

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

Observations 2016

Regional file by country -

CARIBBEAN

C085 - Labour Inspectorates (Non-Metropolitan Territories) Convention, 1947 (No. 85)

Observation 2016

The Committee notes with **deep concern** that the Government's report once again does not provide a reply in relation to the Committee's requests. It is therefore bound to repeat its previous comments.

The Committee notes the indication by the Government that the United Kingdom no longer provides grant-in-aid to the Government of Anguilla in an effort to ensure greater economic and political autonomy to the territory. It also notes that the territory has no responsibility for its economic development, social progress and employment policies. **The Committee requests the Government to provide a copy of the legal provisions relating to the status of the territory and its impact on the application of the Convention.**

The Committee observes that for more than 20 years, no new information had been received at the ILO concerning measures undertaken in order to give effect in law and in practice to the Convention, and that the only information contained in the report is that labour inspectors attend all training programmes in labour inspection and occupational health and safety organized by the ILO subregional office. **The Committee hopes that the Government will communicate in its next report as detailed information as possible on the application of each of the provisions of the Convention as well as a copy of relevant legal texts and available statistics on the labour inspection activities performed during the period covered by the report.**

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

C148 - Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148)

Observation 2016

The Committee notes that the Government's report contains no reply to its previous comments. It is therefore bound to repeat its following comment.

The Committee recalls that the obligations under this Convention in respect of air pollution were accepted and made applicable to Anguilla by declaration without modification on 11 July 1980, and that the Committee has repetitively drawn the attention of the Government to *Article 4 of the Convention* which provides that national laws or regulations shall prescribe that measures be taken for the prevention and control of, and protection against occupational hazards in the working environment due to air pollution and that provisions concerning the practical implementation of these measures may be adopted through technical standards, codes of practice or other appropriate methods. **The Committee again urges the Government to take the necessary measures either by means of adopting regulations under section 20(1) of Labour Ordinance No. 8 of 1996 or by adopting other appropriate methods to ensure the protection of workers against hazards due to air pollution and invites the Government to report on progress in this respect.**

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

Antigua and Barbuda

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

Observation 2016

Articles 3(2), 10 and 16 of the Convention. *Functions and number of labour inspectors and frequency of inspection visits.* In its previous comments, the Committee noted that according to a 2009 job description communicated by the Government, labour inspectors were obliged to carry out other functions in the Labour Department, in addition to their primary duties, as well as the functions assigned to them by their immediate supervisor, the Labour Commissioner or the Deputy Labour Commissioner. It also noted that from 1997 to 2010, there had been a high fluctuation in the number of labour inspections, with a decrease in the number of labour inspections from 2009 to 2010 of almost half (that is, from 248 to 128). The Committee notes the Government's indication in its present report that the 2009 job description of labour inspectors remains valid and that unforeseen challenges had been the cause of the fluctuations and reductions in the number of labour inspections. **The Committee requests that the Government provide detailed information on the current number of labour inspectors (including the number of labour inspectors specializing in occupational safety and health (OSH)), and an indication as to whether this number is sufficient to secure the effective discharge of the duties of the inspectorate. The Committee also requests that the Government provide information on whether any additional functions are entrusted to labour inspectors (such as the mediation and conciliation of labour disputes), as well as information on the measures taken to ensure that any further duties do not interfere with the effective discharge of the primary duties of labour inspectors.**

Article 5(a) and (b). *Cooperation between the labour inspection services and other government services or public institutions and collaboration with employers' and workers' organizations.* The Committee again notes with **regret** that the Government has once again not provided the requested information on the content and modalities of any existing cooperation between the labour inspectorate and the Ministry of Health (or information on any difficulties preventing such cooperation in practice). The Committee further notes that the Government has once again not provided the requested information on the details of collaboration between the labour inspectorate and the social partners. **The Committee therefore once again requests that the Government provide detailed information on the measures taken to develop cooperation between the labour inspectorate and the Ministry of Health (such as on regular exchange of information and data, common training seminars or conferences). It also once again requests that the Government provide details on the content and modalities of any existing cooperation (such as the organization of conferences or joint committees, or similar bodies, to discuss questions concerning the enforcement of labour legislation and the health and safety of workers, and whether the labour inspectorate is represented on the National Labour Board).**

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

C094 - Labour Clauses (Public Contracts) Convention, 1949 (No. 94)

Observation 2016

Article 2 of the Convention. *Insertion of labour clauses in public contracts.* The Committee notes with **regret** that once again the Government's report does not reply to its previous comments. The Committee has been requesting the Government for several years to indicate any legislative text, ministerial regulation or administrative instruction providing for the inclusion of appropriate labour clauses in all public contracts for works, goods or services covered by the Convention. The Committee has also been drawing the Government's attention to the fact that a mere reference to the Labour Code (No. 14 of 1975) as being applicable to all workers, including those engaged in the execution of public contracts, is not sufficient to give effect to the principal requirement of the Convention, namely the insertion of appropriate labour clauses in public contracts as defined in the Convention. In its previous comments the Committee drew the Government's attention to the 2008 General Survey on Convention No. 94 and the Office Practical Guide of 2008, which provide guidance and examples on how legislative conformity with the Convention may be ensured. **The Committee hopes that the Government will take the necessary measures to fully apply the Convention in law and practice and once again recalls that the Government may avail itself of technical assistance from the Office for this purpose.**

The Committee recalls that the Government has undertaken in recent years the revision of its public procurement legislation, including the Tenders Board Act (Cap. 424A). **The Committee reiterates its request that the Government clarify whether the public procurement legislation currently in force addresses in any manner the question of labour clauses in public contracts, and, if not, to indicate any steps taken or envisaged in order to ensure compliance with the provisions of the Convention. The Committee further requests that the Government provide copies of any relevant legal texts, specifically copies of any texts adopted further to the revision of the public procurement legislation, that may not have been previously communicated to the Office.**

Antigua and Barbuda

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

Observation 2016

Article 1(a) and (b) of the Convention. Work of equal value. The Committee previously noted that section E8(1) of the Labour Code of 1975, which provides that “no woman shall, merely by reason of her sex, be employed under terms or conditions of employment less favourable than that enjoyed by male workers employed in the same occupation and by the same employer”, did not give full legislative expression to the principle of the Convention. The Committee merely recalls that prohibiting sex-based wage discrimination will not normally be sufficient to give effect to the Convention, as it does not capture the concept of “work of equal value” set out in *Article 1(b)* of the Convention (see 2012 General Survey on the fundamental Conventions, paragraph 676). It also recalls the importance of giving full legislative expression to the principle of equal remuneration for men and women for work of equal value, particularly given the existence of occupational sex segregation, as women and men often work in different occupations (see 2012 General Survey, paragraphs 673 and 697). In this regard, the Committee takes due note of the Government’s indication that the National Labour Board has reviewed the Labour Code and that a report has been submitted to the relevant authority for necessary action. **The Committee trusts that the revised text of the Labour Code will clearly set out the principle of equal remuneration for men and women for work of equal value – which should not only provide for equal remuneration for men and women working in the same occupations, but also for equal remuneration for work carried out by men and women that is different in nature but nevertheless of equal value – and will ensure that the principle of the Convention can be applied even where there is no sufficient comparator group employed by the employer. It requests the Government to report on the progress made.**

Remuneration. The Committee recalls its previous comments regarding the use and definitions of the terms “wages”, “gross wages”, “remuneration” and “conditions of work” referred to in sections A5, C3, C4(1) and E8(1) of the Labour Code. The Committee had noted that the definition of “gross wage” appeared to be in accordance with the definition of remuneration set out in *Article 1(a)* of the Convention, but that it remained unclear whether section C4(1) prohibiting sex discrimination with respect to wages covered the gross wage. While noting the Government’s indication that the terms “wages”, “gross wages”, and “remuneration” were used interchangeably in practice, the Committee noted that these various terms were often understood to have distinct meanings, thus potentially giving rise to confusion. **Noting the review of the Labour Code, the Committee requests the Government to ensure that the revised text will harmonize the provisions of the Labour Code relevant to wages and remuneration, and include a clear definition of “remuneration” which covers not only the ordinary, basic or minimum wage or salary but also any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker’s employment, in accordance with Article 1(a) of the Convention. The Committee requests the Government to report on the progress made in this regard.**

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

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

Observation 2016

Article 1(1)(a) of the Convention. Grounds of discrimination – National extraction and social origin. For a number of years, the Committee has been noting the absence of an explicit prohibition of discrimination in the national Constitution (article 14(3)) or the Labour Code (section C4(1)) on the basis of national extraction and social origin. In its 2012 report, the Government indicated that, when the new Labour Code would be published, national extraction and social origin would be included to give full effect to the Convention. The Committee notes with **regret** the persistent lack of information in the Government’s latest report on the concrete steps taken to ensure and promote protection of workers against discrimination with respect to these grounds in law or in practice. The Committee recalls that even as the relevance of each of the grounds enumerated in the Convention may be different for each country, new forms of discrimination may emerge over time due to labour market and societal changes, and need to be addressed. Further, where provisions are adopted in order to give effect to the principle of the Convention, they should at least include all the grounds of discrimination laid down in *Article 1(1)(a)* (2012 General Survey on the fundamental Conventions, paragraph 853). **The Committee requests the Government to ensure that workers are protected in law and in practice, against direct and indirect discrimination on the basis of national extraction and social origin, in all aspects of employment and occupation, and to monitor emerging forms of discrimination that may result or lead to discrimination in employment and occupation on the basis of these grounds, and to report in detail on the progress made. Noting the Government’s indication that the National Labour Board has reviewed the Labour Code and submitted a report to the relevant authority for the necessary action to be taken, the Committee hopes that the revised text of the Labour Code will include specific provisions defining and prohibiting direct and indirect discrimination, in all aspects of employment and occupation, and with respect to all the grounds of discrimination set out in the Convention, namely race, colour, sex, religion, political opinion, national extraction and social origin, and requests it to provide information on the progress made.**

Article 2. Equality between men and women. Access to employment, vocational training and education. The Committee notes that the Government continues to provide very general information relating to its national policy to promote and ensure equality of opportunity and treatment of men and women with respect to access to employment, education and vocational training. **With a view to enabling the Committee to assess in an effective way the progress made in ensuring equality of opportunity and treatment between men and women, the Committee urges the Government to take concrete steps to collect, analyse, and provide statistical information, disaggregated by sex, on the participation of men and women in education at all stages and various vocational training courses offered, as well as statistics on the number of men and women that have filled vacancies following such training, including for jobs traditionally held by the other sex. The Committee also urges the Government to provide detailed information on recent initiatives taken or envisaged to promote women’s participation in courses and jobs traditionally held by men, including up to date information on the courses offered by the Gender Affairs Department and the Ministry of Education, as well as the Institute of Continuing Education.**

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

Antigua and Barbuda

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

Observation 2016

The Committee notes with **regret** that the Government's report contains no reply to its previous comments. It is therefore bound to repeat its previous comments.

Article 5 of the Convention. Effective tripartite consultations. The Committee notes that the Government's report does not contain information on the tripartite consultations held on matters related to the Convention. **The Committee once again requests the Government to provide detailed information on the activities of the National Labour Board on matters regarding international labour standards covered by the Convention. It also once again requests the Government to include detailed and updated information on the tripartite consultations held concerning each of the matters related to international labour standards covered by Article 5(1) of the Convention.**

Article 5(1)(b). Submission to Parliament. The Government indicates in its report that all instruments adopted by the Conference were submitted to the relevant authority for action. **The Committee refers to its observations on the obligation to submit and once again requests the Government to report on the effective consultations held with respect to proposals made to the Parliament of Antigua and Barbuda in connection with the submission of the instruments adopted by the Conference, including indications of the date on which the instruments were submitted to Parliament.**

Article 5(1)(c). Examination of unratified Conventions and Recommendations. The Government reiterates, as it did in 2014, that it notes the comments made by the Committee with regard to the examination of unratified Conventions. **The Committee refers to its previous comments and urges the Government to provide updated information on the re-examination of unratified Conventions with its social partners, in particular: (i) the Labour Inspection (Agriculture) Convention, 1969 (No. 129), which is deemed a governance Convention; (ii) the Holidays with Pay Convention (Revised), 1970 (No. 132), (which revises the Weekly Rest (Industry) Convention, 1921 (No. 14)), and the Holidays with Pay (Agriculture) Convention, 1952 (No. 101), to which Antigua and Barbuda is a State party; and (iii) the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185), (which revises the Seafarers' Identity Documents Convention, 1958 (No. 108)), that has also been ratified by Antigua and Barbuda.**

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

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

Observation 2016

The Committee notes the observations received on 1 September 2014 and on 1 September 2016 from the International Organisation of Employers (IOE), which are of a general nature.

The Committee notes the Government's indication that the most recent amendment to the 2001 Industrial Relations Act (IRA) occurred in 2012. The Committee observes with **regret** that the Industrial Relations (Amendment) Act, 2012, did not address the concerns raised in its previous observation and notes the Government's statement that discussions to this end continue.

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 does not apply to the prison service (section 3). In this respect, the Committee notes the Government's reference to the Correctional Officers (Code of Conduct) Rules 2014, which allowed for the establishment of the Bahamas Prison Officers Association (BPOA). **Noting the limited scope of sections 39 and 40 of the abovementioned Rules, the Committee requests the Government to specify the manner in which prison staff and the relevant organization(s) enjoy the rights and guarantees enshrined in the Convention.**

Right of workers and employers to establish organizations without previous authorization. In its previous comments, the Committee noted that, under section 8(1)(e) of the IRA, beyond consideration of the specific requirements for registration, the Registrar shall refuse to register a trade union if he/she considers that the union should not be registered. Moreover, according to section 1 of the Schedule of the IRA, in applying the rules for the registration of trade unions, the Registrar shall exercise his/her discretion. **The Committee requests the Government once again to take the necessary measures to review section 8(1) (e) of the IRA so as to limit the discretionary power conferred upon the Registrar in relation to the registration of trade unions or employers' organizations.**

Article 3. Right of workers' and employers' organizations to draw up their constitutions and rules and to elect their representatives in full freedom. In its previous comments, the Committee noted that section 20(2) of the IRA, under the terms of which a secret ballot for election or removal of trade union officers and for the amendment of the constitution of trade unions shall be held under the supervision of the Registrar or a designated officer, is contrary to the Convention. **The Committee once again expresses the hope that specific measures will be taken for the amendment of section 20(2) of the IRA with a view to ensuring that trade unions can conduct ballots without interference from the authorities.**

Right of organizations freely to organize their activities and to formulate their programmes. In its previous comments, the Committee had noted that, when a strike is organized or continued in violation of the provisions concerning trade dispute procedure, excessive sanctions, including imprisonment for up to two years are provided (sections 74(3), 75(3), 76(2)(b) and 77(2) of the IRA). The Committee recalls once again that no penal sanction should be imposed against a worker for having carried out a peaceful strike and that therefore measures of imprisonment should not be imposed on any account. Such sanctions could be envisaged only where, during a strike, violence against persons or property or other serious infringements of rights have been committed, and these sanctions are imposed pursuant to legislation punishing such acts. **Therefore, the Committee once again requests the Government to amend the abovementioned sections of the IRA to ensure that no penal sanctions may be imposed for having carried out a peaceful strike.**

Article 5. Right to affiliate to an international federation or confederation. The Committee had previously noted that, under the terms of section 39 of the IRA, it shall not be lawful for a trade union to be a member of any body constituted or organized outside the Bahamas without a licence from the minister, who has discretionary power in this regard. In this respect, the Committee notes the Government's indication that although the process requires ministerial approval, these approvals are generally granted and do not represent a challenge. **The Committee requests the Government to take measures to align national legislation with the current practice and repeal section 39 of the IRA in order to give full effect to the right of workers' and employers' organizations to affiliate with international organizations of workers and employers.**

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

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 welcomes the adoption of the National Tripartite Council Act, 2015, aimed at improving the collective bargaining machinery and efficiency of collective agreements, as well as the first meeting of the National Tripartite Council, in which the Government and the social partners discussed matters pertinent to the welfare of workers.

