

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

Observations 2017

Regional file by country -

Africa

C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**Observation 2017**

The Committee notes the observations of the International Organisation of Employers (IOE), received on 30 August 2017, which refer to the interventions of the Employer members during the discussion of the application of the Convention by Algeria in the Committee on the Application of Standards of the International Labour Conference at its last session in June 2017, as well as the conclusions adopted by the Conference Committee following the discussion. The Committee also notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2017, referring to legislative issues, most of which are already under examination by the Committee, and which denounce the persistent violations of the Convention in practice, particularly the reprisal measures by the employer following protest actions by the Autonomous National Union of Electricity and Gas Workers (SNATEGS) and police violence during demonstrations in the mining sector. The Committee notes the information provided by the Government in October 2017 in reply to the ITUC, both on certain legislative and practical issues. It notes in particular the reply concerning the dispute in the mining sector and observes that the SNATEGS presented a complaint to the Committee on Freedom of Association in April 2016 concerning serious violations of its trade union rights (Case No. 3210). In the light of the seriousness of the allegations and pending the examination of the case by the Committee on Freedom of Association, the Committee recalls that the ILO supervisory bodies have unceasingly stressed the interdependence between civil liberties and trade union rights, emphasizing that a truly free and independent trade union movement can only develop in a climate free from violence, pressure and threats of any kind against the leaders and members of such organizations (see General Survey on the fundamental Conventions, 2012, paragraph 59). *The Committee expects that the Government will ensure respect of this principle.*

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 106th Session, June 2017)

The Committee notes the discussion held in the Conference Committee in June 2017 concerning the application of the Convention by Algeria. The Committee notes that, in its conclusions, the Conference Committee requested the Government to: (i) ensure that the registration of trade unions in law and in practice conforms with the Convention; (ii) process pending applications for the registration of trade unions which have met the requirements set out by law and notify the Committee of Experts of the results in this regard; (iii) ensure that the new draft Labour Code is in compliance with the Convention; (iv) amend section 4 of Act No. 90-14 in order to remove obstacles to the establishment by workers' organizations of federations and confederations of their own choosing, irrespective of the sector to which they belong; (v) amend section 6 of Act No. 90-14 in order to recognize the right of all workers, without distinction on the basis of nationality, to establish trade unions; (vi) ensure that freedom of association can be exercised in a climate free of intimidation and without violence against workers, trade unions or employers; and (vii) reinstate employees of the Government, terminated based on anti-union discrimination. Lastly, emphasizing that the progress made in the application of the Convention remained unacceptably slow, the Conference Committee requested the Government to accept a direct contacts mission which should, as of the current year, report progress to the Committee of Experts. Noting that the direct contacts mission has not yet been conducted, the Committee notes the detailed information provided by the Government in October 2017 in response to the conclusions of the Conference Committee. *While noting the information provided by the Government, the Committee hopes that the Government will accept in the near future the direct contacts mission to examine the measures taken and the progress achieved on issues relating to the application of the Convention.*

Legislative issues

Amendment of the Act issuing the Labour Code. The Committee recalls that the Government has been referring, since 2011, to the process of reforming the Labour Code. In this regard, in its reply to the conclusions of the Conference Committee, the Government indicates that the latest version of the draft of the new Labour Code has been transmitted to the independent trade unions for their opinion, and to local government sector departments. *Noting that the process has not yet been completed despite the passage of time, the Committee urges the Government to take all the necessary measures with a view to completing, without any further delay, the reform of the Labour Code. The Committee, in a request addressed directly to the Government, is making comments on the 2015 version of the draft text relating to the application of the Convention, which it expects the Government will take duly into account in the adoption of the requested amendments.*

With regard to the other legislative issues raised in its previous comments, the Committee notes the absence of any tangible measure by the Government to implement the amendments requested since 2006. *The Committee expects the Government to take all necessary measures in the near future to adopt the requested amendments to the following provisions.*

Article 2 of the Convention. Right to establish trade union organizations. The Committee recalls that its comments 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 notes the Government's indication that the required period during which Algerian nationality must have been held has been reduced to five years and that this provision is currently being discussed with the social partners. *The Committee trusts that the current discussions will shortly lead to the revision of section 6 of Act No. 90-14 to remove the requirement of nationality and ensure that the right of all workers is recognized, without distinction of this kind, to establish trade unions. The Committee also refers the Government to its comments in its direct request in which it asks the Government to amend the provisions in the draft bill issuing the Labour Code on the same issue.*

Article 5. Right to establish federations and confederations. The Committee recalls that its comments have related for many years 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 would be amended to include a definition of federations and confederations. *In the absence of information on any new developments in this regard, the Committee expects that the Government will undertake, as soon as possible, the revision of section 4 of Act No. 90-14 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 its comments in its direct request in which it asks the Government to amend the provisions of the draft bill issuing the Labour Code on the same issue.*

Registration of trade unions in practice

The Committee recalls that its comments have related for several years to the issue of particularly long delays in the registration of trade unions and of the apparently unjustified refusal of the authorities for several years to register certain independent trade union organizations. The previous comments referred, in particular, to the situation of the General and Autonomous Confederation of Workers in Algeria (CGATA), the Autonomous Union of Attorneys in Algeria (SAAVA) and the Autonomous Algerian Union of Transport Workers (SAATT). Regarding the CGATA, the Government referred to the information provided by its representative to the Conference Committee that the organization had been invited, since 2015, to bring its fundamental texts into conformity with the law and that, up to now, the organization has not taken any measures to give effect to the request by the administration. The Committee notes that the Government has not provided the details requested on the nature of the amendments requested by the administration of the CGATA, nor any indication on the situation regarding the requests for registration of the SAAVA and the SAATT. *The Committee urges the Government to guarantee the prompt registration of trade unions which have met the requirements set out by law and, if necessary, that the organizations in question are duly informed of the additional requirements that have to be met. Lastly, the Committee requests the Government to indicate as soon as possible any new developments concerning the registration process of the CGATA, the SAAVA and the SAATT.*

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

C094 - Labour Clauses (Public Contracts) Convention, 1949 (No. 94)**Observation 2017**

Article 2 of the Convention. Inclusion of labour clauses in public contracts. In its previous comment, the Committee requested the Government to take the necessary additional measures in the near future to ensure the full application of the Convention and to keep the Office informed of any further developments in this respect. The Committee notes that the Government has approved new regulations for public contracts implemented by Presidential Decree No. 15-247, of 16 September 2015, governing public contracts and public service delegation contracts, which entered into force on 20 December 2015. The Committee notes that these new regulations do not give full effect to *Article 2* of the Convention, which provides that public contracts shall include clauses specifically ensuring to the workers concerned wages, hours of work and other conditions of labour which are not less favourable than those established either by collective agreement, by arbitration award or by national laws or regulations. Furthermore, the "internal regulations" to which the Government refers in its report, under which the employer is required to set out the rules regarding the technical organization of the work, occupational safety and health and discipline, are not sufficient to ensure the full application of *Article 2* of the Convention. In this context, the Committee recalls its previous comments, in which it emphasized that the Convention also requires the fulfilment of other obligations, namely consultation of the employers' and workers' organizations concerned with respect to the terms of the labour clauses (*Article 2(3)*); the posting of the applicable conditions of work in the workplace, including the wages paid, and not only, as indicated in the Government's report, the hours of work, periods of closure for leave and safety instructions, all with a view to duly informing the workers involved (*Article 4*); and, in the event of failure to observe and apply the labour clauses, adequate penalties such as the withholding of public contracts or payments to the enterprises concerned (*Article 5*). In this respect, the Committee notes that the Decree of 19 December 2015, to which the Government refers in its report, does not give effect to *Article 5* of the Convention and concerns corruption rather than the working conditions of workers. **The Committee therefore once again requests the Government to take the necessary measures to give full effect to the Convention with particular attention to the requirements of consultation, adequate notice and dissuasive sanctions, as mentioned above and to provide the Office with information on any further developments.**

C100 - Equal Remuneration Convention, 1951 (No. 100)**Observation 2017**

Articles 1 and 2 of the Convention. Assessment of the gender pay gap. The Committee notes with *interest* that, in its report, the Government provides statistical data disaggregated by sex on the average net monthly wages of men and women in 2011, by sector of activity and job category (executives, supervisors, employees etc.). The Committee notes that, according to this data, the overall wage gap is 15.4 per cent in favour of women. The wage gaps in favour of women are found particularly in agriculture and fishing (21.6 per cent), transport and communications (18.4 per cent), construction (17.4 per cent), administration (15.2 per cent) and health (8.4 per cent). The available data also confirms the very low participation rate of women in the formal labour market (5,649,365 men workers and 1,055,171 women workers), which was also emphasized by the Government in its report on the application of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). The Committee notes that the wage gap in favour of men is more prominent in real estate and enterprise services (28.4 per cent), "extraterritorial activities" (19.6 per cent), education (7.4 per cent) and especially domestic services (36.6 per cent). The Committee wishes to draw the Government's attention to the fact that the low participation of women in the formal labour market and the high level of the positions that they occupy may explain these wage gaps in favour of women in certain sectors. Considering the high qualification level of women in the country, they occupy positions in higher categories in certain sectors (particularly sectors in which men are in the majority), and consequently well-paid positions (for example, women represented 27.7 per cent of executives in 2011), which reduces the pay gap between men and women, and even reverses it in favour of women in certain sectors. Moreover, the Committee notes that the data on wages, which are collected regularly from enterprises by the National Statistics Office in conducting the annual survey on wages, are not disaggregated by sex, which means that the trends in the data cannot be monitored regularly. **In order to be able to follow the trends in pay gaps over time, particularly given the small but steady increase in the participation of women in the formal labour market, the Committee asks the Government to take the necessary steps to continue to regularly collect and analyse comprehensive data on the remuneration of men and women, by vocational category and in all sectors of economic activity, including the public sector, and to supply this data disaggregated by sex.**

Article 2(2). Civil service. Legislation. The Committee recalls that the civil service is governed by Ordinance No. 06-03 of 15 July 2006, which prohibits all discrimination, particularly on the grounds of sex (section 27), but does not contain any provisions on equal remuneration for men and women for work of equal value. The Committee recalls that, in the absence of a clear legislative framework, it is particularly difficult for men and women workers to assert their right to equal remuneration for work of equal value vis-à-vis employers, the relevant bodies and the courts. **The Committee once again asks the Government to examine the possibility of amending Ordinance No. 06-03 of 15 July 2006 issuing the General Civil Service Regulations, in order to incorporate a provision explicitly providing for equal remuneration for men and women for work of equal value. It also asks the Government to take the necessary steps to assess the pay gaps between men and women in the civil service and to raise awareness among public officials and their organizations, as well as personnel managers, of the principle of equal remuneration for men and women for work of equal value.**

Article 3. Objective evaluation and classification of jobs in the civil service. The Committee notes that the Government's report contains no new information in this regard. It notes that the Government reiterates that the General Civil Service Regulations are based on a system of classification and remuneration, and that these establish a classification method based on an objective and measurable criterion, namely the level of qualification as attested by degrees, diplomas and training courses. The Government once again indicates that the planned system is intended to renew the focus on qualifications, competence and personal merit, and that remuneration is fixed for each post, regardless of the sex of the person occupying it. The Committee recalls that, despite the existence of salary scales applicable to all public officials, without discrimination on the grounds of sex, pay discrimination in the public service can arise from the criteria applied in classifying jobs and from an undervaluation of the tasks performed largely by women, or from inequalities in certain supplementary wage benefits (allowances, benefits etc.). The Committee considers that the planned classification system, as it is based on a single criterion (qualification level), does not allow for the objective assessment of the post itself and could effectively result in the undervaluation of certain tasks, and in general, certain jobs that are largely performed by women. The Committee recalls that an objective job evaluation process, which aims to establish a classification and determine the corresponding remuneration, entails an evaluation of the nature of the tasks that each job involves, in terms not only of qualifications but also of the skills, effort (mental as well as physical) and responsibility that the post requires, and the working conditions of the post. Furthermore, often when equal remuneration for work of equal value is not one of the objectives explicitly envisaged by the evaluation and classification method, there is a risk that this method may reproduce sexist stereotypes relating to the vocational capacities and aspirations of women (see General Survey on the fundamental Conventions, 2012, paragraphs 700-703). **The Committee once again requests the Government to review the job evaluation and classification method to ensure that the classification of jobs and the applicable salary scales in the public service is free of any gender bias and does not result in undervaluation of jobs mainly occupied by women. It also requests the Government to encourage the use of job evaluation methods based on objective criteria, such as skills and**

qualifications, effort, responsibility and working conditions. The Government is also requested to provide information, disaggregated by sex, on the respective categories of personnel (A, B, C and D) in the public service. The Committee recalls that the Government can avail itself of the technical assistance of the Office.

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

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

Observation 2017

The Committee notes the observations sent on 31 May 2015 by the General and Autonomous Confederation of Workers in Algeria (CGATA) on the draft Bill issuing the Labour Code and its impact on the application of the Convention.

Article 1 of the Convention. Protection against discrimination. Legislation. Private sector workers. For many years, the Committee has been emphasizing that section 17 of Act No. 90-11 of 21 April 1990 on labour relations does not cover all the grounds of discrimination in employment and occupation listed by the Convention, and does not address discriminatory conduct by the employer or any other person towards a worker in all aspects of employment (recruitment, promotion, dismissal, etc.). This is because section 17 only provides that "any provision in a collective agreement or employment contract that may generate discrimination" is null and void. The Committee also recalls the general nature of section 6 of Act No. 90-11, which provides that workers are entitled to "protection against all discrimination regarding the occupation of a post other than distinctions made on the basis of their ability and merit". The Committee notes with *regret* that the Government's report contains no further information concerning the protection of workers against discrimination. The Committee also notes that the proposed section 12 of the October 2015 version of the draft Bill issuing the Labour Code repeats the general provisions of section 6 of Act No. 90 11. However, the Committee welcomes the inclusion of a definition of discrimination in the proposed section 31, in accordance with the Convention, and of the grounds of national extraction, social origin and religious beliefs, as stipulated in *Article 1(1)(a)* of the Convention, and the ground of nationality, in accordance with *Article 1(1)(b)*. It also welcomes the reference to direct and indirect discrimination, and notes that the proposed section 31 provides that "discrimination in employment and occupation is incompatible with the provisions of this Act". Nevertheless, the Committee notes that reference is still made to "any provision in a collective agreement or employment contract". The Committee considers that this does not cover discriminatory conduct or acts which do not result from the provisions of employment contracts or collective agreements. It also notes that the list of prohibited grounds of discrimination set out in the proposed section 31 omits the grounds of race and colour. *While welcoming this progress, the Committee asks the Government to take the necessary steps to ensure that the future Labour Code explicitly prohibits all forms of direct and indirect discrimination, on at least all of the grounds listed in Article 1(1)(a) of the Convention, including race and colour, and all other grounds specified pursuant to Article 1(1)(b), following consultation with the employers' and workers' organizations. It also asks that these provisions cover all aspects of employment and occupation, including particularly access to employment and occupation, and dismissal. The Committee asks the Government to provide information on any steps taken in this regard and on any progress made regarding the draft Bill issuing the Labour Code.*

Civil servants. In its previous comments, the Committee noted that Ordinance No. 06-03 of 15 July 2006 issuing the General Conditions of Service of Civil Servants prohibits all discrimination towards civil servants "on the basis of their opinions, sex, origin or any other personal or social circumstance" (section 27) and asked the Government to consider including in the list of prohibited grounds of discrimination an explicit reference to political opinion, religion, race, colour, national extraction and social origin. The Committee notes with *regret* that the Government's report contains no information in this regard. *Emphasizing the importance of implementing a comprehensive system to protect civil servants from discrimination, and to allow them to exercise their rights effectively, the Committee once again asks the Government to take the necessary steps to expand the list of prohibited grounds of discrimination by making an explicit reference to all of the grounds listed in Article 1(1)(a) of the Convention.*

Article 1(1)(a). Discrimination based on sex. Sexual harassment. The Committee welcomes the inclusion, in the proposed sections 56–59 of the draft Bill issuing the Labour Code (October 2015 version) of provisions that define both quid pro quo and hostile environment sexual harassment and protect against retaliation when an individual refuses to accede to harassment, and establishes disciplinary penalties. Nevertheless, the Committee draws the Government's attention to the fact that these provisions do not expressly prohibit sexual harassment, but only victimization by the employer following sexual harassment. The Committee also notes the indication by the CGATA that the draft Bill issuing the Labour Code provides a protection against sexual harassment, but emphasizes that the penalties established by the proposed section 58 do not appear to apply to employers, because these are disciplinary penalties, the imposition of which is the employer's responsibility. *While welcoming this progress, the Committee trusts that the Government will introduce into the Labour Code provisions expressly prohibiting all forms of sexual harassment, and that it will establish sanctions that apply to all authors and provide for appropriate remedies. As to practical measures to prevent sexual harassment, the Committee asks the Government to provide information on any steps taken as part of the National Strategy for the Prevention of Violence against Women adopted in 2007, or in any other context specifically concerning work, in collaboration with the employers' and workers' organizations.*

Articles 2 and 3. National policy. Equality of opportunity and treatment between men and women. For many years, the Committee has expressed serious concern regarding the low participation of women in employment and the persistence of strongly stereotyped attitudes with respect to the roles and responsibilities of women and men in society and in the family, both of which have a negative impact on women's access to employment and training. The Committee notes that the Government once again recognizes in its report that the employment rate for women remains relatively low and that among other matters social constraints and personal choices affect progress and hinder the integration of a greater number of women into the labour market. The Committee notes the statistics provided by the Government which show that, between 2010 and 2014, the number of women in employment increased from 1,474,000 to 1,722,000 and that the rate of placement for women by the National Employment Agency rose from 7.64 per cent in 2013 to 8.84 per cent in 2014. It also notes the information provided by the Government on the steps taken to create employment opportunities by the National Youth Employment Agency and the Unemployment Insurance Fund (in 2014: potential jobs for women: 8,960 by the National Youth Employment Agency and 6,332 by the Unemployment Insurance Fund). It also notes the measures adopted towards the promotion of paid employment through a vocational integration scheme and placements on subsidized work contracts (in 2014: 60,432 women beneficiaries through the vocational integration scheme: 60,432 and 26,368 women through subsidized work contracts). The Committee notes, however, that the female labour force participation rate (18.1 per cent) and the rate of economically active women (16.8 per cent) remain low. *While welcoming the action aimed at supporting self-employment and paid employment of women, the Committee notes the limited results achieved, despite the increasing qualification levels of women. It once again asks the Government to take steps to ensure that in addition to these employment policy measures, specific awareness-raising measures aimed at actively combating gender bias and sexist stereotypes concerning the vocational aspirations and capabilities of women and their suitability for certain jobs are adopted. The Committee also asks the Government to take steps towards implementing schemes to help both men and women workers achieve a better balance between work and family responsibilities. The Committee asks the Government to provide information on any evaluation of the National Strategy for the Integration and Promotion of Women (2010–14) and the associated National Action Plan (2010–14), and on the activities of the monitoring committee, as well as information on any measures taken to apply the Women Workers' Charter, including the quota system applicable to positions of responsibility.*

Article 5. Special protection measures. Work prohibited for women. The Committee notes that proposed section 583 of the draft Bill issuing the Labour Code makes it possible to exclude women from certain types of work by means of regulations, for the purpose of protecting their health. The Committee nevertheless

draws the Government's attention to the distinction to be drawn between special measures to protect maternity (in the broad sense), as envisaged in *Article 5* of the Convention, and measures based on stereotypical perceptions of women's capabilities and their role in society, which are contrary to the principle of equality of opportunity and treatment. The provisions relating to the safety and health of workers should provide for a safe and healthy environment for both men and women workers, while taking account of gender differences with regard to specific risks to their health. Moreover, with a view to repealing discriminatory protective measures applicable to women's employment, it may be necessary to examine what other measures, such as improved health protection of both men and women, adequate transportation and security, as well as social services, are necessary to ensure that women can access these types of employment on an equal footing with men (see General Survey of 2012 on the fundamental Conventions, paragraphs 838–840). **Consequently, the Committee once again asks the Government to ensure that the special measures for the protection of women are limited to that which is strictly necessary to protect maternity (in the broad sense), and that these provisions do not impede access for women to employment and occupation. It also invites the Government to consider the possibility of adopting accompanying measures aimed at, inter alia, improving health protection for men and women, security and the availability of adequate transport and social services to enable women to access all types of employment on an equal footing with men. The Committee asks the Government to supply information on any measures adopted in this regard.**

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

C120 - Hygiene (Commerce and Offices) Convention, 1964 (No. 120)

Observation 2017

In order to provide a comprehensive view of the issues relating to the application of the Conventions on occupational safety and health (OSH), the Committee considers it appropriate to examine Conventions Nos 120 (hygiene – commerce and office), 155 (OSH) and 167 (OSH in construction) together.

The Committee notes the information provided by the Government in its reports in response to the Committee's previous comments on the following Articles:

- Convention No. 155: *Articles 4* and *7* (periodic review of national policy and the national situation with regard to OSH); *Article 5(a)* and *(b)* (control of material elements of work and adaptation of the working environment to workers); *Article 12(a)* and *(b)* (requirements for workers who design, manufacture, import, provide or transfer machinery, equipment or substances for occupational use); and *Article 20* (measures taken to ensure cooperation between employers and workers in the enterprise);

- Convention No. 167: *Article 6* (cooperation between employers and workers).

Draft on the Labour Code. The Committee notes the draft on the Labour Code, dated October 2015, which was sent by the Government. It notes that this text contains a set of provisions on OSH (Book VI of the draft) and aims to codify the provisions of the national legislation in force, namely Act No. 88-07 of 26 January 1988 on occupational hygiene, safety and health (Act No. 88-07) and its implementing regulations. The draft provides that all provisions that are contrary to the Labour Code shall be repealed through the adoption of the Code, and that the provisions of regulations adopted pursuant to the legislation concerned shall remain in force until they are replaced, on condition that they are in conformity with the provisions of the Labour Code. **Recognizing the scope of the legislative revision process under way, the Committee requests the Government to take into account the points raised below, in order to ensure the full conformity of the legislation with the ratified Conventions on OSH, in the context of the ongoing reform process.**

General provisions

Safety and health of workers (Convention No. 155)

Article 13 of the Convention. Protection of workers who have removed themselves from a work situation presenting an imminent and serious danger. **In the absence of a reply from the Government on this point, the Committee once again requests the Government to provide information on any measures taken to ensure the protection of workers against any unjustified consequences if they have removed themselves from a situation which they have reasonable justification to believe presents an imminent and serious danger.**

Protection in specific branches of activity

Hygiene in commerce and offices (Convention No. 120)

Articles 14 and 18 of the Convention. Suitable seats for workers. Protection against noise and vibrations. In its previous comment, the Committee requested the Government to take the necessary measures to give effect to *Articles 14* and *18* of the Convention. The Committee notes that the Government once again refers, in its report, to a draft Executive Decree amending Executive Decree No. 91-05 of 19 January 1991 on the general protection requirements applicable to hygiene and safety in the work environment. **The Committee requests the Government to provide information on all progress made in this regard, and to provide a copy of the aforementioned Executive Decree once it has been adopted.**

Safety and health in construction (Convention No. 167)

Articles 14–24 and 27 of the Convention. Technical standards. Prevention and protection measures. Scaffolds and ladders; lifting appliances and gear; transport, earth-moving and materials-handling equipment; plant, machinery, equipment and hand tools; work at heights; excavations and underground works; cofferdams and caissons; work in compressed air; structural frames and formwork; work over water; and demolition. Explosives. In its previous comment, the Committee noted that the following Executive Decrees gave partial effect to *Articles 14–19* and *21–24* of the Convention: No. 05-12 of 8 January 2005 on specific hygiene and safety requirements applicable to the construction, public works and hydraulics sectors; No. 91-05 of 19 January 1991 on the general protection requirements applicable with regard to occupational hygiene and safety; and No. 2-427 of 7 December 2002 on the conditions for the organization and provision of information and the training of workers in the area of prevention of occupational risks. It also noted that no information had been provided by the Government on the application of *Article 20*. With regard to *Article 27*, the Committee noted the Government's indication that the provisions governing explosives were being prepared in the context of technical safety regulations. The Committee notes the Government's indication that draft technical regulations have been developed and will be adopted in consultation with the housing, urban planning, public works and transport, and water resources sectors, and with the social and economic partners and parties involved in the prevention of occupational risks. **The Committee requests the Government to take into account the detailed provisions of *Articles 14–24* and *27* of the Convention in the formulation of the technical safety regulations, and to send a copy of the regulations once they have been adopted.**

Application of the Conventions in practice. Adequate inspection services. The Committee refers to its comments on the Labour Inspection Convention, 1947 (No. 81).

C122 - Employment Policy Convention, 1964 (No. 122)

Observation 2017

Articles 1 and 3 of the Convention. Implementation of an active employment policy. Participation of the social partners. In reply to the Committee's previous

comments, the Government indicates in its report that the survey conducted in September 2016 by the National Statistics Office (ONS) reveals a national unemployment rate of 10.5 per cent. The Committee notes that the unemployment rate remains much higher for women (20 per cent) than for men (8.1 per cent) and also that it rose by 3.5 percentage points in 2016–17. The Committee notes that the Government, through support for the establishment of micro-enterprises, funded 20,164 projects in 2016, compared with 59,679 in 2014. The youth unemployment rate (16–24 years of age) stood at 26.7 per cent in April 2016, a decrease of 3.2 percentage points compared with the previous year. The Committee notes the Government's indication that, for the 2015–19 period, its efforts are focusing on the promotion of waged employment and the creation of employment for young persons and unemployed persons. The creation of employment will be ensured by the simplification of legislative and regulatory procedures to facilitate access to bank credit and the strengthening of support for promoters to ensure the viability of micro-enterprises. As regards the role of the social partners, the Government indicates that tripartite meetings with union representatives of the employers and representatives of the General Union of Algerian Workers have been organized. The aim of these meetings is to adopt a consensus-based development project and identify adjustments that are needed to implemented policies. ***The Committee requests the Government to continue sending information on the adoption and implementation of employment measures and on their impact in terms of possibilities for full, productive and lasting employment. It also requests the Government to provide up-to-date statistical information on the nature, extent and trends of employment and unemployment in all sectors, including in the rural sector. The Committee further requests the Government to provide detailed information on the contribution of the social partners to the preparation of a new employment action plan, indicating the manner in which account has been taken of the opinions of workers in the rural sector and in the informal economy, with a view to securing their active cooperation in formulating employment policies and enlisting support for the measures taken in this respect.***

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

Observation 2017

Article 1 of the Convention. National policy. In its previous comments, the Committee noted that a National Plan of Action (NPA) had officially been launched on 25 December 2008 on the theme "An Algeria fit for children" for the period 2008–15. The NPA called, among other measures, for the development and updating of legislation on child protection, and the strengthening and development of enforcement mechanisms for the legislation in force.

The Committee notes the information provided in the Government's report, according to which Act No. 15-12 of 15 July 2015 on child protection has been enacted. Under this Act, a national body for the protection and promotion of the rights of the child (OPPDE) was finally established in 2017. The OPPDE is presided by the national ombudsman, whose main mission is to oversee the implementation and periodic evaluation of the national and local programmes for the protection and promotion of the rights of the child (section 13).

In addition, under sections 21–31 of Act No. 15-12, children's social protection at the local level falls to the "community oversight services". A minimum of one service provider is established in each *wilaya* (administrative division). The community oversight services monitor the situation of children at risk and provide assistance to their families. Thus, under section 2 of Act No. 15-12, the term "child at risk" is understood as "a child whose health, morals, education or safety are at risk or may be put at risk, or whose living conditions or behaviour are likely to expose him or her to a potential risk or compromise his or her future, or whose environment puts at risk his or her physical, psychological or educational well being". The situations considered to expose the child to risk include, in particular: an infringement of their right to education, and the economic exploitation of a child, particularly by their employment or forced engagement in work that prevents them from studying, or that harms their health or physical or moral well-being. ***The Committee requests that the Government continue its efforts to combat work by children under 16 years of age which is the minimum age of admission to work in Algeria. In this regard, it requests that the Government provide the information on the concrete measures taken by the OPPDE to eliminate child labour and the results achieved. It also requests that the Government provide information on the number of children under 16 years who have been identified by the community oversight services as being "at risk" because of their employment or forced engagement in work and who have benefited from the protection under Act No. 15-12, bearing in mind that the minimum age for hazardous work under the Convention is 18 years.***

Article 2(1). Scope of application and labour inspection. In its previous comments, the Committee noted that the provisions of Algerian legislation, including those of Act No. 90-11 on working conditions of 21 April 1990 and of Ordinance No. 75-59 of 26 September 1975 issuing the Code of Commerce, do not regulate all the economic activities that a child under 16 years of age may carry out in the informal economy or on their own account and which are covered by the Convention, for example in agriculture and domestic work, where the economic exploitation of children is more frequent. In this regard, the Committee noted that around 300,000 children aged under 16 years of age are engaged in work in Algeria. Furthermore, the Committee noted that the Committee on the Rights of the Child has expressed its concern that the minimum age for admission to employment is not applied in Algeria, in particular for children working in the informal sector.

The Committee notes the statistics provided by the Government on the visits conducted by labour inspection in various enterprises and undertakings since 2002, the most recent of which include:

- in 2014, of the 14,201 employers in the private sector, comprising 79,063 workers, 32 workers under 16 years were detected;
- in 2015, of the 15,093 employers in the private sector, comprising 98,327 workers, 79 workers under 16 years were detected;
- in 2016, of the 11,575 employers in the private sector, comprising 100,608 workers, 12 workers under 16 years were detected.

The Committee notes, however, that these statistics do not relate to the informal economy and notes yet again with *regret* that the Government's report is silent on this issue of children working on their own account or in the informal economy. The Committee recalls that the Convention applies to all branches of economic activity, formal and informal, and that it covers all forms of employment and work, whether it is carried out on the basis of an employment relationship or not and whether it is remunerated or not. In this regard, with reference to the 2012 General Survey on the fundamental Conventions (paragraph 407), which notes that the inability of labour inspection to monitor child labour outside a given area is particularly problematic, especially when child labour is concentrated in a sector outside its coverage, the Committee emphasizes the need to ensure that the labour inspection system effectively monitors child labour in all regions and all branches of economic activity. In addition, the Committee refers to paragraph 347 of the 2012 General Survey, which describes the variety of programmes and measures that States have implemented in an effort to combat child labour in the informal economy. These programmes may include specific measures to remove children from work in the informal economy, and often involve initiatives to reintegrate these children into school. Addressing the needs of children engaged in, or at risk of becoming engaged in, the informal economy may also include social protection measures, or mainstreaming the issue of children working in the informal economy into national action plans to combat child labour. ***The Committee therefore encourages the Government to undertake programmatic measures to ensure that the protection provided by the Convention is enjoyed, in practice, by children working in the informal economy. It also invites the Government to strengthen the capacities of labour inspection to enable it to monitor child labour in the informal economy so that labour inspectors can detect all cases of labour involving children under 16 years of age. The Committee requests the Government to provide information on the progress made in this regard. It also requests that the Government continue providing information on inspections carried out in practice by labour inspectors responsible for monitoring child labour by providing information on the number of violations registered and extracts from labour inspectors' reports.***

Algeria

Application of the Convention in practice. In its previous comments, the Committee on the Rights of the Child noted with concern the limited progress made to establish a national, comprehensive and centralized data collection system covering child protection. That Committee was particularly concerned that data by geographic location, socio-economic status and groups of vulnerable children was lacking, and that policy-makers often used unreliable national data to assess the situation and to formulate policies to address the problems of children, including those working in the informal sector.

The Committee notes with *regret* the absence of information in this regard in the Government's report. The Committee notes, however, that under section 13 of Act No. 15-12 of 15 July 2015 on child protection, the national ombudsman must establish a national information system on the situation of children in Algeria in coordination with the administrative divisions and institutions concerned. *The Committee once again urges the Government to take the necessary steps to, either through a national information system established by the national ombudsman or by other means, ensure that sufficient data on work by children under 16 years of age in Algeria are available, in particular concerning children working on their own account or in the informal economy. In this regard, it requests that the Government provide information on the application of the Convention in practice, including statistics and information on the nature, scale and development of child labour. As far as possible, all information should be disaggregated by age and gender.*

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

Observation 2017

In order to provide a comprehensive view of the issues relating to the application of the Conventions on occupational safety and health (OSH), the Committee considers it appropriate to examine Conventions Nos 120 (hygiene – commerce and office), 155 (OSH) and 167 (OSH in construction) together.

The Committee notes the information provided by the Government in its reports in response to the Committee's previous comments on the following Articles:

--Convention No. 155: *Articles 4 and 7* (periodic review of national policy and the national situation with regard to OSH); *Article 5(a) and (b)* (control of material elements of work and adaptation of the working environment to workers); *Article 12(a) and (b)* (requirements for workers who design, manufacture, import, provide or transfer machinery, equipment or substances for occupational use); and *Article 20* (measures taken to ensure cooperation between employers and workers in the enterprise);

--Convention No. 167: *Article 6* (cooperation between employers and workers).

Draft on the Labour Code. The Committee notes the draft on the Labour Code, dated October 2015, which was sent by the Government. It notes that this text contains a set of provisions on OSH (Book VI of the draft) and aims to codify the provisions of the national legislation in force, namely Act No. 88-07 of 26 January 1988 on occupational hygiene, safety and health (Act No. 88-07) and its implementing regulations. The draft provides that all provisions that are contrary to the Labour Code shall be repealed through the adoption of the Code, and that the provisions of regulations adopted pursuant to the legislation concerned shall remain in force until they are replaced, on condition that they are in conformity with the provisions of the Labour Code. *Recognizing the scope of the legislative revision process under way, the Committee requests the Government to take into account the points raised below, in order to ensure the full conformity of the legislation with the ratified Conventions on OSH, in the context of the ongoing reform process.*

General provisions

Safety and health of workers (Convention No. 155)

Article 13 of the Convention. Protection of workers who have removed themselves from a work situation presenting an imminent and serious danger. In the absence of a reply from the Government on this point, the Committee once again requests the Government to provide information on any measures taken to ensure the protection of workers against any unjustified consequences if they have removed themselves from a situation which they have reasonable justification to believe presents an imminent and serious danger.

Protection in specific branches of activity

Hygiene in commerce and offices (Convention No. 120)

Articles 14 and 18 of the Convention. Suitable seats for workers. Protection against noise and vibrations. In its previous comment, the Committee requested the Government to take the necessary measures to give effect to *Articles 14 and 18* of the Convention. The Committee notes that the Government once again refers, in its report, to a draft Executive Decree amending Executive Decree No. 91-05 of 19 January 1991 on the general protection requirements applicable to hygiene and safety in the work environment. *The Committee requests the Government to provide information on all progress made in this regard, and to provide a copy of the aforementioned Executive Decree once it has been adopted.*

Safety and health in construction (Convention No. 167)

Articles 14–24 and 27 of the Convention. Technical standards. Prevention and protection measures. Scaffolds and ladders; lifting appliances and gear; transport, earth-moving and materials-handling equipment; plant, machinery, equipment and hand tools; work at heights; excavations and underground works; cofferdams and caissons; work in compressed air; structural frames and formwork; work over water; and demolition. Explosives. In its previous comment, the Committee noted that the following Executive Decrees gave partial effect to *Articles 14–19 and 21–24* of the Convention: No. 05-12 of 8 January 2005 on specific hygiene and safety requirements applicable to the construction, public works and hydraulics sectors; No. 91-05 of 19 January 1991 on the general protection requirements applicable with regard to occupational hygiene and safety; and No. 2-427 of 7 December 2002 on the conditions for the organization and provision of information and the training of workers in the area of prevention of occupational risks. It also noted that no information had been provided by the Government on the application of *Article 20*. With regard to *Article 27*, the Committee noted the Government's indication that the provisions governing explosives were being prepared in the context of technical safety regulations. The Committee notes the Government's indication that draft technical regulations have been developed and will be adopted in consultation with the housing, urban planning, public works and transport, and water resources sectors, and with the social and economic partners and parties involved in the prevention of occupational risks. *The Committee requests the Government to take into account the detailed provisions of Articles 14–24 and 27 of the Convention in the formulation of the technical safety regulations, and to send a copy of the regulations once they have been adopted.*

Application of the Conventions in practice. Adequate inspection services. The Committee refers to its comments on the Labour Inspection Convention, 1947 (No. 81).

C167 - Safety and Health in Construction Convention, 1988 (No. 167)

Observation 2017

In order to provide a comprehensive view of the issues relating to the application of the Conventions on occupational safety and health (OSH), the Committee considers it appropriate to examine Conventions Nos 120 (hygiene – commerce and office), 155 (OSH) and 167 (OSH in construction) together.

The Committee notes the information provided by the Government in its reports in response to the Committee's previous comments on the following Articles:

--Convention No. 155: *Articles 4 and 7* (periodic review of national policy and the national situation with regard to OSH); *Article 5(a) and (b)* (control of material elements of work and adaptation of the working environment to workers); *Article 12(a) and (b)* (requirements for workers who design, manufacture, import, provide or transfer machinery, equipment or substances for occupational use); and *Article 20* (measures taken to ensure cooperation between employers and workers in the enterprise);

--Convention No. 167: *Article 6* (cooperation between employers and workers).

