

## TEXTS OF THE CASES

### **Preliminary list of cases as submitted by the social partners Committee on the Application of Standards - ILC 2017**

	Country	Convention(s) No(s)
1	Afghanistan	182
2	Algeria	87
3	Armenia	81
4	Azerbaijan	111
5	Bahrain	111
6	Bangladesh	87
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8	Plurinational State of Bolivia	131
9	Botswana	87
10	Brazil	98
11	Cambodia	87
12	Colombia	87
13	Congo	81
14	Cuba	87
15	Democratic Republic of the Congo	182
16	Ecuador**	87
17	Egypt	87
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19	Equatorial Guinea	98
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21	India	81
22	Kazakhstan	87
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24	Malaysia – Peninsular Malaysia/Sarawak**	19
25	Mauritania	29
26	Myanmar	87
27	Pakistan	98
28	Papua New Guinea	182
29	Paraguay	29
30	Poland**	29
31	Qatar	81
32	Sierra Leone	119
33	Somalia	87
34	Sudan	122
35	Turkey	135
36	Ukraine**	81/129
37	United Kingdom	102
38	Bolivarian Republic of Venezuela	122
39	Zambia	138
40	Zimbabwe	105

\*\* double footnoted

Total number of cases concerning Fundamental Conventions	27
Total number of cases concerning Priority Conventions	8
Total number of cases concerning Technical Conventions	5

# Afghanistan

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

(Ratification: 2010)

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

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

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

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

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

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

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

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

# Algeria

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

(Ratification: 1962)

The Committee notes the observations of the International Organisation of Employers (IOE), received on 1 September 2016, which are of a general nature. The Committee also notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2016, on persistent violations of the Convention in practice, in particular the arrest in February 2016 of trade union members at the trade union centre, and acts of violence by the police against protest action in the public education sector. Lastly, the Committee notes the observations of the General and Autonomous Confederation of Workers in Algeria (CGATA), received on 27 June 2016, denouncing the persistence of difficulties for independent trade unions to register and undertake their activities, and cases of police violence at peaceful demonstrations. **Noting the extreme gravity of the allegations, the Committee urges the Government to provide its comments and detailed information in response to the ITUC and the CGATA.**

### Legislative issues

*Act issuing the Labour Code.* The Committee recalls that the Government has been referring since 2011 to the process of adopting a law issuing the Labour Code. In this regard, the Committee recalled the need for consultations with the representative employers' and workers' organizations in order to take their views into account. In its report, the Government indicates that the latter have participated in all the tripartite exercises initiated and that some of the Committee's recommendations have been taken into account. However, the Government does not provide a more up-to-date version of the draft bill. **Noting that this process has still not been concluded despite the time that has passed, the Committee expects the Government to take all the necessary measures for the adoption of the law issuing the Labour Code without any further delay. The Committee is sending comments on the bill in relation to the application of the Convention in a request addressed directly to the Government, and trusts that it will take them duly into account and adopt the amendments requested.**

Moreover, the Committee notes with **regret** that the Government confines itself to reiterating its previous replies to the other legislative issues raised in the Committee's previous comments. **Recalling that it has been making these comments for ten years and that the Government has failed to offer an adequate response, the Committee urges the Government to take all the necessary measures to adopt the amendments requested to the following provisions.**

*Article 2 of the Convention. Right to establish trade union organizations.* The Committee recalls that its comments have focused on section 6 of Act No. 90 14 of 2 June 1990 on the exercise of the right to organize, which restricts the right to establish a trade union organization to persons who are originally of Algerian nationality or who acquired Algerian nationality at least ten years earlier. The Committee previously noted the Government's indication that the Act in question will be amended so that the right to establish trade unions is extended to foreign nationals. **The Committee trusts that the Government will amend section 6 of Act No. 90-14 as soon as possible so that it recognizes the right of all workers, without distinction on the basis of nationality, to establish trade unions. The Committee also refers the Government to the comments it is making in a direct request asking for the amendment of the relevant provisions on this point in the draft bill to issue the Labour Code.**

*Article 5. Right to establish federations and confederations.* The Committee recalls that its comments have related to sections 2 and 4 of Act No. 90 14 which, read jointly, have the effect of restricting the establishment of federations and confederations in an occupation, branch or sector of activity. The Committee previously noted the Government's indication that section 4 of the Act will be amended to include a definition of federations and confederations. **In the absence of information on any new developments in this regard, the Committee trusts that the Government will amend section 4 of Act No. 90-14 as soon as possible in order to remove any obstacles to the establishment by workers' organizations, irrespective of the sector to which they belong, of federations and confederations of their own choosing. The Committee also refers the Government to the comments it is making in a direct request asking for the amendment of the relevant provisions on this point in the draft bill issuing the Labour Code.**

### Trade union registration in practice

The Committee recalls that its comments have related to the issue of particularly long delays in the registration of trade unions. Its previous comments referred in particular to the situation of the Higher Education Teachers' Union (SESS), the National Autonomous Union of Postal Workers (SNAP) and the CGATA. In its report, the Government indicates that SNAP has been registered, that the authorities informed the SESS of certain requirements that must be met to bring its application into conformity with the law, and that the CGATA was informed in 2015 that it did not meet the legal requirements for the establishment of a confederation. The Committee notes with **concern** the CGATA's allegations denouncing the persistence of obstacles to the registration of newly created trade unions, most recently in the case of the Autonomous Union of Attorneys in Algeria (SAAVA) and the Autonomous Algerian Union of Transport Workers (SAATT). The Committee recalls that the Committee on Freedom of Association and the Committee on the Application of Standards of the International Labour Conference have also addressed this issue in recent years and have requested the Government to process registration applications more rapidly. The Government nevertheless continues to indicate repeatedly that the trade unions concerned have not fulfilled certain requirements. **The Committee expects the Government to take all the necessary measures to guarantee the prompt registration of trade unions which have met the requirements set out by law, and, if necessary, expects the competent authorities to ensure that the organizations in question are duly informed of the additional requirements that have to be met. The Committee requests the Government to indicate which requirements were not fulfilled and urges it to process the registration applications of the CGATA, the SESS, the SAAVA and the SAATT rapidly.**

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

# Armenia

## Labour Inspection Convention, 1947 (No. 81)

(Ratification: 2004)

The Committee notes the observations made by the Confederation of Trade Unions of Armenia (CTUA) and the observations of the Republican Union of Employers of Armenia (RUEA), both received on 30 September 2015.

*Articles 3, 4, 5, 6, 7, 9, 12, 13, 15, 16, 17 and 18 of the Convention. Reform of the labour inspection system and effective exercise of labour inspection functions following the reorganization of the labour inspection services.* In its previous comment, the Committee noted that during the ongoing labour inspection reforms up until 2011, planned inspections had been temporarily suspended. The Committee further noted the Government's indication that, following legal amendments in 2011, limitations on the number of labour inspection visits were introduced, in that: (i) inspection visits in workplaces categorized as high-risk would not be conducted more than once a year; (ii) inspection visits in workplaces categorized as medium risk would not be carried out more than every three years; and (iii) inspection visits in workplaces categorized as low-risk labour inspections would not be carried out more than every five years. In this respect, the Committee expressed the view that limiting the number of inspection visits to a specific number for a certain time period raises obstacles to the effective performance of labour inspection functions.

In reply to its request for further information on the labour inspection reform, the Committee notes the Government's indication in its report that the reform of the labour inspection system is ongoing. In this respect, the Committee refers to the recent merger of the State Labour Inspectorate and the State Sanitary and Epidemiological Inspection, as "State Health Inspectorate" under the Ministry of Healthcare, Decree No. 857 of 2013, as amended. In this context, the Committee also notes that Annex II of Decision No. 857 provides for the structural organization of the State Health Inspectorate with ten divisions, including one occupational safety control division and one labour legislation control division; and that section 8 of Decision No. 857 enumerates the various functions of the State Health Inspectorate, including the exercise of state hygiene and anti epidemic control functions. The Committee notes that the CTUA expresses concern that Decree No. 857 on the reorganizing of the labour inspectorate as a part of the Ministry of Health does not meet the requirements of *Article 4* of the Convention (organization of the labour inspection services under the control and supervision of a central authority) and *Article 9* of the Convention (association of duly qualified technical experts and specialists in the work of the labour inspectorate). The RUEA, for its part, observes that the reorganization and the repealing of Decree No. 1146 of 2004, which established the State Labour Inspectorate within the Ministry of Labour and Social Affairs, were adopted without preliminary discussions with the social partners. The RUEA also states that the State Health Inspectorate does not contribute to the application of the legal provisions concerning labour conditions or pursue the objective of defending workers' rights and that, as a result of these changes, the State Labour Inspectorate had not carried out any activities for almost two years. The RUEA also raises concerns related to article 19 of Law No. 254 of 2014 on Inspection Bodies providing that three years after the entry into force of this Law (that is, 27 December 2014), there will be a need to create a new inspectorate because the State Health Inspectorate of the Ministry of Health will terminate its activity.

In relation to the ongoing reform of the labour inspectorate, the Committee would like to emphasize that, whatever the form of organization or the mode of operation of the labour inspectorate, it is important that the labour inspection system functions effectively and that the principles of the Convention are respected. In this regard, it would like to recall, in particular, that *Articles 4 and 5(a)* of the Convention provide that the inspection system shall be placed under the supervision and control of a central authority and appropriate arrangements shall be made to promote effective cooperation with other control bodies. Furthermore, the inspection staff shall be composed of public officials whose status and conditions of service are such that they are assured of stability of employment and are independent of government and of improper external influences (*Article 6*); labour inspectors shall be recruited with sole regard to their qualifications and adequately trained to dispose of relevant capacities for the performance of their duties (*Article 7*); each Member shall take the necessary measures to ensure that duly qualified technical experts and specialists, including specialists in medicine, engineering, electricity and chemistry, are involved in the work of inspection (*Article 9*); and the number, extent and quality of inspectors and inspections and the allocation of financial means (*Articles 10, 11 and 16*) shall be such as to ensure the effective application of the relevant legal provisions. Moreover, labour inspectors must be provided with the rights and powers provided by the Convention (*Articles 12, 13 and 17*) and must be bound by the obligations provided for in it (*Article 15*). According to *Article 3(1)* and *(2)*, the functions of the system of labour inspection shall be to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work, and any further duties which may be entrusted to labour inspectors shall not be such as to interfere with the effective discharge of their primary duties.

**Noting with concern the observations made by the RUEA on the absence of any labour inspection activity for almost two years, the Committee requests that the Government provide its comments in this respect. The Committee also requests that the Government provide detailed statistics on the number of labour inspection visits carried out since the delegation of functions to the State Health Inspectorate and the number of workplaces and workers covered by these visits in the different sectors (Article 16).**

**The Committee also requests that the Government reply to the concerns raised by the CTUA, and requests information on how the principles of the Convention are given effect to in the reorganized system. In this respect, it requests specific information on the delegation of supervision and control functions to a central authority for labour inspection functions (Article 4), as well as the budgetary and human resources allocated for labour inspection purposes (Articles 10 and 11). The Committee also requests clarification on whether all labour inspectors previously employed by the State Labour Inspectorate have been transferred to the newly created State Health Inspectorate, and whether inspectors assuming labour inspection functions have the necessary qualifications to carry out these duties and the nature of the training they receive for this purpose (Article 7). Noting that the functions relating to the control of working conditions and occupational safety and health are only two of the ten functions entrusted to the State Health Inspectorate, the Committee also requests that the Government specify how it ensures that the other functions entrusted to the State Health Inspectorate do not have a negative effect on the effective discharge of the labour inspectors' primary duties (Article 3(2)).**

**In view of the termination of the activity of the State Health Inspectorate in December 2017 in accordance with article 19 of the Law on Inspection Bodies (that is, three years after the entry into force of the Law), the Committee finally requests that the Government provide information on the proposed organization of the labour inspection services after that date. In this regard, the Committee strongly encourages the Government to ensure that any amendments to the national legal framework and practice concerning the organization of the labour inspection services do not introduce restrictions and limitations to labour inspection, and give effect to all the principles of the Convention.**

*Articles 19, 20 and 21. Annual reports on the work of the labour inspectorate.* The Committee notes that, once again, no annual report containing the type of data and statistics set out in *Article 21* of the Convention, was submitted to the Office. The Committee nevertheless notes the information provided by the Government that clause 8(10)(s) of Decree No. 857-N provides that the labour inspectorate must draw up annual reports on its performance and present it to the Ministry of Healthcare. The Committee also notes the Government's indication that the report was presented to the RUEA and the CTUA for their opinions. **The Committee once again urges the Government to take all necessary measures to ensure the preparation and publication by the central labour inspection authority of an annual report containing all the information required under Article 21 of the Convention and to communicate any progress made in this regard.**

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

## Azerbaijan

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

(Ratification: 1992)

*Articles 2 and 3 of the Convention. Equality of opportunity and treatment between men and women.* For a number of years, the Committee has been requesting the Government to take effective measures to address the significant occupational gender segregation in the labour market, and to improve women's participation rates in sectors or occupations in which they are under-represented. The Committee notes the Strategy "Azerbaijan: Vision 2020", approved by Presidential Decree on 29 December 2012, pursuant to which the Government shall take measures to create equal opportunities for women and men in the labour market, promote women at work and expand their opportunities to occupy leading positions, and adopt a national action plan on gender equality (section 7.4). The Government indicates in its report that as a result of the State Programme for the Implementation of the Employment Strategy for 2011–15, approved by Presidential Decree No. 1836 on 15 October 2015, measures have been carried out to increase women's employability and to foster women's entrepreneurship and self-employment. The Government also indicates that from January 2014 to June 2015, 5,565 persons were enrolled in vocational training, of which 46.2 per cent were women. While welcoming these measures, the Committee notes, however, from the information made available by the State Statistical Committee, the persistent and growing occupational gender segregation in the labour market. It notes, in particular, that, in 2015, most women continued to be employed in low-paid sectors such as health and social services (76.6 per cent against 72.7 per cent in 2011) and education (71.4 per cent against 67.2 per cent in 2011), and represented only 19.7 per cent of private entrepreneurs, as of 1 January 2016. The Committee further notes that, in its concluding observations, the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) expressed concern at: (i) the persistent patriarchal attitudes and stereotypes regarding the roles and responsibilities of women and men in the family and in society which undermine women's representation in paid employment; (ii) the stereotypical choices of educational fields which translate in the concentration of women in traditionally female dominated professions and the lower admission rate of women compared to men to undergraduate study programmes; (iii) the difficulties encountered by women in gaining access to credit owing to traditional stereotypes of the role of women; and (iv) the limited access by rural women to land and related resources and to economic opportunities (CEDAW/C/AZE/CO/5, 12 March 2015, paragraphs 20, 28, 34 and 36). **The Committee therefore urges the Government to address effectively and without delay gender stereotypes and traditional assumptions regarding women's aspirations and capabilities which result in occupational gender segregation, and to adopt specific measures to improve the participation rates of women in those economic sectors and occupations in which they are under-represented, including by encouraging girls and young women to choose non-traditional fields of studies and career paths and enhancing women's participation in vocational training courses leading to employment with opportunities for advancement and promotion. It requests the Government to provide information on the results achieved by any measures taken to this end, including in the framework of the State Programme for the Implementation of the Employment Strategy for 2011–15 and the Strategy "Azerbaijan: Vision 2020", in accordance with Article 3(f) of the Convention. The Committee further asks the Government to indicate if a national action plan on gender equality has been developed, in collaboration with employers' and workers' organizations, and provide a copy of such plan once adopted.**

*Exclusion of women from certain occupations.* Since 2002, the Committee has repeatedly raised concerns regarding the prohibition of the employment of women in certain jobs, pursuant to section 241 of the Labour Code, as well as the extensive list of hazardous workplaces and occupations which are prohibited for women by virtue of Decision No. 170 of 20 October 1999. It notes the Government's indication that, having regard to the requirements of the Convention, work is still ongoing in order to repeal the list of occupations from which women are excluded, and a bill has been drafted to amend section 241 of the Labour Code. **The Committee urges the Government to step up its efforts to repeal without delay the list of occupations for which women are excluded, and to ensure that special protective measures are strictly limited to protecting maternity and not aimed at protecting women generally because of their sex or gender, based on stereotyped assumptions about their capabilities and appropriate role in the family and society. The Committee requests the Government to provide information on any progress made in this regard.**

*Article 3(d). Public sector.* The Committee notes from the data collected by the State Statistical Committee that out of 31,123 public officials, only 29.2 per cent were women, as of 1 January 2016. Of those, only 3.8 per cent were employed in the "superior 3 classifications"; 56.4 per cent in the "4 to 7 classifications"; and 39.7 per cent in the "supplementary posts" of the public service. Furthermore, women represented only 12 per cent of the judges in 2015. The Committee recalls that the Convention requires the State to pursue the national equality policy in respect of employment under the direct control of a national authority (*Article 3(d)*). **The Committee requests the Government to take measures to improve the representation of women in the judiciary and in public service, including in higher-level and decision-making posts, and to provide information on the results of the actions taken and progress made in this respect. The Committee requests the Government to include statistical information, disaggregated by sex, on the distribution of men and women in the public sector and the judiciary.**

*Equal opportunity and treatment of ethnic and national minorities.* Since 2005, the Committee has repeatedly raised concerns regarding discrimination faced by members of ethnic minorities in the fields of employment and education, and had requested the Government to indicate the measures taken or envisaged to promote equality of opportunity and treatment of members of the different ethnic minorities. The Committee notes with **regret** that the Government once again does not provide any information in this regard. It notes that, in its concluding observations, the United Nations Committee on Economic, Social and Cultural Rights expressed concern that minorities, particularly the Lezghin and the Talysh populations, continue to be the victims of widespread discrimination, in particular in employment (E/C.12/AZE/CO/3, 5 June 2013, paragraph 8). It further notes that, in its March 2016 report, the European Commission against Racism and Intolerance (ECRI), while welcoming the Government's efforts to improve the historical minorities' access to public services and to the labour market, indicated that many minorities inhabiting rural and mountainous areas still suffer from higher degrees of poverty and below-average education services, this being detrimental to access to education for children belonging to minorities. ECRI also indicated that several thousand ethnic Azerbaijanis originating from Georgia and other former Soviet republics were still stateless and that Roma communities living in remote areas were lacking basic legal documentation, which resulted in an extremely vulnerable socio-economic situation without access to the education system (CRI(2016)17, 17 March 2016, paragraphs 56, 57 and 58). The Committee recalls that a national policy to promote equality of opportunity and treatment, as envisaged in *Articles 2 and 3 of the Convention*, should include measures to promote equality of opportunity and treatment of members of all ethnic groups, including non-nationals, with respect to access to vocational training and guidance, placement services, employment and particular occupations, and terms and conditions of employment (2012 General Survey on fundamental Conventions, paragraphs 765 and 777). **The Committee urges the Government to provide, without delay, detailed information on the specific measures taken or envisaged to promote equality of opportunity and treatment of members of different ethnic and national minorities and stateless persons, in education, vocational training and employment. Recalling the importance of developing means to assess the progress made in the implementation of the national policy to promote equality, including studies and surveys, the Committee requests the Government to collect and analyse information on the situation of ethnic and national minorities in the labour market, as well as on the impact of the measures previously implemented to ensure their effective protection against discrimination with respect to access to education, vocational training and employment. The Committee requests the Government to provide such information without delay.**

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

# Bahrain

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

(Ratification: 2000)

*Article 1 of the Convention. Discrimination on the basis of political opinion.* The Committee recalls that at the 100th Session of the International Labour Conference June 2011, a complaint was filed by some Workers' delegates at the Conference concerning the non-observance by Bahrain of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), under article 26 of the ILO Constitution. According to the allegations, in February 2011, suspensions and various forms of sanctions, including dismissals, were imposed on members and leaders, as a result of peaceful demonstrations demanding economic and social changes and expressing support for ongoing democratization and reform. The complaint alleged that these dismissals took place on grounds such as workers' opinions, belief and trade union affiliation. At its 320th Session (March 2014), the Governing Body welcomed a Tripartite Agreement, reached in 2012 by the Government, the General Federation of Bahrain Trade Unions (GFBTU) and the Bahrain Chamber of Commerce and Industry (BCCI), as well as a Supplementary Tripartite Agreement of 2014, and invited this Committee to examine the application of the Convention by the Government, and to follow up on the implementation of the reached agreements. According to the Tripartite Agreement of 2012, the national tripartite committee that had been put in place to examine the situation of those workers that had been dismissed or that were referred to criminal courts should continue its work to ensure the full reinstatement of workers. The Committee notes that under the Supplementary Tripartite Agreement of 2014, the Government, GFBTU and BCCI had agreed to: (i) refer to a tripartite committee those cases which have not been settled which relate to financial claims or compensation and, in the absence of consensus, refer to the judiciary; (ii) ensure social insurance coverage for the period of interrupted services; and (iii) reinstate the 165 remaining dismissed workers from the public service sector and from the major private companies where the Government has shares and from other private companies according to the list annexed to the Supplementary Tripartite Agreement. **Noting that the Government provides no information in this respect, the Committee requests it to indicate what specific measures have been taken to implement the Tripartite Agreement of 2012 and the Supplementary Tripartite Agreement of 2014 towards the full application of the Convention, and to inform on the current situation concerning the financial claims or compensation; the provision of social insurance coverage and the reinstatement of the 165 workers dismissed during the 2011 peaceful demonstrations.**

*Article 1(1)(a) and (3). Grounds of discrimination and aspects of employment and occupation.* In its previous comment, the Committee noted that the Labour Law in the Private Sector of 2012 (Law No. 36/2012) does not apply to "domestic servants and persons regarded as such, including agricultural workers, security house-guards, nannies, drivers and cooks" performing work for the employer or the employer's family members (section 2(b)). The Committee further recalls that sections 39 (discrimination in wages) and 104 (termination considered to be discriminatory) of the Labour Law in the Private Sector do not include race, colour (only mentioned in section 39), political opinion, national extraction and social origin in the list of prohibited grounds of discrimination. The Committee notes the Government's indication in its report that section 39 prohibits discrimination in wages in a general and broad manner, and that the term "origin" includes national or social origin, race, or nationality, while the term "ideology" includes political conviction. The Committee further referred to the fact that the Labour Law does not define discrimination, does not appear to prohibit indirect discrimination and covers only dismissal and wages, leaving aside other aspects of employment, such as access to vocational training, access to employment and occupation, and terms and conditions of employment. **Recalling that clear and comprehensive definitions of what constitutes discrimination in employment and occupation are instrumental in identifying and addressing the many manifestations in which it may occur, the Committee requests the Government to take the necessary measures to include in the Labour Law in the Private Sector of 2012 a definition of discrimination as well as a prohibition of direct and indirect discrimination that covers all workers, without distinction whatsoever, with respect to all grounds provided for in the Convention, including colour, with respect to all aspects of employment, including access to vocational training, access to employment and to particular occupations, and terms and conditions of employment, and to provide information on any development in this regard. The Committee also requests the Government to provide information on the manner in which adequate protection against discrimination on the grounds of national extraction, social origin and political opinion is ensured in practice, including information on any case examined by the labour inspectorate or administrative bodies or the courts indicating sanctions imposed and remedies provided. Noting that Legislative Decree No. 48 of 2010 regarding the civil service does not include a prohibition of discrimination, the Committee requests the Government to take the necessary measures to ensure that public officials enjoy adequate protection in practice against direct and indirect discrimination in employment and occupation with respect to all grounds provided for in the Convention. In this regard, the Committee encourages the Government to consider including specific provisions in Legislative Decree No. 48 providing for comprehensive protection against discrimination in the civil service.**

*Sexual harassment.* The Committee recalls that it had referred to the need to define and prohibit, expressly, sexual harassment in employment and occupation encompassing both quid pro quo and hostile environment harassment. The Committee notes that the Government refers once again to the Penal Code No. 15 of 1976 which penalizes sexual harassment in the workplace, and to the possibility of submitting complaints of discrimination to the Ministry of Labour. The Government further indicates that it will examine the efficiency of the Penal Code when it will update the Labour Law in the Private Sector in the future. **Recalling that sexual harassment is a serious manifestation of sex discrimination and a violation of human rights, and that addressing sexual harassment through criminal proceedings is not sufficient due to the sensitivity of the issue, the higher burden of proof, and the limited range of behaviours addressed, the Committee once again urges the Government to take steps to prohibit in the civil or labour law both quid pro quo and hostile environment sexual harassment and to provide remedies and dissuasive sanctions. It also asks the Government to take practical measures to prevent and address sexual harassment in employment and occupation, and to provide detailed information in this regard. The Committee reminds the Government that it can avail itself of the technical assistance of the Office in this respect.**

*Article 3(c). Migrant workers.* The Committee recalls that the Labour Law on the Private Sector excludes "domestic servants and persons regarded as such, including agricultural workers, security house-guards, nannies, drivers and cooks" which are, in their great majority, migrant workers, from the coverage of the non-discrimination provisions. The Committee also recalls that it has been raising concerns regarding the particular vulnerability of migrant workers to discrimination, in particular migrant domestic workers. In its previous comments, the Committee referred to sections 2 and 5 of Ministerial Order No. 79 of 16 April 2009 which give migrant workers the right to change employers subject to approval by the Labour Market Regulatory Authority, but noted the Government's indication that the employer generally had the right to include in the employment contract a requirement limiting the approval of a transfer to another employer for a specified period, which the Committee considered as undermining the objective of Ministerial Order No. 79 of 2009. In this regard, the Committee notes the Government's indication that under section 25 of Law No. 19 of 2006 on the Labour Market Regulatory Authority and Ministerial Order No. 79 of 2009, foreign workers may transfer to another employer without the agreement of the current employer. The Government further indicates that, of the requests accepted by the Labour Market Regulatory Authority between the years 2013 and 2014 (which is 84 per cent of the total number of submissions), 43.5 per cent had the approval of the employer, 1 per cent did not have such approval, and the rest (55.5 per cent) were submitted after the termination or expiration of the previous employment relationship. The Committee also notes the Government's indication that the rejections to transfer requests were usually due to errors in the application such as insufficient documentation and that the employers do not have the right to deprive migrant workers from their rights concerning the freedom of transfer from one employer to another. The Committee further notes the various protective measures available to migrant workers, such as individual complaint mechanisms at the Ministry of Labour, the right of migrant workers to advance their claims to the court directly with an exemption

of litigation fees, and their right to communicate with direct contact centres at the Labour Market Regulatory Authority to have their work permit status reviewed. It notes the Government's general indication of the existence of awareness-raising measures to inform workers of their rights and duties, as well as the stated aim of the labour inspectorate to detect practices of exploitation of migrant workers in the labour market by employers who have not obtained the necessary permits. ***The Committee requests the Government to provide information on the specific measures adopted to ensure effective protection of all migrant workers, including migrant domestic workers, against discrimination based on the grounds set out in the Convention, including access to appropriate procedures and remedies. The Committee further requests the Government to ensure that any rules adopted to regulate the right of migrant workers to change employers do not impose conditions or limitations that could increase the dependency of migrant workers on their employers, and thus increase their vulnerability to abuse and discriminatory practices. The Committee requests the Government to continue to provide information on: (i) the nature and number of requests received by the Labour Market Regulatory Authority for a transfer of employer without the employer's approval, disaggregated by sex, occupation and country of origin, and on how many were refused and on what basis; and (ii) the specific measures taken or envisaged to raise the awareness of both migrant workers and their employers of existing mechanisms to advance their claims to relevant authorities, as well as information on the number and nature of claims submitted regarding this matter.***

