in persons, especially women and children of 15 June 2015 (report of the Special Rapporteur on trafficking in persons), workers, including domestic workers, are recruited through fraud and deception about the type and conditions of employment by recruitment agents in Malaysia and in source countries. Most commonly they are exploited through breaches of contract, payment of excessive recruitment and immigration fees, reduction or non-payment of salary, excessive working hours, a lack of rest days and conditions akin to debt bondage and servitude. In some cases, foreign workers' vulnerability to exploitation is heightened when employers neglect to obtain proper documentation for workers or employ workers in sectors other than those for which they were granted an employment visa. Moreover practices of employers withholding passports are reportedly common. This report further states that irregular migrants wanting to report abuse, risk exposing themselves to the real danger of being charged for the offence of "irregular entry or stay" and are detained and ultimately deported (A/HRC/29/38/Add.1, paragraphs 10, 11, 12 and 25).

The Committee further notes from the report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea of 8 September 2015 (A/70/362) that nationals of the Democratic People's Republic of Korea, sent abroad by their Government to countries such as Malaysia, work under conditions that reportedly amount to forced labour. These workers who work mainly in the mining, logging, textile and construction industries are forced to work sometimes up to 20 hours per day with one or two rest days per month and without adequate food, health and safety measures; their freedom of movement is restricted and they are forbidden from returning to their country during their assignment; and their passports are confiscated by the security agents and they are threatened with repatriation if they do not perform well or commit infractions. According to this report, the host countries never monitor the working conditions of overseas workers (paragraphs 24, 26, 27 and 28). While taking note of the measures taken by the Government to protect migrant workers, the Committee notes with **deep concern** the continued abusive practices and working conditions of migrant workers that may amount to forced labour, such as passport confiscation by employers, high recruitment fees, wage arrears and the problem of contract substitution. **The Committee therefore urges the Government to strengthen the measures to ensure that migrant workers, including migrant domestic workers, are fully protected from abusive practices and conditions that amount to forced labour. It requests the Government to provide information on the measures taken in this regard, including information on the implementation of the Government to Government mechanisms for recruiting foreign workers as well as on other bilateral agreements signed with countries of origin. The Committee also requests the Government to provide copies of the bilateral agreements. The Committee further requests the Government to continue to provide information on the activities undertaken by the Special Enforcement Team to combat forced labour and the results achieved.**

2. *Trafficking in persons.* In its previous comments, the Committee noted that during the discussions on the application of the Convention at the Conference Committee in June 2014, the Government reaffirmed its commitment to addressing trafficking in persons and provided information on various measures taken to this end, including measures to strengthen the capacity of law enforcement personnel and awareness-raising initiatives, as well as measures to better protect victims of trafficking. However, the Committee noted that, while the various steps taken by the Government were acknowledged by the members of the Conference Committee, delegates stressed that further measures were necessary in order to develop and implement effective action that is commensurate with the magnitude of the trafficking phenomenon.

The Committee notes the information provided by the Government in its report under the Worst Forms of Child Labour Convention, 1999 (No. 182), that it has elaborated the National Action Plan to Combat Trafficking in Persons 2016–20. This report also indicates that the Government of Malaysia has concluded an MoU with the Government of Thailand in combating trafficking in persons which particularly focuses on protection of victims of trafficking, law enforcement cooperation and the repatriation process. Moreover, it notes from this report that from 2012 to 2015, 746 persons were arrested in 550 cases related to trafficking in persons, involving 1,138 victims.

The Committee further notes the following information contained in the UN Report of the Special Rapporteur on trafficking in persons, regarding the measures taken by the Government to combat trafficking in persons:

- 5,126 awareness-raising campaigns on issues related to trafficking in persons were launched;
- 28 deputy public prosecutors who are specialized in dealing with cases of trafficking in persons were appointed within the Attorney General's Chambers;
- a directive to investigate all cases of trafficking involving foreign nationals under the Anti-Trafficking Act of 2007 as amended in 2010 and renamed as the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act (Anti-Trafficking Act) was issued; and
- a government policy allowing victims of labour trafficking to remain and work legally in Malaysia was adopted in 2014.

Moreover, the statistical data contained in this report indicates that: (i) from 2008 to 2014, 509 cases of trafficking for sexual exploitation and 291 cases of trafficking for forced labour were identified by the Royal Police; (ii) in 2014, two cases of trafficking were identified and investigated by special labour inspectors; (iii) in 2014, six integrated operations to rescue victims of trafficking were conducted jointly by the police, customs, maritime enforcement, immigration and labour officers; and (iv) 1,684 individuals who were rescued were granted interim protection orders and placed in a shelter.

The Committee also notes from the Report of the Special Rapporteur on trafficking in persons that:

Malaysia

-Malaysia faces challenges as a destination and, to a lesser extent, a transit and source country for men, women, girls and boys subjected to trafficking in persons. Fishermen, mainly from Cambodia and Myanmar are trafficked for bonded labour to work on Thai fishing boats in Malaysian waters as well as in palm oil plantations; a large number of women are trafficked into domestic servitude by employment agencies in their home country or in Malaysia or employers in Malaysia with the alleged complicity of State officials; a high number of women are trafficked into the sex industry; a significant number of refugees, asylum seekers and stateless persons, particularly from the Filipino and Indonesian communities in Sabah and Rohingya from Myanmar, are increasingly becoming victims of trafficking;

-the effective and swift investigation of offences under the Anti-Trafficking Act is hampered by a number of factors such as the limited coordination among enforcement agencies and the lack of skills to handle cases of trafficking as well as corruption of law enforcement officers; and

-the shelters run by the Ministry of Women, Family and Community Development which provides psychological, medical and other support services to victims of trafficking, are equivalent to detention centres where trafficked persons are treated as criminals in custody rather than victims.

In light of the above information, the Committee requests the Government to strengthen its efforts to prevent, suppress and combat trafficking in persons, and to take the necessary measures to ensure that all persons who engage in trafficking and related offences are subject to investigation and prosecutions. In this regard, the Committee requests the Government to take measures to strengthen the capacities of the law enforcement bodies, to ensure that they are provided with appropriate training to improve identification of the victims of trafficking as well as measures to ensure greater coordination among these bodies. It requests the Government to provide information on the measures taken in this regard as well as information on the number of victims of trafficking who have been identified and who have benefited from adequate protection. It also requests the Government to provide information on prosecutions and convictions pronounced. The Committee finally requests the Government to indicate the measures taken to implement the National Action Plan to Combat Trafficking in Persons, 2016–20, as well as the results achieved, both with regard to prevention and repression of trafficking in persons, and the protection and rehabilitation of victims of trafficking.

Following the request made by the Worker members and the Employer members at the Conference Committee, in June 2014, the Committee once again encourages the Government to consider availing technical assistance from the ILO in order to help it pursue its efforts to ensure the effective application of the Convention, so as to protect all workers, including migrant workers, from abusive practices that may amount to forced labour.

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

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C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

Observation 2016

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The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2016, concerning matters addressed by the Committee as well as allegations of specific violations of the Convention in practice. **The Committee requests the Government to provide its comments in this respect.**

Follow-up to the conclusions in the Committee on the Application of Standards (International Labour Conference, 105th Session, May–June 2016)

The Committee takes note of the discussion held in the Conference Committee on the Application of Standards (hereinafter the Conference Committee) in June 2016 on the application of the Convention by Malaysia. It notes that the Conference Committee requested the Government to: (i) provide further detailed information regarding the announced repeal of section 13(3) of the Industrial Relations Act 1967 (IRA) on the limitations with respect to the scope of collective bargaining; (ii) report in detail on the holistic review of the national labour legislation described above to the next meeting of the Committee of Experts in November 2016; (iii) ensure that public sector workers not engaged in the administration of the State may enjoy their right to collective bargaining; (iv) provide detailed information on the scope of bargaining in the public sector; (v) review section 9 of the IRA in order to guarantee that the criteria and procedure for union recognition are brought in line with the Convention; (vi) undertake legal and practical measures to ensure that remedies and penalties against acts of anti-union discrimination are effectively enforced; and (vii) ensure that migrant workers are able to engage in collective bargaining in practice. The Committee notes that the Conference Committee further called upon the Government to avail itself of the technical assistance of the Office with a view to implementing its recommendations and ensuring that its law and practice are in compliance with the Convention.

The Committee takes note of the information provided by the Government to the Conference Committee in June 2016 as to the outcome of the judicial proceedings concerning matters raised in the observations of the World Federation of Trade Unions (WFTU) and the National Union of Bank Employees (NUBE) of 2014. The Committee further notes the information provided by the Government to the Conference Committee on the observations of the ITUC and the Malaysian Trades Union Congress (MTUC) of 2015, including the Government's indication, as to allegations of anti-union discrimination and interference, that out of eight complaints raised by the MTUC, three had been resolved and five were pending before the Industrial Court or the relevant authority, and that the Government would submit detailed comments in writing. **The Committee requests the Government to provide such comments concerning these allegations.**

With regard to the holistic review announced by the Government on the main labour laws (including the Employment Act, 1955, the Trade Unions Act, 1959 and the IRA), the Committee welcomes the Government's indication that it is in the process of drafting amendments with the technical assistance of the Office to ensure conformity with the Convention. **The Committee trusts that, with the technical assistance of the Office, the Government will take into account the following comments to ensure the full conformity of these Acts with the Convention and it requests the Government to provide information on any developments in this regard.**

Article 1 of the Convention. Adequate protection against anti-union discrimination. The Committee notes that the Government informs that in the period from 2013 to 2015 the Department of Industrial Relations enforced the laws protecting against anti-union discrimination in 51 cases: 48 cases pertaining to section 8 of the IRA and three cases pertaining to section 59 of the IRA. In this respect, the Committee observes that two different kinds of protection against anti-union discrimination are indeed set out in the IRA. Firstly, section 5 of the IRA broadly prohibits anti-union discrimination in relation to both union membership and participation in union activities, including at the recruitment stage. Under section 8 of the IRA, such prohibition is enforced through general remedies: in case of dismissal, the general dismissal procedures provided in the law, and otherwise the intervention of the Director-General for Industrial Relations to seek a resolution and, failing that, the Labour Court, which "may make such award as may be deemed necessary and appropriate".

Secondly, section 59 of the IRA singles out certain anti-union discrimination acts as offences (namely, the dismissal or other prejudicial treatment by reason of becoming a member or an officer of a trade union or the undertaking of certain activities by trade unionists). The commission of offences under section 59 is punished with imprisonment for a term not exceeding one year or a fine not exceeding 2,000 Malaysian ringgit (MYR) (approximately US\$479) or both, as well as payment of lost wages and "where appropriate direct the employer to reinstate the workman". From the information provided by the Government, the Committee observes that in the past years the vast majority of reported anti-union discrimination cases were addressed through the protection procedure set out in sections 5 and 8 of the IRA (neither providing for specific sanctions, nor acknowledging explicitly the possibility of reinstatement) and that in less than 6 per cent of reported cases use was made of the procedure concerning anti-union discrimination offences set out in section 59 of the IRA (explicitly providing for penal sanctions and the possibility of reinstatement). **Recalling that, under the Convention, all acts of anti-union discrimination should be adequately prevented through the imposition of dissuasive sanctions and adequate compensation, the Committee requests the Government to provide further detailed information as to: (i) the sanctions and compensations effectively imposed to anti-union discrimination acts, especially in those cases where anti-union discrimination acts were dealt with through sections 5 and 8 of the IRA; and (ii) the factors explaining the limited use of section 59 of the IRA which sets specific sanctions for anti-union discrimination acts.**

Articles 2 and 4. Trade union recognition for purposes of collective bargaining. Criteria and procedure for recognition. The Committee had noted in its previous comments that, under section 9 of the IRA, should an employer reject a union's claim for voluntary recognition for the purpose of collective bargaining, the union has to: (i) inform the Director-General of Industrial Relations (DGIR) for the latter to take appropriate action, including a competency check; (ii) the competency check is undertaken through a secret ballot to ascertain the percentage of the work people or class of work people, in respect of whom recognition is being sought, who are members of the trade union making the claim; and (iii) when the matter is not resolved by the DGIR, the Minister decides on the recognition, a decision that may be subject to judicial review by the High Court. The Committee notes that the Government informed the Conference Committee that the main criterion for recognition is the majority support (50 per cent plus one) from employees through secret ballot. The Committee also takes note of the concerns raised by Worker members at the Conference Committee, and by the MTUC in its 2015 observation, that the DGIR uses the total number of workers on the date that the union requested recognition rather than those at the ballot, which given the length of the procedure may impede the recognition of a union enjoying a majority support, and that in certain instances more than 50 per cent of the workforce, being migrant, had repatriated to their home country but were considered as counting against the union for the purposes of the secret ballot. The Committee further notes the concern raised by the ITUC that the secret ballot procedure does not provide protection to prevent interference from the employer. The Committee finally notes that the Government indicates in its latest report that a holistic review of the recognition procedure will be carried out in its next legislative review exercise. The Committee observes that the recognition procedure should seek to assess the representativeness existing at the time the ballot vote takes place (this would not be the case if, for example, the quorum is set in relation to the workforce that existed at a much earlier date, after which there may have been important fluctuations in the number of employees in the bargaining unit), and that the process should provide safeguards to prevent acts of interference. Moreover, the Committee considers that, to promote the development and utilization of collective bargaining, if no union reaches the majority required to be declared the exclusive bargaining agent, minority unions should be able to group together to attain such majority or at least be given the possibility to bargain collectively on behalf of their own members. **The Committee requests the Government, in consultation with the social partners and in the context of the review of the recognition process, to ensure that the process provides safeguards to prevent acts of interference, and that if no union reaches the required majority to be declared the exclusive bargaining agent, minority unions may be able to group together to attain such majority or at least be given the possibility to bargain collectively on behalf of their own members.**

Duration of proceedings for the recognition of a trade union. In its previous report the Government had indicated that the average duration of the recognition process was: (i) just over three months in proceedings resolved by voluntary recognition; and (ii) four-and-a-half months for claims resolved by the Industrial Relations Department which do not involve judicial review. The Committee had considered that the duration of proceedings could still be excessively long. In its

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information provided to the Conference Committee the Government noted that the length of the process varies, depends on the cooperation of the parties and may be subject to judicial review. **Not having received any indication from the Government as to measures carried out or planned in this regard, the Committee again requests the Government to, in consultation with the social partners and in the context of the abovementioned review exercise, take any necessary measures to further reduce the length of proceedings for the recognition of trade unions.**

Migrant workers. In its previous comments, considering that the requirement for foreign workers to obtain the permission from the Minister of Human Resources in order to be elected as trade union representatives hinders the right of trade union organizations to freely choose their representatives for collective-bargaining purposes, the Committee requested the Government to take measures in order to modify the legislation. The Committee notes the Government's statement that current laws do not prohibit foreign workers from becoming trade union members and welcomes its indication that a legislative amendment will be introduced to enable non-citizens to run for election for union office if they have been legally residing in the country for at least three years. The Committee finally notes the concerns raised by the Worker members at the Conference Committee that migrant workers faced a number of practical obstacles to collective bargaining, including the typical two-year duration of their contracts, their vulnerability to anti-union discrimination and a recent judicial decision in the paper industry ruling that migrant workers under fixed-term contracts could not benefit from the conditions agreed in collective agreements. **Recalling the Conference Committee's request to ensure that migrant workers are able to engage in collective bargaining in practice, the Committee requests the Government to take any measures to ensure that the promotion of the full development and utilization of collective bargaining under the Convention is fully enjoyed by migrant workers, and to provide information on any development in this respect.**

Scope of collective bargaining. The Committee had previously urged the Government to amend section 13(3) of the IRA, which contains restrictions on collective bargaining with regard to transfer, dismissal and reinstatement (some of the matters known as "internal management prerogatives") and to initiate tripartite discussions for the preparation, on a voluntary basis, of guidelines for collective bargaining. The Committee welcomes the Government's indication that section 13(3) will be amended to remove its broad restrictions on the scope of collective bargaining. **The Committee requests the Government to provide information on any development in this respect.**

Compulsory arbitration. In its previous comments, the Committee had noted that section 26(2) of the IRA allows compulsory arbitration, by the Minister of Labour of his own motion in case of failure of collective bargaining. The Committee had requested the Government to take measures to ensure that the legislation only authorizes compulsory arbitration in essential services, in the strict sense of the term, for public servants engaged in the administration of the State or in cases of acute national crisis. The Committee noted the Government's indication in previous reports that, although the provision accords discretionary powers to the Minister to refer a trade dispute to the Industrial Court for arbitration, practically, the Minister has never exercised such power in an arbitrary manner and only makes a decision upon receipt of a notification from the Industrial Relations Department that the conciliation has failed to resolve the dispute amicably. The Committee once again recalls that the imposition of compulsory arbitration procedure if the parties do not reach agreement on a draft collective agreement raises problems in relation to the application of the Convention. **Therefore, the Committee once again reiterates its previous comments and urges the Government to take measures to ensure that the legislation only authorizes compulsory arbitration in essential services, in the strict sense of the term, for public servants engaged in the administration of the State or in cases of acute national crisis.**

Restrictions on collective bargaining in the public sector. The Committee has for many years requested the Government to take the necessary measures to ensure for public servants not engaged in the administration of the State the right to bargain collectively over wages and remuneration and other employment conditions. The Committee notes that the Government indicates once again that, through the National Joint Council and the Departmental Joint Council, representatives of public employees have other platforms to hold discussions and consultations with the Government, on matters including terms and condition of service, training, remuneration, promotions and benefits. The Committee, while recognizing the singularity of the public service which allows special modalities, must again reiterate that it considers that simple consultations with unions of public servants not engaged in the administration of the State do not meet the requirements of Article 4 of the Convention. **The Committee urges the Government to take the necessary measures to ensure, for public servants not engaged in the administration of the State, the right to bargain collectively over wages and remuneration and other employment conditions, in conformity with Article 4 of the Convention, and recalls that the Government may avail itself of the technical assistance of the Office.**

Application of the Convention in practice. The Committee notes that the Worker members of the Conference Committee raised concerns over the low percentage of workers covered by collective agreements in the country (according to Worker members, 1 to 2 per cent despite the unionization rate of almost 10 per cent). **The Committee requests the Government to provide information concerning the number of collective agreements concluded, specifying the sectors, the level of bargaining and the number of workers covered, as well as on any additional measures undertaken to promote the full development and utilization of collective bargaining under the Convention.**

C100 - Equal Remuneration Convention, 1951 (No. 100)

Observation 2016

Articles 1(a) and (b), and 2 of the Convention. Equal remuneration for work of equal value. Legislation. For a number of years, the Committee has been noting that the national legislation does not reflect fully the principle of equal remuneration for men and women for work of equal value. It also noted that the definition of wages in the Employment Act 1955 and the National Wages Council Act 2011 does not encompass benefits in kind and excludes certain elements of remuneration as defined in the Convention. The Committee notes the Government's indication that the suitability of incorporating the principle of the Convention into its national legislation will be examined in the framework of the ongoing review of its labour legislation, and more particularly of the Employment Act. **Considering that giving full legislative effect to the principle of equal remuneration for men and women for work of equal value is of particular importance to ensure the effective application of the Convention, the Committee trusts that, in the course of the review of its labour legislation, the Government will take specific measures, in consultation with employers' and workers' organizations, in order to expressly incorporate the principle of equal remuneration for men and women for work of equal value into its national legislation. In this regard, the Committee requests the Government to ensure that its national legislation allows for the comparison not only of the same jobs, but also of work of an entirely different nature which is nevertheless of equal value, taking into account that equality must extend to all elements of remuneration as indicated in Article 1(a) of the Convention. The Committee requests the Government to provide information regarding the progress made in this regard. The Committee also reminds the Government that ILO technical assistance is available and requests the Government to consider forwarding a copy of the draft legislation to the Office for its review.**

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

C182 - Worst Forms of Child Labour Convention, 1999 (No. 182)

Observation 2016

Article 3 of the Convention. Worst forms of child labour. Clause (b). Use, procuring or offering of a child for the production of pornography or for pornographic performances. The Committee previously noted that section 31(1)(b) of the Child Act of 2001 provides for penalties to any person with the care of a child who sexually abuses the child or causes or permits him/her to be so abused. It also noted that section 17(2)(c)(i) of the Child Act refers to the sexual abuse of a child, including using a child for the purposes of any pornographic, obscene or indecent material, by his/her parent, guardian or a member of the extended family. The Committee requested the Government to indicate if the prohibitions contained in sections 31(1)(b) and 17(2)(c)(i) of the Child Act also apply to persons not having the care of a child.

The Committee notes the Government's reference in its report to the provisions under the Penal Code and Children and Young Persons (Employment) Act, 1966 and the Communication and Multimedia Act 1998. The Committee observes that section 377E of the Penal Code which prohibits any person from inciting a child to any act of gross indecency extends only to children under the age of 14 years, while the other two pieces of legislation do not contain any specific prohibition on the use, procuring or offering of a child under the age of 18 years for the production of pornography or for pornographic performances. The Committee notes with **regret** that despite raising this issue since 2003, the Government has not taken any measures in this regard. **The Committee, therefore, urges the Government to take immediate and effective measures to ensure that the use, procuring or offering of a child under 18 years of age, by anyone, for the production of pornography or for pornographic performances is prohibited, as a matter of urgency. It requests the Government to provide information on any measures taken in this regard.**

Article 4(1). Determination of types of hazardous work. The Committee previously noted the Government's indication that the Labour Department would hold consultations with the relevant authorities, such as the Department of Safety and Health, in order to determine the types of hazardous work to be prohibited to persons under the age of 18, pursuant to section 2(6) of the Children and Young Persons (Employment) Act of 1966 (CYP Act) as amended in 2010.

The Committee notes the Government's statement that it is in the process of reviewing the CYP Act with a view to determine the types of hazardous work prohibited to persons under the age of 18 years. The Committee notes with **regret** that the Government has been referring to the revision of the CYP Act since 2003, in this regard. **The Committee, therefore, urges the Government to take the necessary measures to ensure that the hazardous types of work prohibited to children under the age of 18 years are determined in the near future. It requests the Government to provide information on any progress made in this regard.**

Articles 5 and 7(2) clause (d). Monitoring mechanisms and effective and time-bound measures. Identifying and reaching out to children at special risk. Migrant children. The Committee previously noted the indication of the Worker members at the Conference Committee on the Application of Standards at the 98th Session of the International Labour Conference of June 2009 that, according to the Indonesian National Commission for Child Protection (INCCP), cases of forced labour of migrant workers and their children on plantations in Sabah involved an estimated 72,000 children. The Committee also noted that tens of thousands of migrant workers' children also worked in the plantations without regulated employment hours, which meant they worked all day long. Other sectors where migrant workers' children were often found were family food businesses, night markets, small-scale industries, fishing, agriculture and catering. According to the INCCP, children of migrant workers born under these conditions were not provided with birth certificates or any other type of identity document, effectively denying their right to education. The Committee also noted the information from the *UNESCO Global Monitoring Report* of 2011 that there were an estimated 1 million undocumented migrants living in Malaysia, many of them children.

In this regard, the Committee notes the Government's information that a non profit organization, namely the Human Child Aid Society (HCAS) provides education to children of Indonesian migrants in palm oil plantations. Measures were also taken by the Ministry of Women, Family and Community Development to appoint Indonesian teachers in such schools. The Committee also notes the Government's indication that the Sabah Labour Department regularly conducts inspections of workplaces in order to monitor compliance with the provisions related to the protection of children and young persons under the Labour Ordinance. According to the data provided by the Government, 7,946 workplaces were inspected in 2014 and 5,162 workplaces were inspected up to June 2015 during which no cases involving children were detected. While noting the measures taken by the Government, the Committee is bound to express its **concern** that despite the high number of migrant children involved in hazardous work in the plantation sector, no such cases were identified during inspections. In this regard, the Committee recalls that strengthening the capacity of labour inspectors to detect children engaged in hazardous work is essential, particularly in countries where children are, in practice, engaged in hazardous work but no such cases have been detected by the labour inspectorate (see General Survey of 2012 on the fundamental Conventions, paragraph 632). **The Committee, therefore, urges the Government to take effective and time bound measures to protect children of migrant workers from the worst forms of child labour, in particular in the palm oil plantations. It also urges the Government to take the necessary measures to strengthen the labour inspection system to effectively monitor the implementation of labour laws so as to receive, investigate and address complaints of alleged violations of child labour. In this regard, the Committee requests the Government to take the necessary measures to promote collaboration between the labour inspectorate and other relevant stakeholders and to provide training to the labour inspectors to detect cases of children engaged in hazardous work in the palm oil plantations. The Committee finally requests the Government to provide information on the number of children of Indonesian migrants who have been provided education by the Human Child Aid Society.**

Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour and removing them from these worst forms and ensuring their rehabilitation and social integration. Trafficking. The Committee notes the Government's information that the National Action Plan to Combat Trafficking in Persons 2016–20 has been updated. It also notes the Government's indication that from 2014 to 2015, 66 child victims of trafficking (61 girls and 5 boys) were temporarily protected in the shelter home. The Committee notes, however, from the Report of the Special Rapporteur of the United Nations Human Rights Council on trafficking in persons, especially women and children of 15 June 2015, that young girls are trafficked into domestic servitude by employment agencies in their home country or employers in Malaysia with the alleged complicity of State officials. Moreover, a high number of girls and boys are trafficked into the sex industry with an increase in the prevalence of trafficking of boys for work in the sex industry. Young girls are lured with false promises of legal work in Malaysia, but are subsequently coerced into the commercial sex trade. This report further indicates that children are trafficked for the purpose of forced begging and drug trafficking. **The Committee requests the Government to strengthen its measures, including within the framework of the National Action Plan to Combat Trafficking in Persons, 2016–20, to prevent trafficking of children under the age of 18 years, and provide for their removal from such situations and subsequent rehabilitation and social integration. It requests the Government to provide information on the concrete measures taken in this regard and on the results achieved in terms of the number of children reached through such measures.**

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

C019 - Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)

Observation 2016

Article 1(1) of the Convention. Equal treatment of foreign workers. Since 1996 the Committee has been requesting that foreign workers be transferred back to the social security scheme of nationals, as the workers' compensation scheme, which is now applicable to them, provides for significantly lower compensation payments in the form of lump sums and not of a periodical payment as guaranteed by the social security system. The Government stated in its last report its willingness to extend the social security scheme for national workers to foreigners and informed in its 2016 report that it recently held a technical consultation with the ILO on these issues with a view to initiating internal discussions on the way forward. ***The Committee recalls that the current situation, whereby foreign employees are not entitled to equal treatment with national workers in respect of employment injury compensation persist since 1993. The ILC Committee on the Application of Standards has at several occasions also asked the Government to comply with the obligations assumed under the Convention and put an end to the discriminatory treatment of foreign workers as regards employment injury compensation. The Committee strongly hopes that, with the technical cooperation of the ILO, the Government will be able to report progress on the measures taken in this respect. [The Government is asked to supply full particulars to the Conference at its 106th Session and to send a detailed report in 2017.]***

C019 - Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)

Observation 2016

Article 1(1) of the Convention. Equal treatment of foreign workers. Since 1996 the Committee has been requesting that foreign workers be transferred back to the social security scheme of nationals, as the workers' compensation scheme, which is now applicable to them, provides for significantly lower compensation payments in the form of lump sums and not of a periodical payment as guaranteed by the social security system. The Government stated in its last report its willingness to extend the social security scheme for national workers to foreigners and informed in its 2016 report that it recently held a technical consultation with the ILO on these issues with a view to initiating internal discussions on the way forward. ***The Committee recalls that the current situation, whereby foreign employees are not entitled to equal treatment with national workers in respect of employment injury compensation persist since 1993. The ILC Committee on the Application of Standards has at several occasions also asked the Government to comply with the obligations assumed under the Convention and put an end to the discriminatory treatment of foreign workers as regards employment injury compensation. The Committee strongly hopes that, with the technical cooperation of the ILO, the Government will be able to report progress on the measures taken in this respect. [The Government is asked to supply full particulars to the Conference at its 106th Session and to send a detailed report in 2017.]***

C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Observation 2016

The Committee notes the observations made by the International Organisation of Employers (IOE) in a communication received on 1 September 2016, which are of a general nature. The Committee also notes the observations made by the International Trade Union Confederation (ITUC) in communications received on 31 August and 26 September 2016, concerning the application of this Convention, as well as that of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), (not ratified by Myanmar), and the Government's reply thereto. In particular, the Committee notes that the ITUC raises concerns about the difficulties encountered by unionists when organizing and the non-deterrent nature of any sanctions imposed. For its part, the Government refers to a recent increase in penalty for anti-union acts and the current review of the Settlement of Labour Dispute Law. In particular, the Government indicates that, at a Stakeholders Forum on Labour Law Reform and Institutional Capacity Building, it was agreed to amend the Labour Organization Law (LOL), the Settlement of Labour Disputes Law and the Employment and Skill Development Law as first priority. The Committee further notes the decision of the Governing Body at its 328th Session (November 2016) welcoming the steps taken by the Government to reform labour laws, promote freedom of association and institutionalize social dialogue (GB.328/INS/9). **The Committee requests the Government to provide information on the progress made in the Labour Law Reform and as to any further amendments to the Settlement of Labour Dispute Law.**

Civil liberties. In its previous comments, the Committee requested the Government to provide information on developments of the legislative review relating to peaceful assemblies. The Committee notes that the amended Right to Peaceful Assembly and Peaceful Procession Law was enacted on 24 June 2014. The refusal of such assemblies was deleted from Chapter 4 and penalties for violations were reduced. The Government adds that the Ministry of Home Affairs is making efforts to withdraw the amended Law and discussions and consultations are taking place in Parliament for the enactment of a new law. **The Committee requests the Government to provide information on any developments in this regard.**

Article 2 of the Convention. Right of workers to establish organizations. In its previous comments, the Committee observed that a minimum number of workers was necessary to form a trade union, but additionally it was necessary to show affiliation of 10 per cent of the workers in the trade or activity in order to establish a basic labour organization. The Committee notes that the ITUC once again raises concerns about the impact that this double requirement has on organizing in large enterprises and hopes that the Government will take them fully into account within the framework of the Labour Law Reform. **The Committee requests the Government once again to take steps to review, with the social partners concerned, the 10 per cent membership requirement with a view to amending section 4 of the LOL so that workers may form and join the organizations of their own choosing without hindrance.**

The Committee further notes the concerns raised by the ITUC in relation to the trade union structure established in law which requires minimum affiliation at each level, rendering organizing particularly difficult. The Committee notes the information provided by the Government that there are currently 2,204 employers' and workers' organizations, including 2,036 basic labour organizations and 28 basic employer organizations, 115 township labour organizations and one township employer organization, 14 regional or state labour organizations, eight labour federations and one employer federation and one labour confederation. **The Committee once again requests the Government to review the structure set out in section 4 of the LOL, with the social partners concerned, with a view to ensuring that the right of workers to form and join organizations of their own choosing is not hindered in practice.**

Special economic zones (SEZs). The Committee notes the ITUC observations concerning the Special Economic Zone Law of 2014 and its provisions which state that it supersedes any existing laws. The ITUC adds that the procedures for dispute settlement in the zones are more cumbersome than outside and that labour inspector powers are delegated to SEZ management bodies. **The Committee requests the Government to provide its detailed comments in this regard and to take any necessary measures to guarantee fully the rights under the Convention to workers in SEZs.**

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

Nepal

Articles 1(1) and 2(1) of the Convention. 1. Bonded labour. In its previous comments, the Committee requested the Government to provide information on the application in practice of the Kamaiya Labour (Prohibition) Act of 2002.