The Committee notes the Government's indication that the most recent amendment to the Industrial Relations Act (IRA) occurred in 2012, and observes with **regret** that it does not address the concerns raised in its previous observation.

Article 2 of the Convention. Adequate protection against acts of interference. In its previous comments, the Committee requested the Government to take the necessary measures for the adoption of legislative provisions to protect workers' and employers' organizations against acts of interference by each other or each other's agents, accompanied by effective and sufficiently dissuasive sanctions. The Committee notes that the Government merely reiterates that the IRA is designed to prevent the risk of interference and provide protection to workers and union organizations against such acts. **The Committee requests the Government to take the necessary measures to review the IRA with a view to giving effect to Article 2 of the Convention without further delay, and to provide information on any developments in this regard.**

Article 4. Representativeness. The Committee had previously commented on the requirement to represent 50 per cent of workers of the bargaining unit to be recognized for bargaining purposes (section 41 of the IRA). The Committee reiterates that under a system of the designation of an exclusive bargaining agent, if no union represents the required percentage of workers to be declared the exclusive bargaining agent, collective bargaining rights should be granted to all the unions in the unit, jointly or separately, at least on behalf of their own members. **The Committee requests the Government once again to take the necessary measures to review the IRA so as to bring it into line with the Convention.**

Right of prison guards to bargain collectively. In its previous comments, the Committee requested the Government to indicate whether the Bahamas Prison Officers Association (BPOA) enjoyed the collective bargaining rights under the Convention, and, if so, to provide a copy of a collective agreement to which this organization was a signatory or to indicate whether discussions or negotiations were under way. The Committee notes the Government's reference to the Correctional Officers (Code of Conduct) Rules, 2014, which allow the BPOA to make representations to the Commissioner of the Department of Correctional Services in matters relating to the conditions and welfare of officers as a group (sections 39–40). Noting that these provisions do not appear to provide collective bargaining rights to the BPOA, the Committee recalls that the right to bargain collectively also applies to prison staff, and that under this Convention the establishment of simple consultation procedures for public servants who are not engaged in the administration of the State is not sufficient. **The Committee requests the Government to take the necessary measures, including legislative, to ensure that prison guards can fully enjoy the rights and guarantees set out in the Convention and provide information on any developments in this regard.**

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

Observation 2016

Article 1 of the Convention. National policy. In its previous comments, the Committee expressed the hope that a national policy on child labour would be elaborated in the near future.

The Committee notes with **regret** an absence of information in the Government's report on this matter. The Committee recalls that, under *Article 1* of the Convention, each member for which this Convention is in force undertakes to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons. **The Committee therefore requests that the Government take the necessary measures to ensure that a national policy on child labour will be adopted without delay and to provide information on developments in this respect.**

Article 2(1). Scope of application and labour inspection. The Committee previously observed that the minimum age for admission to employment, established under section 50(1) of the Employment Act 2001 only applies to formal undertakings whereas the majority of children work in the informal economy. In this regard, it noted the Government's indication that it had initiated the process of hiring additional labour inspectors to conduct the requisite inspection of workplaces in which children may be engaged in labour. **Noting the absence of information in the Government's report on this point, the Committee requests that the Government provide information on the measures taken to adapt and strengthen the labour inspection services in order to ensure that the protection established by the Convention is secured for children working in all sectors, including children working on their own account or in the informal economy.**

Article 2(2) and (3). Raising the minimum age for admission to employment or work and the age of completion of compulsory schooling. The Committee previously noted that the minimum age for admission to employment or work specified by the Bahamas at the time of ratification was 14 years. It also noted that section 7(2) of the Child Protection Act establishes a minimum age of 16 years for admission to employment or work. Furthermore, the Committee noted that, by virtue of section 22(3) of the Education Act, the age of completion of compulsory schooling is 16 years. **Noting the absence of information in the Government's report, the Committee once again requests that the Government indicate whether it intends to raise the minimum age for admission to employment or work from 14 years (initially specified) to 16 years in accordance with the Child Protection Act and in accordance with the age of completion of compulsory schooling under the Education Act. If so, the Committee draws 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 requests that the Government would consider the possibility of sending a declaration of this nature to the Office.**

Article 3(2). Determination of types of hazardous work. In its previous comments, the Committee noted that a delegation from the Bahamas attended the ILO Subregional Workshop on the Elimination of Hazardous Child Labour for Select Caribbean Countries in October 2011 which aimed to enhance skills for the preparation of a list of hazardous work through internal consultations and collaboration.

The Committee notes the Government's statement that draft regulations under the Health and Safety at Work Act, which include provisions determining the types of hazardous work prohibited for persons under 18 years of age, have been approved by the tripartite social partners. **The Committee expresses the firm hope that the draft regulations on the list of types of hazardous work prohibited for persons under the age of 18 years will be adopted in the near future. It requests that the Government provide information on any progress made in this regard as well as to supply a copy of the list, once it has been adopted.**

Article 7. Light work. The Committee previously noted that section 7(3)(a) of the Child Protection Act provides that a child under the age of 16 may be employed by the child's parents or guardian in light domestic, agricultural or horticultural work. The Committee noted the Government's indication that it would undertake to provide information to the Committee on the measures taken or envisaged in respect of provisions or regulations which would determine light work activities and the conditions in which such employment or work may be undertaken by young persons from the age of 12 years.

The Committee notes with **regret** that despite its raising this issue since 2004, the Government has not provided any information on the measures taken or envisaged in this regard. The Committee recalls that *Article 7(1) and (4)* of the Convention provides that national laws or regulations may permit persons *from the age of 12* to engage in light work, which is: (a) not likely to be harmful to their health and development; (b) not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received. The Committee also recalls that according to *Article 7(3)* of the Convention, the competent authority shall determine what constitutes light work and shall prescribe the number of hours during which, and the conditions in which, such employment or work may be undertaken. **The Committee urges the Government to take the necessary measures without delay to bring the national legislation in line with the Convention by determining the light work activities that may be permitted to children of 12 years and above and the conditions in which such employment or work may be undertaken by them. It requests that the Government provide information on any progress made in this regard.**

Application of the Convention in practice. In its previous comments, the Committee requested that the Government provide information on the manner in which the Convention is applied in practice. **Noting the absence of information on this point in the Government's report, the Committee once again requests that it provide information on the manner in which the Convention is applied in practice, including, for example, statistical data on the employment of children and young persons, especially regarding children working in the informal economy, as well as extracts from the reports of inspection services and information on the number and nature of contraventions reported and penalties applied. To the extent possible, this information should be disaggregated by age and sex.**

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

Observation 2016

Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. Sale and trafficking of children. In its previous comments, the Committee noted that subsections (a), (c) and (d) of section 7 of the Sexual Offences and Domestic Violence Act only prohibit the trafficking of persons for the purpose of sexual exploitation. It urged the Government to take immediate measures to prohibit the sale and trafficking of children under 18 for labour exploitation, and to adopt sufficiently effective and dissuasive penalties.

The Committee notes with **satisfaction** that the Bahamas enacted the Trafficking in Persons (Prevention and Suppression) Act in 2008 (Trafficking in Persons Act). The Committee notes that according to section 3(4) of the Trafficking in Persons Act, a person who recruits, transports, transfers, harbours or receives a child under the age of 18 years for the purpose of exploitation (which includes commercial sexual exploitation, forced labour, practices similar to slavery and servitude (section 2)), commits the offence of trafficking in persons. The Committee also notes that according to section 8(1)(c) of the Trafficking in Persons Act, trafficking of persons under the age of 18 years constitutes an aggravating circumstance giving rise to imprisonment for up to ten years. The Committee notes from the Report of the Special Rapporteur of the United Nations Human Rights Council on trafficking in persons, especially women and children of 5 June 2014 (Report of the Special Rapporteur) that girls, mainly from the Dominican Republic, Jamaica and Haiti are trafficked to the Bahamas for commercial sexual exploitation. The Committee finally notes that the Committee on the Elimination of All forms of Discrimination Against Women (CEDAW), in its concluding observations of August 2012, expressed concern at the absence of effective implementation of the Trafficking in Persons Act and the absence of cases brought before the court since the Act came into force (CEDAW/C/BHS/CO/1-5, paragraph 25(a)). **The Committee requests the Government to take the necessary measures to ensure the effective implementation of the Trafficking in Persons Act, 2008, in particular in ensuring that thorough investigation and robust prosecutions of persons who engage in the sale and trafficking of children are carried out and that sufficiently effective and dissuasive penalties are imposed in practice.**

Clause (c). Use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs. The Committee previously noted that the Dangerous Drugs Act does not specifically establish offences related to the use, procuring or offering of a child for the production and trafficking of drugs. It requested the Government to take immediate and effective measures to prohibit the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs, and to adopt sufficiently effective and dissuasive sanctions.

The Committee notes the absence of information in the Government's report on this point. It notes from the document on the National Anti-Drug Strategy 2012–16 that for more than four decades, drug abuse and illicit trafficking has been of grave concern to the Bahamas and that the illicit trafficking of drugs into and through the Bahamas is a constant and ongoing challenge for the country. **The Committee requests the Government to take the necessary measures without delay to ensure the prohibition of the use, procuring or offering of a child under the age of 18 years for illicit activities, including the production and trafficking of drugs and to adopt appropriate penalties. It requests the Government to provide information on any progress made in this regard.**

Article 4(1). Determination of hazardous work. With regard to 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).

Article 5. Monitoring mechanisms. Trafficking. The Committee notes the information contained in the Government's reply of 11 June 2014 to the report of the Special Rapporteur that the Trafficking in Persons Inter-Ministry Committee and the National Task Force are responsible for coordinating and implementing the activities aimed at preventing trafficking in persons, including issues ranging from identification of victims of trafficking to prosecution of alleged traffickers and the Royal Bahamas Police Force (RBPF) is responsible for investigating trafficking in persons cases. The Committee also notes from the Report of the Special Rapporteur that the RBPF have included a training module for newly enlisted personnel, which includes awareness on trafficking in persons, identification of victims and potential victims. According to this report, more than 240 service personnel have received such training. **The Committee requests the Government to provide information on the number of cases of trafficking of children identified by the RBPF, investigations carried out, prosecutions and penalties applied. It also requests the Government to provide information on the activities undertaken by the Inter-Ministry Committee and the National Task Force to combat the trafficking of children and the results achieved.**

Article 6. Programmes of action. National action plan to combat trafficking in persons. The Committee notes from the Report of the Special Rapporteur that a national action plan to combat trafficking in persons which is focused on prevention and assistance is being finalized. **The Committee expresses the hope that the national action plan to combat trafficking in persons will be adopted and implemented in the near future. It requests the Government to provide information on the progress made in this regard. It also requests the Government to provide information on its impact on the elimination of the trafficking of children under 18 years for labour or sexual exploitation.**

Article 7(2). Effective and time-bound measures. Clause (d). Children at special risk. Child sex tourism. The Committee previously noted that children who are engaged in certain activities related to tourism are at risk of being involved in the worst forms of child labour, such as commercial sexual exploitation.

The Committee notes that, in its concluding observations, the CEDAW expressed concern at the number of children involved in prostitution and child pornography and the lack of awareness-raising activities among the actors directly related to the tourism industry about children, and particularly girls, engaged in certain activities related to tourism who are at risk of becoming involved in commercial sexual exploitation (CEDAW/C/BHS/CO/1-5, paragraph 25(c)). **Noting the absence of information in the Government's report, the Committee requests the Government to take effective and time-bound measures to protect children, particularly girls, from becoming victims of commercial sexual exploitation in the tourism sector. It also requests the Government to take measures to raise the awareness of the actors directly related to the tourist industry, such as associations of hotel owners, tourist operators, associations of taxi drivers, as well as owners of bars and restaurants and their employees, on the subject of commercial sexual exploitation. The Committee requests the Government to provide information on the measures taken in this regard and the results achieved.**

Application of the Convention in practice. The Committee notes that the Government's report does not contain any information on this point. **Considering that there does not appear to be a mechanism of review of the national child labour situation in the Bahamas, the Committee urges the Government to take the necessary measures to determine the magnitude of child labour in the country and, in particular, the worst forms of child labour. The Committee once again requests the Government to supply copies or extracts from official documents including studies and inquiries and to provide information on the nature, extent and trends of the worst forms of child labour and the number of children covered by the measures giving effect to the Convention. To the extent possible, all information provided should be disaggregated by age and sex.**

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

The Committee recalls that it has been requesting the Government since 1998 to provide information on developments in the process of reviewing legislation regarding trade union recognition. The Committee notes that the Government indicates that there are no further developments in the process of reviewing legislation regarding trade union recognition, and that a number of the observations made by the ITUC refer to issues concerning trade union registration.

Hoping that it will be able to observe progress in the near future, the Committee requests the Government to provide information on any development in the legislative review process and it recalls that the Government may avail itself of the technical assistance of the ILO in this regard.

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

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

Observation 2016

The Committee notes the comments made by the International Trade Union Confederation (ITUC) in a communication received on 31 August 2014. **The Committee requests the Government to provide its comments in this respect.**

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

Articles 1 and 3 of the Convention. Protection against acts of anti-union discrimination. The Committee had previously requested the Government to take all the necessary measures to ensure that in addition to covering cases of anti-union dismissals, a new legislation on employment rights would provide for adequate protection against all other acts of anti-union discrimination envisaged by *Article 1* of the Convention, as well as for adequate and dissuasive sanctions aimed at ensuring respect for the right to organize. The Committee notes that the Government indicates in its report that the Employment Rights Act has been passed in Parliament and is now awaiting proclamation. The Committee notes, however, that the Act covers only cases of anti-union dismissals (section 27) and further limits this protection to employees continuously employed for a period of over one year. The Committee recalls that adequate protection against acts of anti-union discrimination should not be confined to penalizing dismissal on anti-union grounds, but should cover all acts of anti-union discrimination (demotions, transfers and other prejudicial acts) at all stages of the employment relationship, regardless of the employment period, including at the recruitment stage. **The Committee reiterates its previous comments and requests the Government to amend the new Act in line with the above. It requests the Government to provide information on all measures taken or envisaged in this regard.**

The Committee further notes that while sections 33–37 of the Act provide for the possibility of reinstatement, re-engagement and compensation, the maximum amount of compensation awarded to workers who have been employed for less than two years is five-weeks wages, which, depending on the number of years of continuous employment, is increased by between two-and-a-half and three-and-a-half weeks wages for each year of that period (Fifth Schedule). The Committee considers that the prescribed amounts do not represent sufficiently dissuasive sanctions for anti-union dismissal. **It therefore requests the Government to take the necessary measures to amend the Fifth Schedule of the Act so as to bring the compensation amount to an adequate level, which would constitute a sufficiently dissuasive sanction for anti-union dismissals.**

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.

C108 - Seafarers' Identity Documents Convention, 1958 (No. 108)

Observation 2016

Articles 2–6 of the Convention. Seafarers' identity documents. The Committee recalls that it has been commenting for several years on the Government's failure to apply the Convention. In particular, the Committee has been requesting the Government to: (i) reinstate the identity document for national seafarers; (ii) enact new regulations or amend existing ones so that foreign seafarers may enter Barbados with a valid identity document issued pursuant to this Convention; and (iii) provide copies of the relevant legislative and/or regulatory texts ensuring the application of the Convention. The Committee notes with **concern** the indication in the report of the Government that the Convention was not being implemented in either law or practice. The Committee further notes the indication by the Government that it encountered difficulties in finding a cost-effective solution for the issuance of identity documents for seafarers. **The Committee therefore requests the Government to take the necessary steps without delay to ensure that its obligations under the Convention are fully respected and reminds the Government that it may seek technical assistance from the Office in this regard.**

The Committee further recalls that the Convention has been revised by the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185). It draws the Government's attention to its general observation addressing the recent amendments to the annexes of Convention No. 185.