Draft on the Labour Code. The Committee notes the draft on the Labour Code, dated October 2015, which was sent by the Government. It notes that this text contains a set of provisions on OSH (Book VI of the draft) and aims to codify the provisions of the national legislation in force, namely Act No. 88-07 of 26 January 1988 on occupational hygiene, safety and health (Act No. 88-07) and its implementing regulations. The draft provides that all provisions that are contrary to the Labour Code shall be repealed through the adoption of the Code, and that the provisions of regulations adopted pursuant to the legislation concerned shall remain in force until they are replaced, on condition that they are in conformity with the provisions of the Labour Code. **Recognizing the scope of the legislative revision process under way, the Committee requests the Government to take into account the points raised below, in order to ensure the full conformity of the legislation with the ratified Conventions on OSH, in the context of the ongoing reform process.**

General provisions

Safety and health of workers (Convention No. 155)

Article 13 of the Convention. Protection of workers who have removed themselves from a work situation presenting an imminent and serious danger. **In the absence of a reply from the Government on this point, the Committee once again requests the Government to provide information on any measures taken to ensure the protection of workers against any unjustified consequences if they have removed themselves from a situation which they have reasonable justification to believe presents an imminent and serious danger.**

Protection in specific branches of activity

Hygiene in commerce and offices (Convention No. 120)

Articles 14 and 18 of the Convention. Suitable seats for workers. Protection against noise and vibrations. In its previous comment, the Committee requested the Government to take the necessary measures to give effect to *Articles 14 and 18* of the Convention. The Committee notes that the Government once again refers, in its report, to a draft Executive Decree amending Executive Decree No. 91-05 of 19 January 1991 on the general protection requirements applicable to hygiene and safety in the work environment. **The Committee requests the Government to provide information on all progress made in this regard, and to provide a copy of the aforementioned Executive Decree once it has been adopted.**

Safety and health in construction (Convention No. 167)

Articles 14–24 and 27 of the Convention. Technical standards. Prevention and protection measures. Scaffolds and ladders; lifting appliances and gear; transport, earth-moving and materials-handling equipment; plant, machinery, equipment and hand tools; work at heights; excavations and underground works; cofferdams and caissons; work in compressed air; structural frames and formwork; work over water; and demolition. Explosives. In its previous comment, the Committee noted that the following Executive Decrees gave partial effect to *Articles 14–19 and 21–24* of the Convention: No. 05-12 of 8 January 2005 on specific hygiene and safety requirements applicable to the construction, public works and hydraulics sectors; No. 91-05 of 19 January 1991 on the general protection requirements applicable with regard to occupational hygiene and safety; and No. 2-427 of 7 December 2002 on the conditions for the organization and provision of information and the training of workers in the area of prevention of occupational risks. It also noted that no information had been provided by the Government on the application of *Article 20*. With regard to *Article 27*, the Committee noted the Government's indication that the provisions governing explosives were being prepared in the context of technical safety regulations. The Committee notes the Government's indication that draft technical regulations have been developed and will be adopted in consultation with the housing, urban planning, public works and transport, and water resources sectors, and with the social and economic partners and parties involved in the prevention of occupational risks. **The Committee requests the Government to take into account the detailed provisions of Articles 14–24 and 27 of the Convention in the formulation of the technical safety regulations, and to send a copy of the regulations once they have been adopted.**

Application of the Conventions in practice. Adequate inspection services. The Committee refers to its comments on the Labour Inspection Convention, 1947 (No. 81).

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

Observation 2017

Articles 3 and 7(1) of the Convention. Worst forms of child labour and the penalties applied. Clause (a). Sale and trafficking of children. In its previous comments, the Committee noted that section 303bis(4) of Act No. 09-01 of 25 February 2009, prohibits the trafficking of persons, in particular for economic and sexual exploitation, and that the applicable penalty is imprisonment of five to 15 years and a fine of 500,000 to 1,500,000 Algerian dinar, with heavier penalties for persons trafficking children (section 303bis(5)). The Committee nevertheless noted with concern that the United Nations Committee on the Rights of the Child (CRC) expressed particular concern that there had been no investigation or prosecution for trafficking offences, or conviction or punishment of trafficking offenders and that some traffickers reportedly benefited from the complicity of some members of the Algerian police. It also noted that child victims of trafficking may be jailed for unlawful acts committed as a result of their being trafficked, such as engaging in prostitution or not having adequate immigration documentation.

The Committee notes with *regret* that the Government still has not provided any information on this matter in its report. It nevertheless notes that training workshops in Algeria on investigations and prosecutions for the trafficking of persons, and on victim protection, have been held in collaboration with the United Nations Office on Drugs and Crime (UNODC). These training workshops have brought together representatives of various departments forming the National Committee on Preventing and Combating Trafficking in Persons, which was established by Presidential Decree No. 16-249 of 26 September 2016, as well as law enforcement officials. **The Committee requests the Government to provide information on the impact of these training workshops on the elimination in practice of the sale and trafficking of children under 18 years of age. It also requests the Government to take measures to ensure that child victims of trafficking are treated as victims rather than offenders, and to provide information on the progress made in this regard. The Committee further requests the Government to continue taking measures to ensure that in-depth investigations and effective prosecutions are conducted of persons who engage in the sale and trafficking of children, including state officials suspected of complicity, and that sufficiently effective and dissuasive sanctions are imposed. The Committee urges the Government to provide information on the number of infringements reported, investigations conducted, prosecutions, convictions and penal sanctions applied, disaggregated by age and gender of the victims.**

Clause (c). Use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs. The Committee noted on several occasions, since its first comments published in 2004, that while the national legislation establishes severe penalties for the possession, use or trafficking of illegal drugs, there is no legislative provision prohibiting the use, procuring or offering of a child under 18 years of age for the production and trafficking of drugs.

The Committee notes with *regret* that the Government does not provide any new information and has still not remedied this shortcoming in the application of

the Convention. The Committee once again reminds the Government that under *Article 3(c)* of the Convention, the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs, is among the worst forms of child labour. Moreover, under *Article 1*, immediate and effective measures to secure the prohibition of the worst forms of child labour must be taken *as a matter of urgency*. ***The Committee thus urges the Government to take, as a matter of urgency, the necessary measures to ensure, in law and in practice, the prohibition of the use, procuring or offering of a child under 18 years of age for illicit activities, in particular for the production and trafficking of drugs, and to establish sufficiently effective and dissuasive sanctions. It requests the Government to provide information on the progress made in this regard.***

Article 4(1). Determination of hazardous types of work. In its previous comments, the Committee noted the Government's indication that the issue of determining hazardous types of work had been addressed during the drafting of the new Labour Code and that a list of prohibited types of work was due to be established by regulation. It noted that the CRC expressed concern that Algeria had still not determined the hazardous types of work prohibited for persons under the age of 18, even though thousands of children continue to be subjected to the worst forms of child labour, especially in agriculture, as street vendors and domestic servants.

The Committee notes that the Government's report does not contain any information on this matter. However, the Committee takes note of the draft Labour Code dated October 2015, section 48 of which provides that "minor workers and apprentices" below the age of 18 may not be engaged in work that is likely to harm the health, safety or morals of children. The same section provides that the list of these types of work will be determined through regulation. The Committee once again reminds the Government that under *Article 4(1)* of the Convention, hazardous types of work shall be determined, *as a matter of urgency*, by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned. ***Noting once again that it has been raising this issue for several years, the Committee urges the Government to take immediate measures to ensure the adoption of the draft Labour Code and of the relevant regulation on the list of types of hazardous work prohibited to children under 18 years of age, as a matter of urgency. It urges the Government to provide information on any progress made in this regard.***

Article 6. Programmes of action. Sale and trafficking of children. The Committee notes that, according to the 2016 UNODC *Global report on trafficking in persons*, a national plan of action to combat trafficking in persons was developed in October 2015, one of the objectives of which is to prevent and reduce trafficking in persons by improving legislation in that field, enhancing the national capacity for detecting and identifying victims, and enhancing international cooperation. The Committee notes that section 3 of Decree No. 16-249 of 26 September 2016 provides that the National Committee on Preventing and Combating Trafficking in Persons – composed of 20 members from various ministries and government institutions – shall oversee the implementation of this plan of action. ***The Committee requests the Government to take the necessary time-bound measures under the National Plan of Action to Combat Trafficking in Persons to combat the trafficking of children under 18 years of age for economic or sexual exploitation. It requests the Government to provide information on progress made in this regard.***

Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour, and providing assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. Trafficking of children. In its previous comments, the Committee noted that the CRC expressed particular concern that there were no government-operated shelters for victims of trafficking and that even civil society was prohibited from operating any such shelters because they would be penalized for harbouring undocumented migrants. The Committee also noted that Algeria did not provide any medical or psychological assistance to children for their rehabilitation and social integration.

The Committee notes with *regret* that the Government's report still does not contain any information in this regard. It reminds the Government that under *Article 7(2)* of the Convention, the Government is bound to take effective and time-bound measures to eliminate the sale and trafficking of children for economic and sexual exploitation as soon as possible. ***The Committee once again urges the Government to take effective and time-bound measures to establish services for the recovery of child victims from sale and trafficking, and for their rehabilitation and social integration. It requests the Government to provide information on progress made in this regard.***

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

C088 - Employment Service Convention, 1948 (No. 88)

Observation 2017

The Committee notes the observations of the National Union of Angolan Workers–Trade Union Confederation (UNTA–CS), received on 12 December 2016, on the persistence of violations of the Convention in practice. **The Committee requests the Government to provide its comments in this regard.**

Article 1 of the Convention. Contribution of the employment service to employment promotion. Application in practice. In its previous comments, the Committee asked the Government to provide a report containing the available statistical data. The Committee notes that the Government has not provided any information in this respect. **The Committee once again requests the Government to provide a report containing the available statistical information on the number of public employment offices established, the number of applications for employment received, vacancies notified and persons placed in employment by such offices.**

Articles 4 and 5. Cooperation with the social partners. The Committee notes that the Advisory Committee for Employment, established by Decree No. 5 of 7 April 1995, is a tripartite advisory body that works in cooperation with the Ministry of Public Administration, Labour and Social Security (MAPTSS), through the National Institute of Employment and Vocational Training (INEFOP). It also notes that the inter-ministerial committee for the training of human resources for the national economy, a ministerial body responsible for the formulation of the comprehensive employment and vocational training policy, created by Decree No. 51 of 17 August 2001, is composed of representatives of various ministries, workers' and employers' representatives and, at the invitation of the Vice-Chairperson, any other member of civil society. **The Committee requests the Government to provide information on the manner in which it is ensured that the social partners can actively participate in the development and implementation of the employment service policy, as well as information on the structuring, functioning and objectives of the various committees, the cooperation established between them and the impact of their policies.**

Article 6. Organization of the employment service. The Government indicates that the national employment system consists of central services and 18 vocational services located throughout the country that include employment centres, integrated employment centres and vocational training centres. The Government adds that a network has been established of 36 employment centres, 11 of which are integrated centres, in 18 provinces. This network is supplemented by training and vocational rehabilitation mechanisms, as well as by various activities carried out by public and private training centres and private employment agencies. **The Committee requests the Government to provide detailed information on the functioning of these centres and the activities undertaken to ensure the effective performance of the functions listed in the Convention. It also requests the Government to continue providing information on the number of employment centres, integrated employment centres and vocational training centres.**

Article 7(b). Public service action for persons with disabilities and other groups in a vulnerable situation. The Government indicates that article 23(1) of the Constitution of 2010 provides for equality before the law, that recruitment in employment centres is not conducted on the basis of special categories and that their services are available to all jobseekers, without any distinction. Moreover, the Committee notes the observations of the UNTA–CS, indicating that although, in recent years, several women have been appointed to senior executive and legislative positions, a large proportion of women continue to face blatant gender discrimination in employment, particularly during pregnancy, that women continue to work in poorly paid jobs in the informal economy and the domestic sector, and that they are often victims of sexual and psychological harassment in the workplace. The Committee recalls that Article 5 of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), establishes that special measures of protection or assistance provided for in other Conventions or Recommendations adopted by the International Labour Conference shall not be deemed to be discrimination. Moreover, the Committee recalls that the public employment service should take measures to develop special arrangements for the placement of minors, persons with disabilities and women (see Paragraph 4(b) and (c) of the Employment Service Recommendation, 1948 (No. 83)). **The Committee requests the Government to provide information on the measures taken to give effect in practice to Article 7(b) of the Convention, and particularly on the special measures of protection or assistance in the employment service that are available to persons with disabilities and other groups in a vulnerable situation, particularly women.**

Article 8. Measures to assist young persons. The Committee notes the integration and training programmes for young persons who are in a situation of vulnerability due to unemployment, inaptitude, socio-economic situation and low level of education. It also notes that, for young entrepreneurs, the Government has created enterprise incubator programmes, credit programmes and programmes to promote self-employment, independent work and micro-enterprises in the informal economy. The Committee further notes that the Government has created employment programmes for other groups in a vulnerable situation, such as women, young persons with a low level of education who are seeking their first job, recent young graduates, demobilized soldiers, young persons living in the streets and young persons living in remote areas. Lastly, the Committee notes the observations of the UNTA–CS, indicating that young persons without any work experience have difficulty securing their first job, that there have been cases of nepotism and corruption in the recruitment of public employees, and that in the private sector certain enterprises select candidates on the basis of their family name and social origin. **Taking due note of the various types of training and integration programmes implemented by the Government to assist young persons, the Committee requests the Government to provide up-to-date statistical data on the number of young persons who have participated in these integration and training programmes, as well as relevant data on the impact of such programmes in securing lasting employment.**

Article 9(4). Proposed measures to provide training or further training for employment service staff. The Government indicates that workers in the employment service are public employees governed by Decree No. 33 of 26 July 1991 on the disciplinary rules governing public and administrative officials. These workers are recruited on the basis of a competition, as well as the needs of the MAPTSS. In this respect, the Committee notes that these employees receive training in accordance with the needs of the state administration services, the business sector and other private entities. **The Committee requests the Government to provide information on the manner in which it is ensured that employment service staff have the necessary skills to carry out the duties set forth in the Convention and have been adequately trained for the performance of their duties, especially for their activities concerning disadvantaged groups.**

Article 10. Measures to encourage full use of employment service facilities. The Government indicates that it is promoting, in collaboration with the social partners, various vocational training programmes through advertisements in several communication media, such as official government websites, and in vocational training centres, schools and universities. **The Committee requests the Government to provide information on the manner in which it ensures the participation of the social partners in this process and the results.**

Article 11. Cooperation between the public employment service and private employment agencies. The Government indicates that Angolan legislation allows the coexistence of, and collaboration between, the public employment service and private agencies, which facilitates the joint creation of vocational orientation and vocational training programmes. With respect to private employment agencies, the Committee notes that they may register, select and place jobseekers. However, they are obliged to: provide monthly statistical data on applications for employment, offers of employment and placements to the employment centre in their area of jurisdiction; cooperate with public employment centres; and participate in meetings organized by the public employment services. **The Committee requests the Government to indicate the specific measures that have been taken to guarantee effective cooperation between the public employment service and private employment agencies, and to provide statistical data on private employment agencies.**

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

Observation 2017

The Committee notes the observations of the National Trade Union of Teachers (SINPROF) and Education International (EI), received on 1 September 2017, alleging the existence of anti-union reprisals by the Government in several provinces of the country. The Committee notes the observations of the National Union of Angolan Workers–Trade Union Confederation (UNTA–CS), received in December 2016, on matters which have already been examined by the Committee. ***The Committee requests the Government to reply to the observations of EI and SINPROF.***

New General Labour Act. The Committee takes due note of the new General Labour Act No. 7/2015, published on 15 June 2015, which repeals Act No. 2/00 of 11 February 2000.

Article 4 of the Convention. Promotion of collective bargaining. Compulsory arbitration. The Committee recalls that for several years it has been requesting the Government to take the necessary measures to amend sections 20 and 28 of Act No. 20-A/92 on the right to collective bargaining, which impose compulsory arbitration in terms contrary to the indications of the Committee. The Committee notes that section 273.2 of the new General Labour Act establishes that collective labour disputes shall be resolved through mediation, conciliation and voluntary arbitration, without prejudice to specific legislation, and also notes that section 293 establishes that collective labour disputes shall be settled preferably through voluntary arbitration. The Committee observes that the new General Labour Act repeals any provision contrary to it, and queries about the effect this general measure has on Act No. 20-A/92 concerning the right to collective bargaining, on which the Committee has commented. ***The Committee requests the Government to clarify whether the new General Labour Act repeals sections 20 and 28 of Act No. 20 A/92, which impose compulsory arbitration on an array of non-essential services, or whether these sections are still in force. The Committee recalls that compulsory arbitration in the context of collective bargaining is only acceptable in relation to public servants engaged in the administration of the State (Article 6 of the Convention), essential services in the strict sense of the term (services the interruption of which would endanger the life, personal safety or health of the whole or part of the population) and in the event of an acute national crisis.***

Articles 4 and 6. Collective bargaining of civil servants not engaged in the administration of the State. The Committee recalls that for several years it has been requesting the Government to take measures to ensure that the trade union organizations of civil servants who are not engaged in the administration of the State have the right to negotiate both wages and other terms and conditions of employment with their public employers. The Committee notes with *regret* that the Government has not provided information on this matter and that there have been no legislative changes in this respect. ***Recalling that, under Articles 4 and 6 of the Convention, all civil servants other than those engaged in the administration of the State must be able to enjoy the right to collective bargaining, the Committee once again requests the Government to take the necessary measures to give effect to the aforementioned provisions of the Convention.***

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

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

Observation 2017

Article 1(a) of the Convention. Imposition of penal sanctions involving compulsory labour as a punishment for expressing political views or views ideologically opposed to the established political, social or economic system. In its previous comments, the Committee noted information from the United Nations High Commissioner for Human Rights regarding difficulties related to the content, interpretation and application in practice of laws on freedom of expression and freedom of assembly, defamation or slander. Noting that the new draft Penal Code still establishes prison sentences for the offences of slander and defamation, the Committee recalled that the Convention prohibits the imposition of forced labour, including compulsory prison labour, for the expression of political views or opposition to the established political, social or economic system. Consequently, prison sentences which involve compulsory labour, which is the case in Angola by virtue of sections 13 and 50(c) of the Regulations of the progressive regime of 9 July 1981, are contrary to *Article 1(a)* of the Convention when they are imposed to punish the expression of political opinions or opposition to the established system. The Committee therefore requested the Government to take account of these considerations in the process of revising the Penal Code and in the application of current legislation.

The Committee notes once again with *regret* that the Government has not provided any information on the progress made in the adoption of the new Penal Code nor on the application in practice of the legal provisions which punish defamation. The Committee notes that, within the framework of its human rights promotion mission in Angola in October 2016, the delegation of the African Commission on Human and Peoples' Rights expressed concern about the continuing existence of the crime of defamation in the Penal Code which limits the right to freedom of expression, and the impact of Presidential Decree No. 74/2015 on the registration of non-governmental organizations on the right to freedom of association (press release of 7 October 2016). The Committee also notes that the United Nations Committee on Economic, Social and Cultural Rights shares these concerns and highlights that human rights defenders and journalists operate under restrictive conditions and face police and judicial harassment, including arbitrary detention (E/C.12/AGO/CO/4-5 of 15 July 2016).

The Committee urges the Government to take into account the above considerations to ensure that the provisions of the new Penal Code are in conformity with the Convention, particularly regarding the penalties applicable for the crime of defamation. In the meantime, the Committee requests the Government to take the necessary measures to ensure that, in accordance with the Convention, no person is compelled to perform labour, particularly compulsory prison labour, for having expressed certain political opinions or opposition to the established political, social or economic system both in relation to the exercise of the right to freedom of expression and the right to association. It requests the Government to provide information on any court decisions relating to the offences of slander and defamation, with an indication of the facts which led to the convictions and the penalties imposed.

Article 1(c). Imposition of compulsory labour as a means of labour discipline. For many years, the Committee has been requesting the Government to amend certain provisions of the Merchant Shipping Penal and Disciplinary Code which are contrary to the Convention as they permit the imposition of prison sentences (including compulsory labour by virtue of sections 13 and 50(c) of the Regulation of the progressive regime of 9 July 1981) for certain breaches in labour discipline which do not endanger the safety of the vessel or the life or health of persons on board. Under the terms of section 132 of the Merchant Shipping Penal and Disciplinary Code, a member of the crew who deserts at the port of embarkation is liable to a prison sentence of up to a year; the sentence may be two years if desertion takes place in another port. By virtue of section 137, crew members who do not carry out an order from superiors, in relation to services that do not jeopardize the safety of the ship, are liable to a sentence of imprisonment from one to six months. Simple refusal to obey an order, followed by voluntarily carrying it out, is punishable by a maximum sentence of three months' imprisonment. The Committee notes in this respect that the Act on Merchant Shipping of 2012 (Act No. 27/12) does not affect these provisions of the Merchant Shipping Penal and Disciplinary Code as it does not regulate the conditions of work of seafarers (section 57), which are to be covered by specific legislation. ***The Committee therefore firmly hopes that the Government will take the necessary measures to ensure that the above provisions of the Merchant Shipping Penal and Disciplinary Code are repealed or amended so that breaches of labour discipline which do not endanger the safety of the vessel or the life or health of persons on board are not punished with prison sentences. Please provide copies of any new legislation adopted to this end.***

Article 1(d). Imposition of prison sentences involving an obligation to work for having participated in strikes. The Committee previously drew the Government's attention to the need to amend the provisions of section 27(1) of the Act on Strikes (Act No. 23/91 of 15 June 1991), under which the organizers of a strike that is prohibited or illegal or has been suspended by law are liable to prison sentences or fines. Therefore, pursuant to this section, compulsory labour (compulsory prison labour arising out of a conviction to a sentence of imprisonment) may be imposed on the organizer of a prohibited, illegal or suspended strike. The Committee emphasized in this regard that the legislation establishes a number of restrictions on the exercise of the right to strike, under

the terms of which a strike, which should be lawful in the light of the principles of freedom of association (see the Committee's comments on the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)), could be declared illegal.

The Committee once again notes with *regret* that the Government has not provided any information on the progress made in the process of revising the Act on strikes, to which it has previously made reference. *The Committee firmly hopes that the Government will take the necessary measures in the very near future to amend Act No. 23/91 on strikes to ensure that, in conformity with Article 1(d) of the Convention, persons who participate peacefully in a strike are not punished with a sentence of imprisonment during which they may be required to perform compulsory labour.*

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

Observation 2017

Angola (ratification: 2001)

Article 7(2) of the Convention. Effective and time-bound measures. Clause (a). Preventing the engagement of children in the worst forms of child labour. Access to free basic education. The Committee previously noted information from UNESCO indicating that, despite the problems caused by a particularly long and bloody conflict, Angola managed to triple the number of children enrolled in primary education, which rose from 2 million to 6 million between 2002 and 2013. The Committee nevertheless noted the very low school enrolment rates at all levels, the high drop-out rates in primary education (30 per cent), particularly among girls, and the limited access to quality education in rural areas.

The Committee notes that the Government's report does not provide any new information on this subject. It nevertheless notes that, in the Government's report of 2016 to the United Nations Committee on the Rights of the Child, the net enrolment rate in secondary education rose from 48.7 per cent in 2013 to 51.8 per cent in 2014, and that it was expected to rise to 54.8 per cent in 2015 and 57.5 per cent in 2016 (CRC/C/AGO/5-7, page 31). *While noting the increase in the enrolment rate at the secondary level, the Committee recalls that education is one of the most effective means to prevent the engagement of children in the worst forms of child labour, and therefore requests the Government once again to intensify its efforts to improve the functioning of the education system and to facilitate access to free, quality basic education, particularly for children from poor families, children living in rural areas, and girls. It once again requests the Government to provide information on the measures taken in this regard and the results achieved, particularly with regard to increasing school enrolment and completion rates and reducing drop-out rates in primary education. To the extent possible, this information should be disaggregated by age and by gender.*

Article 7(2). Effective and time-bound measures. Clause (d). HIV/AIDS orphans and other vulnerable children (OVCs). The Committee previously noted information from the Government indicating a rise in the number of OVCs in the country. It also noted the Government's indication that a national action plan on OVCs was being developed and that the plan sought to strengthen the capacities of families, communities and institutions to respond to the needs of OVCs and to expand social protection services and mechanisms for these children. It nevertheless noted the Government's indication in its country progress report to the United Nations General Assembly Special Session on HIV/AIDS (UNGASS) that only 16.8 per cent of households with OVCs receive basic external support.

The Committee notes that the Government's report does not contain any information on this subject. However, it notes that, in Angola, according to estimates made by UNAIDS in 2016, approximately 130,000 children aged 17 years and younger had been orphaned by HIV/AIDS. *Recalling that OVCs are at an increased risk of being engaged in the worst forms of child labour, the Committee urges the Government to take immediate and effective measures, as part of the national action plan on OVCs, to ensure that HIV/AIDS orphans and OVCs are protected from the worst forms of child labour. The Committee once again requests the Government to provide information on the specific measures taken in this respect and on the results achieved, particularly with regard to the percentage of households with OVCs receiving support in the form of services and allowances.*

Application of the Convention in practice. In its previous comments, the Committee noted the Government's statement that there are children in Angola who are engaged in the worst forms of child labour, such as those who perform hazardous types of work (in the diamond mines and in the fishing industry), those who work on the streets or even some who are subjected to commercial sexual exploitation. The Government added that, because of its particularly long and difficult-to-monitor border with the Democratic Republic of the Congo, Angolan children were taken from the capital and sent to the Democratic Republic of the Congo and, likewise, Congolese children were taken from Kinshasa and brought to Angola.

The Committee notes that the Government's report does not contain any information on this subject. *The Committee once again expresses its deep concern at the situation of persons under the age of 18 years who are engaged in the worst forms of child labour and therefore urges the Government to intensify its efforts to ensure that children are protected in practice against the worst forms of child labour, particularly the trafficking and commercial sexual exploitation of children, their use for illicit activities, or for hazardous work. It also requests the Government to take the necessary measures to ensure the availability of sufficient data on these issues and to provide information on the nature and scope of, and trends in, the worst forms of child labour and on the number of children covered by measures giving effect to the Convention. To the extent possible, this information should be disaggregated by gender and age.*

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

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

Observation 2017

Articles 20 and 21 of the Convention. Publication and communication of an annual inspection report. The Committee notes with *regret* that no annual inspection report has been prepared or communicated to the ILO since the ratification of the Convention in 2001. However, it welcomes the information supplied by the Government in its report to the effect that periodic activity reports are drawn up by the departmental labour directorates and by the Directorate-General for Labour. It therefore considers that data for the preparation of annual inspection reports should already be available. The Committee also notes that the Government has requested technical assistance from the ILO with regard to the preparation of these annual reports. *The Committee urges the Government to take all possible measures with the requested ILO normal technical assistance, to ensure that annual labour inspection reports are published and sent to the ILO in the very near future.*

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

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

Observation 2017

Article 1(a) of the Convention. Imposition of prison sentences involving the obligation to work as punishment for expressing political views or views ideologically opposed to the established political, social or economic system. The Committee recalls that its previous comments referred to a number of provisions under Act No. 60-12 of 30 June 1960 on the freedom of the press and Act No. 97-010 of 20 August 1997 liberalizing audiovisual communications and establishing special penal provisions for offences relating to the press and audiovisual communication, under which prison sentences involving the obligation to work in prison, could be imposed to punish various acts or activities related to the exercise of freedom of speech. The Committee observes in this respect that Act No. 2015-07 on the Code of Information and Communication in the Republic of Benin was adopted on 22 January 2015 and that this law repeals the two acts abovementioned. The Committee notes with *satisfaction* that henceforth the offences of defamation, insult and contempt committed by the press, printed matter, posters or any other modern means of mass communication are no longer sanctioned with prison sentences (articles 268 to 278).

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

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

Observation 2017

The Committee takes note of the observations of the International Organisation of Employers (IOE) received on 31 August 2017, containing the Employer statements made before the 2017 Conference Committee on the Application of Standards (hereinafter: Conference Committee) with regard to the individual case of Botswana. The Committee also notes the observations from the International Trade Union Confederation (ITUC) received on 1 September 2017, alleging dismissals of workers because of strike action, brutal repression by police of a peaceful picket organized in August 2016, and refusal to allow the Botswana Federation of Public Sector Unions (BOFEPUSU) to raise its concerns before Parliament as regards the proposed amendments affecting the public sector. *The Committee requests the Government to provide its comments in this regard. While noting the Government's comments in reply to the 2016 observations from Education International (EI) and the Trainers and Allied Workers Union (TAWU), the Committee is bound to reiterate its request to the Government to respond to the remaining observations made by: (i) the ITUC in 2016 (alleging lockout of workers in the mining sector); (ii) the ITUC and the Botswana Federation of Trade Unions (BFTU) in 2016 concerning new amendments of the Trade Disputes Act (TDA); (iii) the BFTU in 2016; (iv) the ITUC in 2014 (alleging violations of trade union rights in practice); (v) the TAWU in 2013 (alleging favouritism of certain trade unions by the Government); and (vi) the ITUC in 2013 (alleging acts of intimidation against public workers).*

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 106th Session, June 2017)

The Committee notes the discussion that took place in the Conference Committee in June 2017 concerning the application of the Convention. The Committee notes that the Conference Committee called upon the Government to: (i) take appropriate measures that ensure that the labour and employment legislation grants members of the prison service the rights guaranteed by the Convention; (ii) ensure that the Trade Disputes Act (TDA) is in full conformity with the Convention, and engage in social dialogue, with the further technical assistance of the ILO; (iii) amend the Trade Unions and Employers Organisations (TUEO) Act, in consultation with employers' and workers' organizations, to bring the law into conformity with the Convention; and (iv) develop a time-bound action plan together with the social partners in order to implement these conclusions. The Conference Committee also urged the Government to continue availing itself of ILO technical assistance in this regard and to report progress to the Committee of Experts before its next meeting in November 2017.

The Committee *regrets* that, despite the above request of the Conference Committee, the Government's report has not been received.

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, including the pertinent legislative amendments, to grant members of the prison service all rights guaranteed by the Convention. The Committee notes the Government's indication before the Conference Committee that prison officers in Botswana are classified as members of the disciplined forces and are the custodians of public safety and security, and that the constitutionality of the exclusion of prison officers from the coverage of the TDA and the TUEO Act has been reaffirmed by the Court of Appeal; however, support or administrative staff are covered by the above legislation. While noting the classification at national level of the prison service as "disciplined force", the Committee reiterates that the police, the armed forces and the prison service are governed by separate legislation, which does not provide members of the prison service with the same status as the armed forces or the police and emphasizes that the exception set out in *Article 9* of the Convention for the armed forces and the police is to be interpreted restrictively. *The Committee requests the Government once again to take, within the framework of the ongoing labour law review, the necessary legislative measures to ensure that prison officers enjoy the right to establish and join trade unions. 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 concern that section 46 of the new Trade Disputes Bill No. 21 of 2015 enumerated a broad list of essential services, and that in line with section 46(2), 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. The Committee requested the Government to take the necessary measures to amend the Trade Disputes Bill to reduce the list of essential services accordingly. The Committee notes the Government's statement before the Conference Committee that, while the interruption of certain services in some countries may only cause economic hardships, it can prove disastrous in others and rapidly lead to conditions that might endanger the life, personal safety or health of the population and stability of the country; that flexibility is necessary to take into account the socio-economic circumstances of the country; and that the original list of essential services in the TDA was adopted 25 years ago and has been amended in 2016 in response to new developments and the specific circumstances in the country. Recalling that essential services, in which the right to strike may be restricted or even prohibited, as is the case in Botswana, 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 highlights that, while the economic impact of industrial action and its effect on trade and commerce may be regrettable, such consequences in and of themselves do not render a service "essential". The Committee therefore considers that certain services enumerated in section 46, including diamond sorting, cutting and selling services; teaching services; government broadcasting services; the Bank of Botswana; railways operation and maintenance services; public veterinary services; and services necessary to the operation of any of these services, do not constitute essential services in the strict sense of the term.

Referring to the Conference Committee's request to ensure that the TDA is in full conformity with the Convention, the Committee requests the Government to take the necessary legislative measures to ensure that the list in section 46(1) of the TDA is limited to essential services in the strict sense of the term, and invites the Government, with regard to the services mentioned above, to give consideration to the negotiation or determination of a minimum service rather than imposing an outright ban on industrial action. The Committee further notes the Government's indication before the Conference Committee that legislative amendments have been introduced pursuant to the Court of Appeal ruling on the invalidity of statutory provisions, which gave the Minister the power to amend the list of essential services, since it was the role of Parliament to determine the list of essential services. *The Committee requests the Government to provide a copy of the most up-to-date version of section 46(2) of the Trade Disputes Act.*

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 (such as access to premises or representation of members in case of complaint, etc.) 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 before the Conference Committee that several ILO missions had been undertaken in April 2017 following the Government's request for technical assistance, that it was agreed that the main focus of the labour law reform would be the Employment Act and the TUEO Act, and that, while social dialogue and stakeholder involvement during this process are considered central to its success, there has not yet been the opportunity for open discussion thereon with the social partners. *The Committee expects that, in the framework of the ongoing labour law reform, the abovementioned provisions of the TUEO Act will be amended, in full and frank consultation with the social partners, so as to bring these provisions into line with the Convention. The Committee requests the Government to provide information on any progress achieved in this regard and to provide a copy of the amended TUEO Act once adopted.*

The Committee further notes the Government's indication before the Conference Committee that, following considerable consultation with public service unions, the new Public Service Bill is at the stage of publication in the Official Gazette, which will allow for further consultation and could result in further amendments prior to its consideration in Parliament. In light of the most recent ITUC observations, the Committee wishes to emphasize the value of prior detailed consultation with the relevant social partners (including BOFEPUSU) during the preparation of legislation affecting their interests. *The Committee reiterates its request that the Government provide a copy of the Public Service Bill in its current form or, as the case may be, of the Public Service*

Act once adopted.

The Committee reminds the Government that it may continue to avail itself of technical assistance from the Office with respect to all issues raised in its present comments.

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

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

Observation 2017

The Committee notes the Government's comments on the observations made in 2016 by Education International (EI) and the Trainers and Allied Workers Union (TAWU). The Committee also notes the observations of the International Trade Union Confederation (ITUC) received on 1 September 2017 concerning alleged cases of anti-union discrimination and obstruction to collective bargaining. *The Committee requests the Government to provide its comments on these observations, as well as on the pending observations made by the Botswana Federation of Trade Unions (BFTU) in 2016, the ITUC in 2013 and 2014 and by the TAWU in 2013, alleging violations of the right to collective bargaining in practice.*

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2016.

Scope of the Convention. The Committee had previously requested the Government to amend section 2 of the Trade Disputes Act (TDA) and section 2 of the Trade Union and Employers' Organisations Act (TUEO Act), which exclude employees of the prison service from their scope of application, as well as section 35 of the Prison Act, which deprives members of the prison service from the right to unionize under the threat of being dismissed. 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 a separate legislation – the Prison Act, the Police Act and the Botswana Defence Force Act – and the Prison Act does not appear to provide members of the prison service 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 5* of the Convention. *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 1 of the Convention. Adequate protection against acts of anti-union discrimination. The Committee had previously examined the ITUC concern that if a union was not registered, its committee members were not protected against anti-union discrimination, and had recalled the importance of legislation prohibiting and specifically sanctioning all acts of anti-union discrimination as set out in *Article 1* of the Convention. In its previous comments, the Committee requested the Government to take the necessary measures to ensure that all union committee members, including those of unregistered trade unions, enjoy an adequate protection against anti-union discrimination. The Committee *regrets* that the Government failed to provide any comments on this point and it underlines that the fundamental rights accorded by the Convention to members or officers of trade unions, such as protection against acts of anti-union discrimination, cover all workers wishing to establish or join a trade union; therefore, such protection should not be dependent on the registered or unregistered status of a trade union, even if the authorities consider registration to be a simple formality. *In these circumstances, the Committee reiterates its previous request.*

Articles 2 and 4. Adequate protection against acts of interference; promotion of collective bargaining. In its previous comments, the Committee had requested the Government to provide information on the progress made in respect to: (i) the adoption of specific legislative provisions ensuring adequate protection against acts of interference by employers coupled with effective and sufficiently dissuasive sanctions; (ii) the repeal of section 35(1)(b) of the TDA, which permits an employer or employers' organization to apply to the commissioner to withdraw the recognition granted to a trade union on the grounds that the trade union refuses to negotiate in good faith with the employer; and (iii) the amendment of section 20(3) of the TDA (this section read together with section 18(1)(a) and (e) allows the Industrial Court to refer a trade dispute to arbitration, including where only one of the parties made an urgent appeal to the Court for determination of the dispute) so as to ensure that the recourse to compulsory arbitration does not affect the promotion of collective bargaining. In this regard, the Committee recalls that compulsory arbitration is only acceptable in relation to public servants engaged in the administration of the State (*Article 6* of the Convention), or in essential services in the strict sense of the term or in cases of acute national crises. The Committee further observes that a draft TDA Bill (Bill No. 21 of 2015) is in the process of being adopted but *regrets* that the Committee's comments have not been reflected in the draft Bill and that the Government fails to provide any information on this point. *The Committee, therefore, reiterates its request to the Government and trusts that it will be able to observe progress in this regard in the near future. The Committee encourages the Government to avail itself of the technical assistance of the Office, if it so wishes.*

The Committee had previously noted that, in terms of section 48 of the TUEO Act, as read with section 32 of the TDA, the minimum threshold for a union to be recognized by the employer for collective bargaining purposes is set at one third of the relevant workforce. It had therefore requested the Government to ensure that where no union represented one third of the employees in a bargaining unit, collective bargaining rights would be granted to all unions in the unit, at least on behalf of their own members. The Committee observes, however, that section 35 of the TDA Bill does not implement these changes but merely reproduces the text of section 32 of the TDA in this regard. Additionally, the Committee notes that section 37(5) of the draft TDA Bill also provides a one third minimum threshold requirement for union recognition at the industry level. 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. *Regretting that no information has been provided in this respect, the Committee requests the Government to take the necessary measures to ensure that if no union reaches the required threshold to be recognized as a bargaining agent, unions should be given the possibility to negotiate, jointly or separately, at least on behalf of their own members.*

Collective bargaining in the public sector. In its previous comments, the Committee requested the Government to clarify whether the provisions of the Public Service Regulations, 2011 (Statutory Instrument No. 50), providing for general conditions of service in the public sector (hours of work, shift work, weekly rest periods, paid public holiday, overtime and annual paid leave), constituted fixed conditions of service or rather minimal legislative protection clauses on the basis of which the parties are able to negotiate special modalities and additional benefits. The Committee notes the Government's indication that some provisions of the Instrument constitute fixed conditions of service while for others the parties may determine special modalities and additional benefits, as long as they are in conformity with the Public Service Act, 2008. However, the BFTU indicates that it is unclear from the Government's report which provisions are fixed and which are not. *Recalling that measures taken unilaterally by the authorities to restrict the scope of negotiable issues are generally incompatible with the Convention and that tripartite discussions for the preparation, on a voluntary basis, of guidelines for collective bargaining are a particularly appropriate method of resolving these difficulties, the Committee requests the Government to specify which provisions of the Public Service Regulations are not open for negotiation and invites the Government to reconsider the limitation imposed on the scope of collective bargaining for*

public sector workers not engaged in the administration of the State.