The Committee notes the Government's information, in its report, that the Ministry of Land Reform and Management (MOLRM) is drafting a comprehensive bill entitled Bonded Labour (Prohibition, Prevention and Rehabilitation) Act, which will abolish all types of bonded labour systems and other abusive customs and practices, and will repeal the Kamaiya Prohibition Act of 2002. The Committee notes the Government's statement that it has been implementing rehabilitation programmes targeting freed bonded labourers, with the following results achieved:

- according to the progress report of the Freed Kamaiya Rehabilitation and Livelihood Development Programme, out of the estimated 32,509 families that were in bonded labour, 27,570 families were enlisted for rehabilitation, of which 26,090 families were rehabilitated, including through economic empowerment and skills development training;

- the Department of Education has institutionalized a system of extending educational services, through providing scholarships and hostel facilities, to freed *Kamlari* girls (offering girls for domestic work to the families of landlords). Accordingly, in 2015, a total of 29,787,000 rupees (NPR) for scholarships and NPR5,088,000 for hostels were allocated;

- a Freed Haliya Rehabilitation Action Plan is being implemented by the MOLRM from 2012, with the objective of ensuring safe and secure housing for freed *Haliyas* (agricultural bonded labourers); and improving their economic and social condition, including through enhanced access to education and health. Accordingly, out of the estimated 16,953 families who were involved in the *Haliya* bonded labour system, 10,622 were enlisted for rehabilitation and identification cards were issued to 7,898 families. This action plan provided financial support to 236 families to buy land, 162 families to build houses and 259 families to repair their houses.

The Committee also notes that Nepal is one of the participating countries in the ILO project entitled "A Bridge to Global Action on Forced Labour 2015–19" (the Bridge project) that aims to effectively eliminate traditional and state-imposed forced labour systems and to reduce contemporary forms of forced labour, which are often linked to human trafficking. The Committee also notes, that the UN Committee on Economic, Social and Cultural Rights, in its concluding observations of 12 December 2014, expressed its concern that although the traditional bonded labour system (*Kamaiya*, *Haliya* and *Kamlari*) has been formally eradicated and measures have been taken for the rehabilitation of the bonded labourers, many of them, in particular in the western part of Nepal, face obstacles to social reintegration, due to their lack of skills and lack of access to fertile land for cultivation, which leads them to return to their previous employers, by whom they are often exploited (E/C.12/NPL/CO/3, paragraph 18). **The Committee requests the Government to strengthen its efforts to ensure that all freed bonded labourers are rehabilitated and socially reintegrated, including through the provision of skills development and other income-generating activities. It requests the Government to continue to provide information on the measures taken in this regard and on the results achieved. The Committee also expresses the hope that the bill on Bonded Labour (Prohibition, Prevention and Rehabilitation) Act, will be adopted in the near future, requests the Government to provide information on any progress made in this regard and to provide a copy of the Bill on Bonded Labour, once adopted.**

Articles 1(1), 2(1) and 25. 1. Trafficking in persons. In its previous comments, the Committee noted the statement of the International Trade Union Confederation (ITUC) that the Government should take action to enforce the provisions of the Human Trafficking and Transportation (Control) Act of 2007 (Human Trafficking Act) and that the legal framework should be reviewed to ensure that those involved in trafficking and forced labour could be effectively prosecuted and that the punishments were commensurate with the crimes committed. Noting the absence of information in the Government's report on the application of the Human Trafficking Act, the Committee urged the Government to strengthen its efforts to combat trafficking in persons.

The Committee notes the Government's statement that it is committed to combating trafficking and therefore has designed and implemented appropriate laws, policies and programmes to combat trafficking in persons. The Committee notes the following measures taken by the Government, in this regard, as indicated in the Government's report:

- a ten-year National Plan of Action against Trafficking in Persons 2011–21 has been adopted, identifying the three main strategies to counter trafficking in persons, namely: prevention, protection and prosecution;

- the Ministry of Women, Children and Social Welfare (MoWCSW) has established the National Committee on Controlling Human Trafficking which operates programmes to combat trafficking in persons at the district and local levels, through the district committees and village committees established in 75 districts and 109 villages, respectively;

- a fast-track justice system which gives priority to hearing cases of trafficking in persons is ensured;

- the Women and Children Service Directorate established within the Nepal police, and the Women and Children Service Centres established in 39 districts, provide specialized investigation and victim-care services through officers trained in handling cases of trafficking in persons; and

- ten surveillance centres on national highways and 22 checkpoints along the international border have been established to prevent human trafficking.

The Committee also notes that according to the data compiled from a National Report on Controlling Human Trafficking and Transportation, 2015, published by the MoWCSW, in 2013–14, a total of 185 cases and in 2014–15, a total of 184 cases related to trafficking in persons were registered and investigated. The Government also refers to a case in which, three persons who were found guilty of selling two girls to a brothel were punished with imprisonment for 20 years and a fine, and in another case, a government official was removed from his post for assisting the perpetrators of trafficking in persons. The Committee further notes from the national report submitted by the Government on 6 August 2015, to the United Nations Human Rights Council, that investigation procedures for cases related to trafficking in persons have been incorporated in the training curricula of the Nepal police and training programmes on such procedures were conducted for police personnel, prosecutors and judges (A/HRC/WG.6/23/NPL/1, paragraph 53).

Furthermore, the Committee notes that according to the 2016 report of the National Human Rights Commission on Trafficking in Persons, about 8,000 to 8,500 persons were trafficked between 2014 and 2015. In this regard, the Committee notes that the United Nations Human Rights Committee and the Committee on Economic, Social and Cultural Rights, in their concluding observations of 15 April 2014 and 12 December 2014, respectively, expressed their concern at the lack of effective implementation of the Human Trafficking and Transportation (Control) Act of 2007, and the persistence of trafficking for purposes of sexual exploitation, forced labour, bonded labour, and domestic servitude (CCPR/C/NPL/CO/2, paragraph 18 and E/C.12/NPL/CO/3, paragraph 22). **The Committee urges the Government to strengthen its efforts to prevent, suppress and combat trafficking in persons, and to take the necessary measures to ensure that all persons who engage in trafficking and related offences are subject to thorough investigations and prosecutions. In this regard, it requests the Government to continue taking measures to strengthen the capacities of the law enforcement bodies, to ensure that they are provided with appropriate training to improve identification of the victims of trafficking as well as to ensure greater coordination among these bodies. Noting that the number of convictions made for cases related to trafficking in persons are relatively low compared to the number of such cases investigated, the Committee once again requests the Government to ensure the effective implementation of the Human Trafficking and Transportation (Control) Act of 2007 in practice, and to report on the impact achieved, particularly the number of convictions and penalties imposed to persons who engage in trafficking in persons. The Committee finally requests the Government to indicate the measures taken within the National Plan of Action against Trafficking in Persons, 2011–21, as well as the results achieved, both with regard to prevention and repression of trafficking in**

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persons, and the protection and rehabilitation of victims of trafficking.

2. *Vulnerability of migrant workers to conditions of forced labour.* The Committee previously noted the ITUC's communication which outlined migrant workers' vulnerability to trafficking and forced labour. It also noted the various allegations made by the ITUC, including the Government's failure to adequately monitor and punish recruitment agencies for failing to comply with their responsibility under the Foreign Employment Act of 2007 (FEA).

The Committee notes the following information contained in the Government's report regarding the measures taken or envisaged by the Government to protect migrant workers:

- the adoption of the Foreign Employment Policy (FEP), in 2012, with a goal to make foreign employment safe, organized, decent and reliable. This policy includes provision of specific activities for migrant workers such as providing skills training and pre-departure orientation programmes, extensive dissemination of information regarding the migration process, establishment of structural mechanisms for the protection of female migrant workers and collaboration with various stakeholders to develop inter-country networks to prevent trafficking in persons under the pretext of labour migration assistance;
- the preparation of a five-year National Strategic Action Plan (NSAP), 2015, to implement the provisions of the FEP, which is currently under cabinet consideration. This document ensures safe, decent and dignified foreign employment, particularly for female migrant workers and contains provisions for specific programmes for socioeconomic reintegration;
- the implementation of a four-year project entitled "Safer Migration Project", since 2013, in collaboration with the Government of Switzerland, with the aim of effectively implementing the FEP;
- the implementation of the UK-funded five-year regional programme, entitled "Work in Freedom Programme", by the ILO in five districts for prevention of trafficking in persons and promoting safe migration, particularly for women migrant workers in domestic work. This programme has provided departure orientation and pre-decision training to more than 20,000 potential migrant workers;
- the establishment of 24 migrant resource centres (MRC) by the MoLE, including one at the Labour Village, which is a hub of potential migrant workers, and 18 information and counselling centres in 18 districts, which provide information on authentic recruitment agencies, recruitment process, documentation and safe migration; and
- the appointment of labour attachés by the Government in 11 countries that receive at least 5,000 workers from Nepal.

The Committee also notes that the Government indicates that the records from the Investigation and Inquiry Section under the Department of Foreign Employment show that the number of complaints from migrant workers registered have increased from 899 in 2012–13 to 1,406 in 2013–14. Moreover, the Committee notes from the report of the National Human Rights Commission (NHRC), that Nepal has signed bilateral agreements and two memoranda of understanding (MoU) for temporary labour migration with the Governments of Bahrain, Qatar and the United Arab Emirates. Moreover, an MoU was signed with the National Human Rights Committee in the State of Qatar in November 2015, to protect the rights of the Nepali migrant workers in Qatar. The Committee notes however, from this report that there has been evidence of widespread exploitation and abuse by recruiting agencies and brokers in the process of foreign employment, such as: deception – with regard to salary, nature of work, and sometimes even country of destination; and fraud – such as issuing fake medical reports and certificates of orientation training without actually undergoing such training and other irregularities. Hundreds of men and women are victims of such fraudulent activities and a large number of them end up in forced labour situations or are trafficked for labour exploitation. This report further highlights the forms of human rights violations in the context of foreign labour migration, including: passport confiscation by the employers/sponsors; retention of identity and travel documents; withholding of wages; threat of denunciation to the authorities; excessive overtime work; physical and sexual abuse; and isolation. The Committee finally notes from the report of NHRC that the flow of labour migrants was more than 500,000 in 2014–15 and the total number of migrant workers have reached more than 3 million with 2.95 million males and 75,000 females. The Nepalese embassy in Riyadh estimated that there are more than 40,000 Nepali women domestic workers in Saudi Arabia who came in through illegal channels. While taking due note of the measures taken by the Government to protect migrant workers, the Committee notes with **concern** the continued abusive practices and conditions of migrant workers that may amount to forced labour. **The Committee therefore urges the Government to strengthen its efforts to ensure that migrant workers are fully protected from abusive practices and conditions that amount to the exaction of forced labour, including through the effective implementation of the Foreign Employment Act to address the exploitative practices of private recruitment agencies. The Committee requests the Government to continue to provide information on measures taken in this regard, including information on international cooperation efforts undertaken to support migrant workers in destination countries, and measures specifically tailored to the difficult circumstances faced by such workers to prevent and respond to cases of abuse and to grant them access to justice, as well as to other complaints and compensation mechanisms.**

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

C100 - Equal Remuneration Convention, 1951 (No. 100)

Observation 2016

The Committee notes that the Government's report has not been received. Noting the adoption of the new Constitution of 2015, the Committee 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 specific issues raised in relation to the Constitution of 2015, as well as other matters raised in its previous comments.

Article 1(b) of the Convention. Equal remuneration for work of equal value. Legislation. The Committee recalls that article 13(4) of the interim Constitution and Rule No. 11 of the Labour Regulations, 1993, are narrower than the principle of the Convention, as they do not encompass the concept of "work of equal value". In this regard, the Committee understands that the process of developing the permanent Constitution and the labour legislation review are still under way. The Committee also notes the Government's indication that determining the value of work is a technical process, and thus it requests ILO technical assistance in this regard. **In the context of the present legislative reform process, the Committee urges the Government to ensure that full legislative expression is given to the principle of Convention, providing equal remuneration for men and women for not only the same work or work of the same nature, but also for work of an entirely different nature but which is nevertheless of equal value, and to provide information of progress made in this regard. Noting the Government's request for ILO technical assistance in determining the value of work, the Committee hopes that such assistance can be provided in the near future, and asks the Government for information on the steps taken to secure such assistance.**

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

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

C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

Observation 2016

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

Legislative developments. The Committee notes with interest the adoption on 1 June 2011 of the Caste Based Discrimination and Untouchability (Offence and Punishment) Act, 2068 (2011), providing that no one shall commit, or attempt to commit, or cause, aid, abet, or provoke anyone to commit, caste-based discrimination and untouchability (section 3). Caste-based discrimination and untouchability is defined in section 4 as any act based on "custom, tradition, religion, culture, rituals, caste, race, descent, community or occupation", and is prohibited in a wide range of circumstances, including with respect to carrying on a profession or business; producing, selling or distributing any goods, services or facilities; in employment or remuneration. The Act also prohibits demonstrating "any other kind of intolerant behaviour" and disseminating or transmitting any material, etc., denoting hierarchical supremacy of a particular caste or race, or any conduct indicating caste-supremacy or hatred (section 4). Pursuant to the Act, a complaint may be lodged with the police, or if the police fail to register the complaint, the person may seek the assistance of the Dalit Commission to pursue the complaint (section 5). Sanctions for violation of the provisions regarding employment and remuneration include one month to one year imprisonment or a fine of 500 to 10,000 Nepalese rupees (NPR), or both (section 7(1)(b)). **The Committee asks the Government to provide information on the practical application of the Caste Based Discrimination and Untouchability (Offence and Punishment) Act, 2011, including the number, nature and outcome of any complaints lodged pursuant to section 5, as well as the role of the National Dalit Commission in this regard, and steps taken to raise awareness of the Act. Noting that the labour legislation reform process is still under way, the Committee asks the Government to ensure that the new legislation defines and prohibits direct and indirect discrimination, on at least all the grounds set out in Article 1(1)(a) of the Convention, and covers all workers and all aspects of employment and occupation.**

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

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

C138 - Minimum Age Convention, 1973 (No. 138)

Observation 2016

Article 2(1) of the Convention. Scope of application. Children working in the informal economy. In its previous comments, the Committee noted that the Child Labour (Prohibition and Regulation) Act of 2000 (Child Labour Act), which prohibits the employment of children below 14 years as labourers (section 3(1)), does not define the terms “employment” and “labourer”. The Government indicated that the Act does not adequately cover the informal economy and that it is very difficult to enforce the provisions of the Convention in the informal economy due to limited infrastructure and financial resources. The Committee also noted from the report of the International Trade Union Confederation (ITUC), for the World Trade Organization General Council on the Trade Policies that formal employment agreements accounted for only 10 per cent of all employment relationships, so the Child Labour Act does not apply to 90 per cent of employment relationships. This report further indicated that working children were mainly found performing informal economic activity in quarries and mines, domestic servitude, agriculture and portering.

The Committee notes the Government’s statement in its report that the Labour Act of 1992, Children’s Act, 1992 and the Child Labour Act are being revised. These draft laws stipulate that labour inspectors shall inspect all work places to identify child labour. The Government further indicates that it is preparing to empower labour inspectors to monitor child labour, including in the informal economy. **The Committee expresses the firm hope that the draft Labour Act, the Children’s Act and the Child Labour Act which empower labour inspectors to inspect all workplaces, including the informal economy, will be adopted in the near future. It requests that the Government provide information on any progress made in this regard. It also requests that the Government provide information on the measures taken to strengthen the capacity and expand the reach of the labour inspectorate so as to monitor child labour in the informal economy.**

Article 3(1) and (2). Minimum age for admission to hazardous work and determination of types of hazardous work. The Committee previously noted that sections 2(a) and 3(2) of the Child Labour Act prohibit the employment of persons under 16 years of age in any risky job or enterprise listed in the schedule, and that section 43(2) of the Labour Rules, 1993 prohibits the employment of persons under 16 years on dangerous machines and in operations which are hazardous to their health. It also noted that the Child Labour (Prohibition and Regulation) Act, 2000, listed different jobs, occupations and work environments that are hazardous and therefore prohibited to children below 16 years.

The Committee notes the Government’s indication that the draft Child Labour Act contains provisions prohibiting the employment of children under 18 years in hazardous work. It also notes the Government’s statement that a draft list of types of hazardous work, which contains approximately 29 occupations and activities prohibited for children and minors, has been developed in consultation with the workers’ and employers’ organizations. **The Committee expresses the firm hope that the list of types of hazardous work prohibited for children under 18 years of age will be finalized and adopted in the near future. It requests that the Government provide information on any progress made in this regard.**

Article 3(3). Admission to types of hazardous work from the age of 16 years. In its previous comments, the Committee requested that the Government indicate if provisions had been adopted concerning the required vocational training or instruction for persons between 16 and 18 years as a precondition for work, pursuant to section 32A(1) and (2) of the Labour Act. It also requested that the Government provide information on the measures taken to ensure that persons between 16 and 18 years are only permitted to perform hazardous types of work if their health, safety and morals are fully protected.

The Committee notes the Government’s statement that because it is envisaged that the employment of children under 18 years in hazardous work will be prohibited under the draft laws, it appears not to be necessary to have any directives ensuring the safety and protection of children of 16 to 18 years in such work. The Committee notes, however, that some of the activities contained in the proposed list of hazardous work, appears to be prohibited in the case of children under 16 years, for example, any work related to: adventures and sports tourism; transportation of passengers and heavy goods; garment, handloom, power loom and embroidery; and household chores or domestic work. The Committee once again recalls that *Article 3(3)* of the Convention only authorizes the employment or work of young persons between the ages of 16 and 18 years in hazardous work under specific conditions, namely that the health, safety and morals of the young persons concerned are fully protected and that the young persons have received adequate specific instruction or vocational training in the relevant branch of activity. **The Committee therefore requests that the Government take the necessary measures to ensure that persons between 16 and 18 years are only permitted to perform hazardous types of work if their health, safety and morals are fully protected and that they have received adequate training in that activity. It requests that the Government provide information on the measures taken in this regard.**

Application of the Convention in practice. The Committee notes the information provided by the Government, in its report, on the measures taken and envisaged for the abolition of child labour, including the development of the draft National Master Plan on Child Labour 2014–20 with the aim of eliminating child labour by 2020, and a National Child Labour Policy, which are awaiting approval from the Government. However, the Committee notes from the report on the Annual Household Survey 2013–14, that 29.4 per cent of children aged between 5 and 14 years are economically active, with a higher percentage of female children (33.9 per cent) than male children (25.3 per cent). Seventy per cent of the working children work for twenty hours or less per week, while 5.5 per cent work for 40 hours or more. Among working children, 76.5 per cent are engaged in agricultural works and 19.3 per cent in other works. The Committee also notes from the Trafficking in Persons National Report of the National Human Rights Commission of March 2016 that despite several programmes being implemented by the Government to prevent children from becoming involved in child labour and its worst forms, an average of 500,000 students enrolled in grades one to ten drop out each year in Nepal. The Committee finally notes that the Committee on Economic, Social and Cultural Rights (CESC), in its concluding observations of 12 December 2014, expressed concern at the high number of children under the minimum age that work in agriculture, quarries and mines, domestic servitude and pottery factories. The CESC also expressed concern at the weak enforcement of the legislation which prohibits child labour and the lack of information on the impact of awareness-raising campaigns conducted by the state party (E/C.12/NPL/CO/3, paragraph 21). **The Committee expresses its deep concern at the significant number of children under the minimum age who are engaged in child labour in Nepal, and urges the Government to strengthen its efforts, including through the approval and effective implementation of the National Master Plan on Child Labour 2014–20, to eliminate child labour. It requests that the Government continue to provide information on the measures taken in this regard, and on the results achieved.**

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

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C182 - Worst Forms of Child Labour Convention, 1999 (No. 182)

Observation 2016

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Articles 3(a) and 7(2)(b) of the Convention. Worst forms of child labour and time-bound measures to provide direct assistance for their removal and rehabilitation and social integration. Child bonded labour. In its previous comments, the Committee noted the persistence of practices such as *kamlari*, a form of bonded child labour affecting girls from the Tharu indigenous community.

The Committee notes the Government's information that *kamlari* system is prohibited under the *Kamlari Prohibition Act of 2013*. The Government report indicates that several measures are being taken to eliminate bonded labour of children and to provide for their rehabilitation, social reintegration and access to education. These measures include: mobilizing civil societies, in collaboration with the District Child Welfare Board and Labour offices, in freeing *kamlari* and providing for their rehabilitation; launching campaigns against the worst forms of child labour in the formal and informal sectors; and providing opportunities for education and vocational training for freed *kamlari* through targeted scholarship, hostel and livelihood facilities. The Government indicates that under the *Kamlari Scholarship Directives* implemented by the Ministry of Labour and Employment (MoLE), financial assistance is provided, until grade 12, for freed *kamlari* girls who go to school from their homes as well as for those who stay in hostels. So far, 8,000 girls have benefited from this initiative. Furthermore, 425 *kamlari* girls are using hostel facilities established in the five districts where *kamlari* system prevails. The Government further indicates that a total of 12,000 freed *kamlari* girls have received education, including vocational training, since the implementation of the *National Plan of Action Against Child Bonded Labour, 2009*. The Committee notes, however, that the Committee on the Rights of the Child, and the United Nations Human Rights Committee on International Covenant on Civil and Political Rights, in their concluding observations of 3 June 2016 (CRC/C/NPL/CO/3-5, paragraph 67) and 15 April 2014 (CCPR/C/NPL/CO/2, paragraph 18), respectively, expressed concern about the continuity of practices of bonded labour such as *Haliya* (agricultural bonded labour practice), *Kamaiya* and *Kamlari* in some regions of the State party. **While noting the measures taken by the Government, the Committee urges the Government to strengthen its efforts to ensure the complete elimination of bonded labour of children under 18 years of age and to pursue its efforts to ensure that child victims of bonded labour receive appropriate services for their rehabilitation and social reintegration, including access to education. The Committee requests the Government to continue to provide information on the measures taken in this regard and on the results achieved.**

Article 3(b). Use, procuring or offering of a child for the production of pornography or for pornographic performances. The Committee previously observed that the prohibition on the use or involvement of children in an "immoral profession" under sections 2(a) and 16(1) of the *Children's Act, 1992* applies only to children under 16 years. It noted the Government's indication that appropriate amendments would be made to the *Children's Act*.

The Committee notes the Government's information, in its report, that the draft *Children's Act* contains provisions prohibiting the use, procuring or offering of all children under 18 years for the production of pornography or for pornographic performances. **The Committee expresses the firm hope that the draft Children's Act which contains provisions prohibiting the use, procuring or offering of all children under 18 years of age for the production of pornography, will be adopted in the very near future. It requests the Government to provide information on any progress made in this regard and to provide a copy, once it has been adopted.**

Clause (c). Use, procuring or offering of a child for illicit activities. 1. Production and trafficking of drugs. The Committee previously noted that pursuant to sections 2(a) and 16(4) of the *Children's Act*, it is prohibited to involve a child under 16 years in the sale, distribution or trafficking of alcohol, narcotics or other drugs. However, the Committee also noted the Government's statement that the *Children's Act* would be amended in a way consistent with this Convention once a new and fully fledged parliament starts to function.

The Committee notes the Government's information that the draft *Children's Act* contains provisions prohibiting the use, procuring or offering of all children under 18 years of age for the production and trafficking of drugs. **The Committee urges the Government to take the necessary measures to ensure that the Children's Act which prohibits the use, procuring or offering of a child under 18 years for illicit activities, particularly the production and trafficking of drugs, is adopted in the near future. It requests the Government to provide information on any progress made in this regard.**

2. Use of a child for begging. The Committee previously noted that section 3 of the *Begging (Prohibition) Act, 1962*, makes it an offence to ask or encourage a child under 16 years to beg in a street, junction or any other place. The Committee also noted the Government's indication that the *Begging (Prohibition) Act of 1962* would be amended in a way consistent with this Convention.

The Committee notes the Government's statement that it is in the process of amending the *Begging (Prohibition) Act* in order to prohibit the use, procuring or offering of children under 18 years of age for begging. **The Committee expresses the firm hope that amendments to the Begging (Prohibition) Act prohibiting the use, procuring or offering of all children under 18 years of age for begging, will be finalized and adopted soon. It requests the Government to provide information on any progress made in this regard.**

Articles 3(d) and 4(1). Hazardous work and determination of types of hazardous work. With regard to the prohibition of hazardous work by children under 18 years of age and on the adoption of the list of hazardous types of work prohibited to children under the age of 18 years, the Committee requests the Government to refer to its detailed comments under the Minimum Age Convention, 1973 (No. 138).

Articles 5 and 7. Monitoring mechanisms and penalties. Trafficking. In its previous comments, the Committee noted the Government's statement that, as Nepal was one of the poorest countries in South Asia, and as it had an open border with India, some types of human trafficking had flourished. The Committee urged the Government to take immediate measures to strengthen its efforts to combat the trafficking of children under 18 years of age and requested the Government to provide information on the number of cases of trafficking in children detected and investigated, as well as statistics on the number of prosecutions, convictions and penalties applied to perpetrators.

The Committee notes the Government's information that a National Committee on Controlling Human Trafficking, District Committees on Controlling Human Trafficking in 75 districts and local committees in 109 villages were established for the effective implementation of the *Human Trafficking and Transportation (Control) Act of 2007*. Moreover, the Women and Children Service Directorate, under the Nepal Police, provides services to all the Women and Children Service Centres in dealing with cases relating to trafficking in persons. The Government also indicates that the Nepal Police and the Central Child Welfare Board (CCWB) are the two institutions involved in rescuing trafficked children. According to the data provided by the Government, in 2012–13, the CCWB rescued 134 child victims of trafficking (including 129 boys and five girls) and the Nepal Police rescued 136 child victims of trafficking. Information on court cases indicates that in 2013–14, there were 518 cases relating to trafficking in persons, of which decisions were handed down in 168 cases and 78 of them were decided in favour of the victims of trafficking. However, the Government states that no information on cases related to trafficking of children is available.

The Committee notes that the Committee on Economic, Social and Cultural Rights (CESCR) and the United Nations Human Rights Committee on International Covenant on Civil and Political Rights (CCPR), in their concluding observations of 12 December 2014 and 15 April 2014, respectively, expressed concern at the high number of children who are trafficked for labour and sexual exploitation, as well as for begging, forced marriages and slavery, including in neighbouring countries (E/C.12/NPL/CO/3, paragraph 22; and CCPR/C/NPL/CO/2, paragraph 18). The CESCR and the CCPR also expressed concern at the ineffective application of the *Human Trafficking and Transportation (Control) Act* and at the lack of information on investigations, prosecutions, convictions and sanctions imposed on traffickers. The Committee also notes from the National Report on Trafficking in Persons by the National Human Rights Commission, March 2016 (Report of the NHRC) that the massive earthquake of mid-2015 has greatly increased the vulnerability of trafficking, especially of women and children. **The Committee therefore urges the Government to take the necessary measures to ensure that thorough investigations and robust prosecutions of persons engaged in the sale and trafficking of children under 18 years of age are carried out, in particular by reinforcing the capacities of the authorities responsible for the enforcement of the Human Trafficking and Transportation (Control) Act, and to ensure that sufficiently effective and dissuasive penalties are imposed in practice. It requests the Government to provide information on the measures adopted in this respect and on the results achieved. The Committee also requests the Government to provide information on the measures taken by the national, district and local committees on controlling human trafficking to combat trafficking of children and the results achieved.**

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Labour inspectorate and the application of the Convention in practice. The Committee previously noted the Government's statement that the practices of the worst forms of child labour in domestic work, mines, the carpet industry and in rag picking remained a matter of great concern for the Government.

The Committee notes the Government's information that the draft Labour Act contains provisions to entrust the labour inspectors to monitor the employment of children in the worst forms of child labour. In this regard, the labour inspectors are provided training through ILO, UNICEF and CCWB on issues related to child labour and child rights. The Government report further indicates that in 2014–15, the Women and Children Directorate of Nepal Police withdrew 955 children while the CCWB withdrew 737 children from the worst forms of child labour. However, the Government states that monitoring the worst forms of child labour, particularly in the informal economy, is a difficult task. An increased number of labour offices with an increased number of labour inspectors with a specific mandate and adequate resources are required to oversee and overcome the problems relating to child labour. The Government also states that children identified and withdrawn from the worst forms of child labour are not ensured and guaranteed access to education and vocational training due to lack of resources. The Committee notes that according to the ILO World Report on Child Labour, 2015, 19.4 per cent of the total number of children aged between 15–17 years are involved in hazardous work. Moreover, the Committee on the Rights of the Child, in its concluding observations of 3 June 2016, expressed concern that over 600,000 children are engaged in the worst forms of child labour (CRC/C/NPL/CO/3-5, paragraph 67). The Committee expresses its **deep concern** at the high number of children involved in the worst forms of child labour. **The Committee accordingly urges the Government to redouble its efforts, including through strengthening the capacity and expanding the reach of the labour inspectorate, to combat the worst forms of child, including in the informal economy. In this regard, it requests the Government to take the necessary measures to ensure that the draft Labour Act which will enable the labour inspectorate to monitor the employment of children in the worst forms of child labour, is adopted in the near future.**

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

C160 - Labour Statistics Convention, 1985 (No. 160)

Observation 2016

The Committee notes the observations of Business New Zealand and the New Zealand Council of Trade Unions (NZCTU), communicated together with the Government's report.