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

# Bangladesh

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

(Ratification: 1972)

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

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

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

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

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

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

*Minimum membership requirements.* As regards the existing 30 per cent of the enterprise minimum membership requirement in the BLA, the Committee requested the Government to review sections 179(2), 179(5) and 190(f) of the BLA with the social partners with a view to their amendment and to provide



information on the progress made in this regard. **Regretting** the absence of Government information on this point, the Committee must again recall its **deep concern** that workers are still obliged to meet this excessive requirement for initial and continued union registration; and that unions whose membership falls below this number will be deregistered. **Emphasizing that such a high threshold for merely being able to form a union and maintain registration violates the right of all workers, without distinction whatsoever, to form and join organizations of their own choosing provided under Article 2 of the Convention, the Committee reiterates its previous request to the Government.**

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

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

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

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

*Right to organize in EPZs.* In its previous comments, the Committee urged the Government once again to resubmit the law governing the EPZs for full consultations with the workers' and employers' organizations in the country with a view to enacting new legislation for the EPZs in the near future, which would be fully in conformity with the Convention. The Committee notes the Government's indication that: (i) up until June 2016, out of 409 eligible enterprises in the EPZs, referendums were held in 304 enterprises, and workers in 225 enterprises opted to form a workers' welfare association (WWA); (ii) WWAs are actively performing as collective bargaining agents and from January 2013 to December 2015 submitted 260 charters of demands, which were all settled amicably and concluded by the signing of agreements; (iii) after a wide range of consultations with the elected worker representatives in the EPZs, investors and other relevant stakeholders, adoption of a comprehensive Bangladesh EPZ Labour Act is at the final stage – the draft Act was approved by the Cabinet and is in the process of adoption by Parliament; and (iv) the opinions put forward by the social partners were addressed within the limits of the socio-economic conditions in the country in conformity with international labour standards. While recognizing that the draft EPZ Labour Act represents an effort to provide the zones with protection similar to that provided outside the zones and in many areas reproduces the provisions of the BLA, the Committee observes that the sections concerning freedom of association and unfair labour practices mainly transpose into the draft the EPZ Workers' Association and Industrial Relations Act (EWWAIRA) of 2010, which has been addressed by this Committee for a number of years due to its non-conformity with the Convention and that, according to

the ITUC, workers' representatives were not consulted in the process. Further observing that the scheme of industrial relations in the EPZs is more restrictive than the one outside the zones under the BLA, the Committee notes that the following provisions of the draft EPZ Labour Act are not in conformity with the Convention: the imposition of a trade union monopoly at enterprise and industrial unit levels (sections 94(2) and 106); excessive minimum membership and referendum requirements to create a WWA – 30 per cent of workers have to demand formation of a WWA, 50 per cent of eligible workers have to cast a vote in the referendum and more than 50 per cent of the votes cast must be in favour of formation of a WWA (sections 95(1), 96(2)–(3)); prohibition to establish a WWA during one year after a failed referendum (section 98); interference of the Zone Authority in internal union affairs: formation of a committee to draft the constitution (section 99(2)); approval of funds from an outside source (section 100(2)); approval of WWAs constitutions (section 101); organization and conduct of elections to the Executive Council of WWAs (sections 97(1) and 109(1)); approval of the Executive Council (section 110), and determination of the legitimacy of a WWA (section 119(c)); restriction of WWA activities to zones thus banning any engagement with actors outside the zones, including for training or communication (section 108(2)); legislative determination of the tenure of the Executive Council (section 111); elimination of the possibility for WWAs to join together in a federation (section 108(3) and the deletion of previous draft section 113); possibility to deregister a WWA at the request of 30 per cent of eligible workers even if they are not members of the association (section 115(1)); prohibition to establish WWAs during one year after the deregistration of a previous WWA (section 115(5)); cancellation of a WWA on grounds which do not appear to justify the severity of the sanction (section 116(1)(c) and (e)–(h)); prohibition to function without registration (section 118); prohibition of strike or lock-out for four years in a newly established industrial unit and imposition of obligatory arbitration (section 135(9)); excessive penalties, including imprisonment, for illegal strikes (sections 160(1) and 161); severe restrictions on the exercise of the right to strike – possibility to prohibit strike or lock-out after 15 days or at any time if the continuance of the strike or lock-out causes serious harm to productivity in the Zone or is prejudicial to public interest or national economy (section 135(3)(4)); prohibition of activities not specified in the Constitution and prohibition of any connection with any political party or any non-governmental organization (section 177(1)–(2)); the power of the Zone Authority to exempt any employer from the provisions of the Act making the rule of law a discretionary right (section 182); excessive requirements to form an association of employers (section 121); prohibition of an employer association to maintain any relation with another association in another zone or beyond the zone (section 121(2)); and excessive powers of interference in employers' associations' affairs (section 121(3)). The Committee also notes that section 199 provides the possibility for the Zone Authority to establish regulations, which may further restrain the right of workers and their organizations to carry out legitimate trade union activities without interference, and that Chapter XV on administration and labour inspection, including the maintenance of counsellor-cum-inspector under the supervision of the Zone Authority, run counter to the notion of independent government authority to apply the laws fairly. In light of these considerations, the Committee is of the view that the mentioned provisions of the draft EPZ Labour Act would need to be significantly amended or replaced in order to be brought into conformity with the Convention. **Recalling that both the Conference Committee and the high-level tripartite mission requested the Government to ensure that any new legislation for the EPZs allows for full freedom of association, including the right to form free and independent trade unions and to associate with the organizations of their own choosing, and emphasizing the desirability of a harmonization of the labour law throughout the country which would ensure that the rights, inspection, judicial review and enforcement are equal for all workers and employers, the Committee requests the Government to address all the issues noted, encouraging it to consider replacing Chapters IX, X and XV of the draft Act by Chapter XIII of the BLA (as revised in line with the Committee's comments), thereby providing equal rights of freedom of association to all workers and bringing the EPZs within the purview of the labour inspectorate (Chapter XX of the BLA). The Committee requests the Government to provide information on any measures taken to bring the draft EPZ Labour Act into conformity with the Convention.**

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

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

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

## Belarus

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

(Ratification: 1956)

The Committee notes the observations submitted by the International Trade Union Confederation (ITUC) received on 1 September 2016 on the application of the Convention. It further notes the observations submitted by the Belarusian Congress of Democratic Trade Unions (BKDP) received on 31 August 2016 alleging violations of this Convention in law and in practice. The Committee also notes the observations of the International Organisation of Employers (IOE) received on 1 September 2016, which are of a general nature.

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

As a general point, the Committee notes with *interest* that a tripartite activity on collective labour dispute resolution mechanisms organized by the ILO in Minsk in February 2016 allowed for an open discussion on the existing arrangements and possible new mechanisms, including in the framework of the tripartite Council for the Improvement of Legislation in the Social and Labour Sphere (hereinafter, tripartite Council). The Committee notes the Government's indication that ILO tripartite activities carried out in Belarus following the direct contacts mission in 2014 had a positive impact on the social partners and, in particular, on the relations between various trade union groups. Further in this connection, the Committee welcomes the Government's indication that a training course on international labour standards for judges, lawyers and legal educators is planned to take place with ILO support in the first half of 2017. **The Committee requests the Government to provide information on the outcome of this activity.**

*Article 2 of the Convention. Right to establish workers' organizations.* The Committee recalls that in its previous observation, it had urged the Government to consider, within the framework of the tripartite Council, the measures necessary to ensure that the matter of legal address ceases to be an obstacle to the registration of trade unions in practice. While noting the Government's indication that there had been no cases of refusal to register trade unions or their organizational structures, the Committee recalls that the BKDP had previously indicated that, faced with many obstacles in this respect, independent trade unions generally had been discouraged from seeking registration, despite the widening of possibilities as to the kind of premises which could satisfy the legal address requirement. The Committee **deeply regrets** that the Government's latest report does not indicate any measures taken to address this concern, including through the amendment of Presidential Decree No. 2, its rules and regulations, as recommended by the Commission of Inquiry. **The Committee once again urges the Government to assess, within the framework of the tripartite Council, the measures necessary to ensure that the matter of legal address ceases to be an obstacle to the registration of trade unions in practice and requests the Government to indicate all progress made in this respect.**

*Articles 3, 5 and 6. Right of workers' organizations, including federations and confederations, to organize their activities.* The Committee recalls that it had previously expressed its concern at the allegations of repeated refusals to authorize the BKDP, the Belarusian Independent Trade Union (BNP) and the Radio and Electronic Workers' Union (REP) to hold demonstrations and public meetings. The Committee had urged the Government, in working together with the abovementioned organizations, to investigate all of the alleged cases of refusals to authorize the holding of demonstrations and meetings, and to bring to the attention of the relevant authorities the right of workers to participate in peaceful demonstrations and meetings to defend their occupational interests. The Committee notes the latest allegations submitted by the BKDP regarding a video posted on YouTube showing the activists of the Women's Network of the Independent Union of Miners (NPG) protesting by the entrance to the NPG office against the raising of the retirement age. The participants were summoned to the Soligorsk police station and charged with a violation of the Administrative Code. On 17 May 2016, the court determined the video to be an unauthorized picketing, found the participants guilty and imposed a penalty in the form of an administrative warning. Also in May 2016, the Polotsk Court found Mr Victor Stukov and Mr Nikolai Sharakh, trade union activists of the BNP union at "Polotsk-Fiberglass" enterprise, guilty of participating in unauthorized picketing and imposed fines amounting to €250 and €300, respectively. According to the BKDP, trade unionists were protesting in the city centre against violations of labour legislation at the enterprise and against Mr Sharakh's dismissal. The Committee **deeply regrets** that the Government has failed to provide its comments on the new allegations and to reply to all outstanding allegations of refusal to grant authorization for demonstrations, nor has it provided any information on the steps taken to investigate the cases of refusal with the organizations concerned. **The Committee urges the Government, once again, to work together with the abovementioned organizations to investigate these cases, and to bring to the attention of the relevant authorities the right of workers to participate in peaceful demonstrations and meetings to defend their occupational interests. It requests the Government to provide information on the measures taken in this regard.**

In this connection, the Committee recalls that it has been requesting the Government for a number of years to amend the Law on Mass Activities. It **deeply regrets** that the Government provides no information on the measures taken in this regard. It further **deeply regrets** that no measures have been taken to amend Presidential Decree No. 24, which requires previous authorization for foreign gratuitous aid and restricts the use of such aid. **The Committee therefore once again urges the Government, in consultation with the social partners, to amend the Law on Mass Activities and Decree No. 24 and requests the Government to provide information on all measures taken in this respect.** The Committee considers, in particular, that the amendments should be directed at abolishing the sanctions imposed on trade unions or trade unionists for a single violation of the respective legislation; at setting out clear grounds for the denial of requests to hold trade union mass events, bearing in mind that any such restriction should be in conformity with freedom of association principles; and at widening the scope of activities for which foreign financial assistance can be used, in particular, in view of the apparent (financial) burden that is placed on trade unions to ensure the law and order during a mass event. **The Committee invites the Government to avail itself of ILO technical assistance in this respect.**

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

While duly recognizing the efforts made by the Government, the Committee emphasizes that much remains to be done in order to implement in full all of the Commission of Inquiry's recommendations. **It encourages the Government to pursue its efforts in this respect and expects that the Government, with the assistance of the ILO and in consultation with the social partners, will take the necessary steps to fully implement all outstanding recommendations without further delay.**

**Bolivia, Plurinational State of**  
**Minimum Wage Fixing Convention, 1970 (No. 131)**  
**(Ratification: 1977)**

The Committee notes the observations of the International Organisation of Employers (IOE) and of the Confederation of Private Employers of Bolivia (CEPB), received on 31 August 2015 and 30 August 2016, on the application of the Convention. The Committee notes that these observations reiterate the IOE's observations of 2013.

*Article 1(2) and (3) of the Convention. Scope of application.* In its previous comments, the Committee requested the Government to clarify whether workers in the wood and rubber industries were excluded from the coverage of the minimum wage. The Committee notes the Government's indication in its report that there is a single minimum wage, fixed by Supreme Decree, which is therefore of compulsory application to all workers and employers in the country.

*Article 3(b). Determination of the level of minimum wages. Economic factors.* The Committee notes that the IOE and the CEPB allege that when determining the annual increases in the national minimum wage, only the annual inflation rate is taken into account and other variables, such as economic development, levels of productivity, the promotion of greater and better rates of decent employment, enterprise sustainability and the need to attract investment, are overlooked. In this respect, the Committee notes the Government's indication that in fixing minimum wages, the socio-economic situation of the country is evaluated, including factors such as economic growth, unemployment rates, market fluctuations and the cost of living. **Emphasizing the importance of determining the level of minimum wages, so far as possible and appropriate, taking into consideration the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups, as well as economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment, the Committee requests the Government to take measures to enforce this provision of the Convention.**

*Article 4(2) and (3). Full consultation with and direct participation of the social partners.* In its previous comments, the Committee urged the Government to take prompt action to ensure full consultation with the most representative employers' and workers' organizations and their direct participation in the operation of the minimum wage fixing machinery.

The Committee notes with **concern** that the IOE and the CEPB once again allege that between 2006 and 2016 the Government systematically failed to include employers' organizations in the consultations on minimum wage fixing, allowing only the participation of the Bolivian Central of Workers (COB), a representative workers' organization. The Committee notes the Government's reply to these observations, indicating that, prior to issuing the Supreme Decree fixing the amount of the national minimum wage, the Government conducts a negotiation with the COB to agree on the increase in the national minimum wage. The Committee recalls that, under *Article 4(2)* of the Convention, for the establishment, operation and modification of the machinery for fixing and adjusting from time to time minimum wages, provisions shall be made for full consultation with representative employers' and workers' organizations. **The Committee firmly urges the Government to adopt all the necessary measures to ensure the application of this provision of the Convention in particular in full consultation with employers' organizations.**

**[The Government is asked to send a detailed report in 2017.]**

## Botswana

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

(Ratification: 1997)

The Committee takes note of the observations of the International Organisation of Employers (IOE) received on 1 September 2016, which are of a general nature. The Committee also notes the observations from: the International Trade Union Confederation (ITUC) received on 1 September 2016, referring mainly to matters currently or previously addressed by the Committee and alleging lockout of workers in the mining sector; the ITUC and the Botswana Federation of Trade Unions (BFTU) received jointly on 1 September 2016, concerning new amendments of the Trade Disputes Act (TDA); the BFTU received on 13 September 2016; and Education International (EI) and the Trainers and Allied Workers Union (TAWU) received on 12 October 2016. **The Committee requests the Government to provide its comments on these observations, as well as on the pending observations made by: the TAWU in 2013 (alleging favouritism of certain trade unions by the Government); the ITUC in 2013 (alleging acts of intimidation against public workers); and the ITUC in 2014 (alleging violations of trade union rights in practice).**

*Article 2 of the Convention. Right to organize of prison staff.* In its previous comments, the Committee once again requested the Government to take the necessary measures to amend section 2(1)(iv) of the Trade Unions and Employers Organisations Act (TUEO Act) and section 2(11)(iv) of the TDA, which exclude employees of the prison service from their scope of application, as well as section 35 of the Prison Act, which prohibits members of the prison service from becoming members of a trade union or any body affiliated to a trade union. The Committee notes the Government's indication that the prison service is part of the disciplined force and that amendments to the stated laws would not alter their situation, but that civilian personnel in prisons, governed by the Public Service Act and the Employment Act, are allowed to unionize and that 50 such workers are members of trade unions. As regards the Government's statement that the prison service is part of the disciplined force justifying its exclusion from the Convention, the Committee observes that while the prison service does form part of the disciplined force of Botswana together with the armed forces and the police (article 19(1) of the Constitution), each of these categories is governed by separate legislation – the Prison Act, the Police Act and the Botswana Defence Force Act – and the Prison Act as a separate statute does not appear to provide members of the prison service with the status of the armed forces or the police. The Committee, therefore, considers that the prison service cannot be considered to be part of the armed forces or the police for the purposes of exclusion under *Article 9*. **The Committee requests the Government once again to take the necessary measures, including the pertinent legislative amendments, to grant members of the prison service all rights guaranteed by the Convention. The Committee requests the Government to provide information on any developments in this regard.**

*Article 3. Right of workers' organizations to organize their activities and formulate their programmes.* In its previous comments, the Committee noted with interest the decision of the High Court of Botswana which found that Statutory Instrument No. 57 of 2011 declaring veterinary services, teaching services and diamond sorting, cutting and selling services, and all support services in connection therewith to be essential, was unconstitutional and therefore "invalid" and "of no force and effect". However, the Committee notes with **concern** the indication of the BFTU that section 46 of the new Trade Disputes Bill (Bill No. 21 of 2015) enumerates a broad list of essential services, including the Bank of Botswana, diamond sorting, cutting and selling services, operational and maintenance services of the railways, veterinary services in the public service, teaching services, government broadcasting services, immigration and customs services, and services necessary to the operation of any of these services. The Committee also observes that in line with section 46(2) of the Trade Disputes Bill, the Minister may declare any other service as essential if its interruption for at least seven days endangers the life, safety or health of the whole or part of the population or harms the economy. Recalling that, in light of the right of workers' organizations to organize their activities and formulate their programmes, essential services, in which the right to strike may be prohibited or restricted, should be limited to those the interruption of which would endanger the life, personal safety or health of the whole or part of the population, the Committee considers that the services enumerated do not constitute essential services in the strict sense of the term and that harm to the economy caused by the interruption of a service is insufficient to consider it as an essential service. **The Committee requests the Government to take the necessary measures to amend the draft Trade Disputes Act to reduce the list of essential services accordingly.**

The Committee had also previously requested the Government to provide information on the progress made in relation to the amendment of section 48B(1) of the TUEO Act, which grants certain facilities only to unions representing at least one third of the employees in the enterprise, and section 43 of the TUEO Act which provides for inspection of accounts, books and documents of a trade union by the Registrar at "any reasonable time". The Committee notes the Government's statement that the amendment process of the TUEO Act is ongoing and that the social partners have submitted their proposals for amendments. The Committee further notes that the BFTU indicates that the Government had requested it to submit proposals for amendment of the TUEO Act but that no discussion has taken place on the subject matter. **The Committee trusts that, in the framework of the ongoing amendment process of the TUEO Act and in consultation with the social partners, the abovementioned provisions will be amended taking fully into account the Committee's comments. The Committee requests the Government to provide information on any developments in this regard and to provide the text of the amended TUEO Act once adopted.**

The Committee further observes that a new Public Service Bill, 2016, is in the process of being adopted and should replace the Public Service Act, 2008. **The Committee requests the Government to provide a copy of the Public Service Act upon its adoption or, if not yet adopted, the Bill in its current form.**

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

## Brazil

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

(Ratification: 1952)

The Committee notes the observations of the National Confederation of Liberal Professions (CNPL), received on 15 September 2016, relating to matters examined by the Committee in this observation. The Committee also notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2014, relating to matters examined in the present observation, and also to allegations of anti-union discrimination, including dismissals, in a public enterprise in the state of Sao Paulo and a television broadcaster. With regard to these allegations, the Committee notes the Government's indication that the Brazilian legal system has appropriate mechanisms to punish acts of anti-union discrimination when charges are brought. **The Committee requests the Government to provide information on any decisions by the labour prosecution services and tribunals in the cases raised by the ITUC.**

*Article 1 of the Convention. Adequate protection against anti-union discrimination.* The Committee previously observed that, in the context of various complaints examined by the Committee on Freedom of Association (Cases Nos 2635, 2636 and 2646) alleging acts of anti-union discrimination, the Government had indicated that "although freedom of association is protected under the Constitution, the national legislation does not define anti-union acts and this prevents the Ministry of Labour and Employment from taking effective preventive and repressive measures against conduct such as that reported in the present case". Based on the information provided by the Government, the Committee expressed the hope that, in the context of the Labour Relations Council (CRT), it would be possible to prepare draft legislation explicitly establishing remedies and sufficiently dissuasive sanctions against acts of anti-union discrimination. The Committee **regrets** to note that the Government reports the absence of substantive progress in the preparation of the respective draft legislation. **The Committee therefore once again requests the Government to take the necessary measures to ensure that the legislation explicitly establishes remedies and sufficiently dissuasive sanctions against acts of anti-union discrimination. The Committee requests the Government to report any progress achieved in this regard.**

*Article 4. Promotion of free and voluntary collective bargaining. Compulsory arbitration.* In its previous comments, the Committee requested the Government to indicate whether it was still possible in practice to refer a collective dispute (*dissídio coletivo*) to compulsory judicial arbitration at the request of only one of the parties, and to provide information on developments relating to the draft trade union reform referred to in previous reports. In this regard, the Committee notes that the Government: (i) reaffirms that since the adoption of constitutional amendment No. 45 of 2004, judicial intervention in collective bargaining processes has only been possible where the parties are in agreement to request such intervention; and (ii) indicates that the proposed constitutional amendment No. 369/2005, intended to amend Articles 8, 11, 37 and 114 of the Federal Constitution with a view to promoting collective bargaining and bringing an end to trade union monopoly, is continuing to be examined by the National Congress. **The Committee requests the Government to continue providing information on any developments relating to the examination by the National Congress of this Bill.**

*Right to collective bargaining in the public sector.* The Committee recalls that for many years it has been referring to the need, in accordance with *Articles 4 and 6* of the Convention, for public employees who are not engaged in the administration of the State to have the right to collective bargaining. In this regard, the Committee notes that: (i) the Government indicates that proposed constitutional amendment No. 369/2005, referred to above, also addresses collective bargaining in the public sector; (ii) the CNPL recalls that, under the current legal provisions, public employees engaged in public enterprises and mixed economy companies are governed by the Consolidation of Labour Laws (CLT) and, therefore, enjoy the right to collective bargaining, while public servants, who are subject to specific regulations, are not accorded this right in law; and (iii) various draft legislative texts to regulate collective bargaining in the public sector are currently before Congress. **The Committee encourages the Government to take initiatives in legislative matters and trusts that the various legislative drafts and the constitutional amendment that are currently under examination will take fully into account the obligations deriving from the present Convention and from the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154). The Committee requests the Government to provide information on any progress in this regard and recalls in this context that it may have recourse to the technical assistance of the Office, if it so wishes.**

*Subjection of collective agreements to financial and economic policy.* The Committee recalls that for several years it has been referring to the need to repeal section 623 of the CLT, under the terms of which provisions of an agreement or accord that are in conflict with the standards governing the Government's economic and financial policy or the wage policy that is in force shall be declared null and void. The Committee has also been requesting the Government to take measures to amend Act No. 10192, of February 2001, issuing additional measures under the *Plan Real*, section 13 of which provides that automatic price index-related wage increases or adjustments may not be included in agreements, accords or *dissídios coletivos*. In this regard, the Committee notes that: (i) in its 2014 observations, the ITUC indicated that these provisions are used to impose restrictions on the collective bargaining of wages in public and mixed enterprises; (ii) the Government indicates that restrictions on the scope of collective agreements are established on an exceptional basis, and principally in the context of the provision of public services; and (iii) in this context, the Government adds that the constitutional protection of the general interest may require the financial clauses of collective agreements not to prejudice the wage balance on the market or price levels in the national economy.

In this regard, emphasizing that *Article 4* of the Convention requires the promotion of free and voluntary collective bargaining, the Committee recalls that: (i) the public authorities may establish machinery for discussion and the exchange of views to encourage the parties to collective bargaining to take voluntarily into account considerations relating to the Government's economic and social policy and the protection of the public interest; and (ii) restrictions on collective bargaining in relation to economic matters should only be possible in exceptional circumstances, that is in the case of serious and insurmountable difficulties in preserving jobs and the continuity of enterprises and institutions. **The Committee, therefore once again requests the Government to take the necessary measures to amend the legislation as indicated above and to provide information in its next report on any measures adopted in this regard.**

*Relationship between collective bargaining and the legislation.* The Committee notes that various Bills, currently under examination by the Congress, envisage the amendment of section 618 of the CLT, to provide that terms and conditions of work determined by means of a collective agreement or accord shall prevail over those set out in law, on condition that they are not contrary to the Federal Constitution or occupational safety and health standards. The Committee notes that these Bills would entail a significant modification of the relationship between the legislation and collective agreements and accords by permitting in a general manner that the protection set out in the law could be replaced *in pejus* through collective bargaining. The Committee further observes that the possibility to set aside through collective bargaining legislative provisions conferring workers' rights is being discussed before the highest judicial bodies in the country. In this regard, the Committee recalls that the general objective of Conventions Nos 98, 151 and 154 is to promote collective bargaining with a view to agreeing on terms and conditions of employment that are more favourable than those already established by law (see the 2013 General Survey, *Collective bargaining in the public service: A way forward*, paragraph 298). The Committee emphasizes that the definition of collective bargaining as a process intended to improve the protection of workers provided for by law is recognized in the preparatory work for Convention No. 154, an instrument which has the objective, as set out in its preambular paragraphs, of contributing to the objectives of Convention No. 98. During the preparatory discussions, it was not considered necessary to set out explicitly in the new Convention the general principle that collective bargaining should not have the effect of establishing conditions that are less favourable than those provided for by law. The tripartite Conference Committee responsible for examining the draft Convention considered that this was clear and that it was not, therefore, necessary to include explicit language to that effect.

From a practical viewpoint, the Committee considers that the introduction of a general possibility of lowering through collective bargaining the protection established for workers in the legislation would have a strong dissuasive effect on the exercise of the right to collective bargaining and could contribute to

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undermining its legitimacy in the long term. In this respect, the Committee emphasizes that, although isolated legislative provisions concerning specific aspects of working conditions could, in limited circumstances and for specific reasons, provide that they may be set aside through collective bargaining, a provision establishing that provisions of the labour legislation in general may be replaced through collective bargaining would be contrary to the objective of promoting free and voluntary collective bargaining, as set out in the Convention. ***The Committee trusts that the scope and the content of Article 4 of the Convention will be fully taken into consideration both during the examination of the Bills referred to above, as well as in the pending judicial proceedings. The Committee requests the Government to provide information on any development in this respect.***

## Cambodia

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

(Ratification: 1999)

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

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

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

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

#### **Trade union rights and civil liberties**

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

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

#### **Legislative issues**



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

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

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

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

#### **Application of the Convention in practice**

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

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

## Colombia

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

(Ratification: 1976)

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 30 August 2016, the observations of Public Services International (PSI), received on 1 September 2016, the joint observations of the Confederation of Workers of Colombia (CTC) and the Single Confederation of Workers of Colombia (CUT), received on 5 September 2016, and the joint observations of the CTC, the General Confederation of Labour (CGT) and the CUT, received on 7 September 2016. The Committee notes that these observations, which include denunciations of acts of violence against trade union leaders and members, refer to matters examined by the Committee in the present observation and the corresponding direct request.

The Committee notes the Government's replies to the observations of the ITUC of 2014, of the Union of Cali Municipal Enterprises Workers (SINTRAEMCALI) of 2014 and of the Union of Workers of the Electricity Company of Colombia (SINTRAELECOL), of the same year.

The Committee notes the joint observations of the National Employers Association of Colombia (ANDI) and the International Organisation of Employers (IOE), received on 23 August 2016, which refer to matters examined in the present observation and, particularly, the rules applicable to the exercise of the right to strike.

The Committee also notes the observations of a general nature of the International Organisation of Employers (IOE), received on 1 September 2016.