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, and that the TUEO Act is also in the process of being amended. *The Committee trusts that the Government will ensure full conformity of both the Public Service Bill, 2016, and the amended TUEO Act with the Convention. In this regard, the Committee encourages the Government to avail itself of the technical assistance of the Office, if it so wishes.*

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

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

Observation 2017

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2016.

Article 1 of the Convention. Equal remuneration for men and women for work of equal value. Legislation. The Committee recalls that the principle of equal remuneration for work of equal value is not reflected in the national legislation, but that since 2002 the Government has been indicating that amendments to the Employment Act were under consideration with a view to incorporating the provisions of the Convention. The Committee had therefore asked the Government to ensure that full legislative expression be given to the principle of equal remuneration for men and women for work of equal value in the Employment Act of 1982. It had noted that the most recent amendment to this Act in 2010 still did not incorporate this principle. The Committee notes that the Government once again indicates in its report that the process of amending the Employment Act of 1982 has started, and that this process will incorporate provisions on the principle of equal remuneration for men and women for work of equal value. *In light of the above and with a view to ensuring that men and women have a legal basis for asserting their right to equal remuneration with their employers and before competent authorities, the Committee urges the Government to take, without further delay, the necessary measures to ensure that substantial progress will be made in the revision of the Employment Act, and that the Act, once revised, will give full legislative expression to the principle of equal remuneration for men and women for work of equal value. The Committee asks the Government to provide information on the status of the revision process, including on any specific action taken to amend the law in accordance with the Convention.*

Article 2. Minimum wages. The Committee recalls that the Minimum Wage Advisory Board is competent to submit recommendations to the Minister to fix or adjust wages in all sectors of activity under section 132 of the Employment Act of 1982, and that it has requested the Government to ensure that the principle of equal remuneration for men and women for work of equal value is taken into account by the Minimum Wage Advisory Board and is fully reflected in the minimum wage setting process. The Committee notes that the Government once again merely indicates that the process of amending the Employment Act of 1982 has started. *Recalling that special attention is needed in the design or adjustment of sectoral minimum wage schemes to ensure that the rates fixed are free from gender bias, the Committee trusts that the Government will take the necessary measures to ensure that the principle of equal remuneration for men and women for work of equal value is taken into account by the Minimum Wage Advisory Board and fully reflected in the minimum wage setting process, and asks the Government to provide full information on any steps taken in this regard.*

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

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

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

Observation 2017

Article 3 of the Convention. Formulation, carrying out and periodic review of a coherent policy. Legislation. The Committee previously noted that the Government referred to the Mines, Quarries, Works and Machinery (MQWM) Act and Regulations, Cap. 44:02, and its process of review as giving effect to this provision of the Convention. In this respect, the Committee notes that this review is undertaken by the Mines, Quarries and Works Safety Committee (the MQWS Committee) established under section 5(1) of the MQWM Act, where the Government, employers and workers are represented. The role of the MQWS Committee is "to advise the Minister on the supervision to be exercised over mines, quarries and works, or anything or practice which affects or is likely to affect the safety, health or welfare of persons employed in or at mines, quarries and works". With respect to this review, the Committee notes the copy of the Statutory Instrument No. 33/2005, transmitted by the Government in reply to the Committee's previous request, amending the provisions of the MQWM Regulations on certain occupational safety and health issues. *The Committee requests the Government to continue to provide information on the development, implementation and periodic review of its national policy on safety and health in mines, in consultation with the social partners, including through the MQWS Committee.*

Article 4(2). Practical implementation of the Convention through technical standards. With reference to its previous request concerning the content of two technical standards developed by the Botswana Bureau of Standards, the Committee notes that BOS OHSAS 18001:2007 specifies the requirements for an occupational safety and health management system, to enable an organization to control its risks and improve its occupational safety and health performance, and BOS OHSAS 18002:2008 provides detailed guidelines for the implementation of BOS OHSAS 18001:2007.

Article 5(2)(d). Compilation and publication of statistics. Application in practice. With reference to its previous comments in which it requested the Government to provide information on the measures taken to address the number of accidents related to the handling of machinery, the Committee notes the Government's indication that inspectors undertake regular inspections and provide advice to mining operators regarding corrective measures to be taken. The Government adds that inquiries into accidents and dangerous occurrences are carried out, that the report submitted to the mining operator contains instructions regarding the steps to be taken to prevent the recurrence of the accident, and that the operator must comply with the instructions and submit information on the remedial measures taken. *Recalling that Article 5(2)(d) provides for the compilation and publication of statistics on accidents, occupational diseases and dangerous occurrences in mines, the Committee requests the Government to provide this statistical information. The Committee also requests the Government to continue to provide information on the inspection activities carried out in the mining sector.*

Article 5(5). Plans of workings. The Committee previously noted that under regulation 578(1) of the MQWM Regulations, the manager shall ensure that plans are prepared and kept at the mine and that regulation 578(2) permits exemption from the provisions of sub-regulation (1), when the average number of persons employed is less than 100. It also noted the statement of the Government that in practice no exemptions have been granted for such mines and that all mines are inspected by the mine inspectorate periodically to ascertain compliance with regulation 578(1). The Government also indicated that additional measures will be taken to give effect to Article 5(5) in the context of the review process of the MQWM Regulations. *Noting an absence of information in the Government's report on the review process, the Committee requests the Government to take the necessary measures to ensure that the legislation provides that employers shall prepare before the start of operations and keep available at the mine site appropriate plans of workings in respect of all mines, including mines where less than 100 persons are employed. In the meantime, it requests the Government to continue to provide information on any exemptions granted pursuant to regulation 578(2) of the MQWM Regulations.*

Article 13(1)(b). Right of workers to obtain inspections and investigations; Article 13(1)(d). Right of workers to obtain information relevant to their safety or

health; Article 13(1)(e). Right of workers to remove themselves; Article 13(1)(f). Right of workers to collectively select safety and health representatives; Article 13(2)(b). Right of safety and health representatives to: (i) participate in inspections and investigations; and (ii) monitor and investigate safety and health matters; Article 13(2)(d). Right of safety and health representatives to consult with the employer on safety and health matters, including policies and procedures; Article 13(2)(f). Right of safety and health representatives to receive notice of accidents and dangerous occurrences; Article 13(3). Procedures for the exercise of the rights of workers and their safety and health representatives pursuant to Article 13(1) and (2); and Article 13(4). Protection against discrimination and retaliation. In its previous comments, the Committee noted the Government's indications that effect was given to these provisions of the Convention in practice and that they would be taken into account in the review process of the MQWM Regulations. **Noting that the Government does not provide any new information in this respect, the Committee once again requests the Government to take the necessary measures to ensure that the national legislation provides for all the requirements contained in the abovementioned provisions of the Convention.**

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

Observation 2017

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2014. *Article 4(1) of the Convention. Determination of hazardous work.* The Committee previously noted the Government's statement that the Tripartite Labour Advisory Board had prepared a draft list of hazardous types of work which was being circulated to the relevant ministries for their endorsement. The Committee accordingly urged the Government to pursue its efforts to ensure the adoption, in the near future, of the list determining the types of hazardous work prohibited to persons under 18 years of age.

The Committee notes the Government's indication that the list of types of hazardous work prohibited to young persons has not yet been finalized. **The Committee expresses the firm hope that the list, determining the types of hazardous work prohibited to children under 18 years of age, will be adopted in the very near future. It requests the Government to provide a copy of this list once it has been adopted.**

Article 7(2). Effective and time-bound measures. Clause (b). Direct assistance for the removal of children from the worst forms of child labour. Child victims of commercial sexual exploitation. In its previous comments, the Committee noted the Government's statement that prevention and withdrawal efforts related to child commercial sexual exploitation were ongoing, and that the two implementing agencies, namely Humana People to People and Childline Botswana, have been engaged to work in this area. The Committee requested the Government to strengthen its efforts, in collaboration with the ILO-IPEC, to provide the necessary and appropriate direct assistance for the removal of child victims of commercial sexual exploitation, and to ensure their rehabilitation and social integration.

The Committee notes the Government's statement that children engaged in commercial sexual exploitation are identified as children in need of protection under the Children's Act of 2009. It also notes that, according to section 54 of the Children's Act, the Minister shall develop programmes and rehabilitative measures, including community-based counselling and other forms of psychological support to reintegrate abused or exploited children. **The Committee requests the Government to take effective and time-bound measures to remove children engaged in commercial sexual exploitation, and to provide the necessary and appropriate direct assistance to children and young persons who have been victims of this worst form of child labour, pursuant to section 54 of the Children's Act. It also requests the Government to provide information on the number of child victims of commercial sexual exploitation who have been effectively removed, rehabilitated and socially reintegrated as a result of the measures implemented.**

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

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

C029 - Forced Labour Convention, 1930 (No. 29)**Observation 2017**

Articles 1(1), 2(1) and 25 of the Convention. Trafficking in persons. In its previous comments, the Committee requested the Government to provide information on the application in practice of Act No. 029-2008/AN of 15 May 2008 on combating trafficking in persons and similar practices (Anti-Trafficking Act), and to indicate whether the national action plan to combat trafficking and sexual violence against children had been adopted and whether its measures were also intended to prevent trafficking in adults.

The Committee notes the Government's indication in its report that it has not been possible to draw up the national action plan, but that the subjects concerned are covered by other programmes, such as the national programme to combat trafficking in children in small-scale mines and quarries. The Government also indicates that, according to the 2015 national report on trafficking in children, 1,099 children were victims of trafficking and that the partial figures from the 2016 draft report refer to 1,416 child victims. Moreover, 42 persons have been identified as suspects under the terms of the Anti-Trafficking Act of 2008. Out of these 42 suspects, ten have been found guilty and sentenced by the courts.

The Committee notes that most of the information provided by the Government refers to the measures taken to combat trafficking in children and that no information is provided on the trafficking of adults. In this regard, the Committee notes that, in its concluding observations of 17 October 2016, the United Nations Human Rights Committee stated that it remained concerned about human trafficking for the purposes of sexual exploitation or forced labour (CCPR/C/BFA/CO/1, paragraph 35). *The Committee urges the Government to take the necessary measures to combat trafficking in persons (adults), in particular through the adoption of an appropriate national action plan that would enable the application in practice of the Anti-Trafficking Act (No. 029-2008/AN of 15 May 2008). It also requests the Government to take the necessary steps to strengthen the capacities of law enforcement bodies, including the labour inspectorate, to combat trafficking in persons. The Committee further requests the Government to provide information on the measures taken or envisaged to protect victims of trafficking and to provide them with appropriate assistance. Lastly, the Committee requests the Government to continue providing information on the number of prosecutions initiated, convictions handed down and specific penalties applied under the Anti-Trafficking Act.*

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

C138 - Minimum Age Convention, 1973 (No. 138)**Observation 2017**

Article 1 of the Convention. National policy, labour inspection and application of the Convention in practice. In its previous comments, the Committee noted that, according to the last National Survey of Child Labour in Burkina Faso (ENTE) published in 2008, child labour affected 41.1 per cent of children between 5 and 17 years of age in Burkina Faso, a total of 1,658,869 working children. Nearly 30 per cent of children between 5 and 9 years of age and 47.6 per cent of children between 10 and 14 years of age worked in various economic sectors. In this regard, the Committee noted that most children worked in agriculture and livestock farming, and those in the most at-risk groups were employed as apprentices in the informal economy in small-scale gold mines, and girls in particular were employed as domestic workers, vendors or apprentices. The Committee noted that on 15 February 2012 the Government adopted the National Action Plan against the Worst Forms of Child Labour in Burkina Faso 2011–15 (PAN/PFTE), drawn up in cooperation with ILO-IPEC, with the general objective of reducing the incidence of child labour by 2015.

The Committee notes the Government's indications in its report that, as part of the implementation of the PAN/PFTE, a total of 126 inspections were conducted in 2013 in relation to child labour, of which 104 were in small-scale gold mines, ten in agriculture and 12 in the informal economy. Through these inspections, a total of 1,411 children were found to be working, including 1,195 in small-scale gold mining and 215 in the informal economy (carpentry, engineering, tailoring, small-scale trading, etc.). The Government also indicates that in 2013 a total of 50 capacity-building sessions were organized for parties involved in combating child labour; 107 awareness-raising meetings were held providing outreach to some 30,000 persons; and the PAN/PFTE National Coordinating Committee (CNC) was established. The Government also indicates that it has undertaken a number of capacity-building actions for the labour inspectorate relating to the inspection of child labour, including the formulation and validation of a module on child labour for incorporation in the training given to labour inspectors and supervisors, and also the establishment of a training plan for labour inspectors covering various fields, including action against child labour.

The Committee notes that the PAN/PFTE is no longer in force. However, it notes the information provided by the Government in its report on the Worst Forms of Child Labour Convention, 1999 (No. 182), to the effect that the new National Economic and Social Development Plan 2016–20 (PNDES) gives priority status to the combating of child labour. Strategic objective No. 4 of the PNDES seeks to promote decent employment and social protection for all, particularly young persons and children, with one of the expected outcomes being to reduce the proportion of children in the 5–17 age group involved in economic activities from 41 per cent in 2006 to 25 per cent in 2020. *The Committee urges the Government to continue its efforts to ensure the progressive elimination of child labour. It requests that the Government provide detailed information on the impact of the PNDES and all other measures with regard to the number of working children under 15 years of age who have thus been able to enjoy the protection granted by the Convention, particularly those working in the informal economy. The Committee also encourages the Government to continue with capacity-building measures for the labour inspectorate so that it can monitor child labour, particularly in the informal economy. Lastly, the Committee encourages the Government to take the necessary steps to ensure the availability of adequate, up-to-date information on child labour, including recent statistics, disaggregated by gender and age, relating to the nature, extent and trends of work done by children and young persons who are under the minimum age specified by the Government at the time of ratification, and extracts from reports of the inspection services.*

Articles 3(2) and 9(1). Determination of types of hazardous work and penalties. In its previous comments, the Committee noted that, according to the findings of the ENTE, out of a total of 1,658,869 working children, 39.3 per cent were forced to perform harmful activities and 35.8 per cent were engaged in work which was classified as hazardous. The Committee noted that the Government had adopted Decree No. 2009-365/PRES/PM/MTSS/MS/MASSEN of 28 May 2009 determining the list of hazardous types of work prohibited for children under 18 years of age.

The Committee notes the Government's statement that the list of hazardous types of work has since been revised and that new Decree No. 2016 504/PRES/PM/MFPTPS/MS/MFSNF determining the list of hazardous types of work in Burkina Faso (Decree No. 2016-504) was adopted on 9 June 2016. Under section 8 of this Decree, any person committing an offence constituting one of the worst forms of child labour shall be punished according to the terms of section 5 of Act No. 029-2008/AN of 15 May 2008 combating trafficking in persons and similar practices, which provides for imprisonment of ten to 20 years for offenders.

Noting with concern the large number of children engaged in hazardous types of work in Burkina Faso, the Committee requests that the Government take the necessary steps to ensure the effective application in practice of Decree No. 2016-504. The Committee requests that the Government supply detailed information in this regard, including statistics on the number and nature of violations reported, the number and nature of accidents and injuries related to these violations, and the criminal penalties imposed.

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

Observation 2017

Articles 3(a) and (d) and 7(1) of the Convention. Sale and trafficking of children and hazardous work. Penalties. In its previous comments, the Committee noted the considerable extent of internal and cross-border trafficking of children for the exploitation of their labour. The Committee also noted that, in its 2013 concluding observations under the Optional Protocol on the sale of children, child prostitution and child pornography, the Committee on the Rights of the Child expressed its concern about the strikingly low number of prosecutions relating in particular to the practice of *confiage* (placement of rural children in urban households mainly for domestic work) which, in many cases, amounts to the sale of children. The Committee asked the Government to take the necessary steps to ensure that criminal penalties that are sufficiently effective and dissuasive are imposed on the perpetrators of trafficking in children.

The Committee notes the Government's indications in its report that 42 individuals have been identified as suspects under the terms of Act No. 029 2008/AN of 15 May 2008 on combating the trafficking of persons and similar practices. Of the 42 suspects, ten have been convicted and sentenced by the courts. However, the Committee notes that the United Nations Human Rights Committee, in its concluding observations of 17 October 2016, expressed continuing concern at human trafficking for sexual exploitation or forced labour in Burkina Faso (CCPR/C/BFA/CO/1, paragraph 35). In this respect, the Committee notes the Government's indication in its report on the Forced Labour Convention, 1930 (No. 29), that the national report for 2015 on the trafficking of children quotes the figure of 1,099 children who are suspected victims of trafficking, and the partial figures of the national report for 2016, which is being drawn up, indicate 1,416 child victims of trafficking. The Committee observes that, in light of the information provided by the Government, the figures on prosecutions and convictions remain low. *The Committee therefore strongly encourages the Government to step up its efforts to ensure that Act No. 029 2008/AN of 15 May 2008 on combating the trafficking of persons and similar practices is implemented effectively. In this regard, it urges the Government to take the necessary steps to strengthen the capacities of law enforcement bodies to combat the sale and trafficking of children under 18 years of age, including by means of training and adequate resources. The Committee also requests the Government to take the necessary steps to ensure that all persons responsible for the trafficking of children are the subject of thorough investigation and robust prosecution, and that sufficiently effective and dissuasive penalties are imposed in practice. It further requests the Government to continue providing detailed information on the number of investigations, prosecutions, convictions and criminal penalties imposed.*

Article 6. Plan of action and application of the Convention in practice. Sale and trafficking of children. The Committee previously noted that the drafting of the National Action Plan to Combat Trafficking and Sexual Violence against Children in Burkina Faso (PAN/LTVS), which sets out clear strategies for combating the trafficking and sexual exploitation of children, had been suspended pending the results of a national study for evaluating action against trafficking in children, which was being finalized.

The Committee notes with *regret* the Government's indication that the situation is unchanged as regards the drafting of the PAN/LTVS and the implementation of the national evaluation study. *The Committee therefore urges the Government to take the necessary steps to ensure that the national study for evaluating action against trafficking in children is conducted and the PAN/LTVS is drafted and adopted as soon as possible, and requests it to provide information on progress made in this respect, including the results of the study and those relating to the implementation of the PAN/LTVS.*

Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour. Direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. 1. Sale and trafficking of children. In its previous comments, the Committee noted that the Government, through the Ministry of Social Action and National Solidarity (MASSN), was conducting awareness-raising activities for the main parties affected by the sale and trafficking of children and that victims of trafficking are catered for in transit centres, where they are provided with food, clothing, medical and psychosocial care and, where necessary, psychological support.

The Committee notes the Government's indication that actions in the areas of prevention and suppression of trafficking and the protection and reintegration of victims have been conducted in Burkina Faso, resulting in the interception of, and provision of care for, a total of 1,099 children (563 boys and 536 girls) who had been identified as actual, suspected or potential victims of trafficking. *The Committee strongly encourages the Government to pursue its efforts to prevent children under 18 years of age from becoming victims of trafficking for economic or sexual exploitation and to remove child victims of sale and trafficking and ensure their rehabilitation and social integration. It requests the Government to continue providing information on the measures taken in this respect and on the results achieved.*

2. Children working in small-scale gold mines in West Africa. In its previous comments, the Committee noted the project conducted in partnership with UNICEF concerning child labour in small-scale mines and quarries, in the context of which a study had been undertaken on child labour in small-scale gold mines and quarries in five regions of the country. The study showed that about one third of the population at the 86 small-scale gold mines were children, of whom the total number was 19,881 (51.4 per cent boys and 48.6 per cent girls). The children were used in all forms of mining operations, such as work in mine galleries, dynamiting of rocks, rock breaking, crushing and sieving, selling food and water, and hauling minerals to sheds.

The Committee notes with *regret* that the Government does not provide any information on the measures taken to combat child labour in small-scale gold mines in Burkina Faso and on the number of children who have been removed from work in such mines. *Recalling that, under the terms of Article 1 of the Convention, the Government must take immediate and effective measures to ensure the eradication of the worst forms of child labour, the Committee urges the Government to take time-bound measures to remove children from the worst forms of labour in small-scale gold mines and ensure their rehabilitation and social integration. It urges the Government to provide detailed information on the progress made in this respect and on the results achieved.*

Clause (d). Identifying children at special risk. Children in street situations. Further to its previous comments, the Committee notes that the Human Rights Committee, in its concluding observations of 17 October 2016, expressed concern at the extent and persistence of the use of children for begging (CCPR/C/BFA/CO/1, paragraph 35). Moreover, the Committee notes the Government's statement that a targeted public census was carried out in December 2016 in the 49 urban districts of the country, resulting in the identification of 9,313 children in street situations (7,564 boys and 1,749 girls). The Government indicates that a care programme is being drawn up and action is taking place in the meantime to reintegrate children in families or place them in apprenticeships. *The Committee strongly encourages the Government to pursue its efforts and requests it to continue providing information on the number of children in street situations who have been protected against the worst forms of child labour and rehabilitated and socially reintegrated as part of the various measures taken to this end. The Committee also requests the Government to indicate any other effective and time-bound measures taken to prevent children under 18 years of age from becoming victims of forced or compulsory labour, such as begging, and to remove them from such situations and ensure their rehabilitation and social integration.*

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

C026 - Minimum Wage-Fixing Machinery Convention, 1928 (No. 26)**Observation 2017**

The Committee notes the observations of the Trade Union Confederation of Burundi (COSYBU), received in 2015, requesting once again the revision of the inter-occupational guaranteed minimum wage (SMIG), in the light of the cost of living.

Article 3 of the Convention. Operation of the minimum wage-fixing machinery. Further to its previous comments in this respect, the Committee notes the Government's reiteration in its report that the matter of readjusting the minimum wage will be submitted to the social partners, as part of the ongoing revision of the Labour Code. However, pending the receipt of information on progress made in this respect, the Committee is bound to note with **concern** that the last decree fixing the SMIG was issued in 1988. *It therefore urges the Government to take all the necessary measures to immediately reactivate the minimum wage review process, as provided for in section 249 of the Labour Code (annual revision by the National Labour Council), and to carry out a readjustment of the SMIG in the light of this review.*

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

C029 - Forced Labour Convention, 1930 (No. 29)**Observation 2017**

Articles 1(1) and 2(1) of the Convention. 1. Compulsory community development work. For a number of years, the Committee has noted that Act No. 1/016 of 20 April 2005, organizing municipal administration, has the objective of promoting the economic and social development of municipalities at both the individual level and on a collective and unified basis. The municipal council is responsible for determining the community development programme, monitoring its implementation and ensuring its evaluation. The Act also provides for regulations to be issued determining the organization, mechanisms and procedures for inter-municipal action. The Committee also noted the observations made by the Trade Union Confederation of Burundi (COSYBU) on several occasions (2008, 2012, 2013 and 2014) to the effect that community work is decided upon unilaterally without the population being consulted and that the police are mobilized to close the streets and accordingly prevent the population from moving during such work.

The Committee once again notes the observations made by the COSYBU, received in 2015, according to which the voluntary nature of participation in community work should be explicitly set out in law. The Committee notes with **deep concern** the absence of information in the Government's report on this issue, which the Committee has been raising for a number of years. *The Committee urges the Government to take the necessary measures for the adoption of the text to implement Act No. 1/016 of 20 April 2005, organizing municipal administration, particularly with regard to participation in and the organization of community work, and to use this opportunity to ensure explicitly the voluntary nature of participation in such work. In this connection, the Committee requests the Government to indicate the procedures through which such work can be exacted from the population, and particularly the duration of the work carried out and the number of persons concerned.*

2. Compulsory agricultural work. For many years, the Committee has been requesting the Government to take the necessary measures to bring several legal texts providing for compulsory participation in certain types of agricultural work into conformity with the Convention. It has emphasized the need to set out in law the voluntary nature of agricultural work resulting from obligations relating to the conservation and utilization of the land and the obligation to create and maintain minimum areas for cultivation (Ordinances Nos 710/275 and 710/276 of 25 October 1979), and to formally repeal certain texts on compulsory cultivation, portering and public works (the Decree of 14 July 1952, Ordinance No. 1286 of 10 July 1953 and the Decree of 10 May 1957). The Committee also noted the Government's indication that these texts, which date from the colonial period, have been repealed and that the voluntary nature of agricultural work has been confirmed.

The Committee notes the absence of information on this subject in the Government's report. *The Committee hopes that the Government will be in a position to provide copies of the texts repealing the legislative texts referred to above and which establish the voluntary nature of this agricultural work.*

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

C081 - Labour Inspection Convention, 1947 (No. 81)**Observation 2017**

The Committee notes the observations of the Trade Union Confederation of Burundi (COSYBU) received in 2015 regarding the lack of material resources of the labour inspection services.

Article 3 of the Convention. Duties of labour inspectors. The Committee notes that, in reply to its previous request regarding the need to ensure, as established in *Article 3(2)*, that any further duties entrusted to labour inspectors do not interfere with the effective performance of their primary duties, the Government merely reiterates that, in addition to the duties of labour inspection set out in section 156 of the Labour Code (which correspond to the primary duties set out in *Article 3(1)* of the Convention), inspectors are responsible for resolving labour disputes. The Committee notes that these additional duties regarding the resolution of disputes are provided for in sections 181 et seq. (individual disputes) and 191 et seq. (collective disputes) of the Labour Code. It recalls that, according to its most recent analysis of available information, in practice the labour inspectorate has deviated from its primary role and is focused on dispute resolution. *In the absence of information demonstrating that this trend has been reversed, the Committee urges the Government to take the necessary measures to ensure that the additional duties entrusted to labour inspectors, particularly for the settlement of disputes, do not interfere with the performance of their primary duties as specified in Article 3(1). It also requests the Government to provide information on the measures taken in this regard and on the time and resources dedicated by labour inspectors to their various duties.*

Article 7. Recruitment and training of labour inspectors. The Committee notes the Government's indication that the specific duties of labour inspectors are not taken into account in their recruitment and that labour inspectors received training until 2014. The Committee recalls that under *Article 7*, labour inspectors shall be recruited with sole regard to their qualifications for the performance of their duties and shall be adequately trained for the performance of their duties. *The Committee requests the Government to take the necessary measures to improve recruitment and to ensure adequate and continued training of inspectors.*

Article 10. Sufficient numbers of labour inspectors. The Committee notes the information provided by the Government regarding the composition of staff of the labour inspectorate (11 labour inspectors responsible for the monitoring of the application of legal and regulatory provisions and the resolution of labour disputes and three labour controllers responsible for gathering labour statistics). The Committee recalls that, under *Article 10*, the human resources assigned to the inspection services must be determined on the basis of relevant information, and particularly: the number, nature, size and situation of the enterprises or establishments liable to inspection; the number and classes of workers employed in these enterprises or establishments; and the number and the complexity of the legal provisions to be enforced. *The Committee requests the Government to provide information on this subject.*

Articles 11 and 16. Material resources and inspection visits. The Committee notes the information provided by the Government in reply to its previous request

regarding the resources available to labour inspectors for the performance of their duties. In this regard, the Government emphasizes that inspections are not carried out as thoroughly as necessary because the labour inspectors do not have sufficient means of transport and material resources. *The Committee requests the Government to take the necessary measures to improve the means of transport and material resources available to inspectors for the effective performance of their duties and to provide information on the measures taken in this respect.*

Articles 20 and 21. Annual inspection report. The Committee notes that the annual report has not been communicated to the ILO. *The Committee requests the Government to take the necessary measures to ensure that the central inspection authority publishes an annual report on the work of the inspection services under its control, containing information on the matters set out in Article 21(a)–(g) of the Convention, and that this report is communicated to the ILO in the form and within the time limits set out in Article 20.*

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

Observation 2017

Article 2 of the Convention. Inclusion of labour clauses in public contracts. In its previous comments, the Committee asked the Government to take the necessary steps to bring the legislation into full conformity with the Convention. The Committee notes that, further to the entry into force of Act No. 1/01 of 4 February 2008 issuing the Public Procurement Code, the Government has not adopted any new measures in this respect. The Government indicates in its report that Presidential Decree No. 100/49 of 11 July 1986, concerning specific measures to be taken to guarantee minimum conditions for workers employed under a public contract, and also Decree No. 110/120 of 18 August 1990, concerning the general conditions of contracts, have ceased to apply with the entry into force of the Public Procurement Code. The Government makes no reference to the adoption of any new measures to guarantee protection for conditions of work during the performance of public contracts but refers more generally to the Labour Code. The Committee recalls paragraph 45 of its General Survey of 2008 on labour clauses in public contracts, in which it considered that the mere fact of the national legislation being applicable to all workers does not release the States which have ratified the Convention from the obligation to take the necessary steps to ensure that public contracts contain the labour clauses specified in *Article 2(1)* of the Convention, whether for construction work, the manufacture of goods or the provision of services, since the general labour legislation only establishes minimum standards, which are often improved through collective agreements or arbitration awards. The Committee recalls that the main stipulation of *Article 2* of the Convention is that all public contracts coming within the scope of *Article 1* of the Convention must contain labour clauses, whether or not these contracts are assigned through a bidding process. *The Committee requests the Government once again to adopt the necessary measures without delay to ensure the inclusion of labour clauses in all public contracts to which the Convention is applicable, in accordance with Article 2 of the Convention. The Committee also requests the Government to send a copy of the new general conditions governing contracts and to indicate the measures taken or contemplated to ensure minimum conditions for workers employed under a public contract, once such measures have been adopted.*

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

Observation 2017

The Committee notes the observations of the Trade Union Confederation of Burundi (COSYBU), which were received on 26 November 2015.

Article 1(a) of the Convention. Definition of remuneration. Legislation. The Committee recalls that, under section 15(f) of the Labour Code, family allowances, benefits in kind, housing benefits, travel costs and other benefits are not considered as forming a part of wages or remuneration. It also recalls that, in order to ensure the application of the principle of equal remuneration for men and women for work of equal value, the definition of remuneration established by the Convention is to include all elements that workers may receive in exchange for their work and arising from their employment, regardless of whether the employer pays in cash or in kind and directly or indirectly. *Noting the Government's indication that it is in the process of revising the Labour Code, the Committee requests the Government to take this opportunity to extend the definition of "remuneration" to bring it into line with Article 1(a) of the Convention, in order to apply the principle of equal remuneration established by the Convention. The Committee requests the Government to provide information on all progress made in this respect.*

Furthermore, the Committee previously pointed out that the designation of the husband as head of the household could have an adverse impact on the payment to women of employment-related benefits, such as family allowances. Noting that the Government's report does not contain any information on this point, the Committee observes the Government's indication, in its report to the United Nations Committee on the Elimination of Discrimination against Women, that a preliminary draft Code of Personal and Family Rights is under examination (CEDAW/C/BDI/5-6, 17 June 2015, paragraph 36). *The Committee asks the Government to examine the possibility, as part of the review of the Code of Personal and Family Rights, of removing the obstacles to equality between men and women, particularly regarding the payment of employment-related benefits.*

Article 1(b). Equal remuneration for work of equal value. Legislation. The Committee recalls that article 57 of the Constitution provides that "all persons with equal skills shall have the right, without discrimination, to equal wages for equal work" and section 73 of the Labour Code provides that "with equal conditions of work, vocational qualifications and performance, wages shall be equal for all workers, regardless of their origin, sex or age". As the Committee has emphasized several times, these provisions do not give full effect to the principle of equal remuneration for work of equal value laid down in *Article 1(b)* of the Convention. In this regard, the Committee notes that COSYBU, in its observations, reiterates its previous observations to the effect that, as requested by the Committee, section 73 of the Labour Code should be amended to fully reflect the principle of the Convention. The Committee notes the Government's indication that the Labour Code is being revised and that the social partners, including COSYBU, have drawn the attention of the committee responsible for proposing amendments to the fact that section 73 needs to be amended to incorporate the concept of work of equal value. In this regard, the Committee recalls that the concept of "work of equal value" lies at the heart of the fundamental right of equal remuneration for men and women for work of equal value, and the promotion of equality. It is essential to combating gender-based occupational segregation, since it allows for a broad comparison and includes but goes beyond equal remuneration for "equal", the "same" or "similar" work and also encompasses work of an entirely different nature which is nevertheless of equal value. The Committee has previously found that referring in the law to factors such as "equal conditions of work, skill and output" can be used as a pretext for paying women lower wages than men (see the General Survey on the fundamental Conventions, 2012, paragraphs 672–675). *Having raised this issue for many years, the Committee trusts that the Government will take the opportunity provided by the revision of the Labour Code to amend section 73 so as to incorporate the principle of equal remuneration for work of equal value. In addition, the Committee invites the Government to contemplate the possibility of amending article 57 of the Constitution when the Constitution is next revised in order to reflect the concept of "work of equal value".*

Occupational segregation and gender pay gaps. The Committee notes the Government's indication in its report that remuneration is fixed according to the qualifications and post concerned and that a wage policy is being formulated which aims to resolve wage disparities by harmonizing aspects of gender, occupation, posts, grades and wages. It also notes the Government's indication in the National Employment Policy 2015 that women have a major presence in low productivity jobs and underpaid posts and therefore have a minor presence in high-productivity occupations or professions, resulting in their income being lower than that of men. The Committee notes that the United Nations Committee on Economic, Social and Cultural Rights, in its concluding observations,

expressed concern at inequality in the employment sphere and at significant wage gaps (E/C.12/BDI/CO/1, 16 October 2015, paragraph 19). *The Committee requests the Government to take steps to combat occupational segregation between men and women, particularly the predominance of women in low-productivity or underpaid jobs, including by combating stereotypes regarding the roles of men and women and encouraging women to participate in initial or further training. It also requests the Government to provide statistics, disaggregated by sex, on the distribution of men and women in the various sectors of the economy, including the public sector, and on the corresponding levels of pay.*

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

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

Observation 2017

Article 1(a) of the Convention. Imprisonment involving compulsory labour as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system. In its previous comments, the Committee noted the observations of the Trade Union Confederation of Burundi (COSYBU), which referred to judicial proceedings instigated against journalists in private radio stations, restrictions on free and independent demonstrations and the arrest of a human rights activist. The Committee also noted the possibility referred to by the Government of revising Ministerial Order No. 100/325 of 15 November 1963 concerning the organization of prisons, section 40 of which provides for the obligation to work for convicted prisoners, in order to exclude political prisoners from its scope.

The Committee notes the Government's indication that Order No. 100/325 of 15 November 1963 organizing prisons has been repealed and replaced by Act No. 1/026 of 22 September 2003 issuing the rules governing prisons. According to the Government, compulsory and forced prison labour has been abolished in all prisons and detention centres. The Committee however notes with *regret* that, under the terms of section 25 of Act No. 1/026 of 22 September 2003 issuing rules governing prisons, work is compulsory for prisoners. The Committee therefore refers once again to sections 412, 413 and 426 of Legislative Decree No. 1/6 of 4 April 1981 amending the Penal Code, which establishes penalties for certain offences against the security of the State, under the terms of which persons may be convicted to sentences of penal servitude involving, under section 40 of Ministerial Order No. 100/325, the obligation to work. In this regard, the Committee recalls that *Article 1(a)* of the Convention prohibits the use of labour, including compulsory prison labour, as a punishment for persons who, without having recourse to violence, have expressed political views or views ideologically opposed to the established political, social or economic system. It emphasizes that the range of activities which must be protected under this provision from punishment involving compulsory labour includes the freedom to express political or ideological views (which may be exercised orally or through the press and other communications media) (see General Survey of 2012 on the fundamental Conventions, paragraph 302). *The Committee therefore urges the Government to take the necessary measures to bring the legislation into conformity with the Convention and to amend Act No. 1/026 of 22 September 2003 issuing rules governing prisons so as to guarantee, in law and practice, that no penalty involving compulsory labour is imposed as a punishment for the expression of political views or ideological opposition. The Committee requests the Government to provide information on any progress achieved in this regard.*

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

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

Observation 2017

The Committee notes the observations on the application of the Convention made by the Trade Union Confederation of Burundi (COSYBU), which were received on 26 November 2015.

Article 1(1)(a) of the Convention. Discrimination on the basis of sex or gender. Gender-based violence. The Committee notes with *interest* the adoption of Act No. 1/13 of 22 September 2016 concerning the prevention and suppression of gender-based violence and victim protection, which defines and punishes, inter alia, the concept of gender-based violence, including sexual violence, sexual harassment, gender-hostile traditional practices and economic violence, which is defined as denying a spouse access to family resources or forbidding a spouse to work. The Committee also notes that, under section 14, any employees who are victims of gender-based violence in or outside the workplace have the right, at their request and subject to a doctor's approval, to a temporary reduction or reorganization of hours of work, to a geographical transfer, to assignment to another workplace, to the suspension of their employment contract (following which employees can resume their contracts) and to resignation without notice. In this respect, the Committee would like to draw the Government's attention to the fact that resignation with or without notice must not be used in practice as the only means of ending the violence and obtaining compensation but rather should be a last resort since this would amount to punishing the victims through the loss of their jobs (double penalty). The Committee notes that Act No. 1/13 also provides that "any employer who violates the rights of a person on the basis of his/her sex which are set down in the Labour Code and its implementing regulations, shall be liable to a fine of 500,000 to 1 million Burundian francs". *The Committee asks the Government to provide information on the following points:*

- (i) the implementation and application in practice of Act No. 1/13 of 22 September 2016 with regard to employment and occupation, indicating the number and type of cases of gender-based violence dealt with by the labour inspectorate and the courts and also the penalties imposed;*
- (ii) the steps taken or contemplated to inform and raise the awareness of employers, workers and their respective organizations, labour inspectors, judges and also the general public as regards action against gender-based violence, including the steps taken to publicize the content of Act No. 1/13; and*
- (iii) the activities of the Independent National Human Rights Commission (CNIDH) against gender-based violence in employment.*

In addition, the Committee asks the Government to indicate whether it envisages carrying out an inventory of laws that are discriminatory towards women in order to bring them into line with the Constitution and ratified international instruments, as recommended by the CNIDH.