Articles 7 and 8 of the Convention. Employment, unemployment and underemployment statistics. Statistics of the structure and distribution of the economically active population. The Committee notes the information provided in the Government's report and that the Government continues to supply data to the ILO Department of Statistics for dissemination through its website (ILOSTAT). In this regard, the latest Labour Force Survey (LFS) figures relate to 2014. The Committee notes that the 33rd New Zealand Census of Population and Dwellings planned for March 2011 was cancelled due to the Christchurch earthquake on 22 February 2011 and the subsequent state of emergency. The Census was thereafter rescheduled and conducted on 5 March 2013. **The Committee requests that the Government continue to supply data and information on the methodology used in the application of these provisions. It also invites the Government to provide information on any plans for conducting the next population census. Please also include information on any developments in relation to the implementation of the Resolution concerning statistics of work, employment and labour underutilization (Resolution I), adopted by the 19th International Conference of Labour Statisticians (October 2013).**

Article 9. Current statistics of average earnings and hours of work. Statistics of time rates of wages and normal hours of work. The Committee notes that the Government continues to regularly provide data to the ILO Department of Statistics from its Quarterly Employment Survey (QES), which is conducted by Statistics New Zealand in March, June, September and December annually. The Committee notes, however, the concerns expressed by the NZCTU regarding the accessibility and availability of certain data series. For example, the NZCTU indicates that the official statistics available on wage rates in collective agreements in New Zealand show only wage changes (increases or decreases) from the quarterly Labour Cost Index Survey. These statistics reflect only changes in wages that the employer indicates as being due to collective agreements and are reported in a limited number of bands, with no distinction being made by sex, occupation, industry or region. The NZCTU indicates that it would be possible to survey collective agreement wage rates, but this is not done. Moreover, there are no statistics on piece rates and shift rates although these could be surveyed. The Committee notes from the observations of the NZCTU that work is under way to revise the coverage of the QES, but the outcome of this revision has yet to be announced. **The Committee requests that the Government provide updated information on the concepts, definitions and methodology used in the statistics covered by Article 9 of the Convention. Please also include information on the application in practice of Article 3 of the Convention by providing information on the consultations held and cooperation with the social partners when designing and revising such concepts, definitions and methodology.**

Article 14. Statistics of occupational injuries and diseases. The Committee notes the detailed information received concerning advances made and difficulties encountered in the compilation of statistics on occupational injuries and diseases. In reply to the Committee's previous comments, the Government indicates in its report that, in 2012, during the production of the serious injury outcome indicators for 2000–11, Statistics New Zealand became aware of a quality issue concerning the work-related injury indicators. Specifically, it discovered that when a workplace fatality could be attributed to more than one potentially fatal injury, that fatality had been counted more than once. As some deaths result from multiple injuries, the number of deaths being reported was too high. As a result of this discovery, the work-related indicators were not published together with the rest of the indicators in December 2012. The Government further indicates that the definition of "work-related injury" used for the serious injury outcome indicators has since been reviewed and updated, with a view to improving the quality of the indicators. Statistics New Zealand also reviewed the coverage of the data used for the work-related indicators, and investigated the inclusion of additional data sources. As a result of this work, some previously unreported work-related injury events are now being reported. The NZCTU indicates that New Zealand has inadequate statistics on occupational injury and disease, noting that occupational injury data is largely limited to workers compensation claim statistics and statutory serious injury or fatality reports made to regulators, with the exception of the serious injury outcome indicator reports which, while incomplete, combine a number of sources. They are, however, delayed by up to two years and are limited in depth. In this context, the Committee notes the link provided by Business New Zealand to the website of Statistics New Zealand where the serious injury outcome indicator reports may be accessed. The NZCTU refers to the comments made by the Independent Taskforce on Workplace Health and Safety in relation to poor data and measurement, in which the Taskforce noted that New Zealand has unreliable data on workplace fatalities as well as poor information on health and safety risk concentrations, causes of workplace illnesses and injuries, and the effectiveness of interventions. The Taskforce noted that there is therefore insufficient information on which to base effective targeted interventions. The NZCTU also refers to the recommendations made by the Taskforce with a view to improving the situation. **The Committee requests that the Government continue to supply up-to-date statistics as well as information on any developments in relation to the collection, compilation and publication of statistics on occupational injuries and diseases, including in relation to any measures taken to implement the recommendations of the Independent Taskforce on Workplace Health and Safety.**

Pakistan

C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Observation 2016

The Committee notes the observations of the International Organisation of Employers (IOE) received on 27 November 2013 and 1 September 2015, which are of a general nature. It also notes the observations of the Employers Federation of Pakistan (EFP) included in the Government's report. The Committee also notes the observations from the International Trade Union Confederation (ITUC) received on 1 September 2015 referring to new allegations concerning acts of violence and arrests against striking and protesting workers. **The Committee requests the Government to provide its comments thereon.** It further notes the Government's reply to previous ITUC allegations.

Legislative issues. The Committee recalls that, in its previous comments, it had noted: (i) that the Government had enacted the 18th Amendment to the Constitution, whereby the matters relating to industrial relations and trade unions were devolved to the provinces; (ii) the adoption of the Industrial Relations Act (IRA), 2012, which regulates industrial relations and registration of trade unions and federations of trade unions in the Islamabad Capital Territory and in the establishments covering more than one province (section 1(2) and (3) of the IRA), and did not address most of the Committee's previous comments; and (iii) the adoption in 2010 of the Balochistan IRA (BIRA), the Khyber-Pakhtoonkhwa IRA (KPIRA), the Punjab IRA (PIRA), and the Sindh Industrial Relations (Revival and Amendment) Act, all of which raised similar issues as the IRA. The Committee notes the adoption of the Sindh Industrial Relations Act, 2013 (SIRA), which replaces the former industrial relations legislation in the province, and the amendment of the BIRA in 2015. It also notes the Government's statement that the responsibility for the coordination of labour-related issues and the responsibility to ensure that provincial labour laws are drafted in accordance with international ratified Conventions, lie with the federal Government.

Article 2 of the Convention. Right of workers and employers, without distinction whatsoever, to establish and join organizations. The Committee had previously noted that the IRA excludes the following categories of workers from its scope of application: workers employed in services or installations exclusively connected with the armed forces of Pakistan, including the Factory Ordinance maintained by the federal Government (section 1(3)(a)); workers employed in the administration of the State other than those employed as workmen (section 1(3)(b)); members of the security staff of the Pakistan International Airlines Corporation (PIAC), or drawing wages in a pay group not lower than Group V in the PIAC establishment (section 1(3)(c)); workers employed by the Pakistan Security Printing Corporation or Security Papers Limited (section 1(3)(d)); workers employed by an establishment or institution for the treatment or care of sick, infirm, destitute and mentally unfit persons, excluding those run on a commercial basis (section 1(3)(e)); and workers of charitable organizations (section 1(3) read together with section 2(x) and (xvii)). The Committee had further noted that section 1 of the BIRA, the KPIRA and the PIRA further exclude: (i) workers employed in services or installations exclusively connected with or incidental to the armed forces of Pakistan, including the Factory Ordinance maintained by the federal Government; (ii) members of the watch and ward, security or fire service staff of an oil refinery or an airport (and seaport – BIRA and KPIRA); (iii) members of the security or fire service staff of an establishment engaged in the production, transmission or distribution of natural gas or liquefied petroleum gas; (iv) persons employed in the administration of the State except those employed as workmen by the railway and Pakistan Post; and (v) in the PIRA and the KPIRA, persons employed in an establishment or institution providing education or emergency services excluding those run on a commercial basis.

The Committee notes that section 1 of the new SIRA excludes all the abovementioned five categories of workers, except for the members of the watch and ward, security or fire service staff of a seaport. The Committee notes the Government's indication that: (i) the IRA excludes security institutions and installations exclusively connected with the Armed Forces of Pakistan; (ii) the rationale behind excluding workers of institutions for treatment or care and of charitable organizations is that industrial action can put the lives of sick, infirm and destitute people in danger; but that, nonetheless, workers in these organizations have the right to form associations; (iii) public officials and employees of publicly owned undertakings, which are excluded from the purview of industrial relations legislation, get coverage under article 17 of the Constitution, which grants every citizen the right to form and join associations and is enforced by the Societies Registration Act, 1860 and the Co-operative Societies Act, 1925 (see for example the All Pakistan Clerks Association (APCA), the Muttahida Mahaz e Asatza (National Federation of Teachers), the All Pakistan Local Government Workers Federation, the Pakistan Airline Pilots' Association (PALPA), and the Punjab Civil Secretariat Employees' Association); (iv) according to the Government of Balochistan, necessary amendments are being proposed to ensure that under the BIRA only the armed forces and police are excluded in line with the provisions of the Convention; and (v) according to the Government of Sindh, the matter has been referred to the Law Department for opinion before proposing any amendments to the law.

The Committee notes that the BIRA, as amended in 2015, retains the exclusions enumerated above. The Committee considers that the exceptions relating to the armed forces and the police must be construed in a restrictive manner, and thus do not automatically apply to all employees who may carry a weapon in the course of their duties or to civilian personnel in the armed forces, fire service personnel, workers in private security firms and members of the security services of civil aviation companies, workers engaged in security printing services and members of the security or fire services of oil refineries, airports and seaports. The Committee emphasizes that these workers, without distinction whatsoever, should be granted the right to establish and join organizations of their own choosing – on the understanding that the right to strike is not absolute and may be restricted in exceptional circumstances, or even prohibited, for example in essential services in the strict sense of the term (services the interruption of which would endanger the life, personal safety or health of the whole or part of the population). **Welcoming the initiative of the Government of Sindh, the Committee requests the Government to ensure that it, as well as all other governments of the provinces, take the necessary measures in order to ensure that the legislation guarantees the abovementioned categories of employees the right to establish and join organizations of their own choosing to further and defend their social, economic and occupational interests, and to provide information on any progress made in this respect. As regards public service, the Committee requests the Government to provide legislative and other information detailing how the abovementioned associations of public officials and employees of publicly owned undertakings benefit from the trade union rights enshrined in the Convention.**

Managerial employees. The Committee had previously noted that, pursuant to sections 31(2) of the IRA and 17(2) of the BIRA, the KPIRA and the PIRA, an employer may require that a person, upon his or her appointment or promotion to a managerial position, shall cease to be and shall be disqualified from being a member or an officer of a trade union; and that the definition of "worker" in section 2 of the IRA, the BIRA, the KPIRA and the PIRA, excludes any person who is employed mainly in a managerial or administrative capacity. The Committee notes that sections 2 and 17(2) of the new SIRA contain the same provisions. It also notes the Government's indication that the industrial relations legislation considers any person responsible for the management, supervision and control of the establishment as an employer, and that managerial employees have all those rights of association that employers have under the laws. The Committee observes that the definition of "employer" in section 2 of the IRA, the BIRA, the KPIRA, the PIRA and the SIRA refers to any person responsible for the management, supervision and control of the establishment, including the proprietor, and includes every director, manager, secretary, agent or officer or person concerned with the management of the affairs thereof. With respect to workers performing functions that are of a managerial character, the Committee recalls that it is not necessarily incompatible with the requirements of *Article 2* to deny such workers the right to belong to the same trade unions as other workers, provided that the persons concerned have the right to form or join their own organizations and that the categories of such managerial staff are not defined so broadly as to weaken the organizations of other workers in the enterprise or branch of activity by depriving them of a substantial proportion of their present or potential membership and even, in small enterprises, prevent the establishment of trade unions. **The Committee requests the Government to indicate, and to request the governments of the provinces to indicate, by what means it is ensured that these categories of staff are not defined too broadly.**

Rights of workers and employers to establish and join organizations of their own choosing. The Committee had previously referred to the need to amend section 3(a) of the IRA and the BIRA, and 3(i) of the KPIRA and the PIRA, according to which no worker shall be entitled to be a member of more than one trade union. The Committee notes that the new SIRA contains the same provision in section 3(a). It also notes the Government's indication that: (i) there is a restriction on double employment of a worker under the Factories Act, which means that a worker cannot be allowed to become member of more than one trade union; (ii) labour legislation does not recognize part-time work and there are only limited numbers of workers who are engaged in part-time work; (iii) the Government of Khyber Pakhtunkhwa has informed that the question of allowing a worker to be member of different trade unions based on the number of

occupations will be raised in the Provincial Tripartite Consultation Forum; (iv) similarly, the Government of Sindh has informed that the Law Department is being consulted on the matter; and (v) the Government of Punjab indicates that the prohibition ensures that workers do not join more than one trade union in the same organization since they are also supposed to vote and this may cause ambiguity. The Committee observes that, while, as indicated by the Government, under section 48 of the Factories Act, adult workers shall not be allowed to work in any factory on any day on which they have already been working in any other factory, this does not seem to preclude that workers in the private and public sector or sectors may be engaged in more than one job in the same or different occupations. The Committee reiterates that these workers should be allowed to join the corresponding unions as full members (or at least, if they so wish, to join at the same time trade unions at the enterprise, branch and national levels) so as not to prejudice their right to establish and join organizations of their own choosing. **Welcoming the initiatives of the Governments of Sindh and Khyber Pakhtunkhwa, the Committee requests the Government to ensure that it, as well as all governments of the provinces, take all measures to amend the legislation taking into account the abovementioned principle.**

The Committee had previously noted that, pursuant to sections 8(2)(b) of the IRA and 6(2)(b) of the BIRA, the KPIRA and the PIRA, no other trade union is entitled to registration if there are already two or more registered trade unions in the establishment, group of establishments or industry with which that trade union is connected, unless it has, as members, not less than 20 per cent of the workers employed in that establishment, group of establishments or industry.

The Committee notes that section 6(2)(b) of the SIRA contains the same provision. It also notes the Government's indication that these provisions seek to avoid mushroom growth of ineffective trade unions, maintain effectiveness of collective bargaining agreements and discourage formation of pocket unions through employer support having no actual base, and in no way to prohibit workers from changing their union or forming a union for reasons of independence, effectiveness or ideological choice. The Committee reiterates that trade union activity imposed directly or indirectly by law is contrary to the Convention and notes the EFP's statement that, while supporting the views expressed by the Government, this matter could be discussed between the social partners for any amendment if required. **The Committee requests the Government to ensure that workers may establish organizations of their own choosing and that no distinction as to the minimum membership requirement is made between the first two or more registered trade unions and the newly created unions. It requests the Government to take the necessary measures to ensure that the governments of the provinces likewise amend the legislation, while encouraging consultation with the social partners, in regard to such measures.**

In its previous comment, the Committee had noted that sections 62(3) of the IRA, 25(3) of the KPIRA and the PIRA, and 30(3) of the BIRA, provide that, after the certification of a collective bargaining unit, no trade union shall be registered in respect of that unit except for the whole of such a unit. The Committee notes that section 25(2) of the new SIRA contains the same provision. The Committee notes the Government's indication that: (i) since 1969, Pakistan follows an industrial relations model where a collective bargaining agent, once determined, has the exclusive right to represent all workers at the workplace (both members and non-members), in order to exercise meaningful checks and balances for promotion of healthy trade unionism and avoid ambiguities arising out of overlapping; and (ii) the Government of Khyber Pakhtunkhwa has informed that the matter will be raised in the Provincial Tripartite Consultation Forum. The Committee reiterates that, while a provision requiring certification of a collective bargaining agent for a corresponding bargaining unit is not contrary to the Convention, the workers' right to establish and join trade union organizations of their own choosing implies the possibility to create – if the workers so choose – more than one organization per bargaining unit and to freely determine the scope of unions created in relation to such unit, including the rights of minority unions (2012 General Survey on the fundamental Conventions, paragraph 225). **Welcoming the initiative of the Government of Khyber Pakhtunkhwa, the Committee requests the Government to take the necessary measures to amend this provision so as to bring it into conformity with the Convention and to take the necessary measures to ensure that the governments of the provinces likewise amend the legislation.**

Rights and advantages of the most representative trade unions. The Committee had previously noted that certain rights were granted (in particular, to represent workers in any proceedings and to check-off facilities) only to collective bargaining agents, i.e. the most representative trade unions (sections 20(b) and (c), 22, 33, 35 and 65(1) of the IRA; sections 24(13)(b) and (c), 32, 41, 42, 68(1) of the BIRA; sections 24(13)(b) and (c), 28, 37, 38, 64(1) of the KPIRA; and sections 24(20)(b) and (c), 27, 33, 34, 60(1) of the PIRA. The Committee notes that sections 24(20)(b) and (c), 27, 34, 35, 61(1) of the SIRA contain the same provisions. It also notes the Government's indication that: (i) a collective bargaining agent is an elected body for the whole establishment; (ii) first priority is to include representatives of the collective bargaining agent union to ensure effective and meaningful representation of workers in the proceedings, since the collective bargaining agent is legally authorized to fight for the rights of all the workers of the concerned establishment; and (iii) as for the check-off facility, it is provided only with the consent of each individual worker under the industrial relations legislation. The Committee reiterates that the distinction between most representative and minority unions should be limited to the recognition of certain preferential rights (for example, for such purposes as collective bargaining, consultation by the authorities or the designation of delegates to international organizations); however, the distinction should not have the effect of depriving those trade unions that are not recognized as being among the most representative of the essential means of defending the occupational interests of their members (for instance, making representations on their behalf, including representing them in case of individual grievances), of organizing their administration and activities, and formulating their programmes, as provided for in the Convention. **The Committee requests the Government to take the necessary measures to amend the legislation so as to ensure full respect for the abovementioned principles, and to take the necessary measures to ensure that the governments of the provinces likewise amend the legislation.**

In its previous comments, the Committee requested the Government to amend section 27-B of the Banking Companies Ordinance of 1962, which restricted the possibility of becoming an officer of a bank union only to employees of the bank in question, under penalty of up to three years' imprisonment. The Committee notes with **deep concern** that, 18 years after its first observation on the issue, and after having stated on several occasions that legislative measures to repeal section 27-B were being taken, the Government now asserts that this provision is not in contravention with the Convention. In the view of the Committee, provisions of this type infringe the right of organizations to draw up their constitutions and to elect representatives in full freedom by preventing these organizations from determining whether other qualified persons (such as full-time union officers or pensioners) should be candidates for election and by creating a real risk of interference by the employer through the dismissal of trade union officers, which deprives them of their trade union office. **The Committee requests the Government to take the necessary measures to amend the legislation by making it more flexible, either by admitting as candidates persons who have previously been employed in the occupation concerned, or by exempting from the occupational requirement a reasonable proportion of the officers of an organization, along the lines of section 8(d) of the IRA.**

Right of workers' organizations to organize their administration and to formulate their programmes. The Committee had previously noted that sections 5(d) of the IRA, 15(e) of the BIRA, and 15(d) of the KPIRA and the PIRA, confer on the Registrar the power to inspect the accounts and records of a registered trade union, or investigate or hold such inquiry into the affairs of a trade union as he or she deems fit. The Committee notes that section 15(e) of the SIRA contains the same provisions. It also notes the Government's indication that: (i) the Registrar exercises vigilance upon the affairs of a registered trade union and is empowered to inspect its accounts and records so that the unions work properly and the funds of unions are utilized transparently; (ii) the spirit of this non-coercive and rather facilitative measure is to prevent malpractices in the affairs of unions and ensure that union funds are not embezzled by any corrupt executive; and (iii) as for the holding of an inquiry in the affairs of a trade union, a Registrar does not act arbitrarily but only after receiving any complaint and/or if there are sufficient grounds to exercise such powers. The Committee welcomes the Government's views concerning the limited purpose of the Registrar's powers and the conditions for their use for the holding of an inquiry into trade union affairs. The Committee considers, however, that the wording of the relevant legislative provisions ("as he deems fit") is excessively broad. **The Committee requests the Government to take the necessary measures to amend the legislation by explicitly limiting the powers of financial supervision of the Registrar to the obligation of submitting annual financial reports and to verification in cases of serious grounds for believing that the actions of an organization are contrary to its rules or the law or of a complaint or call for an investigation of allegations of embezzlement from a significant number of workers. The Committee requests the Government to take the**

necessary steps to ensure that the governments of the provinces take such measures as well.

Article 4. Dissolution of organizations. The Committee had previously noted that the registration of a trade union can be cancelled by the Registrar for numerous reasons set out in sections 11(1)(a), (d), (e) and (f), 11(5), and 16(5) of the IRA; and section 12(1)(a) and (b), 12(3)(d), and 12(2) and (7) of the BIRA, the KPIRA and the PIRA, and that, under the IRA, the Commission's decision directing the Registrar to cancel the registration of a union cannot be appealed in court (section 59). The Committee recalled that the dissolution and suspension of trade union organizations constitute extreme forms of interference by the authorities in the activities of organizations and should, therefore, be accompanied by all the necessary guarantees, which can only be ensured through a normal judicial procedure, which should also have the effect of a stay of execution. The Committee notes that section 12 of the SIRA provides for grounds for cancellation by the Registrar, if so directed by the labour court. It also notes that the Government indicates that: (i) registration of a trade union is cancelled at federal level only on the order of the National Industrial Relations Commission (NIRC) (judicial body the decision of which can be appealed before its full bench (sections 54, 57 and 58 of the IRA)) or at provincial level by the labour courts; and (ii) the Registrar of Trade Unions, on its own, has no jurisdiction to cancel the trade union registration (section 11(2) of the IRA; 12(2) of the BIRA, the KPIRA, the PIRA and the SIRA). **The Committee takes due note of this information and requests the Government to provide information on all occurrences of cancelled registration since January 2016 and the procedures followed for such occurrences.**

Export processing zones (EPZs). With regard to the right to organize in EPZs, the Committee recalls that it had previously noted the Government's statement that the Export Processing Zones (Employment and Service Conditions) Rules, 2009, had been finalized in consultation with the stakeholders and would be submitted to the Cabinet for approval. The Committee notes that the Government provides no further information in this respect. **The Committee urges the Government to provide detailed information on the progress made in adopting the Export Processing Zones (Employment and Service Conditions) Rules, 2009, and a copy thereof as soon as they are adopted.**

The Committee expects that all necessary measures will be taken to bring the national and provincial legislation into full conformity with the Convention and requests the Government to provide information on all steps taken or envisaged in this respect. The Committee welcomes the ILO project financed by the Directorate General for Trade of the European Commission to support GSP+ beneficiary countries to effectively implement international labour standards targeting four countries and notably Pakistan. The Committee trusts that the project will assist the Government in addressing the issues raised in this observation and the accompanying direct request.

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

Pakistan

C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

Observation 2016

The Committee notes the observations from the International Trade Union Confederation (ITUC) received on 1 September 2015 referring to new allegations concerning acts of anti-union discrimination. **The Committee requests the Government to provide its comments thereon.** Furthermore, the Committee **regrets** that the Government has not responded to the 2012 ITUC allegations of anti-union dismissals and acts of interference in trade union internal affairs by employers (intimidation and blacklisting of trade unions and their members). **The Committee once again requests the Government to provide its comments on these observations.**

The Committee also notes the observations of the Employers Federation of Pakistan (EFP) included in the Government's report concerning matters being examined by the Committee.

Legislative issues. The Committee recalls that, in its previous comments, it had noted: (i) that the 18th Amendment to the Constitution had been enacted, whereby the matters relating to industrial relations and trade unions were devolved to the provinces; (ii) the adoption of the Industrial Relations Act (IRA), 2012, which regulates industrial relations and registration of trade unions and federations of trade unions in the Islamabad Capital Territory and in the establishments covering more than one province (section 1(2) and (3) of the IRA), and the content of which did not address most of the Committee's previous comments; (iii) the adoption in 2010 of the Balochistan IRA (BIRA), the Khyber-Pakhtoonkhwa IRA (KPIRA), the Punjab IRA (PIRA), and the Sindh Industrial Relations (Revival and Amendment) Act, all of which raised similar issues as the IRA. The Committee notes the adoption in 2013 of the Sindh Industrial Relations Act, 2013, (SIRA) which replaces the former industrial relations legislation and the amendment of the BIRA in 2015. It also notes the Government's statement that the responsibility for the coordination of labour-related issues and the responsibility to ensure that provincial labour laws are drafted in accordance with international ratified Conventions lie with the federal Government.

Scope of application of the Convention. The Committee had previously noted that the IRA, BIRA, KPIRA and PIRA excluded numerous categories of workers (enumerated by the Committee in its observation on the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)) from their scopes of application, and – as far as the BIRA is concerned – workers employed in tribal areas. The Committee notes that the SIRA contains the same provisions as the KPIRA and PIRA. It also notes the Government's indication that the exclusions are based on the peculiar nature of the workers' organizations and their functioning, and that the list of exclusions has been reduced considerably compared to the former legislation. The Committee emphasizes that the only categories of workers which can be excluded from the application of the Convention are the armed forces, the police and public servants engaged in the administration of the State (*Articles 5 and 6 of the Convention*). The Committee further notes that in its report under Convention No. 87 the Government states that according to the Government of Balochistan, necessary amendments to the BIRA are being proposed, in order to ensure that only armed forces and police are excluded from its scope and allow workers employed in the Provincially Administered Tribal Areas to enjoy freedom of association rights. The Committee notes however that the BIRA, as amended, still excludes tribal areas from its scope of application and retains the exclusions enumerated under Convention No. 87. **The Committee requests the Government to ensure that it, as well as the Governments of the provinces, take the necessary measures in order to amend the legislation so as to ensure that all workers, with the only possible exception of the armed forces, the police and public servants engaged in the administration of the State, fully enjoy the rights enshrined in the Convention.**

With regard to public servants in particular, the Committee had previously noted that the IRA does not apply to workers employed in the administration of the State other than those employed as workmen (section 1(3)(b)), and that the BIRA, KPIRA and PIRA add the words "as workmen employed by the Railway and Pakistan Post". The Committee had requested the Government to specify the categories of workers employed in the administration of the State excluded from the scope of application of the legislation. The Committee notes that section 1(3)(ii) of the SIRA contains the same provision as the BIRA, KPIRA and PIRA. It also notes the Government's indication that persons employed in the administration of the State means persons engaged in the federal secretariat and various attached departments as well as the federal legislature, and, similarly, persons employed in provincial civil secretariats as well as attached departments and provincial legislatures. While noting that these exclusions would be in line with the Convention, the Committee observes that the wording in section 1(3)(b) of the BIRA, KPIRA, PIRA and SIRA "shall not apply to persons employed in the administration of the State other than those employed as workmen by the Railway and Pakistan Post" could imply that certain persons employed in public enterprises are deemed employed in the administration of the State and excluded from the scope. The Committee recalls that the determination of this category of workers is to be made on a case by case basis, in light of criteria relating to the prerogatives of the public authorities (and particularly the authority to impose and enforce rules and obligations and to penalize non-compliance), and that a distinction must be drawn between, on the one hand, public servants who by their functions are directly employed in the administration of the State (for example, in some countries, civil servants in government ministries and other comparable bodies and ancillary staff) who may be excluded from the scope of the Convention and, on the other hand, all other persons employed by the Government, by public enterprises or by autonomous public institutions who should benefit from the guarantees provided for in the Convention (for instance, employees in public enterprises, municipal employees and those in decentralized entities, as well as public sector teachers). **The Committee requests the Government to indicate whether persons employed in public enterprises are excluded from the scope of application of the industrial relations legislation, and, if so, to specify which categories of persons so employed are excluded, as well as any current or proposed legislation enabling them to fully benefit from the rights afforded by the Convention.**

Export processing zones (EPZs). The Committee recalls that it had previously noted the Government's statement that the Export Processing Zones (Employment and Service Conditions) Rules, 2009, had been finalized in consultation with the stakeholders and would be submitted to the Cabinet for approval. The Committee notes with **regret** that the Government provides no further information in this respect. **The Committee urges the Government to provide detailed information on the progress made in adopting the Export Processing Zones (Employment and Service Conditions) Rules, 2009, and a copy thereof as soon as they are adopted.**

Article 1 of the Convention. Adequate protection against acts of anti-union discrimination. Banking sector. The Committee had previously requested the Government to amend section 27-B of the Banking Companies Ordinance of 1962, imposing sanctions of imprisonment and/or fines on the grounds of the exercise of trade union activities during office hours. The Committee notes with **deep concern** that 14 years after its first observation on the issue, and after having stated on several occasions that legislative measures to repeal section 27-B were being taken, the Government now asserts that this provision is not in contravention with the Convention. **The Committee expects that the relevant amendment will be adopted in the very near future and requests the Government to transmit a copy thereof.**

Article 4. Promotion of collective bargaining. The Committee previously noted that, according to section 19(1) of the IRA, and sections 24(1) of the BIRA, KPIRA and PIRA, if a trade union is the only one in the establishment or group of establishments (or industry in the BIRA, KPIRA, PIRA), but it does not have at least one third of the employees as its members, no collective bargaining is possible at the given establishment or industries. The Committee recalls that it had previously requested the Government to amend similar sections which existed under the former industrial relations legislation. The Committee notes that section 24(1) of the SIRA contains the same provision as the BIRA, PIRA and KPIRA. The Committee notes the Government's indication that: (i) the minimum requirement of membership (33.3 per cent of total workers) is to promote democratic principles for the promotion of healthy and popular trade unionism; (ii) since Pakistan follows an industrial relations system where a union, after being elected as collective bargaining agent, is granted the exclusive right to represent all workers, collective bargaining rights cannot be granted to any union in the absence of a referendum process and merely on the basis of its own membership; and (iii) the Government of Balochistan and the Government of Sindh have informed that they are consulting with their respective provincial law departments. The Committee recalls that the determination of the threshold of representativity to designate an exclusive agent for the purpose of negotiating collective agreements which are destined to be applied to all workers in a sector or establishment is compatible with the Convention in so far as the required conditions do not constitute an obstacle to the promotion of free and voluntary collective bargaining in practice. In this regard, the Committee considers that if no union in a specific negotiating unit meets the required threshold of representativity to be able to negotiate on behalf of all workers, minority trade unions should be able to

negotiate, jointly or separately, at least on behalf of their own members. **The Committee requests the Government to take the necessary measures in order to ensure that if there is no union representing the required percentage to be designated as the collective bargaining agent, collective bargaining rights are granted to the existing unions, jointly or separately, at least on behalf of their own members. The Committee underlines the importance that the Governments of the provinces take measures in the same direction.**