*Trade union rights and civil liberties.* The Committee recalls that for several years it has been examining, in the same way as the Committee on Freedom of Association, allegations of violence against trade unionists and the situation of impunity. The Committee notes with **concern** that the ITUC, CGT, CUT and CTC allege that, although the number of murders of trade unionists has fallen, according to the figures provided by the trade unions, there were 130 murders of trade unionists in the five-year period 2011–15 (in comparison with 275 murders during the five-year period 2006–10), while over the same period the number of attacks (77) and cases of harassment (269) increased against members of the trade union movement. The Committee also notes the indication by the trade unions that: (i) despite the significant reinforcement of the capacity of the Office of the Prosecutor-General to investigate crimes against trade unionists, there has been no significant progress in combating impunity, and that there have been no convictions in 87 per cent of the murders of members of the trade union movement; (ii) according to the information provided by the Office of the Prosecutor-General, in comparison with the five-year period 2006–10, the annual number of convictions for acts of violence against members of the trade union movement fell between 2011 and 2015; (iii) in 2016, the Higher Council of the Judiciary reduced from three to one the number of magistrates assigned exclusively to cases of murders of members of the trade union movement; and (iv) the protection measures for members of the trade union movement continue to be inadequate, are tending to deteriorate and do not take sufficiently into account the risks affecting women trade unionists. Finally, the trade union confederations add that the State of Colombia has begun to recognize the extent and nature of anti-union violence with the adoption and implementation of the Act on Victims, and that the establishment of the high-level dialogue forum is awaited to push forward the process of collective compensation to the trade union movement and the conclusion of agreements on this subject.

The Committee also notes that the IOE and the ANDI emphasize the efforts made by public institutions for the protection of members of the trade union movement and to combat impunity.

The Committee further notes the Government's indication that: (i) since 20 July 2015, the date of the unilateral ceasefire by the Revolutionary Armed Forces of Colombia (FARC) within the framework of the peace process, there has been a substantial reduction in acts of violence which has had an impact on the population as a whole and has also benefited members of the trade union movement; (ii) the current peace process includes various initiatives, such as the establishment of a special investigation unit for the dismantling of criminal organizations engaged in action against human rights defenders, social movements and political movements; (iii) the State of Colombia is continuing its significant effort to provide protection to members of the trade union movement who are under threat; (iv) the budget of the National Protection Unit (UNP) allocated for the protection of trade union leaders was US\$18.5 million in 2015; (v) around 600 trade unionists are currently benefiting from protection measures; (vi) there have been no cases of murders of trade unionists covered by the programme, nor of those whose protection was removed following the updating of the risk assessment; (vii) the Office of the Prosecutor-General and the courts of Colombia are maintaining their efforts to combat impunity in relation to anti-trade union violence; and (viii) the 2,411 investigations into crimes against trade unionists have resulted in 700 rulings and the conviction of 574 persons. The Committee further notes the Government's indication that it trusts that the completion of the peace process and the implementation of the envisaged measures will contribute to overcoming impunity through the confession of crimes and that Decree No. 624 of 18 April 2016 establishes and regulates the Standing Dialogue Forum with the Trade Union Confederations CUT, CGT, CTC and the Colombian Federation of Teachers (FECODE) with a view to the collective compensation of the trade union movement.

**While noting with concern the allegations of persistent acts of violence against members of the trade union movement, the Committee takes due note of the efforts made by the Government and the other authorities in relation to protection and combating impunity. The Committee refers in this regard to the recent recommendations of the Committee on Freedom of Association (CFA) in the context of Case No. 2761 (380th Report, November 2016, paragraph 274), in which the CFA: (i) urges the Government to continue taking all the measures necessary to ensure that all of the acts of anti-union violence reported are resolved and that the perpetrators and instigators are brought to justice; and (ii) requests the Government to facilitate an inter-institutional evaluation of the investigation strategies used by the public authorities in cases of violence against trade union leaders and members. The Committee also requests the Government to continue providing information on the measures adopted in consultation with trade unions for the establishment of collective compensation for the trade union movement for the violence committed against it.**

*Article 2 of the Convention. Right of workers, without distinction whatsoever, to establish and join organizations of their own choosing.* The Committee notes that, in their joint observations, the CUT, CTC and CGT allege that, as a result of the joint reading of sections 5 and 353 of the Substantive Labour Code (CST), the right to organize is only recognized for persons who have an employment contract, as a result of which judicial rulings and decisions by the Ministry are denying this right to: (i) the 300,000 apprentices, as section 30 of Act No. 789 of 2002, provides that apprentices are not parties to an employment relationship; (ii) over 800,000 workers who are engaged under service provision contracts, governed by civil law; (iii) the unemployed; and (iv) retired workers. In addition, the Committee notes that these observations allege that the legislation applicable to associated work cooperatives continues not to provide for the trade union rights of their members, although the incidence of such cooperatives has fallen.

The trade unions add that these legal obstacles, compounded by the practical difficulties encountered by other categories of workers, such as informal workers and workers under contract with temporary work enterprises, has the effect of maintaining the unionization rate of the national labour force at a very low level. In this regard, the Committee recalls that, under the terms of *Article 2* of the Convention, all workers, irrespective of the legal status under which they work, shall enjoy freedom of association, and that the legislation should not prevent trade unions from including the retired and the unemployed among their members, if they so wish, especially when they have participated in the sector represented by the union. **In light of the above, the Committee requests the Government to provide its comments on the observations of the trade union confederations and to provide data on the unionization rate in the country for the next reporting year and the prior two years.**

*Articles 2 and 10 of the Convention. Trade union contracts.* The Committee notes that the CUT and CTC continue to denounce the practice of trade union contracts, as envisaged in the Colombian legislation, under the terms of which an enterprise may conclude a contract with a workers' organization providing that this organization, through its affiliates or members, performs the work of the enterprise, an arrangement which thoroughly undermines the application of

the Convention as a whole. The CUT and CTC allege more specifically that: (i) by converting trade unions into employers of their members and into employment intermediaries, trade union contracts undermine the role of trade unions, as demonstrated by the establishment of thousands of false unions, and endanger the legitimacy of the trade union movement as a whole; (ii) the legislation applicable to trade union contracts does not contain provisions guaranteeing the exercise of freedom of association by their members; and (iii) the adoption of Decree No. 36 of 2016 by the Ministry of Labour does not resolve these problems satisfactorily. In this regard, the Committee notes the Government's indication, in its report on the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), that: (i) trade union contracts are a legal concept governed by the Substantive Labour Code (CST); (ii) the Constitutional Court has ruled on the provisions of the CST respecting trade union contracts, finding them constitutional; and (iii) with a view to resolving abuses, Decree No. 036 of January 2016 reinforces the regulations governing trade union contracts and ensures that a trade union which has concluded a contract is liable for the direct obligations arising out of the contract. **While taking due note of the adoption of Decree No. 36 of 2016 to prevent trade union contracts being used to undermine the application of the labour legislation, the Committee requests the Government to provide its comments concerning the allegations made by the CUT and CTC respecting the impact of trade union contracts on the application of the Convention.**

*Article 3. Right of trade unions to organize their activities.* In their joint observations, the CGT, CUT and CTC denounce the absence of legal regulations respecting the trade union guarantees and facilities that should be enjoyed by trade unions in the enterprise (free time, trade union leave, right of access to workplaces, the right to communicate with the workers and to disseminate information). The trade union confederations indicate that, in the absence of legislative provisions, trade union organizations have to engage in arduous action to obtain recognition of these facilities in collective agreements. They add that the difficulties relating to the exercise of the right of collective bargaining result in many trade unions not being able to establish these facilities, which is accelerating their disappearance. **The Committee invites the Government to provide its comments on the observations of the trade union confederations and to provide information on the number of collective agreements by sector which provide for facilities for the exercise of freedom of association, the nature of the facilities provided and the number of workers covered by these agreements.**

*Right of organizations to determine their structure.* The Committee notes the allegation by the CUT, CGT and CTC that section 391(1) of the CST only allows the establishment of chapters of trade unions at the municipal level, thereby denying the possibility of establishing chapters in regions or departments where they have members. The trade union confederations indicate that, on the basis of this provision: (i) certain courts have ordered the dissolution of chapters at the regional or departmental levels; and (ii) national trade unions could not establish a section or chapter in the locality where they have their national headquarters. **The Committee requests the Government to provide its comments on this subject.**

*Articles 3 and 6. Right of workers' organizations to organize their activities and to formulate their programmes. Legislative issues.* The Committee recalls that for many years it has been referring to the need to adopt measures to amend the legislation in relation to: (i) the prohibition of strikes by federations and confederations (section 417(i) of the Labour Code) and within a very wide range of services that are not necessarily essential in the strike sense of the term (section 430(b), (d), (f) and (h); section 450(1)(a) of the Labour Code; Taxation Act No. 633/00; and Decrees Nos 414 and 437 of 1952, 1543 of 1955, 1593 of 1959, 1167 of 1963, and 57 and 534 of 1967); and (ii) the possibility to dismiss workers who have intervened or participated in an unlawful strike (section 450(2) of the Labour Code), even in cases in which the unlawful nature of the strike is a result of requirements that are contrary to the provisions of the Convention.

In this regard, the Committee notes the Government's indication that: (i) with reference to section 417 of the CST, which prohibits federations and confederations from calling strikes, it is necessary to take into account ruling C-018 of 2015 of the Constitutional Court, in which the court recalls that "the principal objective of trade unions is to represent the common interests of workers in relation to the employer, which fundamentally takes the form of participating in commissions of various types, the designation of delegates or members of commissions, the submission of claims, collective bargaining and the conclusion of collective agreements and collective contracts, the calling of strikes and the designation of arbitrators", while "federations and confederations are trade union organizations of the second and third level, which discharge functions of providing advisory services to their member organizations in relation to their respective employers to deal with their disputes and in relation to the authorities or third parties with reference to any claims"; (ii) in ruling C-796 of 2014, the Constitutional Court ruled on the prohibition of strikes in the oil sector set out in section 430 of the CST; and (iii) the Ministry is currently engaged in a legal analysis with a view to submitting to the Standing National Committee for Dialogue on Wage and Labour Policies a compendium of proposed amendments to the CST, taking into account the ILO's recommendations.

The Committee notes the observations of the ANDI and the IOE concerning the regulation of strikes in essential services, in which it was emphasized that rulings Nos C 691-08 (finding the prohibition of strikes in the extraction of salt unconstitutional) and C-796 of 2014 (allowing the possibility of strikes in the oil sector, on condition that the normal supply of fuel in the country is not compromised) of the Constitutional Court are in perfect harmony with the Constitution and positions of the ILO.

With regard to the prohibition on federations and confederations from calling a strike, the Committee recalls that, under the terms of *Article 6* of the Convention, the guarantees of *Articles 2, 3 and 4* apply fully to federations and confederations, which should therefore be able to determine their programmes in full freedom. In addition, the Committee emphasizes that, in accordance with the principle of trade union independence, set out in *Article 3* of the Convention, it is not for the State to determine the respective roles of first-level unions and of the federations and confederations to which they are affiliated. **In light of the above, and on the basis of Articles 3 and 6 of the Convention, the Committee requests the Government to take the necessary measures to eliminate the prohibition on the right to strike of federations and confederations as set out in section 417 of the CST.**

With regard to the exercise of the right to strike in the oil sector, the Committee notes that, in the context of Case No. 2946, the Committee on Freedom of Association (375th Report, March 2015, paragraphs 254–257) noted with interest ruling no. C-796/2014 of the Constitutional Court. The Committee notes with **satisfaction** that in this ruling the Constitutional Court considers that: (i) the right to strike is a guarantee associated with freedom of association and the right to collective bargaining, which are also protected by the Political Constitution in Article 55 and in ILO Conventions Nos 87, 98 and 154; (ii) the concept of essential public service set out in article 56 of the Constitution of Colombia must be interpreted on the basis of ILO Conventions, in so far as the suspension of the normal supply of the fuels derived from oil could endanger fundamental rights such as life and health. The Committee notes with **interest** the Constitutional Court's further conclusions: (i) that an analysis is needed on the context in which the interruption of the operations of "the exploitation, refining, transport and distribution of oil and its derived products, where they are intended for the normal supply of fuel for the country, in the view of the Government" results in danger to the life, personal safety or health of the whole or part of the population, and circumstances in which this is not the case, with a view to determining the minimum conditions under which it would be possible to exercise the right to strike in the specific oil sector; and (ii) urging the legislative authorities of Colombia, within a period of two years, to address the issue of the right to strike in the specific oil sector. **While welcoming the orientations of ruling No. C-796/2014, the Committee requests the Government to provide information on the measures taken for the adoption of the legislative changes requested by the Constitutional Court in relation to the exercise of the right to strike in the oil sector. The Committee also requests the Government to provide information on progress in the discussion by the Standing National Committee for Dialogue on Wage and Labour Policies concerning the compendium of amendments to the Substantive Labour Code prepared in light of the ILO's recommendations.**

## Congo

### Labour Inspection Convention, 1947 (No. 81)

(Ratification: 1999)

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

*Absence of practical information to enable the Committee to assess the operation of the labour inspectorate in relation to the provisions of the Convention and relevant national laws.* The Committee notes the updated information regarding the number and geographical distribution by category of labour inspection staff. It notes, by comparison with the data given in the report received from the Government in 2008, a substantial reduction in labour inspection staff, in particular labour inspectors (from 75 to 55) and principal controllers (from 96 to 72). The Committee recalls that, according to *Article 10*, in order to secure the effective discharge of the duties of the labour inspectorate, the number of labour inspectors must be determined with due regard to the importance of the duties which inspectors have to perform, in particular the number, nature, size and situation of the workplaces liable to inspection; the number and classes of workers employed in such workplaces; the number and complexity of the legal provisions to be enforced; the material means placed at the disposal of the inspectors; and the practical conditions under which visits of inspection must be carried out.

While the laws and regulations concerning labour inspection and its mandate and prerogatives are available, it must be noted that there are no numerical data on other areas defined in *Article 10* and, as the Government admits, there are no specific measures for giving effect to the provisions of *Article 11* concerning the material conditions of work of labour inspectors, who do not have access to the transport facilities required for them to carry out their duties. The Committee notes, on the other hand, that according to the Government, inspectors' travel and related costs are reimbursed by the competent authority on presentation of invoices, which was not always the case, according to the report received in 2008.

**The Committee once again requests the Government to provide in its next report all the available information needed to assess the application of the Convention in law and in practice. This information should cover, among other matters: (i) the up-to-date geographical distribution of public officials responsible for labour inspection as defined in Article 3(1) of the Convention; (ii) the geographical distribution of workplaces liable to inspection or, at the least, those for which the Government considers that the conditions of work require specific protection from the labour inspection services; (iii) the frequency, content and number of participants at the training courses provided for labour inspectors during their career; (iv) the level of remuneration and conditions for career advancement in relation to other public officials with comparable responsibilities; (v) the proportion of the national budget allocated to the public labour inspection services; (vi) a description of the cases in which inspectors visit enterprises, the procedure followed and the transport facilities that they use for this purpose, the activities that they carry out and their outcome; and (vii) the proportion of supervisory activities carried out by inspectors in relation to their conciliation duties.**

**The Committee also requests the Government to communicate a copy of any inspection activity reports originating from regional directorates, including the reports cited in the Government's reports sent to the ILO in 2008 and 2011; a copy of the draft or final text of the regulations relating to the status and conditions of service of labour inspectors; copies of the proposed amendments to the Labour Code, and of the memorandum which was reportedly sent to the ILO and is intended to improve the functioning of the labour inspection service.**

**In order to establish a labour inspection system that will respond to the social and economic goals which are the object of the Convention, the Committee urges the Government to make every effort to adopt the measures needed to implement the measures described in the Committee's general observations made in 2007 (concerning the need for effective cooperation between the labour inspection service and the judicial system), in 2009 (concerning the need for statistics on industrial and commercial workplaces subject to labour inspection and the number of workers covered, and 2010 (concerning publication of the content of an annual report on the functioning of the labour inspection system). The Committee recalls once again the possibility of obtaining technical assistance from the ILO and of requesting, within the context of international financial cooperation, financial assistance in order to give the necessary impetus to the establishment and operation of the labour inspection system, and would be grateful for any information on progress made and difficulties encountered.**

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

## Cuba

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

(Ratification: 1952)

The Committee notes the observations of the Independent Trade Union Coalition of Cuba (CSIC), which the Government does not consider to be a trade union, received on 1 September 2016, which refer to many cases of arrests and detentions of trade union members and officials in 2014 and 2015 (revealing their identities and the places of their arrests or detentions), and also notes the Government's reply to these observations, describing them as biased and motivated by ill intent. The Committee recalls that the arrest and detention of trade union members and officials, even for a short period, for exercising legitimate trade union activities, constitutes a violation of the principles of trade union freedom enshrined in the Convention. **The Committee, trusting that the Government will ensure observance of this principle, requests it to report on whether official complaints have been lodged relating to the acts referred to by the CSIC and, if so, whether administrative or judicial investigations and proceedings have been conducted.**

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

*Trade union rights and civil liberties.* The Committee recalls that in its previous comments it regretted that the Government had not provided copies of the court rulings related to the convictions of workers belonging to the Independent National Confederation of Workers of Cuba (CONIC), the persecution and threats of imprisonment against delegates of the Light Industry Workers' Union (SITIL) and the confiscation of equipment and humanitarian aid sent from abroad to the Single Council of Cuban Workers (CUTC). The Committee recalls that these matters were examined by the Committee on Freedom of Association in Case No. 2258, in which it emphasized the persistent failure to send the rulings convicting trade unionists and to follow up on its recommendation to initiate a thorough investigation into the allegations relating to the CONIC. The Committee notes that, in its report, the Government reiterates that the trade unionists referred to were sentenced for committing offences duly specified in law, and it cannot be claimed, therefore, that the Convention has been violated. **The Committee once again requests the Government to provide copies of the rulings in question.**

*Legislative matters.* The Committee notes the adoption of Act No. 116 of 2013, issuing the new Labour Code as well as Decree No. 236, issuing the regulations of the Labour Code. The Committee notes that Chapter II of the Labour Code regulates trade unions and provides that workers have the right to organize voluntarily and to establish trade unions, in conformity with the unitary foundational principles, and their statutes and rules, which shall be considered and approved democratically, and shall be in accordance with the law.

*Articles 2, 5 and 6. Trade union monopoly set out in law.* With regard to the comments it has been making for many years on the need to remove the reference to the Confederation of Workers of Cuba (CTC) from sections 15 and 16 of the Labour Code, the Committee notes with **satisfaction** that the new Code contains no specific reference to any trade union.

*Article 3. Right of organizations to organize their activities and formulate their programmes.* The Committee recalls that it has been referring for years to the absence of explicit recognition of the right to strike in the legislation and the prohibition of its exercise in practice. The Committee notes that the new Labour Code again contains no provisions explicitly recognizing the right to strike. The Committee notes the Government's reiteration that there is no provision in law which prohibits the right to strike, nor does criminal law establish any penalties for the exercise of such rights. The Committee recalls that the Convention does not require the adoption of legal provisions to regulate the right to strike provided that this right, which is an expression of trade unions' rights to freely organize their activities for the legitimate defence of the interests of their members, may be exercised in practice without organizations and participants being at risk of the imposition of penalties. **The Committee requests the Government to provide information on measures taken or envisaged to ensure that no one suffers discrimination or prejudice in their employment for having peacefully exercised the right to strike, and also requests it to provide information on the exercise of this right in practice, including the number and nature of strikes called since 1 January 2016 and any administrative or judicial investigations or procedures initiated or conducted in relation to the strikes.**

# Democratic Republic of the Congo

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

(Ratification: 2001)

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

*Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or similar practices. Forced recruitment of children for use in armed conflict.* In its previous comments the Committee noted that section 187 of Act No. 09/001 of 10 January 2009 establishes a penalty of penal servitude of ten to 20 years for the enrolment or use of children under 18 years of age in the armed forces and groups and the police. The Committee noted that, according to the report of 9 July 2010 of the United Nations Secretary-General on children and armed conflict in the Democratic Republic of the Congo (S/2010/369, paragraphs 17–41), 1,593 cases of recruitment of children were reported between October 2008 and December 2009, including 1,235 in 2009. The report of the United Nations Secretary-General also indicated that 42 per cent of the total number of cases of recruitment reported have been attributed to the Armed Forces of the Democratic Republic of the Congo (FARDC). The Committee also noted with concern that, according to the Secretary-General's report, the number of incidents involving the killing and maiming of children had increased. In addition, a significant increase in the number of abductions of children was also observed over the period covered by the Secretary-General's report, mainly carried out by the Lords' Resistance Army (LRA) but in some cases by the FARDC. The Committee also observed that the Committee on the Rights of the Child (CRC), in its concluding observations of 10 February 2009 (CRC/C/COD/CO/2, paragraph 67), expressed grave concern that the State, through its armed forces, bears direct responsibility for violations of the rights of the child and that it had failed to protect children and prevent such violations.

The Committee notes the Government's indication that children under 18 years of age are not recruited into the armed forces of the Democratic Republic of the Congo. Nevertheless, the Committee notes that, according to the report of 23 April 2011 of the United Nations Secretary-General on children and armed conflict (A/65/820-S/2011/250, paragraph 27), many children continue to be recruited and remain associated with FARDC units, particularly within former units of the *Congrès national pour la défense du peuple* (CNDP) incorporated into the FARDC. The report also indicates that, of the 1,656 children in the armed forces or groups who escaped or were released in 2010, a large proportion had been recruited to the FARDC (21 per cent) (paragraph 37). Moreover, despite the drop in the number of cases of children recruited into armed forces and groups in 2010, the report points out that former CNDP elements continue to recruit or to threaten to recruit children under 18 years of age from schools in North Kivu (paragraph 85). The Committee also notes that no judicial action has been initiated against the suspected perpetrators of forced recruitment of children, some of whom remain in the command structure of the FARDC (paragraph 88).

Furthermore, physical and sexual violence committed against children by the FARDC, the Congolese National Police and various armed groups continued to be a source of serious concern in 2010. The Committee notes in particular that in 2010, of the 26 recorded cases of killing of children, 13 were attributed to the FARDC. In addition, seven cases of maiming of children and 67 cases of sexual violence against children are alleged to have been perpetrated by FARDC elements during the same period (paragraph 87).

The Committee observes that despite the adoption of Legislative Decree No. 066 of 9 June 2000, concerning the demobilization and reintegration of vulnerable groups present within the fighting forces, and of Act 09/001 of 10 January 2009, which prohibits and penalizes the enrolment and use of children under 18 years of age in armed forces and groups and the police (sections 71 and 187), children under 18 years of age continue to be recruited and forced to join the regular armed forces of the Democratic Republic of the Congo and armed groups. The Committee expresses deep concern at this situation, especially as the persistence of this worst form of child labour results in other violations of children's rights, such as murder and sexual violence. **The Committee therefore urges the Government to take measures as a matter of urgency to ensure the full and immediate demobilization of all children in the ranks of the FARDC and to put a stop, in practice, to the forced recruitment of children under 18 years of age into armed groups. With reference to Security Council resolution 1998 of 12 July 2011, which recalls "the responsibilities of States to end impunity and to prosecute those responsible for genocide, crimes against humanity and other egregious crimes perpetrated against children", the Committee urges the Government to take immediate and effective measures to ensure that thorough investigations and robust prosecutions of any persons, including officers in the regular armed forces, who forcibly recruit children under 18 years of age for use in armed conflict, are carried out and that sufficiently effective and dissuasive penalties are imposed in practice, pursuant to Act No. 09/001 of 10 January 2009. It requests the Government to provide information on the number of investigations conducted, prosecutions brought and convictions handed down against such persons in its next report.**

*Clauses (a) and (d). Forced or compulsory labour and hazardous work. Child labour in mines.* In its previous comments the Committee noted the statement by the Confederation of Trade Unions of the Congo (CSC) that young persons under 18 years of age are employed in mineral quarries in the provinces of Katanga and East Kasai. It noted that the United Nations Special Rapporteur, in her report of April 2003 on the situation of human rights in the Democratic Republic of the Congo (E/CN.4/2003/43, paragraph 59), noted that military units are recruiting children for forced labour, especially for the extraction of natural resources. The Committee observed that, although the legislation is in conformity with the Convention on this point, child labour in mines is a problem in practice and it, therefore, asked the Government to supply information on the measures which would be taken by the labour inspectorate to prohibit hazardous work by children in mines.

The Committee notes the Government's indication that action to strengthen the capacities of the labour inspectorate is planned in the context of the formulation and implementation of the National Plan of Action (PAN) for the elimination of child labour by 2020. The report also indicates that the Government has launched consultations with a view to gathering statistics on the application, in practice, of legislation relating to the prohibition on hazardous work in mines for children under 18 years of age. However, the Committee notes the UNICEF statistics included in the Government's report, which indicate that nearly 50,000 children are working in mines in the Democratic Republic of the Congo, including 20,000 in the province of Katanga (south-east), 12,000 in Ituri (north-east) and some 11,800 in Kasai (centre). Moreover, the Committee observes that, according to the information in the 2011 report on trafficking in persons, armed groups and the FARDC are recruiting men and children and subjecting them to forced labour for the extraction of minerals. According to the same document, the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) report of January 2011 reports that a commander of one of the FARDC battalions makes use of the forced labour of children in mines in North Kivu. The Committee expresses its deep concern at the allegations that children under 18 years of age are used, especially by certain elements of FARDC, for the extraction of minerals in conditions similar to slavery and in hazardous conditions. **The Committee therefore urges the Government to take immediate and effective measures, as a matter of urgency, to eliminate the forced or hazardous labour of children under 18 years of age in mines. It requests the Government to take the necessary measures to ensure that thorough investigations and robust prosecutions of offenders are carried out and that sufficiently effective and dissuasive penalties are imposed on them in practice. The Government is also requested to provide statistics on the application of the legislation in practice and also requests it to provide information on action to strengthen the capacities of the labour inspectorate planned in the context of the PAN.**

*Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour, removing them from such work and ensuring their rehabilitation and social integration. Child soldiers.* In its previous comments, the Committee noted that, according to the report of the United Nations Secretary-General of 9 July 2010, the number of children released in 2009 more than tripled in comparison with 2008, particularly in the province of North Kivu (S/2010/369, paragraphs 30 and 51–58). Between October 2008 and the end of 2009, a total of 3,180 children (3,004

boys and 176 girls) left the ranks of the armed forces and groups or fled and were admitted to reintegration programmes. However, the Committee noted with concern that on many occasions the FARDC denied access to the camps to child protection institutions seeking to verify the presence of children in FARDC units and that the commanders refused to release children. The Committee also observed that there were many obstacles to effective reintegration, such as the constant insecurity and the continuing presence of former recruiters in the same region. The Committee further noted that the CRC, in its concluding observations of 10 February 2009 (CRC/C/COD/CO/2, paragraph 72), expressed concern at the fact that no provision has been made to assist several thousand child victims recruited or used in hostilities with rehabilitation and reintegration and that some of these children have been re-recruited for want of alternatives or assistance with demobilization. According to the report of the Secretary-General of 9 July 2010, girls associated with the armed forces and groups (around 15 per cent of the total number of children) rarely have access to reintegration programmes, with only 7 per cent receiving assistance through national disarmament, demobilization and reintegration programmes.