Sexual harassment. The Committee recalls that section 563 of the Penal Code, as amended in 2009, includes a provision defining sexual harassment as "the act of subjecting another person to orders, threats or physical or psychological coercion, or serious pressure, with a view to obtaining favours of a sexual nature by abusing the authority inherent in his or her functions", but does not cover either hostile work environment sexual harassment or acts committed by a work colleague or a person connected to the job (such as a customer or supplier). The Committee notes that Act No. 1/13 of 2016 defines sexual harassment as "any form of unwanted verbal, non-verbal or physical conduct of a sexual nature, whether between equals or in a hierarchical situation; the act of subjecting another person to orders, threats or physical or psychological coercion, or serious pressure, with a view to obtaining favours of a sexual nature by abusing the authority inherent in his or her functions". The Committee observes that this definition covers more forms of sexual harassment, including sexual harassment by a person who has no hierarchical connection with the victim. However, it notes that this definition does not cover the concept of a hostile, offensive or humiliating work environment created by certain forms of conduct with sexual connotations. *While noting in particular the progress achieved through the adoption of Act No. 1/13 of 2016, the Committee asks the Government to examine the possibility of expanding the definition of sexual harassment by adding the*

notion of a hostile, offensive or humiliating work environment, and asks it, in the absence of any specific provision towards this end in the Act of 2016, to specify the procedure to be followed and the penalties that apply in cases of sexual harassment. The Committee also asks the Government to provide information on the practical steps taken to prevent and eliminate sexual harassment in the public and private sectors, including measures designed to raise the awareness of employers, workers and their respective organizations with regard to the prevention and treatment of sexual harassment.

Article 2. Equality of opportunity and treatment for men and women. The Committee notes that, according to the National Employment Policy Paper of 2014, some progress has been made on equality but profound inequalities persist in terms of access to initial employment and to managerial posts and as regards conditions of work. These inequalities are due to various forms of discrimination and the social distribution of labour and the exclusive role of women in the area of childcare and domestic tasks. In this regard, the Committee notes that the National Employment Policy states that it will be necessary to encourage enterprises to take steps to achieve a better balance between work and family life and to improve women's access to productive resources. It also provides for the possibility of establishing a 30 per cent quota for women at all hierarchical levels in the public and semi-public administration on a trial basis, and also for the use of anonymous employment resumés and the promotion of vocational training.

The Committee further notes that Act No. 1/13 of 2016 provides that the Government must formulate and implement a gender policy, submit a report on its implementation to the National Assembly (sections 3 and 4) and adopt awareness-raising measures to "modify structures and models of sociocultural behaviour for men and women to eliminate customary or other practices based on the notion of the inferiority or superiority of either sex or stereotypical roles of men or women" (section 5). The Act establishes the obligation for parents or any other persons in charge of children to give equal treatment to boys and girls in all aspects of life and to protect them against any gender-based violence (section 8). Public authorities must take steps to give girls and boys equal access to education, and school directors must ensure that single mothers' right to education is respected. In this regard, the Committee notes that the United Nations Committee on the Elimination of Discrimination against Women (CEDAW), in its concluding observations, welcomed the measures adopted by Burundi to increase the school enrolment and retention rates for girls, including the adoption of a policy on the reintegration of girls into school after pregnancy (CEDAW/C/BDI/CO/5-6, paragraph 34). *While welcoming all of these provisions and measures, the Committee asks the Government to provide information on their implementation in practice and the results achieved, including with regard to increasing the rate of school enrolment and vocational training for girls and improving women's access to productive resources and to employment including to managerial posts in the public and private sectors. The Committee also asks the Government to indicate whether a new national gender policy, replacing the one adopted in 2012, has been formulated and, if so, to provide details on those sections relating to gender equality in employment and occupation.*

Indigenous peoples. The Committee recalls that it has been drawing the Government's attention for a number of years to the stigmatization and discrimination faced by the Batwa people and notes that the Government's report does not contain any information on this matter. The Committee notes that, in their respective concluding observations, CEDAW emphasizes that access to education for Batwa girls is very limited (CEDAW/C/BDI/CO/5-6, 25 November 2016, paragraph 34(b)) and the United Nations Committee on Economic, Social and Cultural Rights expresses concern at the lack of effective measures for combating the discrimination faced by the Batwa, particularly with regard to ensuring the effective exercise of their economic, social and cultural rights (E/C.12/BDI/CO/1, 16 October 2015, paragraph 15). *The Committee urges the Government to take the necessary steps to ensure equal access for the Batwa people to education, vocational training and employment, including to enable them to exercise their traditional activities, and also steps to combat stereotypes and prejudice against this indigenous community and to promote tolerance among all sections of the population. The Committee also asks the Government to provide information on the impact of Act No. 1/07 of 15 July 2016 revising the Forestry Code, which provides that the rational and balanced management of forests is based, inter alia, on the principle of participation by the grassroots communities, and on the exercise of traditional activities by the Batwa on the land where they live.*

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

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

Observation 2017

Article 2(1) of the Convention. Scope of application. In its previous comments, the Committee noted the indication by the International Trade Union Confederation (ITUC) that child labour constitutes a serious problem in Burundi, particularly in agriculture and informal activities in urban areas. The Committee also noted that section 3 of the Labour Code, in conjunction with section 14, prohibits work by young persons under 16 years of age in public and private enterprises, including agricultural undertakings, where such work is carried out on behalf of and under the supervision of an employer. The Committee further noted the Government's indication that the question of extending the application of the labour legislation to work in the informal sector was to be the subject of tripartite discussions during the revision of the Labour Code.

The Committee notes the lack of information on this matter in the Government's report. However, it observes that it has been raising this issue since 2005. *The Committee again expresses the firm hope that the Government will take the necessary steps to extend the scope of application of the Convention to work performed outside an employment relationship, particularly in the informal economy and in agriculture. The Committee again requests that the Government provide information in this respect.*

Article 2(3). Age of completion of compulsory schooling. The Committee previously noted the ITUC's indications that the war had undermined the education system through the destruction of many schools and the death or abduction of a large number of teachers. The Committee further noted that, according to a UNESCO report of 2004 relating to data on education, Legislative Decree No. 1/025 of 13 July 1989 reorganizing education in Burundi did not provide for free and compulsory primary education. Entry into primary education was around the age of 7 or 8 years and lasted six years. Children therefore completed primary education around the age of 13 or 14 years and then had to pass a competition to enter secondary education. The Committee also noted that, since the adoption of the Constitution of 2005, basic education was free of charge and the number of children attending school had tripled. The Committee asked the Government to indicate the age of completion of compulsory schooling and the provisions of the national legislation which determine this age.

The Committee notes the lack of information on this issue in the Government's report. The Committee observes that the Government has adopted a sectoral plan for the development of education and training (2012–20), which recommends improvements to preschool education through support to communities and the development of occupational training through the establishment of centres for the teaching of trades. It also notes the "PASEC2014: performance of the education system in Burundi" report, according to which primary education has also seen a big increase in pupil numbers, rising from 740,850 in 2000 to 2,117,397 in 2014.

Furthermore, the Committee notes Act No. 1/19 of 10 September 2013 establishing the structure of primary and secondary education, which has strengthened core education by increasing it from six to nine years of schooling, from the age of 6 years. In this regard, the Committee notes that, according to section 35 of the Act of 2013, a child who starts school at the age of 6 years completes compulsory schooling at the age of 15 years, one year before the minimum age for admission to work, which is 16 years (sections 3 and 14 of the Labour Code). The Committee therefore recalls that it is necessary to link the age for admission to employment or work to the age of completion of compulsory schooling. If compulsory schooling comes to an end before children are legally entitled to work, there may arise a vacuum which regrettably opens the door for the economic exploitation of children (see General Survey of 2012 on the fundamental Conventions, paragraph 371). The Committee therefore considers it important to raise the age of completion of compulsory education to coincide

with that of the minimum age for admission to employment or work, as provided for in Paragraph 4 of the Minimum Age Recommendation, 1973 (No. 146). *The Committee strongly urges the Government to take the necessary steps to ensure free and compulsory education for all children up to the minimum age for admission to employment, which is 16 years, as a means of combating and preventing child labour. The Committee requests the Government to take steps to increase the school attendance rates of children under 16 years of age and to provide information on progress made in this respect.*

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

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

Observation 2017

Articles 2 and 5 of the Convention. Effective tripartite consultations. The Government indicates in its report that it collaborates closely with the social partners, including the Trade Union Confederation of Burundi (COSYBU) and the Confederation of Free Trade Unions of Burundi (CSB). The Government reports the adoption on 25 May 2011 of a National Social Dialogue Charter, in the context of which each party has undertaken to promote social dialogue and give priority to tripartite consultations with a view to resolving disputes related to the world of work. The Government also reports the establishment of the National Social Dialogue Committee (CNDS), under Decree No. 100/132 of 21 May 2013 revising Decree No. 100/47 of 9 February 2012 on the establishment, composition and operation of the CNDS. The Government also indicates that eight provincial social dialogue committees (CPDS) were established between 2015 and 2016 in the provinces of Makamba, Muyinga, Ruyigi, Karusi, Rumonge, Bubanza, Ngozi and Gitega. At the branch level, six joint bipartite social dialogue committees have been established (for health, justice, education, transport, agriculture and telecommunications). The Government adds that tripartite consultations are held when necessary.

The Committee notes the information provided by the Government concerning the resolution by the CNDS of nine labour disputes, and the recent organization of training on international labour standards, carried out with the technical support of the ILO specialist from the Pretoria Office. However, the Committee recalls that the Convention mainly covers tripartite consultations intended to promote the implementation of international labour standards. It notes in this respect that the Government's report does not contain any information on the tripartite consultations held regarding the matters covered by *Article 5(1)* of the Convention. With regard to the frequency of the consultations held, under the terms of *Article 5(2)* of the Convention, it should also be recalled that, although this provision requires consultations to be held at least once a year, it does not require them to cover each year all of the matters set out in *Article 5(1)*. In practice, certain subjects (such as replies to questionnaires, proposals relating to the submission of instruments to the competent authorities and reports to be made to the ILO) imply annual consultations, while others (such as the re-examination of unratified Conventions and of Recommendations, as well as proposals for the denunciation of ratified Conventions) require less frequent examination. *The Committee therefore requests the Government to provide the ILO with a copy of the legislative, administrative or other provisions giving effect to the Convention, and particularly those governing the composition and operation of the CNDS and the CPDS. It also requests the Government to provide detailed information on the content and outcome of the consultations held each year on the matters relating to international labour standards set out in Article 5(1) of the Convention.*

Article 4. Administrative support. The Committee understands that a permanent executive secretariat for the CNDS has been established, in accordance with Ministerial Ordinance No. 570/66 of 3 January 2014 on the appointment of certain members of the staff of the permanent executive secretariat of the CNDS, and that an operational budget has been allocated to it. *The Committee requests the Government to describe the manner in which administrative support is provided for the consultation procedures envisaged by the Convention and to specify whether arrangements have been made or are envisaged, in accordance with Article 4(2), for the financing of any necessary training of participants in the consultation procedures.*

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

Observation 2017

Article 3 of the Convention. Worst forms of child labour. Clause (b). Use, procuring or offering of children for prostitution. In its previous comments, the Committee noted the indication by the Trade Union Confederation of Burundi (COSYBU) that the extreme poverty of the population induced parents to allow their children to engage in prostitution. It noted that, even though the national legislation prohibits this worst form of child labour, the use, procuring or offering of children for prostitution remains a problem in practice. The Committee also referred to the Conference Committee on the Application of Standards, which observed in its 2010 conclusions that although the law prohibits the commercial sexual exploitation of children (sections 512 and 519 of the Penal Code), this issue remains an area of serious concern in practice. The Committee asked the Government to provide information on the number and nature of violations reported and criminal penalties applied.

The Committee notes the Government's indication, in its report, that a number of measures have been put in place to prevent the engagement of children in prostitution, including: (i) the establishment of a police unit for the protection of minors and morals; and (ii) free primary school education and the setting up of school canteens. The Committee takes note of the Government's indication that the Ministry of Public Administration, Labour and Employment, in collaboration with UNICEF, sponsored a rapid assessment study on the sexual and commercial exploitation of children, published in 2012 (2012 study). Noting that the Government does not provide more recent data, the Committee notes with *concern* that, according to this study, children in fishing areas, particularly Rumonge and Makamba in the south of the country, are handed over to prostitution by adults (p. 20). It also notes that, according to this study, nightclubs, guest houses and other similar establishments proliferate everywhere. They provide "predators" with a meeting place and rooms for their use. In border areas, particularly those adjoining Tanzania, sex tourism targeting children is flourishing. Cases of sex tourism practised by truck drivers in transit and nationals of other countries have also been reported in the study (pp. 64 and 69). *The Committee urges the Government to take immediate and effective steps as a matter of urgency to ensure that persons who use, procure or offer a child under 18 years of age for prostitution are prosecuted and that sufficiently effective and dissuasive penalties are applied in practice. It requests the Government to provide information on the number and nature of violations reported and criminal penalties imposed.*

Article 7(2). Effective and time-bound measures. Clause (b). Removing children from the worst forms of child labour and providing for their rehabilitation and social integration. Commercial sexual exploitation. In its previous comments, the Committee asked the Government to provide information on the number of child victims of commercial sexual exploitation who had effectively been removed from this situation, rehabilitated and socially integrated, particularly further to the implementation of the National Action Plan for the elimination of the worst forms of child labour, which was drawn up in collaboration with ILO-IPEC for the 2010–15 period.

The Committee notes the Government's indication that the 2012 study reveals that potential or actual child victims of commercial sexual exploitation are predominantly girls who are orphans or separated from their families who have come to the major cities to be employed as domestic workers. The Government also indicates that, of 307 children questioned, 92 of them (30 per cent) said they were victims of commercial sexual exploitation, whereas 215 of them (70 per cent) said they had witnessed it. The Committee notes with *deep concern* that the survey conducted as part of the 2012 study reveals that children from all target categories (children in prison, street children, child domestic workers, schoolchildren, displaced or refugee children) are victims of commercial sexual exploitation (p. 50). According to the study, the perpetrators are mainly persons offering financial or material reward, particularly shopkeepers, mine operators,

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foreigners in transit and soldiers. The Committee notes that, in its conclusions, the 2012 study recommends that the Government adopt a number of measures, including: (i) conducting awareness-raising and training campaigns for the judiciary and the general public, and also for teachers, social workers, medical staff, the police and the armed forces; (ii) combating impunity and strengthening the role of child protection committees; and (iii) drawing up fast-track education programmes with a view to promote the return to school of adolescent mothers and children who are victims of commercial sexual exploitation. *The Committee urges the Government to intensify its efforts to identify and protect child victims of commercial sexual exploitation, and to take the necessary steps to ensure that identified victims are directed to appropriate services for their rehabilitation and social integration. The Committee requests the Government to provide information on the results achieved.*

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

C155 - Occupational Safety and Health Convention, 1981 (No. 155)***Observation 2017***

Article 4 of the Convention. Formulation, implementation and periodic review of a coherent national policy on occupational safety, occupational health and the working environment. Consultation with the most representative organizations of employers and workers. Article 8. Measures to give effect to the national policy. In its previous comment, the Committee noted the participation of the country in an ILO technical assistance programme, including the organization of a tripartite workshop in August 2013 with the objective of developing a national policy. It noted that, following the workshop, a national occupational safety and health (OSH) profile was developed and the principle elements of the national policy identified. The Committee notes with **satisfaction** the information provided by the Government in its report that the National Occupational Safety and Health Policy was unanimously approved by the Social Dialogue Council and adopted by Resolution No. 20/2014 of 14 March 2014 of the Council of Ministers. The objective of the National Policy is to promote and maintain at the national level the highest level of physical, mental and social well-being of workers in all occupations and professions and to prevent accidents and health effects which are the consequence of work or are related to work, or occur during work, with a view to reducing to a minimum, in so far as is reasonably possible, the causes of risks inherent in the working environment. The Committee notes that Resolution No. 20/2014 also establishes a Tripartite Occupational Safety and Health Commission responsible for following up the implementation of the National Policy and periodically proposing its revision, within the framework of a continuous improvement process. The Resolution also provides that an executive committee, composed of two representatives of the Ministry responsible for labour matters and two representatives of the Ministry responsible for health matters, is responsible for coordinating and supervising the implementation of the National Policy and the national OSH plan. **The Committee requests the Government to provide information on the measures taken by the Tripartite Occupational Safety and Health Committee in the context of the implementation of the National Policy, and the frequency envisaged for the review of the National Policy.**

Articles 13 and 19(f). Protection of workers who have removed themselves from situations presenting an imminent and serious danger. In its previous comment, the Committee noted the Government's indications that the legal framework still needed to be adopted to give full effect to these Articles. However, the Committee notes that the Government limits itself in its report to referring to section 241(1)(e), (3) and (4) of the Labour Code, which authorize workers to terminate the employment relationship, particularly in cases of serious risks to their health or threats to their safety. In such cases, workers are entitled to compensation calculated on the basis of their years of service. The Committee observes that these provisions do not specifically cover the requirements set out in *Articles 13 and 19(f)* of the Convention. **The Committee once again requests the Government to give effect to these Articles of the Convention and to provide information on this subject.**

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

C094 - Labour Clauses (Public Contracts) Convention, 1949 (No. 94)**Observation 2017**

The Committee notes the observations of the General Union of Workers of Cameroon (UGTC), received on 17 October 2016, and the Government's reply, received on 15 February 2017.

Article 1 of the Convention. Scope of application of the Convention. In its previous comments, the Committee noted the Government's indication that the Public Contracts Code was undergoing revision. The Government indicates in its report that the current legislation in Cameroon does not provide for any exemptions from the application of the Convention. However, it adds that sections 30 and 31 of the Public Contracts Code provide for exceptions, including for contracts relating to national defence, security and the strategic interests of the State. The Committee recalls that the Convention does not envisage any exception of this nature. ***The Committee trusts that the process of the revision of the Public Contracts Code will be completed rapidly. It requests the Government to provide the Office with a copy of the Public Contracts Code once it has been adopted.***

Article 2. Inclusion of labour clauses in public contracts. In its previous comments, the Committee requested the Government to take the necessary measures to ensure the inclusion in all public contracts to which the Convention is applicable of labour clauses in accordance with *Article 2* of the Convention and for the enforcement of such clauses in the manner prescribed by *Articles 4 and 5* of the Convention. In this context, the Committee notes the observations of the UGTC indicating that no measures have been taken to ensure the inclusion of labour clauses in all public contracts to which the Convention is applicable. In its reply to these observations, the Government indicates that it is aware of the existence of these shortcomings in public contracts. However, it adds that certain measures have been taken for the introduction of provisions respecting the protection of workers. With reference to its previous comments, the Committee once again recalls its General Survey of 2008 on labour clauses in public contracts, paragraph 45, in which it considered that the mere fact that the general labour legislation is applicable to all workers does not release States that have ratified the Convention from their obligation to take the necessary measures to ensure that public contracts, whether for construction works, the manufacture of goods or the supply of services, include the labour clauses provided for in *Article 2(1)* of the Convention. This is because the general labour legislation only establishes minimum standards, which are often improved by means of collective bargaining or arbitration awards. If this is the case, under the Convention, the workers concerned must enjoy working conditions which are at least aligned with the most advantageous conditions set through collect agreement or arbitral award. The terms of the labour clauses must be determined after consultation with the employers' and workers' organizations concerned (*Article 2(3)*), must be brought to the knowledge of tenderers in advance of the selection process (*Article 2(4)*) and notices informing workers of their conditions of work must be posted at the workplace (*Article 4(a)(iii)*). ***The Committee once again requests the Government to take the necessary measures (legislative, administrative or others) for the inclusion in all public contracts to which the Convention is applicable of labour clauses consistent with the requirements of Article 2 of the Convention and for the enforcement of such clauses in the manner prescribed by Articles 4 and 5 of the Convention.***

C105 - Abolition of Forced Labour Convention, 1957 (No. 105)**Observation 2017**

Article 1(a) of the Convention. Imposition of sentences of imprisonment involving the obligation to work as punishment for expressing political views or views ideologically opposed to the established political, social or economic system. Since 1996, the Committee has been drawing the Government's attention to certain provisions of the legislation (Penal Code and Act No. 90-53 concerning freedom of association) by virtue of which criminal penalties that include compulsory prison labour may be imposed. Specifically, under section 24 of the Penal Code and section 49 of Decree No. 92-052 establishing the prison system, prison sentences entail the obligation to work. The Committee emphasized that where an individual is, in any manner whatsoever, compelled to perform prison labour as punishment for expressing certain political views or opposing the established political, social or economic system, this is not in conformity with the Convention. The Committee referred to the following legal provisions:

- section 113 of the Penal Code, under which any person issuing or propagating false information that may be detrimental to the public authorities or national unity shall be liable to imprisonment of three months to three years;
- section 154(2) of the Penal Code, under which any person guilty of incitement, whether in speech or in writings intended for the public, to revolt against the Government and the institutions of the Republic shall be liable to imprisonment of three months to three years;
- section 157(1)(a) of the Penal Code, under which any person guilty of incitement to obstruct the enforcement of any law, regulation or lawfully issued order of the public authority shall be liable to imprisonment of three months to four years;
- section 33(1) and (3) of Act No. 90-53 concerning freedom of association, under which board members or founders of an association which continues operations or which is re-established unlawfully after a judgment or decision has been issued for its dissolution, and persons who have encouraged the assembly of members of the dissolved association by allowing continued use of the association's premises, shall be liable to imprisonment of three months to one year. Section 4 of the Act provides that associations founded in support of a cause or for a purpose contrary to the Constitution, or associations whose purpose is to undermine, inter alia, security, territorial integrity, national unity, national integration or the republican nature of the State, shall be null and void. Furthermore, section 14 provides that the dissolution of an association does not prevent any legal proceedings from being instituted against the officials of such an association.

The Committee notes that there is no information on this point in the Government's report. The Committee notes the adoption of Act No. 2016-007 of 12 July 2016 issuing the Penal Code. However, it observes with **concern** that sections 113, 154(2) and 157(1)(a) of the Penal Code remain unchanged and that any person who propagates false information, who is guilty of incitement whether in speech or in writings intended for the public, to revolt against the Government and the institutions of the Republic, or who is guilty of incitement to obstruct the enforcement of any law, regulation or lawfully issued order of the public authority, is still liable to imprisonment that includes compulsory prison labour. Moreover, the Committee notes that, under section 153, any person who insults the President or a foreign head of State shall be liable to imprisonment of six months to five years.

The Committee recalls that *Article 1(a)* of the Convention prohibits the use of forced or compulsory labour, especially compulsory prison labour, as a punishment for persons who, without recourse to violence, hold or express political views or views ideologically opposed to the established political, social or economic system. The Committee emphasizes that the range of activities which must be protected, under this provision, from punishment involving forced or compulsory labour thus includes the freedom to express political or ideological views (which may be exercised orally or through the press or other communications media) (see General Survey of 2012 on the fundamental Conventions, paragraph 302). ***The Committee therefore urges the Government to take the necessary steps without delay to bring the abovementioned provisions of the Penal Code and those of Act No. 90-53 concerning freedom of association into conformity with the Convention, in such a way that no penalty of imprisonment entailing compulsory labour can be imposed on persons who express political views or views ideologically opposed to the established political, social or economic system. The Committee requests the Government to send information on all progress made in this respect.***

C122 - Employment Policy Convention, 1964 (No. 122)**Observation 2017**

Article 1 of the Convention. Implementation of an active employment policy. In its previous comments, the Committee requested the Government to provide information on the formulation and implementation of an active employment policy and to indicate the specific measures taken to create productive employment and reduce precarity in employment in the country. The Government reports that the National Employment Policy is still being finalized and is therefore not yet in effect. It adds that the National Action Plan for Youth Employment (PANEJ) 2016–20 and the Growth and Employment Strategy Paper (DSCE) nevertheless remain important documents for the promotion of employment in Cameroon. The Government adds that it has made employment a central priority of its development policy and one of the three strategic priorities of the DSCE. The Government adds that in Cameroon there is a close link between the objective of full employment and the economic and social development objectives set out in the DSCE and in the vision of the emergence of Cameroon by 2035. *The Committee hopes that the Government will adopt the national employment policy in the near future. It requests the Government to keep it informed of any developments in the formulation and implementation of this policy, and to provide a copy once it has been adopted. The Committee also requests the Government to provide more detailed information on the specific measures implemented to create productive employment and reduce precarity in employment.*

Article 1(3). Coordination of education and training policy with employment policy. The Government indicates that it has observed difficulties related to a lack of adaptation between employment and training. In order to remedy this, it is promoting vocational training and the establishment of centres of excellence for vocational training throughout the national territory, through a partnership with the Republic of Korea. *The Committee requests the Government to provide more detailed information on the impact of the measures taken or envisaged to resolve the difficulties related to the coordination of education and training policy with employment policy, particularly in terms of the long-term integration into the labour market of the most disadvantaged categories of workers. In this respect, it once again requests the Government to provide information on the manner in which the participation of employers' and workers' organizations is ensured in practice.*

Informal economy. The Government reports the implementation in 2005 of an integrated support project for the informal economy funded by resources from the Heavily Indebted Poor Countries (HIPC) Initiative. It adds that these resources, valued at 9 billion CFA francs, have made it possible to establish the Support Fund for Actors of the Informal Sector (FAASI). *The Committee requests the Government to provide more detailed information on the activities of the FAASI, in terms of identifying its participation on creating productive employment or training for workers from the informal economy and of the application of the principles of the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204).*

Article 2. Collection and use of employment data. The Government indicates that the National Employment and Vocational Training Observatory (ONEFOP) and the National Tourist Office (ONT) are working in collaboration with the National Statistics Institute (INS) to compile and publish data on unemployment in Cameroon. It adds that it will provide information to the Committee on the employment situation and on the level and trends of employment, unemployment and underemployment for 2016, as soon as it is available. *The Committee once again requests the Government to specify the active employment policy measures adopted as a result of the establishment of the various structures responsible for collecting information on employment. The Committee hopes that the Government will soon be in a position to provide up-to-date statistics on the employment situation and on trends in employment, unemployment and underemployment, particularly with respect to women and young people. The Committee recalls that the Government can avail itself of the technical assistance of the Office in this regard.*

Article 3. Participation of the social partners in the formulation and implementation of policies. The Government indicates that within the framework of the implementation of the employment policy, all categories of society are consulted through various bodies such as the National Labour Advisory Board, the National Social Dialogue Follow-Up Committee and other bodies involved in the various economic activities. It also reports the organization and holding of workshops and forums in order to gather recommendations which could be integrated into employment programmes in Cameroon. *The Committee requests the Government to continue providing information on the manner in which the social partners participate in the formulation and implementation of the national employment and vocational training policy. The Committee once again requests the Government to provide detailed information on the manner in which the representatives of rural workers and workers in the informal economy participate in the formulation of employment policies and programmes.*

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

C138 - Minimum Age Convention, 1973 (No. 138)**Observation 2017**

Articles 1 and 2(1) of the Convention. National policy, minimum age for admission to employment or work, and application of the Convention in practice. In its previous comments, the Committee noted that the Labour Code only applies within the framework of an employment relationship and does not protect children engaged in work outside a contractual employment relationship. However, the Committee noted that over 1.5 million children under 14 years of age were working in Cameroon and over a quarter of children aged 7 or 8 years were engaged in some form of economic activity (27 and 35 per cent, respectively) and were at serious risk of abuse, injury and disease in the workplace owing to their extreme youth. In addition, 164,000 children between 14 and 17 years of age were forced to perform hazardous work. The Committee also noted the Government's indication that the children's economic activities were mainly in the informal economy.

The Committee noted that the resources allocated to the labour inspectorate were insufficient to conduct effective investigations and that it did not carry out inspections in the informal economy. It noted the adoption of the National Plan of Action for the elimination of the worst forms of child labour (PANETEC) 2014–16, within which the reinforcement of resources for action by labour inspectors and the extension of their scope of activity were priorities. Substantial resources for action (logistics and transport, operating budget and inspection operations) were to be allocated to the labour inspection services to enable them to extend their activities effectively against child labour.

The Committee notes the Government's indication in its report that the National Committee on Combating Child Labour has incorporated its anti-child labour activities in the programme and budget of the State. However, the Committee notes with *concern* the Government's indication that the PANETEC has still not been adopted, which is an obstacle to its effective implementation. The Committee reminds the Government that the Convention applies to all branches of economic activity, whether formal or informal, and that it covers all types of employment or work, irrespective of whether or not it is on the basis of a contractual employment relationship and whether or not it is remunerated. Referring to the General Survey of 2012 on the fundamental Conventions (paragraph 345), the Committee observes once again that in some cases the limited number of labour inspectors does not enable the whole of the informal economy to be covered. Hence it calls on member States to strengthen the capacities of the labour inspectorate.

The Committee is once again bound to express its *deep concern* at the significant number of children who are working in Cameroon, including in hazardous types of work. *The Committee urges the Government once again to step up its efforts to ensure the effective elimination of child labour below the minimum age for admission to employment, including in hazardous types of work, in particular by reinforcing labour inspection in the informal*

economy. The Committee requests that the Government provide information on progress made in this respect. It also requests that the Government continue providing information on the practical conduct of inspections by labour inspectors in the area of child labour, including the number of violations recorded and extracts from inspection reports. Lastly, the Committee urges the Government to take the necessary steps to ensure that the PANETEC is adopted as soon as possible.

Article 2(3). Age of completion of compulsory education. The Committee previously noted that the school attendance rate of working children was substantially lower than that of non-working children, at all ages. The school attendance rate was 70 per cent for working children between 6 and 14 years of age but was 86 per cent among children who did not work.

The Committee notes that the national education system is regulated by Act No. 98/004 of 14 April 1998 governing education in Cameroon. Under section 9 of the Act, only primary education is compulsory in the country, which begins at the age of 6 years (following two years of preschool education) and lasts for a six-year period (section 16). Hence compulsory schooling ends at the age of 12 years in Cameroon, namely two years before the minimum age for admission to employment or work (14 years). Referring to the General Survey of 2012 on the fundamental Conventions, the Committee observes that if compulsory schooling comes to an end before children are legally entitled to work, a vacuum may arise which regrettably opens the door for the economic exploitation of children (paragraph 371). The Committee therefore considers that the age of completion of compulsory schooling should be raised to coincide with that of the minimum age for admission to employment or work, as provided for in Paragraph 4 of the Minimum Age Recommendation, 1973 (No. 146). *Recalling that compulsory schooling is one of the most effective means of combating child labour, the Committee urges the Government to take the necessary steps to make education compulsory up to the minimum age for admission to employment, namely 14 years.*

C158 - Termination of Employment Convention, 1982 (No. 158)

Observation 2017

The Committee notes the observations of the General Union of Workers of Cameroon (UGTC), received on 17 October 2016, and the Government's reply, received on 15 February 2017. It also notes the observations of the Cameroon United Workers Confederation (CTUC), received on 22 November 2016. *The Committee requests the Government to provide its comments in this regard.*

Article 2 of the Convention. Exclusions. In its previous comment, the Committee noted the Government's indications that domestic workers and workers in the informal economy belong to the categories of workers that are subject to special regulations or a special scheme. The Government added that workers subject to special regulations are not considered as workers covered by the Labour Code of 1992. The Committee therefore asked the Government to continue to take all possible steps to ensure that domestic workers and workers in the informal economy enjoy adequate protection in the spheres covered by the Convention. The Government indicates in its report that the Convention is applied uniformly in Cameroon and that no category of wage employees is excluded from its scope. *The Committee requests the Government to provide copies of the legislative texts that apply to domestic workers in relation to the Convention. The Committee also requests the Government to provide detailed information on the manner in which it ensures adequate protection in the spheres covered by the Convention to workers in the informal economy.*

Article 8. Procedure of appeal. The Committee notes the observations of the CTUC, which considers that the terminations of workers in certain enterprises were not in conformity with the procedure established under national legislation, since no authorization for termination had been sought or granted by the labour inspector. *The Committee requests the Government to reply to the observations of the CTUC regarding the termination of workers' employment.*

Article 11. Notice period. The Committee notes the observations of the CTUC indicating that, in practice, employers terminate the employment of workers without observing the obligation to give a notice period as established by section 34(1) of the Labour Code. The Committee notes that the Government's report does not reply to the CTUC's concerns. *The Committee reiterates its request that the Government provide its comments on the observations of the CTUC, indicating the manner in which it is ensured that workers are provided with reasonable notice of termination.*

Article 12(3). Definition of serious misconduct. The Committee previously noted that serious misconduct was not defined by the Labour Code but by case law. The Committee notes the observations of the CTUC indicating that, in national practice, the employer unilaterally defines the degree of seriousness of the misconduct, whereas under Cameroonian law only the judge is empowered to do so. The CTUC adds that a number of companies have engaged in this practice and therefore invites the Government to revise the Labour Code. *The Committee requests the Government to reply to the observations of the CTUC, clarifying the definition of serious misconduct. It also requests the Government once again to provide examples of court decisions which allow an evaluation of the application of Article 12(3) of the Convention.*

Articles 12–14. Severance allowance. Consultation of workers' representatives. Terminations of employment for economic, technological, structural or similar reasons. In its previous comments, the Committee asked the Government to indicate whether the dismissed workers had been paid their severance allowance and to provide information on all measures taken to alleviate the adverse effects of dismissals, such as those envisaged in Paragraphs 25 and 26 of the Termination of Employment Recommendation, 1982 (No. 166). The Government indicates in its report that section 40 of the Labour Code of 1992 refers to this subject. Accordingly, the Committee notes that section 40(3) of the Labour Code establishes an obligation for the employer to call a meeting of staff delegates and the labour inspector to try to avoid any termination on economic grounds. It also notes that section 40(9) of the Labour Code provides that any worker whose employment has been terminated shall be given priority status, where skill levels are equal, for two years with regard to recruitment in the same enterprise. As regards consultation of workers' representatives in the event of terminations on economic grounds, the Government indicates that Order No. 22/MTPS/SG/CJ establishing procedures governing terminations on economic grounds gives effect to *Article 13(1)* of the Convention. In its previous comment, the Committee noted the communication from the UGTC indicating the termination of the employment of a number of young persons at the National Social Security Fund (CNPS) without prior notification in writing or payment of damages. In its observations of 2016, the UGTC indicates that the situation of the dismissed CNPS workers has not changed and that there has been a resurgence of terminations, particularly in a number of local companies. *Referring to its previous comments, the Committee requests the Government once again to indicate whether the workers dismissed from the CNPS and from the local companies referred to in the observation of the UGTC have been paid their severance allowance. It also requests the Government to send a copy of Order No. 22/MTPS/SG/CJ establishing procedures governing terminations on economic grounds. The Committee further requests the Government to continue providing information on any measures taken to alleviate the adverse effects of dismissals, such as those envisaged in Paragraphs 25 and 26 of Recommendation, No. 166.*

Application of the Convention in practice. *The Committee requests the Government once again to supply statistics on the activities of the appeal bodies and the number of terminations on economic grounds. It also requests the Government to provide up-to-date information on the application of the Convention in practice. Referring to its previous comments on valid and invalid grounds for termination and the defence procedure prior to termination, the Committee requests the Government to send examples of court decisions which allow an evaluation of the application of Articles 4, 5 and 7 of the Convention.*

[The Government is asked to reply in full to the present comments in 2019.]

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

Observation 2017

Articles 3(a), 5 and 7(1) of the Convention. Sale and trafficking of children. Monitoring mechanisms and penalties. The Committee previously noted that, according to the estimates of the 2012 study produced jointly by the Government and the "Understanding Children's Work" programme, between 600,000 and 3 million children were victims of trafficking in Cameroon. It noted that Act No. 2005/015 concerning the trafficking of children and child labour had been repealed and replaced by Act No. 2011/024, which is broader in scope. The Committee also noted the observations of the International Trade Union Confederation (ITUC) to the effect that the Government had reportedly conducted ten investigations into the trafficking of children in 2013, which could hardly be considered an adequate response given the scale of the problem. In the Committee on the Application of Standards at the 104th Session of the International Labour Conference in June 2015, the Government representative of Cameroon to the Conference Committee pointed out that the low number of investigations was due to the small number of complaints made.

The Committee notes that the provisions of Act No. 2011/024 have been incorporated into the new Penal Code, which was adopted through Act No. 2016/007 (section 342-1). It also notes the Government's indications in its report that awareness raising in relation to the scourge of the trafficking of children has been conducted for all parties involved in combating child labour, including the heads of decentralized departments of sectoral administrations, and they have been recommended to systematically report any proven case of commercial trafficking and exploitation of children. However, the Committee observes that the Government does not respond to the Committee's concerns regarding the low number of investigations and prosecutions relating to the trafficking of children in Cameroon.