The Committee had previously noted that: (i) shop stewards are either nominated (by a collective bargaining agent) or elected (in the absence of a collective bargaining agent) in every undertaking employing over 50 workers (25 workers in the case of the IRA) to act as a link between the workers and the employer, to assist in the improvement of arrangements for the physical working conditions and to help workers in the settlement of their problems (sections 23 and 24 of the IRA, 33 of the BIRA, 29 of the KPIRA and 28 of the PIRA); (ii) works councils (bipartite bodies), which are established in every undertaking employing over 50 workers, have multiple functions (sections 25 and 26 of the IRA, 39 and 40 of the BIRA, 35 and 36 of the KPIRA, and 29 of the PIRA), and its members are either nominated by a collective bargaining agent or, in the absence of a collective bargaining agent, elected (PIRA) or “chosen in the prescribed manner from amongst the workmen engaged in the establishment” (IRA, BIRA and KPIRA); (iii) management shall not take any decision relating to working conditions without the advice of workers’ representatives who can be nominated (by a collective bargaining agent) or be elected (in the absence of a collective bargaining agent) (section 27 of the IRA, 34 of the BIRA, 30 of the KPIRA and 29 of the PIRA); and (iv) joint management boards shall look after the fixation of job and piece-rate, planned regrouping or transfer of workers, laying down the principles of remuneration and introduction of remuneration methods, etc. (these functions are granted to works councils under the PIRA) (sections 28 of the IRA, 35 of the BIRA, and 31 of the KPIRA). The Committee had requested the Government to ensure that it, as well as the Governments of the provinces, take the necessary measures to amend the legislation so as to ensure that the position of trade unions is not undermined by the existence of other workers’ representatives, particularly when there is no collective bargaining agent. The Committee notes that sections 28, 29 and 30 of the SIRA contain the same provisions as the PIRA. It also notes the Government’s indication that: (i) the position of a single union having less than 33 per cent of the workforce as its membership is not jeopardized through the institutions of shop steward, workers representatives and joint management boards; (ii) workers in these institutions are elected through secret ballot and a union can campaign or canvass the workers to vote for its members for having the highest representation in these institutions; and (iii) moreover, these institutions work even in the presence of a collective bargaining agent. The Committee considers that, where there is no collective bargaining agent, the fact that the trade union can seek to persuade the workers during the elections to vote for its members to be represented in the above entities does not eliminate the risk of the union being undermined by workers’ representatives; moreover, in the case of the works council, its representatives are not elected but “chosen in the prescribed manner from amongst the workmen engaged in the establishment”, which aggravates the risk of the union being undermined by workers’ representatives. **The Committee requests the Government to ensure that it, as well as the Governments of the provinces, take appropriate measures to guarantee that, in the absence of a collective bargaining agent, workers’ representatives in the above entities are not arbitrarily appointed, and that the existence of elected workers’ representatives is not used to undermine the position of the trade unions concerned or their representatives.**

Compulsory conciliation. Having noted that compulsory conciliation is required by law in the collective bargaining process, the Committee had previously observed that the conciliator is appointed either directly by the Government (sections 43 of the BIRA, 39 of the KPIRA, 35 of the PIRA) or by the Commission whose ten members are appointed by the Government, with only one member representing employers and another one representing trade unions (section 53 of the IRA). The Committee had underlined that the system of appointment of the conciliator, as well as the composition of the Commission, could raise questions concerning the confidence of the social partners in the system. The Committee notes that section 36 of the SIRA contains the same provision as the BIRA, KPIRA and PIRA. It also notes the Government’s indication that: (i) the role of the conciliator begins after referral of an industrial dispute to him or her under the industrial relations legislation, and as of that moment a government official who is supposed to be a neutral person has to strive for bringing the parties to an amicable solution; and (ii) involving any social partner in appointing the conciliator may call into question the very neutrality of the conciliator and result in legal complications. The Committee considers that dispute resolution proceedings should not only be strictly impartial but also appear to be impartial both to the employers and to the workers concerned. **The Committee requests the Government to ensure that it, as well as the Governments of the provinces, take measures to guarantee an impartial conciliation mechanism which has the confidence of the parties, for example, by ensuring that there is no opposition by the social partners to the appointment of their conciliators.**

Concerning section 6 of the IRA, the Committee refers to its comments made under Convention No. 87 in its direct request.

The Committee expects that all necessary measures will be taken to bring the national and provincial legislation into full conformity with the Convention and requests the Government to provide information on all steps taken or envisaged in this respect. The Committee welcomes the ILO project financed by the Directorate-General for Trade of the European Commission to support GSP+ beneficiary countries to effectively implement international labour standards targeting four countries and notably Pakistan. The Committee trusts that the project will assist the Government in addressing the issues raised in this observation.

[The Government is asked to reply in full to the present comments in 2017.]

C029 - Forced Labour Convention, 1930 (No. 29)

Observation 2016

The Committee notes that the Government's report has not been received. It notes however the adoption of the Criminal Code (Amendment) Act 2013, which criminalizes trafficking in persons. The Committee will examine this Act at its next session together with the Government's report. In the meantime, it is bound to repeat its previous comments.

Articles 1(1), 2(1) and 25 of the Convention. Trafficking in persons. 1. Strengthening the legal framework and law enforcement. The Committee previously noted a communication from the International Trade Union Confederation (ITUC) stating that there had been no investigations, prosecutions or convictions for trafficking in persons. This communication also stated that men are forced into labour in logging camps and mines and that much of the trafficking of women for the purpose of sexual exploitation took place close to camps for these industries. This report further indicated that there were reports of police and border control officers receiving bribes to ignore trafficking in persons.

The Committee notes the Government's statement that there have been no investigations, prosecutions or convictions for trafficking in persons. Nonetheless, the Government acknowledges that human trafficking is a serious problem in the country, but that it lacks the proper legislation specifically criminalizing human trafficking. It states that while the legislation in some manner prohibits forced labour and trafficking in persons, the provisions do not offer the maximum protection and penalties are not stringent as required by *Article 25* of the Convention. However, it is addressing this issue through the adoption of the People Smuggling and Trafficking in Persons Bill. This Bill would amend the Criminal Code to include a provision prohibiting human trafficking and has been endorsed by the National Executive Council.

The Committee notes the Government's statement that a project is being conducted by the International Organization for Migration and the Department of Justice and the Attorney-General to provide a preliminary overview on the indicators of trafficking and the training needs of law enforcement officials. In this regard, it notes that a survey implemented under this project, entitled "Trafficking in persons and people smuggling in Papua New Guinea" indicated a high rate of domestic and international trafficking of both adults and children for the purpose of forced labour, sexual exploitation and domestic servitude. The survey also highlighted the vulnerability to trafficking of men and women who work in and around the logging industry, and other industries that operate at remote sites. The Committee further notes that the Committee on the Elimination of Discrimination against Women, in its concluding observations of 30 July 2010, expressed **concern** about the lack of specific laws addressing trafficking-related problems and about cross-country trafficking, which involves commercial sex as well as exploitative labour (CEDAW/C/PNG/CO/3, paragraph 31). ***The Committee urges the Government to strengthen its efforts to combat trafficking in persons. In particular, it requests the Government to take the necessary measures to ensure that perpetrators of human trafficking are prosecuted and punished with adequate penal sanctions, as required by Article 25 of the Convention. It requests the Government to provide information on measures taken in this regard, including information on the number of investigations, prosecutions, convictions and specific penalties applied with regard to trafficking in persons.***

2. Protection and assistance for victims of trafficking in persons. The Committee notes the Government's statement that in the absence of a proper legal framework, victims of trafficking are at risk for prosecution and further trauma. Currently, persons found without proper immigration papers are arrested and detained for deportation, without an assessment of their status as a victim of trafficking. Similarly, persons found engaging in prostitution are arrested and it is not assessed whether they are possibly victims of trafficking. ***The Committee requests the Government to strengthen its efforts with regard to the identification of victims of trafficking in persons, and to take the necessary measures to ensure that appropriate protection and assistance is provided to such victims. It requests the Government to provide information on the measures taken in this regard in its next report.***

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

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

C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

Observation 2016

Article 1 of the Convention. Adequate protection against acts of anti-union discrimination. The Committee had previously requested the Government to reply to the 2011 International Trade Union Confederation (ITUC) observations alleging lack of law enforcement in practice in respect of discriminatory acts against workers seeking to form or join a trade union. While noting the Government's indication that the current Industrial Organisations Act provides for the free exercise of the right to form and join trade unions and bargain collectively, the Committee recalls that legal provisions prohibiting acts of anti-union discrimination are not sufficient if they are not accompanied by effective and rapid procedures to ensure their application in practice. **The Committee, therefore, requests the Government to provide information on the measures taken to ensure effective implementation of the prohibition of anti-union discrimination in practice, including information on the functioning of labour inspection and access to judicial remedies. It further requests the Government to provide statistics as to the number of anti-union discrimination complaints brought before the competent authorities, their follow-up and sanctions and remedies imposed.**

Article 4. Promotion of collective bargaining. In its previous comments, the Committee requested the Government to ensure the conformity of the Industrial Relations Bill, 2011, with the provisions of the Convention and in particular with respect to *Article 4*. The Committee notes the Government's indication that the Bill had been further revised and that the new Industrial Relations Bill, 2014, is undergoing a vetting process at the Government Executive Committee and the Central Agency and Consultative Council to harmonize it with other relevant legislation. According to the Government, the revised Bill should be presented to Cabinet before November 2016 or early 2017 and consultations on the matter should be held in the national Tripartite Consultative Council. The Committee notes, however, that the text of the new Bill has not been received.

Power of the Minister to assess collective agreements on the ground of public interest. The Committee previously requested the Government to take the necessary measures to bring section 50 of the Industrial Relations Bill, 2011, into conformity with the principle that the approval of a collective agreement may only be refused if it has a procedural flaw or does not conform to the minimum standards laid down by general labour legislation. The Committee notes that the Government reiterates that the powers previously conferred on the Minister are now conferred on the Attorney-General who can, subject to the approval of the full bench of the Industrial Relations Commission, appeal against the making of an award on the grounds of public interest, including budgetary, financial and economic matters. **Noting that section 50 of the new Industrial Relations Bill, 2014, as described by the Government, does not substantially differ from the previous draft of the text, the Committee is obliged to reiterate its previous request in this respect.**

Compulsory arbitration in cases where conciliation between the parties has failed. In its previous comments, the Committee requested the Government to take the necessary measures to ensure that the recourse to compulsory arbitration under sections 78 and 79 of the Industrial Relations Bill, 2011, does not affect the promotion of collective bargaining. The Committee understands from the Government's observations that section 78 of the Industrial Relations Bill, 2014, now allows for arbitration only where the conciliation process is exhausted, the issues remain unresolved and the parties agree to it, or in the case of public servants exercising authority in the name of the State or in disputes relating to essential services in the strict sense of the term. Recalling that the text of the new Bill has not been received, the Committee observes that the information provided by the Government does not enable it to assess the conformity of section 79 with the Convention. **The Committee, therefore, requests the Government to confirm the Committee's understanding of section 78 of the Industrial Relations Bill, 2014, to clarify the substance of its section 79 and to provide the full text of this Bill.**

The Committee trusts that the Government, taking into account the Committee's comments, will ensure full conformity of the revised Industrial Relations Bill, 2014, with the Convention. In this regard, the Committee encourages the Government to avail itself of the technical assistance of the Office, if it so wishes.

C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

Observation 2016

Article 1(1)(a) of the Convention. Prohibited grounds of discrimination. Legislation. Referring to its previous comments regarding legal protection against discrimination on the basis of the grounds set out in *Article 1(1)(a)* of the Convention, the Committee welcomes the Government's indication in its report that section 8 of the final draft of the Industrial Relations Bill prohibits direct and indirect discrimination on the grounds of race, colour, sex, religion, pregnancy, political opinion, ethnic origin, national extraction or social origin, against an employee or applicant for employment or in any employment policy or practice. The Government adds that further consultations were held between the National Tripartite Consultative Council (NTCC) and the State Solicitor's Office in order to make final amendments to the Bill which was anticipated to be enacted in 2015. The Committee notes that the Government does not provide information on progress made concerning the review of the Employment Act, 1978, including the revision of sections 97–100 which prohibit only sex-based discrimination against women. It notes that the Decent Work Country Programme for 2013–15, which has been extended until 2017, has set as a priority the completion of the Industrial Relations Bill, and revisions of the Employment Act through the delivery of a new Employment Relations Bill. **While noting that none of these Bills have been enacted to date, the Committee trusts that the Industrial Relations Bill will be adopted in the near future, and requests the Government to provide information on progress made in this regard. It also requests the Government to provide information on progress made concerning the review of the Employment Act 1978, and in particular sections 97–100, in collaboration with workers' and employers' organizations, with a view to aligning the provisions on discrimination with the Industrial Relations Bill and to bring them into conformity with the Convention.**

Discrimination on the ground of sex in the public service. For over 15 years, the Committee has been referring to the discriminatory impact of section 36(2)(c)(iv) of the Public Services (Management) Act 1995, which allows calls for candidates to specify that "only males or females will be appointed, promoted or transferred in particular proportions", and section 20.64 of General Order No. 20 as well as section 137 of the Teaching Services Act 1988, which provide that a female official or female teacher is only entitled to certain allowances for their husband and children if she is the breadwinner. A female officer or female teacher is considered to be the breadwinner if she is single or divorced, or if her spouse is medically infirm, a student or certified unemployed. The Committee notes with **deep regret** that despite the adoption of a new Public Services (Management) Act in 2014, which repealed the Act of 1995, section 36(2)(c)(iv) referred to above has been maintained. It however notes that the National Public Service Policy on Gender Equity and Social Inclusion (GESI) adopted in 2013, and its action plan, set as priority action the revision of employment conditions in order to ensure equal access and employment conditions for all individuals regardless of gender. **Noting the discriminatory impact of section 36(2)(c)(iv) of the Public Services (Management) Act 2014, section 20.64 of General Order No. 20 and section 137 of the Teaching Services Act 1988, the Committee urges the Government to take expeditious steps to review and amend these laws in order to bring it in line with the requirements of the Convention. It also requests the Government to provide information on any measures taken as a result of the GESI policy and action plan and any progress made to ensure equality of opportunity and treatment between men and women in the public service.**

Discrimination against certain ethnic groups. Referring to its previous comments concerning the allegations made by the International Trade Union Confederation (ITUC) on the increased violence against Asian workers and entrepreneurs, who were blamed for "taking away employment opportunities", the Committee notes that the Government does not provide any information in this regard. **The Committee once again requests the Government to investigate the allegations of discrimination against Asian workers and entrepreneurs including incidents of violence and to provide information on the results of such investigations. It also requests the Government to provide information on concrete measures taken to ensure protection in the context of employment and occupation, against discrimination on the grounds of race, colour, or national extraction, as well as on any measures taken or envisaged to promote equality of opportunity and treatment of members of different ethnic groups in employment and occupation.**

Article 2. National equality policy. The Committee notes that the Government still does not provide information on a national policy specifically addressing discrimination on all the grounds enumerated in the Convention. With regard to discrimination based on sex, the Committee notes that some sections of the National Public Service Policy on Gender Equity and Social Inclusion of 2013 and the National Policy for Women and Gender Equality for 2011–15 seem to address the issue of gender equality in employment and occupation. The Committee recalls that, even though the relative importance of the problems relating to each of the grounds may differ for each country, when reviewing the situation and deciding on the measures to be taken, it is essential that attention be given to all the grounds of discrimination set out in the Convention in implementing the national equality policy, which presupposes the adoption of a combination of legislative and administrative measures, collective agreements, public policies, affirmative action measures, dispute resolution and enforcement mechanisms, specialized bodies, practical programmes and awareness raising (2012 General Survey on the fundamental Conventions, paragraphs 848–849). **The Committee again urges the Government to provide full particulars on the specific measures taken or envisaged, in collaboration with workers' and employers' organizations, to implement a national policy aimed at ensuring and promoting equality of opportunity and treatment in employment and occupation on all the grounds enumerated in the Convention.**

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

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C138 - Minimum Age Convention, 1973 (No. 138)

Observation 2016

Papua New Guinea

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

Article 1 of the Convention. National plan of action and application of the Convention in practice. The Committee previously noted the comments made by the International Trade Union Confederation (ITUC) that child labour occurred in rural areas, usually in subsistence agriculture, and in urban areas in street vending, tourism and entertainment. It noted that Papua New Guinea was one of the 11 countries that participated in the 2008–12 ILO–IPEC **Time-bound Programme** entitled “Tackling child labour through education” (TACKLE project) which aimed at contributing to the fight against child labour.

The Committee notes from the Government's report under the Worst Forms of Child Labour Convention, 1999 (No. 182), that within the framework of the TACKLE project, a rapid assessment was carried out in Port Moresby targeting children working on the streets and those involved in commercial sexual exploitation. The Committee notes the Government's statement that the findings of the rapid assessment conducted in Port Moresby were alarming and that it is believed that a similar child labour situation is occurring in other regions of the country. The rapid assessment findings indicate that children as young as 5 and 6 years of age are working on the streets and about 68 per cent of them worked under hazardous conditions. About 47 per cent of the street children between 12 and 14 years of age have never been to school and a further 34 per cent had dropped out of school. The Committee expresses its **deep concern** at the situation of children under 16 years of age who are compelled to work in Papua New Guinea. **The Committee, therefore, urges the Government to strengthen its efforts to improve the situation of children working under the age of 16 years and to ensure the effective elimination of child labour. Noting that there is no concrete or reliable data reflecting the real situation of children in the rest of the country, the Committee urges the Government to undertake a national child labour survey to ensure that sufficient up-to-date data on the situation of working children in Papua New Guinea is available.**

Article 2(1). Minimum age for admission to employment. The Committee had previously noted that, although the Government of Papua New Guinea had declared 16 years to be the minimum age for admission to employment or work, section 103(4) of the Employment Act permits a child of 14 or 15 years to be employed during school hours if the employer is satisfied that the child is no longer attending school. It also noted that, by virtue of sections 6 and 7 of the Minimum Age (Sea) Act, 1972, the minimum age to perform work on board ships is 15 years and 14 years, respectively.

The Committee notes the Government's information that the Australian Assistance for International Development through its Facilities and Advisory Services in close consultation with the ILO–IPEC and the Department of Labour and Industrial Relations has undertaken a review of the Employment Act and that the amendment process is ongoing. It also notes the Government's indication that this process will also address the issue related to the minimum age stipulated under the Minimum Age (Sea) Act, 1972. **Noting that the Government has been referring to the review of the Employment Act and the Minimum Age (Sea) Act for a number of years, the Committee once again urges the Government to take the necessary measures to ensure that the proposed amendments are adopted in the near future. In this regard, it expresses the hope that the amended provisions will be in conformity with Article 2(1) of the Convention.**

Article 2(3). Age of completion of compulsory education. The Committee previously noted that education is neither universal nor compulsory in Papua New Guinea, and that the law does not specify a legal age for entering school or an age at which children are permitted to leave school. It noted that the Education Department has developed a ten-year National Education Plan for 2005–15 (NEP) to enable more children to be in school. However, the Committee observed that the NEP seemed intended to make only three years of basic education compulsory up to the age of 9. Moreover, the Committee noted that according to the ITUC, the gross primary enrolment rate was 55.2 per cent, and only 68 per cent of these children remain at school up to the age of 10, while only less than 20 per cent of the country's children attend secondary school.

The Committee notes from the Government's report under Convention No. 182 that the NEP is being supported by donor agencies to implement programmes focusing on formal education and non-formal education (NFE), including assistance from the Asian Development Bank and the European Union in order to extend the NFE to the needy and the disadvantaged. The Committee notes, however, that according to the findings of the rapid assessment conducted in Port Moresby during 2010–11, although educational reforms are in place, 92.2 per cent of those children who enrolled in grade 3 would drop out along the way. The Committee expresses its **deep concern** at the significant number of children under the minimum age of admission to work who are not attending school. In this regard, the Committee must emphasize the desirability of linking the age of completion of compulsory schooling with the minimum age for admission to work, as provided under Paragraph 4 of the Minimum Age Recommendation, 1973 (No. 146). If compulsory schooling comes to an end before young persons are legally entitled to work, there may arise a vacuum which opens the door to the economic exploitation of children (see General Survey of 2012 on the fundamental Conventions concerning rights at work, paragraph 371). **Therefore, considering that compulsory education is one of the most effective means of combating child labour, the Committee urges the Government to take the necessary measures, particularly within the framework of the NEP, to provide for compulsory education for boys and girls up to the minimum age for admission to employment of 16 years. The Committee requests the Government to provide information on the progress made in this regard.**

Article 3(1) and (2). Minimum age for admission to, and determination of, hazardous work. In its previous comments, the Committee noted that while certain provisions of the national legislation prohibit hazardous work for children under the age of 16 years, there exist no provisions protecting children between the ages of 16–18 years from hazardous work. The Committee also noted the absence of any list of types of hazardous work prohibited to children under the age of 18 years.

The Committee notes from the Government's report that the ongoing legislative review of the Employment Act will ensure the compliance of the provisions of the Convention related to hazardous work. **The Committee expresses the firm hope that the amendments to the Employment Act, which will include a prohibition on hazardous work for children under the age of 18 years as well as a determination of types of hazardous work prohibited to such children, will be adopted in the near future. It requests the Government to provide information on any progress made in this regard.**

Article 3(3). Admission to types of hazardous work from the age of 16 years. The Committee previously noted that the conditions of work for young people would be examined through the ongoing Employment Act review and that the legislation relating to occupational safety and health shall also be reviewed in a way to ensure that hazardous work does not affect the health and safety of young workers. **The Committee once again expresses the strong hope that the review of the Employment Act and of the legislation pertaining to occupational safety and health will be completed as soon as possible. It also hopes that the amendments made to the legislation will include provisions requiring that young persons between 16 and 18 years of age who are authorized to perform hazardous types of work receive adequate specific instruction or vocational training in the relevant branch of activity. It requests the Government to provide information on the progress made in this regard in its next report.**

Article 9(3). Registers of employment. The Committee previously noted that the Employment Act does not contain any provision requiring the employer to keep registers and documents of people under the age of 18 working for them. It also noted that section 5 of the Minimum Age (Sea) Act provides for registers to be kept by people having command or charge of a vessel, which contains particulars such as the full name, date of birth, and the terms and conditions of service of each person under 16 years of age employed on board the vessel. The Committee requested the Government to take the necessary measures to ensure that, in conformity with Article 9(3) of the Convention, employers are obliged to keep registers that shall contain the names and ages or dates of birth, duly certified wherever possible, of persons whom they employ or who work for them and who are less than 18 years of age.

The Committee once again notes the Government's information that this issue will be addressed within the review of the Employment Act. **The Committee expresses the firm hope that the Government will take the necessary measures, without delay, to ensure that employers are obliged to keep register of all persons below the age of 18 years who work for them and to provide information with regard to the progress made in ensuring that the Employment Act and the Minimum Age (Sea) Act are in conformity with Article 9(3) of the Convention.**

The Committee urges the Government to strengthen its efforts to ensure that, during its review of the Employment Act and the Minimum Age

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(Sea) Act, due consideration is given to the Committee's detailed comments on the discrepancies between national legislation and the Convention. The Committee requests the Government to provide information on any progress made in the review of these Acts in its next report and invites the Government to consider seeking technical assistance from the ILO.

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

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

C182 - Worst Forms of Child Labour Convention, 1999 (No. 182)

Observation 2016

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

Article 3 of the Convention. Worst forms of child labour. Clause (a). Sale and trafficking of children. The Committee previously noted that women and children were trafficked within the country for the purpose of commercial sexual exploitation and domestic servitude. It requested the Government to take the necessary measures, as a matter of urgency, to adopt legislation prohibiting the sale and trafficking of both boys and girls under 18, for the purposes of labour and sexual exploitation.

The Committee notes the Government's indication that it is addressing this issue through the adoption of the People Smuggling and Trafficking in Persons Bill which would amend the Criminal Code to include a provision prohibiting human trafficking, including children under the age of 18 years, for labour and sexual exploitation. However, the Committee notes that according to a survey conducted in 2012 within the framework of the Combating Trafficking in Human Beings in Papua New Guinea project implemented by the International Organization for Migration (IOM), trafficking for the purpose of forced labour, sexual exploitation and domestic servitude, including child trafficking, is occurring at a high rate in the country. Female children were indicated as over twice as vulnerable to becoming victims of trafficking than male children. The Committee further notes that the Committee on the Elimination of Discrimination against Women (CEDAW), in its concluding observations of 30 July 2010, expressed concern that there are no specific laws addressing trafficking-related problems and about cross-country trafficking, which involves commercial sex as well as exploitative labour (CEDAW/C/PNG/CO/3, paragraph 31). **The Committee, therefore, urges the Government to take the necessary measures to ensure the adoption of the People Smuggling and Trafficking in Persons Bill, without delay, and to ensure that thorough investigations and robust prosecutions of persons who commit the offence of trafficking of children are carried out and that sufficiently effective and dissuasive penalties are imposed in practice. The Committee requests the Government to supply a copy of the People Smuggling and Trafficking in Persons Bill, once it has been adopted.**

Article 7(2). Effective and time-bound measures. Clause (e). Taking into account the special situation of girls. 1. Child victims of prostitution. The Committee previously noted the Government's indication that the number of girls (some as young as 13) who engaged in prostitution as a means of survival was a growing problem in both urban and rural areas. Moreover, the Committee also noted that the laws prohibiting prostitution were selectively or rarely enforced, even in cases involving children.

The Committee notes the absence of information in the Government's report on the measures taken or envisaged to combat the commercial sexual exploitation of children. The Committee notes that, according to the findings of the rapid assessment conducted in Port Moresby during 2010–11, there are an increasing number of girls involved in commercial sexual exploitation. The most common age at which girls engaged in prostitution is 15 years (34 per cent), while 41 per cent of the children are sex workers before the age of 15 years. The survey report further indicated that girls as young as 10 years are also involved in sex work. The Committee once again expresses its **deep concern** at the prevalence of the commercial sexual exploitation of children in Papua New Guinea. **The Committee therefore urges the Government to take effective and time-bound measures to provide the necessary and appropriate direct assistance to remove children, particularly girls under 18 years of age from prostitution, and provide for their rehabilitation and social integration.**

2. "Adopted" children. The Committee previously noted the observation of the International Trade Union Confederation (ITUC) that indebted families sometimes pay off their dues by sending children – usually girls – to their lenders for domestic servitude. The ITUC indicated that "adopted" children usually worked long hours, lacked freedom of mobility or medical treatment, and did not attend school. The Committee also noted the Government's indication that the practice of "adoption" is a cultural tradition in Papua New Guinea. The Committee observed that these "adopted" girls often fall prey to exploitation, as it was difficult to monitor their working conditions, and it requested the Government to provide information on the measures taken to protect these children.

In this regard, the Committee noted the Government's reference to the Lukautim Pikinini Act of 2009 which provided for the protection of children with special needs. According to the Lukautim Pikinini Act, a person who has a child with special needs in his/her care but who is unable to provide the services required for the upbringing of a child may enter into a special needs agreement with the Family Support Service. Under these agreements, financial assistance may be provided. Pursuant to section 41 of the Lukautim Pikinini Act, the definition of a "child with special needs" includes children who have been orphaned, displaced or traumatized as a result of natural disasters, conflicts or separation, or children who are vulnerable to violence, abuse or exploitation.

The Committee notes that the Government has not provided any additional information on this issue. The Committee expresses its **concern** at the situation of "adopted" children under 18 years of age who are compelled to work under conditions similar to bonded labour or under hazardous conditions. **It once again requests the Government to take immediate and effective measures to ensure, in law and in practice, that "adopted" children under 18 years of age may not be exploited under conditions equivalent to bonded labour or under hazardous conditions, taking account of the special situation of girls. The Committee also requests the Government to provide information on the number of "adopted" children engaged in exploitative and hazardous work who have benefited from special needs agreements.**

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

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

C017 - Workmen's Compensation (Accidents) Convention, 1925 (No. 17)

Observation 2016

Article 7 of the Convention. Additional compensation paid to public sector workers requiring constant help. Referring to its long-standing comments on the necessity to extend the carer's allowance to public sector employees, the Committee notes with **satisfaction** that, based on the actuarial study conducted by the Government Service Insurance System (GSIS) in 2012, the State Insurance Fund (SIF) was found to be in a position to finance the extension of this benefit without affecting the stability of the SIF and without requiring additional contributions. In conformity with *Article 7* of the Convention, on 23 April 2013, the Executive Order No. 134 on Granting of Carer's Allowance to Employees' Compensation Permanent Partial Disability and Permanent Total Disability Pensioners in the Public Sector was issued and took effect as of 31 May 2013. This Order provides for additional financial assistance in the amount of 575 Philippine pesos (PHP) per month for public sector pensioners suffering from work-related contingency. Since 2013, a total of 1,456 pensioners have been granted this allowance. Private sector employees started benefiting from similar allowances already in 1993.