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 2014 and 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 Government's reply to the 2011 comments of the International Trade Union Confederation (ITUC), and particularly the information on the establishment of the Southern Workers' Union (SWU), which represents workers in the shrimp, banana and citrus sectors and which, together with the Belize Workers' Union (BWU), has developed a strategic plan to organize workers in export processing zones (EPZs). The Committee also notes the comments made by the ITUC in 2013.

Article 3 of the Convention. Compulsory arbitration. In its previous observation, the Committee noted the Government's indication that, in the context of the process of reviewing labour legislation, the Labour Advisory Board (LAB) recommended that the Schedule to the Settlement of Disputes in Essential Services Act 1939 (SDESA) be amended so as to exclude from the list of services considered essential in the strict sense of the term, in respect of which the authorities may submit collective disputes to compulsory arbitration, and prohibit or bring an end to a strike: (i) the civil aviation and airport security services (AIPOAS); (ii) monetary and financial services (banks, treasury, Central Bank of Belize); (iii) the PAO Authority (pilots and security services); (iv) postal services; (v) the Social Security Scheme administered by the Social Security Board; and (vi) services through which petroleum products are sold, transported, loaded or unloaded.

The Committee notes the Government's indication in its report that the LAB has concluded its review and that the Ministry of Labour will submit to the Attorney-General's Office the corresponding legal instructions, including the dissenting views expressed during the tripartite discussions. The Committee welcomes the tripartite initiatives in the process of discussing the amendment of the legislation and requests the Government to provide information in its next report on any developments in this respect.

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

The Committee notes the observations of the International Trade Union Confederation (ITUC) in 2014. **It requests the Government to provide its comments in this respect.**

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

Articles 1 and 3 of the Convention. Protection against acts of anti-union discrimination. In its previous comments, the Committee noted that, according to the ITUC, there are cases of anti-union discrimination in the banana plantation sector and in export processing zones (EPZs), where employers do not recognize any unions. It also noted the Government's indication that the comments would be submitted to a Tripartite Body established in 2008 under the provisions of the Trade Unions and Employers' Organizations (Registration, Recognition and Status) Act. The Committee notes the Government's indication in its report that the tripartite body has been meeting continuously and that the ITUC's allegations were submitted to it for review. The Committee also notes the Government's indication that employers in the banana sector and in EPZs are not above the law and that those who feel that their rights have been violated can have recourse to the judicial system. Finally, the Committee notes the establishment of the Southern Workers Union (SWU), which represents workers in the shrimp, banana and citrus sectors and which, together with the Belize Workers' Union (BWU), has developed a strategic plan to organize workers in EPZs. **The Committee requests the Government to provide statistics on the number of acts of anti-union discrimination that are denounced to the authorities in these sectors and on the outcomes of these denunciations.**

Article 4. Promotion of collective bargaining. In its previous comments, the Committee requested the Government to take measures to amend section 27(2) of the Trade Unions and Employers' Organizations (Registration, Recognition and Status) Act, Chapter 304, which provides that a trade union may be certified as the bargaining agent if it is supported by at least 51 per cent of employees, as this requirement of an absolute majority may give rise to problems given that, if this percentage is not attained, the majority union would be denied the possibility of bargaining. The Committee notes the Government's indication that: (i) the Tripartite Body and the Labour Advisory Board have been engaged in discussions on a possible amendment to the Act; (ii) based on these consultations, it has been recommended to reduce to 20 per cent the trade union membership threshold required to trigger a poll, while retaining the requirement of a 51 per cent approval of those employees voting and to require a turnout at the poll of at least 40 per cent of the bargaining unit; and (iii) the Government and the National Trade Union Congress of Belize (NTUCB) are in agreement with the proposal, although the Belize Chamber of Commerce would prefer to maintain the status quo. **The Committee welcomes the initiatives taken by the Government to bring the legislation into conformity with the Convention and requests it to continue promoting dialogue and to provide information in its next report on any developments in this respect. The Committee reminds the Government that it may have recourse to technical assistance from the Office, if it so wishes.**

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

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

Observation 2016

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

Article 1(c) and (d) of the Convention. Penalties involving compulsory labour as a punishment for breaches of labour discipline or for having participated in strikes. For many years, the Committee has been referring to section 35(2) of the Trade Unions Act, under which a penalty of imprisonment (involving an obligation to perform labour, by virtue of section 66 of the Prison Rules) may be imposed on any person employed by the Government, municipal authority or any employer in charge of supplying electricity, water, railway, health, sanitary or medical services or communications or any other service that may, by proclamation, be declared by the Governor to be a public service, if such person willfully and maliciously breaks a contract of service, knowing or having reasonable cause to believe that the probable consequences will be to cause injury or danger or grave inconvenience to the community. The Committee has also noted that section 2 of the Settlement of Disputes (Essential Services) Act, Statutory Instrument No. 92 of 1981, declared the national fire service, postal service, monetary and financial services (banks, treasury, monetary authority), airports (civil aviation and airport security services) and the port authority (pilots and security services) to be essential services, and Statutory Instrument No. 51 of 1988 declared the social security scheme administered by the Social Security Branch an essential service.

The Committee has recalled in this respect that the imposition of sanctions involving compulsory labour as a punishment for breaches of labour discipline or for having participated in strikes is incompatible with the Convention. It has noted that section 35(2) of the Trade Unions Act refers not only to injury or danger but, alternatively, to grave inconvenience to the community, and applies not only to essential services, but also to other services, such as most employment under the Government or a municipal authority and most banking, postal and transport services.

The Government indicates in its report that one of the main tasks of the newly revived Labour Advisory Board is the revision of the national legislation, and that the Board has regrouped the legislation under revision into six topics, including trade unions' rights. The Government also states that, although trade unions' legislation has not yet been covered, the intention is to revise it in order to bring it into conformity with the international labour Conventions, and that the Committee's concern regarding section 35(2) of the Trade Unions Act will definitely be taken into consideration. **While taking due note of this information, the Committee trusts that the process of the revision of the Trade Unions Act will be completed in the near future, so as to ensure that no sanctions involving compulsory labour could be imposed as a punishment for breaches of labour discipline or for peaceful participation in strikes.**

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

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

C115 - Radiation Protection Convention, 1960 (No. 115)

Observation 2016

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

General observation of 2015. The Committee would like to draw the Government's attention to its general observation of 2015 under this Convention, including the request for information contained in paragraph 30 thereof.

The Committee notes the information in the Government's current report that the National Occupational Safety and Health (NOSH) Bill does take into consideration all the Committee's observations as it ensures the effective protection of workers exposed to ionizing radiation in the course of their work. The Committee also notes from the Government's report that provisions have been made in the NOSH Bill for maximum permissible doses of ionizing radiation, alternative employment (especially for pregnant women) and the prevention of occupational exposure during an emergency. Furthermore, according to available information, the NOSH Bill has not yet been adopted due to concerns that it may be burdensome to employers. The Committee notes that, in spite of its previous request, the Government has not provided a detailed report as requested by the Committee. The Committee wishes to emphasize that the indication that the new legislation is in the process of adoption does not free the Government from the obligation to ensure the application of the provisions of the Convention during the transition period and to provide such information in its report. **The Committee requests the Government to supply detailed information on the application of the Convention, including new legislation, if adopted, and where it has not been adopted, the manner in which the Government ensures the application of the provisions of the Convention in practice. It also reiterates its request to the Government to respond in detail to its previous observation which reads as follows:**

Articles 3(1) and 6(2) of the Convention. Maximum permissible doses of ionizing radiation. With reference to its previous comments, the Committee notes the Government's response indicating that on 13 March 2009, the Labour Advisory Board was re-activated and that its main duty is the revision of national labour legislation. The Committee notes that the Ministry is currently in the process of identifying a consultant that will work with the Labour Advisory Board to conduct the revision of the legislation, and that comments made by the Committee will be submitted to the Board. **The Committee hopes that in the course of the ongoing revision of national labour legislation due account will be taken on the exposure limits adopted by the International Commission on Radiological Protection, in order to ensure the effective protection of workers exposed to ionizing radiation in the course of their work.**

Article 14. Provision of alternative employment. The Committee notes the Government's response indicating that there is no provision in the Labour Act for the transfer of pregnant women from their work involving exposure to ionizing radiation to another job. The Committee notes, however, the Government's statement that the National Occupational Safety and Health Policy, adopted by Cabinet on 9 November 2004, can provide a suitable framework for drafting legislation that could make provision for such transfer and that legislation is drafted in consultation with the Labour Advisory Board. **The Committee hopes that in the course of the ongoing revision of the national labour legislation due account will be taken of the need to ensure that suitable alternative employment opportunities, not involving exposure to ionizing radiations, be provided for workers having accumulated an effective dose beyond which detriment to their health considered unacceptable is to arise, as well as for pregnant women, who may be faced with the dilemma that protecting their health means losing their employment.**

Occupational exposure during an emergency. The Committee notes that there is currently no provision within the Labour Act laying out the circumstances in which exceptional exposure is authorized. **The Committee requests the Government, in the course of the ongoing revision of the national labour legislation, to take due account of the need to determine circumstances in which exceptional exposure is authorized, and to make protection as effective as possible against accidents and during emergency operations, in particular with regard to the design and protective features of the workplace and the equipment, and the development of emergency intervention techniques, the use of which in emergency situations would enable the exposure of individuals to ionizing radiations to be avoided.**

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

C016 - Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16)

Observation 2016

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

Articles 2 and 3 of the Convention. Medical examination of young seafarers. The Committee has been drawing the Government's attention to the need to adopt specific laws or regulations to regulate the medical examination of young seafarers, especially since the Employment of Women, Young Persons and Children Act permits young persons on board ships already from the age of 14 and also in view of the fact that Dominica has a sizeable fleet under its flag. In a previous report, the Government indicates that regrettably no progress has been made on this matter other than that the Industrial Relations Advisory Committee is planning to examine the question of the medical examination of young seafarers with a view to modifying the legislation and complying with the requirements of the Convention. The Committee recalls that the employment of any young person under 18 years of age on any vessel should be conditional on the production of a medical certificate delivered by a medical practitioner and also that the continued employment at sea of any such young person should be subject to the repetition of such medical examination at intervals of not more than one year. **Noting that the Government has indicated in earlier reports its preparedness to update its laws to give full effect to the provisions of the Convention, the Committee requests the Government to keep the Office informed of any progress made in this regard.**

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

Articles 1(1) and 2(1), (2)(a) and (d) of the Convention. National service obligations. Over a number of years, the Committee has been requesting the Government to repeal or amend the National Service Act, 1977, under which persons between the ages of 18 and 21 years are required to perform service with the national service, including participation in development and self-help projects concerning housing, school, construction, agriculture and road building, failure to do so being punishable with a fine and imprisonment (section 35(2)). The Committee observed that, contrary to the Government's repeated statement that the national service was created to respond to national disasters, the Act contained no reference to natural disasters, but specified the objectives of the national service, which "shall be to mobilize the energies of the people of Dominica to the fullest possible level of efficiency, to shape and direct those energies to promoting the growth and economic development of the State". The Committee pointed out that the above provisions are not in conformity with the present Convention and the Abolition of Forced Labour Convention, 1957 (No. 105), which specifically prohibits the use of forced or compulsory labour "as a means of mobilizing and using labour for purposes of economic development".

The Government indicates in its report that the item concerning the amendment of the legislation has been included in the Decent Work Agenda, and that the necessary measures will be taken to address the requests in relation to compliance with the Conventions with the technical assistance of the ILO. **While having noted the Government's indications in its earlier reports that the National Service Act, 1977, has been omitted from the Revised Laws of Dominica, 1990, and that section 35(2) of the Act has not been applied in practice, the Committee trusts that appropriate measures will be taken in the near future in order to formally repeal the above Act, so as to bring national legislation into conformity with Conventions Nos 29 and 105 and that the Government will provide, in its next report, information on the progress made in this regard.**

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

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

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

Observation 2016

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

Articles 3, 6, 7, 10 and 16 of the Convention. Numbers, conditions of service and functions of labour inspection staff. Number of labour inspection visits. The Committee notes from the Government's report that the Labour Department cannot increase its staff and that inspectors operate in all areas of labour administration. The Government also declares that every attempt is made to ensure that inspectors are professional in their conduct. **The Committee requests once again the Government to indicate the criteria and process for the recruitment of labour inspectors, and to specify the training activities provided to them upon their entry into service and in the course of employment. Please also indicate how it is ensured that the conditions of remuneration and career development of labour inspectors reflect the importance and specificities of their duties, and take into account personal merit.**

The Committee asks the Government to provide information on the time and resources spent on mediation/conciliation of industrial disputes in relation to their primary duties of inspection established under this Convention. It asks the Government to take the necessary measures to ensure that, in accordance with Article 3(2), any duties which may be entrusted to labour inspectors in addition to their primary functions shall not be such as to interfere with the effective discharge of the latter. It also asks the Government to provide information on the measures taken to ensure that all workplaces are inspected as often and as thoroughly as necessary in line with Article 16 of the Convention.

Article 15. Duty of confidentiality. Referring to the Committee's previous comments on this issue, the Committee notes from the Government's report that there has not been any change in legislation to give effect to this Article of the Convention and that the issue is to be addressed by the Industrial Relations Advisory Committee. The Government also reports that the department and labour inspectorate have always maintained strict confidentiality. **The Committee once again requests the Government to take steps to ensure that the legislation is supplemented so as to give full effect to Article 15 of the Convention and to keep the Office informed of all progress in this respect and to send copies of any relevant draft or final texts.**

Articles 5(a), 17, 18, 20 and 21. Cooperation with the justice system and enforcement of adequate penalties. Publication and content of an annual report. The Committee notes from the Government's report that steps will be taken to improve the quality of the annual report on inspection services. **The Committee hopes that the Government will make every effort to ensure that an annual report on the work of the labour inspection services is elaborated and published and that it contains information on all the items listed in Article 21 of the Convention, notably, statistics of inspection visits, violations and penalties imposed as well as industrial accidents and cases of occupational disease.** The Committee draws the Government's attention in this regard to the guidance provided in Paragraph 9 of the Labour Inspection Recommendation, 1947 (No. 81) as to the type of information that should be included in the annual labour inspection reports.