The Committee reminds the Government once again that under *Article 5* of the Convention, member States must establish or designate appropriate mechanisms to monitor the implementation of the provisions giving effect to the Convention, irrespective of any complaints filed by victims. Moreover, referring to the General Survey of 2012 on the fundamental Conventions, the Committee emphasizes that any penalties laid down will only be effective if they are applied in practice, which requires procedures for bringing violations to the attention of the judicial and administrative authorities, and that these authorities be strongly encouraged to apply such penalties (paragraph 639). ***The Committee therefore urges the Government to take the necessary steps to ensure that monitoring mechanisms are adequate for detecting cases involving the sale and trafficking of children. It also requests the Government to take the necessary steps to ensure the thorough investigation and robust prosecution of persons who engage in the sale and trafficking of children under 18 years of age, particularly by reinforcing the capacities of the authorities responsible for the enforcement of section 342-1 of the new Penal Code and Act No. 2011/024, and to ensure that sufficiently effective and dissuasive penalties are imposed in practice. Lastly, it requests the Government to provide information on the measures adopted in this respect and on the results achieved, disaggregated, where possible, by age and gender of the victims.***

Article 3(b) and (c). Use, procuring or offering of a child for the production of pornography or for pornographic performances and for illicit activities. In its previous comments, the Committee noted the Government's indication that the Bill on the Child Protection Code and the Bill on the Family Code had been incorporated into the Bill issuing the revised Civil Code (which is being finalized), and that this was to cover issues relating to the use and procuring of children for the production of pornography, for pornographic performances, as well as for illicit activities, particularly the production of drugs. The Committee also noted that the Conference Committee had urged the Government to adopt and implement the Child Protection Code, which had been pending for almost ten years, in order to prohibit the use, procuring or offering of children for the abovementioned purposes.

The Committee notes with **concern** the Government's indication that the Civil Code is still being revised. It also notes the Government's indication that the Penal Code establishes penalties for all illicit activities. In this regard, the Committee observes that Cameroon has adopted a new Penal Code through Act No. 2016/007, sections 344 and 346 of which prohibit the corruption of young people and indecent behaviour in the presence of a minor. However, the Committee observes that neither these provisions nor the provisions penalizing illicit activities adequately prohibit the use, procuring or offering of a child for the production of pornography, for pornographic performances, or for illicit activities. The Committee notes the Government's statement that the outcome of the request for technical assistance will enable the necessary competencies to be acquired to address this issue. ***Noting that it has been raising this issue for over ten years, the Committee urges the Government once again to take the necessary measures as soon as possible to ensure that the national legislation prohibits the use, procuring or offering of a child under 18 years of age for the production of pornography, for pornographic performances or for illicit activities, through the adoption either of the Child Protection Code or of any other legislative text that incorporates the relevant provisions. Moreover, sufficiently dissuasive penalties for the offences in question must also be adopted as a matter of urgency.***

Article 4(3). Periodic review and revision of the list of hazardous types of work. In its previous comments, the Committee noted the observations of the ITUC to the effect that some 164,000 children between 14 and 17 years of age were involved in hazardous work in Cameroon. The Committee noted that Order No. 17 of 27 May 1969 concerning child labour (Order No. 17) – adopted more than 48 years ago – does not prohibit work under water or work at dangerous heights, as in the case of children employed in fishing or banana harvesting. In this regard, the Committee noted that the Conference Committee had urged the Government to urgently revise, in consultation with the social partners, the list of hazardous types of work established by Order No. 17 in order to prevent the engagement of children under 18 years of age in hazardous activities, including underwater work and work at dangerous heights.

The Committee notes the Government's indication that the revision of the list of hazardous types of work is due to take place in 2018 and will be undertaken in conjunction with the social partners. The Government indicates that the ILO Office in Yaoundé has recruited a consultant who has initiated the process of revision of this list. ***The Committee urges the Government to take the necessary steps to ensure the adoption as soon as possible of the revised list of hazardous types of work prohibited for children under 18 years of age, in consultation with the social partners. It requests the Government to provide information on any progress made in this respect.***

Article 7(2). Effective and time-bound measures. Clause (d). Children at special risk. HIV/AIDS orphans. In its previous comments, the Committee noted that, according to estimates of the Joint United Nations Programme on HIV/AIDS (UNAIDS), there were approximately 310,000 children who were HIV/AIDS orphans in Cameroon in 2014. The Committee noted the Government's indications that this problem was the subject of in-depth discussion within the National Committee for Combating Child Labour, the body established in 2014 for the implementation of the National Plan of Action for the elimination of the worst forms of child labour (PANETEC) 2014–16. The Government indicated that actions are planned in the context of the PANETEC relating to the ongoing establishment of structures to care for HIV/AIDS orphans, including initiatives implemented by the Ministry of Public Health and the Ministry of Social Affairs. However, the Committee noted that even though the PANETEC had been technically approved, it had not yet been officially adopted.

The Committee notes with **deep concern** that not only has the PANETEC not yet been adopted, but that, according to UNAIDS estimates for 2016, the number of HIV/AIDS orphans has reached 340,000. ***Recalling that HIV/AIDS orphans are at particular risk of becoming engaged in the worst forms of child labour, the Committee urges the Government to take immediate and effective measures to protect them from these worst forms of labour. It requests the Government once again to send information on the measures taken in this respect and the results achieved, and also on the number of HIV/AIDS orphans who have been admitted to care structures set up for their benefit.***

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

C018 - Workmen's Compensation (Occupational Diseases) Convention, 1925 (No. 18)

Observation 2017

Articles 1 and 2 of the Convention. List of recognized occupational diseases. With reference to its previous comments, the Committee once again notes with **concern** that the list of occupational diseases envisaged in section 91 of the Social Security Code of 2006 and section 81 of Decree No. 09-116 of 27 April 2009, on the application of the Social Security Code, has still not been adopted by the Ministers responsible for social security and public health. The Government indicates in this regard that in 2013 a national delegation participated in the work of the technical committee responsible for finalizing the harmonized list of occupational diseases at the Inter-African Conference on Social Insurance (CIPRES) and that the committee responsible for preparing the list has taken up its work once again. The recurrent crises experienced by the country in recent years have however prevented the Government from finalizing the process of the preparation of the list of occupational diseases. The Committee wishes to emphasize that, without a list of occupational diseases, it is impossible to implement not only compensation, but also the prevention of such diseases. **The Committee therefore once again expresses the hope that the technical committee responsible for the adoption of the list of occupational diseases will be in a position to complete its work in the very near future and that the Ministries concerned will be able to adopt the schedules of occupational diseases envisaged in the Social Security Code and Decree No. 09-116, taking duly into consideration the Schedule annexed to the Convention.** In this regard, the Committee draws the Government's attention to the List of Occupational Diseases Recommendation, 2002 (No. 194), which contains the most up-to-date list of occupational diseases at the international level.

Recommendations of the Standards Review Mechanism. The Committee notes that, according to the recommendations made by the Tripartite Working Group of the Standards Review Mechanism, as approved by the ILO Governing Body, member States which have ratified the Convention are encouraged to ratify the Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121), and/or the Social Security (Minimum Standards) Convention, 1952 (No. 102), and accept the obligations in its Part VI, as the most up-to-date instruments in this subject area (GB.328/LILS/2/1). The Committee reminds the Government of the possibility of having recourse to ILO technical assistance in this regard.

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

Observation 2017

Articles 1(1) and 2(1) of the Convention. Violations committed in the context of hostilities between armed groups. In its previous comments, while bearing in mind the complexity of the situation in the country and the efforts made by the transitional Government to restore peace and security, the Committee asked the Government to take the necessary steps to end the violence committed against civilians, particularly women and children, with the aim of subjecting them to forced labour, including sexual slavery.

The Committee notes the Government's indication in its report that, after a period of transition, the constitutional order of the country has been restored and the established institutions are now operational. A number of steps have been taken to end the violence committed against civilians, particularly women and children, in particular: (i) the National Plan to restore and consolidate peace (2017–21); (ii) the process to update the political dialogue on social protection conducted in June 2017 by the Ministry of Social Affairs in partnership with the World Bank, UNICEF and the ILO; and (iii) the disarmament, demobilization, reintegration and repatriation (DDRR) programme.

The Committee notes that these initiatives are aimed at restoring peace and security in the country. The Committee also notes that the Independent Expert on the situation of human rights in the Central African Republic, in her 2017 report to the United Nations Human Rights Council, observed that the Lord's Resistance Army (LRA) continues to commit serious abuses against the civilian population in the areas under its control in the east of the Central African Republic, to attack villages, to loot property and to abduct civilians almost routinely, subjecting them to forced labour, forced recruitment, sexual slavery and sexual violence. Between July 2016 and June 2017, the Human Rights Division of the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA) documented more than 100 incidents, which left over 360 victims (A/HRC/36/64, paragraph 53). The Independent Expert emphasized that the resurgence of widespread violence has gone hand in hand with a significant increase in acts of sexual violence committed by armed groups (paragraph 63). She also observed that a truth and reconciliation commission and a special criminal court are being established and that these two institutions might help victims to assert their rights (paragraphs 80 and 81). In this regard, the Independent Expert recalled the importance of ensuring the safety and protection of victims and witnesses, in order to encourage them to testify about the serious violations they suffered or witnessed (paragraph 92).

In the light of the above, the Committee is bound to express its **deep concern** at the persistent recourse to forced labour and sexual slavery by armed groups, as well as the large number of victims of such practices. **While acknowledging the complexity of the situation prevailing on the ground and the presence of a conflict and armed groups in the country, the Committee urges the Government to take, as a matter of urgency, the necessary measures to end the violence committed against civilians with the aim of subjecting them to forced labour, including sexual slavery. It also requests the Government to take the necessary steps to combat impunity and to ensure that the perpetrators of these serious violations of the Convention are brought to justice and punished, and that the victims are compensated for the harm suffered. Lastly, the Committee requests the Government to provide information on the results achieved in this regard.**

Article 25. Application of adequate criminal penalties. The Committee previously noted that the national legislation did not contain provisions that would enable full effect to be given to *Article 25* of the Convention, which establishes that the exaction of any form of forced labour shall be punishable with criminal penalties that are really adequate. While the Labour Code prohibits recourse to forced labour in all its forms, it does not establish the applicable penalties, and the criminal penalties established by section 151 of the Penal Code apply only to the offence of trafficking in persons.

The Committee notes that the Government's report does not contain any information on this matter. **In view of the fact that the definition of forced labour provided in the Convention is very broad and covers various practices that are not limited to trafficking in persons, the Committee requests the Government to take the necessary steps to ensure that the legislation contains provisions that enable law enforcement bodies and the authorities to prosecute, judge and punish the perpetrators of all forms of forced labour.**

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

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

Observation 2017

Articles 2, 3, 5 and 6 of the Convention. Labour Code. In its previous comments, the Committee highlighted the need to amend the following legislative provisions:

- section 17 of the Labour Code, which limits the right of foreign nationals to join trade unions by imposing conditions of residence (two years) and reciprocity;
- section 24 of the Labour Code, which limits the right of foreign nationals to be elected to trade union office and executive functions by imposing a condition of reciprocity;
- section 25 of the Labour Code, which renders non-eligible for trade union office persons sentenced to imprisonment, persons with a criminal record or

persons deprived of their right of eligibility under national law, even where the nature of the relevant offence is not prejudicial to the integrity required for trade union office;

--section 26 of the Labour Code, under which the union membership of minors under 16 years of age may be opposed by parents or guardians despite the minimum age for admission to employment being 14 years under section 259 of the Labour Code;

--section 49(3) of the Labour Code, under which no confederation may be established without the prior existence of occupational or regional federations.

In its previous comments, the Committee also noted the Government's earlier indication, in its report submitted in 2014, that the requested amendments to the Labour Code were the subject of an implementing decree which was in the process of being adopted. The Committee notes with *regret* the absence of any new information concerning this decree. The Committee notes the Government's indication that sections 17, 24 and 26 of the Labour Code are based on the provisions of the Criminal Code and the Code of Criminal Procedure and that section 25 of the Labour Code is based, among others, on the provisions of the Criminal Code, the Code of Criminal Procedure and section 4 of Order No. 3899/IGT/LS of 9 December 1953 on the institution of staff delegates in French Equatorial Africa. The Government indicates that when the national employment and training policy document was adopted in the last quarter of 2016 with ILO support, the participants recommended a review of the Labour Code in which the provisions conflicting with the relevant principles in certain Conventions would be subject to a specific examination. *The Committee hopes that the Government will continue, in consultation with the social partners, the efforts made to complete this review and specific examination of the Labour Code and requests it to indicate any progress made in this regard.*

With respect to section 49(3) of the Labour Code, the Committee notes the Government's explanation that the confederations are central organizations which can only result from the grouping of regional and occupational federations.

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

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

Observation 2017

Article 2 of the Convention. Inclusion of labour clauses in public contracts. In its previous comment, the Committee noted the adoption of Act No. 08.017 of 6 June 2008 issuing the Public Procurement Code and Decree No. 08.335 of 20 September 2008 on the organization and operation of the authority to regulate public procurement. The Committee notes that, in accordance with section 63 of Act No. 08.017, if a single evaluation criteria has to be taken into account by the contracting authority in light of the objective of the contract, it has to be the price. In this context, no reference is made to the conditions of work in the evaluation criteria. It also noted that this Act, which is aimed at ensuring free access to public procurement orders, the equality of treatment of tenderers, the economy and effectiveness of the procurement procedure and the transparency of procedures on the basis of their rationalization, modernization and traceability, does not contain any provisions on labour clauses which are to be included in public contracts, in accordance with *Article 2* of the Convention. The Government indicates in its report that the terms of the labour clauses to be included in public contracts have not been determined. However, it adds that the conditions of work, hours of work, remuneration rates and registration of employees with the social security fund are still monitored by the regional labour inspection services. The Committee once again draws the Government's attention to the fact that, in its General Survey of 2008 on labour clauses in public contracts, in paragraphs in 40–46 and 176, it emphasized that the essential purpose of the Convention is to ensure that the workers employed by a contractor and paid indirectly out of public funds, through the inclusion of appropriate labour clauses in public contracts, enjoy wages and conditions of work which are at least as satisfactory as the wages and conditions of work normally established for the type of work concerned, whether they are established by collective agreement or otherwise. In its previous comments, the Committee indicated that the Convention has a very simple structure, with all its provisions being articulated around and directly linked to the core requirements set out in *Article 2(1)* of the Convention, namely the requirement to adopt measures to ensure the inclusion of labour clauses guaranteeing to the workers concerned the most advantageous wages and other conditions of work established locally. *While noting that Act No. 08.017 contains specifications to determine the conditions under which the contract is implemented and which include general administrative clauses, as well as specific administrative clauses, the Committee once again requests the Government to adopt without further ado all the appropriate measures to ensure that provisions giving full effect to Article 2 of the Convention are included in the general administrative clauses set out in the specifications. The Committee hopes that, when issuing implementing decrees under the Public Procurement Code, the Government will not fail to take the opportunity to bring the legislation finally into conformity with the Convention, and once again requests the Government to provide a copy of any further texts once they have been adopted. It reminds the Government that it may have recourse to ILO technical assistance if it so wishes.*

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

Observation 2017

Article 2 of the Convention. Adequate protection against acts of interference. Section 30(2) of the Labour Code. In its previous comments, the Committee considered that section 30(2) of the Labour Code does not cover all of the acts of interference prohibited by *Article 2* of the Convention. The Committee also noted the Government's indications that implementing regulations would be adopted to cover all of the acts of interference envisaged in *Article 2* of the Convention, and that these regulations would also specify the penalties applicable in cases of violations of section 30(2) of the Labour Code.

The Committee notes the Government's indication that section 152 of the Labour Code contributes to the protection of unionized workers against acts of interference by the employer by providing that terminations are unjustified when based on the opinions of the worker, the worker's trade union activities or membership or not of a specific union.

The Committee however observes that, in relation to the implementation of the Convention, section 152 of the Labour Code affords protection to workers in the event of the unjustified termination of the employment contract, including in cases of anti-union dismissal, but does not provide specific protection against acts of interference. *The Committee therefore once again requests the Government to provide information on any progress achieved concerning the adoption, as previously announced, of regulations broadening the protection against the acts of interference set out in section 30(2) of the Labour Code and establishing penalties in this regard.*

Article 4. Promotion of collective bargaining. Section 40 of the Labour Code. In its previous comments, the Committee noted that, in accordance with section 40 of the Labour Code, collective agreements must be discussed by the delegates of employers' and workers' organizations belonging to the occupation or occupations concerned. Recalling that the level of bargaining should normally be a matter for the social partners themselves, the Committee requested the Government to indicate whether federations and confederations have the right to collective bargaining and to indicate the legislative provision which grants them this right.

The Committee notes the Government's affirmation that federations and confederations are included in occupational unions, which therefore gives them the right to negotiate collective agreements. The Committee notes this indication. *However, observing that no provision of the Labour Code appears to explicitly recognize the right of federations and confederations to conclude collective agreements, the Committee requests the Government to*

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provide copies of collective agreements negotiated and concluded by federations or confederations.

Sections 197 and 198 of the Labour Code. In its previous comments, the Committee noted with regret that, under the terms of sections 197 and 198 of the Labour Code, representatives of trade union organizations and occupational groupings of workers (non-unionized) are on an equal footing in relation to collective bargaining. Recalling that *Article 4* of the Convention promotes collective bargaining between employers' and workers' organizations, the Committee had requested the Government to indicate the measures taken to ensure that occupational groupings of workers can only negotiate collective agreements with employers where no trade union exists in the bargaining units concerned.

Noting the Government's indication that measures are currently being taken with a view to amending sections 197 and 198 of the Labour Code, the Committee hopes that the Government will be in a position to report in the near future specific progress in the amendment of the above legislative provisions with a view to ensuring that occupational groupings of workers can only negotiate collective agreements with employers when there is no union in the bargaining units concerned.

Sections 367 to 370 of the Labour Code. In its previous comments, the Committee requested the Government to envisage amending sections 367 to 370 of the Labour Code, which appear to establish a procedure whereby all collective disputes are subject to conciliation and, failing resolution, to arbitration.

The Committee notes the Government's indication that the urgent procedure of attempted conciliation and arbitration envisaged in sections 367 et seq. of the Labour Code is intended to resolve disputes within a reasonable period. *Recalling that, by virtue of the principle of the promotion of free and voluntary collective bargaining set out in Article 4 of the Convention, recourse to compulsory arbitration in the case of disagreement between the parties to collective bargaining is only acceptable in relation to public servants engaged in the administration of the State (Article 6 of the Convention), essential services in the strict sense of the term or in the event of an acute national crisis, the Committee reiterates its request for the amendment of sections 367–370 of the Labour Code.*

Articles 4 and 6. Public servants not engaged in the administration of the State. Section 211 of the Labour Code. In its previous comments, the Committee noted that section 211 of the Labour Code only provides for the right to collective bargaining in public services, enterprises and establishments for personnel not governed by specific conditions of service.

The Committee notes the Government's indication that the right to bargaining established in the Labour Code cannot be applied to all personnel in public services, enterprises and establishments, except for employees recruited under private law, as public servants are excluded from the scope of application of the Labour Code.

The Committee recalls that, under the terms of *Article 6* of the Convention, a distinction has to be made between, on the one hand, public servants who, through their functions, are directly engaged in the administration of the State (for example, in certain countries, officials in government ministries and other similar bodies and their auxiliary personnel), who may be excluded from the scope of application of the Convention and, on the other, all other persons employed by the Government, public enterprises or autonomous public institutions, who should benefit from the guarantees set out in the Convention (for example, employees in public enterprises, employees in municipal services and employees in other decentralized bodies, as well as public sector teachers). *Emphasizing that only public servants engaged in the administration of the State may be excluded from the scope of application of the Convention, the Committee requests the Government to indicate the categories of public sector workers who are subject to specific conditions of service, and accordingly excluded from the scope of application of the Labour Code, and to indicate any texts which may accord certain of these categories the right to negotiate their terms and conditions of work and employment.*

Observations of the International Trade Union Confederation (ITUC). In its previous comments, the Committee requested the Government to reply to the observations of the ITUC alleging the absence of collective bargaining in the wage determination process in the public sector and to indicate the measures taken to promote machinery for the negotiation of terms and conditions of employment in the public sector. The Committee notes with *regret* that the Government does not provide any information in this regard. *While taking duly into account the difficulties currently experienced by the country, the Committee once again requests the Government to indicate the measures taken to promote machinery for the negotiation of terms and conditions of work and employment in the public sector.*

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

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

Observation 2017

Articles 1–3 of the Convention. With reference to its previous comments regarding the serious human rights violations in the country and recalling that the objective of the Convention, particularly concerning equality of opportunity and treatment in employment and occupation, cannot be achieved in a general context in which such abuses occur, the Committee notes the report of the United Nations Independent Expert on the human rights situation in the Central African Republic for the period July 2016 to June 2017. According to the report, the period covered was once again marked by outbreaks of violence, including sexual violence against women, with increasingly frequent and intense clashes between armed groups, leading to disastrous consequences for civilian populations in virtually all provinces. The report also indicates that, despite the implementation of a legislative and institutional framework, this violence has undermined the Government's efforts to restore the authority of the State and the national and regional initiatives to achieve peace (A/HRC/36/64, 28 July 2017, paragraphs 8, 23, 24 and 39). In this challenging context, the Committee welcomes the establishment, on 23 October 2017, of the National Commission for Human Rights and Fundamental Freedoms, with the mandate of conducting investigations into the serious human rights violations and crimes committed in the territory between December 2003 and January 2015. *However, taking into account the serious concerns which continue to be expressed regarding the human rights situation and its specific impact on women, children and ethnic and religious communities, the Committee urges the Government to take the necessary steps to promote equality of opportunity and treatment without distinction on grounds of race, colour, sex, religion, political opinion, national extraction or social origin. The Committee urges the Government in particular to address the laws, particularly civil legislation, which have a discriminatory impact and the inferior position of women which creates a context facilitating the perpetration of violence against women, and which the Committee considers have a profound impact on the application of the principle of the Convention. In this context, the Committee also urges the Government to continue taking measures to create the necessary conditions to restore the rule of law and give effect to the provisions of the Convention.*

Article 1(1)(a) and (b). Protection of workers from discrimination. Constitution and national legislation. The Committee welcomes the entry into force, on 30 March 2016, of the new Constitution which, like the Transitional Constitutional Charter of 2013, provides that "all human beings are equal before the law without distinction on the basis of race, ethnic origin, regional background, gender, religion, political affiliation and social position"; "the law shall guarantee equal rights for men and women in all areas" (Article 6); "all citizens are equal in employment"; and "no one shall be disadvantaged in their work or employment on the basis of their origin, sex, opinions or beliefs" (Article 11). The Committee notes with *interest* the adoption, on 24 November 2016, of Act No. 16.004 establishing equality between men and women, which provides that at least 35 per cent of appointed and elected posts in both the public and private sectors must be filled by women. The Act also provides for the creation of the National Equality Observatory, which will be responsible for the regular monitoring and evaluation of the implementation of the Act.

The Committee recalls that, under sections 10 and 14 of the Labour Code, "the law shall guarantee to everyone equality of opportunity and treatment in

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employment and work, with no discrimination" and "access to vocational training is guaranteed to all workers, without discrimination". The Labour Code prohibits any discrimination against candidates for a job or employees on the basis of mental or physical disability (section 266) and provides that employers' and workers' organizations shall ensure the protection of workers from all forms of stigmatization and discrimination on the basis of HIV status (section 313). The Committee also recalls that the Penal Code of 2010 penalizes "any person having discriminated between any individuals or entities on the basis of their origin, gender, family situation, health, disability, lifestyle, political opinions, trade union activities or their membership of a national, ethnic, racial or religious group". Noting the existence of a constitutional and legislative framework in relation to discrimination, including in employment and occupation, the Committee wishes to draw the attention of the Government to the fact that, based on its experience, the full implementation of the Convention usually requires the adoption of comprehensive legislation defining and prohibiting direct and indirect discrimination, covering at least all of the grounds set out in the Convention and all aspects of employment and occupation. The Committee has accordingly observed that a number of features in legislation contribute to addressing discrimination and promoting equality in employment and occupation more effectively: coverage of all workers (no exclusions); provision of a clear definition of direct and indirect discrimination, and of sexual harassment; the prohibition of discrimination at all stages of the employment process; the explicit assignment of supervisory responsibilities to competent national authorities; the establishment of accessible dispute resolution procedures; the establishment of dissuasive sanctions and appropriate remedies; the shifting or reversing of the burden of proof; the provision of protection from retaliation; affirmative action measures; and provision for the adoption and implementation of equality policies or plans at the workplace, as well as the collection of relevant data at different levels (see the 2012 General Survey on the fundamental Conventions, paragraphs 854–855). *In light of the above, the Committee asks the Government to examine the possibility of reinforcing the labour legislation against discrimination, on the occasion of a future revision of the Labour Code, by inserting provisions explicitly prohibiting any form of discrimination on at least the grounds set out in the Convention (race, colour, sex, religion, political opinion, national extraction or social origin) and on any other grounds of discrimination which it considers important to include, covering all stages of employment, including recruitment. It also asks the Government to examine the possibility of including provisions protecting victims from retaliation and providing for adequate sanctions. The Committee also asks the Government to provide information on the implementation of Act No. 16.004 of 2016 establishing equality for men and women in the public and private sectors, in particular information on the application of the 35 per cent quota of women in elected and appointed posts and on the results achieved in numerical terms, and information on the establishment and activities of the National Equality Observatory, as provided for by the Act. The Government is requested to provide a copy of the Act and any implementing texts.*

Articles 2 and 3. National policy of equality of opportunity and treatment. The Committee recalls that the implementation of a genuine national equality policy requires not only the adoption of an appropriate legislative framework, but also the implementation of a range of specific measures, in collaboration with the employers' and workers' organizations, within the framework of collective agreements, plans of action including, inter alia, affirmative action and awareness-raising measures, or through specialized bodies. *While acknowledging the difficult situation in the country, the Committee once again asks the Government to take practical measures, in collaboration with the employers' and workers' organizations, pursuant to a genuine national policy for the promotion of equality of opportunity and treatment in employment and occupation without distinction on the basis of religion or ethnic origin or any of the other grounds set out in Article 1(1)(a) of the Convention. It also asks the Government to provide information on any measures adopted in this respect.*

In the absence of information on this subject in the Government's report, despite its request and taking into account the context of persistent violence against women, the Committee once again asks the Government to provide information on the application of the National Policy for the Promotion of Equality between Men and Women, adopted in 2005, and the 2007 Plan of Action, which aims to encourage and ensure equality of access of women and men to training and employment, particularly by combating stereotypes and prejudices regarding the role and status of women in the family and in society, and to enable women to better know and assert their rights.

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

C118 - Equality of Treatment (Social Security) Convention, 1962 (No. 118)

Observation 2017

The Committee recalls that, following the adoption of Act No. 06-035 of 28 December 2006 issuing the Social Security Code, Decree No. 09-116 of 27 April 2009 implementing that Act, and Decree No. 09-115 of 27 April 2009 determining the legal and institutional status of the National Social Security Fund, the national law and regulations continue to be based on the principle that equality of treatment is subject, contrary to *Article 4(1) of the Convention*, to the condition of the residence of foreign nationals in the national territory. The provision of benefits abroad is only possible if it is provided for by a bilateral or multilateral social security agreement, which is contrary to the provisions of *Article 5(1)* of the Convention. In the Central African Republic, this provision of the Convention requires the provision of old-age benefit and employment injury pensions, without other conditions, to its own nationals and to the nationals of any other Member which has accepted the obligations of the Convention in respect of these benefits.

The Committee notes that the Government, in its report, does not indicate any measures adopted or envisaged with a view to amending the national legislation to bring it into conformity with these provisions of the Convention. In light of the information available, the Committee concludes once again that the national legislation continues not to give full effect to the essential provisions of the Convention. *The Committee expects that the Government will take the necessary measures to make appropriate amendments to the legislation so as to give full effect to the Convention.*

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

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

Observation 2017

Articles 1 and 2(1) of the Convention. National policy, scope, and application of the Convention in practice. The Committee previously noted that the Labour Code is not applicable to self-employed workers (section 2) but only governs occupational relationships between workers and employers deriving from employment contracts (section 1). In this regard, the Committee noted with concern that 57 per cent of children between 5 and 14 years of age were engaged in work in the Central African Republic (44 per cent of boys and 49 per cent of girls) and that an increasingly large number of these children were working in the informal economy, often employed in hazardous work. The Committee noted the Government's indication that a national policy aimed at progressively abolishing child labour was being formulated. Moreover, it noted that activities were being conducted in partnership with UNICEF to raise the awareness of economic operators regarding the protection of children employed in the informal economy and in hazardous work, since the Government was not in a position, on account of financial difficulties, to strengthen the capacities of the labour inspectorate in such a way as to ensure that these children would enjoy the protection of the Convention.

In view of the considerable number of children under 14 years of age who are working in the country, the Committee notes with *deep concern* the Government's indication in its report that this national policy has still not been adopted owing to a lack of financial resources. However, the Committee notes the Government's indications that the impact of the awareness-raising activities conducted in collaboration with UNICEF can be seen in the reduction in the number

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of children who work on their own account or in the informal economy, the integration of children in their own or host families, or their care by the Ministry of Social Affairs or by non governmental organizations (NGOs) established in the country. *Observing that the Government has been referring for a number of years to a national policy aimed at progressively abolishing child labour, the Committee once again requests that the Government take immediate steps to formulate and implement such a policy as soon as possible. It strongly urges the Government to continue taking measures to ensure that children working in the informal economy enjoy the protection of the Convention and to supply information on progress made in this respect.*

Article 3(1) and (2). Minimum age for admission to hazardous types of work and determination of these types of work. The Committee previously noted that section 261 of the Labour Code provides that a joint order of the Minister of Labour and the Minister of Public Health, issued further to the opinion of the Standing National Labour Council, shall determine the types of work and the categories of enterprises prohibited for children, and the age limit to which this prohibition applies. The Government indicated that the adoption of the abovementioned order was imminent.

The Committee notes the Government's indication that the Directorate-General of Labour and Social Protection submitted a request to UNICEF in November 2016 with a view to drawing up a list of the types of work constituting the worst forms of child labour, but that there has been no follow-up to this request. The Committee therefore notes with *concern* that there is still no list in existence in the Central African Republic that determines hazardous types of work prohibited for children under 18 years of age, despite the fact that the Labour Code was adopted in 2009, in other words, nearly ten years ago. *Recalling that, under Article 3(2) of the Convention, hazardous types of work must be determined in consultation with the organizations of employers and workers concerned, the Committee urges the Government to take the necessary steps to ensure that the list of types of employment or work prohibited for children and young persons under 18 years of age is adopted as soon as possible. It requests that the Government provide information on all progress made in this respect.*

Article 9(3). Keeping of registers by employers. In its previous comments, the Committee noted that, under section 331 of the Labour Code, certain enterprises or workplaces, as well as certain categories of enterprises or workplaces, may be exempted from the obligation to keep an employment register by reason of their situation, their small size or the nature of their activity by order of the Ministry of Labour further to an opinion of the Standing National Labour Council. The Committee reminded the Government that *Article 9(3)* of the Convention does not envisage such exemptions.

The Committee notes that the Government indicates once again that it has taken account of the Committee's observation in order to ensure that the legislation is in conformity with this provision of the Convention. The Committee observes with *deep concern* that it has been raising this matter since 2003 and that the Government has not taken any steps since then to bring its legislation into conformity with the Convention on this point, despite having had the opportunity to do so at the time of the adoption of the new Labour Code in 2009. *The Committee urges the Government to take the necessary measures as soon as possible to bring the legislation into conformity with the Convention, ensuring that no employer may be exempted from the obligation to keep a register of persons under 18 years of age employed by him or working for him.*

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

Observation 2017

Article 3(a) of the Convention. All forms of slavery or practices similar to slavery. Forced recruitment of children for use in armed conflict. In its previous comments, the Committee noted that despite the adoption of the 2009 Labour Code, which prohibits the forced or compulsory recruitment of children under 18 years of age for use in armed conflict, children were still found in the ranks of various armed groups and local self-defence militia. Indeed, children continued to engage in combat as part of the various armed groups. The Committee noted that the human rights situation constantly worsened in the Central African Republic throughout 2013, with the proliferation and shifting of alliances of armed groups: on the one hand, the many groups which came to form the Séléka coalition or are associated in varying degrees with the ex-Séléka coalition; on the other hand, the anti-balaka, a local defence militia which emerged in the second half of the year in response to systematic attacks against the civilian population by the ex-Séléka coalition. Both the anti-balaka and the Séléka coalition systematically recruited and used children.

The Committee notes the Government's indication in its report that the security situation in the Central African Republic remains a source of major concern for the Government. The Government indicates that, in the context of the National Recovery and Peacebuilding Plan for the Central African Republic (RCPA) 2017–21, in the first component on supporting peace, security and reconciliation, the Government launched the disarmament, demobilization, reintegration and repatriation process with a view to promoting peace in the country. The Government indicates that a return to security will enable the redeployment of the administration throughout the country as well as the restoration of the authority of the State with a view to conducting investigations into the forced recruitment of children and prosecuting the perpetrators.

The Committee also notes that, according to the report of 12 February 2016 of the United Nations (UN) Secretary-General on children and armed conflict in the Central African Republic (2016 report of the Secretary-General), on 23 July 2014 an agreement on the cessation of hostilities was signed in Brazzaville, which led to the gradual restoration of calm in Bangui and set the ground rules for the completion of the transition process, such as the holding of elections, disarmament, demobilization and reintegration, and national reconciliation (S/2016/133, paragraph 12). The 2016 report of the Secretary-General also indicates that the Bangui Forum for National Reconciliation, held in May 2015, and the preceding nationwide popular consultations culminated in the signing of an agreement on the principles of disarmament, demobilization, reintegration and repatriation, and the integration of armed elements into the uniformed state forces of the Central African Republic. On 5 May 2015, ten armed groups, including factions of ex-Séléka and anti-balaka, signed an agreement to stop and prevent the recruitment and use of children and other grave violations against children (paragraph 14). The Committee also notes that, according to the country programme document of 10 August 2017 proposed by UNICEF and presented to the Executive Board of the UN Economic and Social Council (UNICEF country programme document), the Central African Republic is gradually emerging from a period of institutional, social and political instability, with the adoption of a new Constitution in March 2016 and the holding of democratic, transparent presidential elections at the start of 2016 and legislative elections in April 2016. However, armed groups continue to control the country's natural resources, threatening social cohesion and access to basic services (E/ICEF/2017/P/L.27, paragraph 1).

However, the Committee notes that, according to the 2016 report of the Secretary-General, a 2014 UNICEF study estimated that between 6,000 and 10,000 children were associated with armed groups, a surge attributed to the increased activities of anti-balaka factions since 2013 (S/2016/133, paragraph 17). According to the 2016 report of the Secretary-General, not only were children brutalized with regard to being used in combat and as sex slaves but they were also forced to perform various support roles, including as informants. Since 2014, children have been increasingly used to commit violations against civilians. The report also indicates that in 2015 a total of 39 children (28 boys and 11 girls) were verified as having been newly recruited, the majority by the Lord's Resistance Army (LRA) (21 children) and others by ex-Séléka factions such as the Union for Peace in Central Africa (UPC) (13 children). However, during the outbreak of violence that erupted on 26 September, hundreds of children were observed either manning checkpoints or erecting barricades in Bangui (paragraph 22). Furthermore, according to the report of 28 July 2017 of the Independent Expert on the situation of human rights in the Central African Republic, the Office for the Coordination of Humanitarian Affairs (OCHA) estimates that from 4,000 to 5,000 children still belong to armed groups (A/HRC/36/64, paragraph 69).

Despite the progress made on achieving stability in the country, the Committee once again expresses *deep concern* at the current situation, especially as it entails other violations of children's rights, such as abductions, murders and sexual violence. It recalls once again 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

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matter of urgency. *While recognizing the complexity of the situation prevailing on the ground and the existence of an armed conflict and armed groups in the country, the Committee urges the Government to intensify its efforts to eliminate in practice the forced recruitment of children under 18 years of age by all armed groups in the country. The Committee also urges the Government to take immediate measures to ensure that the investigation and prosecution of offenders is carried out and that sufficiently effective and dissuasive penalties are imposed on persons found guilty of recruiting children under 18 years of age for use in armed conflict. It requests the Government to supply information on the number of investigations conducted, prosecutions brought and convictions handed down under the provisions of the Labour Code.*

Article 7(2). Effective and time-bound measures. Clauses (b) and (c). Direct assistance for the removal of children from the worst forms of child labour and to ensure their access to free basic education and vocational training. Child soldiers. In its previous comments, the Committee noted that measures had been adopted in partnership with UNICEF to provide appropriate direct assistance for removing child victims of forced recruitment from armed groups and ensuring their rehabilitation and social integration. However, the Committee noted that the increase in insecurity had given rise to the re-enlistment of children and had restricted humanitarian action in many parts of the country. However, the Committee noted that the transitional Government had undertaken a review of the national disarmament, demobilization and reintegration strategy and that the UN was working closely with the transitional authorities on this issue to ensure that appropriate provisions on the disarmament, demobilization and reintegration of children were incorporated in the national strategy.

The Committee notes that, according to the 2016 report of the Secretary General, between January 2014 and December 2015 the country task force monitoring and reporting on violations committed against children separated 5,541 children (4,274 boys and 1,267 girls) from armed groups. However, the country task force was only able to document a total of 715 children, including 114 girls, as being newly recruited and used (S/2016/133, paragraph 17). According to the report, there were many cases of children who had been demobilized and then re-enlisted in armed groups. Between December 2013 and the end of 2014, the country task force verified 464 cases of new recruitment, including 446 by anti-balaka (360 boys and 86 girls) and 18 boys by ex-Séléka factions. In addition, 2,807 children (2,161 boys and 646 girls) were identified and verified among armed groups, including anti-balaka (2,347 children), various ex-Séléka factions (446 children) and the LRA (13 children), and one boy was demobilized from the "Revolution and Justice" armed group (paragraph 20). Moreover, according to the UNICEF country programme document, of the 9,449 children freed from armed groups from January 2014 to March 2017 (30 per cent of whom were girls), only 4,954 had benefited from reintegration programmes (E/ICEF/2017/P/L.27, paragraph 8).