Conclusions and recommendations of the Standards Review Mechanism. The Committee notes that, at its 328th Session in October 2016, the Governing Body of the ILO adopted the conclusions and recommendations formulated by the Standards Review Mechanism Tripartite Working Group (SRM TWG), recalling that Convention No. 17 to which the Philippines is party is outdated and charging the Office with follow-up work aimed at encouraging States party only to these Conventions to ratify the Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121), and/or the Social Security (Minimum Standards) Convention, 1952 (No. 102), and accept the obligations in its Part VI, as these represent the most up-to-date instruments in this subject area. **The Committee reminds the Government of the availability of ILO technical assistance in this regard.**

C029 - Forced Labour Convention, 1930 (No. 29)

Observation 2016

Articles 1(1), 2(1) and 25 of the Convention. Trafficking in persons. Law enforcement measures and penalties. The Committee notes the Government's indication in its report that the Inter-Agency Council Against Trafficking (IACAT) has been implementing and monitoring cases of trafficking in persons through a certain number of measures and programmes, including: (i) the second National Strategic Action Plan for 2012–16 that provides for a medium-term roadmap for the implementation of the Government's plans, programmes and activities against trafficking; (ii) the Public Assistance Corner, as a tool wherein the public can report or share information on trafficking in persons; (iii) the development of the Manual on the Labour Dimension of Trafficking in Persons, which is designed to provide law enforcement bodies with conceptual clarity on forced labour/trafficking, and victim-related issues; and (iv) the establishment of Law Enforcement Task Forces Against Trafficking in Persons and Quick Reaction Team (QRT), composed of prosecutors, law enforcement investigators, welfare officers and NGOs acting in hotspot areas, including sea spots, airports and land terminals all over the country. As of 2015, 24 existing anti-trafficking task forces have been established. All task forces are an indispensable part in the rescue operations, and prosecution of traffickers. The Committee further notes that according to the statistics contained in the website of the IACAT, there were 259 convictions pronounced for trafficking in persons as of 31 August 2016, with a total of 282 persons condemned to imprisonment ranging from six years to life imprisonment. **The Committee requests the Government to continue to take measures to combat trafficking in persons and to continue to strengthen the capacity of law enforcement agencies in identifying victims and dealing with the complaints received. The Committee also requests the Government to provide information on the activities within the framework of the second National Strategic Action Plan for 2012–16, as well as the results achieved in combating trafficking in persons. Lastly, the Committee requests the Government to continue to provide information on the number of investigations, prosecutions and the penalties imposed with regard to cases of trafficking in persons.**

Complicity of law enforcement officials in trafficking activities. The Committee notes the Government's indication that the Department of Justice promptly investigates all employees reported to be involved in acts of trafficking, and imposes administrative sanctions on those who were found liable after due process of law. The Government also refers to the case of two employees from the Bureau of Immigration who were found guilty of violation of the 2003 Anti-Trafficking Act, by facilitating the exit of a passenger despite having in their possession fake documents, with intent to work in another country. They were sentenced to 15 years' imprisonment and a fine. **The Committee encourages the Government to continue to take measures to ensure that all persons who engage in trafficking in persons, including complicit government officials, are subject to thorough investigations and prosecutions, and that sufficiently effective and dissuasive penalties are applied in practice. The Committee requests the Government to continue to provide information in this respect.**

Protection and assistance to victims. The Committee notes the Government's indication that the IACAT 1343 Actionline Against Human Trafficking, as a hotline service, has been established to receive and respond to requests for assistance, inquiries and/or referrals relating to trafficking. In 2015, the Actionline received a total of 62 reports. Some 25 of these reports were confirmed to be trafficking cases which resulted in 62 victims (32 male and 30 female victims) being given assistance and appropriate referrals. The Committee further notes the statistical information provided by the Government for 2015. It notes, in particular, that a total of 198 rescue and entrapment operations were conducted by IACAT Task Forces resulting in the rescue of 430 victims and the arrest of 132 perpetrators. Moreover, the National Bureau of Investigation Anti-trafficking Division (NBI-AHTRAD) conducted 48 operations that led to the rescue of 303 trafficking victims and the arrest of 151 offenders. All these operations resulted in filed cases, where 35 are presently under preliminary investigation and 34 cases have already been filed in court. The Government also indicates that in 2015, the IACAT secretariat received 364 deferred departure incidents involving 3,587 passengers who were endorsed to the port-based task force. In the conduct of the investigations, 18 of these incidents were found to be actual cases of trafficking in persons. With regard to the shelters provided to the victims, the Government indicates that in addition to shelters operated by the Department of Social Welfare and Development (DSWD) and NGOs, the IACAT Operation Centre (OPCEN) established a temporary shelter for witnesses and trafficking victims. It served as a temporary holding area for the rescued victims who were eventually turned over the DSWD for the provision of protection services. As a support centre, the OPCEN assists service providers in investigation, prosecution and protection of victims. The OPCEN greatly contributed to the prosecution of trafficking cases, by persuading a total of 75 victims/witnesses in different areas in the country and escorting them to attend their respective court hearings.

The Committee takes due note of the different measures taken by the Government to provide assistance to victims of trafficking. Furthermore, the Committee notes that while welcoming the efforts made by the Government to prevent and combat trafficking in persons, the UN Committee on the Elimination of Discrimination against Women (CEDAW), in its concluding observations of 22 July 2016, noted with concern that the Government remains a source country for international and internal trafficking, including for sexual exploitation, forced labour and domestic servitude. The CEDAW pointed out, among other aspects, the lack of designated shelters for victims of trafficking as well as support for rehabilitation and reintegration (CEDAW/C/PHL/CO/7-8, paragraph 27).

The Committee encourages the Government to continue to take measures to provide appropriate protection and assistance to victims of trafficking. The Committee also requests the Government to provide information on the different measures taken to facilitate the subsequent reintegration of victims of trafficking into society.

Articles 1(1) and 2(1). Vulnerable situation of migrant workers with regard to the exaction of forced labour. The Committee notes the Government's statement that the Philippine Overseas Employment Administration (POEA) has stepped up its campaign against abusive practices of private recruitment agencies. In 2014, some 54 private recruitment agencies' licences were cancelled by the POEA on account of unethical recruitment practices and violations of Philippine migration laws and regulations such as misrepresentation, illegal collection of placement fees, non-issuance of appropriate receipts, and disregard of orders, notices and other legal processes. The POEA has also adopted a "no placement fee policy" to all destination countries which prohibit such charges to the migrant workers, to vulnerable workers like domestic workers and to Filipino seafarers working on board foreign flag vessels. In 2015, a joint Manual of Operations in Providing Assistance to Migrant Workers and other Filipinos Overseas was signed by six government agencies. The Manual outlines the roles and responsibilities of the respective agencies and overseas offices to provide assistance services, including legal and medical aid to Filipino migrant workers. **The Committee takes due note of this information, and requests the Government to continue to take measures to ensure that migrant workers are fully protected from abusive practices and conditions that amount to the exaction of forced labour. The Committee also requests the Government to provide statistics on the number of migrant workers who have benefited from POEA services, in terms of assistance received in case of forced labour practices.**

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

Philippines

C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Observation 2016

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The Committee notes the observations of the International Organisation of Employers (IOE) received on 1 September 2016, which are of a general nature. The Committee also notes the observations from the International Trade Union Confederation (ITUC) received on 31 August 2016 referring to matters already being addressed by the Committee, matters to be considered in the framework of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), as well as new allegations concerning violations of the Convention in practice, including violent suppression of strikes and acts of anti-union harassment. **Noting the Government's reply thereto, the Committee requests the Government to supply details concerning the allegation of anti-union violence against striking distillery workers, and to continue providing information on the developments or outcome of the investigations being pursued concerning the alleged shooting at agricultural workers preparing for a strike and the allegations of harassment of several union officials and COURAGE union activists.**

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 105th Session, May–June 2016)

The Committee takes due note of the debate which took place within the Conference Committee in June 2016 and the ensuing conclusions, according to which the Conference Committee noted with concern the numerous allegations of anti-union violence and the lack of progress in the investigation of many such cases and, regretting that the legislative reforms introduced to address some of the Committee of Experts' concerns had not been adopted, urged the Government to bring the law into compliance with the Convention. Furthermore, the Conference Committee requested the Government to: (i) undertake appropriate investigations on the alleged cases of violation of trade union rights in the near future with a view to establishing the facts, determining responsibilities and punishing the perpetrators; (ii) ensure that sufficient funds and staff are available to effectively carry out this work expeditiously so as to avoid a situation of impunity; (iii) establish monitoring bodies and provide regular information on these mechanisms and progress on the cases assigned to them; (iv) institute adequate measures to prevent the repetition of crimes against trade unionists, including the institution of protection schemes for trade unionists that are determined to be at risk by an impartial body; (v) bring national legislation into conformity with the Convention with regard to the requirement of government permission for foreign assistance to trade unions and to reduce the registration requirement from ten to five duly recognized bargaining agents or local chapters; (vi) amend the legislation to allow currently excluded classes of public servants to associate freely; (vii) take effective measures to prohibit the intentional misclassification of employees so as to deprive them of the right to freedom of association under the Convention; and (viii) accept a direct contacts mission in 2016 in order to follow up on the foregoing conclusions.

Civil liberties and trade union rights

Monitoring mechanisms. In its previous comments, the Committee requested the Government to provide further information on the functioning of the monitoring bodies in practice, including on the participation of social partners as well as on the number and types of cases addressed by these mechanisms.

The Committee notes the information provided by the Government on the National Monitoring Mechanism (NMM), a component of the EPJUST Programme, in particular: (i) its Operational Guidelines, which inter alia provide the coordinative mechanism among its members for the immediate provision of services, which include but are not limited to, legal services, in promoting, protecting and addressing the rights of the victims and/or members of their families, and establish a local monitoring mechanism in the regions; (ii) its composition, including the Commission on Human Rights (CHR), government agencies (such as the Presidential Human Rights Committee, the Department of Justice (DOJ), the Department of Interior and Local Government (DILG), the Department of National Defense (DND), the Armed Forces of the Philippines (AFP), the Philippine National Police (PNP), the Department of Labor and Employment (DOLE), the Office of the Presidential Adviser on the Peace Process) and civil society organizations; and (iii) its functioning, notably its regular meetings and the present conduct of an audit or investigation into the human rights situation on Semirara Island following the accident at the open-cast coal mine.

Furthermore, the Committee notes the following information provided by the Government: (i) the DOJ Special Task Force and the Inter-Agency Committee on Extra-Legal Killings, Enforced Disappearances, Torture and Other Grave Violations of the Right to Life, Liberty and Security of Persons (IAC) continue to perform their functions: inventory of cases, investigation of unsolved cases, monitoring and reporting cases under investigation, preliminary investigation, and trial; investigation and prosecution of new cases; and submission of report to the President; (ii) due to the transition in the DOJ leadership, the IAC has not yet convened as of the reporting date (26 August 2016); (iii) DOLE Regional Tripartite Monitoring Bodies (RTMBs) in coordination with the regional counterpart of the IAC members such as the DOJ, CHR, PNP and AFP continue to function in the monitoring, investigation and prosecution of reported cases; and (iv) capacity-building activities were conducted to aid the tripartite monitoring bodies in the delivery of their functions such as case profiling and reporting, and to strengthen the inter-agency coordination between and among the IAC government agencies in charge of investigation and prosecution of cases and the labour and employer representatives of the National Tripartite Industrial Peace Council – Monitoring Body (NTIPC–MB) and RTMBs tasked to monitor, document and process reported violations of international labour standards, particularly freedom of association and collective bargaining. The Committee also notes from the Government's reply to the 2016 ITUC observations that, on 25 May 2016, TIPC Resolution No. 1, s. 2016, was adopted setting up independent and capacitated case-based NTIPC–MB Tripartite Validating Teams (one DOLE representative, one representative from the labour sector and one representative from the employers' sector) for cases of extrajudicial killings (EJK), enforced disappearances, torture, harassment and other grave violations committed against trade unionists, which require further validation or review of gathered information for it to serve as significant support to case build-up and resolution; the DOLE approved for the present year a budget allocation in support of the functioning of the Tripartite Validating Teams, one for each of the identified ILO cases.

Welcoming the detailed information provided by the Government, the Committee requests the Government to continue to provide information on the working of the above monitoring mechanisms in practice, the progress on cases addressed by them and further steps taken or contemplated to ensure a climate of justice and security for trade unionists in the Philippines.

Allegations of violations of trade union rights

ITUC observations of 2011 and 2012. The Committee had firmly hoped that the investigations of the serious allegations contained in the 2011 ITUC observations concerning the alleged killings of three trade union leaders and seven cases of alleged trade union rights violations including arrests and false criminal charges filed against trade union leaders and physical assaults of striking workers, and in the 2012 ITUC observations concerning inter alia the alleged killings of four trade union leaders, would be finalized in the near future with a view to establishing the facts, determining responsibilities and punishing the perpetrators, and requested the Government to provide details on any developments in this regard.

The Committee notes that, regarding the 2011 ITUC observations: (i) in relation to the killing of Eduard Panganiban, elected Secretary of the United Strength of Workers in Takata, the Government reiterates that the victim's mother executed a sworn affidavit on 5 April 2014 stating her lack of interest to pursue the case; (ii) regarding the killing of Benjamin Bayles, organizer of the National Federation of Sugar Workers, the Government again states that the case is still under trial with the prosecution presenting its 19th witness and closely monitored by the IAC which had identified it as an extra-judicial killing; (iii) concerning the killing of Carlo "Caloy" Rodriguez, President of the Calamba Water District Union, the Government reiterates that the victim's wife remains uncooperative and adds that, to date, efforts are still being made to look for possible witnesses to identify the suspect(s) that may lead to the closure of the case; (iv) out of the five remaining cases of alleged violations of trade union rights, in two cases the parties have reached an amicable settlement, in one case (alleged union busting) it was ruled that no violation of trade union rights had been committed, in one case (violent suppression of picket lines), the DOLE engaged the Metropolitan Manila Development Authority in awareness-raising activities as recommended by the NTIPC–MB, and one case is still pending resolution before the Supreme Court.

Concerning the 2012 ITUC observations, the Committee notes that the Government, recalling that the case of the killing of Santos V. Manrique had been dismissed as not related to his trade union activities, indicates that: (i) as regards the killing of Celito Baccay, board member of the Maeno-Giken Workers' Organization, PNP investigators could not yet determine the perpetrators and the motive for lack of trace evidence at the crime scene and potential

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eyewitnesses which could provide investigative leads; his wife did not pursue the case; and the prosecutor was adamant about not filing the case because of weak evidence against the suspected perpetrator; (ii) as to the killing of Noriel Salazar, President of the Union of COCOCHEM, after preliminary investigation, a case for murder was filed against a suspect on 4 August 2011 and is still under trial; (iii) concerning the killing of Elpidio Malinao, Vice-President of the University of the Philippines (UP) Los Banos Chapter of the Organization of Non-Academic Personnel of UP, an alias warrant of arrest was issued on 12 December 2011 against a suspect for the crime of murder, and a continuous search operation is being conducted; and (iv) regarding the abduction and arbitrary detention of Elizar Nabas, member of the National Federation of Sugar Workers, he was detained in jail and discharged on 23 January 2013 after a surety bond, the case of arson filed against him was dismissed due to insufficient evidence on 5 September 2013, and he was arrested for the crime of murder on 2 October 2013 and released on 28 July 2014 after a cash bond.

The Committee observes that, out of the six remaining cases of killings of trade union leaders, two are still under trial, in one an alias warrant has been issued and in three one of the reasons or the only reason given for the lack of progress in the investigation is the lack of cooperation or interest of the victim's family. The Committee considers that cases of alleged extrajudicial killings of trade union leaders should, due to their seriousness, be investigated and, where evidence (not necessarily in the form of witnesses) exists, prosecuted ex officio without delay, regardless of desistance or disinterest of the parties to pursue the case, and even in the absence of a formal criminal complaint being lodged by a relative. The Committee further recalls that justice delayed is justice denied and that it is important to avoid any situation of impunity. **The Committee expresses the firm hope that the investigations into the serious allegations of killings of trade union leaders as well as the ongoing judicial proceedings in this regard, will be completed in the very near future with a view to shedding full light, at the earliest date, on the facts and the circumstances in which such actions occurred and, to the extent possible, determining responsibilities, punishing the perpetrators and preventing the repetition of similar events. The Committee requests the Government to provide information on any progress achieved in this regard, as well as on any developments in relation to the aforementioned case pending resolution before the Supreme Court.**

2015 and 2016 ITUC and Center of United and Progressive Workers (SENTRO) observations. The Committee previously hoped that all alleged cases of violations of trade union rights reported by the ITUC and by the SENTRO in 2015 would be the subject of appropriate investigations which would be vigorously pursued, and requested the Government to provide information on any developments in this regard.

The Committee notes with **regret** that the Government provides no information concerning developments in relation to: (i) the killing of trade union leader Victorio Embang alleged by the SENTRO in 2015; and (ii) certain violations of trade union rights alleged by the ITUC in 2015, especially the enforced disappearance of trade union leader Benjamen Villeno and the arbitrary detention of trade unionists Randy Vegas and Raul Camposano.

The Committee notes that, as regards the killing of trade union leader Florencio "Bong" Romano, the Government indicates that: (i) the case has been endorsed to the RTMB of DOLE Region IV-A and is still pending investigation by the PNP-Task Force Usig; (ii) the IAC will deliberate on this case at its next meeting; (iii) no conclusion has yet been made as to whether the killing is labour-related; (iv) a final report will be elevated to NTIPC-MB upon completion of the RTMB Region IV-A, PNP-Task Force Usig and IAC reports; and (v) livelihood assistance from DOLE for the victim's family is being explored. The Committee notes the Government's reply concerning the remaining SENTRO allegations, including the killing by gunshots on 29 November 2014 of Rolando Pango, a farmworker leader, in particular that: (i) Mr Pango was involved in the agrarian and labour disputes in Hacienda Salud, a sugar plantation in Barangay Rumirang, Isabela; he was instrumental in organizing the plantation workers and had filed a case before the National Labor Relations Commission (NLRC) against management for unlawful termination of 41 workers; (ii) he was advised in June 2014 to desist from assisting and organizing people at the plantation and subsequently received death threats; (iii) the case was considered by the IAC as an extrajudicial killing and endorsed to the RTMB of DOLE Region VI; and (iv) on 17 April 2015, a murder case against alias Andres Gumban and alias Gante has been filed but dismissed on 10 November 2015 due to insufficient evidence.

The Committee observes that some ITUC allegations (false criminal charges brought against trade union leaders Artemio Robilla and Danilo Delegencia, and shooting at picketing workers) and SENTRO allegations (killing of trade union leader Antonio Petalcorin) are already being dealt with by the Committee on Freedom of Association in the framework of Cases Nos 3119 and 3185, respectively.

The Committee firmly hopes that all remaining alleged cases of violations of trade union rights reported by the ITUC and by the SENTRO in 2015 will be the subject of appropriate investigations which will be vigorously pursued, and requests the Government to provide information on any developments in this respect. With particular regard to the killings of Rolando Pango, Florencio "Bong" Romano as well as Victorio Embang, the Committee requests the Government to provide information on the relevant resolutions issued by the NTIPC, to indicate whether the killings of these trade union leaders have benefited or are benefiting from the resources and powers of the high-level IAC in order to ensure effective steps to combat impunity, and to provide details on the outcome of the investigations conducted in that framework or on the negative outcome of the second IAC review, as the case may be.

Human Security Act. The Committee notes that, similarly to the SENTRO in 2015, the ITUC expresses concern in its 2016 observations about the possible negative implications of the Human Security Act on the exercise of trade union rights. **In view of the Government's previous assurances referring to the 2012 AFP Guidelines, the Committee continues to trust that the Government will take all necessary steps to ensure that the Human Security Act will not be misused to suppress legitimate trade union activities.**

Legislative issues

Labour Code. In its previous comments, the Committee noted the Government's indication that there were several bills seeking to amend the Labour Code, and that the NTIPC constituted a Tripartite Labour Code Review Team as an external partner in the drafting process. The Committee recalls the need to bring the national legislation into conformity with the following Articles of the Convention.

Article 2 of the Convention. Right of workers, without distinction whatsoever, to establish and join organizations of their own choosing, without previous authorization. Aliens. The Committee had previously referred to the need to amend sections 269 and 272(b) (now renumbered to sections 284 and 287(b)) of the Labour Code so as to grant the right to organize to all workers residing in the Philippines. The Committee notes the Government's statement that House Bill No. 5886 was approved by the House on 16 December 2015 and received by the Senate on 6 January 2016; and that it did not pass into law in the 16th Congress but may possibly be pursued in the next Congress as refiled House Bill No. 1354. Having previously noted that House Bill No. 5886, while recognizing a degree of participation in trade union activities to all aliens, only recognizes the right to self-organization and the right to join and assist labour organizations, to aliens with a valid working permit, the Committee wishes to recall that the right of workers, without distinction whatsoever, to establish and join organizations of their own choosing implies that anyone residing in the territory of a State, whether or not they have a residence or a working permit, benefits from the trade union rights provided by the Convention. **The Committee expects that any relevant draft legislation will accurately reflect the Convention in this regard and will be adopted in the very near future. It requests the Government to provide information on progress achieved in this respect.**

Other categories of workers excluded from the rights of the Convention. The Committee previously noted the observations of the ITUC, SENTRO, Education International (EI) and the SMP-NATOW alleging the lack of trade union rights of certain public servants and managerial employees, as well as the widespread denial by employers of employees' employment status, the misclassification of employees and the use of contract and temporary workers who do not have the right to join trade unions. The Committee had hoped that the various initiatives to amend the provisions of the Labour Code and the proposed Civil Service Reform Code (House Bill No. 2400 and Senate Bill No. 1174) pending before the Congress would ensure that all workers, except the armed forces and the police, fully benefit from the right to organize. The Committee notes the Government's statement that House Bill No. 2400 and Senate Bill No. 1174 have been pending with the relevant parliamentary committees since August 2013, and that they did not pass into law in the 16th Congress, but may possibly be pursued in the next Congress. The Committee also notes the Government's commitment to eliminate illegitimate forms of contractualization obscuring the existence of an

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employment relationship and eroding the right to security of tenure, including in the public sector. **The Committee firmly hopes that the proposed legislative amendments and any other relevant legislative measures will ensure in the near future that all workers (other than the armed forces and the police as determined by national law), including those in managerial positions or with access to confidential information, firefighters, prison guards and other public sector workers, as well as temporary or outsourced workers and workers without employment contract, without distinction or discrimination of any kind, enjoy the right to establish and join organizations to defend their occupational interests. The Committee requests the Government to provide information on any developments in this regard.**

Registration requirements. The Committee had previously referred to the need to amend section 234(c) (now renumbered section 240(c)) of the Labour Code so as to lower the excessive minimum membership requirement for forming an independent union (20 per cent of all the employees in the bargaining unit where the union seeks to operate). The Committee notes that the Government reports that: (i) House Bill No. 6238 seeking to reduce the minimum membership requirement for registration of unions from 20 to 10 per cent, was approved by the House on 16 December 2015 and received by the Senate on 6 January 2016; (ii) House Bill No. 2540 aiming at establishing an efficient system to strengthen workers' right to self-organization and collective bargaining, has remained pending with the Committee on Labor and Employment since 2 September 2013; (iii) given that these bills did not pass into law in the 16th Congress, the same may possibly be pursued in the next Congress; and (iv) House Bill No. 6238 has been refiled as House Bill No. 1355. **Reiterating that a 10 per cent requirement may still obstruct the right of workers to form trade unions, the Committee expects that in the near future legislative measures will be taken to lower the minimum membership requirements in consultation with the social partners to a reasonable number so that the establishment of organizations is not hindered, and requests the Government to provide information on progress achieved in this respect.**

Article 3. Right of workers' organizations to organize their activities and to formulate their programmes without interference by the public authorities. The Committee previously referred to the need to amend section 263(g) (now renumbered section 278(g)) of the Labour Code and Department Order No. 40 G 03 to restrict government intervention leading to compulsory arbitration, to essential services. Welcoming the issuance of Order No. 40-H-13, which harmonizes the list of industries indispensable to the national interest with the essential services criteria of the Convention, the Committee expressed the firm hope that House Bill No. 5471, which sought to install further necessary amendments, would be adopted in the near future. The Committee notes the Government's statement that House Bill No. 5471, aiming at rationalizing government interventions in labour disputes by adopting the essential services criteria in the exercise of the assumption or certification power of the Secretary of Labor and Employment, and decriminalizing violations thereof, as substituted by House Bill No. 6431, was approved on second reading on 2 February 2016 but failed to pass during the remaining sessions of the 16th Congress; it may possibly be pursued in the next Congress and was refiled as House Bills Nos 175, 711 and 1908. **The Committee expects that the proposed legislative amendments will ensure in the near future that government intervention leading to compulsory arbitration is limited to industries which can be considered as essential services in the strict sense of the term, and requests the Government to provide information on any developments in this respect.**

In its previous comments, the Committee trusted that sections 264 and 272 (now renumbered sections 279 and 287) of the Labour Code would be amended to ensure that no penal sanctions are imposed against a worker for having carried out a peaceful strike. The Committee notes the Government's indication that House Bill No. 5471, as substituted by House Bill No. 6431, failed to pass during the 16th Congress; and that, subject to the discretion of the new administration, such a bill, refiled as House Bills Nos 175, 711 and 1908, shall be part of DOLE Legislative Priority Measures for the 17th Congress. Having previously noted that the Bill, once a final judgment declares the illegality of a strike, allows for criminal prosecution under section 279, which prohibits labour organizations from declaring a strike without having complied with the bargaining and notice requirements, the Committee wishes to recall that measures of imprisonment or fines should not be imposed on any account, unless, during a strike, violence against persons or property, or other serious infringements of penal law have been committed, and that these sanctions can be imposed exclusively pursuant to legislation punishing such acts. **The Committee firmly trusts that sections 279 and 287 of the Labour Code will be amended in the very near future, thus ensuring that no penal sanctions are imposed against a worker for having carried out a peaceful strike, even if non-compliant with bargaining or notice requirements. It requests the Government to provide information on any progress achieved in this regard.**

The Committee had previously referred to the need to amend section 270 (now renumbered section 285) of the Labour Code, which subjected the receipt of foreign assistance to trade unions, to prior permission of the Secretary of Labour. The Committee notes that the Government reports that House Bill No. 5886, aiming at allowing foreign individuals or organizations to engage in trade union activities and to provide assistance to labour organizations or groups of workers, was approved by the House on 16 December 2015 and received by the Senate on 6 January 2016; and that, given that it did not pass into law in the 16th Congress, it may possibly be pursued in the next Congress as refiled House Bill No. 1354. The Committee also notes the Government's indication that House Bill No. 5927, which sought to repeal section 285 of the Labour Code, also failed to pass in the Congress but may possibly be pursued in the next Congress. **The Committee expects that the proposed legislative amendments removing the need for government permission for foreign assistance to trade unions will be adopted in the near future, and requests the Government to provide information on any developments in this regard.**

Article 5. Right of organizations to establish federations and confederations. The Committee previously referred to the need to lower the excessively high requirement of ten union members for the registration of federations or national unions set out in section 237(1) (now renumbered section 244) of the Labour Code. The Committee notes the Government's statement that: (i) House Bill No. 6238, which reduces the registration requirement for federations from ten to five duly recognized bargaining agents or local chapters, was approved by the House on 16 December 2015 and received by the Senate on 6 January 2016, but did not pass into law in the 16th Congress and may possibly be pursued in the next Congress as refiled House Bill No. 1355; and (ii) House Bill No. 2540, which also addresses the issue, has remained pending with the Committee on Labor and Employment since 2 September 2013. **Welcoming the above initiative to reduce the registration requirement for federations or national unions from ten to five duly recognized bargaining agents or local chapters, the Committee expects that the proposed legislative amendments will lower the excessively high requirement for registration and will be adopted in the very near future. It requests the Government to provide information on any progress achieved in this regard.**

Direct contacts mission. The Committee notes that the Government accepted the direct contacts mission requested by the Conference Committee in order to follow up on its conclusions. **The Committee understands that the mission will take place in the near future and trusts that it will be able to assist the Government and the social partners in finding appropriate solutions to the outstanding matters raised by the ILO supervisory bodies concerning the application of the Convention in law and in practice.**

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

C105 - Abolition of Forced Labour Convention, 1957 (No. 105)

Observation 2016

Article 1(a) of the Convention. Punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system. The Committee previously noted that, penalties of imprisonment (involving compulsory labour) may be imposed under section 142 (inciting to sedition by means of speeches, proclamations, writings or emblems; uttering seditious words or speeches; writing, publishing or circulating scurrilous libels against the Government) and section 154 (publishing any false news which may endanger the public order or cause damage to the interest or credit of the State, by means of printing, lithography or any other means of publication) of the Revised Penal Code. The Committee requested the Government to take the necessary measures to amend the abovementioned sections of the Revised Penal Code.

The Committee notes the Government's indication in its report that the Department of Justice is still reviewing the provisions of the current Penal Code for possible revision to make it up to date with the present time. Referring to section 1727 on the liability of prisoners to labour, the Government also states that the Administrative Code of 1917 has been repealed, and replaced by the Administrative Code of 1987 (Executive Order No. 292), which does not carry the provision on the penalties of imprisonment involving compulsory labour. The Committee notes that although the 1987 Administrative Code does not provide for sanctions of imprisonment involving compulsory labour, convicted prisoners may be required to work under Chapter 2, section 2, of the Bureau of Corrections manual. In this connection, the Committee once again observes that sections 142 and 154 of the Revised Penal Code are worded in terms broad enough to lend themselves to be applied as a means of punishment for the peaceful expression of views, enforceable with sanctions involving compulsory labour. It reminds the Government that *Article 1(a)* of the Convention prohibits the use of forced or compulsory labour as a punishment for holding or expressing political views.

The Committee therefore, hopes that within the framework of the ongoing revision of the Penal Code, measures will be taken to ensure sections 142 and 154 of the Revised Penal Code are repealed or amended so as to ensure that no prison sentence entailing compulsory labour can be imposed on persons who, without using or advocating violence, express certain dissident political views or opposition to the established political, social or economic system. Pending the adoption of such amendments, the Committee once again requests the Government to provide information on the application of these provisions in practice, including copies of relevant court decisions.