The Committee notes the information provided by the Government concerning the results achieved regarding the demobilization of child soldiers by the new structure of the Unit for the Implementation of the National Programme for Disarmament, Demobilization and Reintegration (UE-PNDDR). It observes that more than 30,000 children have been separated from the armed forces and groups since the launch of the programme in 2004, including nearly 3,000 in 2009 and 2010. Moreover, 6,704 children removed from the armed forces and groups (1,940 girls and 4,764 boys) received support in 2010. However, the Committee observes that, according to the report of 23 April 2011 of the United Nations Secretary-General on children and armed conflict, only 1,656 children recruited to the armed forces or groups escaped or were released in 2010 (A/65/820-S/2011/250, paragraph 37). Of these, the vast majority fled and only a small minority were released by child protection institutions (paragraph 38). The Committee also notes with regret that, according to the aforementioned report, the Government has not been forthcoming in engaging with the United Nations on an action plan to end the recruitment and use of children by the FARDC (paragraph 27). The Committee further observes that, although more than 50 screening attempts were carried out by MONUSCO aimed at demobilizing children under 18 years of age who had been recruited to the FARDC, only five children were demobilized owing to the fact that FARDC troops were not made available for screening by MONUSCO. The Committee also notes that a large number of children released in 2010 stated that they had been recruited several times (paragraph 27) and that some 80 children who had been reunited with their families returned to the transit centres alone in North Kivu during November 2010 for fear of being re-recruited (paragraph 85). **The Committee therefore urges the Government to intensify its efforts and take effective, time-bound measures to remove children from armed groups and forces and ensure their rehabilitation and social integration, giving special attention to the demobilization of girls. It expresses the firm hope that the Government will adopt a time-bound plan of action in the very near future, in collaboration with MONUSCO, to put a stop to the recruitment of children under 18 years of age into the regular armed forces and to ensure their demobilization and reintegration. The Committee also requests the Government to continue to provide information on the number of child soldiers removed from armed forces and groups and reintegrated through appropriate assistance with rehabilitation and social integration. It requests the Government to provide information on this matter in its next report.**

*Children working in mines.* The Committee previously noted that a number of projects for the prevention of child labour in mines and the reintegration of these children through education were being implemented, aimed at covering a total of 12,000 children, of whom 4,000 were to be covered by prevention measures and 8,000 were to be removed from labour with a view to their reintegration through vocational training.

The Committee notes the Government's indication that efforts are being made to remove children working in mines from this worst form of child labour. The Government also indicates in its report that more than 13,000 children have been removed from three mining and quarrying locations in Katanga, East Kasai and Ituri as part of the work of the NGOs Save the Children and Solidarity Centre. These children were then placed in formal and non-formal education structures and also in apprenticeship programmes. However, the report also indicates that, in view of the persistence of the problem, much work remains to be done. **The Committee therefore requests the Government to intensify its efforts to prevent children under 18 years of age from working in mines and to provide the necessary and appropriate direct assistance for their removal from these worst forms of child labour and to ensure their rehabilitation and social integration. It requests the Government to provide information on the measures taken or contemplated in the context of the PAN and on the results achieved.**

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.**

## Ecuador

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

(Ratification: 1967)

The Committee notes the joint observations of the National Federation of Education Workers (UNE) and Public Services International (PSI), received on 1 September 2016, and the joint observations of the UNE and Education International (EI), received on 7 September 2016, with both trade union communications referring to matters examined in the present observation and the corresponding direct request. The Committee also notes that, in the context of their observations on the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), received on 1 September 2016, the above organizations report police violence in the context of a peaceful demonstration accompanying the adoption on 3 December 2015 of amendments to the national Constitution, and the arbitrary detention of 21 persons, including the President of the Confederation of Workers of Ecuador, Edgar Sarango. **The Committee expresses concern at these allegations and requests the Government to send its comments in this regard.**

The Committee also notes the observations of the National Federation of Chambers of Industries of Ecuador, received on 2 September 2016, which also refer to matters examined in the present observation and in the corresponding direct request. The Committee finally notes the observations of the International Organisation of Employers (IOE), received on 1 September 2016, which are of a general nature.

The Committee notes the Government's comments in reply to the joint observations of 2015 of the UNE, Public Services International (PSI) and the United Front of Workers (FUT). With reference to the complaint concerning the active role of the Government in the establishment of the National Confederation of Public Sector Workers, the United Central Workers' Organization and the Primary Teachers' Network, the Committee notes the Government's indication that: (i) the State promotes the creation of all types of associations or organizations without favouritism or interference; (ii) it plays an active role in simplifying the procedures for the establishment and registration of labour organizations; and (iii) the Primary Teachers' Network is not a labour or trade union organization, but an educational organization. With regard to the situation of Mery Zamora, former President of the UNE who, according to these trade unions, was subject to criminal persecution by the public authorities, the Committee notes the Government's indication that Mery Zamora was found innocent by the judicial system.

#### Application of the Convention in the public sector

*Article 2 of the Convention. Right of workers to establish organizations of their own choosing without previous authorization. Impossibility of establishing more than one trade union in state bodies.* In its previous comments, the Committee examined article 326(9) of the Constitution, which provides that for all purposes relating to industrial relations in state institutions, workers shall be represented by a single organization. Having taken due note of the Government's indication that other provisions of the Constitution (article 326(7)) and of laws do recognize the right of workers in the public sector, without distinction whatsoever, to establish organizations of their own choosing, the Committee requested the Government to take measures to amend article 326(9) of the Constitution so as to bring it into conformity with *Article 2* of the Convention and with the provisions of Ecuadorian legislation referred to above. The Committee notes the Government's indication in its latest report that the objective of article 326(9) of the Constitution is to prevent the disorganized proliferation of labour organizations. The Committee also notes that the PSI and the UNE provide with their observations the text of the Bill to amend the legislation governing the public sector, which is currently under examination by the National Assembly. The Committee notes that the Bill provides that, for the purposes of the exercise of their right to organize, in light of article 326(9) of the Constitution, public servants shall be represented by a "committee of public servants" (CPS), the members of which shall represent at least half plus one of all public servants in the same institution. The Committee observes that: (i) under the terms of the Bill, the CPS would have all the characteristics of a workers' organization, with members, statutes and an executive board; (ii) the CPS would have all the attributes to promote and defend the collective interests of public servants recognized in the Bill (especially the right to social dialogue and the right to strike); (iii) the Bill does not envisage other forms of organization through which public servants could collectively defend their interests and exercise the collective rights referred to above; and (iv) in view of the need to include half plus one of all public servants, there could only be one CPS for each institution. The Committee recalls that, under the terms of *Article 2* of the Convention, workers, whether in the public or private sector, must be able to establish the organizations of their own choosing. In light of the above, the monopoly of organization imposed by the law, whether directly or indirectly, is contrary to the provisions of the Convention, and trade union pluralism should be possible at all times. **The Committee therefore urges the Government to take the necessary measures immediately to ensure that, in accordance with Article 2 of the Convention, both the Constitution and the legislation fully respect the right of public servants to establish the organizations of their own choosing for the collective defence of their interests. The Committee requests the Government to provide information on this subject.**

*Articles 2, 3 and 4. Registration of associations of public servants and their officers. Prohibition of the administrative dissolution of such associations.*

*Regulations on the operation of the unified information system for social and citizens' organizations (Executive Decree No. 16 of 20 June 2013, as amended by Decree No. 739 of 12 August 2015).* In its previous direct request, the Committee observed that Executive Decree No. 16 envisaged broad grounds for administrative dissolution, such as engaging in party political activities (reserved for political parties and movements registered with the National Electoral Board), activities interfering in public policies which prejudice the internal or external security of the State, and activities jeopardizing public peace (section 26(7) of the Decree). The Committee requested the Government to provide information on the applicability of these grounds for administrative dissolution to occupational organizations of public servants and to workers' trade unions governed by the Labour Code. The Committee notes the Government's indication that: (i) Executive Decree No. 16, as amended by Decree No. 739, only applies to social and citizens' organizations self-defined as such, and is not therefore applicable to labour organizations; (ii) the labour legislation in Ecuador establishes a complex procedure for the dissolution of labour organizations, which may be requested by their members, but not at all by the State, or by employers in the private sector; and (iii) associations (of public servants) such as the UNE, which were not registered by the Ministry of Labour, but by the Ministry of Education, are not labour organizations governed by the Labour Code and are therefore covered by the provisions of Executive Decrees Nos 16 and 739.

In this regard, in light of *Article 10* of the Convention, the Committee recalls that, in so far as occupational associations of public servants have the objective of furthering the economic and social interests of their members, irrespective of their classification or legal regulation under the terms of the national law, they are fully protected by the guarantees of the Convention. The Committee recalls in particular that the defence of the interests of their members requires associations of public servants to be able to express their views on the Government's economic and social policy, and that *Article 4* prohibits dissolution or suspension by administrative authority. **In light of the above, the Committee urges the Government to adopt the necessary reforms so that occupational associations of public servants are not subject to grounds for dissolution which prevent them from exercising in full their mandate of defending the interests of their members, and are not subject to administrative dissolution or suspension. The Committee requests the Government to provide information on this subject.**

*Administrative dissolution of the UNE.* In its previous comments, the Committee requested the Government to register the new executive committee of the UNE. In this regard, the Committee notes the observations of the UNE, EI and PSI alleging that: (i) in view of the continued refusal of the authorities to register the executive committee of the UNE, the teachers of the country took the initiative of convening an extraordinary congress on 14 May 2016 to start from zero the process of registering their executive committee; (ii) in July 2016, the Sub-secretariat for Education of the Metropolitan District of Quito, under the terms of Executive Decree No. 16, initiated the process of the administrative dissolution of the UNE; (iii) the Sub-secretariat for Education of the Metropolitan District of Quito declared the dissolution of the UNE in a resolution of 18 August 2016; and (iv) with a view to initiating the process of liquidating the assets of the UNE,



the National Police of Ecuador raided and took over the trade union headquarters of the UNE in the cities of Guayaquil and Quito on 29 August 2016. The Committee also notes the Government's indication that: (i) the UNE had been requested since 23 December 2013 to comply with a list of six requirements set out both in the regulations that are in force and in its own statutes; and (ii) the convocation of an extraordinary congress by a number of members of the social organization, who did not have the power to do so, to elect the members of its executive committee is in violation of the provisions of Executive Decree No. 16, as well as clause 18 of the statutes of the organization. Finally, the Committee notes that, in a joint communication of 27 September 2016, the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the United Nations Special Rapporteur on the situation of human rights defenders condemned the use of the national legislation in Ecuador to dissolve the UNE. In light of the above, the Committee is bound to recall once again that the election of the officers of workers' organizations, which include professional associations of public servants, is an internal matter in which the administrative authorities should not interfere and that the administrative dissolution of workers' organizations constitutes a serious violation of the Convention. **The Committee expresses its deep concern at the administrative dissolution of the UNE and urges the Government to take all necessary measures on an urgent basis to revoke that decision so that the UNE can immediately exercise its activities once again. The Committee requests the Government to report on any progress in this regard.**

*Article 3. Right of workers' organizations and of associations of public servants to organize their activities and to formulate their programmes. Prison sentences for the stoppage or obstruction of public services.* In its previous comments, the Committee urged the Government to take the necessary measures to amend section 346 of the Basic Comprehensive Penal Code so as not to impose penal sanctions on workers engaged in a peaceful strike. In this regard, the Committee notes the Government's indication that: (i) the prohibition set out in this section refers to the illegal and unlawful interruption of a public service outside the procedures governing the exercise of the right to strike; (ii) the objective of the penal provision is to safeguard the right of citizens to have access to public services without any limitation; and (iii) there is a process to be followed to call a strike in the public sector, and the labour legislation determines a system of minimum services to be provided. **Recalling that no penal sanctions should be imposed for the peaceful participation in a strike and that such sanctions should only be permissible where violence is committed against persons or property, or other serious violations of penal law, the Committee once again urges the Government to take the necessary measures to amend section 346 of the Basic Comprehensive Penal Code as indicated above and to report any developments in this regard.**

### Application of the Convention in the private sector

*Article 2. Excessive number of workers (30) required for the establishment of workers' associations, enterprise committees or assemblies for the organization of enterprise committees.* The Committee recalls that, since the legislative reform of 1985, which increased the minimum number of members required from 15 to 30, it has been requesting the Government to reduce the minimum number of workers required by law to establish workers' associations or enterprise committees. The Committee notes the Government's indication that the minimum number of 30 members is intended to ensure the representative nature of the enterprise committee and to allow the conclusion of collective contracts which strengthen the union and its members. In this regard, the Committee emphasizes that the requirement of a reasonable level of representativity to conclude collective agreements, which is not contrary to the ILO Conventions on freedom of association and collective bargaining, must not be confused with the conditions required for the establishment of trade union organizations. Emphasizing that, under the terms of *Article 2* of the Convention, workers shall have the right to establish organizations of their own choosing in full freedom, the Committee recalls that it has generally considered that the requirement of a minimum number of 30 members to establish enterprise unions in countries in which the economy is characterized by the prevalence of small enterprises hinders the freedom to establish trade unions. **The Committee therefore once again requests the Government, in consultation with the social partners, to take the necessary measures to amend sections 443, 452 and 459 of the Labour Code to reduce the minimum number of members required to establish workers' associations and enterprise committees.**

*Article 3. Compulsory time limits for the convening of trade union elections.* In its previous comments, the Committee noted the allegation by various trade unions that section 10(c) of Ministerial Decision No. 0130 of 2013, regulating labour organizations, is in violation of the independence of trade unions by providing that trade union executive committees shall lose their powers and competencies if they do not convene elections within 90 days of the expiration of their mandate, as set out in the statutes of their organizations. The Committee requested the Government to provide its comments on this subject, as well as information on the application of this provision in practice. The Committee notes the Government's indication that the purpose of this provision is to promote the normal democratic functioning of trade unions. While observing that the promotion through the legislation of the democratic functioning of trade unions is not in itself contrary to the Convention, the Committee recalls that, by virtue of *Article 3* of the Convention, trade union elections are an internal matter for the organizations which should primarily be governed by their statutes. **The Committee therefore requests the Government to amend section 10(c) of Ministerial Decision No. 0130 of 2013 to ensure that, in compliance with democratic rules, the consequences of any delay in convening trade union elections are set out in the by-laws of the organizations themselves.**

*Election as officers of enterprise committees of workers who are not trade union members.* In its previous comment, the Committee noted that new section 459(3) of the Labour Code provides that enterprise committees "shall be composed of any worker, whether or not a union member, who is registered on the lists for such election". The Committee considered that the imposition by law that workers who are not union members may stand for election as officers of the enterprise committee is contrary to the trade union autonomy recognized by *Article 3* of the Convention, and it requested the Government to take the necessary measures to amend this provision of the Labour Code. In this regard, the Committee notes the Government's indication that enterprise committees represent all workers, whether or not they are members of a union. Observing that, under the terms of the Labour Code, the enterprise committee is one of the forms which may be assumed by trade union organizations within the enterprise, and that the officers of the enterprise committee are elected solely by workers in the enterprise who are unionized, the Committee once again emphasizes that it would be acceptable for workers who are not union members to stand for office only if the specific by-laws of the enterprise committee envisage this possibility. **The Committee therefore once again requests the Government to take the necessary measures to amend section 459(3) of the Labour Code to bring it into compliance with the principle of trade union autonomy, and to provide information on any progress achieved in this regard.**

**The Committee observes with deep concern that, despite its reiterated comments, restrictions on freedom of association that are contrary to the guarantees of the Convention are being extended, especially in the public service. The Committee urges the Government to take fully into consideration the content of the present observation both with regard to the legislation that is in force and its application, and in relation to the draft legislation that is currently under examination, and particularly the Bill to reform the administrative legislation. In this regard, the Committee recalls that the Government may have recourse to ILO technical assistance.**

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

**[The Government is asked to supply full particulars to the Conference at its 106th Session and to reply in full to the present comments in 2017.]**

# Egypt

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

(Ratification: 1957)

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 31 August 2014 and 31 August 2016, which refer to legislative issues already being raised by the Committee, as well as allegations of arrest and harassment of trade unionists. The Committee further notes the observations of several Egyptian trade unions received from the ITUC on 1 September 2016. **The Committee urges the Government to provide its comments on the serious allegations contained in these communications.** The Committee takes note of the comments of the Government on the observations from the ITUC of 2013 and the Government's expression of its commitment to comply with Conventions it has ratified. 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 recalls that in its previous comments it noted with interest that the final draft law on trade union organizations and protection of the right to organize was being discussed by the Council of Ministers and was expected to be finalized soon. The Committee expected that the draft would be adopted in the very near future and would ensure full respect for freedom of association rights, and it requested the Government to transmit a copy of the law once promulgated. The Committee notes from the Government's latest report that a draft law on freedom of association was prepared to replace the current Trade Unions Act No. 35 of 1976, was approved by the Council of Ministers and is currently before the House of Representatives (*Majlis Al Nouwab*) for adoption. According to the Government, the draft law takes into account the comments made by the Committee on the need to ensure conformity of national legislation with the provisions of the Convention. The Committee, however, notes with **concern** the ITUC's observations that no tangible results have been delivered on the discussions for a new trade union law since 2011 and that the independent trade unions are still awaiting formal recognition.

The Committee further notes the conclusions and recommendations of the Committee on Freedom of Association in Case No. 3025 (375th Report, paragraphs 201–210) in which the Committee expressed its expectation that the draft law on trade union organizations will provide clear legislative protection to the numerous newly formed independent trade unions and ensure full respect for freedom of association rights and requested the Government to transmit detailed information in this regard and supply a copy of the law to the Committee of Experts.

The Committee, therefore, finds itself bound to recall the comments it has been making for several years on the discrepancies between the Convention and the Trade Union Act No. 35 of 1976 as amended by Act No. 12 of 1995 (hereinafter: Trade Union Act), with regard to the following points:

- the institutionalization of a single trade union system under the Trade Union Act, and in particular sections 7, 13, 14, 17 and 52;
- the control granted by law to higher level trade union organizations, and particularly the Confederation of Trade Unions, over the nomination and election procedures to the executive committees of trade unions, under the terms of sections 41, 42 and 43 of the Trade Union Act;
- the control exercised by the Confederation of Trade Unions over the financial management of trade unions, by virtue of sections 62 and 65 of the Trade Union Act;
- prohibition from joining more than one workers' organization (section 19(f) of the Trade Union Act);
- the removal from office of the executive committee of a trade union which has provoked work stoppages or absenteeism in a public service or community services (section 70(2)(b) of the Trade Union Act); and
- the requirement of the prior approval of the Confederation of Trade Unions for the organization of strike action, under section 14(i) of the Trade Union Act.

**The Committee requests the Government to transmit a copy of the draft law and trusts that the law will ensure full freedom of association rights under the Convention. The Committee urges the Government to report further progress in this regard.**

As regards the comments it has been making for several years on the Labour Code No. 12 of 2003, the Committee notes that the legislative committee set up at the Ministry of Manpower and Migration has finalized the formulation of the new draft Labour Code and societal dialogue sessions are being held with employers' and workers' organizations, and civil society organizations, to discuss the draft. As soon as the discussions are finished, it will be submitted to the *Majlis Al-Nouwab* for adoption. The Committee recalls in this regard its previous comments in relation to the Labour Code:

- certain categories of workers excluded from the scope of the Labour Code (public servants in state agencies who do not exercise authority in the name of the State, including local public administrations and public authorities, domestic and similar workers, and workers who are members of the employer's family and dependent upon the latter) do not enjoy the right to strike;
- legal obligation (accompanied by a penalty) for workers' organizations to specify in advance the duration of a strike (sections 69(9) and 192 of the Labour Code);
- recourse to compulsory arbitration at the request of one of the parties (sections 179 and 187 of the Labour Code); and
- excessive restrictions on the right to strike (sections 193 and 194 of the Labour Code), accompanied by penalties (section 69(9) of the Labour Code).

**The Committee firmly expects the Government to introduce amendments to the Labour Code taking full account of the above comments. It requests the Government to provide information in its next report on the progress made in this regard and to supply any related amendments proposed or adopted.**

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

## El Salvador

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

(Ratification: 1995)

The Committee notes the observations of the National Business Association (ANEP), received on 4 September 2016 and endorsed by the International Organisation of Employers (IOE).

*Article 2 of the Convention. Adequate procedures. Effective tripartite consultations.* The Government reiterates the information provided in its 2015 report on the measures taken to ensure that the tripartite consultations required by the Convention are actually conducted. Documents are sent to all the confederations and federations that are active at the time of the consultation, the representatives of employers' organizations who are members of the Higher Labour Council, and the government representatives concerned by the subject under consultation. The Committee recalls that in order to be "effective", consultations must be conducted before a decision is taken, irrespective of the nature or form of the procedures followed; moreover, the representatives of employers and workers must have before them sufficiently in advance all the elements necessary to form an opinion. The Committee further recalls that consultation through written communications should be undertaken only "where those involved in the consultative procedures are agreed that such communications are appropriate and sufficient" (see 2000 General Survey on tripartite consultations, paragraph 71). **The Committee hopes that the circumstances which have been hindering the operation of the Higher Labour Council for three years will be resolved rapidly. The Committee requests the Government to describe in detail the measures taken, while awaiting the reactivation of the Higher Labour Council, to ensure that the consultations held are effective.**

*Article 3(1). Election of representatives of the social partners to the Higher Labour Council.* ANEP expresses its concern at the lack of will on the part of the Government to give effect to the Committee's recommendations. It indicates that the Higher Labour Council has not met for over three years, and that there is no sign of any action being taken by the Government for its reactivation. The Government indicates that, as part of its efforts to overcome the impasse resulting from the failure to designate workers' representatives on the Higher Labour Council, and further to the conclusions adopted by the Conference Committee on the Application of Standards in June 2015 on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), it accepted ILO technical assistance. The assistance provided included a mediation process carried out from 1 to 3 February 2016 by an external consultant. In accordance with the mediator's recommendations, in early April the Government initiated a dialogue process, as suggested. As there is no mechanism for determining the representative nature of trade unions, the Government asked the organizations concerned to form a transitional committee to review the rules of procedure of the Higher Labour Council relating to the designation of members from workers' organizations. Some trade unions rejected the proposed solution, indicating that the rules of procedure could only be reviewed in the Higher Labour Council. The Government informed the employers' organizations represented on the Higher Labour Council of the outcome of its efforts. The Committee notes the information provided by the Government concerning the 2016 decision of the Constitutional Chamber of the Supreme Court of Justice in *amparo* appeal No. 951-2013. In that case, the Court set aside the appeal, concluding that the Minister's actions in exhorting the trade unions to put forward a single list of representatives to the Council did not violate the right to freedom of association, and was therefore not unconstitutional. The Court observed that the Ministry of Labour was nevertheless under the statutory obligation to implement and support social partnership and tripartite participation in dealing with situations that posed an obstacle to the functioning of the Higher Labour Council. **The Committee refers to its comment on Convention No. 87 and reiterates its call for the Government and employers' and workers' organizations to endeavour to promote and reinforce tripartism and social dialogue so as to ensure the operation of the Higher Labour Council. The Committee requests the Government to report any developments in this regard.**

*Article 5(1)(b). Tripartite consultations on the submission to the Legislative Assembly of the instruments adopted by the International Labour Conference.* In response to the Committee's request for information regarding the tripartite consultations held on the submission of instruments, the Government refers to a meeting held on 7 July 2016 and a workshop on 31 October 2016, in which the scope of the obligation concerned, and the list of instruments pending submission to the Legislative Assembly, were discussed. The Government adds that it plans to: validate the procedure with representatives of the competent institutions in order to examine the possibility of regulating the process; prioritize the instruments to be submitted as soon as possible; continue awareness-raising activities; and submit a report to the ILO describing the progress achieved. **The Committee hopes that the Government will soon be in a position to report on the results of the tripartite consultations held on the proposals to be submitted to the Legislative Assembly with regard to the submission of the 58 instruments adopted by the Conference between 1976 and 2015.**

**[The Government is asked to supply full particulars to the Conference at its 106th Session and to reply in full to the present comments in 2017.]**

## Equatorial Guinea

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

(Ratification: 2001)

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

*Article 4 of the Convention. Collective bargaining.* The Committee noted the previous comments by the International Trade Union Confederation (ITUC), on the repeated refusal to recognize a number of trade unions, namely the Workers' Union of Equatorial Guinea (UST), the Independent Service Union (SIS), the Teachers' Trade Union Association (ASD) and the Rural Workers' Organization (OTC), and the lack of a legal framework for the development of collective bargaining. The Committee again stresses that the existence of trade unions established freely by workers is a prerequisite for the application of the Convention. **The Committee urges the Government once again to adopt the necessary measures without delay to create appropriate conditions for the establishment of trade unions that are able to engage in collective bargaining with a view to regulating conditions of employment.**

*Article 6. Right of public servants not engaged in the administration of the State to engage in collective bargaining.* The Committee notes that, according to ITUC's comments, the right of workers in the public administration to establish trade unions has still not been recognized in law, despite the fact that section 6 of the Act on trade unions and collective labour relations, No. 12/1992, provides that the right to organize of employees in the public administration shall be regulated by a special law. The Committee notes that the ITUC also indicates that the legal framework for collective bargaining is deficient and ambiguous. **The Committee urges the Government to indicate whether a special law has been adopted and whether it establishes the right to organize and to collective bargaining of workers in the public administration, and asks it to send detailed information on the application of the Convention to public servants not engaged in the administration of the State. The Committee reminds the Government that it may seek technical assistance on this matter from the Office, and expresses the firm hope that it will take without delay all measures within its reach to resume constructive dialogue with the ILO.**

*Application of the Convention in practice.* **The Committee asks the Government to send statistics of the number of employers' and workers' organizations, the number of collective agreements concluded with these organizations and the number of workers and the sectors covered.**

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

# Guatemala

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

(Ratification: 1952)

The Committee notes the observations received on 1 September 2016 submitted, respectively, by the: (i) International Trade Union Confederation (ITUC); (ii) Autonomous Popular and Trade Union Movement of Guatemala; and (iii) the Indigenous and Rural Workers Trade Union Movement of Guatemala (MSICG). **The Committee notes that these observations refer to matters examined in its present comment and also to denunciations of violations in practice on which the Committee requests the Government to provide its comments.** The Committee also notes the joint observations of the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF), received on 1 September 2016, referring to matters examined by the Committee in the present observation. Finally, the Committee notes the observations of the International Organisation of Employers (IOE), received on 1 September 2016, which are of a general nature.

### Complaint made under article 26 of the ILO Constitution concerning non observance of the Convention

The Committee notes that at its 328th Session (October–November 2016), the Governing Body decided to defer consideration until its 329th Session (March 2017) of the decision to establish a Commission of Inquiry to examine the complaint submitted under article 26 of the ILO Constitution by various Worker delegates to the 101st Session of the International Labour Conference (May–June 2012) concerning non-observance of the Convention by Guatemala. The Committee notes that the Governing Body took special note of the submission to the Congress of the Republic, on 27 October 2016, of two draft legislative initiatives, one relating to freedom of association, and that the Governing Body expressed the firm expectation that it would be informed before its 329th Session (March 2017) of the passage into law of legislation that is fully in conformity with the conclusions and recommendations of the ILO supervisory system and the Convention.