The Committee notes the Government's indication that it is giving priority to actions combating the scourge of human rights violations. To this end, many different initiatives are being implemented, such as protection of women's and children's rights, development of humanitarian actions and economic growth for lasting peace. The Committee notes that, according to the report of 2 June 2017 of the Secretary-General on the situation in the Central African Republic, UNICEF provided integration support to 420 children released from armed groups, while 239 children (including 55 girls) were separated from anti-balaka groups. Furthermore, as part of efforts to end the association of children with armed groups, the UN Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA), deployed in September 2014 to replace the African Union-led International Support Mission to the Central African Republic (MISCA), organized a week-long campaign in February 2017 in collaboration with local partners to raise the awareness of armed groups, community members and authorities in five localities regarding the impact of armed conflict on children (S/2017/473, paragraph 36). *While noting the measures taken by the Government and the difficulty of the situation, the Committee urges the Government to intensify its efforts to provide appropriate direct assistance to remove child victims of forced recruitment from armed groups and ensure their rehabilitation and social integration so as to guarantee their long-term, definitive demobilization. It requests the Government to provide information in its next report on progress made and the results achieved in this respect.*

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

C029 - Forced Labour Convention, 1930 (No. 29)**Observation 2017**

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2014.

Article 2(2)(a) of the Convention. Work of general interest imposed in the context of compulsory military service. For many years, the Committee has been requesting the Government to take measures to amend the legislation on compulsory military service to ensure its conformity with *Article 2(2)(a)* of the Convention. The Committee noted previously that, according to section 14 of Ordinance No. 001/PCE/CEDNACVG/91 reorganizing the armed forces within the framework of compulsory military service, conscripts who are fit for service are classified into two categories: the first, the size of which is determined each year by decree, is incorporated and compelled to perform active service; the second remains at the disposal of the military authorities for two years and may be called upon to perform work of general interest by order of the Government. However, to be excluded from the scope of the Convention and not considered to be forced labour, any work or service exacted in virtue of compulsory military service laws must be of a purely military character. In its report, the Government indicates that it will take the necessary measures to bring the provisions of section 14 of Ordinance No. 001/PCE/CEDNACVG/91 into conformity with the Convention. ***The Committee takes due note of this information and hopes that the provisions of section 14 of the Ordinance reorganizing the armed forces of 1991 will be amended in the very near future so as to ensure that work exacted within the framework of compulsory military service is of a purely military character.***

Article 2(2)(c). Work imposed by an administrative authority. For many years, the Committee has been drawing the Government's attention to the need to amend or repeal section 2 of Act No. 14 of 13 November 1959 authorizing the Government to take administrative measures for the relocation, internment or expulsion of persons whose activities constitute a danger for public order and security, under which persons convicted of penal offences involving prohibition of residence may be used for work in the public interest for a period, the duration of which is to be determined by order of the Prime Minister. This provision allows the administrative authorities to impose work on persons subject to a prohibition of residence once they have completed their sentence. The Committee notes the Government's indication that it will take the necessary measures to amend or repeal section 2 of Act No. 14 of 1959 referred to above. ***Taking into account the fact that this matter has been the subject of comments by the Committee for many years and that the Government has already referred in the past to a draft text to repeal this provision, the Committee trusts that the Government will indicate in its next report the progress achieved in this respect.***

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

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

C144 - Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)**Observation 2017**

The Committee notes with *regret* that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2014.

Technical assistance. In its conclusions of June 2013, the Conference Committee invited the Government to take all appropriate measures to ensure the effective operation of the procedures required by this governance Convention. The Government states in its report, received in November 2014, that it always advocates social dialogue with the social partners. The Committee notes that the Government submitted reports on ratified Conventions to the social partners for any possible observations, as agreed at a workshop held in Dakar in July 2014 on constitutional obligations. The Committee was also informed about a capacity-building workshop on international labour standards and social dialogue, which was held in Ndjamena in September 2014. With ILO assistance, and in the framework of the follow-up requested by the Conference Committee pursuant to a tripartite discussion held in June 2013, the participants put forward various proposals to strengthen the consultation procedures required by the Convention, including the convening of a tripartite workshop with the departments and units to address the information required in the Committee of Expert's comments, and a tripartite workshop for the validation of reports before they are submitted to the ILO. ***The Committee invites the Government to submit further information on the progress made as a result of the assistance received from the ILO on matters related to tripartite consultations and social dialogue.***

Articles 2 and 5 of the Convention. Consultation mechanisms and effective tripartite consultations. The Government states that in 2013, the Higher Committee for Labour and Social Security convened with a view to incorporating the technical comments in the draft Labour Code. The Committee also notes that this Higher Committee was inactive in 2014. ***The Committee invites the Government to provide detailed information on the consultations held on all the items covered by Article 5(1) of the Convention.***

Article 4(2). Training. The Government confirms that training for participants in consultative procedures is necessary, but that more often than not there is a problem of funding. The Committee notes the possibility of the Government intervening directly or through third-party development partners to make training possible. ***The Committee invites the Government to describe any arrangements made for the financing of any necessary training of participants on the consultative procedures.***

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

C151 - Labour Relations (Public Service) Convention, 1978 (No. 151)**Observation 2017**

The Committee notes with *concern* that the Government's report has not been received. It hopes that the next report will contain full information on the matters raised in its previous comments initially made in 2009.

Article 1 of the Convention. Scope of application. Noting that section 3 of the General Public Service Regulations excludes from their scope of application local government officials, employees in public establishments and auxiliary personnel employed by the administration who are governed by a specific text, the Committee requests the Government to indicate the legal texts in force which recognize for all these categories of public employees, the rights and guarantees envisaged by the Convention. In so far as legal texts governing the specific conditions of service of these public employees grant them these rights and guarantees, the Committee requests the Government to provide copies thereof.

Article 4. Adequate protection against acts of anti-union discrimination. The Committee notes that, while section 10 of the General Public Service Regulations provides that there may be no discrimination between public employees on the grounds of their trade union opinions, no provision in the Regulations, or in other texts applicable to public employees, establishes protection against discrimination in the exercise of trade union activities. ***The Committee urges the Government to take measures to include in the legislation provisions that explicitly provide adequate protection for public employees against discrimination on the grounds of their trade union membership or activities.***

Article 5. Adequate protection against acts of interference. Noting that neither the General Public Service Regulations, nor other texts applicable to public employees, contain provisions prohibiting acts of interference by the public authorities in the internal affairs of unions, and recalling the need,

in accordance with the Convention, to fully guarantee adequate protection for organizations against any acts of interference by public authorities in their establishment, operation and administration, the Committee urges the Government to take measures to include such protective provisions in the legislation.

Article 6. Facilities to be afforded to workers' representatives. Noting the absence of provisions in the General Public Service Regulations explicitly providing for such facilities, the Committee once again urges the Government to take measures, as required by the Convention, with a view to ensuring, through the adoption of legislative provisions or other means, that facilities are afforded to the representatives of recognized public employees' organizations in order to allow them to perform their functions promptly and efficiently both during working hours and at other times.

Article 7. Procedures for determining terms and conditions of employment. The Committee urges the Government to provide a copy of the Decree determining the composition, operation and appointment of the members of the Public Service Advisory Committee, and to indicate any consultations or agreement concluded with trade union organizations in the public sector over recent years.

Article 8. Settlement of disputes. Noting the absence of provisions in this respect, the Committee once again urges the Government to take measures to establish a procedure offering guarantees of independence and impartiality (such as mediation, conciliation or arbitration) with a view to settling disputes arising out of the determination of the terms and conditions of employment of public employees.

The Committee expects that the Government will take all the necessary measures without delay in consultation with the representative organizations concerned, and will act on the Committee's comments and accordingly give full effect to the provisions of the Convention.

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

Observation 2017

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2014.

Article 3(a) of the Convention. All forms of slavery or practices similar to slavery. Forced recruitment of children for use in armed conflict. In its previous comments, the Committee noted that, according to the report of the United Nations Secretary-General on children and armed conflict of 15 May 2013 (A/67/845-S/2013/245, paragraphs 45 and 46), despite progress in the implementation of the action plan signed between the Government and the United Nations in June 2011 concerning children associated with the armed forces and armed groups in Chad, and although the national army of Chad did not recruit children as a matter of policy, the country task force verified 34 cases of recruitment of children by the army during the reporting period. The 34 children appeared to have been enlisted in the context of a recruitment drive in February–March 2012, during which the army gained 8,000 new recruits. In this respect, the Committee noted the new roadmap of May 2013, adopted further to the review of the implementation of the action plan concerning children associated with the armed forces and armed groups in Chad and aimed at achieving full observance of the 2011 action plan by the Government of Chad and the United Nations task force. The Committee observed that, in the context of the roadmap, one of the priorities was to speed up the adoption of the preliminary draft of the Child Protection Code, which prohibits the recruitment and use of young persons under 18 years of age in the national security forces and lays down penalties to that effect. Moreover, during 2013 it was planned to establish transparent, effective and accessible complaint procedures regarding cases of recruitment and use of children, and also to adopt measures for the immediate and independent investigation of all credible allegations of recruitment or use of children, for the persecution of perpetrators and for the imposition of appropriate disciplinary sanctions.

The Committee takes note of the information contained in the United Nations Secretary-General's report of 15 May 2014 to the Security Council on children and armed conflict (A/68/878-S/2014/339). According to this report, the deployment of Chadian troops to the African-led International Support Mission in Mali (AFISMA) has prompted renewed momentum to accelerate the implementation of the action plan signed in June 2011 to end and prevent underage recruitment in the Chadian National Army, and the Chadian authorities have renewed their commitment to engage constructively with the United Nations to expedite the implementation of the action plan. The Government of Chad, in cooperation with the United Nations and other partners, has therefore taken significant steps to fulfil its obligations. For example, a presidential directive was adopted in October 2013 to confirm 18 years as the minimum age for recruitment into the armed and security forces. This directive also establishes age verification procedures and provides for penal and disciplinary sanctions to be taken against those violating the orders. The directive was disseminated among the commanders of all defence and security zones, including in the context of several training and verification missions. Furthermore, on 4 February 2014, a presidential decree explicitly criminalized the recruitment and use of children in armed conflict.

The Secretary-General states, however, that while the efforts made by the Government to meet all obligations under the action plan have resulted in significant progress, a number of challenges remain to ensure sustainability and the effective prevention of violations against children. Chad should pursue comprehensive and thorough screening and training of its armed and security forces to continue to prevent the presence of children, including in the light of Chad's growing involvement in peacekeeping operations. While no new cases of recruitment of children were documented by the United Nations in 2013 and no children were found during the joint screening exercises carried out with the Chadian authorities, interviews confirmed that soldiers had been integrated in the past into the Chadian National Army from armed groups while still under the age of 18. According to the Secretary-General, the strengthening of operating procedures, such as those for age verification, which ensure the accountability of perpetrators, should remain a priority for the Chadian authorities. Finally, the Secretary-General invited the National Assembly to proceed as soon as possible with the examination and adoption of the Child Protection Code, which should provide greater protection for the children of Chad. ***The Committee therefore requests the Government to intensify its efforts to end, in practice, the forced recruitment of children under 18 years of age by the armed forces and armed groups and to undertake immediately the full demobilization of all children. The Committee urges the Government to take immediate measures to ensure that the perpetrators are investigated and prosecuted and that sufficiently effective and dissuasive penalties are imposed on persons found guilty of recruiting and using children under 18 years of age in armed conflict. Finally, the Committee urges the Government to take the necessary measures to ensure the adoption of the Child Protection Code as soon as possible.***

Article 7(2). Effective and time-bound measures. Clauses (b) and (c). Preventing children from being engaged in the worst forms of child labour, removing children from these forms of labour and ensuring their rehabilitation and social integration. Children who have been enlisted and used in armed conflict. In its previous comments, the Committee noted that, according to the report of the United Nations Secretary-General on children and armed conflict of 15 May 2013 (A/67/845-S/2013/245, paragraph 49), the actions taken by the Government for the release, temporary care and reunification of separated children, while encouraging, were not yet in line with the commitments made in the action plan signed between the Government and the United Nations in June 2011 concerning children associated with the armed forces and armed groups in Chad. The Committee noted that one of the priorities referred to in the 2013 roadmap was to secure the release of children and support their reintegration.

The Committee notes that, according to the Secretary-General's report of 15 May 2014, a central child protection unit has been established in the Ministry of Defence, as well as in each of the eight defence and security zones, to coordinate the monitoring and protection of children's rights and to implement awareness-raising activities. Between August and October 2013, the Government and the United Nations jointly conducted screening and age verification of approximately 3,800 troops of the Chadian national army in all eight zones. The age verification standards had been previously developed during a workshop organized by the United Nations in July. In addition, between August and September 2013, a training-of-trainers programme on child protection was attended by 346 members of the Chadian National Army. As from July 2013, troops of the Chadian National Army deployed in Mali started to receive pre deployment training on child protection and international humanitarian law; in December of the same year, 864 troops attended child protection training at the Loumia training centre.

Chad

The Committee encourages the Government to intensify its efforts and continue its collaboration with the United Nations in order to prevent the enrolment of children in armed groups and improve the situation of child victims of forced recruitment for use in armed conflict. In addition, the Committee requests the Government once again to supply information on measures taken to ensure that child soldiers removed from the armed forces and groups receive adequate assistance for their rehabilitation and social integration, including reintegration into the school system or vocational training, wherever appropriate. It requests the Government to supply information on the results achieved in its next report.

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

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

C077 - Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77)**Observation 2017**

In order to provide an overview of all the issues relating to the application of the ratified Conventions on the medical examination of young persons, the Committee considers it appropriate to examine Conventions Nos 77 and 78 in a single comment.

The Committee notes the comments made by the Workers Confederation of Comoros (CTC), received on 16 August 2016 and 25 July 2017.

Article 6 of Conventions Nos 77 and 78. Vocational guidance and physical and vocational rehabilitation of children and young persons found to be unsuited to certain types of work. In its previous comments, the Committee noted that the new Labour Code of Comoros was adopted in 2012 by virtue of Act No. 12–167. Pursuant to section 130 of the Code, labour inspectors may require the examination of children by a registered physician with a view to ensuring that the work they have been assigned does not exceed their strength. Children cannot continue to be assigned to such work and must be assigned to a job that is suited to them and, if this is not possible, the contract must be terminated with payment of compensation in lieu of notice. The Government also indicated that an Order on the types of work and categories of enterprises prohibited for young persons was adopted and published in 2014. The Government further indicated that, under section 17 of the Order, children hired for work that they are prohibited to perform have to be reassigned to work that is suited to them. The Committee nevertheless reminded the Government that *Article 6* requires appropriate measures to be taken by the competent authority for the vocational guidance and physical and vocational rehabilitation of children and young persons found by medical examination to be unsuited to certain types of work or to have physical disabilities or limitations. The Committee emphasized that this situation also occurs in jobs that are not generally prohibited for young persons, but in which they are found to be unsuited to work that would otherwise be allowed.

The Committee notes with *regret* that the Government has not provided any new information on this subject. ***The Committee requests the Government to take specific measures for the vocational guidance and physical and vocational rehabilitation of children and young persons found by medical examination to be unsuited to certain types of work or to have physical disabilities or limitations, in accordance with Article 6(1). It requests the Government to provide information on the progress achieved in this regard.***

Article 7(2) of Convention No. 78. Scope of application and supervision of the application of the system of medical examination for fitness for employment to young persons engaged either on their own account or on account of their parents. In its previous comments, the Committee noted that the Labour Code of 1984 did not seem to cover apprentices or children and young persons working on their own account, in itinerant trading or in any other occupation carried out in the streets or in a public place (for the latter, *Article 7(2)* also provides for measures of identification, to be determined by national laws or regulations, in order to ensure the application of the system of medical examination). The Committee also noted the observation of the CTC that non-industrial occupations are outside the scope of the labour inspectorate's supervision. The Committee further noted the Government's indication that, in the context of the revision of the national labour legislation, all the necessary measures would be examined in order to bring the legislation into conformity with the provisions of the Convention. The Committee expressed the firm hope that the Bill revising the Labour Code would be adopted in the very near future and that its provisions would give effect to *Article 7* of the Convention.

The Committee notes with *interest* that, by virtue of section 129(2) of the new Labour Code of 2012, children under the age of 15 years are prohibited from working on their own account. The Committee also notes that, under section 130 of the Labour Code, labour inspectors may require the examination of children by a registered physician with a view to ensuring that the work they have been assigned does not exceed their strength. Such an examination is mandatory when requested by the parties concerned.

However, the Committee notes the observations of the CTC that, although the legislative texts provide for the medical examination of young persons, there is no supervision by the labour inspectorate in practice. Furthermore, the CTC expresses its regret that the problem of medical examinations of young persons is far from being resolved, given the lack of a functional service in the Ministry and the fact that this issue is not a priority for the administration. The Committee recalls that, under the terms of *Article 7(2)(a)*, national laws or regulations shall determine the measures of identification to be adopted to ensure the application of the system of medical examination for fitness for employment to children and young persons engaged either on their own account or on account of their parents in itinerant trading or in any other occupation carried out in the streets or in places to which the public have access. Under *Article 7(b)*, national laws or regulations shall also determine the other methods of supervision to be adopted to ensure the strict enforcement of the Convention. ***The Committee therefore requests the Government to take the necessary measures to establish supervision of the application of the system of medical examination for fitness for employment to young persons engaged either on their own account or on account of their parents, in itinerant trading or in any other occupation carried out in the streets or in places to which the public have access. It requests the Government to provide information on any progress achieved in this regard.***

C078 - Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 78)**Observation 2017**

In order to provide an overview of all the issues relating to the application of the ratified Conventions on the medical examination of young persons, the Committee considers it appropriate to examine Conventions Nos 77 and 78 in a single comment.

The Committee notes the comments made by the Workers Confederation of Comoros (CTC), received on 16 August 2016 and 25 July 2017.

Article 6 of Conventions Nos 77 and 78. Vocational guidance and physical and vocational rehabilitation of children and young persons found to be unsuited to certain types of work. In its previous comments, the Committee noted that the new Labour Code of Comoros was adopted in 2012 by virtue of Act No. 12–167. Pursuant to section 130 of the Code, labour inspectors may require the examination of children by a registered physician with a view to ensuring that the work they have been assigned does not exceed their strength. Children cannot continue to be assigned to such work and must be assigned to a job that is suited to them and, if this is not possible, the contract must be terminated with payment of compensation in lieu of notice. The Government also indicated that an Order on the types of work and categories of enterprises prohibited for young persons was adopted and published in 2014. The Government further indicated that, under section 17 of the Order, children hired for work that they are prohibited to perform have to be reassigned to work that is suited to them. The Committee nevertheless reminded the Government that *Article 6* requires appropriate measures to be taken by the competent authority for the vocational guidance and physical and vocational rehabilitation of children and young persons found by medical examination to be unsuited to certain types of work or to have physical disabilities or limitations. The Committee emphasized that this situation also occurs in jobs that are not generally prohibited for young persons, but in which they are found to be unsuited to work that would otherwise be allowed.

The Committee notes with *regret* that the Government has not provided any new information on this subject. ***The Committee requests the Government to take specific measures for the vocational guidance and physical and vocational rehabilitation of children and young persons found by medical examination to be unsuited to certain types of work or to have physical disabilities or limitations, in accordance with Article 6(1). It requests the Government to provide information on the progress achieved in this regard.***

Article 7(2) of Convention No. 78. Scope of application and supervision of the application of the system of medical examination for fitness for employment to young persons engaged either on their own account or on account of their parents. In its previous comments, the Committee noted that the Labour Code of 1984 did not seem to cover apprentices or children and young persons working on their own account, in itinerant trading or in any other occupation carried out in

the streets or in a public place (for the latter, *Article 7(2)* also provides for measures of identification, to be determined by national laws or regulations, in order to ensure the application of the system of medical examination). The Committee also noted the observation of the CTC that non-industrial occupations are outside the scope of the labour inspectorate's supervision. The Committee further noted the Government's indication that, in the context of the revision of the national labour legislation, all the necessary measures would be examined in order to bring the legislation into conformity with the provisions of the Convention. The Committee expressed the firm hope that the Bill revising the Labour Code would be adopted in the very near future and that its provisions would give effect to *Article 7* of the Convention.

The Committee notes with *interest* that, by virtue of section 129(2) of the new Labour Code of 2012, children under the age of 15 years are prohibited from working on their own account. The Committee also notes that, under section 130 of the Labour Code, labour inspectors may require the examination of children by a registered physician with a view to ensuring that the work they have been assigned does not exceed their strength. Such an examination is mandatory when requested by the parties concerned.

However, the Committee notes the observations of the CTC that, although the legislative texts provide for the medical examination of young persons, there is no supervision by the labour inspectorate in practice. Furthermore, the CTC expresses its regret that the problem of medical examinations of young persons is far from being resolved, given the lack of a functional service in the Ministry and the fact that this issue is not a priority for the administration. The Committee recalls that, under the terms of *Article 7(2)(a)*, national laws or regulations shall determine the measures of identification to be adopted to ensure the application of the system of medical examination for fitness for employment to children and young persons engaged either on their own account or on account of their parents in itinerant trading or in any other occupation carried out in the streets or in places to which the public have access. Under *Article 7(b)*, national laws or regulations shall also determine the other methods of supervision to be adopted to ensure the strict enforcement of the Convention. *The Committee therefore requests the Government to take the necessary measures to establish supervision of the application of the system of medical examination for fitness for employment to young persons engaged either on their own account or on account of their parents, in itinerant trading or in any other occupation carried out in the streets or in places to which the public have access. It requests the Government to provide information on any progress achieved in this regard.*

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

Observation 2017

The Committee notes the observations of the Workers' Confederation of Comoros (CTC), received on 1 August 2017, relating to matters examined by the Committee in the present observation, and it requests the Government to provide its comments in this regard. The Committee notes that, in response to the observations of the CTC in 2013, the Government indicates that the trade union leaders who had been dismissed have been reinstated. *The Committee requests the Government to provide its comments on the other matters raised by the CTC, and particularly the allegations of employer pressure against trade union leaders of the CTC, the Union of Health and Education Workers and a new trade union in a communications enterprise to persuade them to end their trade union activities.*

Articles 4 and 6 of the Convention. Promotion of collective bargaining in the private and public sectors (employees of public enterprises and public servants not engaged in the administration of the State). In its previous comments, the Committee once again regretted the absence of progress in relation to collective bargaining which, according to the CTC, was not structured and had no framework at any level, and particularly that joint bodies in the public service had still not been established. The Committee notes that the CTC in its 2017 observations makes particular reference to decrees and implementing orders covering the Higher Council of the Public Service, the Joint Commission and the Medical Commission established to provide a framework for bargaining, but which have still not been signed following their preparation in 2015, thereby opening the way for regulations and measures which are not in conformity with the law to the prejudice of employees of the public service. *While taking note of the request made by the Government in its report for technical assistance, the Committee urges the Government to take the necessary measures to promote collective bargaining in both the private and the public sectors (employees of public enterprises and public servants not engaged in the administration of the State). The Committee requests the Government to provide information on this subject.*

The Committee notes the adoption of the Act of 28 June 2012 repealing, amending and supplementing certain provisions of Act No. 84-108/PR issuing the Labour Code.

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

C122 - Employment Policy Convention, 1964 (No. 122)

Observation 2017

The Committee notes the observations made by the Workers Confederation of Comoros (CTC), received on 1 August 2017. *It requests the Government to provide its comments on the matter.*

Article 1 of the Convention. Implementation of an active employment policy. Youth employment. In its previous comments, the Committee requested the Government to indicate in its next report whether the Act issuing the national employment policy had been adopted and to indicate whether specific difficulties had been encountered in achieving the objectives set out in the national Poverty Reduction and Growth Strategy Paper (PRGSP). The Committee notes with *interest* that the national employment policy act (PNE) was adopted through the promulgation on 3 July 2014 of Decree No. 14-11/PR enacting Framework Act No. 14-020/AU of 21 May 2014 issuing the national employment policy. The Government indicates that this Act aims to provide a common and coherent vision of the strategic approaches for taking national action on employment, by increasing opportunities for low-income population groups to access decent work and a stable and sustainable income. The Government adds that in November 2014, with ILO support, it developed and adopted the Emergency Plan for Youth Employment (PUREJ), which is part of the process to implement the PNE. The PUREJ involves the adoption of programmes to promote youth employment which result from priority measures identified in the strategic framework of the PNE and integrated in the Strategy for Accelerated Growth and Sustainable Development (SCA2D). The Government adds that the overall objective of the PUREJ is to ensure strong employment growth in the short and medium term. In this context, the PUREJ focuses mainly on the promotion of youth employment in job-creating sectors for a period of two years, in order to contribute to the diversification of the economy, the production of goods and services and the building of social peace. The Government points out that the objective was to create 5,000 new decent and productive jobs for young persons and women by the end of 2016, through the development of skills in line with the needs of priority sectors of the Comorian economy and support for the promotion of employment and vocational integration. The Committee notes that in May 2015 the Government signed, together with the constituents and the ILO, the second generation Decent Work Country Programme (DWCP), of which the main priority is to ensure the promotion and governance of employment. The Committee notes the observations of the CTC which indicate that the implementation of the PNE is not effective. It points out that the vocational training component, which is being conducted through a project with the European Union, is the only one being applied. In this regard, the provisions and mechanisms of the PNE have not been implemented and the text has not been disseminated to the public. The CTC also reports the dismissal of over 5,000 young persons without compensation. *The Committee once again requests the Government to indicate whether*

specific difficulties have been encountered in achieving the objectives set out in the PRGSP. It requests the Government to provide more detailed information on the measures taken with a view to achieving the employment priorities established in the framework of the DWCP 2015–19, and on the impact of measures and programmes such as the PUREJ, which are aimed at increasing access to decent work for young persons. In this regard, the Committee requests the Government to indicate the number of young persons who have benefited from these programmes.

Article 2. Collection and use of employment data. The Committee once again requests the Government to provide detailed information on the progress made with the collection of data on the labour market, and on the manner in which this data is taken into consideration during the formulation and implementation of the employment policy. It reminds the Government that it may avail itself of ILO technical assistance if it so wishes.

Article 3. Participation of the social partners. The Committee once again requests the Government to include full information on the consultations envisaged in Article 3 of the Convention, which requires the participation of all of the persons affected, and particularly employers' and workers' representatives, in the formulation and implementation of employment policies. The Committee hopes that the Government will make every effort to take the necessary measures without delay.

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

Observation 2017

Article 2(3) of the Convention. Compulsory schooling and application of the Convention in practice. In its previous comments, the Committee noted that child labour was a visible phenomenon in the country, particularly as a result of poverty and of the low school enrolment rate in some cases. In this regard, the Committee noted that the capacity of schools was very limited and that some primary and secondary schools were obliged to refuse to enrol certain children of school age. Consequently, a large number of children, particularly from poor families and disadvantaged backgrounds, were deprived of an education.

The Committee noted the Government's indication that there had been a positive trend towards gender parity in school, standing at 0.87 at primary level. However, it was less satisfactory at secondary level, where the numbers of girls in school had fallen significantly. According to the Government, particular problems in the educational situation for girls involved late enrolment, a very high repetition rate – around 30 per cent in primary school and 23 per cent in secondary school – and a high drop-out rate, with only 32 per cent of pupils completing primary education.

The Committee notes the Government's statement in its report that it is taking steps to reduce the disparity in school enrolment rates for girls and boys. The Government indicates that the school mapping system is being revised by the Ministry of Education, in conjunction with the education offices and UNICEF, with a view to boosting educational coverage and ensuring better access to education for children living in rural areas. Moreover, the Committee notes that a UNICEF country programme has been adopted for 2015–19, which aims, among other things, to support the Government's efforts to enhance children's right to education. One of the main objectives of the programme is to ensure that all children are enrolled in and complete inclusive, high-quality education, with the focus on equity and achievement.

However, the Committee notes that section 2 of Framework Act No. 94/035/AF of 20 December 1994 provides that schooling is only compulsory from 6 to 12 years of age, which is three years earlier than the minimum age for admission to employment or work, namely 15 years. Referring to the General Survey of 2012 on the fundamental Conventions, the Committee observes that if compulsory schooling comes to an end before children are legally entitled to work, a vacuum may arise which regrettably opens the door for the economic exploitation of children (paragraph 371). The Committee therefore considers it desirable to raise the age of completion of compulsory schooling so that it coincides with the minimum age for admission to employment or work, as provided for in Paragraph 4 of the Minimum Age Recommendation, 1973 (No. 146). ***Recalling that compulsory education is one of the most effective means of combating child labour, the Committee strongly encourages the Government to take the necessary steps to make education compulsory until the minimum age for admission to employment, namely 15 years. Moreover, the Committee requests that the Government intensify its efforts to increase the school attendance rate and reduce the school drop-out rate, especially among girls, in order to prevent children under 15 years of age from working. The Committee requests that the Government provide information on the results achieved in this respect.***

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

C029 - Forced Labour Convention, 1930 (No. 29)**Observation 2017**

The Committee notes with *concern* that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2012. The Committee also notes that the Government has been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

Article 2(2)(a) of the Convention. 1. *Work exacted under compulsory military service laws.* For many years the Committee has been drawing the Government's attention to the fact that section 1 of Act No. 16 of 27 August 1981 establishing compulsory military service is not in conformity with the Convention. Under this provision, national service is instituted for the purpose of enabling every citizen to participate in the defence and construction of the nation and has two components: military service and civic service. The Committee has repeatedly emphasized that work exacted from recruits as part of compulsory national service, including work related to national development, is not purely military in nature and is therefore contrary to *Article 2(2)(a)* of the Convention.

The Committee notes that the Government once again indicates that it is committed to repealing the abovementioned Act and this will be seen in practice in the revision of the Labour Code, which is in progress. *The Committee again expresses the strong hope that when the Labour Code is revised, the necessary steps will be taken to amend or repeal the Act establishing compulsory military service so as to bring the legislation into conformity with the Convention. The Government is requested to supply information on any progress made in this respect.*

2. *Youth brigades and workshops.* In its previous comments the Committee noted the Government's indication that Act No. 31-80 of 16 December 1980 on guidance for youth had fallen into disuse since 1991. Under this Act, the party and mass organizations were supposed to create, over time, all the conditions for establishing youth brigades and organizing youth workshops (type of tasks performed, number of persons involved, duration and conditions of their participation, etc.). The Committee once again notes the Government's indication that it is committed to repealing the abovementioned Act and this will be seen in practice in the revision of the Labour Code, which is in progress. *The Committee expresses the strong hope that when the Labour Code is revised, the necessary steps will be taken to formally repeal Act No. 31-80 of 16 December 1980 on guidance for youth.*

Article 2(2)(d). Requisitioning of persons to perform community work in instances other than emergencies. For many years the Committee has been drawing the Government's attention to the fact that Act No. 24-60 of 11 May 1960 is not in conformity with the Convention in that it allows the requisitioning of persons to perform community work in instances other than the emergencies provided for under *Article 2(2)(d)* of the Convention, and provides that persons requisitioned who refuse to work are liable to imprisonment ranging from one month to one year.

The Committee again notes the Government's indication that this Act has fallen into disuse and may be considered as repealed, in view of the fact that the Labour Code (section 4) and the Constitution (article 26), which prohibit forced labour, annul all the provisions of national law which are contrary to them. The Government explains that, in order to avoid any legal ambiguity, a text will be adopted enabling a clear distinction to be made between work of public interest and the forced labour prohibited by the Labour Code and the Constitution. The Government also indicates that the practice of mobilizing sections of the population for community work, on the basis of the provisions of section 35 of the statutes of the Congolese Labour Party (PCT), no longer exists. Tasks such as weeding and clean-up work are carried out by associations, state employees and local communities on a voluntary basis, therefore without any compulsion involved. Moreover, the voluntary nature of work for the community will be established in the revision of the Labour Code in such a way as to clearly bring the national legislation into conformity with the provisions of the Convention. *The Committee notes this information and hopes that appropriate measures will be taken to clarify the situation in both law and practice, especially by the adoption of a text enabling a distinction to be made between work in the public interest and forced labour.*

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.

C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**Observation 2017**

The Committee notes with *concern* that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2016. The Committee also notes that the Government had been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

The Committee notes the Government's reply to the allegations made by the International Trade Union Confederation (ITUC) in 2014 concerning a strike by teachers that reportedly resulted in: (i) the arbitrary arrest of teachers who are trade unionists by the Directorate-General for Territorial Surveillance (DGST); and (ii) the abduction in June 2013 of Mr Dominique Ntsienkoulou, a member of the Dialogue Group for the Redevelopment of the Teaching Profession (CRPE), by officials of the Provincial Directorate for Territorial Surveillance (DDST) and his subsequent disappearance. The Committee notes that, according to the Government: (i) the Directorate-General of the Police (and not the DGST) summoned the leaders of the CRPE to explain the reasons for their excessive action during the strike; and (ii) Mr Ntsienkoulou left his home on his own initiative and was never arrested, abducted or investigated by the national police services. In light of the divergent information provided by the ITUC and the Government, the Committee wishes to recall that the public authorities must not interfere in the legitimate activities of trade union organizations by subjecting workers to arrest or arbitrary detention, and that the arrest and detention of trade unionists, without any charges being brought or without a warrant, constitute a serious violation of the trade union rights enshrined in the Convention. *The Committee trusts that the Government will ensure that these principles are fully respected and urgently requests it to further investigate the situation of Mr Ntsienkoulou, particularly as to his safety and whereabouts and to provide information in this respect.*

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.

C100 - Equal Remuneration Convention, 1951 (No. 100)**Observation 2017**

Articles 1 and 2(a) of the Convention. Principle of equal remuneration for men and women workers for work of equal value. Laws and regulations. The Committee recalls that, since 2005, it has been drawing the Government's attention to the need to amend sections 80(1) and 56(7) of the Labour Code, which limit the application of the principle of equal remuneration to the existence of "equal working conditions, qualifications and output" (section 80(1)) or to "equal work" (section 56(7)), and do not reflect the notion of "work of equal value". The Committee notes that the Government reaffirms that amendments to sections 80(1) and 56(7) of the Labour Code are envisaged to ensure that the concept of "work of equal value" is binding. *Noting the Government's commitment, the Committee requests it to ensure, within the framework of the ongoing revision of the Labour Code, that the principle of equal remuneration for men and women workers for work of equal value set out in the Convention is set out in the Labour Code.*

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

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

Observation 2017

Articles 1–3 of the Convention. Protection against discrimination. Legislation. For many years the Committee has been emphasizing the shortcomings in the Labour Code and the General Civil Service Regulations regarding the protection of workers against discrimination, since these texts do not cover all of the grounds of discrimination or all the aspects of employment and occupation set out in the Convention. The Committee recalls that the Labour Code only covers the grounds of "origin", gender, age and status in relation to wage discrimination (section 80) and the grounds of opinion, trade union activity, membership or not of a political, religious or philosophical group or a specific trade union in relation to dismissal (section 42). The General Civil Service Regulations prohibit any distinction between men and women in relation to their general application and any discrimination on the basis of family situation in relation to access to employment (sections 200 and 201). The Committee notes the Government's indication that a preliminary draft of a new Bill amending and supplementing certain provisions of the Labour Code will take into account the grounds of discrimination set out in *Article 1(1)(a)*. **The Committee asks the Government to ensure that, within the framework of the ongoing revision of the Labour Code, discrimination on all of the grounds set out in the Convention is explicitly prohibited, as well as discrimination on any other grounds which it considers appropriate to include in the Code, at all stages of employment and occupation, including recruitment. The Committee also asks the Government to take the necessary measures to amend the provisions of the General Civil Service Regulations in order to ensure that civil servants are protected as a minimum in relation to the grounds set out in Article 1(1)(a) in respect of all aspects of employment, including recruitment and promotion. The Committee also requests the Government to provide information on any legislative developments in this respect.**

Article 1(1)(a). Discrimination based on sex. Sexual harassment. The Committee notes that the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) expressed deep concern at the high prevalence of violence against women and girls, especially sexual harassment at school and at work, the delay in adopting a comprehensive law to combat all forms of violence against women and the lack of awareness regarding this issue and of reporting of gender-based violence (CEDAW/C/COG/CO/6, 23 March 2012, paragraph 23). The Committee notes the Government's indication that, since 2011, the new draft Bill amending and supplementing certain provisions of the Labour Code has contained provisions against sexual harassment. **The Committee once again asks the Government to ensure that provisions covering both *quid pro quo* harassment and sexual harassment which creates a hostile, intimidating or offensive environment are adopted and that they protect the victims of sexual harassment and establish penalties for the perpetrators. The Committee also asks the Government to take steps, in collaboration with employers' and workers' organizations, to prevent and combat sexual harassment, such as awareness-raising measures for employers, workers and educators as well as for labour inspectors, lawyers and judges, and to establish information systems and complaints procedures which take into account the sensitive nature of this issue in order to bring an end to these practices and allow victims to exercise their rights without losing their jobs.**

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

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

Observation 2017

Article 1 of the Convention. National policy and application of the Convention in practice. In its previous comments, the Committee noted that a large number of children were involved in economic activity but that no national policy had been adopted in this regard. It noted the Government's indication that there were no inspection reports providing any information on the presumed or actual employment of children in enterprises in Congo during the reporting period. However, the Committee noted that 25 per cent of Congolese children were involved in child labour, according to UNICEF statistics.