Article 1(d). Punishment for having participated in strikes. Over a certain number of years, the Committee has been drawing the Government's attention to section 263(g) of the Labor Code under which in the event of a planned or current strike in an industry considered indispensable to the national interest, the Secretary of Labor and Employment may assume jurisdiction over the dispute and settle it or certify it for compulsory arbitration. Furthermore, the President may determine the industries indispensable to the national interest and assume jurisdiction over a labour dispute. The declaration of a strike after such "assumption of jurisdiction" or submission to compulsory arbitration is prohibited (section 264), and participation in an illegal strike is punishable by imprisonment (section 272(a) of the Labor Code), which involves an obligation to perform labour. The Revised Penal Code also provides for sanctions of imprisonment for participation in illegal strikes (section 146). The Committee requested the Government to take the necessary measures to amend the abovementioned provisions of the Labor Code and the Revised Penal Code so as to ensure their compatibility with the Convention.

The Committee notes the Government's statement that House Bill No. 5471, which aimed to amend the Labor Code by rationalizing the Government's intervention in labour disputes by adopting the essential services criteria in the exercise of the assumption of jurisdiction or certification power of the Secretary of Labor and Employment, and Decriminalization Violations, was filed in the 16th Congress on 17 February 2015, but was later substituted by House Bill No. 6431 with the same objective. This Bill removed imprisonment as a penalty for violating any of the provisions of section 272 of the Labor Code. The Government further adds that House Bill No. 6431 was approved on second reading in February 2016 but failed to pass in the Congress. Subject to the discretion of the new administration, the same, or a similar bill incorporating proposed modifications, may be pursued as part of the Department of Labor and Employment legislative priority measures for the next Congress session. ***Referring to its comments made on this point under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Committee hopes that the Government will take the necessary measures to amend the abovementioned provisions of the Labor Code and the Revised Penal Code so as to ensure that penalties of imprisonment (involving compulsory labour) cannot be imposed for peacefully participating in a strike. It requests the Government to provide information on any progress made in this regard.***

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

C138 - Minimum Age Convention, 1973 (No. 138)

Observation 2016

Article 2(1) of the Convention. Scope of application. Children working on their own account or in the informal economy. The Committee previously noted the information from the Baseline Survey for the ILO–IPEC Philippine *Time bound Programme (TBP)* phase II that in the province of Quezon the majority of children identified were self-employed, while in the province of Masbate 45 per cent of the children identified were self-employed. The survey also indicated that many children in the country were engaged in selling goods in the informal economy. It also noted from the report of the International Trade Union Confederation (ITUC), for the World Trade Organization General Council on the trade policies of the Philippines entitled “Internationally recognised core labour standards in Philippines” (ITUC report to the WTO), that most child labour in the Philippines occurs in the informal economy, often in family settings. In this regard, it noted the Government’s information that the Department of Labour and Employment (DOLE) launched the Campaign for Child Labor-Free Barangays in May 2012, with the aim of obtaining the commitment and support from various stakeholders in order to render *barangays* (villages) free from child labour.

The Committee notes with **interest** the detailed information provided by the Government with regard to the implementation of the Campaign for Child Labor-Free Barangays. Accordingly, target areas by level of intervention are classified as: (i) “new frontier barangays”, villages where no intervention on the prevention and elimination of child labour has been undertaken yet; (ii) “continuing barangays”, villages where initiatives, interventions or services have already been provided but need further enhancement to achieve the goal of child labour elimination; and (iii) “low-hanging-fruit barangays”, villages where various services have already been provided and stakeholders were already mobilized but need to be sustained and continuously monitored. The Government indicates that: (i) in 2015, a total of 160 “low-hanging-fruit barangays” were certified as child labour-free bringing it to a total of 213 child labour-free barangays since 2014; (ii) a total of 192 “continuing barangays” have been upgraded to “low-hanging-fruit barangays”; and (iii) 131 “new frontier barangays” have been upgraded to “continuing barangays”. The Committee also notes the Government’s indication that through the Campaign for Child Labor-Free Barangays, a total of 7,584 children have been removed from child labour in the target *barangays* and placed in schools and are being monitored by the Barangay Council for the Protection of Children.

The Committee notes, however, from the country report “Understanding child labour and youth employment outcomes in the Philippines, December 2015”, developed by the Understanding Children’s Work programme (UCW 2015 report), that child labour in the Philippines continues to affect an estimated 2.1 million children aged 5–17 years of which 62 per cent work in agriculture, about 6 per cent are self-employed and an additional 3 per cent work in private households, most likely as domestic workers. **The Committee requests that the Government pursue its efforts to ensure that children working in the informal economy or on a self-employed basis benefit from the protection of the Convention. It requests that the Government continue to provide information on the results achieved, in terms of the number of these children who are effectively protected and provided with the appropriate services.**

Application of the Convention in practice. Following the Committee’s reference, in its previous comments, to the findings of the 2011 survey on children conducted by the Philippine Statistics Authority, the Government clarifies that the estimates showed that about 2,097,000 children aged between 5 and 17 years were engaged in child labour, of whom 2,049,000 or 97.7 per cent worked in a hazardous environment. The Government states that given the magnitude of the child labour situation in the country, it has, through its various agencies, developed the HELP ME Convergence Program which aims to implement a sustainable and responsive convergence programme to address child labour through community-based strategies for health and services; education and training; livelihood opportunities to parents of child labourers; prevention, protection and prosecution; and monitoring and evaluation. Accordingly, a Joint Memorandum Circular on Guidelines on the implementation of HELP ME Convergence Program was signed by the heads of the various government departments on 7 January 2016. On 15 February 2016, the DOLE, after a series of tripartite consultations, issued Department Order No. 149 of 2016 on Guidelines in Assessing and Determining Hazardous Work in the employment of persons under 18 years which enumerates the different types of work and activities considered to be hazardous for persons below 18 years. Moreover, the Committee notes the information provided by the Government in its report under the Worst Forms of Child Labour Convention, 1999 (No. 182), that, as of April 2016, the ABK3 LEAP project (implemented by World Vision to combat exploitative child labour in the sugar cane sector through education) provided support in formal schooling to 53,613 children; provided livelihood support to 30,348 households; and assisted 142 barangays, 37 cities and eight provinces in developing policies and programmes on child rights and child labour elimination. While taking due note of the measures taken by the Government to combat child labour, the Committee observes with **concern** that there remains a significant number of children engaged in child labour, particularly in hazardous conditions in the country. **The Committee therefore requests that the Government strengthen its efforts, including through the effective implementation of the HELP ME Convergence Program to progressively eliminate child labour. It requests that the Government continue to provide information on the measures taken in this regard and on the results achieved.**

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

C141 - Rural Workers' Organisations Convention, 1975 (No. 141)

Observation 2016

The Committee recalls that, in its previous comments, in view of 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, it had referred to the need to amend section 241(c) and (p) of the Labor Code, which requires unions to hold elections of officers in the local or national union directly and by secret ballot, under penalty of dissolution or officer expulsion. The Committee notes the Government’s renewed reference to Department Order No. 40-03, which establishes guidelines for the conduct of the election of officers in the absence of any agreement among the members, or any provision in the union constitution and by-laws. The Committee also notes with **interest** that, as the Government indicates, Department Order No. 40-F-03 of 2008 reduces the grounds for cancellation of registration of labour organizations so that they no longer include the commission of acts enumerated under section 241(c) and (p). The Committee observes nevertheless that section 241 (renumbered to section 250) of the Labor Code continues to contain the above-noted onerous election requirement in subsection (c), and that subsection (p) still sanctions its violation with dissolution (albeit no longer included in the grounds for cancellation of union registration), or with officer expulsion. The Committee recalls that *Article 5 of the Convention* requires Members to carry out a policy of active encouragement to rural workers’ organizations, particularly with a view to eliminating obstacles to their establishment, their growth and the pursuit of their lawful activities. **The Committee expresses the firm hope that section 250(c) and (p) of the Labor Code will be amended accordingly in the very near future. It requests the Government to provide information on any progress achieved in this respect.**

C176 - Safety and Health in Mines Convention, 1995 (No. 176)

Observation 2016

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 104th Session, June 2015)

The Committee notes the discussion in the Committee on the Application of Standards (CAS) and its conclusions concerning the following questions: (1) plans of workings; (2) safe design and construction of mines; (3) recording of the probable location of the workers in mines; (4) two or more employers undertaking activities at the same mine; (5) the right of workers and their representatives to report accidents, dangerous occurrences and hazards to the employer and to the competent authority; (6) the increase in work accidents; (7) stiffer penalties and criminalization of the violation of occupational safety and health (OSH) standards; and (8) the capacity and involvement of the social partners, particularly trade union representatives, in ensuring compliance with OSH standards in mining. The CAS requested the ILO to extend technical assistance and capacity building to the Government and its social partners. In August 2015, the Government communicated to the Office its willingness to avail itself of technical assistance from the ILO. The Committee notes with *interest* that an ILO mission was undertaken on 27 and 28 October 2016 to review the progress made and to discuss a possible review of OSH legislation. **The Committee requests the Government to provide information on the outcome of this mission and its follow-up.**

Article 5(5) of the Convention. Plans of workings. The Committee notes the Government's indication in reply to its previous request and the request of the CAS concerning appropriate plans of workings. Companies are required to submit detailed plans and work programmes to be evaluated and validated by the Mines and Geoscience Bureau (MGB) prior to the approval of exploration permits, mineral production and sharing agreements, financial technical assistance agreements and mineral processing permits. The Government further indicates that a proposed amendment to section 21(11) of the Department of Environment and Natural Resources Administrative Order No. 2000-98 (DAO 2000-98) on mine safety and health standards would establish the obligation of the employer in charge of the mine to submit to the Director of the MGB a safety and health programme covering its area of operation, including updated plans of workings, 15 working days before every calendar year. However, the Government does not provide information on the obligation of the employer in charge of the mine to update plans of workings whenever significant modifications are necessary and to keep them available at the mining site. **The Committee requests the Government to provide information on this subject.**

Article 7(a). Safe design and construction of mines and provision of electrical, mechanical and other equipment. **The Committee once again requests the Government to provide information in reply to its previous request and the request of the CAS concerning the responsibility placed upon employers to design mines, construct mines and provide mines with electrical, mechanical and other equipment, including a communication system, in order to provide conditions for safe operations and a healthy working environment.**

Article 10(c). Measures and procedures to establish a recording system of the names and probable location of all persons who are underground. The Committee notes the Government's indication in reply to its previous request and the request of the CAS concerning further information on the *chapas* system used to account for miners involved in underground operations. The Government describes the usual practice according to which each miner is provided with a pair of thin metal chips with the miner's number, so-called *chapas*, one of which is deposited at the entrance of the mine (to ascertain that he/she has entered the mine) and the other is kept by the miner. Some operations have boards reproducing underground maps where *chapas* are placed according to the actual position of the miners, while in some cases logbooks are kept indicating the miners' assigned positions. The Government further indicates that a proposed amendment to section 21(5) of the DAO 2000-98 on mine safety and health standards would explicitly establish the obligation of the employer to ensure that a system is established to account for all underground workers at any time and to know their probable location. **The Committee requests the Government to continue providing information on this subject.**

Article 12. Two or more employers. **The Committee requests the Government to provide information in reply to the request of the CAS concerning the measures taken to ensure that whenever two or more employers undertake activities at the same mine, the employer in charge of the mine coordinates the implementation of all measures concerning the safety and health of the workers, and is held primarily responsible for the safety of the operations.**

Article 13(1)(a). The right of workers to report accidents, dangerous occurrences and hazards to the competent authority. The Committee notes the Government's indication in reply to its previous request and the request of the CAS concerning the right of workers to report accidents, dangerous occurrences and hazards to the employer and to the competent authority. The Government indicates that a proposed amendment to section 23(8) of the DAO 2000-98 on mine safety and health standards would establish the right to report to the employer, as well as the competent authority, as required by *Article 5(1)* of the Convention. **The Committee requests the Government to continue providing information on this subject.**

Article 13(2)(b)(i). Participation of the social partners in ensuring compliance. **The Committee requests the Government to provide information in reply to the request of the CAS concerning the increased capacity and involvement of the social partners, particularly trade union representatives, in ensuring compliance with occupational safety and health standards in the mining industry, including in the conduct of safety and health inspection.**

Article 13(2)(f). The right of workers to receive notice of accidents and dangerous occurrences. **The Committee once again requests the Government to provide information concerning the right of health and safety representatives to receive notice of accidents and dangerous occurrences.**

Article 16. Penalties. **The Committee requests the Government to provide information in reply to the request of the CAS concerning the enactment of a pending legislative measure that proposes to impose stiffer penalties and criminalization of the violation of occupational safety and health standards.**

Application in practice. Increase in occupational accidents. The Committee notes the Government's indication in reply to its previous request and the request of the CAS concerning the measures taken to respond to the increase in work accidents in the mining sector, including: (a) quarterly monitoring activities run by the regional offices of the MGB and audits on safety and health conducted by the central MGB, with penalties imposed for non-compliance with Act No. 7942 of 1995, the Mining Act and its Revised Implementing Rules and Regulations (Administrative Order No. 2010-21); (b) the Safest Mine Award programme, promoting safety and health culture; and (c) the preparation of a Memorandum of Agreement for coordination among the following Departments: Labour and Employment; Environment and Natural Resources; Energy; Health; and the Interior and Local Government. The Committee also notes the Government's indication that, since the majority of accidents were incurred by service contractors, it is currently considering restoring the accreditation system of service contractors, pursuant to section 143 of DAO 2010-21 on Revised Implementing Rules and Regulations of Act No. 7942, the Philippine Mining Act of 1995. **The Committee requests the Government to continue providing information on the progress made in this respect.**

Philippines

C182 - Worst Forms of Child Labour Convention, 1999 (No. 182)

Observation 2016

Philippines

Articles 3 and 7(1) of the Convention. Worst forms of child labour and penalties. Clause (a). All forms of slavery or practices similar to slavery. 1. Sale and trafficking of children. In its previous comments, the Committee noted from the report of 19 April 2013 of the Special Rapporteur on trafficking in persons, especially women and children, following her mission to the Philippines, that trafficking of persons, mostly women and children, for sexual and labour exploitation was widespread, both cross-border and internally, and that exploitation of children, especially girls, for sex tourism was alarmingly common and sometimes socially and culturally tolerated in many areas of the country. The report of the Special Rapporteur also indicated that, given the prevalence of trafficking in the country, the number of trafficking cases registered was low and that the deep-rooted corruption at all levels of law enforcement continued to be a major obstacle in the identification of trafficked persons, as well as a hindrance to the effective investigation of trafficking cases. The Committee also noted the various measures taken by the Government to detect and address any delays in the resolution of cases of trafficking in persons as well as to monitor and investigate the cases pending in the Regional Trial Courts of the country. However, expressing its serious concern at the reports of high prevalence of trafficking in children for both labour and sexual exploitation, the Committee requested the Government to intensify its efforts to ensure the elimination in practice of the sale and trafficking of children and young persons under 18 years of age.

The Committee notes the following measures taken by the Government, in this regard, as indicated in the Government's report:

-a Memorandum of Agreement on handling cases of child labour, illegal recruitment and trafficking of persons was formulated and signed in 2015 by the various Government departments, including: the Department of Labor and Employment (DOLE); the Department of Social Welfare and Development; the Department of Justice; the Department of Health; the Department of Education; the Philippine National Police; the National Bureau of Investigation; and the Maritime Industry Authority;

-a Memorandum of Understanding was signed in March 2016 by the Inter-Agency Council Against Trafficking (IACAT), the Department of Justice, the National Child Labour Committee and the DOLE in order to effectively address cases related to trafficking of children through cooperation in the investigation and prosecution of cases, rescue of victims and provision of assistance to victims;

-a Manual on Labour Dimensions of Trafficking in Persons for investigators, prosecutors, labour inspectors and service providers was developed and published by the IACAT in 2015.

The Committee further notes from the website of the IACAT that after five years of being Tier 2 in the Global Trafficking in Persons (GTIP) report, the Philippines anti-human-trafficking efforts have finally been given the highest ranking of Tier 1 in its 16th GTIP report indicating that the Government is fully complying with the minimum standards for the elimination of severe forms of trafficking. According to the statistics contained in the website of the IACAT, 259 convictions were made for offences related to trafficking of persons as of 31 August 2016, with a total of 282 persons being handed down penalties of imprisonment ranging from six years to life imprisonment. **While noting the various measures taken by the Government to combat trafficking of children, the Committee requests the Government to continue its efforts to strengthen the capacity of law enforcement agencies in identifying and combating the sale and trafficking of children under 18 years of age. It also requests the Government to pursue its efforts to ensure that all perpetrators of trafficking of children are subject to thorough investigations and robust prosecutions, and that sufficiently effective and dissuasive penalties are imposed in practice. It further requests the Government to continue providing information on the number of reported violations, investigations, prosecutions, convictions and criminal penalties imposed in cases related to the trafficking of children.**

2. *Compulsory recruitment of children for use in armed conflict.* The Committee previously noted the International Trade Union Confederation's (ITUC) comments that numerous children under 18 years of age took part in armed conflicts in the country, including in the New People's Army (NPA) and in the Moro Islamic Liberation Front. In this regard, it noted the Government's indication that it does not condone the recruitment of children in militias and that it was closely collaborating with the United Nations Country Task Force on Monitoring and Reporting (UNCTFMR), UNICEF, and the Council for the Welfare of Children towards capacity-building efforts for the prevention of grave violations of children's rights, including their protection against recruitment in armed conflict. However, it noted from the report of the Secretary-General on children and armed conflict in the Philippines of 12 July 2013 (S/2013/419), that, in practice, children continued to be recruited and forced to join illegal armed groups or the national armed forces.

The Committee notes the information provided by the Government in its report that in 2013, the President issued Executive Order No. 138, adopting a Comprehensive Programme Framework for Children in Armed Conflict, which provides for the enhancement of the Children in Armed Conflict (CIAC) programme framework. Executive Order No. 138 calls on the national agencies and local government units affected by armed conflict to integrate the implementation of the CIAC programme, including developing, strengthening and enhancing policies to promote the protection and prevention of children in armed conflict. The Committee also notes the Government's indication that, in February 2016, a workshop was conducted by the Inter-Agency Committee on Children in Situations of Armed Conflict on advocacy and communication plan and development of concepts regarding children in situations of armed conflict (CSAC) which was attended by the representatives of various ministries, the Armed Forces of the Philippines, the Philippine National Police and the Office of the Presidential Adviser on the Peace Process.

The Committee further notes from a report from the United Nations Office of the Special Representative of the Secretary-General for Children and Armed Conflict of 14 September 2016 that following the signing of an action plan between the United Nations and the Moro Islamic Liberation Front in 2009, aimed at ending the recruitment and use of child soldiers, significant progress has been achieved. This report indicates that as of June 2016, the majority of the benchmarks of the Action Plan have been reached and that the Moro Islamic Liberation Front is implementing a four-step process to identify and release all children associated with the military. However, the Committee notes from the Report of the Secretary-General on Children and Armed Conflict (A/70/836-S/2016/360) of 20 April 2016 that the United Nations verified the recruitment and use of 17 children, including five children used as human shields, by the Bangsamoro Islamic Freedom Fighters and two recruited by the NPA, while unverified reports indicated that the Abu Sayyaf Group recruited around 30 children in Basilan. While taking note of the measures taken by the Government, the Committee expresses its **concern** that children are still being recruited by armed forces and groups. **The Committee therefore urges the Government to intensify its efforts to put an end, in practice, to the forced or compulsory recruitment of children for use in armed conflict, and proceed with the full and immediate demobilization of all children. It urges the Government to take the necessary measures to ensure that thorough investigations and robust prosecutions of offenders are carried out and sufficiently effective and dissuasive penalties are imposed.**

Articles 3(d), 4(1) and 7(2)(b). Hazardous work and time-bound measures to provide direct assistance for their removal and rehabilitation and social integration. Child domestic workers. The Committee previously noted the ITUC's allegations that: (i) hundreds of thousands of children, mainly girls, worked as domestic workers in the Philippines and were subject to slavery-like practices; (ii) 83 per cent of child domestic workers lived in their employers' home and only half of them were allowed to take one day off per month; (iii) they were on call 24 hours a day, and more than half of them dropped out of school; and (iv) some of the child domestic workers, under 18 years of age, were working in harmful and hazardous conditions while some of them, especially girls, suffered physical, psychological and sexual abuses and injuries. The Committee also noted the ITUC's allegations that there were at least 1 million children in domestic work in the Philippines. In this regard, the Committee noted the adoption of the Republic Act No. 10361 instituting policies for the protection and welfare of domestic workers, including provisions for their health and safety, daily and weekly rest periods, minimum wage and payment of wages, and the prohibition of debt bondage. Section 16 of this Act sets the minimum age for employment in domestic work at 15 years of age, subject to certain provisions of protection against exploitation set out in Republic Act No. 7610 on the special protection of children against child abuse, exploitation and discrimination.

The Committee notes the following measures taken by the Government in this regard, as indicated in its report:

Philippines

-a Roadmap for the Elimination of Child Labour in domestic work and the provision of adequate protection for young domestic workers of legal working age was adopted in 2015 with particular focus on knowledge management and advocacy, capacity building, political action, partnership building and social mobilization;

-a Joint Memorandum Circular (JMC) on the *Protocol on the Rescue and Rehabilitation of Abused Kasambahay* (domestic worker) was signed in October 2015 by the DOLE, the Department of Social Welfare and Development, the National Bureau of Investigation and the Philippine National Police. The JMC provides guidelines to all concerned agencies for the immediate rescue and rehabilitation of abused or exploited *kasambahay* nationwide;

-Department Order No. 149 of 2016 on Guidelines in Assessing and Determining Hazardous Work in Employment of Persons below 18 years of age which was issued in February 2016, lists work and activities which are considered as hazardous to domestic workers below 18 years of age.

The Committee further notes from the Government's report that in 2011, the court convicted and sentenced a person to six years imprisonment and a fine for trafficking and forcing a 16 year-old girl to be a domestic worker. ***The Committee urges the Government to strengthen its efforts to ensure that Republic Act No. 10361 is effectively applied and that sufficiently effective and dissuasive penalties are imposed in practice on persons who subject children under 18 years of age to domestic work in hazardous or exploitative conditions. It also requests the Government to provide information on the implementation of the Roadmap for the Elimination of Child Labour in domestic work and the results achieved. The Committee finally requests the Government to indicate the measures taken to rescue and rehabilitate abused domestic workers following the Joint Memorandum Circular (JMC) on the Protocol on the Rescue and Rehabilitation of Abused Kasambahay and the results achieved in terms of the number of child domestic workers rescued and rehabilitated.***

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

C138 - Minimum Age Convention, 1973 (No. 138)

Observation 2016

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

Article 2(3) of the Convention. Age of completion of compulsory education. In its previous comments, the Committee noted that section 20 of the Education Act 2009 prohibits arranging for a compulsory school-aged child to engage in street trading or to carry out other work of any kind during school hours. However, the Committee noted that pursuant to section 2 of the Education Act 2009, a compulsory school-aged child is defined as a person between 5 years and 14 years of age, who has not completed the eighth year of school. Noting that the age of completion of compulsory schooling (14 years) is less than the minimum age for admission to employment (15 years), the Committee requested the Government to consider raising the age of completion of compulsory schooling to 15 years of age so as to be in line with the minimum age for admission to work, as provided under Paragraph 4 of the Minimum Age Recommendation, 1973 (No. 146).

The Committee notes the Government's statement that the provisions to raise the age of completion of compulsory schooling to 15 years will be incorporated in the Education Act after consultations with the Attorney General's Office. **The Committee expresses the firm hope that the Government will take the necessary measures, without delay, to ensure that the age of completion of compulsory schooling is raised to 15 years which is the minimum age for admission to employment for Samoa. It requests the Government to provide information on any progress made in this regard.**

Article 3(2). Determination of types of hazardous work. Following its previous comments, the Committee notes that according to section 83(2)(b) of the LER Act of 2013, regulations may be made to determine unhealthy, dangerous or onerous work and to indicate the minimum age for entry into employment in such work. Section 83(d) further provides for regulations protecting the health and safety of children. **Recalling that, pursuant to Article 3(2) of the Convention, the types of hazardous employment or work prohibited to children under 18 years of age shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned, the Committee requests the Government to indicate the measures taken or envisaged to adopt regulations determining types of hazardous work prohibited to children under 18 years pursuant to section 83(2)(b) and (d) of the LER Act of 2013. It requests the Government to provide information on any progress made in this regard.**

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

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

C182 - Worst Forms of Child Labour Convention, 1999 (No. 182)

Observation 2016

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

Article 3 of the Convention. Worst forms of child labour. Clause (b). Use, procuring or offering of a child for pornographic performances. Pornography or pornographic performances. The Committee had previously observed that neither the Crimes Ordinance 1961 nor the Indecent Publications Ordinance 1960 appeared to specifically address the production of indecent materials, or the use, procuring or offering of children under the age of 18 years for the production of such materials.

The Committee notes that according to section 82 of the Crimes Act 2013, any person who sells, delivers, exhibits, prints, publishes, creates, produces or distributes any indecent material, that depicts a child engaged in sexually explicit conduct shall be punished. The Committee notes, however, that for the purposes of this section a child is defined as a person under the age of 16 years. In this regard, the Committee reminds the Government that by virtue of *Article 3(b)* of the Convention, the use, procuring or offering of children under 18 years of age for pornography or pornographic performances shall be prohibited. **The Committee, therefore, urges the Government to take the necessary measures to ensure that the use, procuring or offering of children between the ages of 16 and 18 for the production of indecent materials is effectively prohibited.**

Article 7(2). Effective and time-bound measures. Clause (d). Reaching out to children at special risk. Children working as street vendors. The Committee noted that section 20 of the Education Act 2009 specifically prohibits the engagement of compulsory school-aged children in street trading during school hours, and that it provides for the appointment of school attendance officers, responsible for identifying children who are out of school during school hours and returning to them to the school. However, the Committee noted the statement in the National Policy for Children, that despite measures to increase school attendance, child vendors continue to be seen operating day and night around central Apia. Moreover, the Committee noted the information from the United Nations Development Programme in a compilation of information from United Nations bodies prepared by the Office of the High Commissioner for Human Rights for the Human Rights Council's Universal Periodic Review of 11 February 2011 that, due to recent economic difficulties, there had been an increase in the number of children selling various goods on the street (A/HRC/WG.6/11/WSM/2, paragraph 50). Furthermore, the Committee on the Rights of the Child, in its most recent examination of Samoa, expressed that it shared the Government's concern regarding the growing number of working children, including children involved in domestic work and child street vendors, and the need to undertake targeted activities to address this issue (16 October 2006, CRC/C/WSM/CO/1, paragraph 54).

The Committee notes the Government's information that children working as street vendors are those sent by their parents after school to sell goods for their own living. The Government further indicates that the school attendance officers identifies children of compulsory school age who are not in school during school hours, while the police is the authority to identify and remove children from street vending after school hours. The Committee also notes the Government's information that the Ministry of Women, Community and Social Development, in collaboration with the Samoa Law Reform Commission, is in the process of developing a draft child care and protection bill. The Government indicates that through this bill, the Government's commitment to childcare and protection initiatives can be enhanced. **The Committee expresses the firm hope that the child care and protection bill will be adopted in the near future. Considering that children working on the streets are particularly vulnerable to the worst forms of child labour, the Committee requests the Government to take the necessary measures to identify and protect children engaged in street vending from the worst forms of child labour. It also requests the Government to provide information on the number of child street vendors who have been removed from the worst forms of child labour by the police and the school attendance officers.**

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

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

C081 - Labour Inspection Convention, 1947 (No. 81)

Observation 2016

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

Article 3(2) of the Convention. Additional functions entrusted to labour inspectors. The Committee notes that, according to the Government, labour inspections are carried out irrespective of nationality and that employers engaging workers covered under the Employment Act are required to discharge their obligations with regard to the statutory rights of foreign workers. The Government also indicates that foreign workers "who are not complicit" in their illegal employment may seek recourse for salary arrears and other benefits. The Committee reminds the Government that, in accordance with *Article 3(2)* of the Convention, any further duties which may be entrusted to labour inspectors shall not be such as to interfere with the effective discharge of their primary duties, or to prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers. Furthermore, the Committee refers to paragraphs 75–78 of its 2006 General Survey on labour inspection, in which it emphasized, in relation to the assignment to labour inspectors of the task of supervising the legality of employment and prosecuting violations, including migrant workers in an irregular situation, that the primary duty of labour inspectors is to secure the enforcement of the legal provisions relating to conditions of work and the protection of all workers and not to enforce immigration law, and that the Convention does not contain any provision suggesting that any worker be excluded from the protection afforded on account of their irregular employment status. The Committee reminds the Government that the function of verifying the legality of employment should have as its corollary the reinstatement of the statutory rights of all the workers if it is to be compatible with the objective of labour inspection, which is to protect the rights and interests of all workers and to improve their working conditions. ***The Committee requests the Government to provide information on how it ensures the discharge of employers' obligations with regard to the statutory rights of foreign workers illegally employed, regardless of whether or not they are aware of their employment status, such as the payment of wages and any other benefits owed for the work performed in the framework of their employment relationship, including where the workers in question are liable to expulsion or after they have left the country.***

Furthermore, the Committee asks the Government to provide information on the time and resources the labour inspectorate spends on activities in the area of irregular work in relation to activities spends on securing the enforcement of legal provisions relating to other areas (such as provisions relating to working hours, wages, safety and health, child labour, etc.), and to continue providing relevant information on the number of inspections, violations found and penalties imposed, categorized according to the legal provisions to which they relate.

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

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

C081 - Labour Inspection Convention, 1947 (No. 81)

Observation 2016

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

The Committee previously noted the joint observations of the representative employers' and workers' organizations (the Solomon Islands Chamber of Commerce and Industry (SICCI), the Solomon Islands Chinese Association (SICA), the Solomon Islands Indigenous Business Association (SIIBA), the Solomon Islands Women in Business Association (SIWIBA), the Association of Solomon Islands Manufacturers (ASIM), the Solomon Forestry Association (SFA), the Solomon Islands Council of Trade Unions (SICTU), the Solomon Islands Public Employees' Union (SIPEU), the Solomon Islands National Union of Workers (SINUW) and the Solomon Islands National Teachers' Association (SINTA)). According to these observations, there was a need for capacity building of the Labour Department and the social partners on the content and application of international labour standards. The Committee invited the Government to take formal steps so as to avail itself of further ILO technical assistance aimed at capacity building in the area of labour inspection. The Committee notes that the Government does not provide any reply in relation to its comments. **Accordingly, the Committee invites the Government to inform it of any measures taken aimed at capacity building in the area of labour inspection, in light of the comments of the social partners.**

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

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

C029 - Forced Labour Convention, 1930 (No. 29)

Observation 2016

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

The Committee notes the communication from the National Trade Union Federation (NTUF) dated 24 August 2013, as well as the Government's report.