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

The Committee notes the discussion held in the Conference Committee on the Application of Standards (hereinafter the Conference Committee) in June 2016 on the application of the Convention by Guatemala. The Committee notes in particular that the Conference Committee urged the Government to: (i) investigate, with the involvement of the Public Prosecutor's Office, all acts of violence against trade union leaders and members, with a view to determining responsibilities and punishing the perpetrators, taking the trade union activities of the victims fully into consideration in the investigations as one of the possible motives; (ii) provide rapid and effective protection to all trade union leaders and members who are under threat, increasing the budget allocated to protection schemes for trade unionists so as to ensure that protected individuals do not personally have to bear any costs arising out of those schemes; (iii) submit to the Congress, before September 2016, a draft law respecting the number of workers required to constitute a trade union and the categories of workers in the public sector to ensure the conformity of national legislation with the Convention; (iv) eliminate the various legislative obstacles to the free establishment of trade union organizations and, in consultation with the social partners and with the support of the Special Representative of the ILO Director-General, review the handling of registration applications; (v) disseminate in the national mass media the campaign on freedom of association and collective bargaining supported by the Special Representative of the ILO Director-General, and ensure that there is no stigmatization whatsoever against collective agreements existing in the public sector; (vi) continue to support the work of the Committee for the Settlement of Disputes before the ILO in the area of Freedom of Association and Collective Bargaining; and (vii) continue taking the necessary steps to fully implement the roadmap adopted on 17 October 2013 in consultation with the social partners.

### Trade union rights and civil liberties

The Committee **regrets** that for a number of years, in the same way as the Committee on Freedom of Association, it has been examining allegations of serious acts of violence against trade union leaders and members, including numerous murders and the related situation of impunity. The Committee notes the Government's indication that: (i) up to now, there have been 14 rulings on the over 70 cases of murder brought before the Committee on Freedom of Association of the International Labour Organization, 11 of which were convictions; (ii) the Office of the Public Prosecutor and the courts have found that the motive for the violent murders subject to these 11 convictions was not based on trade union activity or the defence of the labour rights of the victims; (iii) the perpetrators of the attempted murder of trade unionist Cruz Telón were convicted on 25 April 2016 for attempted murder and robbery with violence; (iv) the Office of the Public Prosecutor, through the Special Investigation Unit for Crimes Against Trade Unionists, has made significant progress in the investigation of another two cases (the murders of José Ricardo Morataya Lemus and Bruno Ernesto Figueroa, in which cases rulings have not yet been handed down); (v) the Trade Union Committee of the Office of the Public Prosecutor is continuing to meet regularly, with the participation on a monthly basis of trade unions, the Office of the Public Prosecutor, the Ministry of Labour and the Special Representative of the ILO Director-General; (vi) collaboration is continuing with the International Commission Against Impunity in Guatemala (CICIG) relating to the investigation of a list of 12 murders selected by the trade union movement; (vii) the Special Investigation Unit for Crimes Against Trade Unionists has been restructured and is now composed of two agencies; (viii) during the first half of 2016, the Ministry of the Interior granted two personal security measures and 24 security measures covering specific locations for trade union members; (ix) on 18 August 2016, the authorities of the Ministry of the Interior reached agreement with trade union representatives on a draft Protocol for the implementation of immediate and preventive security measures for trade union members; (x) the emergency telephone number 1543 continues to operate for the denunciation of acts of violence or threats against trade union members and human rights defenders; and (xi) in June 2016, a special bonus of 700 Guatemalan quetzals (GTQ) a month was authorized for officers of the National Civil Police so that protected persons do not have to personally cover any cost in that regard. The Committee also notes that, within the framework of the examination by the Governing Body of the complaint made under article 26 of the ILO Constitution, the Government reported the capture and prosecution of the alleged murderer of Brenda Marleni Estrada Tambito, trade union adviser to the Trade Union of Workers of Guatemala (UNSTRAGUA-Historic), who was murdered in June 2016.

The Committee notes that the various national trade union organizations and the ITUC: (i) denounce the persistence of many attacks and threats against members of the trade union movement; (ii) denounce the absence of specific progress in the investigation of the 75 murders of trade union members and the conviction of their murderers; and (iii) particularly regret the absence of convictions or significant progress in the investigation of murders in which evidence of a possible anti-union motive has already been identified. In this connection, the Committee notes that the Autonomous Popular Trade Union Movement of Guatemala indicates that collaboration with the CICIG in relation to 12 murders corroborates the existence of clear evidence relating to the murders with the trade union activities of the victims. The representatives of the trade union confederations nevertheless regret that, despite the above, there is still much to do to shed full light on these crimes. The Committee further notes the six-monthly report on acts of violence against trade unionists for January–June 2016, prepared by the Network of Labour Rights Defenders of Guatemala and forwarded by the ITUC. According to this report, 11 threats against trade union members, five physical attacks, including two murders (the death on 24 February 2016 of Silvia Marina Calderón Uribe, member of the Union of Workers of the National Committee for Alphabetization (SITRACONALFA), and the death on 19 June 2016 of Brenda Marleni Estrada Tambito, legal adviser to UNSTRAGUA-Historic) have been recorded during the first half of 2016. The Committee notes the emphasis placed by the CACIF on the persistence of the general climate of violence affecting the country, which is accompanied by a high level of impunity (of the over 20,000 murders in the country in 2012, only 12.77 per cent of cases resulted in a conviction). The CACIF indicates that, although these figures are not an excuse for failing to make progress in the

investigation of the violent deaths of trade unionists, they do illustrate the general inefficiency of the application of justice in Guatemala.

The Committee notes with **deep concern** the persistent allegations of acts of anti-union violence, including physical aggression and murders. While taking due note of the results achieved by the Office of the Public Prosecutor in the investigation of the latest murder of a member of the trade union movement which occurred in June 2016, the Committee **regrets** that it is once again bound to note the overall absence of progress in combating impunity. In the same way as the Committee on Freedom of Association in the context of Case No. 2609 (378th Report, paragraphs 272–325), the Committee expresses its particular **concern** at the lack of progress in the investigations of murders in which evidence has already been found of a possible anti-union motive. **In light of the above, the Committee firmly urges the Government to intensify its efforts to: (i) investigate all acts of violence against trade union leaders and members with a view to determining responsibilities and punishing the perpetrators and instigators of such acts, taking fully into consideration in the investigations the trade union activities of the victims; and (ii) provide prompt and effective protection for all trade union leaders and members who are at risk. In particular, the Committee urges the Government to intensify its efforts to: (i) allocate additional financial and human resources to the Special Investigation Unit for Crimes against Trade Unionists of the Office of the Public Prosecutor; (ii) develop the collaboration initiated between the Office of the Public Prosecutor and the CICIG; (iii) establish special courts to deal more rapidly with crimes and offences committed against members of the trade union movement; and (iv) increase the budget for protection programmes for members of the trade union movement. The Committee requests the Government to continue providing information on all of the measures adopted and the results achieved in this regard.**

### Legislative issues

*Articles 2 and 3 of the Convention.* The Committee recalls that for many years it has been requesting the Government to take measures to amend several legislative provisions.

In this regard, the Committee notes that the Government has provided a copy of a Bill which seeks to bring legislation into conformity with the Convention and which was submitted to the Congress of the Republic on 27 October 2016.

The Committee observes with **interest** that the Bill addresses the Committee's previous comments in relation to:

- the minimum membership requirements set out in section 215(c) of the Labour Code for sectoral trade unions – by replacing the current requirement to affiliate 50 per cent plus one of those working in the sector, with a 90 members minimum membership requirement;
- the restrictions for election as trade union leader – by allowing up to one-third of the union's executive committee to be composed of foreign nationals, and by allowing, in the same proportion, that former employees of the enterprise, guild or sector of the union concerned be designated by the union's executive committee;
- the majority required to call a strike – by replacing the requirement of a majority of all workers in the enterprise, with a requirement of the majority of the workers present at the assembly specially convoked for the strike ballot;
- the imposition of compulsory arbitration in non-essential services in the strict sense of the term – by eliminating such imposition through the amendments of section 4(d) of the Act on Unionization and the Regulation of Strikes of Public Employees (Decree No. 71-86, as amended by Legislative Decree No. 35-96; and
- the prohibition of solidarity strikes – by eliminating such prohibition through the amendment of section 4(d) of the Act on Unionization and the Regulation of Strikes of Public Employees.

However, the Committee **regrets** to note that the provisions of the Bill amending sections 390(2) and 430 of the Penal Code do not resolve the difficulties raised by the Committee in its previous comments. In this respect, the Committee notes that the Bill's proposal revise section 390(2) of the Penal Code imposes imprisonment penalties from one to five years to persons who "carry out acts that result in sabotage, damage or destruction of private property of an enterprise or a public institution, affecting their production or service". The Committee observes that the large breadth of such formulation retains the risk of imposing penal sanctions on workers carrying out a peaceful strike. The Committee further notes the Bill does not address the Committee's concerns as to section 430 of the Penal Code, inasmuch as the amended formulation on the Bill sets out that "civil servants, public employees and employees or dependants of a public service enterprise who abandon their post, work or service, will be liable to imprisonment for a term of six months to two years" and that this sanction will be doubled for the leaders, promoters, or organizers of the massive abandonment or if the abandonment results in damage to the public interest. In this regard, the Committee recalls that no penal sanctions should be imposed with respect to carrying out a peaceful strike and that such sanctions should only be permissible where violence against persons or property, or other serious infringements of penal law have been committed.

Finally, the Committee **regrets** that the Bill does not include measures to ensure that various categories of public sector workers (engaged under item 029 and other items of the budget) enjoy the guarantees afforded by the Convention.

**In the light of the above, the Committee trusts that all the legislative amendment it has requested for many years will be adopted in the near future in accordance with all the Committee's comments. While welcoming the progress contained in the Bill submitted by the Government, the Committee emphasizes the importance of the Government having recourse as soon as possible to the technical assistance of the Office to ensure that the Bill that is adopted is in full compliance with the guarantees of the Convention. The Committee requests the Government to provide information in this respect.**

### Application of the Convention in practice

*Registration of trade unions.* In its previous comment, the Committee expressed deep concern at the obstacles to the registration of trade unions noted by the Committee on Freedom of Association within the framework of Case No. 3042. In this regard, the Committee notes the Government's indication that: (i) there was a significant increase in the registration of trade unions during 2015 (52 registrations) and the first half of 2016 (76 registrations between January and July); (ii) a draft Government Decision to reduce the time required for the registration of trade unions was submitted on 8 September 2016 by the Ministry of Labour and Social Welfare to the Tripartite Committee on International Labour Affairs; and (iii) the submission of the Bill resulted in complete rejection by the workers, thereby preventing genuine consultations. The Committee also notes that both the Autonomous Popular Trade Union Movement of Guatemala and the MSICG continue to denounce cases of hindrance in the registration of trade unions. **In light of the above, the Committee requests the Government to continue to have recourse to the technical assistance of the Office in order to pursue more in-depth dialogue with the trade unions on the reform of the registration procedure. The Committee also requests the Government to continue providing information on the number of registrations requested and those recorded.**

### Conflict resolution on freedom of association and collective bargaining

*Settlement of disputes relating to freedom of association and collective bargaining.* In its previous comment, the Committee invited the Government to continue strengthening the Conflict Resolution Committee on Freedom of Association and Collective Bargaining (hereinafter the Conflict Resolution Committee). In this regard, the Committee notes that: (i) the Government has provided information on the activities of the Conflict Resolution Committee indicating that progress has been achieved in certain aspects of two cases that are before the Committee on Freedom of Association; (ii) the Autonomous Popular Trade Union Movement of Guatemala indicates that the Conflict Resolution Committee has achieved very limited results, with the partial settlement of a single case, and considers that the terms of reference and operation of the Conflict Resolution Committee need to be reviewed; and (iii) the CACIF

emphasizes that only four cases examined by the Conflict Resolution Committee are related to the private sector. ***In light of the above, and with a view to reinforcing the effectiveness and impact of the Conflict Resolution Committee, the Committee requests the Government to undertake, in consultation with the social partners and with the support of the Office of the Special Representative of the ILO Director General, an evaluation of the terms of reference and operation of the Conflict Resolution Committee. Noting the reiterated observations by trade unions alleging a complete absence of judicial protection for freedom of association, the Committee calls for the inclusion in this evaluation of an examination of the complementarity between the Conflict Resolution Committee and the judicial mechanisms for the protection of freedom of association in the country, together with an analysis of their effectiveness.***

*Awareness-raising campaign on freedom of association and collective bargaining.* In its previous comment, and in light of the commitments made by the Government in the 2013 roadmap, the Committee invited the Government to disseminate in the national mass media the awareness-raising campaign on freedom of association and collective bargaining prepared in collaboration with the Office. In this regard, the Committee notes the Government's indication that: (i) a communication plan has been prepared to pursue the campaign initiated the previous year; (ii) the campaign has been disseminated in the governmental mass media with the support of 13 ministries and other public institutions; and (iii) a workshop on international labour standards for managers of the media, columnists and opinion-formers, especially focusing on freedom of association and collective bargaining, was held on 27 October 2016 jointly with the Office of the ILO Special Representative of the Director-General. The Committee also notes that the various trade unions consider that there is no campaign to promote freedom of association and that, on the contrary, since the middle of 2015, the public authorities have been carrying out, with the support of the mass media, a very aggressive campaign against trade unionism and collective bargaining in the public sector. Expressing its **concern** at the allegations made by the trade unions, especially in a context marked by frequent acts of anti-union violence, the Committee considers that these allegations make it even more necessary to disseminate broadly in the national mass media the awareness raising campaign on freedom of association and collective bargaining prepared in collaboration with the Office. ***The Committee therefore once again requests the Government to provide information on the action taken to carry out such broad dissemination.***

*The maquila sector.* For many years, the Committee has been requesting the Government to intensify its efforts to promote and guarantee full respect for trade union rights in the *maquila* sector. In this connection, the Committee notes the Government's indication that, on the basis of a specific operational plan, the labour inspectorate carried out inspections of 88 enterprises in the *maquila* sector in 2015, focusing on the payment of the minimum wage. The Government also reports the reactivation in June 2016 of the coordinating unit for the apparel and textile sector. While noting this information, the Committee **regrets** to note that the Government has not reported any initiative related specifically to the exercise of freedom of association in the sector. ***Recalling that for many years it has been receiving allegations of violations of freedom of association in the maquila sector and that the impossibility to exercise freedom of association in the sector was one of the five elements contained in the complaint made in 2012 under article 26 of the ILO Constitution, the Committee once again requests the Government to: (i) take specific measures to promote and guarantee full compliance with trade union rights in the maquila sector; (ii) accord special attention to the maquila sector in the context of the awareness-raising campaign; and (iii) report on the exercise in practice of trade union rights in the maquila sector, with an indication of the number of active trade unions and workers who are members of those unions.***

***The Committee once again trusts that the Government will take all the necessary measures to resolve the serious violations of the Convention noted by the ILO supervisory bodies and that it will take full advantage of the technical assistance made available to the country by the Office, as well as the resources available through international cooperation, including within the context of the project funded by the Directorate General for Trade of the European Commission.***

# India

## Labour Inspection Convention, 1947 (No. 81)

(Ratification: 1949)

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

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

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

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

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

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

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

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



registers of workplaces liable to inspection and the preparation of the annual labour inspection report. **The Committee encourages the Government to take the necessary steps to ensure that the central authority publishes and submits to the ILO an annual report on labour inspection activities containing all the information required by Article 21 in relation to the central and state levels. Noting the Government's intention to seek technical assistance for the establishment of registers of workplaces at the central and state levels and the annual labour inspection reports, the Committee encourages this endeavour, hopes that such assistance will be provided and requests the Government to provide information on any progress made in this regard.**

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

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

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

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

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

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

# Kazakhstan

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

(Ratification: 2000)

The Committee notes the observations on the application of the Convention by the International Trade Union Confederation (ITUC) received on 1 September 2016 and of the Confederation of Independent Trade Unions of Kazakhstan (KNPRK) received on 25 November and 5 December 2016. It further notes the observations of the International Organisation of Employers (IOE) received on 1 September 2015, which are of general nature. In its previous comments, the Committee had also noted the observations of the Confederation of Free Trade Unions of Kazakhstan (CFTUK) (now, the KNPRK), as well as the Government's failure to reply. **The Committee deeply regrets that the Government still has not provided its comments in reply to these longstanding observations and firmly trusts that it will provide complete comments thereon without delay. The Committee also requests the Government to respond to the more recent observations of the ITUC and the KNPRK referenced above.**

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

The Committee notes the discussion that took place in the Conference Committee on the Application of Standards (hereinafter the Conference Committee), in June 2016 concerning the application of the Convention. The Committee notes the Conference Committee's request to the Government to: (i) amend the provisions of the Law on the National Chamber of Entrepreneurs in a manner that would ensure the full autonomy and independence of the free and independent employers' organizations in Kazakhstan, without any further delay; (ii) amend the provisions of the Law on Trade Unions, in particular sections 10–15, which limit the right of workers to form and join trade unions of their own choosing; (iii) amend section 303(2) of the Labour Code so as to ensure that any minimum service is a genuinely and exclusively minimum one; (iv) indicate which organizations fall into the category of organizations carrying out "dangerous industrial activities" and indicate all other categories of workers whose rights may be restricted, as stipulated in section 303(5) of the Labour Code; (v) amend the Constitution and appropriate legislation to permit judges, firefighters and prison staff to form and join a trade union; (vi) amend the Constitution and appropriate legislation to lift the ban on financial assistance to national trade unions by an international organization; and (vii) accept ILO technical assistance to implement the above noted conclusions. The Conference Committee considered that the Government should accept a direct contacts mission (DCM) this year in order to follow-up on these conclusions.

The Committee notes the report of the DCM, which visited the country between 19 and 22 September 2016. It further notes the entry into force on 1 January 2016 of the new Labour Code.

*Article 2 of the Convention. Right of workers and employers, without distinction whatsoever, to establish and join organizations.* The Committee had previously urged the Government to take the necessary measures to amend its legislation so as to ensure that judges, firefighters and prison staff have the right to establish organizations for furthering and defending their interests in line with the Convention.

As regards the judiciary, the Committee notes the Constitutional Council Ruling No. 13/2 of 5 July 2000 providing for an official interpretation of paragraph 2 of Article 23 of the Constitution. According to the Council, in accordance with paragraph 1 of Article 23 of the Constitution, "judges, like all citizens of the State, have the right to freedom of association to further and defend their professional interests, as long as they do not use the associations to influence the administration of justice and to pursue political goals. ... The prohibition imposed on judges to become members of trade unions provided for by ... the Constitution does not imply the restriction on their right to establish other associations and membership in other voluntary associations". The Committee notes from the report of the DCM, that the Union of Judges, while not a trade union registered pursuant to the Law on Trade Unions, it is an organization which represents the interests of judges and which can raise, and has raised in the past, issues relating to working conditions and pension.

Regarding prison staff and firefighters, the Committee notes from the DCM report that among the employees of the law enforcement bodies, only employees who have a (military or police) rank are prohibited from establishing and joining trade unions (sections 1(9) and 17(1)(1) of the Law on Law Enforcement Service (2011)), and that under the current system, prison staff and firefighters who have the status of officers are ranked. The Committee notes from the DCM and the Government's reports that all civilian staff engaged in the law enforcement bodies can establish and join trade unions and that there were currently two sectoral trade unions representing their interests.

*Right to establish organizations without previous authorization.* In its previous comments, the Committee had noted that pursuant to section 10(1) of the Law on Public Associations, which the Government had previously indicated was also applicable to employers' organizations, a minimum of ten persons was required to establish an employers' organization, and urged the Government to amend it so as to lower the minimum membership requirement for establishing an employers' organization. The Committee notes from the DCM report that employers' organizations are established as non-commercial entities pursuant to the Law on Non-Commercial Organizations, which allow, under section 20, for an organization to be created by one person, natural or juridical.

The Committee recalls that following the entry into force of the Law on Trade Unions, all existent unions had to be reregistered. The Committee notes from the DCM report that some of the KNPRK affiliates have encountered difficulties with the (re)registration. It further notes with **concern** the most recent ITUC and KNPRK communications, referring to cases of denial of registration. The Committee understands that unregistered or not reregistered trade unions are currently under the threat of being liquidated. **Noting that the DCM was assured that the Ministry of Justice together with the Ministry of Labour and Social Development would look into this matter and assist the unions, as relevant, the Committee trusts that all the authorities will provide the necessary assistance to the organizations concerned. The Committee requests the Government to provide information on all measures taken in this respect and to reply to the ITUC and KNPRK allegations.**

*Right to establish and join organizations of their own choosing.* The Committee had previously requested the Government to amend the following sections of the Law on Trade Unions:

-sections 11(3), 12(3), 13(3) and 14(4), which require, under the threat of deregistration pursuant to section 10(3), the mandatory affiliation of sector based, territorial and local trade unions to a national trade union association within six months following their registration, so as to ensure the right of workers to freely decide whether they wish to associate or become members of a higher-level trade union structure; and

-section 13(2), which requires a sector-based trade union to represent no less than half of the total workforce of the sector or related sectors, or organizations of the sector or related sectors, or to have structural subdivisions and member organizations on the territory of more than half of all regions, cities of national significance and the capital, with a view to lowering this threshold requirement.

The Committee notes from the DCM and the Government's reports that following the 2016 Conference discussion, the Ministry of Labour and Social Development established a roadmap and held a tripartite meeting to discuss outstanding comments of the Committee of Experts. On the basis of the discussions, a Concept Note on the amendment of the legislation has been prepared and submitted to the Ministry of Justice. The Committee welcomes that pursuant to point 2 of the Concept Note, the adoption of a draft law "stems from the need to improve the legislation in force with the purpose of better regulating social relationships related to trade union activities and complying with international labour standards enshrined in Convention No. 87". The Committee notes that in agreement with all three trade union centres, the Government intends to amend the Law on Trade Unions so as to: (i) lower the

minimum membership requirement from ten to three people in order to establish a trade union; and (ii) simplify the registration procedure. Regarding the obligation imposed on a trade union to be affiliated to a higher level structure and the thresholds (sections 11(3), 12(3), 13(2) and (3), and 14(4) of the Law on Trade Unions), the Committee notes from the DCM report that while several actors agreed that this constituted a restriction on trade union rights, it was explained that the current circumstances in the country justified it. The Government considers that by obliging trade unions at the lower level to affiliate to trade unions of a higher level, the system allowed all trade unions to access political and economic decision-making processes and at the same time, engaged responsibility of the higher-level trade union structures towards their member organizations. The Government further considers that the trade union movement should be a system where all parts were linked, especially during the transitional stage, so as to ensure that trade unions become social partners capable of protecting ordinary workers. The Committee notes that the DCM observed that pluralism existed in the country and that there were currently three trade unions at the level of the Republic, 32 sectoral trade unions, 23 territorial trade unions and 339 local trade unions. While taking due note of this information, the Committee once again recalls that the free exercise of the right to establish and join organizations implies the right of workers to freely decide whether they wish to associate or become members of a higher-level trade union structure and that the thresholds requirements to establish higher-level organizations should not be excessively high. **The Committee, therefore, encourages the Government to engage with the social partners in order to review sections 11(3), 12(3), 13(2) and (3), and 14(4) of the Law on Trade Unions so as to bring it into full conformity with the Convention. It requests the Government to provide information on all measures taken or envisaged in this regard.**

*Law on the National Chamber of Entrepreneurs.* The Committee had previously urged the Government to take measures to amend the Law on the National Chamber of Entrepreneurs, so as to eliminate all possible interference by the Government in the functioning of the Chamber and so as to ensure the full autonomy and independence of the free and independent employers' organizations in Kazakhstan. The Committee recalls that the Law calls for the mandatory affiliation to the National Chamber of Entrepreneurs (NCE) (section 4(2)), and, during the transitional period to last until July 2018, for the Government's participation therein and its right to veto the NCE's decisions (sections 19(2) and 21(1)). The Committee further notes from the DCM report the difficulties encountered by the Confederation of Employers of Kazakhstan (KRRK) in practice, which stem from the mandatory membership and the NCE monopoly. The DCM noted, in particular, that the KRRK considered that the accreditation of employers' organizations by the NCE and the obligation imposed in practice on employers' organizations to conclude an annual agreement (a model contract) with the NCE, meant, for all intents and purposes, that the latter approved and formulated the programmes of employers' organizations and thus intervened in their internal affairs. While noting with *regret* that, according to the information received by the DCM, there are no immediate plans to amend the Law, the Committee welcomes the Government's request for the technical assistance of the Office in this respect. **In light of the above, and bearing in mind the serious concerns raised during the discussion of the application of this Convention in the Conference Committee, the Committee urges the Government to take measures without delay to amend the Law on the National Chamber of Entrepreneurs with the technical assistance of the Office.**

*Article 3. Right of organizations to organize their activities and to formulate their programmes. Labour Code.* The Committee had previously requested the Government to indicate which organizations fall into the category of organizations carrying out "dangerous industrial activities" for which strikes were illegal under section 303(1) of the Labour Code by providing concrete examples. It further requested the Government to indicate all other categories of workers whose rights may be restricted, as stipulated in section 303(5) of the Code and to amend section 303(2) so as to ensure that any minimum service is a genuinely and exclusively minimum one and that workers' organizations can participate in its definition.