The Committee notes with *regret* that the Government's report still does not contain any information on the adoption of a national policy for ensuring the effective abolition of child labour. The Committee also observes that the United Nations Committee on the Rights of the Child (CRC), in its concluding observations of 2014, noted that child labour and the economic exploitation of children remain widespread, particularly in the big cities (CRC/C/COG/CO/2-4, paragraph 74). **Expressing its deep concern at the large number of children working below the minimum age in the country, and given the lack of a national policy designed to ensure the effective abolition of child labour, the Committee once again urges the Government to take the necessary steps to ensure the adoption and implementation of such a policy as soon as possible. It requests that the Government provide detailed information in its next report on the measures taken in this respect.**

Article 3(2) and (3). Determination of hazardous types of work and age of admission to hazardous work. In its previous comments, the Committee noted that section 4 of Order No. 2224 of 24 October 1953, which establishes employment exemptions for young workers, determines the types of work and the categories of enterprises prohibited for young persons and sets the age limit for the prohibition, prohibits the employment of young persons under 18 years of age in certain hazardous types of work, and includes a list of such types of work.

The Committee notes the Government's indication that Order No. 2224 is no longer in force. The Committee also notes that section 68(d) of Act No. 4-2010 of 14 June 2010 concerning child protection (Child Protection Act) provides that any work which, by its nature or the conditions in which it is performed, is likely to harm the health, safety or morals of the child is prohibited. It also provides that a decree issued further to the opinion of the National Labour Advisory Committee shall determine the list and the types of work and the categories of enterprises prohibited for children and the age limit for the prohibition. **The Committee requests that the Government take the necessary steps to ensure the adoption as soon as possible of the decree determining the list of hazardous types of work, in accordance with section 68(d) of the Child Protection Act.**

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

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

Observation 2017

The Committee notes with *deep concern* that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2008. The Committee also notes that the Government has been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or similar practices. Sale and trafficking of children. In its previous comments, the Committee noted the Government's statement that there is child trafficking between Benin and the Congo for the purpose of forcing children to work in Pointe-Noire in trading and domestic work. According to the Government, the children are forced to work all day in harsh conditions by their host families, and are subjected to all kinds of hardships. The Committee noted that sections 345, 354 and 356 of the Penal Code lay down penalties for anyone

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found guilty of the forcible or fraudulent abduction of persons including young persons under 18 years of age. It requested the Government to indicate to what extent sections 345, 354 and 356 of the Penal Code have been implemented in practice. ***The Committee requests the Government once again to supply information on the application of sections 345, 354 and 356 of the Penal Code in practice, including, in particular, statistics on the number and nature of offences reported, investigations, prosecutions, convictions and penalties imposed.***

Article 7(2). Effective and time-bound measures. Clause (b). Removal of children from the worst forms of child labour and ensuring their rehabilitation and social integration. Sale and trafficking of children. In its previous observations, the Committee noted the Government's statement acknowledging that the trafficking of children between Benin and Congo for the purpose of forcing children to work in Pointe-Noire in trading and domestic work is contrary to human rights. It also noted that the Government has taken certain measures to curb child trafficking, including: (a) the repatriation by the Consulate of Benin of children who have either been picked up by the national police or removed from families; and (b) the requirement at borders (airport) for minors (young person under 18 years of age) to have administrative authorization to leave the territory of Benin. The Committee asked the Government to provide information on the impact of the measures taken with regard to the rehabilitation and social integration of children following their withdrawal from labour. It noted that the Government's report does not contain any information on this subject. ***The Committee requests the Government once again to supply information on the time-bound measures taken to remove young persons under 18 years of age from this worst form of child labour and to ensure their rehabilitation and social integration. It also requests the Government to supply information on the impact of these measures.***

Application of the Convention in practice. The Committee noted that, according to the concluding observations of the Committee on the Rights of the Child on the initial report of Congo of October 2006 (CRC/C/COG/CO/1, paragraph 85), a study of the root causes and repercussions of trafficking is due to be conducted in the country. ***The Committee requests the Government to supply information on the results of this study and to supply a copy of it once it has been prepared.***

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.

C144 - Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)**Observation 2017**

The Committee notes the observations of the Federation of Autonomous Trade Unions of Côte d'Ivoire (FESACI), received on 30 August 2016.

Article 5(1) of the Convention. Effective tripartite consultations. The Government indicates in its report that the order appointing the members of the tripartite committee on ILO matters has not yet been adopted. However, it adds that the most representative organizations of employers and workers are consulted regularly on these matters. The Government explains in this respect that meetings are initiated prior to the International Labour Conference by the Ministry of Labour concerning the items on the agenda of the Conference. However, the Committee notes that no additional information has been provided in relation to the other matters covered by *Article 5(1)* of the Convention. The FESACI recalls in its observations that the member States of the ILO are required, under the terms of the ILO Constitution, to communicate to the most representative organizations of employers and workers copies of the reports communicated to the ILO. These reports have to be sent to the Office between 1 June and 1 September each year. In its observations, the FESACI indicates that it has been denied the right to make known its views on these reports. The Committee notes that the Government's report was received by the Office on 21 October 2016. The Committee recalls that, "to be 'effective', consultations must take place before final decisions are taken, irrespective of the nature or form of the procedures adopted. ... The effectiveness of consultations thus presupposes in practice that employers' and workers' representatives have all the necessary information far enough in advance to formulate their own opinions. It should be emphasized that the mere communication of information and reports transmitted to the Office under article 23, paragraph 2, of the Constitution does not in itself meet the obligation to ensure effective consultations since, by that stage, the Government's position will already be final" (see the General Survey on tripartite consultation, 2000, paragraph 31). ***The Committee requests the Government to provide specific information on the content and outcome of the tripartite consultations held on all of the matters relating to international labour standards covered by the Convention, including questionnaires concerning items on the agenda of the Conference (Article 5(1)(a)), the proposals to be made in connection with the submission of instruments adopted by the Conference to the National Assembly (Article 5(1)(b)), the re-examination at appropriate intervals of unratified Conventions and of Recommendations to which effect has not yet been given (Article 5(1)(c)), reports to be made on the application of ratified Conventions (Article 5(1)(d)) and proposals for the denunciation of ratified Conventions (Article 5(1)(e)). The Committee also requests the Government to provide information on the adoption of the order appointing the members of the tripartite committee on ILO matters, and information on the activities of the committee relating to international labour standards.***

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

Observation 2017

Articles 1(1), 2(1) and 25 of the Convention. Forced labour and sexual slavery in the context of the armed conflict. In its previous comments, the Committee noted several reports from, inter alia, the Secretary-General of the United Nations (UN), the UN Security Council and the UN High Commissioner for Human Rights on the situation in the Democratic Republic of the Congo (documents A/HRC/27/42, S/2014/697, S/2014/698 and S/2014/222). The Committee noted that while these reports recognized the efforts made by the Government to prosecute the perpetrators of human rights violations, including public officials, they nevertheless expressed concern at the human rights situation and reports of violence, including sexual violence, committed by armed groups and the national armed forces. The Committee also noted the efforts made by the Government to combat the massive human rights violations.

The Committee notes the Government's indication in its report that it has taken the following measures to protect victims of sexual violence and facilitate their reintegration. The laws on sexual violence now supplement the Penal Code, which did not contain all the offences criminalized under international law. The Government also indicates that it has set up three local police units to ensure the protection of civilians in the zones of armed conflict.

The Committee notes that, in his April 2017 report on conflict-related sexual violence, the UN Secretary-General stated that in 2016, the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) verified 514 cases of conflict-related sexual violence committed against 340 women, 170 girls and one boy. MONUSCO rescued 40 girls, some of whom reported being subjected to sexual slavery. Verdicts were also handed down in cases involving four combatants affiliated with the then *Mouvement du 23 Mars* for rape and three Nyatura combatants for sexual slavery (S/2017/249, paragraphs 32, 33 and 35).

While noting the difficult situation in the country, the Committee is bound to express *concern* at the sexual violence committed against civilians, particularly women who are subjected to sexual exploitation. *The Committee urges the Government to step up its efforts to put an end to such acts of violence against civilians, which constitute a grave violation of the Convention, and to take immediate and effective measures so that appropriate criminal penalties are imposed on the perpetrators of these acts and the practice of sexual slavery and forced labour does not remain unpunished. It also urges the Government to intensify its efforts to ensure that the victims of such violence are fully protected. Lastly, the Committee requests the Government to provide information on the results achieved in this regard.*

Article 25. Criminal penalties. For several years, the Committee has been drawing the Government's attention to the lack of adequate criminal penalties in its legislation for the imposition of forced labour. With the exception of section 174(c) and (e) regarding forced prostitution and sexual slavery, the Penal Code does not establish appropriate criminal penalties to punish the imposition of other forms of forced labour. Moreover, the penalties established by the Labour Code in this respect are not of the dissuasive nature required by *Article 25* of the Convention (section 323 of the Labour Code establishes a principal penalty of imprisonment of a maximum of six months and/or a fine).

The Committee notes the absence of information from the Government on this matter. *The Committee once again expresses the firm hope that the Government will take the necessary measures to ensure the adoption in the very near future of adequate legislative provisions, which allow that, in accordance with Article 25 of the Convention, effective and dissuasive criminal penalties can be imposed in practice on persons exacting forced labour.*

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

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

Observation 2017

The Committee notes with *regret* that the Government's report has not been received. It also notes that the Government had been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference, owing to the failure to send reports and information on the application of ratified Conventions. *Noting that the Government received, in November 2017, technical assistance from the Office and the ILO International Training Centre in this regard, the Committee expects that the Government will be more cooperative in the future in fulfilling its constitutional obligations.* The Committee notes the observations of the International Trade Union Confederation (ITUC) in 2016, as well as in 2014 and 2013, which refer to the issues addressed in this observation and in the corresponding direct request, as well as issues concerning the application of the Convention in practice. *The Committee requests the Government to provide its comments in this regard.*

Articles 2 and 5 of the Convention. Right to organize in the public service. In its previous comments, the Committee asked the Government to take the necessary steps to ensure that the reform of the public administration and the revision of the conditions of service of career members of the public service enable the guarantees enshrined in the Convention to be afforded to all state employees. The Committee noted the Government's indication that the reform is still in progress but that the 2013 version of the draft revised conditions of service of career members of the public service had been approved by the general secretaries of the public administration to be submitted to Parliament for adoption. *The Committee once again expresses the firm hope that the Government will provide information in its next report on the adoption of new conditions of service of career members of the public service which secure the rights laid down in the Convention to all state employees.*

Furthermore, the Committee previously requested the Government to specify the instrument that safeguards the trade union rights of magistrates. The Committee noted that, according to the Government, the freedom of association of magistrates is recognized under the provisional Order of 1996 and that magistrates' trade unions exist. *The Committee requests the Government to provide information on the reform of the public administration and in particular to indicate whether provisions are envisaged to explicitly ensure that magistrates enjoy the rights laid down in the Convention.*

Article 3. Right of foreign workers to hold trade union office. The Committee notes the promulgation of Act No. 16/010 of 15 July 2016 amending and supplementing Act No. 015-2002 on the Labour Code. It notes with *regret* that new section 241 of the Labour Code continues the prior legislative requirement that eligibility for appointment to administrative or executive positions in trade unions is conditional on residence of 20 years. *Recalling that the national legislation should allow foreign workers to take up trade union office, at least after a reasonable period of residence in the host country (see the 2012 General Survey on the fundamental Conventions, paragraph 103), the Committee requests the Government to take measures to amend, to this end, section 241 of the Labour Code, as revised by the Act of July 2016.*

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

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

Observation 2017

The Committee notes with *regret* that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2011.

Article 2 of the Convention. Insertion of labour clauses in public contracts. The Committee notes the adoption of Act No. 10/010 of 27 April 2010 respecting

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public contracts. However, it notes that this new Act, which is intended to adapt the system of the conclusion of contracts to the requirements of transparency, rationality and effectiveness which currently characterize this vital sector, does not contain any provision on the labour clauses which have to be inserted in public contracts, in accordance with this Article of the Convention. In this respect, the Committee considers it necessary to refer to its 2008 General Survey, which recalls that the essential purpose of the Convention is to ensure that, through the insertion of appropriate labour clauses in public contracts, the workers employed by a contractor and paid indirectly out of public funds enjoy wages and conditions of labour which are at least as satisfactory as the wages and conditions of labour normally established for the type of work concerned, whether they are established by collective agreement or otherwise. *While noting that section 49 of Act No. 10/010 provides for the establishment of specifications determining the conditions for the execution of the contracts, which will include general administrative clauses as well as specific administrative clauses, the Committee asks the Government to take all the appropriate measures for the inclusion of provisions giving full effect to Article 2 of the Convention in the general administrative clauses contained in the specifications. The Committee hopes that, when adopting the decrees to apply the Act to public contracts, the Government will not fail to take the opportunity to bring its legislation finally into conformity with the Convention and it requests the Government to provide a copy of any new text once it has been adopted.*

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

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

Observation 2017

The Committee notes with *regret* that the Government's report has not been received. It also notes that the Government was requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference due to the failure to provide reports and information on the application of ratified Conventions. *Noting that in November 2017 the Government received technical assistance from the Office and the International Training Centre of the ILO on the subject, the Committee expects that the Government will be more cooperative in the future in fulfilling its constitutional obligations.*

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

Article 2 of the Convention. Protection against acts of interference. The Committee previously recalled that, although section 235 of the Labour Code prohibits all acts of interference by employers' and workers' organizations in each other's affairs, section 236 provides that acts of interference shall be defined more precisely in an order. *The Committee once again requests the Government to indicate any new developments regarding the adoption of the order in question, and expects that the Government's next report will indicate that specific progress has been made in this regard, in particular the inclusion of the various acts specified in Article 2 of the Convention.*

Articles 4 and 6. Collective bargaining in the public sector. In its previous comments, the Committee noted various agreements concluded between the administration and the trade unions representing public servants not engaged in the administration of the State. It concluded that, in practice, wage bargaining and agreements exist in the public sector. However, having noted that section 1 of the Labour Code expressly excludes from its scope career officials of the state public services governed by the general conditions of service and career employees and officials of state public services governed by specific conditions of service, the Committee requested the Government to take measures to ensure that the national legislation clearly guarantees the right to collective bargaining of all public servants not engaged in the administration of the State, as provided in *Articles 4 and 6* of the Convention. The Committee noted the Government's repeated indication that mechanisms for collective bargaining exist between public sector unions and the administration, such as the joint committee. *The Committee is once again bound to repeat its request to the Government to establish explicitly in the national legislation, for example as part of the public administration reform under way, the right to collective bargaining of all public servants not engaged in the administration of the State, so that the legislation is consistent with the practice. Meanwhile, it once again requests the Government to provide information on all negotiations held in the joint committee.*

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

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

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

Observation 2017

Article 1(a) of the Convention. Prison sentences involving an obligation to work imposed as a penalty for the expression of political views. Since 2005, the Committee has been drawing the Government's attention to certain provisions of the Penal Code and other legal provisions regulating freedom of expression under which criminal penalties (penal servitude) entailing compulsory labour (section 8 of the Penal Code) may be imposed in the situations covered by *Article 1(a)* of the Convention, namely:

--Penal Code, sections 74–76: injurious allegations and insults; sections 136–137: contempt towards members of the National Assembly, the Government and depositaries of the public authority or law enforcement officers; section 199bis and ter: dissemination of false rumours liable to alarm the population; section 209: dissemination of tracts, bulletins or leaflets of foreign origin or inspiration liable to harm national interests; section 211(3): display in public places of drawings, posters, engravings, paintings, photographs and all objects or images liable to cause a breach of the peace.

--Sections 73–76 of Act No. 96-002 of 22 June 1996 establishing arrangements for the exercise of freedom of the press, which refer to the Penal Code for the definition and punishment of press-related offences.

--Legislative Ordinance No. 25-557 of 6 November 1959 on penalties to be applied for infringements of general measures.

--Legislative Ordinances Nos 300 and 301 of 16 December 1963 on the punishment of offences against the head of State and foreign heads of State.

The Committee asked the Government to provide information on the application in practice of the abovementioned provisions so that it could examine their scope.

The Committee notes the Government's indication in its report that section 5 of the Penal Code provides for compulsory labour among applicable penalties and section 5bis provides that the period of compulsory labour may range from one to 20 years. The Government also indicates that the penalty of penal servitude cannot be deemed equivalent to the penalty of forced labour. However, the Committee notes that, under section 8 of the Penal Code, any person sentenced to penal servitude shall be employed either inside the prison or outside the prison in one of the types of work authorized by the prison regulations or determined by the President of the Republic. It stresses once again that the Convention protects persons against the imposition of any kind of compulsory labour, including the compulsory labour imposed within the sanction of penal servitude and not only against the imposition of forced labour, in the five instances covered by *Article 1*.

Moreover, the Committee notes that the United Nations (UN) Human Rights Council, at its 35th session (June 2017), expressed deep concern at reports of:

restrictions on the freedoms of peaceful assembly, opinion and expression; violations of the right to liberty and security of person; threats against and intimidation of members of political parties, civil society representatives and journalists; and arbitrary detention (A/HRC/35/L.37).

The Committee also notes UN Security Council resolution 2360 (2017), in which the Security Council called for the immediate implementation of the measures specified in the 31 December 2016 agreement to support the legitimacy of the transitional institutions, including by putting an end to restrictions of the political space in the country, in particular arbitrary arrests and detention of members of the political opposition and of civil society, as well as restrictions of fundamental freedoms such as the freedom of opinion and expression, including freedom of the press (S/RES/2360 (2017)).

The Committee expresses its *concern* at the current human rights situation in the country and recalls that restrictions on fundamental rights and freedoms, including the freedom of expression, may affect the application of the Convention if such restrictions can result in the imposition of penalties that involve compulsory labour. In this regard, the Committee recalls that the Convention prohibits the use of compulsory prison labour as a punishment for the expression of certain political views or for opposition to the established political, social or economic system. ***The Committee urges the Government to take the necessary measures to bring the abovementioned provisions of the Penal Code, of Act No. 96-002 of 22 June 1996, of Legislative Ordinance No. 25-557 of 6 November 1959, and of Legislative Ordinances Nos 300 and 301 of 16 December 1963 into conformity with the Convention in order to ensure that no penalty entailing compulsory labour (including compulsory prison labour) can be imposed for expressing political views or views ideologically opposed to the established political, social or economic system. The Committee requests the Government to provide information on progress made in this respect.***

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

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

Observation 2017

Article 1 of the Convention. National policy and application of the Convention in practice. In its previous comments, the Committee noted that the Committee on the Rights of the Child (CRC) expressed concern at the large number of children involved in child labour in the country. It also noted that, according to the Government's initial report to the CRC, because of the economic situation, many parents allow or even send their children to do work which they are forbidden to perform by law. The Committee observed that virtually one out of two children between 5 and 14 years of age is engaged in child labour, particularly in rural areas (46 per cent in rural areas compared to 34 per cent in urban areas).

The Committee notes the Government's indication in its report that the National Plan of Action to combat the worst forms of child labour (PAN) was adopted in 2015. However, the Committee observes that, according to the Second Demographic and Health Survey (EDS-RDC II 2013–14), 38 per cent of children between 5 and 17 years of age who were questioned had worked during the week preceding the survey, among whom 27.5 per cent had worked under dangerous conditions (pages 336–337). The Committee expresses its *deep concern* at the number of children involved in child labour, including in dangerous conditions. ***The Committee urges the Government to step up its efforts to secure the elimination of child labour. It requests that the Government provide information on the application of the Convention in practice, including statistics, disaggregated by gender and age, on the employment of children and young persons, together with extracts from labour inspection reports.***

Article 2(1). Scope of application and labour inspection. The Committee noted previously that Act No. 015/2002 of 16 October 2002 issuing the Labour Code applies only where there is an employment relationship. It also noted that the CRC expressed concern at the prevalence of child labour in the informal economy, which frequently falls outside the protection afforded by national legislation. The Committee reminded the Government that the Convention applies to all branches of economic activity and that it covers all types of employment or work, whether or not it is performed on the basis of an employment relationship and whether or not it is remunerated. The Government indicated in this regard that it would intensify its efforts to make labour inspection more effective. The Committee noted the Government's indication that the Committee's recommendations regarding child labour in the informal economy would be taken into account when the PAN is implemented.

The Committee notes that there is no information on this subject in the Government's report. It observes that the PAN refers to the fact that labour inspection faces a particularly difficult challenge in the context of enforcing the Labour Code in certain sectors where there is a concentration of child labour, such as the informal urban economy or agriculture (page 22). In this regard, the Government plans to draw up and implement a programme whereby state law enforcement officials will collaborate in the monitoring and prohibition of child labour. It also plans to establish a community-based child labour surveillance mechanism which collaborates with the labour inspectorate and also plans to develop an institutional capacity-building programme (PAN, Part 1, actions 1.1.2 and 1.2). In this regard, referring to the General Survey of 2012 on the fundamental Conventions (paragraph 407), which indicates that the inability of the labour inspectorate to monitor outside a given area is particularly problematic when child labour is concentrated in sectors outside its coverage, the Committee emphasizes the importance of ensuring that the labour inspection system effectively monitors working children in all areas and sectors. ***Recalling that the Convention applies to all forms of work or employment, the Committee once again requests that the Government take measures, in the context of the PAN, to adapt and strengthen the labour inspection services so as to ensure the monitoring of child labour in the informal economy, and to ensure that children benefit from the protection afforded by the Convention. It also requests that the Government provide information on the structure, functioning and work of the labour inspectorate in relation to child labour.***

Article 2(3) of the Convention. Age of completion of compulsory schooling. In its previous comments, the Committee noted that, according to the information available on the website of the Senate, a Bill establishing the fundamental principles of the national education system had been put to the vote and adopted at the ordinary session of March 2013. The Committee also noted the detailed statistics on education provided in the Government's report. It observed that the primary school completion rate is close to 65 per cent at national level. However, there are significant disparities between the regions: for example, 78.5 per cent in the Kinshasa region compared with 56.2 per cent in South Kivu. Furthermore, the primary school completion rate is much higher for boys than for girls (73.8 per cent compared with 54.7 per cent). As regards secondary education, the gross enrolment rate for the first year of secondary school is barely 47 per cent at national level. The Committee also noted that, according to the *Education for All Global Monitoring Report 2012*, published by UNESCO, although the results of household surveys suggest that the proportion of out-of-school children fell by 25 per cent between 2001 and 2010, the number of out-of-school children is probably well above 2 million, which means that the Democratic Republic of the Congo is likely to be among the five countries with the highest numbers of out-of-school children.

The Committee notes the adoption of Framework Act No. 14/004 of 11 February 2014 on the national education system (Education Act, a copy of which is attached to the Government's report), which introduces an eight-year duration for basic education. It also notes the adoption of the Sectoral Strategy for education and training for 2016–25. ***In view of the fact that compulsory schooling is one of the most effective means of combating child labour, the Committee urges the Government to step up its efforts to ensure that children below the minimum age of 14 years for admission to employment or work are integrated into the education system, with a special focus on girls. It requests that the Government provide detailed information on the measures taken and the action programmes implemented to this end, and on the results achieved.***

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

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

Observation 2017

The Committee notes with *concern* that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2013.

Effective tripartite consultations. The Government indicates that the trade union and employers' elections held between October 2008 and July 2009 enabled 12 occupational organizations of workers to be identified as being the most representative, with terms of office lasting until the next elections, scheduled for December 2013. The most representative occupational organizations of employers are determined on the basis of the number of enterprises affiliated. The Government also indicates that the Ministry of Employment, Labour and Social Welfare convenes sittings of the National Council on Labour (CNT) by an order that it issues to the social partners represented in the CNT, requesting them to submit the names of the titular and alternate representatives of their respective organizations (Article 3 of the Convention). The Committee notes that the Government's report contains no further information on the operation of the consultation procedures required by the Convention. *The Committee refers the Government to its previous observation, in which it points to a serious failure of the obligation to submit the instruments adopted by the Conference, laid down in article 19(5) and (6) of the ILO Constitution. It requests the Government to provide information on the consultations held with the social partners on the proposals made to Parliament upon the submission of instruments adopted by the Conference (Article 5(1)(b) of the Convention). It further requests the Government to provide detailed information on the content of the consultations and the recommendations made by the social partners on each of the matters listed in Article 5(1) of the Convention. The Committee expects that the Government will make every effort to take the necessary action in the near future.*

C158 - Termination of Employment Convention, 1982 (No. 158)

Observation 2017

The Committee notes with *regret* that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2013.

Observations by the Labour Confederation of Congo (CCT). Abusive dismissals. The CCT expresses concern at a collective labour dispute which involved the massive, abusive and unlawful dismissal of around 40 employees of a private multinational enterprise governed by French law, in which the public authorities are reported to have let the situation deteriorate, disregarding the provisions of the Convention. The CCT also refers in this context to the wilful violation by the employer of the OECD Guidelines for Multinational Enterprises, and particularly those on employment and industrial relations. The Committee notes that the CCT called on the authorities to ensure the reinstatement of workers subjected to abusive and unlawful dismissal and the application of the provisions of the Convention respecting severance allowances and collective dismissals. *The Committee invites the Government to provide its own comments on the observations of the CCT. It hopes that the Government will be in a position to indicate whether the dismissals referred to were based on valid reasons (Article 4 of the Convention) and whether the dismissed workers were entitled to severance allowances (Article 12). It also requests the Government to provide information on the measures adopted to mitigate the effects of the dismissals, such as those envisaged in Paragraphs 25 and 26 of the Termination of Employment Recommendation, 1982 (No. 166).* It recalls that the ILO can provide assistance to promote the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.

In reply to the previous comments, the Government has provided the relevant provisions of Act No. 13/005 of 15 January 2013 issuing the conditions of service of military members of the armed forces of the Democratic Republic of the Congo (Article 2(4) of the Convention). *The Committee once again invites the Government to provide a report containing information on the practice of the labour inspectorate and the decision of the courts on matters of principle relating to the application of Articles 4, 5 and 7 of the Convention. Please indicate the number of appeals against termination, their outcome, the nature of the remedy awarded and the average time taken for an appeal to be decided (Parts IV and V of the report form).*

Article 7. Procedure prior to, or at the time of, termination. The Government has provided the text of the national interoccupational collective agreement of December 2005, which does not appear to envisage the possibility of a specific procedure to be followed prior to, or at the time of, termination, as required by the Convention. *The Committee once again invites the Government to provide copies of collective agreements which have provided for this possibility and to indicate in its next report the manner in which this provision of the Convention is given effect for workers not covered by collective agreements.*

Article 12. Severance allowance and other income protection. The Government indicates in its report that section 63 of the Labour Code of 2002 protects employment and recommends reinstatement in the event of the abusive termination of the employment contract. In the absence of reinstatement, damages are set by the labour tribunal. The Committee emphasizes that this method of compensating unjustified termination, namely through the granting of damages by the court, is covered more by Article 10 of the Convention, which envisages the payment of adequate compensation or such other relief as may be deemed appropriate. The severance allowance, which is one form of income protection, needs to be distinguished from damages paid in the event of unjustified termination. Under the terms of Article 12 of the Convention, a worker whose employment has been terminated shall be entitled, in accordance with national law and practice, to either a severance allowance or other separation benefits; or to benefits from unemployment insurance or assistance or other forms of social security; or a combination of such allowance and benefits. The Committee recalls its previous comments and notes that the Labour Code does not specify the severance allowance which is to be paid to workers, in accordance with Article 12 of the Convention. *The Committee once again invites the Government to indicate the manner in which effect is given to Article 12 of the Convention.*

Articles 13 and 14. Terminations for economic or similar reasons. The Government indicates that the Ministry of Employment, Labour and Social Welfare signed 15 orders authorizing collective terminations for economic or similar reasons, covering 701 workers in 2012–13. *The Committee invites the Government to indicate whether the dismissed workers were entitled to severance allowances (Article 12). It hopes that the Government will also be in a position to provide information on the measures taken to mitigate the effects of these terminations, as envisaged in Paragraphs 25 and 26 of the Termination of Employment Recommendation, 1982 (No. 166).*

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

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

Observation 2017

The Committee notes the observations of the International Organisation of Employers (IOE), received on 30 August 2017, and of the International Trade Union Confederation (ITUC), received on 1 September 2017, and of the in-depth discussion on the application of the Convention by the Democratic Republic of the Congo which took place in the Conference Committee on the Application of Standards in June 2017.

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 106th Session,

Democratic Republic of the Congo

June 2017)

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 enlistment or use of children under 18 years of age in the armed forces, armed groups or the police. The Committee noted the Government's indication that the Armed Forces of the Democratic Republic of the Congo (FARDC) does not recruit children under 18 years of age. However, the Committee observed that, according to the 2011 report of the United Nations (UN) Secretary-General on children and armed conflict, a large number of children were still being recruited and continued to be associated with FARDC units. The report indicated that armed groups and the FARDC were responsible for numerous serious violations against children, including physical and sexual violence, killings and maimings.

The Committee notes the observations of the ITUC according to which the serious violations committed by the FARDC have not given rise to criminal prosecutions. The ITUC also states that numerous witnesses have made allegations that FARDC officers played an active role in the enlistment of children and that the Government has sufficient information to open investigations and prosecute the suspected perpetrators of these atrocities. Lastly, the ITUC highlights the contradictory actions of the Government, which is carrying out reforms to prevent further recruitment, but at the same time allows the police and the armed forces not only to recruit children but also to commit physical and sexual violence against them.

The Committee also notes the IOE's statement that the adoption of legislation is insufficient without effective enforcement.

The Committee notes the Government's indication in its report that an action plan to combat the recruitment and use of children in armed conflict and other serious violations of children's rights by the armed forces and security services of the Democratic Republic of the Congo was adopted in 2012. The Government also indicates that one of the measures taken as part of the action plan was the appointment in 2015 of the Special Adviser to the Head of State on action to combat sexual violence and the recruitment of children into the armed forces. It also notes the Government's indication that 17 children's courts have been set up and are operational. The Committee observes that, according to the report of 20 April 2016 of the UN Secretary-General on children and armed conflict (A/70/836-S/2016/360) (2016 report), three new provincial joint technical working groups were established to accelerate the implementation of the action plan (paragraph 54). In this regard, it notes that, according to information from the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO), a total of seven joint technical working groups were established in the provinces in 2017 (Goma, Bukavu, Kisangani, Lubumbashi, Kalemie, Bunia and Katanga), in addition to the national group. The Committee also takes note, according to the report of 24 August 2017 of the UN Secretary-General on children and armed conflict (A/72/361-S/2017/821) (2017 report of the Secretary-General), of the validation of standard operating procedures for age verification, the adoption of a Ministry of Defence directive for the dissemination of those procedures within the FARDC and the screening of new recruits. The report also indicates that the UN documented the arrest of at least 15 FARDC members and five Congolese National Police (PNC) officers, in particular for offences linked to the recruitment and use of children in armed conflict before 2016, and that 41 individuals (including 23 FARDC members and 11 PNC officers) were convicted of sexual violence against children and received sentences ranging from three years' imprisonment to the death penalty. The Government reported that perpetrators of sexual violence against children were convicted in 129 cases (paragraph 71).

While noting these measures, the Committee nevertheless observes that, according to the 2017 report of the Secretary-General, the UN verified that 492 children (including 63 girls) were recruited and used by armed groups in 2016, with 82 per cent of cases occurring in North Kivu. At the time of recruitment, 129 children were under 15 years of age (paragraph 63). In addition, the report indicates that at least 124 children were killed and 116 maimed (paragraph 65). The rape of 170 girls and one boy was verified, the FARDC being responsible for 64 cases and the PNC for 12 cases (paragraph 66). The Committee also notes that, according to the 2016 report of the Secretary-General, a total of 488 cases of new recruitment of children were recorded in 2015, 89 per cent of which involved armed groups in North Kivu, in addition to the cases of ten boys previously recruited by the FARDC (paragraph 45). The report also refers to 254 cases of sexual violence against children, including 68 perpetrated by the FARDC, 19 by the PNC, and two by the National Intelligence Agency (paragraph 48). Lastly, it states that 68 individuals, including high-ranking officers, were arrested, with 37 receiving sentences of up to 20 years' imprisonment for sexual violence against girls (paragraph 55).

The Committee further observes that the report of the Secretary-General on MONUSCO of 9 March 2016 (S/2016/233) refers to the fact that the Military Academies High Command (CGEM) screened new FARDC recruits and found among them 84 children, who were then demobilized. The CGEM called on the FARDC Joint Chiefs of Staff to impose sanctions on the recruiters (paragraph 48).

The Committee also notes that, according to the report of the Secretary-General on MONUSCO of 30 June 2017 (S/2017/565), between January and March 2017 MONUSCO documented 28 new cases of child recruitment by the Kamuina Nsapu militia in the Kasai provinces, where numerous cases of violence have been recorded. It also documented the killing of at least 59 children, including 25 girls, and the maiming of 44 children, including four girls (paragraph 48). The Committee also notes that, according to the MONUSCO report "Invisible survivors: Girls in armed groups in the Democratic Republic of Congo from 2009 to 2015", since the adoption of the Child Protection Act in 2009, which criminalizes the recruitment of children, a total of 8,546 children, including 600 girls, were documented as recruited by the armed groups in the Democratic Republic of the Congo (up to May 2015). Furthermore, the Committee observes that the UN Committee on the Rights of the Child (CRC), in its concluding observations of 28 February 2017 (CRC/C/COD/CO/3-5), noted that, despite some improvements, there have been reports of the involvement of children in the activities of the national armed forces and reports of collaboration of the armed forces with armed groups that are known for the recruitment or use of child soldiers (paragraph 47). The Committee also observes that, according to the report of MONUSCO and the UN Office of the High Commissioner for Human Rights (OHCHR) entitled "Accountability for human rights violations and abuses in the DRC: Achievements, challenges and way forward (1 January 2014–31 March 2016)", the number of prosecutions of members of armed groups remains very low. The report states that this is mainly due to the volatile security situation in the affected areas, which complicates investigations, particularly in terms of identifying the victims and the alleged perpetrators (paragraph 47). The report also describes the obstacles that exist, such as political considerations or de facto immunities enjoyed by certain suspected perpetrators on account of their customary powers. It adds that legal proceedings against members of armed groups would send a strong signal at national level and would also have a strong impact on the vetting of the security forces, since a conviction would make an individual ineligible to join the national armed forces (paragraphs 54–55). In this regard, the Committee notes that, according to the report of the Secretary-General on MONUSCO of 30 June 2017, MONUSCO engaged in advocacy with the military prosecutor with a view to bringing to justice the perpetrators of serious children's rights violations (paragraph 48).

The Committee expresses its *deep concern* at the large number of children who are still being recruited by armed groups, especially as the persistence of this worst form of child labour leads to other violations of children's rights, such as killings and sexual violence, which have also been committed by the armed forces. *While recognizing the complexity of the situation on the ground and the existence of armed conflict and armed groups in the country, the Committee once again urges the Government to take urgent measures to ensure the full and immediate demobilization of all children in the FARDC ranks and to put a stop in practice to the forcible recruitment of children under 18 years of age into armed groups. The Committee urges the Government to take immediate and effective measures to ensure the thorough investigation and robust prosecution of all persons, including officers in the regular armed forces, who forcibly recruit children under 18 years of age for use in armed conflict, and to ensure that sufficiently effective and dissuasive penalties are imposed in practice, pursuant to Act No. 09/001 of 10 January 2009, including by the 17 courts established for this purpose. The Committee requests the Government to provide information on the number of investigations conducted, prosecutions brought, convictions issued against such persons and sanctions imposed.*

Clauses (a) and (d). Forced or compulsory labour and hazardous work. Child labour in mines. In its previous comments, the Committee noted the observations of the Confederation of Trade Unions of the Congo (CSC) that young persons under 18 years of age are employed in mineral quarries in the

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provinces of Katanga and East Kasai. It noted the UN Special Rapporteur's observation that military groups were recruiting children for forced labour 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 was a problem in practice. The Committee noted UNICEF statistics indicating 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).

The Committee notes the observations of the ITUC indicating that a 2016 Amnesty International report revealed that children work in the mines for up to 12 hours per day, carrying heavy sacks of rocks and earning only between US\$1 and US\$2 per day. The report also states that children work in the open air, in very high temperatures or rain, without any protective clothing and in constant contact with heavy concentrations of cobalt. The ITUC also reports that the climate of impunity that prevails regarding the employment of children in the mining sector is a direct consequence of the ineffectiveness and incompetence of the labour inspectorate. It adds that penalties for the use of forced labour remain inadequate and are not an effective deterrent.

The Committee also notes that, in the Conference Committee on the Application of Standards, the Worker member of the Democratic Republic of the Congo referred to the 2015 Amnesty International report on five mining sites in Katanga, according to which the health risks faced by children in mines include a potentially fatal lung disease, respiratory sensitization, asthma, shortness of breath and decreased pulmonary function.

The Committee also notes the observations of the IOE to the effect that if the human resources allocated to law enforcement are sparse, the revenue from these provinces and from the mining sector must be reinvested in recruiting the necessary staff, in the interests of the country and of its children.