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

C094 - Labour Clauses (Public Contracts) Convention, 1949 (No. 94)

Observation 2016

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

Article 6 of the Convention. Legislation giving effect to the Convention. The Committee notes that the Government has never supplied any information of a practical nature concerning the application of the Convention. **It would therefore be grateful if the Government would collect and transmit together with its next report up-to-date information on the average number of public contracts granted annually and the approximate number of workers engaged in their execution, extracts from inspection reports showing cases where payments have been retained, contracts have been cancelled or contractors have been excluded from public tendering for breach of the Fair Wages Rules, as well as any other particulars which would enable the Committee to have a clear understanding of the manner in which the Convention is applied in practice.**

Moreover, the Committee understands that the Government has entered into a World Bank-financed technical assistance project for growth and social protection with a view to improving, among other things, the transparent operation and the efficient management of public procurement. **In this connection, the Committee would appreciate receiving additional information on the implementation of this project and the results obtained, in particular as regards any amendments introduced or envisaged to public procurement laws and regulations which might affect the application of the Convention.**

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

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

Observation 2016

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

Article 2(2) of the Convention. Raising the initially specified age for admission to employment or work. Noting that the Government initially specified a minimum age of 15 years upon ratification, the Committee observes that the Education Act of 1997 provides for a minimum age for admission to work of 16 years of age. **In this regard, the Committee takes the opportunity to draw the Government's attention to the provisions of Article 2(2) of the Convention which provides that any Member having ratified this Convention may subsequently notify the Director-General of the International Labour Office, by a new declaration, that it has raised the minimum age that it had previously specified. This allows the age fixed by the national legislation to be harmonized with that provided for at the international level. The Committee would be grateful if the Government would consider sending a declaration of this nature to the Office.**

Article 3(1). Minimum age for admission to hazardous work. The Committee previously noted that, according to section 7(1) of the Employment of Women, Young Persons and Children Act, no young person (under 18) shall be employed or work during the night in any public or private industrial undertaking, other than an undertaking in which only members of the same family are employed. However, the Committee observes that there is no other provision which prohibits the employment of young persons in work which is likely to jeopardize their health, safety or morals. **In this regard, the Committee requests the Government to take the necessary measures to ensure that the performance of hazardous work is prohibited for all persons under 18 years of age.**

Article 3(2). Determination of types of hazardous work. The Committee notes the Government's statement in its report submitted under the Worst Forms of Child Labour Convention, 1999 (No. 182), in 2009 that the social partners will be consulted for the determination of the list of types of hazardous work. **Recalling that, pursuant to Article 3(2) of the Convention, the types of hazardous employment or work shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned, the Committee requests the Government to provide information on any progress made with regard to the determination of the list of types of hazardous work to be prohibited for persons under 18 years.**

Article 7(3). Determination of types of light work. The Committee notes that while section 46(3) permits children from the age of 14 to be employed during school vacations (i.e. in light work), but observes that there does not appear to be a determination of the types of light work permitted for these children. In this regard, the Committee recalls that, pursuant to Article 7(3) of the Convention, the competent authority shall determine what light work is and shall prescribe the number of hours during which, and the conditions in which, such employment or work may be undertaken. **The Committee therefore requests the Government to provide information on any measures taken or envisaged to determine the hours during which and the conditions in which light work may be undertaken by children above the age of 14 during vacations from school, pursuant to Article 7(3) of the Convention.**

Article 9(3). Keeping of registers. The Committee previously noted that section 8(1) of the Employment of Women, Young Persons and Children Ordinance provided for the keeping of registers or lists by the employer of all persons employed who are less than 16 years of age. In this regard, the Committee recalled that Article 9(3) of the Convention requires the keeping of such registers for all persons who are less than 18 years of age. **Noting an absence of information on this point in the Government's report, the Committee once again requests the Government to take the necessary measures to ensure that registers be kept and made available by the employer in respect of all children under 18 years of age. It requests the Government to provide information on any measures taken in this regard.**

Application of the Convention in practice. The Committee notes the Government's statement in its report submitted under Convention No. 182 in 2009 that measures will be taken to broaden the existing mandate of the national inspectorate in order to cover child labour issues, in consultation with the social partners. **The Committee requests the Government to provide information on the manner in which the Convention is applied in practice, including statistical data on the employment of children and young persons, extracts from the reports of inspections services and information on the number and nature of violations detected involving children and young persons.**

The Committee encourages the Government to take into consideration the Committee's comments on discrepancies between national legislation and the Convention. The Committee invites the Government to consider technical assistance from the ILO to bring its legislation into conformity with the Convention.

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

C147 - Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147)

Observation 2016

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

Article 2 of the Convention. Implementing legislation. The Committee notes the Government's indication that a special Tripartite Committee has been appointed to advise the Government on all matters relating to legislation and institutional changes necessary for the ratification of the Maritime Labour Convention, 2006 (MLC, 2006). It also notes that a National Action Plan has been prepared in order to formulate recommendations to the Government on matters of maritime laws and administration. While welcoming the Government's active steps towards the ratification of the MLC, 2006, the Committee is bound to observe that the Government's first report on the application of Convention No. 147 does not contain any information on the laws or regulations and other measures giving effect to the specific requirements of the latter Convention. ***The Committee therefore requests the Government to indicate in detail how each of the Articles of the Convention is applied in national law and practice, and explain in particular in what manner the provisions of the International Maritime Act, 2002, and of the Dominica Maritime Regulations, 2002, are substantially equivalent to the Conventions mentioned in the Appendix of the Convention relating to safety standards, social security measures and shipboard conditions of employment and shipboard living arrangements, as required under Article 2 of the Convention.***

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

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

Observation 2016

Articles 20 and 21 of the Convention. Establishment, publication and communication to the ILO of annual inspection reports. In its previous comments, the Committee noted that despite its reiterated comments on this subject, no annual labour inspection reports had been communicated to the ILO since 1995. It notes that the Government underlines the importance of establishing, publishing and transmitting annual labour inspection reports, but that it indicates that the annual reports as currently prepared do not contain all of the subjects as required under *Article 21*. **The Committee urges the Government to indicate the measures adopted or envisaged to ensure that annual inspection reports are published and transmitted to the ILO in accordance with the requirements of Articles 20 and 21. The Committee reminds the Government, once again, that it may avail itself of technical assistance for this purpose.**

The Committee requests the Government in any event to provide statistical information that is as detailed as possible on the activities of the labour inspection services (industrial and commercial workplaces liable to inspection, number of inspections, infringements detected and the legal provisions to which they relate, penalties applied, number of industrial accidents and cases of occupational disease, etc.) to enable the Committee to make an informed assessment on the application of the Convention in practice.

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

Observation 2016

Article 5 of the Convention. Effective tripartite consultations. The Committee recalls that, in its previous comment, it had requested the Government to provide detailed information on each of the tripartite consultations held on matters concerning international labour standards covered by the Convention. The Government indicates in its report that tripartism is working well in the country to the extent that it has moved towards establishing a Committee of Social Partners. The said Committee includes civil society organizations and the conference of churches; it is responsible for the monitoring of the IMF Structural Adjustment Programme 2014–16 in Grenada, including labour reforms. Additionally, the Government specifies that a comprehensive review of the Labour Code was conducted during the 2014–15 period. Moreover, the Government recalls that, pursuant to section 21(2) of the Employment Act, the functions of the Labour Advisory Board reflect the provisions of *Article 5(1)* of the Convention. **The Committee requests the Government to provide detailed information on the activities of the Labour Advisory Board on the tripartite consultations on international labour standards covered by the Convention, including full particulars on the consultations held on each of the matters listed in Article 5(1) of the Convention. The Government is also requested to indicate the intervals at which the abovementioned consultations are held, and the nature of the participation by the social partners during these consultations.**

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

Observation 2016

The Committee notes with **deep concern** that the Government's report has not been received. It is therefore bound to repeat its previous comments. *Articles 1(1), 2(1) and 25 of the Convention. Trafficking in persons.* The Committee has noted the adoption of the Combating of Trafficking in Persons Act, 2005, as well as the Government's indication in the report that 300 volunteers have been trained to identify cases of trafficking. **The Committee would appreciate it if the Government would provide information on the following matters:**

- **the activities of the task force to develop and implement a national plan for the prevention of trafficking in persons, to which reference is made in section 30 of the above Act, supplying copies of any relevant reports, studies and inquiries, as well as a copy of the National Plan;**
- **statistical data on trafficking which is collected and published by the Ministry of Home Affairs in virtue of section 31 of the Act;**
- **any legal proceedings which have been instituted as a consequence of the application of section 3(1) of the 2005 Act on penalties, supplying copies of the relevant court decisions and indicating the penalties imposed, as well as the information on measures taken to ensure that this provision is strictly enforced against perpetrators, as required by Article 25 of the Convention.**

The Committee expects 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

The Committee notes with **concern** that the Government's report has not been received. It is therefore bound to repeat its previous comments. In its previous observation, the Committee referred to the recognition of only those unions claiming 40 per cent support of the workers, as set out in the Trade Union Recognition Act. The Committee takes note of the Government's statement that, at the request of the Trades Union Congress, the Trade Union Recognition Act provided for the recognition of unions that were recognized prior to the Act without having to prove that they had majority support (section 32). All unions benefited from this provision which the Government says is no longer applicable as all certificates applicable under this section have been issued. Given that the representativeness of unions might change, the Committee recalls once again that, if no union covers more than 40 per cent of the workers in the bargaining unit, collective bargaining rights should be granted to all the unions in the unit, at least on behalf of their members (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 241). **The Committee hopes that significant progress respecting this issue will be made in the near future and requests the Government to provide information on the results of the consultative process.**

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

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

Observation 2016

The Committee notes with **regret** that the Government's report has not been received. It is therefore bound to repeat its previous comments. *Articles 1 and 2 of the Convention. Legislation.* Since 1998, the Committee has been referring to the need to amend section 2(3) of the Equal Rights Act No. 19 of 1990 which provides for "equal remuneration for the same work or work of the same nature" in order to bring it into conformity with the provisions of the Convention and align it with the Prevention of Discrimination Act No. 26 of 1997, which both provide for the principle of equal remuneration for work of equal value. The Committee notes with regret that no progress has been reported by the Government in this respect. The Committee considers that the coexistence of the two different concepts in the current legislation has the potential to lead to misunderstanding in the application of the principle of the Convention. The Committee recalls that once the area of wages becomes a matter for legislation, full legislative expression should be given to the principle of the Convention (see General Survey on the fundamental Conventions, 2012, paragraph 676). **The Committee asks the Government to provide concrete information on the implementation of the Convention and in particular on the measures adopted to amend section 2(3) of the Equal Rights Act No. 19 of 1990 with a view to bringing it into conformity with the principle of the Convention and aligning it with the Prevention of Discrimination Act No. 26 of 1997 so as to remove legal ambiguities.**

Considering the ambiguity in the legislation and concerned about misunderstandings regarding the scope and meaning of the principle of equal remuneration for work of equal value, the Committee has been asking the Government to organize training activities and awareness-raising campaigns concerning this principle for labour inspectors and judges, as well as workers' and employers' representatives. The Committee notes that once again no information has been provided by the Government on any measures adopted in this respect, and stresses that a clear and accurate understanding of the concept of equal value is essential if the equal pay principle is to be effectively promoted and enforced. In its 2012 General Survey on the fundamental Conventions, the Committee emphasized 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 and others by men. 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, as it permits a broad scope of comparison, including, but going beyond, equal remuneration for "equal", "the same" or "similar" work, and also encompasses work that is of an entirely different nature, which is nevertheless of equal value (see General Survey, 2012, paragraph 673). **The Committee therefore urges the Government to take the necessary measures to address misunderstandings on the principle of the Convention, including through activities to raise awareness among labour inspectors, judges and workers' and employers' representatives on the scope and meaning of the principle of equal remuneration for work of equal value. It asks the Government to provide information on any judicial or administrative decisions relating to the equal pay provisions of the Equal Rights Act No. 19 of 1990 and the Prevention of Discrimination Act of 1997.**

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.

C115 - Radiation Protection Convention, 1960 (No. 115)

Observation 2016

The Committee notes with **deep concern** that the Government's report has not been received. It is therefore bound to repeat its previous comments. *General observation of 2015.* The Committee would like to draw the Government's attention to its general observation of 2015 under this Convention, including the request for information contained in paragraph 30 thereof.

The Committee notes that section 75(1)(b) of the Occupational Safety and Health Act (Act No. 32 of 1997) provides that the Ministry may adopt regulations to further regulate occupational safety and health issues. It notes the detailed draft regulations on the safe use of chemicals at work of 31 January 2003, which was attached to the Government's report, but also notes that this draft text does not contain any rules with respect to ionizing radiation. **The Committee asks the Government to provide information in its next report on measures taken or envisaged to ensure that workers are protected against ionizing radiation at work, particularly through issuing regulations under section 75 of the Occupational Safety and Health Act.**

Article 3(1) of the Convention. Effective protection of workers in the light of knowledge available at the time. With respect to exposure limits to chemical substances and agents, the Committee notes that Annex 2 in the proposed regulations refers to the international standard established by the American Conference of Governmental Industrial Hygienists. **The Committee requests the Government to provide further information on measures taken or envisaged to give effect to the Convention, taking due account of the recommendations of the ICRP.**

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

C136 - Benzene Convention, 1971 (No. 136)

Observation 2016

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

The Committee notes that the Government's report does not provide any information on the application of the Convention, either in law or in practice. The Committee reiterates that current national laws and regulations are too general to give full effect to the provisions of the Convention and that specific measures should be taken to regulate the use of benzene and products containing benzene in accordance with the Convention. **The Committee therefore once again requests the Government to take the necessary measures to ensure that the provisions of the Convention are applied in law and in practice. The Committee would also like to inform the Government that the Office is available to provide relevant technical assistance to assist in its efforts to bring national law and practice into conformity with this Convention.**

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

C137 - Dock Work Convention, 1973 (No. 137)

Observation 2016

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

The Committee noted the Government's report for the period ending September 2002, according to which there has been no change in the application of the Convention. **The Committee requests the Government to give a general appreciation on the manner in which the Convention is applied in practice, including for instance extracts from the reports of the authorities entrusted with the application of the laws and regulations, and the available information on the numbers of dockworkers on the registers of workers in docks maintained in accordance with Article 3 of the Convention and of any variations in their numbers (Part V of the report form).**

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

Article 1 of the Convention. National policy for the elimination of child labour and national action plan. The Committee recalls that the Government has been reiterating its commitment to adopting a national policy designed to ensure the effective abolition of child labour in the country for nearly 15 years. The Committee also notes that, although the Government has undertaken a number of policy measures aimed to tackle child labour through education programmes, in particular under the ILO–IPEC project entitled “Tackle child labour through education” (TACKLE project) and under the Millennium Development Goals, it continues to indicate that a National Plan of Action for Children (NPAC) is under development. **The Committee accordingly urges the Government to strengthen its efforts to finalize the NPAC and to provide a copy of it in the very near future. Furthermore, noting the Government's indication that the National Steering Committee on Child Labour – which had initiated and drafted a national action plan to eliminate and prevent child labour – is no longer functioning, the Committee requests the Government to provide updated information on the measures taken or envisaged to finalize this process.**

Article 3(3). Authorization to work in hazardous employment from the age of 16 years. In previous comments, the Committee observed that section 6(b) of Act No. 9 of 1999 on the employment of young persons and children (hereafter, Act No. 9 of 1999) grants the Minister discretion to authorize, through regulations, the engagement of young persons between the ages of 16 and 18 years in hazardous work. The Committee also observed that, although sections 41 and 46 of the Occupational Safety and Health Act, 1997 (OSHA) aim to prevent young persons from undertaking employment activity that could impede their physical health or emotional development, the Government has identified difficulties in monitoring and enforcing those provisions. The Government accordingly indicated that Act No. 9 of 1999 will be amended to ensure that the protections afforded under the Act are extended to all young persons under the age of 18 years.

The Committee notes with **concern** that the Government's latest information provides no new information concerning the process of amending Act No. 9 of 1999, despite its repeated commitment over the years to do so. Rather, it states that no ministerial regulations have been issued and that the OSHA provisions ensure that young persons between 16 and 18 years who are employed in hazardous work receive adequate specific vocational training. The Committee notes, however, that the Committee on the Rights of the Child (CRC), in its concluding observations on the combined second to fourth periodic reports of Guyana in June 2013 (CRC/C/GUY/CO/2-4, paragraph 59(c)–(d)), noted the inadequate measures for monitoring and enforcing the OSHA provisions and that, notwithstanding reports of significant numbers of children involved in hazardous work, only three such cases had been reported to the Government's reporting mechanism.

The Committee draws the Government's attention in this respect to paragraph 381 of the 2012 General Survey on the fundamental Conventions, which stresses that compliance with *Article 3(3)* of the Convention requires that any hazardous work for persons from the ages of 16 to 18 years be authorized only upon condition that the health, safety and morals of the young persons concerned are fully protected and that they, in practice, receive adequate specific vocational training. **The Committee accordingly urges the Government to take measures to amend Act No. 9 of 1999 in the near future so as to ensure conformity with Article 3(3) of the Convention by providing adequate protection to young persons of ages 16 and above and to supply a copy of the amendments once they have been finalized. Moreover, noting the Government's indication that efforts are underway with the tripartite partners to include additional areas of work on the hazardous work list, the Committee requests the Government to supply a copy of this amended list once it becomes available.**

Article 9(3). Keeping of registers. In its previous report, the Committee noted that section 3(3), read in conjunction with section 3(2), of Act No. 9 of 1999 requires registers to be kept in places where young persons under the age of 16 years are employed, rather than 18 years as required under *Article 9(3)* of the Convention. **Noting the absence of information on this point, the Committee requests the Government to provide updated information on the process of amending section 3 of Act No. 9 of 1999 to bring it into conformity with the Convention and to supply a copy of the amendments once they have been finalized.**

Labour inspection and practical application of the Convention. The Committee recalls its previous comments which noted the results of the 2001 Multiple Cluster Indicator Survey identifying a high percentage of working children in the country. The Committee also noted the indication of the International Trade Union Confederation (ITUC) that labour inspectors fail to effectively enforce the applicable legislation and that child labour was particularly prevalent in the informal economy.