The Committee notes that section 176(1)(1) of the new Labour Code (previously 303(1)(1)) describes cases where a strike shall be deemed illegal. Under paragraph 1 of this section, strikes shall be deemed illegal when they take place at entities operating hazardous production facilities. The Committee notes sections 70 and 71 of the Law on Civil Protection listing hazardous production facilities, as well as Order No. 353 of the Minister of Investment and Development Order (2014), pursuant to which, determination of whether certain production facilities are hazardous is carried out by the enterprise in question. The Committee notes from the DCM report that the KNPRK pointed out that legal strikes did not take place in Kazakhstan as almost any enterprise could be declared hazardous and the strike therein illegal. Moreover, requests to conduct a strike were submitted to the executive bodies and were denied in practice. In these circumstances, section 176(2) of the Labour Code, according to which, "at railways, civil aviation ... public transport ... and entities providing communication services, strikes should be allowed to the extent that the required services were provided on the basis of prior agreement with a local executive body", did not allow for strikes in practice. The KNPRK further pointed out that according to section 402 of the Criminal Code, which entered into force on 1 January 2016, an incitement to continue a strike declared illegal by the court was punishable by up to one year of imprisonment and in certain cases (substantial damage to rights and interest of citizens, etc.), up to three years of imprisonment. The Committee notes that the Government considers that the above provisions of the Labour Code could be made more explicit as to which facilities were considered to be hazardous instead of referring to another piece of legislation. The Committee notes, in particular, that according to the abovementioned Concept Note, "the Labour Code does not specify the conditions under which a strike action at entities operating hazardous production facilities shall be deemed illegal, which restricts the right of workers to freedom of action. Taking into account the implications of a strike action at entities operating hazardous production facilities and possible production process failures and accidents as a result, it is proposed to make the provision more concrete by introducing a prohibition to strike in such facilities in cases where industrial safety is not fully guaranteed." The Committee welcomes the intention of the Government to amend the Labour Code regarding the right to strike and recalls that, rather than imposing an outright ban on strikes in certain sectors, negotiated minimum services may be imposed to guarantee the safety of persons and equipment. **The Committee expects that the necessary legislative amendments will be made in the near future in consultation with the social partners and technical assistance of the Office so as to address the outstanding concerns of the Committee regarding the right to strike. The Committee requests the Government to provide information on all measures taken or envisaged in this respect.**

*Article 5. Right of organizations to receive financial assistance from international organizations of workers and employers.* The Committee had previously requested the Government to take steps to amend section 106 of the Civil Code, as well as article 5 of the Constitution, so as to lift the ban on financial assistance to national trade unions by an international organization. The Committee notes from the DCM and the Government's reports that only "direct" financing (for example, payment of salaries of trade union leaders by international organizations, purchase of cars and offices) was prohibited in order to safeguard the constitutional order, independence and territorial integrity of the country. However, there was no prohibition imposed on trade unions to participate in and carry out international projects and activities (seminars, conferences, etc.) together or with the assistance of international workers' organizations. Thus, as noted by the DCM, currently, there was no intention to amend article 5(4) of the Constitution. While noting that all three trade union centres confirmed that in practice, they could benefit from international assistance as long as it was not through a "direct" financing and that there was a general agreement that banning the "direct" financing was necessary, the DCM noted that the legislation could be amended so as to make it clear that joint cooperation projects and activities could be freely carried out. **The Committee, therefore, requests the Government to adopt, in consultation with the social partners, specific legislative provisions which clearly authorize workers' and employers' organizations to benefit, for normal and lawful purposes, from the financial or other assistance of international workers' and employers' organizations. It requests the Government to provide information on all measures taken or envisaged in this regard.**

# Libya

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

(Ratification: 2000)

*Articles 3(a) and 7(2)(b) of the Convention. All forms of slavery and practices similar to slavery and effective and time-bound measures. Compulsory recruitment of children for armed conflict and providing the necessary and appropriate direct assistance for their removal from the worst forms of child labour and for their rehabilitation and social integration.* The Committee notes from the Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Libya of 12 January 2015 that Libya is facing the worst political crisis and escalation of violence since the 2011 armed conflict. This report documented tens of cases of children injured, killed or maimed as a result of violence, attacks and shelling on hospitals, schools and camps housing displaced persons. The Committee also notes from the Report on the Investigation by the Office of the United Nations High Commissioner for Human Rights on Libya (A/HRC/31/47 and A/HRC/31/CRP.3-detailed findings) of 15 February 2016 (Investigation Report by the OHCHR), that there is information on the forced recruitment and use of children in hostilities by armed groups pledging allegiance to the Islamic State in Iraq and Levant (ISIL). These children are forced to undergo religious and military training (including how to use and load guns and to aim and shoot at targets using live ammunition), and watch videos of beheadings, in addition to being sexually abused. Children are also reported to be used to detonate bombs. This Report, further referring to another report, indicates that the *Islamic State* in Sirte welcomed the graduation of 85 boys below the age of 16, describing them as the “*Khilapha Cubs*” who were trained in conducting suicide attacks. The Committee **deeply deplores** the current situation of children affected by armed conflict in Libya, especially as it entails other violations of the rights of the child, such as abductions, murders and sexual violence. It recalls that, under *Article 3(a)* of the Convention, the forced or compulsory recruitment of children under 18 years of age for use in armed conflict is considered to be one of the worst forms of child labour and that, under *Article 1* of the Convention, member States must take immediate and effective measures to secure the elimination of the worst forms of child labour as a matter of urgency. **While acknowledging the complexity of the situation prevailing on the ground and the presence of armed groups and armed conflict in the country, the Committee strongly urges the Government to take measures as a matter of urgency to ensure the full and immediate demobilization of all children and to put a stop, in practice, to the forced recruitment of children under 18 years of age into armed groups. It also urges the Government to take immediate and effective measures to ensure that thorough investigations and robust prosecutions of all persons who forcibly recruit children under 18 years of age for use in armed conflict are carried out, and that sufficiently effective and dissuasive penalties are imposed in practice. It requests the Government to take effective and time bound measures to provide for their rehabilitation and social integration and to provide information on the measures taken in this regard and on the results achieved.**

*Article 7(2). Effective and time-bound measures. Clause (a). Prevent the engagement of children in the worst forms of child labour. Access to free basic education.* Following its previous comments, the Committee notes the Government's indication that education is mandatory and free at the primary and secondary level and that training is provided by the vocational training centres established in all parts of Libya. It notes, however, the Government's indication that the number of students who enrolled in the primary level decreased from 1,056,565 in 2009–10 to 952,636 in 2010–11. In this regard, the Committee notes from the Investigation Report by the OHCHR, that access to education in Libya has been significantly curtailed due to the armed conflict, particularly in the east (for example, the Office for the Coordination of Humanitarian Affairs estimated, in September 2015, that 73 per cent of all schools in Benghazi were not functioning). Schools have been either damaged, destroyed, occupied by internally displaced persons, converted into military or detention facilities, or are otherwise dangerous to reach. In addition, in many areas where schools remain open, parents refrain from sending their children to school for fear of injury from attacks, especially of girls being attacked, harassed or abducted by armed groups. Moreover, there are reports that in areas controlled by groups pledging allegiance to ISIL, girls are not allowed to attend school or are permitted only if wearing a full face veil. This report further indicates that children residing in camps for the internally displaced face particular challenges in their access to education. The Committee expresses its **deep concern** at the situation of children who are deprived of education because of the climate of insecurity prevailing in the country. **While acknowledging the difficult situation prevailing in the country, the Committee urges the Government to take effective and time-bound measures to improve the functioning of the education system in the country and to facilitate access to free basic education for all children, particularly girls, children in areas affected by armed conflict, and internally displaced children. It requests the Government to provide information on concrete measures taken in this regard and the results achieved.**

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

## Malaysia - Peninsular Malaysia/Sarawak

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

(Ratification: 1957)

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

**[The Government is asked to supply full particulars to the Conference at its 106th Session and to send a detailed report in 2017.]**

# Mauritania

## Forced Labour Convention, 1930 (No. 29)

(Ratification: 1961)

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

*Articles 1(1), 2(1) and 25 of the Convention. Slavery and the vestiges of slavery.* In its previous comments, the Committee urged the Government to continue taking the necessary measures to mobilize the competent authorities and society at large with a view to continuing to combat slavery and its vestiges by ensuring strict compliance with the new legislation and that the victims of slavery are identified and have access to justice. The Committee notes the discussion held in June 2016 in the Committee on the Application of Standards of the International Labour Conference and observes that the Conference Committee expressed deep concern that, in practice, the Government had yet to take sufficient measures to combat slavery. Following the discussion, the Government accepted a direct contacts mission, which visited Mauritania from 3 to 7 October 2016. The Committee notes the report of the mission. It also notes the observations made by the International Trade Union Confederation (ITUC) and the General Confederation of Workers of Mauritania (CGTM), received on 31 August and 1 September 2016, respectively.

#### (a) Effective enforcement of the legislation

The Committee previously requested the Government to accompany the adoption of the Act of 2015 criminalizing slavery and punishing slavery-like practices (hereinafter the 2015 Act) with specific measures to ensure its effective enforcement. The Act reinforced the legislative framework to combat slavery by providing, among other measures, for the possibility for associations for the defence of human rights which have benefited from legal personality for at least five years to take legal action and to be party to civil proceedings, as well as for the establishment of collegial courts to hear cases of offences relating to slavery.

The Committee notes in this regard, from the information contained in the mission's report and communicated by the Government, that the three special criminal courts competent in matters relating to slavery, which have been established in Nema, Nouakchott and Nouadhibou, are operational. The court in Nema handed down a first ruling, under which two persons were convicted to a sentence of five years of imprisonment (of which four years are suspended) and the payment of damages to the victims. In addition, investigating magistrates have already referred a number of cases to the courts in Nema and Nouadhibou, which will be judged in accordance with the 2015 Act. The Government indicates that cases pending before the courts prior to the adoption of the 2015 Act will also be heard by the special criminal courts, but under the 2007 Act.

The Committee also notes the Government's indication that the technical cooperation project currently being developed in Mauritania by the Office to support the implementation of the 2015 Act is assigning a significant proportion of its resources to reinforcing the competent actors for the identification of slave-like practices, and particularly the prosecution services, investigating magistrates and other actors involved in the process, such as the police, the gendarmerie and the administrative authorities. The Government considers that this support will enable it to give effect to its regularly reiterated political will to bring an end to the vestiges of slavery and slavery-like practices which may persist.

The Committee notes the indication by the ITUC in its observations that the police and the judicial authorities have shown themselves to be resistant to investigating or initiating prosecutions following allegations of slavery lodged by victims or associations. According to the ITUC, several cases of slavery reported to the authorities have been reclassified as less serious offences. In other instances, cases have been resolved through informal settlements. While recognizing the importance of the adoption of the 2015 Act and the ruling handed down by the criminal court of Nema, the ITUC considers that the sentence imposed is light in relation to the gravity of the crime committed.

As the mission emphasized in its report, the Committee considers that it is indispensable for the three special criminal courts to operate effectively throughout the territory and to be provided with the necessary personnel and adequate material and logistical resources. The Committee recalls that, under the terms of *Article 25* of the Convention, States are required to ensure that the penalties established by law for the exaction of forced labour are really adequate and are strictly enforced. **The Committee therefore trusts that the Government will pursue the significant efforts already being made to reinforce the judicial system and that it will take the necessary measures to enable the special criminal courts to render justice so as to ensure that no cases of slavery go unpunished. Considering that to achieve this objective it is indispensable to reinforce the whole of the criminal investigation and prosecution system, the Committee requests the Government to indicate the measures taken to continue raising awareness and training the actors responsible for law enforcement and for the creation of specialized units in the Office of the Public Prosecutor and the forces of order. It is essential that these authorities are in a position to gather proof, assess the facts correctly and initiate the corresponding judicial procedures. Finally, the Committee requests the Government to provide information on the number of cases of slavery reported to the authorities, the number of those cases which resulted in judicial action, and the number and nature of the convictions handed down. The Committee recalls in this respect that the penalties imposed must be commensurate with the seriousness of the crime committed in order to be of a dissuasive nature. Please also indicate whether victims of slavery have been compensated for the damages suffered, in accordance with section 25 of the 2015 Act.**

#### (b) Assessment of the real situation in relation to slavery

The Committee previously emphasized the complexity of the phenomenon of slavery and its vestiges and the necessity for the Government to take action within the framework of a coordinated global strategy. In this regard, the Committee notes that the direct contacts mission considered that a number of specific elements brought to its knowledge prove that slavery exists in Mauritania. The mission emphasized that "slavery and the vestiges of slavery are two phenomena which do not cover the same situations, do not have the same scope and call for different targeted measures. It is important to identify these two phenomena better. A qualitative and/or quantitative study should make it possible to provide a specific and objective basis for the discussions, thereby calming the debate and demystifying the issue at both the national and international levels." The Committee notes in this regard the Government's indication that it has included as a priority action in the technical cooperation project developed with the Office the preparation of a study which would make it possible to collect sufficient and reliable data on the alleged practices of slavery and in general on forced labour. The Committee also notes the reference by the ITUC to the fact that certain authorities deny the existence of slavery and do not recognize the "vestiges" of slavery. The ITUC considers that such statements send a prejudicial message to the authorities responsible for the enforcement of the legislation to combat slavery.

The Committee recalls that both the Committee of Experts and the Conference Committee have been emphasizing for several years the importance of conducting research work to provide a qualitative and quantitative analysis of the situation with regard to slavery in Mauritania. **The Committee hopes that the Government will not fail to take the necessary measures to conduct a study that will enable it to be in possession of reliable data on the nature and prevalence of slavery-like practices in Mauritania. The Committee hopes that these data will provide a basis for improving the planning and targeting of public interventions with a view, on the one hand, to reaching out effectively and protecting persons who are victims of slavery and, on the other, determining more effectively the measures intended to combat the vestiges of slavery.**

#### (c) Inclusive and coordinated action

With regard to the need to adopt a global coordinated approach, the Committee previously noted that action to combat slavery and its vestiges falls within the purview of the roadmap to combat the vestiges of slavery, responsibility for the implementation and follow-up of which lies with a Ministerial Committee

chaired by the Prime Minister. The Committee notes the Government's indication that 70 per cent of the recommendations contained in the roadmap have been implemented. Many awareness-raising activities have been carried out in collaboration with civil society and the religious authorities, such as: the awareness-raising caravans which have travelled throughout the territory (ten of the 15 regions of the country); the organization of seminars and discussions on the radio and television to raise awareness of the unlawful nature of slavery; the position taken by the Uléma community concerning the prohibition of slavery and the decision to harmonize Friday prayers, which for several months addressed the position of Islam in relation to the prohibition of slavery. With regard to action to combat poverty, the Committee notes that the Tadamoun Agency (National Agency to Combat the Vestiges of Slavery) is continuing to develop programmes targeting zones in which there is little state presence and zones in which the descendants of slaves (*adwabas*) are concentrated, and particularly the Triangle of Hope. The objective of these programmes is to provide basic services in the fields of sanitation, education and health. The programmes implemented are also aimed at providing the population with means of production. Finally, with reference to education, the Committee notes the action undertaken in priority education areas, and the apprenticeship programmes developed for teenagers who have never gone to school.

The Committee notes that the mission welcomed the efforts made by the Government in these fields. It also welcomed the multisectoral approach and the inter-ministerial coordination which have been introduced to combat slavery and its vestiges. However, the mission emphasized that this coordination should be accompanied by greater communication and visibility of the action taken. This action must form part of an inclusive approach involving the social partners and civil society. In this respect, the Committee notes the complaint by the CGTM of the absence of dialogue, particularly with representative trade unions, which risks compromising government programmes and the efforts made to combat slavery and its vestiges.

***The Committee hopes that the Government will continue to implement all of the recommendations contained in the roadmap and that the Inter-ministerial Technical Committee will undertake an evaluation of the impact of the measures taken in this context. Recalling that action to combat slavery requires the broadest commitment, the Committee hopes that on the occasion of this evaluation and the determination of further action, the Government will continue to collaborate with civil society and the religious authorities, and that it will associate the social partners with such action. The Committee also hopes that the Government will continue to provide the Tadamoun Agency with the necessary resources to combat the vestiges of slavery, which are manifest in the poverty, dependence and stigmatization of which the descendants of slaves may be victims.***

#### **(d) Identification and protection of victims**

The Committee previously emphasized that the victims of slavery are in a situation of great vulnerability which requires specific action by the State. The Committee notes the observation by the mission in its report that the relation between victims and their masters is multidimensional. Their economic, social and psychological dependence varies in degree and results in a broad range of situations that call for a series of complementary measures. Victims are not aware of their rights and may come under very strong social pressure if they denounce their situation. The mission considered that it would be appropriate to establish a mechanism to provide shelter for presumed victims as soon as they lodge a complaint or are identified. ***The Committee expresses the firm hope that the Government will continue the action taken to delegitimize slavery with a view to reaching out to all the persons who may be concerned, whether they are masters or slaves. The Committee requests the Government to indicate the measures taken to ensure that victims who are identified or who denounce their situation are assisted and protected so that they can assert their rights and stand up to any social pressure exerted upon them. Please indicate whether the creation of a public mechanism to provide shelter to victims is planned and specify the manner in which the authorities collaborate with associations that protect and defend slaves. Finally, the Committee requests the Government to specify the assistance provided to victims so that they can reconstruct their lives and to prevent them returning to a situation of dependence in which they are stigmatized and vulnerable to abuse.***

# Myanmar

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

(Ratification: 1955)

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

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

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

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

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

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



# Pakistan

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

(Ratification: 1952)

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

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

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

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

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

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

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

*Article 4. Promotion of collective bargaining.* The Committee previously noted that, according to section 19(1) of the IRA, and sections 24(1) of the BIRA, KPIRA and PIRA, if a trade union is the only one in the establishment or group of establishments (or industry in the BIRA, KPIRA, PIRA), but it does not have at least one third of the employees as its members, no collective bargaining is possible at the given establishment or industries. The Committee recalls that it had previously requested the Government to amend similar sections which existed under the former industrial relations legislation. The Committee notes that section 24(1) of the SIRA contains the same provision as the BIRA, PIRA and KPIRA. The Committee notes the Government's indication that: (i) the minimum requirement of membership (33.3 per cent of total workers) is to promote democratic principles for the promotion of healthy and popular trade unionism; (ii) since Pakistan follows an industrial relations system where a union, after being elected as collective bargaining agent, is granted the exclusive right to

represent all workers, collective bargaining rights cannot be granted to any union in the absence of a referendum process and merely on the basis of its own membership; and (iii) the Government of Balochistan and the Government of Sindh have informed that they are consulting with their respective provincial law departments. The Committee recalls that the determination of the threshold of representativity to designate an exclusive agent for the purpose of negotiating collective agreements which are destined to be applied to all workers in a sector or establishment is compatible with the Convention in so far as the required conditions do not constitute an obstacle to the promotion of free and voluntary collective bargaining in practice. In this regard, the Committee considers that if no union in a specific negotiating unit meets the required threshold of representativity to be able to negotiate on behalf of all workers, minority trade unions should be able to negotiate, jointly or separately, at least on behalf of their own members. **The Committee requests the Government to take the necessary measures in order to ensure that if there is no union representing the required percentage to be designated as the collective bargaining agent, collective bargaining rights are granted to the existing unions, jointly or separately, at least on behalf of their own members. The Committee underlines the importance that the Governments of the provinces take measures in the same direction.**

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

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

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

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

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

# Papua New Guinea

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

(Ratification: 2000)

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

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

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

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

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

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

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

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

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

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

# Paraguay

## Forced Labour Convention, 1930 (No. 29)

(Ratification: 1967)

The Committee takes note of the Government's report and the observations of the Central Confederation of Workers Authentic (CUT-A) and the International Trade Union Confederation (ITUC) received respectively on 1 July and 31 August 2016.

*Articles 1(1), 2(1) and 25 of the Convention. Forced labour of indigenous workers.* The Committee previously firmly encouraged the Government to continue to take necessary measures, within the framework of coordinated and systematic action, to respond to the economic exploitation and in particular the debt bondage to which certain indigenous workers are subjected, especially in the Chaco region of Paraguay. The Committee noted the adoption of several measures which demonstrate the Government's commitment to address this problem. It noted, in particular: the activities undertaken by the Commission on Fundamental Rights at Work and the Prevention of Forced Labour, and the creation of a subcommission in the Chaco region; the establishment of an office of the Department of Labour in the locality of Teniente Irala Fernandez (central Chaco); the activities undertaken in collaboration with the International Labour Office with a view to the development of the national strategy to prevent forced labour; and the creation within the labour inspectorate of a technical unit for the prevention and eradication of forced labour. The Committee requested the Government to ensure that these different structures were provided with the adequate means to carry out appropriate monitoring in the regions concerned, identify victims, investigate the complaints received, and ensure that the national strategy to prevent forced labour is adopted.

The Committee notes the Government's indication in its report that the Commission on Fundamental Rights at Work and the Prevention of Forced Labour met in July and December 2015 for the development of the national strategy to prevent forced labour. The Ministry of Labour contributed to the process by leading several workshops, some of which were tripartite and others specifically targeted at representatives of indigenous communities, or workers' or employers' organizations. In this regard, the Government has provided a draft strategy for 2016–20 which was adopted on 15 November 2016 by Decree No. 6285. The Committee notes that this strategy adopts a results-oriented approach and constitutes the framework for the development of local and regional policies and plans. It sets out three principal objectives: educate and raise awareness of situations of forced labour; develop and implement a comprehensive system of prevention, detection and eradication of forced labour and of victim protection; and reduce people's vulnerability to forced labour. In this respect, the ITUC indicates that workers' organizations have not been sufficiently consulted during the process of elaboration of the strategy. The CUT-A considers that the strategy is general and does not contain specific actions, especially relating to indigenous communities in the Chaco and the eastern region. In addition, the strategic objectives do not include a component on suppression and punishment of perpetrators. The CUT-A also considers that the strategy should refer to institutional strengthening of labour inspection and to the need for coordination between the inspectorate and the Office of the Public Prosecutor.

***The Committee recognizes that the participatory process that led to the adoption of the national strategy to prevent forced labour constitutes an important step against forced labour and urges the Government to intensify its efforts to effectively implement the strategy, particularly in regions with weak state presence and where forced labour indicators have been identified (Chaco and the eastern region). This goal could be achieved, for example, by adopting regional action plans. The Committee requests the Government to indicate the priority actions that have been defined and measures taken to raise awareness on forced labour; respond to the situation of vulnerability faced by indigenous workers; and protect the victims identified. The Committee also refers the Government to its comments under the Indigenous and Tribal Peoples Convention, 1989 (No. 169).***

*Imposition of effective penalties.* The Committee previously insisted on the need to build the capacities of the law enforcement bodies and to improve the legislative framework against forced labour to ensure that victims have effective access to justice and that those imposing forced labour are punished. The Committee notes the Government's indication that labour inspection staff increased in 2015 across the country through the recruitment of 30 labour inspectors who had received training in the fundamental rights at work, including forced labour. In April 2015, a delegation of the Ministry of Labour, Employment and Social Security visited the Chaco region in Paraguay to examine the working conditions in agricultural undertakings. In addition, in the second half of 2015 inspections were also conducted in this region, during which the inspectorate identified certain labour rights violations but no cases of forced labour. The Government adds that, since March 2015, new courts have been established in the Chaco region and judges designated to them are competent in criminal, civil, trade and labour law.

The Committee notes that, in their observations, the CUT-A and the ITUC refer to a lack of resources and to the operational problems of the office of the Department of Labour in the central Chaco region. As this office is too far from the departmental capital, it is almost impossible for indigenous workers to get there to report violations committed against them. The trade unions also mention that, in practice, the Directorate for Indigenous Labour and the technical unit for the prevention and eradication of forced labour of the labour inspectorate are not able to function. In addition, the CUT-A rejects the statement that there is no forced labour in Paraguay and expresses its concern at the fact that workers who are victims of exploitation or debt bondage do not have access, in practice, to an effective mechanism enabling them to submit complaints about their situation and preserving their anonymity with regard to their employers. In this respect, the CUT-A notes that the inspection conducted by the delegation of the Ministry of Labour in 2015 in the Chaco region was publicized and included employers. Regarding the inspection visits of agricultural undertakings and the failure to detect cases of debt bondage, the CUT-A considers that factors relating to debt processes and to discrepancies in the payment of wages were not adequately examined. Lastly, the CUT-A raises the issue of the high prices fixed by the employers in commissaries where workers have no choice but to buy their basic goods, as well as the deductions made against their salaries.

The Committee notes with **deep concern** the operational problems facing the bodies set up to enable indigenous workers who are victims of labour exploitation to exercise their rights, as well as the lack of information on the activities performed by those bodies. ***Given the geographic characteristics of the country and the severe poverty of certain communities, the Committee recalls that it is essential that the Government continues to strengthen state presence in the regions concerned, by equipping law enforcement agents with the means to identify situations of forced labour and protect the most vulnerable people. The Committee therefore requests the Government to provide specific information on the means and actions led by the technical unit for the prevention and eradication of forced labour, the subcommission of the Commission on Fundamental Rights at Work and the Prevention of Forced Labour in the Chaco region, and the office of the Department of Labour in the locality of Teniente Irala Fernandez.***

***Recalling that under Article 25 of the Convention, criminal penalties must be imposed and strictly enforced for persons found guilty in the exaction of forced labour, the Committee requests the Government to provide information on the judicial proceedings launched against persons exacting forced labour in the form of debt bondage or otherwise. Noting the absence of judicial decisions issued in this regard, the Committee hopes that the Government will not fail to ensure that national criminal law contains sufficiently specific provisions adapted to the national circumstances to enable the competent authorities to initiate criminal proceedings against the perpetrators of these practices and punish them.***

*Article 2(2)(c). Obligation to work imposed on non-convicted detainees.* For many years, the Committee has been emphasizing the need to amend the Act on the prison system (Act No. 210 of 1970), under the terms of which prison labour shall be compulsory for persons subjected to security measures in a prison establishment (section 39 in conjunction with section 10 of the Act). Under the terms of *Article 2(2)(c)* of the Convention, only prisoners who have been convicted in a court of law may be subjected to the obligation to work. In this regard, the Government refers to the adoption of the Code on the Execution of Criminal Sentences (Act No. 5162/14). The Committee notes that this Code regulates the execution of criminal sentences handed down by the courts and does not contain provisions concerning security measures which may be imposed before a ruling. The Committee notes, however, that the new Code on the

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Execution of Criminal Sentences does not repeal the Act on the prison system (Act No. 210 of 1970). ***The Committee therefore requests the Government to take the necessary measures to formally repeal the provisions mentioned of Act No. 210 of 1970 and to ensure that persons subject to security measures in prison establishments are not subjected to the obligation to work in prison.***

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

## Poland

### Forced Labour Convention, 1930 (No. 29)

(Ratification: 1958)

The Committee notes the observations of the Independent and Self-Governing Trade Union ("Solidarnosc") received on 29 August 2016 as well as the Government's reports.

*Articles 1(1), 2(1) and 25 of the Convention. Vulnerable situation of migrant workers with regard to the exaction of forced labour.* The Committee notes the observations of Solidarnosc, stating that Poland is a country of destination of people who become victims of forced labour, the majority of whom are migrants. Solidarnosc also states that there has been exploitation of citizens of the Democratic People's Republic of Korea (DPRK) for forced labour in Poland. The Committee notes Solidarnosc's indication that there were 239 DPRK workers brought legally to Poland in 2011 and 509 workers brought legally in 2012. According to Solidarnosc's indication, DPRK workers have to send back to the regime a large part of their legitimate earnings. The Committee notes Solidarnosc's concern regarding the working conditions of those workers, which might be assimilated to forced labour. Solidarnosc mentions that ten years ago, DPRK workers were discovered in a fruit plantation near Sandomierz on the coastal construction sites. Their salary was only \$20 instead of the \$850 promised in the contract, their passports were taken away, they were working on average 72 hours per week and they were placed in barracks, from which they were prohibited to leave.

The Committee notes the Government's statement, in its communication dated 7 October 2016, that in 2016 comprehensive controls of the legality of employment of foreigners in selected entities known to employ DPRK citizens were carried out throughout the country. During those controls, no cases of illegal employment were detected but a number of infringements of the provisions of the Act on Employment Promotion and provisions of the Labour Law were found. In the controlled entities there were no instances of failure to pay or payment of a lower amount than that stated in the foreigners' work permits. Findings of this respect were made on the basis of evidence of payments presented by the employers (bank transfers and payrolls with signatures of DPRK citizens). The information supplied by the regional labour inspectorates shows the labour inspectors have found no proof that a given employer or entrepreneur would employ a national of the DPRK in conditions giving rise to a suspicion of forced labour.

The Committee also takes notes of the report of the Special Rapporteur of the United Nations on the situation of human rights in the DPRK of 8 September 2015 (A/70/362). In this report, the Committee notes the Special Rapporteur's indication that nationals of the DPRK are being sent abroad by their Government to work under conditions that reportedly amount to forced labour (paragraph 24). According to the report, 50,000 DPRK workers operate in countries such as Poland and mainly in the mining, logging, textile and construction industries. The Committee notes, as examples of working conditions, that: the workers do not know the details of their employment contract; workers earn on average between \$120 and \$150 per month, while employers in fact pay significantly higher amounts to the Government of the DPRK (employers deposit the salaries of the workers in accounts controlled by companies from the DPRK); the workers are forced to work sometimes up to 20 hours per day with only one or two rest days per month; health and safety measures are often inadequate; safety accidents are allegedly not reported to local authorities but handled by security agents; they are given insufficient daily food rations; their freedom of movement is unduly restricted; they are under constant surveillance by security personnel and are forbidden to return to the DPRK during their assignment (paragraph 27); workers' passports are confiscated by the same security agents; workers are threatened with repatriation if they do not perform well enough or commit infractions; and host authorities never monitor the working conditions of overseas workers. The Committee notes the Special Rapporteur's indication that companies hiring overseas workers from the DPRK become complicit in an unacceptable system of forced labour and that they should report any abuses to the local authorities, which have the obligation to investigate thoroughly and end such partnership (paragraph 32).