Articles 1(1), 2(1) and 25 of the Convention. Trafficking in persons. The Committee notes the NTUF's statement that, while the Sri Lanka Bureau of Foreign Employment is pursuing action to eradicate trafficking in persons, the penalties imposed on traffickers are not severe enough to serve as a deterrent.

The Committee notes the Government's statement that legal, medical and psychological assistance for trafficking victims is provided by the Government, in collaboration with NGOs. The Ministry of Child Development and Women's Affairs, under the direction of the task force functioning under the Ministry of Justice, has established a government-run shelter for victims of trafficking. The Committee also notes the Government's statement that, since 2009, the Criminal Investigations Department has commenced 61 investigations related to suspected cases of trafficking, and that these investigations are ongoing. The Children and Women's Bureau of the Sri Lanka Police also carried out 38 investigations between March 2012 and April 2013. Moreover, the Attorney-General's Department has received 191 files since 2009 of suspected cases of human trafficking, following which 65 indictments have been filed in court. Noting an absence of information on the number of convictions and penalties applied with regard to trafficking offences, the Committee recalls that *Article 25* of the Convention provides that the illegal exaction of forced or compulsory labour shall be punishable by penalties that are really adequate and strictly enforced. ***It therefore requests the Government to take the necessary measures to ensure that persons who traffic in persons are subject to robust prosecutions and thorough investigations, and that the penalties imposed on perpetrators are sufficiently effective and dissuasive. The Committee requests the Government to provide information on measures taken in this regard, as well as on the application in practice of the relevant provisions of the Penal Code, particularly the number convictions and the specific penalties applied. Lastly, it requests the Government to continue to provide information on the measures taken to ensure that victims of trafficking are provided with appropriate protection and services, as well as on the number of persons benefiting from these services.***

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

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

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

Labour inspection needs assessment (ILO technical assistance) and continuing restructuring of the labour inspection system. The Committee notes with interest that the Government received ILO technical assistance in the form of a labour inspection audit in March 2012 (the 2012 audit), and that the recommendations made correspond to a large extent to the Committee's previous comments on the application of the Convention. The Committee also notes the Government's indications on the continuing restructuring of the labour inspection system and the technical assistance provided by the Office, including for the drafting of the national labour inspection policy, the harmonization of labour statistics and the computerization of the labour inspection system (launching of the Labour Inspection System Application (LISA)), as well as on capacity building for labour inspectors. **The Committee invites the Government to indicate the steps taken or envisaged with a view to improving the labour inspection system in accordance with the requirements of the Convention, in light of the recommendations made in the 2012 audit, and to provide a copy of any texts adopted in this regard. The Committee asks the Government to continue to supply detailed information on the technical assistance provided by the Office and the impact of the restructuring of the labour inspection system on the effective discharge of labour inspection functions. It also asks the Government to provide a copy of the national labour inspection policy, if possible in one of the ILO's working languages, once it is adopted.**

Articles 2, 3, 12(1)(a) and 23 of the Convention. Labour inspection in export processing zones (EPZs) and right of inspectors to freely enter any workplace liable to inspection. The Committee notes that the Government strongly rejects the observations made previously by the Lanka Jathika Estate Workers' Union (LJEWU), according to which labour inspections in export processing zones (EPZs) are restricted and require prior approval due to unwritten and undeclared concessions granted to investors by the Government. It notes that the Government reiterates that labour inspectors have the right to enter workplaces in EPZs freely and without prior approval and emphasizes that labour inspectors not only have this right in law, but also in practice. In this regard, the Committee also notes the statistical information provided by the Government for 2011, 2012 and 2013 on the number of routine inspections and inspections following complaints (the garment and other sectors) within the 13 EPZs in the country.

The Committee notes, however, that the NTUF reiterates that even now, labour inspectors cannot enter workplaces in EPZs without prior approval and that while, in theory, the national labour laws apply to all establishments within EPZs, the situation in practice is entirely different. The Committee also notes that the 2012 audit recommends the removal of any obstacles that in practice may prevent labour inspectors from carrying out their duties and making use of their powers, including the right to enter EPZs, on the sole condition that they hold appropriate credentials. **The Committee asks the Government to make any observations it deems appropriate in relation to the comments made by the NTUF and to indicate whether there are any practical obstacles for labour inspections in EPZs and, where applicable, to indicate the steps taken or envisaged to overcome these obstacles. Please specify whether the routine inspections and inspections following a complaint in EPZs are announced, or unannounced, and also continue to provide relevant statistical data.**

Please also provide detailed information on the total number of workers employed in the enterprises in EPZs, the number of violations reported, the legal provisions concerned, the number and nature of sanctions imposed (including the corresponding amount of fines) and the measures adopted with immediate executory force in the event of an imminent danger to the health or safety of workers, as well as on the number of industrial accidents and cases of occupational disease.

Articles 3(1)(a) and (b), 9, 13, 14 and 17. Role of the labour inspectorate in the field of occupational safety and health (OSH). Notification of industrial accidents and cases of occupational disease to the labour inspectorate. The Committee notes the Government's explanations that the enforcement of legislation in the area of OSH is carried out by the Factories Division of the Department of Labour, whereas promotional and preventive activities are mostly carried out by the National Institute of Occupational Safety and Health (NIOSH). In this regard, the Committee also notes the activities of the NIOSH, as described in its activity report for 2012.

Following up on its previous comments on the shortage of factory inspection engineers, medical officers and occupational hygienists to carry out routine inspections in industrial enterprises, the Committee notes that it appears from the statistical information provided in a table included in the Government's annual report of the labour inspection service that labour inspectors in the area of OSH has further increased in 2013. Furthermore, it might appear from the statistics provided with the Government's report (Enforcement of the Factories Ordinance from 2003–12) that the number of inspections in the area of OSH has significantly increased in recent years. The Committee also notes the observations made by the NTUF, according to which factory inspection engineers and occupational hygienists do not conduct inspections in plantations, despite the fact that the vulnerability of workers to occupational diseases is very high, due to the use of chemicals, pesticides and other substances. The Committee previously noted the Government's statement that both fatal and non-fatal accidents are likely to be much higher than the numbers recorded due to deficiencies in reporting, as well as the lack of coverage of the informal sector. While it notes the information on fatal and non-fatal accidents reported in the annual labour inspection report for 2011–13, it also notes that once again no information has been provided on the number of cases of occupational disease. The Committee also notes in this regard the findings of the 2012 audit concerning: the need for improved data on industrial accidents and cases of occupational diseases; the recommendation to thoroughly review the reporting system to increase its reliability and to address its apparent deficiencies; the need to conduct awareness-raising activities in consultation with the social partners; and the use of targeted inspection and prosecution in serious cases.

Noting that the Government indicates that a draft OSH policy has been prepared and will be formally drafted very soon, the Committee would like to draw the Government's attention to the fact that the establishment of a system that ensures the access of the labour inspectorate to information on industrial accidents and cases of occupational disease (*Article 14*) is essential to the development of the prevention policy to which the Government has committed itself in the framework of the restructuring of the labour inspection system. **The Committee requests the Government to continue providing information that is as detailed as possible on the number of inspections conducted in the area of OSH. Please also provide information on the progress made in the adoption and implementation of a national policy on OSH, and a copy of any relevant documents.**

Furthermore, the Committee requests the Government to indicate the measures taken or envisaged to ensure that the labour inspectorate is duly informed of industrial accidents and cases of occupational disease and that relevant statistics are included in the annual labour inspection report, in accordance with Article 21(f) and (g), and to point out how this information is used for the development of the national policy on OSH. Please also indicate any measures taken, as recommended in the 2012 audit, to improve the current system for the reporting of industrial accidents and cases of occupational diseases.

The Committee finally once again requests the Government, to provide information on any arrangement to associate technical experts and specialists from the NIOSH in the work of the labour inspectorate for the purpose of securing the enforcement of the legal provisions relating to the protection of the health and safety of workers and investigating the effects of processes, materials and methods of work on the health and safety of workers.

Articles 17 and 18. Amendments to legislative acts relating to enforcement procedures and dissuasive sanctions. The Committee previously noted that steps had been taken to update the fines and penal provisions in all legislative acts relating to conditions of work and asked the Government to keep the ILO informed of the progress made in the adoption of the relevant bills. In this regard, it notes with interest the Government's indications that the proposed amendments to the Industrial Disputes Act (IDA) have been adopted. The Government has however not provided information on the progress made in this regard concerning other laws. **The Committee asks the Government to continue to keep the ILO informed of any progress made in the adoption of the relevant bills, including with regard to the Wages Boards Ordinance, the Shop and Office Employees' Act, the Maternity Benefits Ordinance, and the Termination of Employment of Workmen (Special Provisions) Act.**

Articles 3, 4, 5(a) and (b), 10, 11, 16, 20 and 21. Effective functioning of the labour inspection system and reliable statistics to evaluate its effectiveness. The

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Committee notes from the 2012 audit that the structures of the labour inspectorate encompass a General Inspectorate and a Factories Inspectorate, which is responsible for labour inspection in the area of OSH. It notes that the 2012 audit recommends, among others: (i) the appointment of a Chief Inspector/Director of the labour inspection services to enable effective planning, better monitoring and evaluation of labour inspection at the central level; and (ii) the collaboration and information sharing between the General Inspectorate and the Factory Inspectorate.

The Committee notes that, according to the statistical information provided by the Government, including in the annual report on the activities of the labour inspection services for 2011–13, the total number of labour inspectors seems to have slightly decreased between 2011 and 2013, and the number of inspections seems to have increased in recent years. However, the Committee notes that the NTUF expresses doubts with regard to the statistical information provided by the Government, in particular with regard to the number of workers subject to inspection. The Committee also notes the Government's indications that statistical data are not properly recorded. In this regard, the Committee notes that, in conformity with the relevant recommendations made in the 2012 audit, the Government indicates that the implementation of the LISA application system has been launched, which should enable the collection of the required data for the preparation of the annual labour inspection reports. According to the Government, its application has been implemented in four districts and is planned to be completed by the middle of 2014. It notes that, according to the Government, the existing hardware for this purpose is still considered to be insufficient and that, for the purpose of the implementation of the LISA project, 50 computers were donated by the United States' Government. The Committee also notes that efforts have been undertaken, in the framework of the "harmonization of labour statistics project" with ILO technical assistance, to determine the criteria for the collection of labour statistics and that a relevant report is awaiting tripartite approval. According to the Government, the collection of harmonized labour statistics will be possible once the LISA system is fully implemented. ***The Committee requests the Government to keep the ILO informed of the progress made in the implementation of the "harmonization of labour statistics project" and the implementation of the LISA application system for the collection of data. It requests the Government once again to ensure the publication of an annual inspection report by the central labour inspection authority as required under Articles 20 and 21 of the Convention, containing information and data on the number of inspection visits in different sectors, including in EPZs, the violations detected and the penalties imposed with reference to the legal provisions concerned, cases brought to the courts and outcomes of the proceedings, etc.***

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

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

C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

Observation 2016

In its previous comments, the Committee had noted that in the absence of tripartite consensus towards the amendment of the Industrial Disputes Act, discussions would be pursued at the level of the National Labour Advisory Council (NLAC) and its subcommittee. The Committee notes that the Ministry of Labour and Trade Unions Relations has now initiated a study on labour law reforms undertaken by a local expert (a former Justice of the Supreme Court) and that a workshop was held in November 2015 to discuss the proposed reforms, with the support of the ILO Office in Colombo. According to the Government, the Ministry is in the process of examining the proposed amendments to the existing labour legislation. **Considering the comments made for a number of years, the Committee expects that progress towards the amendment of the labour legislation will be achieved in the near future along the lines indicated below, and that the Government will provide information on any developments in this respect.**

Article 1 of the Convention. Adequate protection against acts of anti-union discrimination. Effective and expeditious procedures. Noting that in practice only the Department of Labour can bring cases concerning anti-union discrimination before the Magistrate's Court, and that there are no mandatory time limits within which complaints should be made to the Court, the Committee had previously requested the Government: (i) to ensure the effectiveness and expeditiousness of the procedures of unfair labour practices (which englobe the acts of anti-union discrimination); and (ii) to take the necessary measures to ensure that workers who are victims of anti-union discrimination can lodge a complaint before the judicial courts. With regard to delays in holding inquiries and prosecution of unfair labour practices, the Committee notes from the Government that according to a circular dated 29 April 2011, each District Labour Office or Sub-Office is required to open a register for complaints on unfair labour practices within 14 days. The Government reiterates that, even though the Department of Labour has taken a number of initiatives to expedite the processes against anti-union discrimination, it still faces various practical difficulties, including a lack of accurate information and the unwillingness of workers to give evidence before the courts, which cause delays in the processes. With respect to the possibility for the workers who are victims of anti-union discrimination to lodge a complaint before the judicial courts, the Committee notes from the Government that this matter was taken up on various occasions during NLAC meetings but that the majority of trade unions were not willing to assume such a role and responsibility, further discussion with the social partners being therefore necessary. The Committee also takes note of the information provided by the Government as to the number of cases examined or pending before the courts. The Committee finally notes from the Government's report that fines and offences arising out of unfair labour practices increased from 20,000 to 100,000 Sri Lankan rupees (LKR). **Recalling that anti-union discrimination is one of the most serious violations of freedom of association and that adequate remedies should be granted to the persons concerned, the Committee urges the Government to take the necessary measures in the near future to ensure that workers who are victims of anti-union discrimination can lodge a complaint before the judicial courts. The Committee also expresses the hope that the Government will take the necessary measures to amend the Industrial Disputes Act so as to grant trade unions the right to bring anti-union discrimination cases directly before the courts. In addition, the Committee requests the Government to provide further information on the number of cases of anti-union discrimination examined by the courts, the duration of proceedings and the sanctions or remedies imposed.**

Article 4. Measures to promote collective bargaining. The Committee notes the information provided by the Government on progress made to promote collective bargaining to keep enhancing the awareness of collective bargaining among the general public and at workplaces. **The Committee requests the Government to continue to take measures to promote collective bargaining and to provide information in this regard.**

Export processing zones (EPZs). In its previous comments, the Committee had noted difficulties with regard to the exercise of workers' rights to organize and collective bargaining in EPZs, and in particular that labour inspectors are not allowed to carry out unannounced visits to EPZ factories. The Committee notes that the Government firmly reiterates that labour inspectors have the authority to enter any factory in EPZs without getting the permission of the employer or Board of Investment (BOI). The Government indicates that in 2014, 410 inspections were carried out at the EPZs, as against 386 in 2015. It also emphasized that 35 enterprises have recognized trade unions in EPZs and import processing zones (IPZs), of which 18 have granted check-off facilities to trade unions, and that seven enterprises have signed collective agreements. It also reiterates that trade union facilitation centres have been established in three EPZs, with a view to facilitating private meetings between workers and their representatives, and that the BOI is vigilant that the existence of employees' councils does not undermine the position of trade unions. **The Committee requests the Government to continue to provide information on the number of collective agreements concluded by trade unions in the EPZs and the number of workers covered. It also requests the Government to indicate the respective numbers of trade unions and employees' councils in EPZs, as well as the measures taken to ensure that employees' councils do not undermine the position of trade unions.**

Representativeness requirements for collective bargaining. In its previous comments, the Committee requested the Government to take the necessary steps to review section 32(A)(g) of the Industrial Disputes Act, according to which no employer shall refuse to bargain with a trade union which has in its membership not less than 40 per cent of the workers on whose behalf the trade union seeks to bargain. The Committee notes that the Government reiterates that it considers it important that the bargaining agent on behalf of the workers is sufficiently representative to bargain with the employer, and that all major trade unions of the country have no objections in keeping the threshold of 40 per cent. However, the Committee recalls the need to ensure that where, under a system for nominating an exclusive bargaining agent who is entitled to negotiate a collective agreement applicable to all workers in the unit, there is no union representing the required percentage to be so designated (in this case 40 per cent), trade unions should either be granted the possibility of forming a grouping with a view to achieving the required percentage or be given the possibility to negotiate on behalf of their own members. **The Committee expects that the NLAC and the Government will take the necessary measures to review section 32(A)(g) of the Industrial Disputes Act, in accordance with Article 4 of the Convention, in order to promote the full development and utilization of collective bargaining. The Committee requests the Government to indicate any progress in this regard.**

Article 6. Right to collective bargaining for public service workers other than those engaged in the administration of the State. In its previous comments, the Committee had noted that the procedures regarding the right to collective bargaining of public sector workers did not provide for genuine collective bargaining, but rather established a consultative mechanism. The Committee notes that the Government reiterates that: (i) the Industrial Disputes Act recognizes the right of private sector trade unions to bargain collectively with the employer or the authority concerned; (ii) in Sri Lanka, the private sector includes government corporations where a large segment of workers is engaged; and (iii) section 32(A) of the Act, which deals with unfair labour practices and collective bargaining, applies not only to trade unions in the private sector but also to trade unions in public corporations. The Committee also notes from the Government that a study on collective bargaining in the public service has been undertaken with the technical support of the Office, and that its recommendations will be brought to the attention of the Committee. **In light of section 49 of the Industrial Disputes Act, which excludes state and government employees from the Act's scope of application, the Committee requests the Government to specify the provisions ensuring that all public service workers other than those engaged in the administration of the State enjoy collective bargaining rights with respect to salaries and other conditions of employment. The Committee requests the Government to indicate any progress made in this regard.**

C105 - Abolition of Forced Labour Convention, 1957 (No. 105)

Observation 2016

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

Article 1(a) of the Convention. Penal sanctions involving compulsory labour as a punishment for expressing political views or views ideologically opposed to the established political, social or economic system. The Committee previously noted that section 120 of the Penal Code provides that whoever by words, signs or visible representations excites or attempts to excite feelings of disaffection to the President or the Government, or hatred towards or contempt of the administration of justice, or excites or attempts to excite people, or attempts to raise discontent or to promote feelings of ill will and hostility between different classes of people, shall be punished with imprisonment for up to two years. It also noted that, by virtue of section 65 of the Prison Ordinance, imprisonment involved the obligation to perform compulsory labour. It requested information on the application of this provision of the Penal Code.

The Committee notes with **concern** the Government's statement that it has not yet received information on the application of section 120 of the Penal Code. However, the Government indicates that it is implemented by government officers and government institutions and, in case a fraudulent case is brought, such officers or institutions can be penalized and ordered to compensate the affected party. Any case brought against a person under section 120 must be filed by making a charge sheet according to section 136(1)(a)(b) of the Penal Code. Additionally, the affected party has the right to file a case with the Supreme Court, pursuant to the Constitution. The Government indicates that it is therefore not possible to use section 120 of the Penal Code to penalize the expression of political opinions. **The Committee once again requests the Government to provide information on the application of section 120 of the Penal Code in practice, including information on any arrests, prosecutions, convictions and penalties imposed, as well as copies of court decisions illustrating the scope of its application, in order to enable the Committee to assess the provision's conformity with the Convention.**

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

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

C138 - Minimum Age Convention, 1973 (No. 138)

Observation 2016

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

The Committee notes the Government's report and the comments made by the National Trade Union Federation (NTUF) dated 24 August 2013.

Article 2(2) of the Convention. Raising the minimum age for admission to employment or work. The Committee previously noted the Government's information that the Ministry of Labour Relations and Foreign Employment was considering the possibility of extending the age for admission to employment to 16 years and that steps were being taken to consult the relevant organizations/parties concerned. The Committee requested the Government to indicate whether any amendments raising the minimum age for employment to 16 years had been made.

The Committee notes the Government's statement that amendments in this regard have been submitted to the Attorney-General for approval, which will thereupon be submitted to the Parliament for adoption. **The Committee expresses its firm hope that the amendments with regard to raising the minimum age for admission to employment to 16 years will be adopted in the near future. In this regard, the Committee would like to draw the Government's attention to the provisions of Article 2(2) of the Convention, which provides that any Member having ratified this Convention may subsequently notify the Director-General of the International Labour Office, by a new declaration, that it has raised the minimum age that it had previously specified. The Committee would be grateful if the Government would consider the possibility of sending a declaration of this nature to the Office, in case any amendments to the national legislation raising the minimum age for admission to employment or work to 16 years have been made.**

Article 2(3). Compulsory education. The Committee previously noted the Government's information that the Ministry of Education had taken steps to submit a Bill to the Parliament in respect of extending compulsory schooling up to 16 years of age.

The Committee notes the Government's information that the Cabinet of Ministers have approved the memorandum submitted by the Ministry of Education on raising the upper age limit of compulsory education from 14 years to 16 years. The Government further indicates that the amendments in this regard have been submitted to the Attorney-General for approval. **The Committee expresses the firm hope that the Government will take the necessary measures to ensure that the amendments with regard to extending compulsory education up to 16 years will be adopted in the near future. It requests the Government to provide information on any progress made in this regard, as well as to supply a copy, once it has been adopted.**

Application of the Convention in practice. The Committee notes that, according to the findings of the Child Activity Survey of 2008–09 conducted by the Department of Census and Statistics, 2.5 per cent of the total child population aged between 5 and 17 years are involved in child labour, of which 1.5 per cent are engaged in hazardous work. About 80.8 per cent of the working children are engaged in unpaid family work; 66.3 per cent are engaged in elementary occupations such as street and mobile vendors, domestic helpers, mining, construction, manufacturing, transport and related work; while 61 per cent are engaged in the agricultural sector. The survey report further indicates that the average work time by children aged 5–17 years is 13.3 hours per week.

The Committee notes the Government's statement that the Department of Labour (DoL) is making every effort to enforce the law against child labour and that no incidence of child labour has been observed in the formal economy. In 2012, the DoL received 186 complaints on child labour in the informal economy of which four cases have been filed with the magistrate courts, while in the other cases legal action was impossible due to lack of evidence. The Committee further notes the Government's information that one of its districts, "Rathnapura", is envisaged to become a Child Labour Free Zone by 2015, and that the Government is trying to expand this concept into other districts as well. According to the Government's report, the main aspect of this concept is that it has the support of all government programmes related to education, vocational training, poverty alleviation and other social welfare schemes, as well as support of the private sector and the non-governmental organizations, in eliminating child labour. The Committee notes, however, the comments made by the NTUF that the number of cases of employment of children are much more than indicated by the Government as most of the children are employed as domestic workers where outsiders have no access. **The Committee encourages the Government to take the necessary measures within the framework of its attempt to expand the Child Labour Free Zone concept to all of its districts by 2016, to ensure the application of the Convention to all branches of economic activity, including the informal economy. In this regard, the Committee requests the Government to take effective measures to strengthen the capacity and expand the reach of the labour inspectorate to better monitor children working in the informal economy, including domestic workers. The Committee also requests the Government to continue providing information on the manner in which the Convention is applied in practice, including information from the labour inspectorate on the number and nature of contraventions reported, violations detected and penalties applied.**

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

C160 - Labour Statistics Convention, 1985 (No. 160)

Observation 2016

Articles 7 and 8 of the Convention. Statistics on the economically active population, employment, unemployment and underemployment. Structure and distribution of the economically active population. The Committee notes that the Government has regularly provided statistics on the economically active population, employment and unemployment to the ILO Department of Statistics for dissemination on ILOSTAT. The latest Labour Force Survey (LFS) figures relate to 2014, and quarterly reports on the 2015 LFS are also available. The Committee also notes the data and methodology provided by the Government relating to the 2012 Population and Housing Census. In this regard, the Committee notes with **interest** that the 2012 Census marks the first time in 31 years that the census findings have become available for the entire country. **The Committee requests the Government to continue to supply the relevant data and methodological information as soon as practicable. It also invites the Government to provide information on any developments in relation to the implementation of the Resolution concerning statistics of work, employment and labour underutilization (Resolution I), adopted by the 19th International Conference of Labour Statisticians (October 2013).**

Article 10. Compilation of statistics of wage structure and distribution. The Committee notes the information contained in the annex to the Government's report, entitled "Survey on Hours Actually Worked and Average Earnings, 2014". It notes, however, that this document does not contain sufficient information to permit tracking the composition of earnings and hours of work by main component. **The Committee therefore reiterates its request that the Government supply the latest information available on the composition of earning and hours of work by main component and, if possible, an internet link providing access to statistics on the structure of earnings and hours of work.**

Article 15. Statistics of industrial disputes. The Government indicates that, at present, information gathered on industrial disputes is not classified according to branch of economic activity. The dissemination of statistics by economic activity will be possible once the Labour Inspection Systems Application (LISA) is implemented island-wide. **The Committee therefore requests the Government to provide updated information in its next report with regard to the implementation of LISA as well as on any developments made towards the dissemination of statistics on strikes and lockouts by economic activity.**

Article 16. Acceptance of obligations. **The Committee reiterates its request that the Government indicate the progress in law and practice regarding the statistics mentioned in Article 9 (average earnings and hours of work, time rates of wages and normal hours of work), Article 11 (level and composition of labour costs) and Article 14 (occupational injuries and diseases).**

C182 - Worst Forms of Child Labour Convention, 1999 (No. 182)

Observation 2016

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

The Committee notes the Government's report and the comments made by the National Trade Union Federation (NTUF) dated 24 August 2013.

Article 3 of the Convention. Worst forms of child labour. Clause (b). Use, procuring or offering of a child for prostitution. The Committee previously noted that sections 360A, 360B and 288A of the Penal Code, as amended, prohibited a wide range of activities associated with prostitution, including the prohibition of the use, procuring or offering of minors under 18 years of age for prostitution. It also noted the Government's information that prosecutions on the commercial sexual exploitation of children are carried out by the Department of Police and the National Child Protection Authority (NCPA). The Committee further noted that the Committee on the Rights of the Child (CRC), in its concluding observations of 19 October 2010 (CRC/C/LKA/CO/3-4, paragraph 69), expressed concern at the high incidence of exploitation of approximately 40,000 children in prostitution, that no comprehensive data were available on child sexual exploitation, and that no central body was established to monitor the investigation and prosecution of child sexual exploitation cases.

The Committee notes the Government's information that several initiatives and measures have been taken against the sexual exploitation of children, such as: the development of a national plan of action to combat trafficking in children for sexual and labour exploitation; the establishment of a children's council throughout the island; and the establishment of a special committee to look into the issue of reducing the duration of judicial proceedings relating to child sexual exploitation. The Committee also notes the information provided by the Government in its fifth periodic report of 31 January 2013 to the Human Rights Committee (CCPR/C/LKA/5, paragraph 294), that it has established a women and children police desk at district level consisting of specially trained police officers to deal with the incidence of sexual exploitation of children. The Committee further notes from the Government's report that, as per the data collected from the police unit and the NCPA, in 2012, 53 cases of commercial sexual exploitation of children were reported while, in 2013, 30 cases were reported. **The Committee urges the Government to continue its efforts to combat the commercial sexual exploitation of children and to ensure that thorough investigations and robust prosecutions of persons who commit this offence are carried out and sufficiently effective and dissuasive penalties are imposed in practice. It requests the Government to continue providing information with regard to the number of prosecutions, convictions and penalties imposed on offenders in cases related to the commercial sexual exploitation of children.**

Clause (d) and Article 4(1). Hazardous work. The Committee previously requested the Government to provide information on the application in practice of section 20A of the Employment of Women, Young Persons, and Children Act of 2006, which prohibits the employment of children under the age of 18 years in any hazardous occupation.

The Committee notes the Government's statement that around 65,000 labour inspections are carried out annually and no incidents of hazardous work by children have been detected in the formal economy. The Committee notes, however, that, according to the findings of the Child Activity Survey 2009, out of the total child population of 107,259 reported to be in child labour, 63,916 children (1.5 per cent) between the ages of 5 to 17 years are engaged in hazardous work. The incidence of hazardous forms of child labour is highest in the manufacturing industries followed by the service and agricultural industries. **Noting that a large number of children under the age of 18 years are involved in hazardous work in Sri Lanka, the Committee urges the Government to take immediate and effective measures to ensure their protection from hazardous work, including in the informal economy. It also requests the Government to provide information on the measures taken in this regard and on the results achieved.**

Article 6. Programmes of action to eliminate the worst forms of child labour. Commercial sexual exploitation of children. The Committee previously noted that the CRC, in its concluding observations of 19 October 2010 (CRC/C/LKA/CO/3-4, paragraph 71), expressed concern that Sri Lanka remained a common destination for child-sex tourism, with a high number of boys being sexually exploited by tourists. The CRC also expressed concern that the police lacked the necessary technical expertise to combat child-sex tourism; that the Cyber-Watch programme to monitor the Internet for child pornography and crimes related to child-sex tourism was discontinued; and that the Cyber Crimes Unit closed due to lack of funding.