The Committee notes that the Government's latest report simply indicates that its labour inspectors routinely conduct workplace inspections and that there has been no evidence of child labour. Nevertheless, the Committee also notes the information contained in the Government's 2011 report to the UN Office of the High Commissioner for Human Rights (OHCHR) concerning a three-year programme which aims to, among others, strengthen the capacity of national and local authorities in the formulation, implementation and enforcement of the legal framework on child labour and which will include a focus on child labour in the informal economy. **The Committee accordingly requests the Government to continue to strengthen its efforts to combat child labour, including in the informal economy, and to provide information on the impact in this regard. Furthermore, noting the Government's indication in its report under the Worst Forms of Child Labour Convention, 1999 (No. 182), that it is establishing a baseline survey on child labour, the Committee requests the Government to provide information concerning the results of the survey in its next report.**

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

C139 - Occupational Cancer Convention, 1974 (No. 139)

Observation 2016

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

The Committee notes that draft Regulations on the safe use of chemicals at work of 31 January 2003 are currently being discussed. It notes the Government's statement that these draft Regulations provide protection against occupational cancer and also that it refers to the international exposure limits standard established by the American Conference of Governmental Industrial Hygienists. The Committee further notes that Chapter 3.6 of Annex 2 of the draft Regulations contains rules applicable to carcinogenicity and also notes the Government's statement that these draft Regulations will attempt to provide for medical examinations. The Committee hopes that these Regulations will be adopted in the near future, ensuring the application of the Convention, and that they will also ensure that medical examinations or biological or other tests or investigations are carried out during the period of employment and thereafter, in accordance with *Article 5 of the Convention*. **The Committee requests the Government to provide information on measures taken to ensure the application of the Convention and to provide a copy of the Regulations, once they are adopted.**

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

C140 - Paid Educational Leave Convention, 1974 (No. 140)

Observation 2016

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

Articles 2 and 6 of the Convention. Formulation and application of a policy designed to promote the granting of paid education leave. Participation of the social partners. The Committee notes the Government's report indicating that, in the public service, overall responsibility for the management and administration of paid education leave resides with the Public Service Ministry. There is a training division within the Ministry which deals with both local and overseas training of public officers (for short- and long-term courses). Currently 205 public servants are undergoing training courses. As regards the implementation of the Convention in the private sector, the Government indicates that the legislation does not require enterprises to disclose such information. The Committee also notes the Government's indication that there is no available information suggesting that arrangements have been or are in place for the participation of employers' and workers' organizations in the formulation and application of the policy for the promotion of paid educational leave. The Committee recalls that the Convention requires the formulation and application of "a policy designed to promote, by methods appropriate to national conditions and practice and by stages as necessary, the granting of paid educational leave" (*Article 2*) with the participation of the social partners (*Article 6*). **The Committee therefore invites the Government to adopt policies and measures to promote the granting of paid educational leave for the purpose of occupational training at any level, as well as for the purpose of trade union education. The Committee invites the Government to provide a report containing full particulars on the measures taken or envisaged in order to give effect to the Convention.**

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

C150 - Labour Administration Convention, 1978 (No. 150)

Observation 2016

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

Article 5 of the Convention. Functions of the tripartite Committee. In the Committee's previous request, the Government was asked to indicate the functions of the tripartite committee chaired by the Minister of Labour, as well as those of the six subcommittees to which it referred in its 1999 report. The Government states in reply that this question was dealt with comprehensively under the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). While the Committee has not found the information requested in the Government's report, it wishes nevertheless to emphasize that the tripartite consultations referred to in that instrument are distinguished clearly by virtue of their purpose – activities of the International Labour Organization – from the tripartite consultations referred to in *Article 5*, which concern the various areas of national labour policy. **The Committee therefore once again requests the Government to indicate the functions of the tripartite committee chaired by the Minister of Labour, as well as those of the subcommittees referred to in its report received in 1999, and to report to the Office any other arrangements made, at the national, regional and local levels, to ensure the consultation, cooperation and negotiation provided for by Article 5. It would be grateful if the Government would also provide copies of any reports or extracts of reports relating to the work of these various tripartite bodies, their purpose and their results.**

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

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

C024 - Sickness Insurance (Industry) Convention, 1927 (No. 24)

Observation 2016

The Committee notes with **concern** that the Government's report has not been received. It notes the observations made by the Confederation of Public and Private Sector Workers (CTSP), received on 31 August 2016, by which it reiterated most of the issues raised previously, indicating that, even though some state efforts to increase the coverage of the insurance have been visible, these were focused on the capital city, leaving apart the people living in rural areas. The Committee hopes that the Government's next report will contain a full reply to its previous comments, which read as follows:

The Committee notes that on 15 September 2015 the Confederation of Public and Private Sector Workers (CTSP) provided its observations concerning the application of the Convention under examination. The CTSP indicates that the affiliation of employers to the Employment Injury, Sickness and Maternity Insurance Office (OFATMA), although a legal obligation, is a reality in practice for less than 5 per cent of workers. In the specific case of agricultural workers, the CTSP considers that it is necessary to take urgent measures to extend effective coverage by the OFATMA, as they represent the majority of workers in the country and produce 30 per cent of the gross domestic product, and yet they remain without any social protection.

The Committee is fully aware that the Government indicated in its last report that the Act of 28 August 1967, establishing the OFATMA, covers all dependent workers irrespective of their sector of activity, but that the absence of formal agricultural enterprises means that most agricultural workers are engaged in family subsistence agriculture and are excluded from the scope of the social security legislation. Nevertheless, the Committee observes that the application of the existing legislation appears to give rise to difficulties, even with regard to workers in the formal economy. Moreover, the sickness insurance scheme has never been established, even though the Government has indicated that it is pursuing its efforts to establish progressively a sickness insurance branch covering the whole of the population and to enable OFATMA to regain the trust of the population.

With a view to better assessing the challenges facing the country in the application of the social security Conventions and providing better support for the initiatives taken in this respect, the Committee requests the Government to provide further information in its next report concerning the functioning of the employment injury scheme administered by OFATMA (numbers covered, amount of contributions collected annually, number of employment accidents and occupational diseases recorded, amount of benefits paid for employment injury). Please include information on strategies for increasing participation in and utilization of OFATMA services by the eligible populations.

International assistance. The Committee notes that the Government is receiving substantial support from the ILO and the international community, particularly in the field of labour inspection. Moreover, since 2010, the ILO and the United Nations system as a whole have made available to the Government their expertise for the establishment of a social protection floor. The Committee considers that it is necessary for the Government to envisage as a priority the establishment of mechanisms to provide the population as a whole, including informal workers and their families, with access to essential health care and a minimum income when their earnings capacity is affected as a result of sickness, employment accident or occupational disease. In this regard, the International Labour Conference adopted the Social Protection Floors Recommendation (No. 202) in 2012, with a view to the establishment of basic social security guarantees to prevent and alleviate poverty, vulnerability and social exclusion. In this connection, the implementation of Conventions and of Recommendation No. 202 should continue in parallel, seeking and exploiting synergies and complementarity.

The Committee recalls that the establishment of a social protection floor was included by the Haitian Government as one of the elements of the Action Plan for National Recovery and Development of Haiti, adopted in March 2010. However, the Government has not yet provided any information on the measures adopted to achieve this objective. The Committee notes, among other matters, the conclusion in 2010 of a national programme for the promotion of decent work which includes an item dedicated to the establishment of the social protection system under the social security Conventions ratified by Haiti. ***Recalling that the Office's technical assistance, coordinated with that of the United Nations system as a whole, has been made available to the Government, the Committee invites the Government to provide information on this subject in its next report.***

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

Conclusions and recommendations of the Standards Review Mechanism. The Committee notes that, at its 328th Session in October 2016, the Governing Body of the ILO adopted the conclusions and recommendations formulated by the Standards Review Mechanism Tripartite Working Group (SRM TWG), recalling that Conventions Nos 17, 24, 25 and 42 to which Haiti is party are outdated and charging the Office with follow-up work aimed at encouraging States party only to these Conventions to ratify the following instruments as they represent the most up-to-date standards:

– As regards employment injury: the Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121) and/or the Social Security (Minimum Standards) Convention, 1952 (No. 102) and accept the obligations in its Part VI.

– As regards medical care and sickness benefit: the Medical Care and Sickness Benefits Convention, 1969 (No. 130) and/or the Social Security (Minimum Standards) Convention, 1952 (No. 102), and accept the obligations in its Parts II and III.

C025 - Sickness Insurance (Agriculture) Convention, 1927 (No. 25)

Observation 2016

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

The Committee notes that on 15 September 2015 the Confederation of Public and Private Sector Workers (CTSP) provided its observations concerning the application of the Conventions under examination. The CTSP indicates that coverage of employment injury is extremely weak in the context of an informal economy which represents 90 per cent of the national economy. The affiliation of employers to the Employment Injury, Sickness and Maternity Insurance Office (OFATMA), although a legal obligation, is a reality in practice for less than 5 per cent of workers. In the specific case of agricultural workers, the CTSP considers that it is necessary to take urgent measures to extend effective coverage by the OFATMA, as they represent the majority of workers in the country and produce 30 per cent of the gross domestic product, and yet they remain without any social protection.

The Committee is fully aware that the Government indicated in its last report that the Act of 28 August 1967, establishing the OFATMA, covers all dependent workers irrespective of their sector of activity, but that the absence of formal agricultural enterprises means that most agricultural workers are engaged in family subsistence agriculture and are excluded from the scope of the social security legislation. Nevertheless, the Committee observes that the application of the existing legislation appears to give rise to difficulties, even with regard to workers in the formal economy. Moreover, the sickness insurance scheme has never been established, even though the Government has indicated that it is pursuing its efforts to establish progressively a sickness insurance branch covering the whole of the population and to enable OFATMA to regain the trust of the population.

With a view to better assessing the challenges facing the country in the application of the social security Conventions and providing better support for the initiatives taken in this respect, the Committee requests the Government to provide further information in its next report concerning the functioning of the employment injury scheme administered by OFATMA (numbers covered, amount of contributions collected annually, number of employment accidents and occupational diseases recorded, amount of benefits paid for employment injury). Please include information on strategies for increasing participation in and utilization of OFATMA services by the eligible populations.

International assistance. The Committee notes that the Government is receiving substantial support from the ILO and the international community, particularly in the field of labour inspection. Moreover, since 2010, the ILO and the United Nations system as a whole have made available to the Government their expertise for the establishment of a social protection floor. The Committee considers that it is necessary for the Government to envisage as a priority the establishment of mechanisms to provide the population as a whole, including informal workers and their families, with access to essential health care and a minimum income when their earnings capacity is affected as a result of sickness, employment accident or occupational disease. In this regard, the International Labour Conference adopted the Social Protection Floors Recommendation (No. 202) in 2012, with a view to the establishment of basic social security guarantees to prevent and alleviate poverty, vulnerability and social exclusion. In this connection, the implementation of Conventions and of Recommendation No. 202 should continue in parallel, seeking and exploiting synergies and complementarity.

The Committee recalls that the establishment of a social protection floor was included by the Haitian Government as one of the elements of the Action Plan for National Recovery and Development of Haiti, adopted in March 2010. However, the Government has not yet provided any information on the measures adopted to achieve this objective. The Committee notes, among other matters, the conclusion in 2010 of a national programme for the promotion of decent work which includes an item dedicated to the establishment of the social protection system under the social security Conventions ratified by Haiti. ***Recalling that the Office's technical assistance, coordinated with that of the United Nations system as a whole, has been made available to the Government, the Committee invites the Government to provide information on this subject in its next report.***

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

C042 - Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42)

Observation 2016

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

The Committee notes that on 15 September 2015 the Confederation of Public and Private Sector Workers (CTSP) provided its observations concerning the application of the Conventions under examination. The CTSP indicates that coverage of employment injury is extremely weak in the context of an informal economy which represents 90 per cent of the national economy. The affiliation of employers to the Employment Injury, Sickness and Maternity Insurance Office (OFATMA), although a legal obligation, is a reality in practice for less than 5 per cent of workers. In the specific case of agricultural workers, the CTSP considers that it is necessary to take urgent measures to extend effective coverage by the OFATMA, as they represent the majority of workers in the country and produce 30 per cent of the gross domestic product, and yet they remain without any social protection.

The Committee is fully aware that the Government indicated in its last report that the Act of 28 August 1967, establishing the OFATMA, covers all dependent workers irrespective of their sector of activity, but that the absence of formal agricultural enterprises means that most agricultural workers are engaged in family subsistence agriculture and are excluded from the scope of the social security legislation. Nevertheless, the Committee observes that the application of the existing legislation appears to give rise to difficulties, even with regard to workers in the formal economy. Moreover, the sickness insurance scheme has never been established, even though the Government has indicated that it is pursuing its efforts to establish progressively a sickness insurance branch covering the whole of the population and to enable OFATMA to regain the trust of the population.

With a view to better assessing the challenges facing the country in the application of the social security Conventions and providing better support for the initiatives taken in this respect, the Committee requests the Government to provide further information in its next report concerning the functioning of the employment injury scheme administered by OFATMA (numbers covered, amount of contributions collected annually, number of employment accidents and occupational diseases recorded, amount of benefits paid for employment injury). Please include information on strategies for increasing participation in and utilization of OFATMA services by the eligible populations.

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The Committee recalls that the establishment of a social protection floor was included by the Haitian Government as one of the elements of the Action Plan for National Recovery and Development of Haiti, adopted in March 2010. However, the Government has not yet provided any information on the measures adopted to achieve this objective. The Committee notes, among other matters, the conclusion in 2010 of a national programme for the promotion of decent work which includes an item dedicated to the establishment of the social protection system under the social security Conventions ratified by Haiti. **Recalling that the Office's technical assistance, coordinated with that of the United Nations system as a whole, has been made available to the Government, the Committee invites the Government to provide information on this subject in its next report.**

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

Haiti

The Committee notes the observations of the Confederation of Public and Private Sector Workers (CTSP), received on 31 August 2016.

The Committee notes that, according to the CTSP, although the Government receives ILO assistance to strengthen the labour inspectorate, the Government shows a lack of will to make the labour inspectorate operational. The CTSP reiterates its previous observations concerning: (i) the lack of inspections in sectors other than the textile industry, such as the hotel industry, the restaurant industry, petrol stations and construction; the precarious material resources made available to labour inspectors, particularly the transport facilities necessary for the performance of their duties; (iii) the recruitment of labour inspectors on the basis of "cronyism"; (iv) the inadequate academic level of labour inspectors; and (v) their low remuneration, which is often paid late, making labour inspectors vulnerable to corruption. The CTSP adds that no steps have been taken to set up a database containing labour statistics as a basis for the development of policies and actions. The trade union further indicates that inspectors are at risk of being transferred, dismissed and penalized if they take decisions that run counter to the interests of certain employers. **The Committee requests the Government to send its comments on this matter.**

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

Articles 3, 12, 13, 15, 16, 17 and 18 of the Convention. Discharge of primary duties of the labour inspectorate. Further to the Committee's previous comments, the ITUC [International Trade Union Confederation] stresses the need to reform the Labour Code, especially section 411, which stipulates that labour inspectors shall provide employers and workers with technical information and advice "where necessary".

The Committee notes the Government's proposal to modify the expression "where necessary" in section 411 as part of the revision of the Labour Code, which is due to take place with technical support from the ILO, with a view to harmonizing the Labour Code with the international labour Conventions ratified by Haiti. The Government also emphasizes that, despite the wording of section 411 of the Labour Code, inspections have been conducted regularly over the last three years in Port-au-Prince and certain departments of the country.