The Committee recalls the importance of taking effective action to ensure that the system of the employment of migrant workers does not place the workers concerned in a situation of increased vulnerability, particularly when they are subjected to abusive employer practices such as retention of passports, deprivation of liberty, non-payment of wages, and physical abuse, as such practices might cause their employment to be transformed into situations that could amount to forced labour. ***The Committee therefore urges the Government to strengthen its efforts to ensure that migrant workers are fully protected from abusive practices and conditions amounting to the exaction of forced labour and to provide information on the measures taken in this regard. The Committee also requests the Government to take concrete action to identify the victims of forced labour among migrant workers and to ensure that these victims are not treated as offenders. Lastly, the Committee requests the Government to take immediate and effective measures to ensure that the perpetrators are prosecuted and that sufficiently effective and dissuasive sanctions are imposed.***

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

***[The Government is asked to supply full particulars to the Conference at its 106th Session and to reply in full to the present comments in 2017.]***

## Qatar

### Labour Inspection Convention, 1947 (No. 81)

(Ratification: 1976)

The Committee recalls that, at the 103rd Session of the International Labour Conference in June 2014, the application of Convention No. 81 by Qatar was discussed by the Committee on the Application of Standards (CAS). Moreover, a complaint was filed against the Government of Qatar relating to the violation of the Forced Labour Convention, 1930 (No. 29) and Convention No. 81 under article 26 of the International Labour Organisation (ILO) Constitution, and was declared receivable at the Governing Body's 322nd Session (November 2014). The complaint alleges that the problem of forced labour affects the large migrant worker population, indicating that the Government fails to maintain a legal framework sufficient to protect the rights of migrant workers and to enforce the legal protections that currently do exist.

At its 325th Session (November 2015), the Governing Body decided to request that the Government receive a high-level tripartite visit to assess all the measures taken to address the issues raised in the complaint. This visit was received by the Government from 1 to 5 March 2016. At its 326th Session (March 2016), the Governing Body examined the mission report of the high-level tripartite delegation (GB.326/INS/8(Rev.)). It decided to request that the Government report on the follow-up given to the assessment in this report at the 328th Session (November 2016). Having examined the reports submitted by the Government to that session (GB.328/INS/11(Rev.)), the Governing Body decided to defer further consideration on the setting up of a Commission of Inquiry until its 329th Session (March 2017).

*Articles 8, 10 and 16. Sufficient number of labour inspectors and coverage of workplaces.* The Committee recalls that the article 26 complaint indicated that the inspectorate had few staff who, in addition, were unable to speak the languages of most workers, and that similar findings were made during a high-level mission to Qatar in February 2015, the report of which was submitted to the Governing Body in March 2015 (GB.323/INS/8(Rev.1)). In its comments adopted in 2015, the Committee noted an increase in the number of labour inspectors from 200 to 294, but also noted the observations made by the International Trade Union Confederation (ITUC) that this number was still insufficient to effectively control compliance in workplaces. The Committee notes the findings in the high-level tripartite mission report submitted to the Governing Body in March 2016 (GB.326/INS/8(Rev.)) that the strengthening of the labour inspection services should be supported by the development of an inspection strategy targeting as a priority the protection of the most vulnerable migrant workers against abusive practices in small companies which are subcontracted by larger companies or recruited from manpower companies.

The Committee welcomes the Government's indication in its report that the number of labour inspectors continued to increase to 397 labour inspectors in September 2016 (including 69 women inspectors in May 2016), and that, between 2014 and 2015, the number of labour inspection visits increased from 50,994 to 57,013 inspections. It also notes from the statistics provided by the Government that 10,052 of the 24,914 inspection visits undertaken in the first semester of 2016 were carried out in workplaces with ten or fewer workers. In reply to its previous request concerning the language capacities within the labour inspectorate, the Government indicates that four interpreters proficient in the most prevalent languages spoken by workers were appointed in the Labour Inspection Department, and that the Government seeks to increase the number of interpreters in accordance with future needs. In this context, the Committee also notes the information provided by the Government in its report to the 328th Session of the Governing Body (November 2016) that symposia and meetings are convened on a regular basis with employers and communities of expatriate workers in order to familiarize them with respect to labour laws, and their implementation in order to safeguard the rights of expatriate workers. **Noting that there are currently four interpreters employed at the Labour Inspection Department speaking the language of migrant workers and that there are 397 labour inspectors and about 1.7 million migrant workers in the country, the Committee requests that the Government continue its efforts to ensure the recruitment of labour inspectors and interpreters able to speak the language of migrant workers, and to provide information on the number of inspectors and other staff hired in this regard. It also requests the Government to provide information on the inspection strategy devised to achieve sufficient coverage of workplaces by labour inspection, including by targeting small companies employing vulnerable migrant workers.**

*Articles 5(a), 17, 18 and 21(e). Effective cooperation between the labour inspectorate and the justice system, legal proceedings and effective enforcement of adequate penalties.* The Committee recalls that the article 26 complaint stated that the country's labour inspection and justice system had proven highly inadequate in enforcing the few rights that migrant workers do have under Qatari law, that inspectors have little power to enforce findings and that fines are far from dissuasive or in some cases non-existent. The Committee notes that similar findings were made in the report of the high-level mission (GB.323/INS/8(Rev.1)) and in the recent report of the high-level tripartite delegation (GB.326/INS/8(Rev.)). The latter report stated that challenges remained with respect to the capacity of the labour inspectorate to detect various irregularities, borne out by the relatively small number of violations detected in comparison to the large number of migrant workers in the country. In its comments made in 2014 and 2015, the Committee also noted that a report on migrant workers commissioned by the Government recommended a number of measures, including bolstering the powers of labour inspectors who only have the power to draw up infringement reports when detecting non-compliance but not to apply sanctions and who must refer these reports to the courts for further action. While the Committee noted in its last report that a permanent office had been set up at the labour inspectorate to support cooperation with the judicial system to facilitate prosecution, the Committee nevertheless noted that the outcome of most inspections was no further action and that the Government had not provided information on the specific penalties applied in the cases where decisions had been handed down by courts.

The Committee notes the information provided by the Government in its report that the labour inspectorate carried out 57,013 inspection visits in 2015 as a result of which 18,979 warnings to remedy violations and 666 infringement reports were issued, that is to say only 1.2 per cent of inspection visits led to infringement reports. While the Government notes that the infringement reports were subsequently referred to the judicial system, the Committee notes that the Government once again does not provide the requested information on the penalties imposed by the courts as a result. The Government also refers to the fact that non-complying undertakings can be placed on a prohibition list, which means that they will not be granted new work permits and are prohibited from engaging in transactions with the Ministry of Labour and the Ministry of the Interior (in 2015, 929 undertakings were placed on the prohibition list). While the Committee notes the Government's indication that the decrease in the number of more robust enforcement measures, such as the drawing up of infringement reports against non-compliant companies (referral to public prosecution), reflects the increased efficiency and improved performance of the labour inspectorate, the Committee nevertheless considers that doubts remain with regard to the dissuasiveness of labour inspection, as in 2015, only 1.2 per cent of all inspection visits resulted in infringement reports (with no information on any penalties imposed by the judiciary as a result). As to the dissuasiveness of fines, the Committee also notes the Government's indication that draft Law No. 21 of 2015 (which is proposed to enter into force in December 2016) provides for increased penalties for non-compliance with the Labour Code, including for the failure to pay wages on time. **The Committee requests that the Government take steps to strengthen the effectiveness of enforcement mechanisms, including measures to provide enhanced enforcement powers to labour inspectors and further measures to promote effective collaboration with the judicial system (including with regard to the exchange of information on the outcome of cases referred to the judicial system).**

**The Committee requests that the Government continue to provide comprehensive statistics on the enforcement activities of the labour inspection activities and urges it to provide the missing information on their outcome (that is, the penalties imposed as a result of inspection activities and the legal provisions to which they relate). In addition, it requests the Government to provide detailed information on the possibility of placing undertakings on the so-called "prohibition list" (including information on the competent authority for the taking of such decisions, the type of violations which may justify such a decision, the duration of such a decision, and the practical consequences that may result from such a**

*decision).*

Concerning the strengthening of the available complaints mechanisms, which the article 26 complaint had considered to be ineffective, the Committee refers to its comments on the application of Convention No. 29. **Noting the information under Convention No. 29 that the permanent office at the labour inspectorate is intended to help workers initiate legal procedures free of charge, and follow up on their complaints and lawsuits, the Committee requests that the Government indicate the number of labour inspectors assigned to this office and their time spent on assisting workers to pursue their claims before the courts.**

*Articles 5(a) and 14. Labour inspection in the area of occupational, safety and health (OSH).* The Committee recalls that during the discussion on the application of the Convention at the CAS in 2014, several speakers indicated that the strengthening of labour inspection would contribute to protecting OSH of migrant workers, particularly in the construction sector where several fatal occupational accidents had occurred. The Committee notes the Government's indication, in reply to its previous request on the measures taken to strengthen the capacity of labour inspection in relation to OSH, that it seeks to upgrade the OSH unit at the Ministry of Labour and Social Affairs entrusted with OSH inspections and the registration of occupational accidents to a full department, through the strengthening of its capacities to ensure migrant workers' safety and health, especially in the construction sector. In this respect, the Committee also notes from the statistics provided by the Government in its report that about a third of inspections in 2014 and 2015 were undertaken in the area of OSH and that the number of OSH inspections increased from 17,117 to 20,777. The Committee further notes the explanation provided by the Government that, where a "regular" OSH violation is detected (that is, a violation other than one that threatens the safety of workers), a compliance notice is issued requesting the rectification of the violation within 15 days. Where the employer has not rectified the violation, an infringement report will be issued during a follow-up visit. In this context, the Committee notes that in 2015, 8,452 warnings to remedy infringements and only 344 infringement reports were issued (in addition to the 174 undertakings that were placed on the prohibition list). The Committee notes however that the Government has once again not provided the requested information on the penalties issued as a result of these infringement reports (that were referred to public prosecution). The Committee finally notes that the Government has communicated statistics on industrial accidents for 2014, 2015 and for the first quarter of 2016, including on the requested number of fatal accidents (that is, 19, 24 and six fatal accidents).

The Committee also notes from the Government's report submitted to the 328th Session of the Governing Body that the Supreme Committee for Delivery and Legacy, the Ministry of Administrative Development and the Labour and Social Affairs concluded a draft Memorandum of Understanding (MoU) with the Building and Wood Workers' International (BWI). This was to be signed in November 2016 to protect the occupational safety and health of workers in World Cup projects, including through the organization of joint inspection visits and the setting up of a training team specialized in OSH inspections. **The Committee requests that the Government provide information on the joint activities carried out by the Supreme Committee for Delivery and Legacy, the Ministry of Administrative Development, Labour and Social Affairs and BWI. It further requests that the Government provide statistics on the inspection activities undertaken in the area of OSH, including the number and type of inspection visits undertaken (announced, unannounced, routine, in response to a complaint, follow-up), the number of violations detected, the number of suspensions of workplaces or machines in the event of a serious danger to the health and safety of workers, the number of infringement reports issued and in particular the information that has not yet been provided, that is to say the follow-up given by the judicial authorities to infringement reports (acquittal, fine or prison sentence, etc.). It also requests the Government to provide detailed information on the number and type of violations as a result of which undertakings were placed on the prohibition list.**

**Noting that the Government has not provided a reply in this regard, the Committee once again requests that the Government take measures to ensure coordination between labour inspectors and inspectors in the occupational safety and health department, and to provide information on the specific steps taken in this regard.**

The Committee is raising other matters in a request addressed directly to the Government.  
**[The Government is asked to reply in full to the present comments in 2017.]**



## Sierra Leone

### Guarding of Machinery Convention, 1963 (No. 119)

*(Ratification: 1964)*

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

For a number of years, the Committee has drawn the attention of the Government to the fact that the national legislation does not contain provisions to give effect to Part II of the Convention (prohibition of the sale, hire, transfer in any other manner and exhibition of unguarded machinery) and that it does not provide for the full application of Article 17 of the Convention (which applies to all sectors of economic activity), as it is not applicable to certain branches of activity, inter alia, sea, air or land transport and mining.

Since 1979, in reply to the Committee's comments, the Government has indicated in its reports that a Bill to revise the 1974 Factories Act was being drafted and would contain provisions consistent with those of the Convention, and would apply to all the branches of economic activity. In its latest report (received in 1986), the Government indicates that the draft Factories Bill, 1985, has been examined by the competent parliamentary committee and is to be submitted to Parliament for adoption.

With its report for the period ending 30 June 1991, the Government supplied a copy of extracts of the Factories Bill containing provisions which should give effect to Part II of the Convention. In this connection, the Government was requested to indicate the stage of the legislative procedure reached by the Bill and the body which was in the process of examination of the Bill. **Since no information has been provided by the Government in this respect, the Committee once again expresses the hope that the abovementioned Bill will be adopted in the near future and requests the Government to provide a copy of this text, once it has been adopted.**

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

## Somalia

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

*(Ratification: 2014)*

The Committee **regrets** that the Government's first report has again not been received.

The Committee notes the observations of the International Organisation of Employers (IOE), received on 1 September 2016, which are of a general nature. The Committee also notes the observations of the Federation of Somali Trade Unions (FESTU), received on 28 August 2015, on restrictions on the exercise of trade union rights, in particular in the telecommunications and media sector, as well as repeated acts of harassment against trade union members. The Committee also notes with **concern** that the Committee on Freedom of Association examined a case brought by the FESTU concerning particularly serious violations of its trade union rights (Case No. 3113, 380th Report). ***In these circumstances, the Committee trusts that the Government will take all the necessary measures to provide its first report on the application of the Convention as soon as possible and that it will also provide on that occasion information in response to the observations of the FESTU.***

## Sudan

### Employment Policy Convention, 1964 (No. 122)

(Ratification: 1970)

The Committee notes the observations of the Sudanese Businessmen and Employers Federation (SBEF), communicated together with the Government's report.

*Articles 1 and 2 of the Convention. Formulation of an employment policy and coordination with poverty reduction.* In its previous comments, the Committee invited the Government to provide information on the progress made towards the formulation of an active employment policy, as required by the Convention. The Government indicates in its report that a Labour Force Survey was carried out in 2011 in order to prepare indicators to assist in the formulation of an employment policy. In 2013, a roadmap and seven concept papers were prepared by international experts on a range of topics, including: the creation of job opportunities through small project development; the formulation of a vocational training policy; the social economy; social protection; social dialogue and the dynamics of the labour market; and the informal economy. The roadmap and concept papers were discussed in workshops and at a high-level round table which issued recommendations on the formulation of an employment policy. The Government indicates that a high-level advisory committee, composed of experts and the social partners, was set up in 2014 to formulate an employment policy. The high-level advisory committee has formulated the principal guidelines to be contained in the employment policy. With respect to plans and programmes designed to promote full, productive and freely chosen employment, the Committee notes the information provided by the Government concerning the impact of measures implemented during the reporting period, including the impact of employment measures taken within the National Project for Rural Women Development, as well as various training measures targeting youth. The Committee also notes that a Coordinating Unit for Intensive Employment has been established within the Ministry of Labour and Administrative Reform that will focus on creating sustainable jobs for youth. The Government indicates that a five-year Economic Reform Programme (ERP) 2015–19 was approved, which aims to benefit from value-added results in manufacturing and agricultural industrialization, while focusing on the need to increase the competitiveness of national goods. In its observations, the SBEF refers to the importance of the ERP 2015–19, which includes concrete quantitative goals and indicators, including in relation to the diverse resources available in the country and increasing the competitiveness of national goods. The ERP's objectives include the creation of 1 million jobs in manufacturing industries. The SBEF adds that there is a need for broad government reform so as to promote interest in the real economy, reform the public service and combat corruption. The SBEF is of the view that these are all serious issues that must be addressed to provide jobs, combat poverty and expand productive work. **The Committee requests the Government to provide further information on the formulation and implementation of an active employment policy, as required by the Convention, and on the implementation of the Economic Reform Programme 2015–19. Please also provide a copy of the text of the national employment policy, once it is adopted. The Committee also requests the Government to continue to provide information on the employment measures taken to promote full, productive and freely chosen employment, and on their results.**

*Article 2. Collection and use of labour market data.* The Government indicates that data collected through the Labour Force Survey were used in the formulation of the ERP 2015–19. The Committee notes from the data provided that the unemployment rate was 18.5 per cent in 2011, with 16 per cent unemployment in rural areas compared to 22.9 per cent unemployment in urban areas. It further notes the statistical data provided, disaggregated by sex, employment status and by urban and rural areas. **The Committee requests the Government to continue to provide updated statistical data, disaggregated as much as possible, on the situation and trends of employment, unemployment and underemployment, in both the formal and informal economies.**

*Article 3. Consultation with the social partners.* The Committee welcomes the information provided by the Government on the establishment of a National Advisory Committee for Labour Standards, composed of representatives of the social partners and of other relevant bodies. The Government indicates that the social partners are seeking to update the National Jobs Charter in order to take new parameters into account and improve implementation of the Charter, so as to maintain existing jobs and create new ones. The social partners are also working with the Government to implement the Paid Training Programme which aims to train approximately 400,000 graduates in all sectors of economic activity. Moreover, efforts are being made to regulate the conditions of workers employed in the informal economy. **The Committee requests that the Government provide detailed information on the consultations held with the social partners, including within the National Advisory Committee for Labour Standards, on the formulation and implementation of an active employment policy. Please also include information on the consultations held with the representatives of the persons affected by the employment measures to be taken, such as those working in rural areas and in the informal economy.**

## Turkey

### Workers' Representatives Convention, 1971 (No. 135)

*(Ratification: 1993)*

The Committee notes the observations on the application of the Convention by the Turkish Confederation of Employers' Associations (TİSK), the Confederation of Turkish Trade Unions (TÜRK-İŞ) and the Confederation of Public Employees Trade Unions (KESK) received in January 2016 and transmitted with the Government's report. The Committee notes the numerous allegations of violations of the Convention in practice submitted by the KESK, which refer, in particular, to the cases of dismissal, transfers and disciplinary measures, as well as denial of facilities to worker representatives and **regrets** the absence of any reply thereon in the Government's report. **The Committee requests the Government to provide its comments on the observations made by TÜRK-İŞ and KESK.**

## Ukraine

### Labour Inspection Convention, 1947 (No. 81) / Labour Inspection (Agriculture) Convention, 1969 (No. 129)

(Ratification: 2004)

In order to provide a comprehensive view of the issues relating to the application of the ratified governance Conventions on labour inspection, the Committee considers it appropriate to examine Convention No. 81 and Convention No. 129 in a single comment.

*Technical assistance with a view to strengthening the labour inspection services.* The Committee notes with **interest** that the Government requested ILO technical assistance for support in undertaking its labour inspection reforms initiated in 2014. The Committee notes that, as a result of this request made in February 2015, the ILO has, among other technical activities, established a needs assessment of the current structure of the State Labour Service (SLS) in November 2015 (2015 ILO needs assessment). This makes a number of recommendations on how to improve the effective functioning of the SLS, applying international labour standards and using best practices as a reference. The Committee also notes the information provided by the Government in its report on the initiation of the ILO project on "The strengthening of the effectiveness of the labour inspection system and social dialogue mechanisms" in September 2016 which aims to improve the national legal framework as well as compliance mechanisms, including through the revision of the Regulations of the SLS, the organization of the labour inspection, and the collaboration with the social partners. **The Committee requests that the Government provide information on the activities undertaken in the framework of the technical assistance provided and the measures taken to strengthen the labour inspection services in relation to the principles of the Convention.**

*Articles 12(1)(a) and (b), 15(c) and 16 of Convention No. 81 and Articles 16(1)(a) and (b), 20(c) and 21 of Convention No. 129. Restrictions and limitations to labour inspection.* Further to the Committee's reiterated request to amend Act No. 877-V of 2007 concerning the fundamental principles of state supervision and monitoring of economic activity, so as to bring it into conformity with the abovementioned Articles of the labour inspection Conventions, the Committee welcomes the Government's indication that further to amendments in 2014, Act No. 877-V of 2007 no longer applies to the activities in the area of labour and employment legislation by the State Labour Inspectorate.

The Committee notes however with **deep concern** the information provided by the Government in its report on the moratorium introduced between January and June 2015 on labour inspections (pursuant to the Concluding Provisions of Act No. 76 VIII of 28 December 2014 on the repeal of several legislative acts), as a result of which there was a significant rise in the number of complaints made to the SLS concerning labour law violations. In this respect the Committee notes with **concern** that the number of labour inspections between 2011 and 2014 decreased from 42,323 to 21,015 and that in 2015, only 2,704 labour inspection visits were undertaken. The Committee further notes with **concern** the information provided by the Government that two Bills have recently passed the first reading in the Parliament of Ukraine, namely Bill No. 2418a of 21 July 2015 and Bill No. 3153 of 18 September 2015, which propose to place a fresh moratorium on scheduled inspection visits until 31 December 2016 and thereby restrict state oversight and monitoring of labour law. However, the Committee also notes that an ILO delegation was invited by the Government in the context of a technical mission to Kyiv in October 2016 to attend a hearing in Parliament on the proposed amendments to the Labour Code, which are supposedly intended to bring the Labour Code into conformity with the principles of the Conventions. In this context, the Committee welcomes the fact that, following the mission, the Government has requested informal opinions in relation to three legislative drafts, including on the procedures and regulations concerning labour inspection in the area of working conditions, occupational safety and health and mining. **Recalling that a moratorium placed on labour inspection is contrary to the principles of the Convention, the Committee urges the Government to ensure that the proposed amendments to the national legal framework are undertaken with the purpose of bringing the national legislation into conformity with the Conventions and do not introduce restrictions and limitations on labour inspection. The Committee strongly encourages the Government to continue to avail itself of ILO technical assistance for this purpose.**

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

**[The Government is asked to supply full particulars to the Conference at its 106th Session and to reply in full to the present comments in 2017.]**

## United Kingdom

### Social Security (Minimum Standards) Convention, 1952 (No. 102)

(Ratification: 1954)

*Parts III, IV, V, VII and X of the Convention. Benefits to be taken into account.* The Committee recalls that the system of social protection in the United Kingdom comprises contribution-based and income-based social security benefits, as well as various tax credits and a range of means-tested social assistance benefits, which offer additional protection against poverty. Contribution-based benefits are payable at a flat rate to anyone who has paid the requisite amount of National Insurance Contributions (NICs). Income-based benefits replace or supplement contribution-based benefits and are available to all who meet the eligibility criteria as to their income. In case of sickness, income security is ensured through a mix of measures comprising employer liability provisions, contributory social insurance benefits and non-contributory income-tested benefits, which together seem to offer the level of social protection comparable to that guaranteed by the Convention. According to the Government, the obligation to provide sickness benefit cover is met through a combination of Statutory Sick Pay (SSP) payable to employed workers by their employers, and contribution-based Employment and Support Allowance (ESA), which is available to employed and self-employed earners who are not covered for SSP purposes or whose entitlement to SSP has come to an end after the maximum duration of 28 weeks. SSP can be considered the main benefit covering the majority of persons protected during the whole period of payment of sickness benefit, as prescribed by *Article 18(1)* of the Convention/Code. ESA plays a supplementary role protecting only those who are not covered by SSP. Taken together, the Government believes these benefits ensure the required level of income security for the duration outlined by Part III of the Convention/Code. As regards the role of the income-tested benefits in the case of sickness, they are currently being replaced by Universal Credit (UC), which "is a general anti-poverty benefit available to those at risk of falling into poverty. It is payable to people out of work as well as those in work and on a low income. The UK classifies this as a 'social assistance' rather than a 'social security' benefit ... As Universal Credit is a form of social assistance it does not fall within the scope of the Code." Therefore, the Government considers that the United Kingdom's obligation under the accepted Parts of the Convention/Code should continue to be met for the foreseeable future on the force of the NIC-based social security benefits alone.

The Committee takes due note of these important statements. It notes in particular that the United Kingdom wishes to apply Part III of the Code/Convention on the force of the combination of SSP and ESA (Contributory) at the exclusion of income-tested benefits such as income-related ESA and UC. Moreover, the Government insists that non-contributory income-related benefits shall not be taken into account for the purpose of all accepted Parts of the Code/Convention. The Committee observes that a Contracting Party is free to declare on the force of which benefits provided by the national social security system it accepts the obligations of the Code/Convention under each Part covered by its ratification. While respecting the above choice of the Government, the Committee would only partially agree with its statement that social assistance benefits fall outside of the scope of the Code/Convention. Indeed, the Code/Convention does not apply to the discretionary social assistance provided by the local authorities as they deem necessary; it fully applies to non-contributory means-tested social assistance benefits provided to all residents as of right. It is for measuring the adequacy of the rate of such benefits that *Article 67* was included in the Code and Convention No. 102. The preparatory document on Convention No. 102 clearly states that *Article 67* "applies to cases of social assistance under which the benefit may be reduced by part of the income or means of the beneficiary during the contingency. Safeguards are obviously required if social assistance is to be admitted for the purpose of compliance ... A Member wishing to comply on the basis of social assistance would therefore have to prove that its maximum benefit, which will be payable to a family without sufficient means, is actually a subsistence benefit and large enough to permit the family to live under tolerable conditions" (Report V(B), International Labour Conference, 35th Session, Geneva, 1952, p. 110).