The Committee notes that, according to the document entitled "Sri Lanka's Roadmap 2016 on the Worst Forms of Child Labour from Commitment to Action", one of the strategies of the 2016 Roadmap is to promote child-safe tourism. The document also indicates that Sri Lanka's Ten-Year Horizon Development Framework 2006–16, called *Mahinda Chintana*, which is vigorously tackling many of the root causes of child labour, aims to strengthen security against tourism-related crimes, including combating child-sex tourism through strict police vigilance and awareness-raising programmes. However, the Committee notes from the same document that the beach boy phenomenon along with the issue of paedophilia has been known for a long time along the south western coastal belt of Sri Lanka. The Committee further notes the comments made by the NTUF that the commercial sexual exploitation of children takes place mainly in seaside tourist resorts and the very secretive nature of these offences curtails complaints or facts from coming to light. The Committee expresses its **concern** at the situation of children involved in child-sex tourism. **The Committee, therefore, once again urges the Government to strengthen its efforts to combat child-sex tourism and to ensure that perpetrators are brought to justice. The Committee requests the Government to provide information on the implementation of the strategies of the 2016 Roadmap in promoting child-safe tourism as well as the measures taken within the framework of the Mahinda Chintana in combating child-sex tourism.**

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

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

C019 - Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)

Observation 2016

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

Article 1 of the Convention. Equality of treatment in case of employment accidents. The Committee takes note of the detailed information supplied in the report and commends the Government's commitment to take action with a view to improving the situation of the hundreds of thousands of documented and undocumented migrants working in Thailand. It recalls that, while documented workers are registered and protected by the Social Security Fund (SSF) on the same conditions as national workers, undocumented foreign workers with no proof of national identity are not entitled to benefits under the social security system. These persons are, however, eligible to receive work-related compensation at the same rate as national workers under the Workmen's Compensation Fund (WCF) in accordance with section 50 of the Workmen's Compensation Act allowing the Social Security Office (SSO) to order the employer to pay compensation. Employers are also responsible for paying the health insurance contributions for undocumented workers (1,150 Thailand Baht (THB)) for workers awaiting registration with the SSF and THB2,800 for those not covered by the SSF). With respect to improving the social security coverage of migrant workers, the Government reports that a Working Committee chaired by the Deputy Secretary of the SSO responsible for studying the current limitations for accessing the social security benefits recommended that the SSO should make it easier for migrant workers to access benefits from the WCF in accordance with the terms and conditions of employment and residence status of migrant workers. The SSO, in turn, has conducted research on the development of a social insurance system for inbound and outbound migrant workers and the technical report is currently with the Committee of Research Report Verification.

The Committee welcomes the efforts undertaken by the SSO to facilitate access of migrant workers to benefits from the WCF and to explore the possibility of developing a social insurance scheme for migrant workers. **The Committee requests the Government to provide information on the decisions taken by the SSO, as well as on the practical effects of these measures on compliance by employers with their obligation to compensate their workers, whether documented or undocumented, in case of occupational injuries. Also, recalling that the steps taken with a view to verifying the nationality of undocumented migrants came to an end in August 2014, the Committee requests the Government to communicate, with its next report, a thorough assessment of the situation of undocumented migrants who continue to reside and work in Thailand.**

With respect to the situation of migrant domestic workers, seasonal workers and workers in agriculture and fisheries, who, according to the report, are exempt from coverage by both the social security scheme and the WCF due to limitation of collection of contributions, the Committee recalls that these categories of workers are fully covered by the Convention and therefore entitled to equal treatment with national workers in respect of employment injuries. It therefore requests the Government to take steps to comply with the Convention and further requests the Government to provide in its next report more detailed information about their situation both in law and in practice, including disaggregated data on the number of documented and undocumented migrant workers in the above categories.

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

C029 - Forced Labour Convention, 1930 (No. 29)

Observation 2016

Representation made under article 24 of the Constitution. The Committee notes that the Government's report has not been received. It also notes that, at its 316th Session (March 2016), the Governing Body declared receivable the representation made by the International Trade Union Confederation (ITUC) and the International Transport Workers' Federation (ITF) alleging non-observance by Thailand of the Convention, and set up a tripartite committee to examine it. In accordance with its usual practice, the Committee has decided to suspend its examination of the application of this Convention, in particular concerning trafficking of persons and the vulnerability of migrant workers to conditions of forced labour, pending the adoption by the Governing Body of the conclusions and recommendations of the above tripartite committee.

C100 - Equal Remuneration Convention, 1951 (No. 100)

Observation 2016

Article 1 of the Convention. Work of equal value. Legislation. In its previous comments, the Committee noted that section 53 of the Labour Protection Act of 2008, in providing only equal wages in cases where men and women perform work of the same nature, quality and quantity, did not fully reflect the principle of the Convention. The Committee notes the Government's indication that the Department of Labour Protection and Welfare has set up a working group to revise the Labour Protection Act, which will take into consideration the definitions of the terms "remuneration" and the terms "equal remuneration for men and women for work of equal value", as provided by the Convention. **The Committee hopes that the necessary steps will soon be taken to amend section 53 of the Labour Protection Act of 2008 in order to include the principle of equal remuneration for men and women for work of equal value explicitly, and requests the Government to report on the progress made in this regard. The Committee further requests the Government to provide information on any further activities undertaken, in cooperation with workers' and employers' organizations, to promote the principle of the Convention in the public and the private sectors.**

Articles 2 and 3. Public sector. The Committee previously noted that the former classification method which divided workers into four occupational clusters (unskilled, semi-skilled, skilled and special skilled employees) had been maintained. The Committee notes with **regret** that once again no further information has been provided on the manner in which it is ensured that the wage determination mechanisms are free from gender bias. **The Committee urges the Government to indicate the specific measures taken to ensure that job descriptions and the selection of factors for job evaluation are free from gender bias, and more particularly with regard to employees working in the public service who are not public officials. The Committee also requests the Government to provide statistical data, disaggregated by sex, on the distribution and remuneration of men and women in the various groups of the compensation schedule.**

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

C105 - Abolition of Forced Labour Convention, 1957 (No. 105)

Observation 2016

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

The Committee notes the observations of the National Congress of Thai Labour (NCTL), transmitted by the Government and received on 6 August 2014.

Article 1(a) of the Convention. Penal sanctions involving compulsory labour as a punishment for holding or expressing political views. Criminal Code. The Committee previously noted that section 112 of the Criminal Code states that whoever defames, insults or threatens the King, the Queen, the Heir apparent or the Regent, shall be punished with imprisonment of three to 15 years. Sections 14 and 15 of the Computer Crimes Act of 2007 prohibit the use of a computer to commit an offence under the provisions of the Criminal Code concerning national security (including section 112 of the Criminal Code), with a possible sanction of five years' imprisonment. The Committee also noted that, according to the report of the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, there had been a recent increase in lèse-majesté cases pursued by the police and the courts. In this regard, the Special Rapporteur urged the Government to hold broad-based public consultations to amend its criminal laws on lèse-majesté, particularly section 112 of the Criminal Code and the Computer Crimes Act (A/HRC/20/17, 4 June 2012, paragraph 20). The Committee further noted the information in a compilation prepared by the Office of the High Commissioner for Human Rights for the Universal Periodic Review that the UN Country Team in Thailand had indicated that a number of individuals had received lengthy prison sentences for breaching the lèse-majesté laws.

The Committee notes the Government's statement that the provisions referred to above relate to protecting the public. The Government indicates that it has attempted to find a balance between protecting the monarchy and the right of individuals to express their views. Section 112 of the Criminal Code is focused on criminal liability in connection with the country's security, and is based on the tradition, culture and history of the country where the King is a central feature of the unity of the Thai people. However, a review process is under way to study which aspects should be improved, as well as the best way to enforce the relevant laws with fairness. The Government also indicates that it has endorsed the recommendation made by the Human Rights Council, including those concerning promoting freedom of expression and ensuring public and transparent proceedings as well as adequate legal counselling for all persons charged with violations of the lèse-majesté legislation and the Computer Crimes Act. In this connection, a number of concerned governmental agencies have been tasked with establishing work plans to implement these recommendations.

In this regard, the Committee notes that the NCTL states that it agrees with the Government concerning the objectives of the enforcement of section 112, but also indicates that it supports the revision of the penalty under this section to punish only those persons who intentionally violate the monarchy.

Taking note of these statements, the Committee recalls that *Article 1(a)* of the Convention prohibits the use of forced or compulsory labour, including compulsory prison labour as a punishment for holding or expressing political views or of opposition to the established political, social or economic system. While the Convention does not prohibit punishment by penalties involving compulsory labour of persons who use violence, incite to violence or engage in preparatory acts aimed at violence, the Committee must emphasize that the protection conferred by the Convention is not limited to activities expressing or manifesting opinions diverging from established principles. Even if certain activities aim to bring about fundamental changes in state institutions, such activities are nevertheless protected by the Convention, as long as they do not resort to or call for violent means to these ends. ***The Committee therefore urges the Government to take the necessary measures to repeal or amend section 112 of the Criminal Code, so that persons who peacefully express certain political views cannot be sentenced to a term of imprisonment which involves compulsory labour. The Committee requests the Government to provide information on the specific measures taken in this regard, including within the framework of the work plans established by governmental agencies, in its next report.***

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

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

Thailand

C182 - Worst Forms of Child Labour Convention, 1999 (No. 182)

Observation 2016

Thailand

Articles 3, 5 and 7(1) of the Convention. Worst forms of child labour, monitoring mechanisms and penalties. 1. Trafficking. In its previous comments, the Committee noted the various activities undertaken by the Division on the Suppression of Offences against Children, Youth and Women, established under the Royal Thai Police, to combat trafficking in persons as well as the measures taken by the Government in collaboration with the ILO-IPEC. The Committee noted, however, that 76 per cent of the foreign victims of trafficking identified were minors and that Thailand remained a source country of trafficking victims.

The Committee notes the Government's statement in its report that it has announced human trafficking as a serious crime and that all government officials are required to seriously patrol and arrest offenders of trafficking in persons. The Government indicates that a Centre for Combating Human Trafficking (CCHT) is operational nationwide in the offices of each police commander, which receive complaints and investigate all offences related to trafficking in persons. According to the Government's report, the Royal Thai Police has launched two new plans, since 2014, to combat trafficking in persons and to protect children and women from trafficking. Moreover, at the community level, executives of local administration offices are appointed as members of the Child Protection Committees and at the sub-district level. One Stop Critical Centres have been established to receive complaints of trafficking of persons and to monitor all anti-human trafficking activities.

The Committee also notes from the Government's report that between October 2013 to September 2014, 165 cases of trafficking of children for commercial sexual exploitation involving 250 victims was registered under the Anti-trafficking in Persons Act B.E 2551 (2008) (Anti-Trafficking in Persons Act) and 126 cases were prosecuted. Moreover, in 2014, a total of 103 persons were sentenced for offences related to trafficking of persons with penalties of imprisonment ranging from six months to 30 years and more. The Committee also notes from the Government's report that in 2012, the CCHT investigated a case of trafficking involving three boys under the age of 15 years and the perpetrators were convicted and sentenced to 33 years' of imprisonment. The Committee notes, however, that the Committee on the Rights of the Child (CRC), in its concluding observations of 2012, expressed concern at the increase of trafficking of foreign children from neighbouring countries into Thailand for sexual exploitation, contributing to the large child sex tourism industry in the country, while Thai children are often trafficked to foreign countries for sexual exploitation. The CRC also expressed concern that children, especially children of poor families, undocumented migrants and ethnic minorities are trafficked internally (CRC/C/THA/CO/3-4, paragraph 76). **The Committee, therefore, strongly urges the Government to intensify its efforts to strengthen the capacity of law enforcement officials responsible for the monitoring of trafficking in children, including those in the CCHT and border officials, to ensure the effective implementation of the Anti-Trafficking in Persons Act. It requests the Government to provide information on the number of infringements reported, investigations, prosecutions, convictions and penal sanctions applied in this regard.**

2. Child prostitution. In its previous comments the Committee observed that the figures provided by the Government on the number of reported child victims of commercial sexual exploitation appeared to represent only a fraction of the number of children engaged in prostitution (with previous government estimates indicating that tens of thousands of persons under 18 are victims of this worst form of child labour).

The Committee notes the Government's information in its report that the Ministry of Justice has introduced several measures under the responsibility of the CCHT to investigate cases of commercial sexual exploitation of children. The Committee notes, however, that the CRC, in its concluding observations of February 2012 to the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, expressed concern that prostitution is practised quite openly, with the involvement of large numbers of children and that corruption and cases of police officers involved in the child sex trade industry contribute to the problem. The CRC also expressed concern that existing laws, administrative measures, social policies and programmes of the State party are insufficient and do not adequately prevent children from becoming victims of these offences (CRC/C/OPSC/THA/CO/1, paragraph 21). The Committee expresses its **deep concern** at the situation of children involved in prostitution and also at the lack of prosecutions and convictions of perpetrators. **The Committee, therefore, urges the Government to take the necessary measures, without delay, to ensure that persons, including complicit and corrupt officials, who are suspected of procuring, using, offering or employing children under 18 for prostitution are subject to thorough investigations and robust prosecutions and that sufficiently effective and dissuasive penalties are imposed in practice. It requests the Government to provide statistical information on the number and nature of violations reported, investigations, prosecutions, convictions and penalties imposed in this respect. Finally, the Committee requests the Government to provide information on the activities undertaken by the CCHT to monitor and investigate cases of commercial sexual exploitation of children under the age of 18 years and on the results achieved.**

Article 3(d). Hazardous work. Agricultural work. In its previous comments, the Committee noted the various measures taken by the Government, including with the cooperation of ILO-IPEC, for the protection of children from hazardous work in agricultural sector. The Committee requested the Government to pursue its efforts in this regard.

The Committee notes with **interest** the Government's information that the Department of Labour Protection and Welfare (DLPW) enacted a Ministerial Regulation concerning the Labour Protection Act in the Agricultural Sector, BE 2557 of 2014, which prohibits children under the age of 18 years from engaging in hazardous work in agricultural work. The Government report indicates that the DLPW disseminated a total of 15,000 copies of a brochure of this regulation to the public and conducted seminars in 15 provinces to convey the protection afforded to children under this regulation to concerned associations, and employers' and workers' organizations in the agricultural sector. Moreover, programmes to sensitize workers in the informal sector on their rights and obligations under the law were also carried out by the DLPW. **The Committee encourages the Government to pursue its efforts to protect children working in agriculture from hazardous work. It also requests the Government to provide information on the impact of these measures, in terms of the number of children withdrawn and prevented from undertaking hazardous work in the agricultural sector.**

Article 6. Programmes of action to eliminate the worst forms of child labour. ILO-IPEC project on Combating the Worst forms of Child Labour in Shrimp and Seafood Processing Areas in Thailand. The Committee notes that the ILO-IPEC project on Combating the Worst Forms of Child Labour in Shrimp and Seafood Processing Areas in Thailand 2010–16 is being implemented in the country. This project aims to create an industry that is free of child labour and offers decent working conditions and opportunities as well as to provide accessible education, social protection and livelihood services to children and families in the targeted shrimp industry areas. The Committee notes that a survey conducted by ILO-IPEC in 2012 in four seafood producing provinces established an average child labour prevalence rate in the age group of 5–17 years of 9.9 per cent, while in Samut Sakhon, one of the biggest seafood industry hubs in Thailand, the prevalence rate rose to 12.7 per cent. Out of the economically active children in the age group of 15–17 years identified in the survey, 36.2 per cent were found in hazardous working conditions, such as work with fire, heat or strong sunlight; damp, smelly, dirty and dusty workplaces; working for long hours; using hazardous tools; working in extremely hot or cold environments and working at night. According to the Government's report, the results following the implementation of this project include: (i) improved knowledge on the nature and extent of child labour in the seafood sector, through research studies and surveys; (ii) increased capacity of the Ministry of Education to provide access to education of migrant children who are vulnerable to child labour in this sector; (iii) the establishment of a manual on Good Labour Practices on the basis of which 170 enterprises received training on improving their labour practices, particularly concerning children; (iv) the provision of educational support to a total of 4,638 children and livelihood support to 3,506 parents and family members; and (v) the development of a training manual on child and forced labour and a handbook on protection of young workers from hazardous work for labour inspectors. **The Committee encourages the Government to continue taking measures to combat the worst forms of child labour in the shrimps and seafood areas. It requests the Government to provide information on the measures taken in this regard and the results achieved.**

Article 7(2). Effective and time-bound measures. Clause (b). Providing the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour, and for their rehabilitation and social integration. Child victims of trafficking. In its previous comments, noting the various measures taken by the Government, through the protection centres, to provide appropriate services and assistance for the protection and rehabilitation of child victims of trafficking, the Committee requested the Government to pursue its efforts in this regard.

Thailand

The Committee notes the Government's statement that one of several measures to assist child victims of trafficking is the provision of compensation. Accordingly, child victims of trafficking are eligible to claim compensation: (i) for being subject to human trafficking in accordance with the Anti-trafficking in Persons Act; (ii) from offenders in accordance with the Penal Code; (iii) from the provision fund for prevention and suppression of human trafficking as prescribed in the Anti-Trafficking in Person Act. The compensation shall be awarded based on the damage caused to the victim's life, mind, property, reputation and other criteria. Moreover, there is a provision fund for rehabilitation, occupational training and development from the Ministry of Social Development and Human Security (MSDHS). The Committee notes the Government's information that it, through the Ministry of Justice, provided compensation of 15,290,000 Baht to 3,023 victims of trafficking. In addition, the MSDHS provided financial assistance to 619 victims of trafficking, including 310 child victims who were assisted with a total of 2,048,600 Baht. **The Committee requests the Government to pursue its efforts to provide compensation and financial assistance for child victims of trafficking and to continue providing information in this regard. It also requests the Government to provide information on the number of child victims of trafficking who have been provided assistance and rehabilitated in its various protection centres.**

Article 8. International cooperation and assistance. Regional cooperation and bilateral agreements. The Committee notes the Government's indication that in November 2012, the CCHT signed an agreement with the National Police Office of Myanmar to organize meetings and share information on trafficking in persons and transnational organized crimes. This agreement aims to enable both countries to cooperate with respect to trafficking of persons across the borders as well as in providing appropriate assistance for victims of trafficking. The Committee notes the Government's information that owing to this cooperation, several victims of trafficking from Myanmar were identified and removed and three offenders were arrested and prosecuted in 2013. Moreover, a workshop on laws and regulations related to child labour was held from 30 July to 1 August 2014 in Chiangmai province to enhance cooperation among government offices of Thailand and Myanmar, private sectors and NGOs in the border areas as well as to provide assistance and protection to child migrant workers. A total of 105 officials participated in this workshop. The Committee also notes the Government's information that Thailand and Australia signed an MoU to proceed with Australia-Asia Programme to Combat Trafficking in Persons to enhance capacity in judicial procedures related to trafficking of persons. The Government further indicates that in 2015, the Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT), to which Thailand is a party along with Cambodia, China, Lao People's Democratic Republic and Myanmar, adopted the draft phase 4 of the subregional Plan of Action to combat trafficking in persons.

In addition, the Department of Social Development and Welfare of the MSDHS, implemented the following activities in cooperation with other neighbouring countries:

-Anti-human trafficking campaigns were initiated in border areas with the aim to enhance cooperation in the Greater Mekong Subregion to prevent and resolve issues related to trafficking in persons and to develop repatriation and reintegration measures.

-Bilateral Case Management Meetings are being held every six months with Myanmar and Lao People's Democratic Republic to develop working mechanisms to handle all challenges related to trafficking in persons.

-Remand Centres for Victims of Trafficking have been established in Myanmar and Cambodia to assist victims and reintegrate them into their society.

-The MSDHS in collaboration with the World Vision Foundation have developed a mechanism to support anti-human trafficking by launching a research project on "Vulnerable ways and patterns to becoming victims of Trafficking" for policy and strategy formulation to prevent trafficking in persons in Thailand and neighbouring countries.

The Government also indicates that it is in the process of initiating similar bilateral MoUs with the Governments of Malaysia, Brunei Darussalam, United Arab Emirates, China and India. **Noting that cross-border trafficking remains an issue of concern in practice, the Committee encourages the Government to pursue its international cooperation efforts with regard to combating the trafficking of persons under 18. It requests the Government to continue to provide information on the concrete measures implemented in this regard, and on the results achieved.**

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

C029 - Forced Labour Convention, 1930 (No. 29)

Observation 2016

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

Articles 1(1) and 2(1) of the Convention. Work exacted in drug rehabilitation centres. The Committee previously noted that the Decree on regulating in detail the implementation of the law to amend and supplement a number of articles of the Law on drug prevention regarding post-rehabilitation management (No. 94/2009/ND-CP) states that persons in drug rehabilitation centres must actively participate in labour and production and complete assigned target volume and quality of work (sections 26(2) and 34(1)(b)) and that the director of the centre has the authority to apply coercive measures against those failing to comply with the centre's rules and regulations regarding education, learning and labour (section 43(1)(a)). Noting that work is part of the treatment in these centres, the Committee requested information on how persons enter these centres.

The Committee notes the Government's statement that persons staying at drug rehabilitation centres are involved in production. The Government states that this is not forced labour, that this work helps drug addicts to realize the value of their labour and to recover their work skills, and that no sanction shall be applied to those who do not wish to work. However, the Government also states that those who are healthy enough are allocated a certain amount of product to produce, and that persons with low labour discipline will be criticized or reprimanded. The Committee further notes the Government's indication that section 28 of the Law on drug prevention states that the sending of drug addicts into compulsory drug rehabilitation establishments shall be implemented by a decision of the President of the People's Committees in districts, towns and cities.

With reference to paragraph 52 of its 2007 General Survey on the eradication of forced labour, the Committee reminds the Government that *Article 2(2)(c)* of the Convention provides that work can only be exacted from a person as a consequence of a conviction in a court of law. In this respect, it recalls that compulsory labour imposed by administrative or other non-judicial bodies or authorities is not compatible with the Convention. ***Therefore, noting that persons are sent to drug rehabilitation centres following an administrative decision, the Committee urges the Government to take the necessary measures, in both law and practice, to ensure that persons detained in drug rehabilitation centres who have not been convicted by a court of law may not be subject to the obligation to perform work. In this regard, the Committee requests the Government to provide information on how, in practice, the free and informed consent to work of persons in drug rehabilitation centres is formally obtained, free from the menace of any penalty and taking into account the situation of vulnerability of such persons.***

Article 2(2)(a). Compulsory military service. The Committee previously noted that article 77 of the Constitution provides for compulsory military service and participation in building a national defence among citizens' obligations. The Government indicated that compulsory military service is purely of a military character in order to protect the sovereignty and territorial integrity of the country, and that the use of labour and services exacted from persons in military duty for economic purposes for any organization or individual is strictly prohibited. However, the Committee noted that, pursuant to the Ordinance on militia and self defence forces 2004, all Vietnamese citizens were obliged to serve for five years in the militia or self-defence force, and that this service included the active implementation of socio-economic development programmes in localities.

The Committee notes the Government's statement that all citizens have the obligation to participate in the military service or the militia and self-defence forces, and participation in one service will exempt a person from the obligation to serve in the other. Between July 2010 and December 2012, the militia and self defence forces had 163,124 enlisted persons who worked 2,508,812 public working days. The Committee also notes the Government's indication that the Ordinance on militia and self-defence forces of 2004 has been replaced by the Law on militia and self-defence forces of 2009. Section 8(3) of the Law on militia and self-defence forces of 2009 states that the tasks of the militia and self-defence forces include, inter alia, protecting forests and preventing forest fires, protecting the environment and the construction and socio-economic development of localities and establishments. The Government indicates that this work includes dredging canals, building roads, supporting the economic development of households, planting trees and contributing to reducing and eliminating poverty.

In this regard, the Committee observes that these tasks do not appear to be work of a military character, and once again recalls that, under *Article 2(2)(a)* of the Convention, work or service exacted by virtue of compulsory military service legislation which is not of a purely military character is incompatible with the Convention. ***Taking note of the Government's indication that such service is obligatory, the Committee requests the Government to take measures, in law and practice, to ensure that persons working by virtue of compulsory military conscription laws, including in the militia and self-defence forces, only engage in work of a military nature. It requests the Government to provide information on measures taken in this regard, in its next report. The Committee once again requests the Government to provide a copy of the Law on military service 1981 with its next report.***

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

C081 - Labour Inspection Convention, 1947 (No. 81)

Observation 2016

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

Follow-up to the labour inspection needs assessment of 2012. The Committee notes with interest that, in reply to its comment concerning the follow-up to the labour inspection audit conducted by the ILO in 2012, the Government indicates that, to set up an advanced labour inspection system which fully meets the requirements of the Convention, the Ministry of Labour, War Invalids and Social Affairs (in collaboration with the ministries concerned) has developed the plan "Strengthening the inspection capacity in the field of labour, invalids and social affairs until 2020" (the MOLISA plan), which has been submitted to the Prime Minister for consideration and approval. **The Committee requests the Government to provide a copy of this plan once approved, if possible in one of the ILO's working languages, and to keep the Office informed of progress made or any difficulties encountered in its implementation.**

Articles 10 and 11 of the Convention. Resources available to the labour inspectorate. The Committee notes that, according to the Government, human resources and material means and facilities of the labour inspectorate are inadequate, and that the inadequacy of material means particularly affects occupational safety and health inspection. The Committee notes that the Government indicates that the MOLISA plan contains important measures to improve facilities for labour inspection across the country. In addition, the Government indicates that the use of self-inspection questionnaires is a solution to address the shortage of human and financial resources. In this respect, the Committee once again reminds the Government that self-inspection and self-assessment should be complementary to, and not replace labour inspections. **The Committee requests the Government to continue to take the necessary measures, if necessary with financial assistance to be sought in the context of international cooperation, to ensure that the labour inspectorate is provided with the necessary resources for the effective discharge of its duties, and to keep the Office informed of any development in this respect.**

Articles 5(a), 20 and 21. Publication of an annual inspection report. The Committee notes that no annual report on the activities of the labour inspection services has been transmitted to the Office. **Referring to its previous comments and to its general observations of 2009 and 2010, the Committee once again asks the Government to indicate the measures taken to promote inter-institutional cooperation for the establishment of a register of workplaces liable to inspection and the workers employed therein, with a view to ensuring the fulfilment by the central inspection authority of its obligation to publish and transmit to the ILO an annual report in accordance with Articles 20 and 21 of the Convention. It also once again requests the Government to indicate the formal steps taken in order to obtain ILO technical assistance in this respect.**

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

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

C138 - Minimum Age Convention, 1973 (No. 138)

Observation 2016

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

Application of the Convention in practice. The Committee previously noted that, according to the joint ILO, UNICEF and World Bank report on Understanding Children's Work (UCW) in Viet Nam of April 2009, an estimated 1.3 million children between the ages of 6 and 17 years were involved in child labour.

The Committee notes the Government's information regarding the statistics on the employment of children and young persons, extracted from the reports of the labour inspection services for 2006–10. According to these statistics, 1,012 underage workers were detected in 2006; 101 in 2007; 501 in 2008; 496 in 2009; and 101 in 2010. However, the Government also indicates that the number of children subjected to heavy labour and in hazardous and dangerous conditions, while decreasing, was as high as 68,000 in 2005 and 25,000 in 2010. In this regard, the Government provides information on the new penalties provided in Decree No. 91/2011/ND-CP of 17 October 2011 and imposed in various cases of child labour, aimed at deterring the use of child labour in the country. These penalties include: a caution or fine of 1 to 5 million Vietnamese dong (VND) for parents who force their children to work too hard or overtime in a manner that affects their studies; a fine of VND10 to 20 million for employing children in certain types of work, such as working in massage rooms, in casinos, bars, pubs or places that risk adversely affecting the development of the child; a fine of VND20 to 40 million for employing children in certain illicit activities, such as the transport of illegal commodities.

The Committee takes due note of the Government's information regarding the measures adopted to combat child labour. However, the Committee notes that, in its concluding observations of 15 June 2012 (CRC/C/VNM/CO/3-4, paragraph 68), the Committee on the Rights of the Child expresses its concern that child labour remains widespread in the country, in particular in the informal economy, and that labour inspection outreach is limited. The Committee therefore observes that the statistics provided by the Government and taken from the labour inspection reports may not take into account the high number of children working in the informal economy in Viet Nam, as reflected in the joint ILO, UNICEF and World Bank report on UCW of April 2009. It must therefore once again express its **deep concern** at the prevalence of child labour in the country. **The Committee urges the Government to intensify its efforts to ensure the effective elimination of child labour. It requests the Government to take practical measures to strengthen the capacity and expand the reach of the labour inspectorate in its action to prevent and combat child labour, in particular in the informal economy. The Committee also requests the Government to continue to provide information on the manner in which the Convention is applied in practice, based in particular on statistics on the employment of children under 15 years of age, extracts from the reports of the inspection services and information on the number and nature of the violations reported and the sanctions imposed.**

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

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

C182 - Worst Forms of Child Labour Convention, 1999 (No. 182)

Observation 2016

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

Articles 3(b) and 7(2)(b) of the Convention. Use, procuring or offering of a child for prostitution; effective and time-bound measures to provide assistance for the removal of children in the worst forms of child labour and for their rehabilitation and social integration; and application of the Convention in practice. The Committee previously noted that a Programme of Action to Combat Prostitution for the period 2011–15 (PACP) was approved by the Government through Decision No. 679/QĐ-TTg of 10 May 2011.

The Committee notes the Government's detailed information pertaining to the implementation of the PACP. In this regard, the Government indicates that, between 2006 and 2011, the police conducted 182,656 inspections of various service providing establishments, and discovered 68,249 establishments that were violating the provisions related to prostitution, 12,563 warnings were issued, and 37,130 financial sanctions amounting to 103 billion Vietnamese dong (VND) were imposed. In addition, the police traced and raised 6,109 prostitution cases against 19,443 persons, including 4,113 pimps and brokers, 9,067 prostitutes, and 6,263 clients. The Government also indicates that the People's Procurators have prosecuted a total of 3,455 cases of crimes related to prostitution against 4,585 persons, including 114 cases against defendants who were accused of buying juvenile sex.

However, the Committee notes that, in its concluding observations of 22 August 2012, the Committee on the Rights of the Child (CRC) expressed its concern about the rise in child prostitution, the rise in the number of cases of child trafficking including, inter alia, for prostitution purposes, and the increasing number of children involved in commercial sexual activity, mainly due to poverty-related reasons (CRC/C/VNM/CO/3-4, paragraph 71). The CRC further expressed its concern that children who are sexually exploited are likely to be treated as criminals by the police, and that there is a lack of specific child-friendly reporting procedures. ***The Committee, therefore, urges the Government to intensify its efforts within the framework of the PACP to strengthen the capacity of the authorities in charge of applying the legislation against child prostitution, to combat the commercial sexual exploitation of children under 18 years of age. It also requests the Government to take the necessary measures to ensure that child victims of commercial sexual exploitation are treated as victims rather than as offenders. In this regard, the Committee also requests the Government to take effective and time-bound measures to remove children under 18 years of age from prostitution and provide them with the appropriate assistance to ensure their social integration through education, vocational training or jobs, and to provide information on the results achieved.***

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

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