The Committee recalls that the role of the labour inspectorate must not be limited to reacting to requests from workers or employers, and that inspections of workplaces, whether scheduled or not, should be conducted as often and as thoroughly as necessary throughout the country (*Article 16*), in order to enable the labour inspectorate to discharge its primary duties, as provided for in *Article 3(1)*. The Committee notes that the effectiveness of the inspection system and the credibility of inspectors for employers and workers depends largely on the manner in which inspectors exercise their prerogatives (right to enter workplaces, direct or indirect powers of injunction, reporting infringements, initiating proceedings, etc.) and meet their obligations (such as displaying probity and observing confidentiality), as established by *Articles 3, 12, 13, 15, 17 and 18* of the Convention.

The Committee requests the Government to keep the Office informed of any progress made regarding the revision of section 411 of the Labour Code, so that the provision of technical information and advice to employers and workers is recognized as a permanent function of the labour inspectorate in conformity with Article 3(1)(b).

The Committee also requests the Government to supply detailed information together with statistics on the planning and implementation of systematic inspections throughout the country, including in the export processing zones, and also their results (identification of infringements or irregularities, technical advice and information, observations, injunctions, notices of infringement, legal proceedings initiated or recommended, penalties imposed and enforced), and to indicate any obstacles to the full application in practice of the prerogatives and obligations of labour inspectors.

Finally, the Committee requests the Government to send a copy of the report form on violations and of some of such reports which have already been completed.

Articles 6, 8, 10 and 11. Human and material resources available to the labour inspectorate. The Government refers to the obstacles encountered in the application in practice of the Convention which, according to its report, are numerous: inadequate numbers of labour inspectors in view of the number, nature and size of workplaces liable to inspection and the complexity of the provisions of the Labour Code in force; lack of logistical resources; insufficient budget resources for paying reasonable salaries to labour inspectors; lack of mobile resources to facilitate the transportation of inspectors and enable them to fully perform their duties; premises inaccessible to certain persons (especially persons with disabilities).

According to the ITUC, the labour inspection services continue to lack the resources to be fully operational and show deficiencies in terms of supervision on the ground.

The Committee requests the Government to supply detailed information on the measures taken or envisaged, including having recourse to international financial aid, to obtain the necessary funds to build the capacities of the labour inspection system, especially by increasing the number of labour inspectors and the material and logistical resources available to the labour inspectorate.

The Committee also refers to paragraph 209 of its 2006 General Survey on labour inspection. While being fully aware of the problems faced by the Government, it is bound to emphasize the importance that it places on the treatment of labour inspectors in a way that reflects the importance and specific features of their duties and takes account of personal merit. **The Committee requests the Government to indicate all the measures taken or envisaged to improve the status and conditions of service of inspectors, so that they correspond to the conditions of public officials performing comparable tasks, such as tax inspectors.**

Articles 5(a) and 21(e). Effective cooperation with other government departments and with employers' and workers' organizations. The ITUC underlines the need to provide statistics that make it possible to assess any cooperation and procedures for such cooperation with other government departments and with employers' and workers' organizations. The Government, for its part, refers to cooperation between the labour inspectorate and other government departments, such as the National Office for Old-Age Insurance (ONA), the Office for Occupational Accident, Sickness and Maternity Insurance (OFATMA), the Office for the Protection of Citizens (OPC), and also civil society organizations for the defence of human rights. **The Committee requests the Government to provide details of this cooperation and its impact on the effectiveness of the action of the labour inspectorate, with a view to the application of the legal provisions relating to conditions of work and the protection of workers while engaged in their work.**

The Government also refers to cooperation between the labour inspectorate and the labour tribunal, to which files are referred for the imposition of penalties provided for by the law further to a report of non-compliance. The Committee recalls its general observation of 2007, in which it stressed the importance of measures enabling effective cooperation between the labour inspection system and the justice system, in order to encourage due diligence and attention in the treatment by judicial bodies of violations reported by labour inspectors, and in the disputes concerning the same fields which are submitted directly to them by workers or their organizations. **The Committee requests the Government to provide statistics on the follow-up to reports of infringements submitted by the labour inspectorate to the judicial bodies and to state whether measures have been taken or envisaged to strengthen cooperation between the labour inspectorate and the justice system, for example by the creation of a system for the registration of judicial decisions accessible to the labour inspectorate, to enable the central authority to use this information to achieve its objectives, and to include them in the annual report, in accordance with Article 21(e) of the Convention.**

The Committee also requests the Government to indicate the measures taken or envisaged to strengthen collaboration between the labour inspectorate and employers' and workers' organizations (Article 5(b)), including in the construction sector, which, in the opinion of the Government constitutes a priority for the revival of the country. The Committee recalls the guidance given in Paragraphs 4–7 of the Labour Inspection Recommendation, 1947 (No. 81), regarding collaboration between employers and workers in relation to safety and health.

Article 7(3). Training of inspectors. Further to the Committee's comments on this subject, the ITUC notes certain gaps in the area of training, whereas the Government refers to a number of training courses in 2008 and 2011 with the support of the ILO and international donors. **The Committee requests the Government to indicate the measures taken or envisaged to develop a training strategy, and to provide information on the frequency, content and**

duration of training given to labour inspectors, and also on the number of participants and the impact of this training on the effective performance of labour inspection duties.

Article 14. Notification and registration of industrial accidents and cases of occupational disease. The Committee notes the comments of the ITUC on the need to provide data on this subject and the information provided by the Government according to which industrial accidents are notified to the general inspectorate of OFATMA. **The Committee requests the Government to describe in detail the system for the notification of industrial accidents and cases of occupational disease and to indicate the measures taken or envisaged following the earthquake, in order to collect and supply statistics on this subject, including in the construction sector.**

The Committee urges the Government, as a preliminary stage in the preparation of an annual inspection report and in order to evaluate the situation of the labour inspection services in terms of their needs, to compile an inventory and register of industrial and commercial workplaces liable to inspection (number, activity, size and geographical situation) and of the workers employed in them (number and categories), and to keep the Office informed of any progress made in this field.

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

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) in a communication received on 1 September 2016 which are of a general nature.

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

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 1 September 2015 and of the Confederation of Workers of the Public and Private Sectors (CTSP) received on 31 August 2015 concerning alleged violations of freedom of association in the public and private sectors, including acts of interference in trade union activities. **It requests the Government to provide its comments in this respect.**

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

The Committee takes note of the observations provided by the International Trade Union Confederation (ITUC) in a communication received on 1 September 2014. **The Committee requests the Government to provide its comments in this regard.**

The Committee has for many years been asking the Government to amend the national legislation, particularly the Labour Code, in order to align it with the provisions of the Convention. In previous comments, the Committee made the following points:

Article 2 of the Convention. Right of workers, without distinction whatsoever, to form and join organizations of their choosing.

– The need to amend articles 229 and 233 of the Labour Code in order to ensure that minors who have reached the statutory minimum age for admission to employment are allowed to exercise their trade union rights without parental authorization.

– The need to amend section 239 of the Labour Code so as to allow foreign workers to serve as trade union officials, at least after a reasonable period of residence in the country.

– The need to guarantee for domestic workers the rights laid down in the Convention (section 257 of the Labour Code establishes that domestic work is not governed by the Code, and the Act adopted by Parliament in 2009 to amend this provision – which has not yet been promulgated but to which the Government referred in its previous reports – likewise omits the trade union rights of domestic workers).

Article 3. Right of workers' organizations to organize their activities and formulate their programmes.

– The need to revise the Labour Code's provisions on compulsory arbitration so as to ensure that recourse to the latter in order to end a collective labour dispute or a strike may be had only in specific circumstances, namely: (1) when the two parties to the dispute so agree; or (2) where a strike may be restricted, or prohibited, namely: (a) in disputes involving officials who exercise authority in the name of the State; (b) in disputes in essential services in the strict sense of the term; or (c) in situations of acute national or local crisis, although only for a limited period and solely to the extent necessary to meet the requirements of the situation.

While aware of the difficulties the country is facing, the Committee trusts that with the technical assistance it is receiving, in particular for the reform of the Labour Code, and with the political will reaffirmed by the Government, the latter will be in a position in its next report to provide information on progress made in revising the national legislation to bring it fully into conformity with the Convention. The Committee requests the Government to provide copies of any new texts adopted.

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

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

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

Observation 2016

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

The Committee notes the observation of the International Trade Union Confederation (ITUC) on 1 September 2015 and the observation of the Confederation of Workers of the Public and Private Sectors (CTSP) on 31 August 2015. According to the ITUC, legislative texts are not object of consultations and many anti-trade union lay-offs occur in practice. The CTSP also refers to such practices and indicates that there are only three collective agreements in the country.

The Committee expresses concern at this information and requests the Government to send its comments on these issues.

The Committee takes note of the observations provided by the International Trade Union Confederation (ITUC) in a communication received on 31 August 2014. **The Committee requests the Government to provide its comments in this regard.**

Noting that most employment in Haiti is in the informal sector, the Committee requests the Government to indicate the manner in which the application of the Convention to workers in the informal economy is ensured and to clarify, in particular, whether specific measures have been adopted to address the particular difficulties encountered by these workers. The Committee also requests the Government to supply information on the application of the Convention in the export processing zones.

The Committee recalls that it has been asking the Government for many years to amend the national legislation, particularly the Labour Code, in order to bring it into conformity with the provisions of the Convention.

The Committee recalls that its comments refer principally to:

Article 1 of the Convention. Adequate protection of workers against acts of anti-union discrimination in respect of their employment. The Committee recalls that its previous comments concerned the need to adopt a specific provision establishing protection against anti-union discrimination in recruitment practices, and the need to adopt provisions generally affording adequate protection to workers against acts of anti-union discrimination (on the basis of union membership or activity) during employment, accompanied by effective and rapid procedures and penalties acting as an adequate deterrent.

The Committee notes that section 251 of the Labour Code provides that "any employer who, in order to prevent an employee from joining a trade union, organizing a trade union or exercising his or her rights as a trade union member, dismisses, suspends or demotes the employee or reduces his or her wages, shall be liable to a fine of 1,000 to 3,000 Haitian gourdes (HTG) (approximately US\$25 to US\$75) to be imposed by the labour tribunal, without prejudice to any compensation to which the employee concerned shall be entitled". The Committee notes that the Government reiterates in its report that the social partners have begun to submit their views with regard to the preparation of the new Labour Code and that the points raised by the Committee regarding protection against anti-union discrimination at the time of recruitment and during employment are due to receive particular attention in the context of the reform in progress. **The Committee requests the Government to ensure that, in the context of the reform of the Labour Code, the penalties provided for in the event of anti-union discrimination during employment are made more severe, in order to ensure that they act as an adequate deterrent. It also requests the Government to ensure that a specific provision establishing protection against anti-union discrimination at the time of recruitment is adopted.**

Article 4. Promotion of collective bargaining. The Committee recalls that its previous comment also concerned the need to amend section 34 of the Decree of 4 November 1983, which empowers the Labour Organizations Branch of the Labour Directorate of the Ministry of Social Affairs and Labour to intervene in the drafting of collective agreements and in collective labour disputes with respect of all matters related to freedom of association. **Noting the Government's indication that this matter is due to receive particular attention in the context of the legislative reform in progress, the Committee hopes that the Government will avail itself of the technical assistance provided by the Office in this context to amend section 34 of the Decree of 4 November 1983, in order to ensure that the Labour Organizations Branch can only intervene in collective bargaining at the request of the parties. The Committee requests the Government to send a copy of any amendments adopted to this effect.**

Right to collective bargaining of public officials and employees. **The Committee requests the Government to provide information on the legal provisions relating to this field.**

Right to collective bargaining in practice. The Committee appreciates the information to the effect that, further to the tripartite training on international labour standards and the ILO supervisory system organized by the Office in Port au-Prince in July 2012 for interested parties in the textile manufacturing sector, the participants affirmed the need, in order to continue to strengthen dialogue between the interested parties in this sector, to establish a permanent forum for bipartite dialogue which would meet each month to discuss all ILO-related subjects, and any other subject connected with labour relations. **The Committee requests the Government to supply information on the activities of this dialogue forum and hopes that this process will be extended to other sectors, with technical assistance from the Office.**

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

Haiti

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

Observation 2016

The Committee notes the observations of the Confederation of Public and Private Sector Workers (CTSP) received on 31 August 2016 and requests the Government to provide its comments in this respect. The Committee notes with **regret** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee notes that the Law No. CL/2014-0010 of 2 June 2014 on the fight against trafficking in persons has been adopted.

Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. Sale and trafficking of children. In its previous comments, the Committee noted that, according to the report of the United Nations Special Rapporteur on contemporary forms of slavery, a new trend has been observed with regard to the employment of children as domestic workers (designated by the Creole term *restavèks*). This consists of the emergence of persons who recruit children from rural areas to work as domestic servants in urban families and outside the home in markets. The Special Rapporteur noted that this new trend has caused many observers to describe the phenomenon as trafficking, since parents are now handing their children over to strangers, whereas previously they entrusted the children to relatives. The Committee noted the observations of the International Trade Union Confederation (ITUC) that smuggling and trafficking in children was continuing, particularly towards the Dominican Republic. The ITUC has gathered serious eyewitness reports of sexual abuse and violence, even including murder, against young women and young girls who have been trafficked, particularly by Dominican military personnel and expressed concern at the fact that there does not appear to be a law under which those responsible for trafficking in persons can be brought to justice and that a draft legislation was to be adopted by the Parliament.

The Committee notes with **interest** the adoption of Law No. CL/2014-0010 of 2 June 2014 on the fight against trafficking in persons. The Law provides that trafficking in children, meaning the procuring, enlistment, transfer, transportation, accommodation or reception of a child for the purposes of exploitation constitutes an aggravating circumstance giving rise to life imprisonment (sections 11 and 21). The Committee notes, however, that, according to its 2014 concluding observations (CCPR/C/HTI/CO/1, paragraph 14), the Human Rights Committee remains concerned about the continuing exploitation of *restavèks* children and the lack of statistics on, and results from, the investigations into the perpetrators of trafficking. Similarly, the Committee notes that, according to the 2015 report of the independent expert on the human rights situation in Haiti (A/HRC/28/82, paragraph 65 with reference to A/HRC/25/71, paragraph 56), the *restavèks* phenomenon is the consequence of the weakness of the rule of law and those children are systematically unpaid, subjected to forced labour, and exposed to physical and/or verbal violence. Their number was estimated at 225,000 by UNICEF in 2012. **The Committee, therefore, urges the Government to take the necessary measures to ensure the effective implementation of Law No. CL/2014-0010, in particular in ensuring that in-depth investigations and effective prosecutions are completed with regard to perpetrators of trafficking of children under 18 years of age. The Committee also requests the Government to provide statistical data on the application of the law in practice, including the number and nature of the violations reported, investigations, prosecutions, convictions and the penal sanctions applied.**

Clauses (a) and (d) Forced or compulsory labour and hazardous work. Child domestic labour. In its previous comments, the Committee noted the situation of hundreds of thousands of *restavèk* children who are often exploited under conditions that qualify as forced labour. It noted that in practice many of these children, some of whom are only 4 or 5 years old, are the victims of exploitation, are obliged to work long hours without pay, face all kinds of discrimination and bullying, receive poor lodging and food and are often victims of physical, psychological and sexual abuse. In addition, very few of them attend school. The Committee also noted the repeal of Chapter IX of Title V of the Labour Code, relating to children in service, by the Act of 2003 for the prohibition and elimination of all forms of abuse, violence, ill-treatment or inhumane treatment of children (the Act of 2003). It noted that the prohibition set out in section 2(1) of the Act of 2003 covers the exploitation of children, including servitude, forced or compulsory labour, forced services and work which by its nature or the circumstances in which it is carried out is likely to harm the health, safety or morals of children, without however establishing penalties for violations of its provisions. The Committee noted that the repealed provisions included section 341 of the Labour Code, under which a child from the age of 12 years could be entrusted to a family to be engaged in domestic work. The Committee nevertheless observed that section 3 of the Act of 2003 provides that a child may be entrusted to a host family in the context of a relationship of assistance and solidarity.