*Part III (Sickness benefit), Article 16 (Calculation of the level of benefit).* The Committee notes that the calculation of the replacement level of the SSP and ESA (Contributory) for the standard beneficiary (man with wife and two children) includes Child Tax Credit (CTC) of £117.50 in respect of two children. CTC is a means-tested form of support for low-income families with children who are in or out of work and living in the United Kingdom. Means-tested benefits, according to the Government, are not a form of social security and fall outside the scope of the Code/Convention. Following this logic, CTC, as a means-tested benefit, shall not be included in the calculation of the replacement level of SSP or ESA. Recalculated without CTC, the replacement rate of SSP Week 1–28 stands at 30.25 per cent of the reference wage of an ordinary labourer, of ESA (Contributory) Week 1–13 at 26.50 per cent and for Week 14 onwards at 33.62 per cent. **The Committee observes that these rates fall much below the minimum rate of 45 per cent guaranteed by the Convention/Code and concludes that social security benefits in case of sickness, as they are understood and conceived by the Government, do not permit the United Kingdom to fulfil its obligations under Part III of the Convention/Code as regards the level of benefit.**

*Part IV (Unemployment benefit), Article 22 (Calculation of the level of benefit).* The Committee notes that the calculation of the replacement level of the contribution-based Jobseeker's Allowance (JSA) for the standard beneficiary (man with wife and two children) includes CTC of £117.50 in respect of two children and refers the Government to its comments under *Article 16* above. Recalculated without CTC, the replacement rate of JSA Joint Claim stands at 36.75 per cent of the reference wage of an ordinary labourer, which is much below the minimum rate of 45 per cent guaranteed by the Convention. **The Committee concludes that the United Kingdom does not fulfil its obligations under Part IV of the Convention as regards the level of unemployment benefit.**

*Part X (Survivors' benefit), Article 62 (Calculation of the level of benefit).* The Committee notes that, according to the data given in the report on Convention No. 102, the weekly rate of widow's benefit together with Child Benefit but excluding CTC will provide a replacement rate of 36.18 per cent, which is below the minimum level of 40 per cent guaranteed by the Convention. **Referring to its comments under Article 16 above, the Committee concludes that the United Kingdom does not fulfil its obligations under Part X of the Convention as regards the guaranteed level of the survivors' benefit.**

*Level of contribution-based and income-related benefits below poverty line.* During the last decade, the Committee of Ministers of the Council of Europe has been repeatedly pointing out that, unlike the income-based ESA and JSA, the contribution-based ESA and JSA fell short of the minimum level prescribed by the Code/Convention and do not attain even the lowest EUROSTAT at-risk-of-poverty threshold of 40 per cent of median equivalized income in the United Kingdom and in the European Union as a whole. In its latest reply, the Government states that: (a) "the rates of contributory ESA and JSA are the same as the income-based rates of ESA and JSA respectively"; (b) "the Government believes that it maintains a strong welfare safety net that is adequate and balances the requirements of a sustainable welfare system with the need to ensure that work pays"; and (c) "the Committee should note that the main rates of Jobseeker's Allowance and Employment and Support Allowance provide a basic standard of living to those who are not in work at a level that does not disincentivise moving into work or back into work when the opportunity arises or their health permits". With respect to these statements, one should first of all note that the Government is not contesting the fact that the level of the said benefits is insufficient in terms of the international standard established by the Code and Convention No. 102 and the at-risk-of-poverty threshold established by EUROSTAT. Instead, it considers this insufficient level "adequate" in terms of internal standard of welfare, and consequently expresses no intention to comply with the United Kingdom's obligation to maintain social security benefits at least at the minimum level guaranteed by these international instruments. In appraising the Government's position from a legal point of view, the Committee is bound to recall some basic rules of conduct of the Contracting Parties with respect to their international obligations freely assumed under the Code and ILO Conventions. Thus, the Vienna Convention on the Law of Treaties 1969 stipulates, in particular, that "every treaty in force is binding upon the parties to it and must be performed by them in good faith" (Article 26: *Pacta sunt servanda*), and that "a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty" (Article 27: Internal law and observance of treaties). With regard to the internal provisions to incentivize sick or unemployed workers moving into work as soon as possible invoked by the Government to justify its failure to guarantee the minimum benefits prescribed by the Code and

Convention No. 102, the Committee considers that the policy of keeping the basic standard of living of those who are on benefits and not in work below the absolute poverty line results in using social security as a means of economic compulsion to labour. While such policies were indeed common in Europe in the nineteenth century, in the twenty-first century the international community believes that “basic income security should allow life in dignity” and “secure protection aimed at preventing or alleviating poverty”, as it was recently stated in the Social Protection Floors Recommendation, 2012 (No. 202). The policy of keeping the rates of SSP, ESA, JSA and the widow’s benefit, contribution-based as well as income-based benefits, below the poverty line stands in direct contradiction to such objectives of the Code as “harmonising social charges in member countries” and “facilitating their social progress”, stated in its Preamble. In such situations where national welfare systems are designed in violation of the requirements of the Code, the Committee of Ministers reminds the Contracting Parties, as it has done in the Resolution CM/ResCSS(2016)21 on the application of the Code by the United Kingdom, that common European social security standards may be effective only so much as they are being respected and fulfilled by all and every member State. As, notwithstanding these reminders, the Government apparently remains deaf to the common European and international objectives of social protection, the Committee of Ministers should point out that, in accordance with Articles 66, 67 and 70(3) of the Code, the Government shall accept general responsibility for the due provision of the said benefits at the level which shall be sufficient to maintain the family of the beneficiary in health and decency, and shall not be less than the level calculated in accordance with the requirements of Article 66. To fulfil these provisions in good faith, the Code/Convention requires the Government to take all the necessary measures, including actuarial studies and calculations of the changes in benefits, insurance contributions, or the taxes allocated to covering the contingencies in question. Regretfully, there are no such measures mentioned in the report, which merely indicates that the proportion of expenditure on contributory benefits as a share of gross domestic product (GDP) has remained broadly stable over recent years, from 4.8 per cent in 2008–09 to 5.2 per cent in 2016–17, and forecast to be 4.9 per cent by 2020–21. **Taking into account that, with these resources, the levels of abovementioned benefits were considered by Resolution CM/ResCSS(2016)21 to be manifestly inadequate in the meaning of Article 66 of the European Code of Social Security as well as in the meaning of Article 12(1) of the European Social Charter, the Committee asks the Government to undertake an actuarial study on the cost, in terms of a share of GDP, of bringing the level of contributory benefits to the minimum level guaranteed by the Code and to assess the capacity of the national economy to maintain them above the poverty line.** As regards generation of additional resources which may be required for this purpose, the Committee draws attention to the 2010 estimation of the National Institute for Economic and Social Research, mentioned in the Government’s report, that extending average working lives by one effective year, which is the purpose of raising the State Pension age from 65 to 66 years by 2020, could increase GDP by around 1 per cent.

In this context, the Committee has also considered the demand of the Government to take into account that contribution-based benefits represent one part of the overall welfare system that includes a mixture of income-related and social assistance benefits, such as housing benefit and tax credits, and that the Government is taking additional steps to incentivize and support people into work. This includes measures such as the introduction of the national living wage, which increases the minimum level of pay per hour for those aged 25 or over; the increases to the personal allowance in income tax which has ensured that workers keep more of what they earn; and the reforms to childcare including doubling the hours of free childcare available for working parents of 3–4 year-olds from 15 to 30 hours and the introduction of tax-free childcare. The Committee, much as it would have liked to take into account social assistance benefits and other measures mentioned above in assessing the overall level of protection ensured by the national social security system, regrets to point out that, following the position firmly expressed by the Government, these measures “fall outside the scope of the Code as they are not a form of social security”. Nevertheless, the Committee is ready to enlarge the scope of social protections to be taken into account for the purposes of the Code and Convention No. 102, if the Government would reconsider its position.

# Venezuela, Bolivarian Republic of

## Employment Policy Convention, 1964 (No. 122)

(Ratification: 1982)

The Committee notes the observations of the Independent Trade Union Alliance (ASI) on the application of the Convention, received on 22 August 2016, the observations of the International Organisation of Employers (IOE) and the Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS), received on 30 August 2016, and the observations of the National Union of Workers of Venezuela (UNETE), the Confederation of Workers of Venezuela (CTV), the General Confederation of Labour (CGT) and the Confederation of Autonomous Trade Unions (CODESA), received on 8 and 12 September 2016 and on 12 October 2016. **The Committee requests the Government to provide its comments on the above observations.**

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

The Committee notes the discussion on the application of the Convention that took place in the Conference Committee on the Application of Standards in June 2016. It notes that in its conclusions, the Conference Committee deplored the social and economic crisis affecting the country and the absence of an active employment policy designed to promote full, productive and freely chosen employment. The Conference Committee likewise deplored the absence of social dialogue with the most representative organizations of workers and employers with a view to applying an active employment policy. Taking note of the information provided by the Government representative and the discussion that followed, the Conference Committee urged the Government to: with the assistance of the ILO, develop, without delay, in consultation with the most representative workers' and employers' organizations, an employment policy designed to promote full, productive and freely chosen employment; implement, without delay, concrete measures to put in practice an employment policy with a view to stimulating economic growth and development, raising levels of living, meeting manpower requirements and overcoming unemployment and underemployment; establish without delay a structured body for tripartite social dialogue in the country and take immediate action to build a climate of trust based on respect for employers' and workers' organizations with a view to promoting solid and stable industrial relations; implement all commitments made in the session of the Governing Body, March 2016, to follow the plan of action for consultation with social partners that includes stages and specific time frames for its implementation; and report in detail to the Committee of Experts on the application in law and practice of Convention No. 122. The Conference Committee concluded with the statement that the Government should accept an ILO tripartite high-level mission before the next Session of the International Labour Conference in order to assess progress towards compliance with these conclusions. **The Committee notes with regret that the Government has not responded to the recommendation of the Conference Committee that it should accept an ILO tripartite high-level mission in order to assess progress towards compliance with that committee's conclusions before the June 2017 Session of the International Labour Conference, and hopes that the Government will shortly implement that recommendation.**

*Articles 1 and 2 of the Convention. Implementation of the employment policy in the framework of a coordinated economic and social policy. Measures to respond to the economic crisis.* The Committee notes that in the course of the discussions in June 2016 on the case concerning the Bolivarian Republic of Venezuela before the Conference Committee on the Application of Standards, a Government representative referred to the report submitted in 2015 indicating that the country has a sustained employment policy, namely the Economic and Social Development Plan 2007–13. In that report, reference is made to the Second Socialist Plan for the Economic and Social Development of the Nation, 2013–19, which, according to the Government constitutes a strategic roadmap for the transition towards Bolivarian socialism in the twenty-first century. The Committee notes the information supplied by the Government on the increases in the basic monthly minimum wage and the various decrees on labour immunity implemented since July 2002. The Government indicates that in order to secure a return to growth and reinvigorate the national economy, it has put in place six strategic measures known as the "Bolivarian economic agenda", which includes an enhanced plan to protect employment, wages and pensions. The ASI, for its part, states that the Bolivarian Republic of Venezuela has no employment policy. The IOE and FEDECAMARAS assert that the macroeconomic planning for the country includes no coordinated policy for the joint implementation of employment plans. They indicate that the absence of any coherent employment policy is responsible for an enormous rise in the poverty index, from 53 per cent in 2014 to 76 per cent in 2015. They add that the increase has been even more marked in the extreme poverty index, which rose from 25 per cent in 2014 to 53 per cent in 2015. The employers' organizations further observe that the Bolivarian Republic of Venezuela currently has the highest inflation in the world, with a monthly rate for July 2016 of 23.2 per cent and a cumulative rate by July 2016 of 240 per cent, and with a rate for the year from July 2015 to July 2016 amounting to 565 per cent, which has demolished the purchasing power of Venezuelan workers. A great many production plants are out of operation for lack of raw materials and production is seriously hampered. The trade union organizations UNETE, CTV, CGT and CODESA report that the Government provides no information on the situation, level and trends in employment and that there are no labour market data that could serve as a basis for regular review of the employment policy measures adopted within the framework of a coordinated economic and social policy; nor is there any information on the measures, and their results, adopted in the framework of the Economic and Social Development Plan for 2007–13. The abovementioned organizations further indicate that the Government hides information on trends in youth employment and that there are no measures or policies to promote the lasting integration of young people in the labour market. **The Committee requests the Government to provide information on the concrete measures taken to develop and adopt an active employment policy designed to promote full, productive and freely chosen employment that fully complies with the Convention, and on the consultations held with the social partners to this end.**

*Labour market trends.* In its report, the Government states that the economy grew between 2010 and 2015 and that women's participation increased by 9.2 per cent. It indicates that in the second half of 2015, the Bolivarian Republic of Venezuela had an activity rate of 63.4 per cent for an active population of 14,136,349 persons aged 15 years and over, which represents a drop of 1.2 per cent over 2014. The male activity rate was 77.7 per cent as compared to a rate of 49.3 per cent for women in the second half of 2015. It indicates that women's inactivity rate rose by 7.1 per cent in 2014–15. The Government reports a significant drop in the unemployment rate from 8.5 per cent in 2010 to 6.7 per cent in 2015, and indicates that at the close of 2015 the country had a 92.6 per cent employment rate. In its observations, the ASI indicates that employment statistics do not cover underemployment or precarious employment, and asserts that open unemployment, when added to the number of the employed who work 15 hours or less, points to a labour market deficit in the country amounting to 11 per cent. The ASI further reports that in the last 15 years, the figures for unemployment have been the highest ever recorded. Furthermore, average incomes, regardless of occupational category, border on the minimum wage, which reflects the lack of any wage policy linked to productivity levels. It reports that in 2014, households living in poverty reached 48.4 per cent. According to the IOE and FEDECAMARAS, the lack of social dialogue in the country has adversely affected employment levels, and the activity rate in April 2016 is lower than those recorded in 2014 and 2015, and the corresponding inactivity rate is higher. They report a drop in the percentage of workers employed in the formal sector, but also a reduction in the percentage of workers in the informal economy, which they attribute to a fall in the number of employers caused by the negative effects of the economic and employment generating policies that the Government developed without consultation. **The Committee requests the Government to continue to provide detailed information, including up-to-date statistics, on labour market trends in the country. Please also provide information on the impact of the measures taken to give effect to the Convention.**

*Transitional labour regime.* The Committee takes note of Resolution No. 9855 of 22 July 2016, adopted under the State of Exception and Economic Emergency declared by the Government, which establishes a transitional labour regime that is compulsory and strategic for the revival of the agro-food sector,



and which provides for workers in public and private enterprises to be placed in other enterprises in the sector except in the enterprise that generated the original employment relationship. The IOE and FEDECAMARAS indicate that the Ministerial Resolution provides for the temporary placement of workers in enterprises in the sector, known as requesting enterprises, to which the Government has applied some special measure in order to boost the agro-food industry. Under the Resolution, requesting enterprises may apply to receive a certain number of workers from public or private enterprises. The employers' organizations indicate that it is not the worker but the requesting enterprise (owned by the State) that determines the transfer of the worker to another enterprise, and assert that this is contrary to the principle of the Convention which requires member States to develop, in coordination with the social partners, an active policy designed to promote full, freely chosen employment. They further indicate that some Government representatives have said that there is an error in the Resolution which will be corrected shortly so as to make it clear that the Resolution applies only on a voluntary basis; however, to date there has been no amendment and the Resolution remains mandatory. The IOE and FEDECAMARAS allege that because of the Resolution staff costs have doubled in enterprises that generated labour relationships. **The Committee requests the Government to indicate how the principle laid down in the Convention requiring the promotion of full, productive and freely chosen employment is applied under the transitional labour regime established by Resolution No. 9855.**

*Youth employment.* The Government reports that in 2015, the number of unemployed young persons stood at 304,933, which means that young people accounted for 32.3 per cent of all the unemployed in the country. The Government also provides information showing that the rate of unemployment among workers between 15 and 24 years of age is virtually double the national unemployment average. In 2015, while the national unemployment rate stood at 6.7 per cent, the rate for young people reached 14.7 per cent. The Government refers to the Act for Productive Youth, No. 1.392 of 13 November 2014, which aims to promote entry into the job market for young people and enshrines their right to decent work (section 6). The Government also reports that responsibility for implementing the policy on vocational training and training for work lies with the National Institute for Socialist Training and Education (INCES), which was created, inter alia, to promote vocational training for men and women workers, including training and apprenticeships for young people. The Committee notes the information provided by the Government on the courses and workshops offered by the INCES. In June 2016, a Government representative informed the Committee on the Application of Standards that the INCES would train 50,000 young people in various occupational fields and that under the "Knowledge and Work" mission, over 1 million persons had been integrated into the economic and productive system. According to the Government's report, young people between 15 and 30 years of age account for 35.5 per cent of the country's total population and 51.1 per cent of the unemployed. Furthermore, women have a lower participation rate than men: out of every ten young people in employment, seven are men and three are women. **The Committee requests the Government to continue to provide detailed information, disaggregated by sex, on trends in youth employment. It also reiterates its request to the Government to provide an evaluation, in consultation with the social partners, of the active employment policy measures implemented to reduce youth unemployment and facilitate the entry of young persons into the labour market, particularly for the most disadvantaged young persons.**

*Development of small and medium-sized enterprises (SMEs).* The Committee notes that the Government's report contains no reply to its request. **Consequently, the Committee once again requests the Government to provide information on the measures taken to encourage the creation of SMEs and promote their productivity, and to create a climate conducive to the generation of employment in such enterprises.**

*Article 3. Participation of the social partners.* In June 2016, a Government representative indicated that in early 2016 the National Council for Productive Economy (CNEP) was created as a forum for tripartite dialogue which deals with the development of strategic economic areas in the country and which has held more than 300 meetings. The Committee notes the observations of the IOE and FEDECAMARAS, indicating that the Government is still in default of its obligation to consult the representatives of employers' and workers' organizations in developing the employment policy, and reporting that FEDECAMARAS, despite its representativeness (a membership of some 300 Chambers), has not been consulted by the Government for 17 years on the formulation or coordination of the employment policy. The employers' organizations further assert that the Government has not met the commitment it made to the ILO Governing Body in March 2016 to implement a plan of action that includes establishing a forum for dialogue and a time frame for meetings with FEDECAMARAS and trade union organizations of independent workers. FEDECAMARAS also indicates that the National Council for Productive Economy appointed by the President in January 2016 has not been convened. The workers' federations UNETE, CTV, CGT and CODESA state that workers' organizations are not consulted about the development of employment policies and that the Government has not taken into account the views of employers' and workers' organizations in formulating and implementing employment policies and programmes. The Committee refers the Government to its General Survey of 2010 concerning employment instruments, in which it emphasizes that social dialogue is essential in normal times and becomes even more so in times of crisis. The employment instruments require member States to promote and engage in genuine tripartite consultations (General Survey on employment instruments, 2010, paragraph 794). **The Committee again reiterates its request to the Government to provide information that includes specific examples of how account has been taken of the views of employers' and workers' organizations in the formulation and implementation of employment policies and programmes. The Committee takes note of the information provided by the Government in relation to the National Council for the Productive Economy supplied during the discussion held in the Governing Body in November 2016, and requests the Government to provide information on the council's activities that concern the issues covered by the Convention.**

# Zambia

## Minimum Age Convention, 1973 (No. 138)

(Ratification: 1976)

*Article 2(3) of the Convention. Age of completion of compulsory schooling.* The Committee had previously noted that the Education Act of 2011 neither defined the school going age nor indicated the age of completion of compulsory schooling. It had further noted that according to section 34 of the Education Act of 2011, the Minister may, by statutory instrument, make regulations to provide for the basic school going age and age for compulsory attendance at educational institutions.

The Committee notes the Government's indication in its report that the Education Act and Education Policy are undergoing revision. **The Committee expresses the firm hope that the Government will take the necessary measures to ensure that the revision of the Education Act will define the basic school going age and the age of completion of compulsory schooling of 15 years, so as to link it with the minimum age for employment for Zambia. It expresses the hope that the revised Education Act will be adopted in the near future. The Committee requests that the Government provide information on any progress made in this regard.**

*Article 3(2). Determination of hazardous work.* The Committee previously noted that the draft statutory instrument on the list of hazardous work was in the process of being approved by the Minister of Justice.

The Committee notes with **satisfaction** that the Statutory Instrument No. 121 of 2013 on the prohibition of employment of young persons and children (hazardous labour) has been adopted and that it prohibits the employment of children and young persons under the age of 18 years in hazardous work. Section 3(2) of the Statutory Instrument contains a list of 31 types of hazardous work prohibited to children and young persons, including: animal herding; block or brick making; charcoal burning; explosives; exposure to dust, high levels of noise, asbestos and silica dust, high voltage, lead, toxic chemicals and gases; spraying of pesticides or herbicides; exposure to waterborne diseases and infections; exposure to physical or sexual abuse; excavation/drilling; welding; stone crushing; work underground and underwater; work at heights; fishing; handling tobacco and cotton; lifting heavy loads; operating dangerous machinery or tools; long working hours; night work; and selling or serving in bars. **The Committee requests that the Government provide information on the application in practice of Statutory Instrument No. 121 of 2013, including statistics on the number and nature of violations reported and penalties imposed.**

*Labour inspectorate and application of the Convention in practice.* The Committee previously noted that according to the joint ILO-IPEC, UNICEF and World Bank report on Understanding Children's Work (UCW) in Zambia of 2012, although there has been a substantial reduction in the incidence of child labour, over one third of children aged 7–14 years, some 950,000 children were working, of which nearly 92 per cent worked in the agricultural sector.

The Committee notes the Government's information in its report that a number of provinces have active programmes against child labour, such as sensitization of parents, farmers and employers on child labour and hazardous work. The District Child Labour Committees (DCLC) in the Kaoma and Nkeyama districts in the Western Province, in collaboration with Japan Tobacco International (JTI) and Winrock International, are progressively bringing an end to child labour in tobacco growing communities by focusing on education. The Government also indicates that according to the 2015 annual review of the Achieving Reduction of Child Labour in Support of Education project (ARISE), a joint initiative of the ILO, JTI and Winrock International developed with the involvement of national governments, social partners, and tobacco growing communities, about 5,322 children have been withdrawn from child labour and placed in schools; 11,570 community members and teachers were educated about child labour, while 797 households improved their income to take care of their children. The Committee also notes the Government's indication, in its report under the Worst Forms of Child Labour Convention, 1999 (No. 182) that an Inter ministerial National Steering Committee on Child Labour has been established to coordinate various interventions relating to child labour and that more labour officers have been hired in various districts to boost the inspectorate and enhance the enforcement of labour laws. Accordingly, following the inspections carried out by the labour inspectors, it has been identified that hazardous child labour exists in small-scale mining, agriculture, domestic work, and trading sectors, generally in the informal economy. The Committee further notes from the Government's report that according to the findings of the Child Labour Report of 2012, an estimated 1,215,301 children were in child labour, registering an increase from 825,246 children in 2005. The Committee notes with **concern** that a large number of children are engaged in child labour, including in hazardous work in the country. **While taking note of the measures taken by the Government, the Committee urges the Government to strengthen its efforts to ensure that, in practice, children under the minimum age of 15 years are not engaged in child labour. In this regard, the Committee requests that the Government strengthen the activities of the District Child Labour Committees to reduce child labour as well as to strengthen the capacity and expand the reach of the labour inspectorate in monitoring the situation of child labour, especially in the informal economy. It requests that the Government continue to provide information on the measures taken in this regard and on the results achieved.**

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

# Zimbabwe

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

(Ratification: 1998)

The Committee notes the observations of the Zimbabwe Congress of Trade Unions (ZCTU) received on 1 September 2016, as well as the Government's report.

*Article 1(a) of the Convention. Penal sanctions involving compulsory labour as a punishment for the expression of views opposed to the established political, social or economic system.* In its earlier comments, the Committee noted that penalties of imprisonment (involving compulsory prison labour by virtue of section 76(1) of the Prisons Act (Cap. 7:11) and section 66(1) of the Prisons (General) Regulations 1996) may be imposed under various provisions of national legislation in circumstances falling within *Article 1(a)* of the Convention, namely:

-sections 15, 16, 19(1)(b)–(c), and 24–27 of the Public Order Security Act (POSA) publishing or communicating false statements prejudicial to the State; making any false statement about or concerning the President; performing any action, uttering any words or distributing or displaying any writing, sign or other visible representation that is threatening, abusive or insulting, intending thereby to provoke a breach of peace; failure to notify the authority of the intention to hold public gatherings; and violation of the prohibition of public gatherings or public demonstrations;

-sections 31 and 33 of the Criminal Law (Codification and Reform) Act (Cap. 9:23), which contain provisions similar to the abovementioned sections of the POSA concerning publishing or communicating false statements prejudicial to the State or making any false statement about or concerning the President, etc.; and

-sections 37 and 41 of the Criminal Law (Codification and Reform) Act (Cap. 9:23), under which sanctions of imprisonment may be imposed, inter alia, for participating in meetings and gatherings with the intention of “disturbing the peace, security or order of the public”; uttering any words or distributing or displaying any writing, sign or other visible representation that is threatening, abusive or insulting, “intending thereby to provoke a breach of peace”; and engaging in disorderly conduct in public places with similar intention.

In this respect, the Committee referred to the recommendations of the Commission of Inquiry appointed under article 26 of the ILO Constitution to examine the observance by the Government of Zimbabwe of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), which recommended that the POSA be brought into line with these Conventions. Furthermore, the Committee referred to the conclusions of the Conference Committee on the Application of Standards of June 2011, which requested the Government, to carry out, together with social partners, a full review of the POSA in practice, and considered that concrete steps should be taken to enable the elaboration and promulgation of clear lines of conduct for the police and security forces with regard to human and trade union rights.

The Committee notes that in its observations, the ZCTU refers to the Criminal Law, alleging that the police invoke section 33 of the Criminal Law (Codification and Reform) Act (Cap. 9:23) for allegedly undermining the authority of, or insulting, the President or his office.

The Committee notes the Government's indication in its report that the abovementioned provisions do not criminalize any person who, without using or advocating violence, express certain political views or opposition to the established political, social or economic system. The Government also states that the Constitution provides for freedom of expression and the courts always give due consideration to this right in their judgments, and therefore work exacted as a result of a court order does not constitute forced labour.

However, the Committee, in its 2015 observations made under the Convention No. 87 noted that persisting allegations have indicated that certain trade union activities have been disrupted by the police. It recalled that permission to hold public meetings and demonstrations should not be arbitrarily refused. Moreover, the Committee noted that the POSA has still not been aligned to the Constitution and the Convention, despite agreement in the Tripartite Negotiating Forum to expedite the process of legislative harmonization.

Referring to its General Survey of 2012 on the fundamental Conventions, the Committee recalls once again that *Article 1(a)* of the Convention prohibits the use of “any form” of forced or compulsory labour, including compulsory prison labour, as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system. However, the Convention does not prohibit punishment by penalties involving compulsory labour of persons who use violence, incite violence or engage in preparatory acts aimed at violence. But sanctions involving compulsory labour are not in conformity with the Convention if they enforce a prohibition of the peaceful expression of non-violent views that are critical of government policy and the established political system, whether the prohibition is imposed by law or by an administrative decision. Since opinions and views opposed to the established system may be expressed not only through the press or other communications media, but also at various kinds of meetings and assemblies, if such meetings and assemblies are subject to prior authorization granted at the discretion of the authorities and violations can be punished by sanctions involving compulsory labour, such provisions also come within the scope of the Convention (paragraphs 302–303).

**The Committee strongly urges, once again, the Government to take the necessary measures in order to ensure that the provisions of the POSA and the Criminal Law (Codification and Reform) Act are repealed or amended, in order to bring legislation into conformity with the Convention. Pending the adoption of such measures, the Committee requests the Government to provide information on the application of these provisions in practice, supplying copies of the court decisions and indicating the penalties imposed.**

*Article 1(d). Penal sanctions involving compulsory labour as a punishment for having participated in strikes.* In its earlier comments, the Committee referred to certain provisions of the Labour Act (sections 102(b), 104(2)–(3), 109(1)–(2), and 122(1)) punishing persons engaged in an unlawful collective action with sanctions of imprisonment, which involves compulsory prison labour. However, the Committee noted the Government's indication that these sections of the Labour Act were included in the draft Principles for the Harmonization and Review of Labour Laws in Zimbabwe. In 2011, the social partners had agreed to the principle of streamlining mechanisms to deal with collective job action and review ministerial powers and those of the Labour Court on collective job action. This principle would provide the framework to amend section 102(b) defining essential services, section 104 on balloting for strike action, sections 107, 109 and 112 on excessive penalties, including lengthy periods of imprisonment and deregistration of trade unions and dismissal of employees involved in collective job action.

The Committee notes the Government's indication that the Labour Law reform is ongoing with the participation of the social partners and the comments made by the Committee of Experts are being taken into consideration. The Committee also notes the Government's indication in its report submitted under Convention No. 87, that the Labour Amendment Act No. 5 was promulgated in August 2015. The Committee notes however that the Labour Amendment Act No. 5 of 2015 does not align sections 102(b), 104(2)–(3), 109(1)–(2), and 122(1) of the Labour Act (Cap. 28:01, as amended in 2006) with the Convention. **The Committee therefore urges once again the Government to take the necessary measures to ensure that the relevant provisions of the Labour Act are amended so that no sanctions of imprisonment may be imposed for organizing or peacefully participating in strikes, in conformity with Article 1(d) of the Convention.**

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