The Committee noted previously that the Special Rapporteur, in her report, expressed deep concern at the vagueness of the concept of assistance and solidarity and considered that the provisions of the Act of 2003 allow the practice of *restavèk* to be perpetuated. According to the report of the Special Rapporteur, the number of children working as *restavèk* is between 150,000 and 500,000 (paragraph 17), which represents about one in ten children in Haiti (paragraph 23). Following interviews with *restavèk* children, the Special Rapporteur ascertained that all of them were given heavy workloads by their host families, which were often incompatible with their full physical and mental development (paragraph 25). Moreover, the Special Rapporteur was told that these children are often ill-treated and subjected to physical, psychological and sexual abuse (paragraph 35). Representatives of the Government and of civil society pointed out that cases of children being beaten and burnt were routinely reported (paragraph 37). The Committee noted that, in view of these findings, the Special Rapporteur described the *restavèk* system as a contemporary form of slavery.

The Committee notes the ITUC's allegations that the earthquake of 12 January 2010 resulted in an abrupt deterioration in the living conditions of the population of Haiti and increasingly precarious working conditions. According to the ITUC, an increasing number of children are engaged as *restavèk* and it is highly probable that their conditions have deteriorated further. Many of the eyewitness accounts gathered by the ITUC refer to extremely arduous working conditions, and exploitation is often combined with degrading working conditions, very long hours of work, the absence of leave and sexual exploitation and situations of extreme violence.

The Committee notes the Government's recognition that the engagement of *restavèk* children in domestic work is similar to forced labour. It once again expresses **deep concern** at the exploitation of children under 18 years of age in domestic work performed under conditions similar to slavery and in hazardous conditions. It once again reminds the Government that, under the terms of *Article 3(a) and (d)* of the Convention, work or employment by children under 18 years of age under conditions that are similar to slavery or that are hazardous comprise the worst forms of child labour and, under the terms of *Article 1*, are to be eliminated as a matter of urgency. **The Committee requests the Government to take immediate and effective measures to ensure in law and practice that children under 18 years of age are not engaged as domestic workers under conditions similar to slavery or in hazardous conditions, taking into account the special situation of girls. In this respect, it urges the Government to take the necessary measures to amend the provisions of the national legislation, and particularly section 3 of the Act of 2003, which allow the continuation of the practice of *restavèk*. The Committee also requests the Government to take the necessary measures to ensure that in-depth investigations are conducted and effective prosecutions of persons subjecting children under 18 years of age to forced domestic work or to hazardous domestic labour, and that sufficiently effective and dissuasive penalties are imposed in practice.**

Article 5. Monitoring mechanisms. Child protection brigade. The Committee notes the ITUC's allegation that a child protection brigade (BPM) exists in Haiti protecting the borders. However, the ITUC indicates that the corruption of officials on both sides of the border has not been eradicated and that the routes for trafficking in persons avoid the four official border posts and pass through remote locations where more serious situations of abuse against the life and integrity of migrants probably occur.

The Committee notes the Government's indication that the BPM is a specialized police unit which arrests traffickers, who are then brought to justice. However, the Government adds that, during judicial inquiries, procedural issues are often used by those charged to escape justice. The Committee is bound to express **concern** at the weakness of the monitoring mechanisms in preventing the phenomenon of trafficking in children for exploitation. **The Committee requests the Government to take the necessary measures to strengthen the capacity of the BPM to monitor and combat trafficking in children under 18 years of age and to bring those guilty to justice. It requests the Government to provide information on the measures adopted in this respect and the results achieved.**

Haiti

Article 7(2). Effective and time-bound measures. Clause (b). Providing the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. Sale and trafficking. In its previous comments, the Committee noted that, according to the United Nations Office on Drugs and Crime report of February 2009: *Global Report on Trafficking in Persons*, no system exists to provide the victims of trafficking with care or assistance, nor are there any reception centres for victims of trafficking. It also noted that the Committee on the Elimination of Discrimination against Women (CEDAW), in its concluding observations (CEDAW/C/HTI/CO/7, 10 February 2009, paragraph 26), expressed concern at the lack of reception centres for women and girls who are victims of trafficking.

The Committee notes the ITUC's allegations that there is a public system of care and assistance for persons who are victims of trafficking. The reports gathered by the ITUC indicate that victims are referred to the police forces, which relay them to the Social Welfare and Research Institute (IBESR), which then places them in reception centres.

The Committee notes the Government's indication that a pilot social protection programme was envisaged, but that the earthquake of 12 January 2010 undermined the implementation of the programme. ***The Committee urges the Government to take effective measures for the provision of the necessary and appropriate direct assistance for the removal of child victims of sale and trafficking and for their rehabilitation and social integration. In this respect, it requests the Government to provide information on the number of children under 18 years of age who are victims of trafficking and who have been placed in reception centres through the police forces and the IBESR.***

Clause (d). Identifying and reaching out to children at special risk. Restavèk children. In its previous comments, the Committee noted the existence of programmes for the reintegration of *restavèk* children established by the IBESR in cooperation with various international and non-governmental organizations. It noted that these programmes focus on reintegration in the family setting with a view to promoting the social and psychological development of the children concerned. However, it noted that the Committee on the Rights of the Child, in its concluding observations, had expressed deep concern at the situation of *restavèk* children placed in domestic service and recommended that the Government take urgent steps to ensure that *restavèk* children are provided with physical and psychological rehabilitation and social reintegration services (CRC/C/15/Add.202, 18 March 2003, paragraphs 56 and 57).

The Committee notes the ITUC's indications that it has been informed of initiatives for the reintegration of *restavèk* children implemented, among others, with the support of UNICEF and the International Organization for Migration (IOM). While welcoming these initiatives, the ITUC calls on the Government to ensure that these programmes continue to be combined with measures intended to improve the living conditions of the families of origin of the children.

The Committee notes the Government's indication that cases of the ill treatment of children in domestic service are taken up by the IBESR, which is responsible for placing them in families for the purposes of their physical and psychological rehabilitation. However, the Government recognizes that there are still only a few such cases. ***The Committee urges the Government to intensify its efforts to ensure that restavèk children benefit from physical and psychological rehabilitation and social integration services in the framework of programmes for the reintegration of restavèk children or through the IBESR.***

Article 8. International cooperation. Sale and trafficking of children. The Committee previously noted that the Ministry of Social Affairs and Labour, in cooperation with the Ministry of Foreign Affairs, was studying the problem of the exploitation of persons in sugar cane plantations in the Dominican Republic and of children reduced to begging in that country, and intends to engage in bilateral negotiations with a view to resolving the situation. It also noted that the CEDAW, in its concluding observations (CEDAW/C/HTI/CO/7, 10 February 2009, paragraph 27), encourages the Government "to conduct research on the root causes of trafficking and to enhance bilateral and multilateral cooperation with neighbouring countries, in particular the Dominican Republic, to prevent trafficking and bring perpetrators to justice".

The Committee notes once again that the Government's report does not contain information on this subject. ***It once again requests the Government to provide information in its next report on the progress made in the negotiations for the adoption of a bilateral agreement with the Dominican Republic.***

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

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

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 of the International Trade Union Confederation (ITUC) received on 1 September 2015. **The Committee requests the Government to provide its comments in this regard.**

Article 2 of the Convention. Right of workers to establish and join organizations. The Committee notes the indications of the ITUC that section 6(4) of the Trade Union Act (TUA) provides that, if an application for registration of a trade union has not been made in line with the Act, or if registration of a trade union has been refused or cancelled, every member of the trade union who continues to be a member thereof, and every person who participates in any meetings or proceedings of the trade union, knowing that it is not registered under the Act, shall be guilty of an offence and liable on summary conviction to a penalty of up to 500 Jamaican dollars. **Acknowledging that the official recognition of an organization through its registration constitutes a relevant aspect of the right to organize, as it is the first measure to be taken so that organizations can fulfil their role effectively, but also recalling that the exercise of legitimate trade union activities should not be dependent upon registration and that, therefore, penalties should not be imposed upon workers for their membership and participation in an unregistered trade union, the Committee requests the Government to take the necessary measures to amend the legislation in this respect.**

Article 3. Interference in the financial administration of a trade union. The Committee notes that the ITUC denounces that, in addition to the obligation on the treasurer to submit to the Registrar annual statements of account, audit certificates, membership lists and changes to the rules and officers of the trade union, the Registrar may, in line with section 16(2) of the TUA, at any time, request the treasurer or any trade union member to provide detailed accounts of the revenue, expenditures, assets, liabilities and funds of the trade union in respect of any specified period. **Recalling that the control exercised by the public authorities over trade union finances should not normally exceed the obligation to submit periodic reports, and that the discretionary rights of the authorities to carry out inspections and request information at any time entails a danger of interference in the internal administration of trade unions, the Committee requests the Government to take the necessary measures to restrict the Registrar's powers 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.

C094 - Labour Clauses (Public Contracts) Convention, 1949 (No. 94)

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 of the Convention. Insertion of labour clauses in public contracts. The Committee notes that despite the detailed explanations provided in previous comments regarding the scope and purpose of the Convention as well as the steps required for its practical implementation, the Government continues to refer to legislative texts that bear little relevance with the Convention as they do not provide for labour clauses of the type prescribed in *Article 2* of the Convention. More concretely, the Committee notes the Government's reference to the Factories Act and the Minimum Wages Act as instruments protecting all workers without exception, and also to the Labour and Management Agreement (LMA) 2011–13 for the building and construction industry. In particular, the Committee notes that the LMA provides for a pay scale which is higher than the minimum wage rate which was last revised in September 2012 and is now set at 5,000 Jamaican dollars (JMD) (approximately US\$48) per 40-hour working week.

The Committee recalls, in this connection, that the Convention requires that public contracts (whether for construction works, manufacture of goods or supply of services) should include clauses ensuring to the workers concerned wages, hours of work and other labour conditions not less favourable than those locally established for work of the same character through collective agreement, arbitration award or national laws or regulations. In the case of a construction contract, for instance, this requirement would practically mean that the selected contractor and any subcontractors would be obliged to pay wages at least at the LMA rate – and not the national minimum wage – provided that the LMA contains the most favourable pay conditions for construction workers. It is precisely because employment and working conditions set out in general labour legislation are often improved through collective bargaining that the Committee has consistently taken the view that the mere fact of the national legislation being applicable to all workers does not release the government concerned from its obligation to provide for the insertion of labour clauses in all public contracts in accordance with *Article 2(1)* and *(2)*, of the Convention. **Recalling that the Convention does not necessarily require the adoption of new legislation but may also be applied through administrative instructions or circulars, the Committee expresses once again the hope that the Government will take prompt action to ensure the effective implementation of the Convention both in law and in practice.**

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

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

Observation 2016

Article 1(c) and (d) of the Convention. Disciplinary measures applicable to seafarers. For a number of years, the Committee has been referring to the following provisions of the Jamaica Shipping Act, 1998, under which certain disciplinary offences are punishable with imprisonment (involving an obligation to perform labour under the Prisons Law):

- section 178(1)(b), (c) and (e), which provides for penalties of imprisonment, inter alia, for wilful disobedience or neglect of duty or combining with any of the crews to impede the progress of the voyage; an exemption from this liability applies only to seafarers participating in a lawful strike after the ship has arrived and has been secured in good safety to the satisfaction of the master at a port, and only at a port in Jamaica (section 178(2)); and
- section 179(a) and (b), which punishes, with similar penalties, the offences of desertion and absence without leave.

The Committee recalled, referring to paragraphs 179–181 of its 2007 General Survey on eradication of forced labour, that provisions under which penalties of imprisonment (involving an obligation to perform labour) may be imposed for desertion, absence without leave or disobedience, are not in conformity with the Convention. In this regard, the Committee noted the Government's indication that amendments would be made to the Shipping Act, 1998 after a general review and updating of the legislation.

The Committee notes the Government's statement in its report that amendments to the Shipping Act of 1998 are intended to bring it into conformity with the Maritime Labour Convention of 2006 (MLC, 2006) and hence do not cover the above provisions. The Government also indicates that the shipping industry of Jamaica and the country as a whole do not use any forms of forced or compulsory labour, including as a means of labour discipline. Moreover, the Government states that the disciplinary procedures of the Shipping Association of Jamaica are circumscribed by the Joint Labour Agreement between the Shipping Company and the Unions that represent workers in the Bargaining unit, such as the Bustamante Industrial Trade Union, the Trade Union Congress and the United Port Workers and Seamen's Union. The Government also states that during the period of review, no decisions have been made by the court of law or other tribunals in relations to the above provisions of the Shipping Act.

The Committee takes due note of the Government's statement and referring to paragraph 312 of its General Survey of 2012 on the fundamental Conventions, it recalls that *Article 1(c)* of the Convention expressly prohibits the use of any form of forced or compulsory labour as a means of labour discipline and that the punishment of breaches of labour discipline with sanctions of imprisonment (involving an obligation to perform labour) is incompatible with the Convention. ***Observing that the above provisions of the Shipping Act have been the subject of comments since 2002, the Committee urges the Government to take the necessary measures to ensure the amendments of the Shipping Act are adopted so as to bring the legislation into line with the Convention and the indicated practice. It requests the Government to provide information on the progress made in this regard.***

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

Observation 2016

Article 1 of the Convention. Work of equal value. Legislative developments. The Committee notes the adoption of the Equal Pay Act No. 23 of 2012, which defines remuneration in broad terms in accordance with the Convention. However, the Committee notes with **regret** that section 3(1) of the Act only prohibits an employer from discriminating between male and female employees by failing to pay “equal pay for equal work”. Section 2(1) defines “equal work” as “the work performed for an employer by males and females in which: (a) the duties, responsibilities or services to be performed are similar or substantially similar in kind, quality and amount; (b) the conditions under which such work is performed are similar or substantially similar; (c) similar or substantially similar qualifications, degrees of skill, effort and responsibility required; and (d) the difference, if any, between the duties of male and female employees are not of practical importance in relation to terms and conditions of employment or do not occur frequently”. The Committee notes that these provisions are narrower than the principle of equal remuneration for work of equal value enshrined in the Convention, as they limit the requirement of equal remuneration for men and women to “similar or “substantially similar” duties, responsibilities or services, conditions of work and qualifications, skills, effort and responsibilities. The Committee emphasizes that the concept of “work of equal value” established in the Convention includes but goes beyond similar or substantially similar work performed by men and women and that comparing the relative value of jobs in occupations which may involve different types of skills, responsibilities or working conditions, but which are nevertheless of equal value overall, is essential in order to eliminate pay discrimination (see 2012 General Survey on the fundamental Conventions, paragraph 675). The Committee recalls the importance of giving full legislative expression to the principle of equal remuneration for men and women for work of equal value, particularly given the existence of occupational sex segregation, as women and men often work in different occupations (see 2012 General Survey, paragraphs 673 and 697). **The Committee requests the Government to give full legislative expression to the principle of the Convention and to take the necessary measures to amend the Equal Pay Act 2012 so that it will clearly set out the principle of equal remuneration between men and women for work of equal value – which should not only provide for equal remuneration for men and women performing similar or substantially similar work, but also for equal remuneration for work carried out by men and women that is different in nature but nevertheless of equal value. Noting the Government’s indication that the draft Labour Code has been tabled before the National Tripartite Committee and was expected to be adopted in the first half of 2016, the Committee trusts that all efforts will be made to include provisions explicitly guaranteeing equal remuneration for men and women for work of equal value, and requests the Government to report on the progress made.**

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

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

Observation 2016

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

With reference to its previous observation, the Committee notes the reply of the Government that, contrary to *Article 7 of the Convention*, no provision is made in national legislation for the payment of additional compensation for injured workers requiring the constant help of another person; and that compensation for all expenses (medical, surgical or pharmaceutical, etc.) is limited to 20,000 East Caribbean dollars, whereas no such ceiling is foreseen in the Convention in case of occupational accident (*Articles 9 and 10 of the Convention*). The Committee **regrets** to note that since the entry into force of the Convention in 1980 the Government has been unable to bring the provisions of the national legislation in conformity with *Articles 7, 9 and 10 of the Convention*. **In this situation, the Committee deems it necessary to ask the Government to undertake an actuarial study which will determine the financial implications of the introduction into the national insurance scheme of the benefits guaranteed by these Articles of the Convention. The Committee wishes to remind the Government of the possibility to avail itself of the technical assistance of the Office in this respect.**

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

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

Article 2 of the Convention. Right of workers and employers, without distinction whatsoever, to establish and to join organizations. For several years, noting that the "protective services" – which include the fire services and prison officers – were excluded from the Registration, Status and Recognition of Trade Unions and Employers' Organizations Act, 1999, the Committee had requested the Government to take the necessary measures to ensure the right to organize to fire service personnel and prison staff. The Committee notes that section 325 of the Labour Act 2006 also excludes "protective services" (which according to section 2 of the Act include the fire service and the correctional services) from the scope of application of the provisions which are dealing with the right to organize in the new legislation. **Noting that the Government indicates in its report that the issue of the right to organize fire service personnel and prison staff would be raised with the Minister of Labour, and recalling previous indications that the workers of these services benefit in practice from this right, the Committee once again requests the Government to indicate the manner in which service personnel and prison staff are assured the organizational rights provided in the Convention.**

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

The Committee 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

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

Articles 1, 2, 4 and 6 of the Convention. For several years, noting that the "protective services" – which include the fire services and correctional officers – were excluded from the Registration, Status and Recognition of Trade Unions and Employers' Organizations Act, 1999, the Committee had requested the Government to take the necessary measures in order to grant fire service personnel and correctional staff the rights and guarantees provided for in the Convention. The Committee notes that the Labour Act 2006, which entered into force on 1 August 2012, repeals the Registration, Status and Recognition of Trade Unions and Employers' Organizations Act, 1999. It further notes that section 355 of the Labour Act 2006 also excludes "protective services" (which according to section 2 of the Act include the fire service and the correctional services) from the scope of application of the provisions which are dealing with the right to bargain collectively in the new legislation. **Noting that the Government indicates in its report that fire service personnel and prison staff benefit in practice from the right to collective bargaining, and that the issue would be raised with the Minister of Labour, the Committee once again requests the Government to take the necessary measures to expressly grant in the legislation the right to collective bargaining to fire service personnel and correctional staff.**

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

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

Observation 2016

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

Article 1(a) of the Convention. Definition of remuneration. The Committee recalls that the Equality of Opportunity and Treatment in Employment and Occupation Act, 2000, contains no definition of the term "remuneration". The Committee notes the adoption of the Labour Code (Amendment) Act No. 6 of 2011, which amends section 95 of the Labour Code of 2006 to include the definition of "total remuneration" as "all basic wages which the employee is paid or is entitled to be paid by his or her employer in respect of labour performed or services rendered by him or her for his or her employer during that period of employment". The Committee notes that section 2 of the Labour Code, continues to exclude overtime payments, commissions, service charges, lodging, holiday pay and other allowances from the definition of wages. The Committee recalls that the Convention sets out a very broad definition of "remuneration" in *Article 1(a)* which includes not only "the ordinary, basic or minimum wage or salary" but also "any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment" (see General Survey on the fundamental Conventions, 2012, paragraph 686). **The Committee asks the Government to take the necessary measures to further amend section 95 of the Labour Code in order to ensure that at least for the purposes of the application of the principle of the Convention the concept of remuneration covers not only the basic wages, but also any additional benefit or allowance arising out of the worker's employment.**

Different wages and benefits for women and men. The Committee notes with regret that despite the Government's previous announcement in this respect, the Labour Code (Amendment) Act No. 6 of 2011 does not repeal the existing laws and regulations establishing differential wage rates for men and women, nor does it revoke the Contract of Service Act which provides for different ages for men and women with respect to entitlement to severance pay. **The Committee urges the Government to take measures without delay to ensure that all laws and regulations are repealed which contain differential wages for men and women, as well as the Contract of Service Act, which provides for different ages for men and women with respect to entitlement to severance pay. The Committee requests the Government to provide information on any development in this regard.**

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

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

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.

Legislation. The Committee notes with interest that an Occupational Safety and Health (OSH) Bill has been developed in cooperation with the ILO, which addresses several of the previous points raised by the Committee (such as the powers of labour inspectors provided for under *Article 13 of the Convention*, the notification of the labour inspectorate of industrial accidents and cases of occupational diseases provided for under *Article 14*, etc.), and that relevant national consultations with various stakeholders, including employers' and workers' representatives, are currently being held. **The Committee asks the Government to continue to keep the ILO informed of any progress made in the adoption of this Bill and to communicate a copy of the relevant OSH Act, once adopted. It expresses the hope that this OSH Act will give full effect to the Convention.**

Articles 20 and 21 of the Convention. Annual report on the work of the labour inspection services. The Committee notes that, once again, no annual labour inspection report has been received by the Office, nor has any statistical information been communicated by the Government. It notes the Government's indication according to which ongoing technical assistance is provided by the Office for the implementation of the Labour Market Information System (LMIS) which, as the Committee had previously noted, contains statistics on labour inspection and is intended to be used to record and generate reports on labour inspections. It also notes the Government's indications that comprehensive statistical labour inspection reports are expected to be published separately as from 2014, provided that inspection data are correctly and regularly entered in the LMIS database. **The Committee requests the Government to make every effort, including the training of staff in the use and operation of the LMIS, to allow the central labour authority to publish and communicate to the ILO, together with its next report due in 2016, an annual labour inspection report containing full information as required under Article 21(a)–(g) of the Convention.** The Committee recalls also that the Government could make use of the guidance provided in Paragraph 9 of the Labour Inspection Recommendation, 1947 (No. 81), concerning the type of information that should be included in a labour inspection 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.

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(d) and 4(1). Hazardous work. The Committee previously noted that the Employment of Women, Young Persons and Children Act (EWYPC Act), did not contain a general prohibition on the employment of children below 18 years of age in hazardous work, other than the prohibition on night work in any industrial undertaking (section 3(2)) nor a determination of hazardous types of work prohibited to children under 18 years of age.

The Committee notes the Government's indication that consultation with stakeholders to address the issues related to hazardous work by children will be commenced shortly and a draft report will be prepared by the end of 2013. **The Committee expresses the firm hope that consultations with the stakeholders including the social partners will be held in the near future and legislation relating to the prohibition on hazardous work by children under 18 years of age as well as a regulation determining the types of hazardous work prohibited to children under the age of 18 years will be adopted soon. The Committee requests the Government to provide information on any developments made in this regard.**

Article 7(1). Penalties. **The Committee requests the Government to provide information on the application in practice of the sanctions established in the Trafficking Act of 2011 for the offences related to the sale and trafficking of children and for the use, procuring and offering of children for prostitution and child pornography.**

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

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

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 Trade Union Confederation (ITUC) received on 31 August 2016. The Committee also 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 response of the Government to the ITUC's observations.

Articles 2 to 4 of the Convention. Trade Unions Act. The Committee notes that the ITUC alleges that a number of the provisions of the Trade Unions Act (TUA) unduly restrict trade union rights under the Convention. The Committee further notes that the Government indicates that it intends to review the TUA and that during the legislative reform project the comments of the ITUC will be considered as part of the review process. In this respect, the Committee observes that the following sections of the TUA raise issues of compatibility with the Convention: (i) section 10 requires unions to register, subjects the registration to the permission of the Registrar and provides that in the event of failure to register the officers or an unregistered trade union are liable to a fine of 40 dollars for every day for which the union remains unregistered (the Committee recalls that the right to establish organizations without previous authorization entails that the authorities should not have discretionary power to refuse the establishment of an organization and that the exercise of legitimate trade union activities should not be dependent upon registration); (ii) section 16(4) allows the Registrar to order an inspection of the books, accounts, securities, funds and documents of the trade union (the Committee recalls that financial supervision of unions should be limited to the obligation of submitting annual financial reports and verifications should be carried out only when there are serious grounds for believing that the actions of a union are contrary to its rules or the law, or when a significant number of workers request such verification by raising a complaint or in relation to allegations of embezzlement); (iii) section 18(1)(d) enables the Registrar to withdraw or cancel the certificate of registration on certain grounds (the Committee notes that under the Convention unions shall not liable to be dissolved or suspended by the administrative authority, and that the possibility under section 18(1)(e) to appeal such decisions by the Registrar should have the effect of a stay of execution); and (iv) section 33 limits the right of unions to administer their funds in relation to political activities (unduly restricting the possibilities of unions to legitimately engage on matters of economic or social policy affecting their members or workers in general). **The Committee requests the Government to take the necessary measures to amend the abovementioned provisions and to bring the TUA and its application into full conformity with the Convention. Recalling that the Government may avail itself of the technical assistance of the Office, the Committee requests the Government to provide information on any development concerning the review and amendment of the TUA.**

Article 3. Right of organizations to organize their activities freely and to formulate their programmes. In its previous comments, the Committee has been referring for a number of years to the need to amend or repeal the following sections of the Industrial Relations Act (IRA): (i) section 59(4)(a) concerning the majority required for calling a strike; (ii) sections 61(d) and 65 concerning recourse to the courts by either party or by the Ministry of Labour to end a strike; and (iii) section 67 (in conjunction with the second schedule) and section 69 concerning services in which industrial action may be prohibited. Furthermore, the Committee observes that section 2(3) of the IRA excludes from its scope of application the following categories of workers: members of the teaching service or employed in a teaching capacity by a university or other institution of higher learning, apprentices, domestic workers, and persons in enterprises with policy and other managerial responsibilities (all of which should enjoy the guarantees set out in the Convention, be it through the IRA or other applicable legislation). The Committee notes that the Government indicates that the Industrial Relations (Amendment Bill) 2015 was introduced in the House of Representatives on 1 May 2015 but that, after two readings, the Bill lapsed in June 2015 due to the end of the parliamentary term. The Government notes that a new parliamentary term commenced on 23 September 2015 and that it is anticipated that action will be taken in respect for the amendment of the IRA in due course. **The Committee firmly hopes that the amendment of the IRA will address its comments related to sections 59(4)(a), 61(d), 65, 67 and 69. The Committee further requests the Government to clarify how the abovementioned categories of workers excluded from the scope of the IRA under section 2(3) enjoy the rights under Article 3 of the Convention. Recalling that the Government may avail itself of the technical assistance of the Office, the Committee requests the Government to indicate any progress made in this respect.**

Trinidad and Tobago

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

Observation 2016

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 31 August 2016. The Committee also notes the response of the Government to the ITUC's observations, including the Government's indication that these observations will be considered as part of the ongoing revision of the Industrial Relations Act (IRA).

Workers covered by the Convention. The Committee observes that section 2(3) of the IRA excludes from its scope of application the following categories of workers: members of the teaching service or employed in a teaching capacity by a university or other institution of higher learning, apprentices, domestic workers, and persons in enterprises with policy and other managerial responsibilities. In this respect, the Committee recalls that, according to *Articles 5 and 6 of the Convention*, only members of the armed forces and the police as well as public servants engaged in the administration of the State may be excluded from the guarantees set out in the Convention. **The Committee thus requests the Government to indicate the manner in which the categories of workers excluded from the IRA and mentioned above, enjoy the guarantees under the Convention.**

Article 4 of the Convention. Representativeness for the purposes of collective bargaining. In its previous comments, the Committee has been referring to the need to amend section 24(3) of the Civil Service Act, which affords a privileged position to already registered associations, without providing objective and pre-established criteria for determining the most representative association in the civil service. The Committee notes that the Government indicates once again that the matter of the amendment of section 24(3) is still under consideration as it requires extensive continuing dialogue. The Committee recalls that where there exists a trade union which enjoys preferential or exclusive bargaining rights, as in the current system, decisions concerning the most representative organization should be made by virtue of objective and pre-established criteria instead of simply giving priority to the one which was registered earlier in time, so as to avoid any opportunities for partiality or abuse. **The Committee expresses the firm hope that section 24(3) of the Civil Service Act will be modified in the near future so as to bring it into conformity with the Convention, and requests the Government to indicate any developments in this regard.**

In its previous comments, the Committee also referred to the need to amend section 34 of the IRA in order to ensure that, in cases in which no trade union represents the majority of workers, the minority unions can jointly negotiate a collective agreement applicable in the negotiating unit, or at least conclude a collective agreement on behalf of their own members. The Committee notes the Government's indication that the concerns of the Committee are noted and will continue to receive the attention of the Industrial Relations Advisory Committee. The Committee also observes that the Government notes, in its report under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), that a bill to amend the IRA was introduced in 2015 and is before the House of Representatives. **The Committee hopes that the amendment of the IRA will address its comments and that measures will be taken to ensure that minority unions can jointly negotiate a collective agreement applicable in the negotiating unit, or at least conclude a collective agreement on behalf of their own members when there is no union that represents the majority of workers. Recalling that the Government may avail itself of the technical assistance of the Office, the Committee requests the Government to provide a copy of the bill and to indicate any progress made in this respect.**

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

Observation 2016

Article 1(c) of the Convention. Sanctions involving compulsory labour for various breaches of labour discipline. In its earlier comments, the Committee noted that sections 157 and 158 of the Shipping Act, 1987, under which penalties of imprisonment (involving compulsory labour pursuant to sections 255 and 269(3) of the Prison Rules) may be imposed for breaches of labour discipline in circumstances where the life, personal safety or health of persons are not endangered. The Committee requested the Government to take the necessary measures to amend the Shipping Act, in order to bring the abovementioned provisions into conformity with the Convention.

The Committee notes the Government's indication in its report that the Ministry of Works and Transport, which has responsibility for overseeing the implementation of the Shipping Act, will recommend the amendment of the following provisions in order to provide for an appropriate fine instead of imprisonment: section 157(b) (wilfully disobeying any lawful command) and section 157(c) and (e) (continually disobeying any lawful command or wilfully neglecting duty and combining with any of the crew to disobey a lawful command or to neglect duty). The Government also indicates that section 158(a) and (b) which provides for imprisonment for seafarer desertion and when a seafarer neglects to join a ship, will be repealed. **The Committee hopes that, within the framework of the amendments of the abovementioned sections of the Shipping Act, the Government will take the necessary measures to ensure that no penalties of imprisonment may be imposed on seafarers for breaches of labour discipline.**

Article 1(d). Sanctions for participating in strikes. In its earlier comments, the Committee noted that pursuant to section 8(1) of the Trade Disputes and Protection of Property Act, a person employed in certain public services (but not limited in this respect to services whose interruption might endanger the life, personal safety or health of the whole or part of the population) who wilfully and maliciously breaks a contract of service, is liable to a fine or to imprisonment of three months. It also noted that pursuant to section 69 of the Industrial Relations Act, penalties of imprisonment (involving compulsory labour) could be imposed on certain categories of workers for participation in an industrial action. The Committee requested the Government to take the necessary measures, within the framework of the review of the Industrial Relations Act, to ensure that no penalties of imprisonment may be imposed on persons for the peaceful participation in a strike. It also requested the Government to provide information on the measures taken or envisaged to amend the Trade Disputes and Protection of Property Act.

The Committee notes the Government's indication in its report that the Ministry of Labour is currently in the process of amending the Industrial Relations Act, Chapter 88:01. The Government also indicates that national tripartite consultations were held within the first quarter of 2016; subsequently a report was prepared for dissemination to the stakeholders for their comments, and once comments are received, further consultations would be conducted. With regard to the Trade Disputes and Protection of Property Act, the Government states that it has not taken any measures to amend the Act yet. **Referring to its comments made under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Committee hopes that within the framework of the amendment of the Industrial Relations Act, the Government will take the necessary measures to ensure that no penalties of imprisonment may be imposed on persons for the peaceful participation in a strike. It also requests the Government to provide information on any measures taken or envisaged to amend the Trade Disputes and Protection of Property Act in this regard.**