The Committee notes the Government's indication that the economy of the Democratic Republic of the Congo is mainly based on the exploitation of natural resources, involving hazardous operations in mining and quarrying, forestry, oil and gas. It adds that children between 16 and 18 years of age are most exposed to hazardous work in small-scale mining. The Committee takes notes of the Ministerial Order No. 0058/CAB.MIN/MINES/01/2012 of 29 February 2012 issuing procedures for the classification and authorization of gold- and tin-mining sites in the provinces of Katanga, Maniema, North Kivu, South Kivu and Eastern Province, attached to the Government's report. Section 8 of the Order provides that the socio-economic situation of the region of the Great Lakes in general, and of the Democratic Republic of the Congo in particular, must be taken into account as an indicator and that steps must be taken to ensure that children are not employed on mining sites. The Committee also notes the Government's indication that an inter-ministerial committee responsible for monitoring child labour in mines and on mining sites was set up in 2016. It indicates that the mandate of this committee is to: (1) coordinate and facilitate the various initiatives for combating child labour in mines and on mining sites; (2) act as the Government's advisory, monitoring and follow-up body vis-à-vis the competent ministries and departments; and (3) engage in advocacy vis-à-vis third parties. The report also states that the abovementioned committee has drawn up a three-year action plan for 2017–20 with the general objective of coordinating actions on the ground to put an end to the presence of children in mining operations by 2020. The plan contains five specific objectives, namely: (i) monitor and evaluate the implementation of actions to combat child labour in mines and on mining sites; (ii) resolve the issue of the presence of children; (iii) step up the enforcement of measures for removing children from mineral supply chains, giving priority to "3TG" (tungsten, tantalum, tin and gold); (iv) implement corrective measures on the ground proposed by the competent ministries and departments; and (v) adopt a communication strategy. Lastly, the Committee notes that, according to information gathered by the ILO in the Democratic Republic of the Congo, a draft sectoral strategy was formulated and discussed at a workshop in September 2017 and is currently awaiting final adoption. The prime objective of this strategy is the gradual removal of children from small-scale mines and small-scale mining sites, and their social reintegration within their national community. The strategy also reproduces the objectives of the three-year action plan, with the additional objective of combating impunity. The Committee notes that the strategy states that an operational plan must be formulated as soon as possible. While noting the measures taken by the Government, the Committee once again expresses *deep concern* at the large number of children working under dangerous conditions in mines. ***The Committee urges the Government to take immediate and effective measures, as a matter of urgency, to eliminate forced child labour and hazardous work for children under 18 years of age in mines. In this regard, it requests the Government to take the necessary steps to ensure the thorough investigation and robust prosecution of offenders, and to ensure that sufficiently effective and dissuasive penalties are imposed in practice. It requests the Government to provide information on the actions taken and the results achieved as part of the implementation of the three-year action plan for 2017–20 and of the sectoral strategy for 2017–25, once the latter has been officially adopted.***

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. 1. Child soldiers. Further to its previous comments, the Committee notes the Government's indication that it is consolidating data on children who have been the beneficiaries of demobilization and social and economic reintegration programmes. The Committee notes that, according to the 2017 report of the Secretary-General, a total of 1,662 children (including 177 girls) were separated from armed groups in 2016 (paragraph 74). In 2015, a total of 2,045 children were separated from armed groups and ten boys were separated from the FARDC (2016 report of the Secretary-General, paragraph 53). The Committee also observes that, according to the report of the Secretary-General on MONUSCO of 10 March 2017 (S/2017/206), between January and March 2017, 61 boys and nine girls were separated or escaped from armed groups (paragraph 33). In addition, it notes that, according to the report of the Secretary-General on MONUSCO of 30 June 2017 (S/2017/565), between March and June 2017 at least 269 children (including 14 girls) were separated or escaped from armed groups (paragraph 47). The Committee also notes that the MONUSCO report "Invisible survivors: Girls in armed groups in the Democratic Republic of Congo from 2009 to 2015" highlights the harsh reality faced by girls, half of whom have been subjected to sexual violence and often remain behind in armed groups for fear of stigmatization. In this regard, the Committee notes that the CRC, in its concluding observations of 2017, indicates that the human and financial resources for the demobilization, rehabilitation and reintegration of child soldiers are scarce, disproportionately affecting girl soldiers who comprise up to 30 per cent of children involved with the armed forces and armed groups (paragraph 47(e)). The CRC also refers to the fact that girl soldiers face stigmatization and rejection by their communities and thus are sometimes obliged to rejoin armed groups (paragraph 47(f)). Furthermore, the Committee observes that the CRC, in its concluding observations of 28 February 2017 relating to the sale of children, child prostitution and child pornography (CRC/C/OPSC/COD/CO/1), expresses concern at the fact that a significant number of girls remain victims of sexual exploitation and forced labour in the hands of armed groups (paragraph 40) and that there is no clear procedure or referral service for the protection and care of child victims of sexual exploitation (paragraph 36). In this regard, the Committee notes that in 2016 UNICEF supplied medical, psycho-social, economic and legal assistance to 100,000 children who were subjected to sexual and gender-based violence (2016 UNICEF annual report on the Democratic Republic of the Congo, page 1). ***The Committee urges the Government to intensify its efforts and take effective and time-bound measures to remove children from the armed forces and armed groups, as well as from forced labour and sexual exploitation, and to ensure their rehabilitation and social integration, with a particular focus on the demobilization of girls. The Committee also requests the Government to provide information on the number of child soldiers who have been removed from the armed forces and armed groups and have been reintegrated through appropriate assistance with rehabilitation and social integration.***

2. Children working in mines. The Committee previously noted that several 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 and reintegrated through vocational training. The Government also indicated that more than 13,000 children were removed from three mining and quarrying locations in Katanga, East Kasai and Ituri as part of the work of the non-governmental organizations 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 indicated that, in view of the persistence of the problem, much remained to be done. The Committee further noted that Congolese girls were victims of forced prostitution in improvised prostitution centres, in camps, around mining sites and in markets.

The Committee notes that the Conference Committee urged the Government to step up its efforts to prevent children from working in mining and other

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hazardous types of work and to provide the necessary and appropriate direct assistance for their removal from the worst forms of child labour.

The Committee notes that there is no information in the Government's report on the number of children removed from mining work. However, it observes that the stated aim of part 5 of the draft sectoral strategy for combating child labour in mines – namely, providing protection and care for children – is to remove children from mines and cater for their needs in terms of protection and socio-economic reintegration. In this regard, planned actions are to identify the number of children working in informal mines, to implement alternative and sustainable solutions in educational and socio-economic terms, and to reinforce community mechanisms for prevention and for the protection and promotion of children's and women's rights. The Committee also notes that a draft plan to remove children from supply chains in small-scale mining has been adopted. *The Committee requests the Government to intensify its efforts to prevent children under 18 years of age from working in mines and from being subjected to prostitution on mining sites. It also requests the Government 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 further requests the Government to send information on the measures taken under the three-year action plan for 2017–20 and the sectoral strategy for 2017–25, once the latter has been officially adopted, and on the results achieved.*

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

C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**Observation 2017**

Article 3 of the Convention. Right of workers' organizations to organize their administration and activities in full freedom. In its previous comments, the Committee asked the Government to indicate the reasons for the arrest at Djibouti airport in May 2014 of Mr Adan Mohamed Abdou, Secretary-General of the Labour Union of Djibouti (UDT), who was to attend the 103rd Session of the International Labour Conference (May–June 2014) as an International Trade Union Confederation (ITUC) observer, and whose travel documents and luggage were confiscated. The Government merely indicated that it does not recognize Mr Mohamed Abdou's status as a worker representative as he is an elected Member of Parliament. In its last report the Government indicates that it is in the process of gathering the necessary information to explain why Mr Mohamed Abdou was prohibited from leaving the country. The Committee recalls that leaders of organizations of workers and employers should enjoy appropriate facilities for carrying out their functions, including the right to leave the country when their activities on behalf of the persons they represent so require; moreover, the free movement of these representatives should be ensured by the authorities. **Noting with regret the failure to provide the requested information more than three years after the events, the Committee expects that the Government will indicate without delay the reasons why Mr Mohamed Abdou was prohibited from leaving the country, which prevented him from participating in the International Labour Conference in May and June 2014, and specify whether this prohibition has been lifted.**

Trade union situation in Djibouti. The Committee also notes the conclusions of the Credentials Committee at the 106th Session of the International Labour Conference (June 2017) regarding an objection concerning the nomination of the Workers' delegation of Djibouti. In this respect, the Committee notes with **concern** the Credentials Committee's indication that confusion continues to reign over the trade union landscape in Djibouti. The Credentials Committee particularly refers to the information provided by the appealing organizations indicating that the situation of trade unions has deteriorated and that the phenomenon of "clone unions" (trade unions established with the Government's support) now also affects primary unions. In this respect, the Committee recalls that the trade union situation in Djibouti has been the subject of concerns expressed by the supervisory bodies, including the Committee on Freedom of Association, since many years. **Noting that the Conference Committee calls upon the ILO supervisory bodies to take all necessary measures to provide, with the cooperation of the Government, before the next session of the Conference, a reliable, comprehensive and up-to-date assessment of the situation of trade union movements and freedom of association in Djibouti, the Committee expects that the Government will ensure the development of free and independent trade unions in conformity with the Convention and that it will take all necessary measures to allow for an evaluation of the trade union situation in Djibouti, with the technical assistance of the Office if it so desires.**

Legislative issues. The Committee recalls that its comments have focused, for many years, on the need to take measures to amend the following legislative provisions:

- section 5 of the Act on Associations, which requires organizations to obtain authorization prior to their establishment as trade unions; and
- section 23 of Decree No. 83-099/PR/FP of 10 September 1983, which confers upon the President of the Republic broad powers to requisition public officials.

Noting with regret that the Government confines itself to indicating that it is planning a revision of the Labour Code, the Committee expects that the Government will take the necessary measures to amend the above provisions and that it will indicate in its next report specific progress in this regard.

C094 - Labour Clauses (Public Contracts) Convention, 1949 (No. 94)**Observation 2017**

Article 2 of the Convention. Inclusion of labour clauses in public contracts. In its previous comment, the Committee asked the Government to take prompt steps to ensure the effective implementation of the Convention. The Committee notes once again that clause 9.1 of the General Administrative Terms and Conditions applicable to public procurement, adopted by Decree No. 2010 0084/PRE of 8 May 2010, and the exclusion provided for in section 13.1.1 of the Public Procurement Code are insufficient to give effect to the key requirements of the Convention. *Article 2* of the Convention provides for the inclusion of labour clauses in all public contracts covered by the scope of *Article 1* – drawn up after consultation of the employers' and workers' organizations – ensuring to the workers concerned conditions of remuneration and other conditions of labour which are not less favourable than those established by national laws or regulations, collective agreements or arbitration awards for work of the same character in the same sector. In its 2008 General Survey concerning labour clauses in public contracts, paragraph 45, the Committee observed that the essential purpose of the Convention is to ensure that workers employed under public contracts shall enjoy the same conditions as workers whose conditions of employment are fixed not only by national legislation but also by collective agreements or arbitration awards, and that in many cases the provisions of the national legislation respecting wages, hours of work and other conditions of employment provide merely for minimum standards which may be exceeded by collective agreements. The Committee therefore feels that the mere fact of the national legislation being applicable to all workers does not release the States which have ratified the Convention from the obligation to take the necessary steps to ensure that public contracts contain the labour clauses specified in *Article 2* of the Convention. The Committee therefore considers that the mere fact that the legislation applies to all workers does not release the government concerned from its obligation to include labour clauses in all public contracts, in accordance with *Article 2(1)* and *(2)* of the Convention. In this context, the Committee notes that the Government has not yet taken steps to give effect to the provisions of the Convention. It also notes the request made by the Government in its report for technical assistance to ensure the effective application of the Convention. The Committee recalls once again that the Convention does not necessarily require the adoption of new legislation but may be applied by means of administrative instructions or circulars. **The Committee expresses the hope that technical assistance from the Office will be available in the near future and requests the Government to provide information on all measures taken or contemplated to ensure the effective application of the Convention.**

C122 - Employment Policy Convention, 1964 (No. 122)**Observation 2017**

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2014.

Article 1 of the Convention. Adoption and implementation of an active employment policy. ILO technical assistance. In response to previous comments, the Government indicates in its report that, although the strategy for the formulation of a national employment policy was commenced in April 2003, and new structures have been established, the preparation of a national employment policy paper has still not been completed. The Committee notes that the National Employment Forum held in 2010 showed the need to develop a new employment policy adapted to labour market needs, which will have to target as a priority the reform of the vocational training system and the improvement of employment support services. The Government indicates that, out of a population of 818,159 inhabitants of working age, recent estimates place the unemployment rate at 48.4 per cent. It also indicates that, following a mission for the evaluation

of technical cooperation undertaken by the ILO in March 2011, the Government reiterated its commitment to developing a Djibouti Decent Work Programme. It adds that it is still awaiting Office support for this purpose. *The Committee requests the Government to provide information on the measures taken to ensure that employment, as a key element of poverty reduction, is central to macroeconomic and social policies, and on the progress made in the adoption of a national policy for the achievement of full employment within the meaning of the Convention.*

Youth employment. The Government indicates that in 2012, despite a certain improvement, unemployment particularly affected young persons with higher education degrees. Moreover, although the country does not currently have a formal strategy to promote youth employment, several initiatives have been established to improve the operation of the labour market, promote entrepreneurship and provide training adapted to labour market needs. *The Committee invites the Government to provide information on the manner in which the measures adopted have resulted in productive and lasting employment opportunities for young persons, and on the collaboration of the social partners in their implementation.*

Article 2. Collection and use of employment data. In March 2014, the Government provided the summary of the employment situation prepared by the National Employment and Skills Observatory. The number of jobs is increasing (30,118 jobs created in 2007, 35,393 in 2008 and 37,837 in 2010). *The Committee invites the Government to indicate the measures taken to improve the labour market information system and to consolidate the mechanisms linking this system with decision-making in the field of employment policy. It also requests the Government to provide updated statistical data disaggregated by age and sex, as well as any other relevant data relating to the size and distribution of the workforce, the nature and scope of unemployment and underemployment and the respective trends.*

Article 3. Collaboration of the social partners. *The Committee recalls the importance of the consultations required by the Convention and once again requests the Government to provide information on the measures adopted or envisaged for the consultation of the representatives of the persons affected on employment policies.*

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

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

Observation 2017

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2016.

Article 1 of the Convention. National policy to ensure the effective abolition of child labour; application of the Convention in practice. In its previous comments, the Committee noted the Decent Work Country Programme (DWCP) 2008–12 for Djibouti, which prioritized, inter alia, the improvement of conditions of work by promoting national and international labour standards, with a particular focus on child labour. The Committee also noted the adoption of the National Strategic Plan for Children in Djibouti (PSNED) for the 2011–2015 period, with the goal of establishing a protective environment conducive to the observance of the fundamental rights of children. The Committee asked the Government to provide information on the implementation of the DWCP and the PSNED and on the results achieved regarding the progressive elimination of child labour. It also asked the Government to provide information on progress made in framing a national policy to combat child labour.

The Committee notes that, according to UNICEF, for the 2002–12 period, 7.7 per cent of children between five and 14 years of age in Djibouti were engaged in activities deemed to be work. The Committee notes the Government's indication in its report that it is not in a position to communicate the results achieved through the PSNED since the studies conducted are still in draft form. The Government also indicates that the DWCP could not be adopted owing to a lack of agreement with the trade unions and it hopes for a resumption of social dialogue, with ILO assistance, with a view to adoption and implementation of the DWCP in the near future. The Committee also notes the "Djibouti Compendium of Statistics" attached to the Government's report and the Government's statement that the Directorate of Statistics and Demographic Studies (DISED) has not undertaken any survey in relation to child labour. *The Committee firmly hopes for a resumption of social dialogue without delay and requests that the Government take the necessary steps to ensure the effective implementation of the DWCP and the PSNED. It requests that the Government provide information on the results achieved regarding the progressive elimination of child labour and on progress made in framing a national policy to combat child labour. Lastly, the Committee again requests that the Government take the necessary measures to ensure that studies on the extent and nature of child labour in Djibouti are conducted in the near future, and that the results are then communicated to the Office.*

Article 2(1). Scope of application and labour inspection. The Committee previously noted that, by virtue of section 1 of Act No. 133/AN/05/5ème issuing the Labour Code (hereinafter: Labour Code), the Labour Code applies only to employment relationships. It also noted the Government's indication that the provision on the minimum age for access to work is observed in the formal sector but is not applied effectively in the informal economy. The Committee further noted that, despite new Act No. 199/AN/13/6ème, supplementing Act No. 212/AN/07/5ème establishing the National Social Security Fund, which extends health-care benefits to all self-employed workers in the informal economy, the Government recognized that the lack of structure in the informal economy prevented the identification of issues faced by young workers in the sector.

The Committee notes the Government's indication that it hopes to submit the question of informal work to the National Labour Council, with a particular focus on the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204). The Committee recalls that the Convention applies to all branches of economic activity, whether formal or informal, and that it covers all types of employment or work, whether or not it is effected on the basis of a dependent employment relationship, and whether or not it is remunerated. *The Committee therefore requests that the Government take steps to ensure that the protection afforded by the Convention is secured to children under 16 years of age working in the informal economy, particularly by adapting and strengthening the labour inspectorate in order to improve labour inspectors' capacity to identify cases of child labour. It requests that the Government provide information on this matter and also to communicate the results achieved.*

Article 2(3). Age of completion of compulsory schooling. The Committee previously noted that, according to section 4 of Act No. 96/AN/00/4ème setting out the policy for Djibouti's education system, the State guarantees education for children from the age of six to 16 years. The Committee also noted that, in 2006, the net primary school enrolment rate was 66.2 per cent and at secondary level the rate was 41 per cent.

The Committee notes that, despite the improvements in school attendance, Djibouti still has a low school enrolment rate and that the goal, established in the PSNED, of achieving a 100 per cent enrolment rate for children in the 6–10 age group by 2015 was not achieved. Indeed, in 2014, according to the UNESCO Institute of Statistics, the attendance rate was 67.39 per cent in primary education and 46.35 per cent in secondary education. *Recalling that compulsory education is one of the most effective means of combating child labour, the Committee requests that the Government intensify its efforts and take measures that will ensure children's participation in compulsory basic schooling, or in an equivalent setting. It requests that the Government provide information on the recent measures taken to increase the school attendance rate, at both primary and secondary levels, so as to prevent children under 16 years of age from working. It further requests that the Government provide recent statistics on the primary and secondary school enrolment rates in Djibouti.*

Article 3(1). Age of admission to hazardous work. The Committee previously noted that, according to section 112 of the Labour Code, at the request of a labour inspector, women or young persons between 16 and 18 years of age may not be placed in employment recognized as being beyond their strength by an approved doctor. However, the Committee observed that the national legislation does not appear expressly to establish, as *Article 3(1)* of the Convention requires, a minimum age of 18 years for any type of employment or work which, by its nature or the circumstances in which it is carried out, is likely to jeopardize

the health, safety or morals of young persons. *Noting once again the lack of information on this matter in the Government's report, the Committee again requests that the Government take the necessary measures to ensure that no person under 18 years of age is authorized to engage in hazardous work, in accordance with Article 3(1). It requests that the Government provide information on the progress made in this regard.*

Article 3(2). Determination of hazardous types of work. The Committee recalls that, according to section 110 of the Labour Code, the employment of young persons in domestic work, hotels and bars is strictly prohibited, with the exception of employment strictly in the area of catering. Furthermore, under section 111 of the Labour Code, an order adopted on the proposal of the Minister of Labour and the Minister of Health, after consultation with the National Council for Labour, Employment and Social Security (CONTESS), shall determine the nature of the work and the categories of enterprise prohibited for all women, pregnant women and young people, and the applicable minimum age. The Committee previously asked the Government to adopt such an order on jobs and enterprises prohibited for young people.

The Committee again notes the Government's indication that the order in question has been drawn up and that it has pledged to refer the adoption thereof to CONTESS. It also indicates that no controls have been undertaken to date by the labour inspectorate on hazardous types of work performed by young people. *The Committee again requests that the Government take the necessary steps as a matter of urgency to ensure that the order determining the nature of the work and the categories of enterprise prohibited for young people under 18 years of age is adopted under section 111 of the Labour Code in the near future.*

Noting the interest expressed by the Government in obtaining technical assistance from the Office, the Committee invites the Government to avail itself of ILO technical assistance in order to facilitate the application of the Convention.

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

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

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

Observation 2017

Articles 1 and 3(1) of the Convention. Participation of representative organizations. The Government reiterates in its report that two legislative texts were drafted in 2013 in consultation with the social partners. These texts were referred to the National Council for Labour, Employment and Social Security (CONTESS) in 2014. The aim of the first text is to create an institutional framework for setting the issue of representativeness as provided by section 215 of the Labour Code, which establishes that "the representative nature of trade union organizations shall be determined by the outcome of workplace representation elections" and that "the ranking ... thus determined by the workplace elections shall be recorded in an order issued by the Minister in charge of labour". Nevertheless, the draft order is in preparation, hence the criteria for determining the representativeness of employers' and workers' organizations is still to be established. The aim of the second text is to reinforce the electoral procedures to be followed in occupational or national elections, with free and independent elections which are essential for ensuring the formation of legitimate workers and employers' organizations and also their representativeness. The Government points out that the two draft texts have not been approved by CONTESS, which assigned the task of examining the drafts to the standing committee but the latter did not adopt them. The Government indicates that it will keep the Office informed of any developments in the matter. *The Committee refers to its comments on the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and expresses the firm hope that the Government will adopt the abovementioned draft texts as soon as possible so that objective and transparent criteria can be established for appointing workers' representatives to national and international tripartite bodies, including the International Labour Conference.*

Article 4(2). Financing of training. The Government indicates that a seminar on labour law was held for members of grassroots unions affiliated to the two most representative federations of workers' unions in Djibouti. The seminar took place from 28 to 31 August 2016 at the National Institute of Public Administration and was funded by the executive secretariat responsible for reform of the administration. In addition, the Operational Action Plan 2014–18, adopted under the national employment policy, includes a component of training on labour legislation for trade union representatives and employers. *The Committee requests the Government to continue providing information on appropriate arrangements made for the financing of any necessary training for participants in consultation procedures, as provided for by the Convention.*

Article 5. Tripartite consultations required by the Convention. Frequency of tripartite consultations. The Committee notes the detailed record of the meeting of CONTESS that took place on 27 and 28 November 2016, which the Government attached to its report. In this regard, it notes the agenda of the meeting, which included draft texts for the implementation of the Labour Code and also the discussion of unratified Conventions (*Article 5(1)(c)* of the Convention). In this regard, the Committee notes with *interest* the ratification proposals adopted unanimously concerning the Maritime Labour Convention, 2006 (MLC, 2006), and the Protocol of 2014 to the Forced Labour Convention, 1930. *The Committee requests the Government to continue providing detailed information on the content and outcome of the tripartite consultations held on each of the matters referred to in Article 5(1) of the Convention, and in particular to continue to send copies of the records of CONTESS meetings.*

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

Observation 2017

The Committee notes that the Government's report has not been received. It hopes that the next report will contain full information on the matters raised in its previous comments initially made in 2016.

Articles 3(b) and 7(2) of the Convention. Use, procuring or offering of a child for prostitution or illicit activities; effective and time-bound measures. Clause (b). Assistance for removing children from the worst forms of child labour. The Committee previously noted that the Committee on the Rights of the Child (CRC) once again expressed its concern at the high number of children, particularly girls, involved in prostitution and at the lack of facilities providing services for sexually exploited children.

The Committee notes the Government's indication that it does not have up-to-date information on this matter. *The Committee urges the Government to take effective and time-bound measures to remove children from prostitution, and to ensure their rehabilitation and social integration. It also requests the Government to supply information on the progress achieved in this respect.*

Articles 3(d) and 4(1). Hazardous work and determination of these types of work. As regards the prohibition on employing children under 18 years of age in work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children, as prescribed by Article 3(d) of the Convention, and also the adoption of a list of hazardous types of work, the Committee refers to its detailed comments relating to the Minimum Age Convention, 1973 (No. 138).

Article 6. Programmes of action to eliminate the worst forms of child labour. The Committee previously noted that in the context of activities carried out under the Decent Work Country Programme (DWCP) for Djibouti for 2008–12, which prioritized, inter alia, the improvement of conditions of work through the promotion of national and international labour standards, with a particular focus on child labour, one of the objectives was that the ILO constituents and the social partners should work together to prevent and eliminate the worst forms of child labour. In this regard, it was planned to formulate and implement a national plan of action

for the elimination of the worst forms of child labour.

The Committee notes the Government's indication that the DWCP has not been adopted owing to a lack of agreement between the Government and the trade unions but that it hopes that, with the help of the Office, social dialogue can resume and that the national plan of action for the elimination of the worst forms of child labour will be adopted and implemented. *The Committee firmly hopes that social dialogue will resume as soon as possible. It again requests the Government to take immediate and effective measures to ensure that the national plan of action for the elimination of the worst forms of child labour is formulated, adopted and implemented as soon as possible and to provide information on the progress made in this respect.*

Article 7(2)(d). Identifying children at special risk. 1. *HIV/AIDS orphans.* In its previous comments, the Committee noted that despite the measures taken by the Government in favour of orphans and vulnerable children (OVCs), the number of HIV/AIDS orphans had increased (to 8,800 in 2011).

The Committee notes that the Government does not supply any information on the measures taken to prevent the engagement of HIV/AIDS orphans in the worst forms of child labour. However, the Committee notes that according to the UNICEF publication *The state of the world's children 2016: A fair chance for every child*, a total of 6,000 children were orphaned as a result of HIV/AIDS in 2014. It also notes that the Ministry of Health has drawn up a National Health Development Plan (2013–17), which indicates that in the context of the Horn of Africa Partnership (HOAP) to address HIV vulnerability and cross-border mobility, the Government renewed its commitment to intensifying and strengthening inter-ministerial collaboration at the national and subregional levels in order to stop the spread of HIV/AIDS and reverse the current trend of this scourge. *Recalling that HIV/AIDS orphans are at greater risk of involvement in the worst forms of child labour, the Committee again requests the Government to supply information on the impact of measures, policies and plans aimed at preventing the engagement of HIV/AIDS orphans in the worst forms of child labour, and on the results achieved.*

2. *Street children.* The Committee previously noted the Government's statement that most of the children living and working on the streets were of foreign origin and often worked as beggars or shoeshine boys or girls. It also noted that the CRC continued to express concern at the very high number of children still on the streets and at the continued exposure of these children to prostitution, sexually transmissible infections, including HIV/AIDS, economic and sexual exploitation, and violence.

The Committee notes that the Government does not provide any information in this respect. However, it notes that a paper entitled *Humanitarian action for children*, published by UNICEF in 2016, indicates that 200 street children received social assistance through the humanitarian action of UNICEF, with the collaboration of the Government. *Recalling that street children are particularly exposed to the worst forms of child labour, the Committee again urges the Government to take immediate and effective measures to protect them from the worst forms of child labour and ensure their rehabilitation and social reintegration, and also to provide information on progress made in this respect.*

Application of the Convention in practice. The Committee previously noted that the CRC observed that there were gaps in the surveys that had been carried out in the areas of poverty, education and health, and that there was insufficient capacity to centralize and analyse population data. The Committee notes the Government's wish to obtain technical assistance from the Office with regard to drawing up statistics. *The Committee requests the Government once again to take steps to ensure the availability of statistics on the nature, extent and trends of the worst forms of child labour, disaggregated by age and gender, and on the number of children covered by the measures giving effect to the Convention.*

Noting the interest expressed by the Government in obtaining technical assistance, the Committee invites the Government to avail itself of technical assistance from the Office in order to facilitate the implementation of the Convention.

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

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

C029 - Forced Labour Convention, 1930 (No. 29)**Observation 2017**

Articles 1(1) and 2(1) of the Convention. Use of conscripts for non-military purposes. For a number of years, the Committee has been referring to section 1 of Act No. 76 of 1973, as amended by Act No. 98 of 1975, concerning general (civic) service, according to which young persons (male and female) who have completed their studies, and who are surplus to the requirements of the armed forces, may be directed to work such as the development of rural and urban societies, agricultural and consumers' cooperative associations, and work in production units of factories. The Committee considered that these provisions were incompatible both with the present Convention and the Abolition of Forced Labour Convention, 1957 (No. 105), which provides for the abolition of any form of compulsory labour as a means of mobilizing and using labour for purposes of economic development. In this regard, the Government previously indicated that a proposal had been submitted to the Committee on Law Revision at the Ministry of Social Solidarity to amend the Act on general (civic) service so as to provide for the voluntary nature of the service.

The Committee notes the Government's indication in its report that, the draft amendments to Act No. 76 of 1973 were prepared and are under examination by the legislative committee within the Ministry of Labour in order to be submitted without delay to the Parliament. The Government also states that no sanctions have been imposed on reluctant young persons (male and female) who refuse to participate in the general (civic) service. The Committee recalls that, as regards national service obligations imposed outside emergency situations, only compulsory military service is excluded from the scope of the Convention, subject to the condition that it is used "for work of a purely military character" (*Article 2(2)(a)*), this condition being aimed specifically at preventing the call-up of conscripts for public works or development purposes (see General Survey on the fundamental Conventions, 2012, paragraph 288). **The Committee strongly encourages the Government to take the necessary measures to ensure that Act No. 76 of 1973 is amended so that the participation of young persons in the general (civic) service is voluntary, in accordance with both Conventions Nos 29 and 105. Pending the revision, the Committee once again requests the Government to provide information on the application of the above legislation in practice, including information on the number of persons who have applied for exemption from such service, the number of those whose applications have been refused and any sanctions imposed in this connection.**

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

C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**Observation 2017**

The Committee takes note of the observations made by the International Trade Union Confederation (ITUC) received on 1 September 2017 in relation to the application of the Convention in law and in practice. The Committee also notes the Government's detailed reply to these observations as well as to the 2016 ITUC observations.

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 106th Session, June 2017)

The Committee notes the discussion that took place in the Conference Committee on the Application of Standards in June 2017 concerning the application of the Convention. The Committee observes that the Conference Committee called upon the Government to: (1) ensure that the draft Law on trade union organizations, presently before the House of Representatives (*Majlis Al Nouwab*) for adoption, is in conformity with the Convention, in particular with respect to the concerns relating to the institutionalization of a single trade union system; (2) transmit a copy of this draft legislation to the Committee of Experts; and (3) ensure that all trade unions in Egypt are able to exercise their activities and elect their officers in full freedom, in law and in practice, in accordance with the Convention. The Committee called on the Government to accept an ILO direct contacts mission to assess the progress in respect of the abovementioned conclusions and requested that this information, as well as a detailed report from the Government, be transmitted to the Committee of Experts for examination before its November 2017 session.

The Committee welcomes the information that the direct contacts mission (DCM) was able to visit the country from 11 to 14 November 2017 and takes note of the mission report. The Committee also notes the draft Law on trade union organizations transmitted by the Government as the version submitted to the *Majlis Al-Nouwab* in May 2017, as well as the additional changes made by the Parliament in October, all of which were the subject of consideration by the direct contacts mission.

Trade union monopoly and the development of a legislative framework for freedom of association – Trade Union Act. The Committee recalls that it has been raising concerns about the non-conformity of Trade Union Act No. 35 of 1976 for several decades and that consideration by the Conference Committee on the Application of Standards of the application of this Convention in Egypt goes back to 2008 when it urged the Government to take tangible steps in the very near future to ensure that all workers were ensured the full enjoyment of their fundamental right to freely organize and, in particular, to guarantee the independence of trade union organizations and the elimination of all forms of interference in workers' organizations.

In this regard, the Committee noted in its previous comments the Government's indication 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 expressed its expectation that the new Law would address its long-standing comments concerning the Trade Union Act with regard to: the institutionalization of a single trade union system; 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; the control exercised by the Confederation of Trade Unions over the financial management of trade unions; the prohibition from joining more than one workers' organization; 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; and the requirement of the prior approval of the Confederation of Trade Unions for the organization of strike action.

Article 2 of the Convention. Right of workers to establish and join organizations of their own choosing. The Committee notes the Government's indication in its latest report that the philosophy of the new draft Law is based on the consolidation of the principle of free establishment of trade union organizations and federations, as well as the guarantee of their democracy and stability. In this respect, the Government confirms that the new draft Law provides for the possibility of establishing more than one trade union federation and a pluralism of general trade unions, while additionally eliminating the control previously granted under the 1976 Trade Union Act to the higher-level Confederation of Trade Unions. The Committee notes, however, the concerns raised by the ITUC and further reflected by a number of stakeholders to the direct contacts mission that the provision granting continuing legal personality only to trade union organizations recognized by law at the time of its enforcement would seriously disadvantage those unions that had been registered pursuant to the 2011 Ministerial Declaration on Freedom of Association as they are not considered as being recognized by law. The Committee notes the information provided by the Government that it is not possible to grant legal personality to those unions that had been registered under the Ministerial Declaration as such status can only be granted through law and not a declaration. The Government adds that the draft was amended to allow all trade unions without exception to reconcile their situation within two months of the issuance of the implementing regulation.

The Committee emphasizes that, in the context of a long-entrenched system of legislatively imposed trade union monopoly, it is critical that all trade unions be given an equal chance to be registered under the new trade union law, once adopted. This would not be possible in a system where legal personality is

maintained only for those registered under the 1976 Act unless the unions registered under the Ministerial Declaration on Freedom of Association are also able to maintain their membership and continue their activities during the period stipulated for the reconciliation of their status. The Committee further expresses its **deep concern** at the indication in the ITUC's observations, also raised in discussions with the DCM, that the State Advisory Council issued a statement on 21 December 2016 stipulating that the Ministry of Manpower and Immigration shall not accept applications for registration from independent trade union organizations and that, as a result, there has been severe obstruction and interference with the internal trade union affairs of the organizations registered under the Ministerial Declaration. **Emphasizing the conclusions of the Committee on the Application of Standards requesting the Government to ensure that all trade unions in Egypt are able to exercise their activities and elect their officers in full freedom, in law and in practice, the Committee urges the Government to ensure that all trade unions existing at the time of the adoption of the Law on trade union organizations are able to function freely and carry out their activities without interference, pending their regularization under the Law. In this regard, the Committee further urges the Government to ensure that workers wishing to change their trade union membership may do so without detriment to their acquired rights relating to contributory provident funds, which otherwise might hinder the workers' freedom to choose the organization with which they wish to affiliate.**

Minimum membership requirements. The Committee further notes the concerns raised by the ITUC in its observations and by various stakeholders to the mission that the minimum membership requirements for establishing a trade union at the various levels (enterprise, sectoral and national) were excessive and likely to hinder the right of workers to establish the organization of their own choosing and prevent the establishment of independent trade unions in practice. The Committee notes with **regret** the indications provided by the Government that the number of workers required to establish a trade union committee at the enterprise level had been increased during the parliamentary debate from 50 to 250. The Government adds that minimum membership requirements are necessary for the good organization of trade union work and to ensure the power of trade union organizations and preserve against fragmentation. The Committee must nevertheless recall that, while it has found that the establishment of a minimum membership requirement in itself is not incompatible with the Convention, it has always been of the view that the number should be fixed in a reasonable manner so that the establishment of organizations is not hindered. It also considers that this criterion should be assessed in relation to the level at which the organization is to be established (for example, at the industry or enterprise level) and the size of the enterprise (see the 2012 General Survey on the fundamental Conventions, paragraph 89 and related footnotes). In this regard, the Committee notes the uncontested information provided by various stakeholders to the direct contacts mission that well over 90 per cent of the Egyptian economy was situated in micro- and small enterprises with fewer than 50 workers. Additionally, the Committee notes that the draft Law requires a minimum of 15 enterprise unions and 20,000 workers to establish a general (sectoral) trade union and ten general trade unions and 200,000 workers to establish a trade union federation. **The Committee notes from the mission report that detailed discussions were held in relation to the minimum membership requirement and urges the Government, following full consultations with all the social partners concerned, to take the necessary measures to ensure that the level of minimum membership requirements set out in the Law once adopted are not set at such a level as to perpetuate the previously imposed trade union monopoly and thus ensure the right of all workers to form and join the organization of their own choosing.**

Finally, the Committee recalls its previous comments that the ban on workers joining more than one trade union should not apply in cases where the worker holds more than one job in different workplaces and once again requests the Government to take the necessary measures in this regard.

Articles 3 and 5. Right of workers' organizations to organize their administration without interference and to enjoy the benefits of international affiliation. The Committee notes the concerns raised by the ITUC in its observations and by several stakeholders to the mission in relation to the ban on receipt of aid grants from foreign organizations in the draft trade union organizations law. The Committee recalls in this regard that it has considered that subjecting the receipt of funds from abroad to the approval of the public authorities to be incompatible with the Convention (see the 2012 General Survey on the fundamental Conventions, paragraph 110). While taking due note of the circumstances in the country and the national security concerns described by the Government and stressed by various stakeholders to the direct contacts mission, the Committee considers that an outright prohibition of the receipt of funds from a foreign entity is an excessive measure for addressing these concerns and the specific targeting of trade unions in this regard, as opposed to subjecting such receipt to general approval provisions covering all aspects of society, is difficult to understand. **The Committee requests the Government to modify this prohibition prior to the adoption of the law so as to ensure that it clearly enables trade unions to benefit from the technical assistance and support that may be provided by foreign entities for the exercise of their legitimate trade union activities.**

Finally, the Committee notes a number of other issues raised by the ITUC in its observations concerning the detailed regulation of trade union activities, constitutions and eligibility for union office. **The Committee firmly expects the Government to ensure that the law once adopted will not be implemented in a manner which would infringe on the right of workers' organizations to carry out their activities, draw up their constitutions and rules and elect their officers freely, and requests the Government to provide detailed information in its next report on the application of the law.**

The Committee takes note of the communication from the Government received on 7 December 2017 providing its observations on the DCM report and indicating that the Parliament had adopted the draft law. The Committee notes with **regret** that the only apparent change to the draft was to lower the minimum membership requirement for forming a trade union at enterprise level to 150 workers, a requirement that the Committee still considers to be well beyond a reasonable level that would ensure the rights of workers to form and join the organization of their own choosing. Additionally, the Committee notes with **regret** the section at the end of the law penalizing various contraventions with imprisonment. The Committee further notes the Government's indication that the implementing Executive Regulations will clarify the rights related to the other points raised above. **The Committee urges the Government to ensure that all workers are able to exercise freely the rights under the Convention in accordance with the above comments and requests it to provide detailed information in this regard in its next report, including a copy of the law on trade union organizations and of the Executive Regulations and to indicate any steps taken or contemplated to revise the law on trade union organizations.**

Labour Code. As regards the comments it has been making for several years on Labour Code No. 12 of 2003, the Committee notes the Government's indication that the State Council finished its examination of the draft Labour Code on 30 January 2017 and that it was referred to the *Majlis Al-Nouwab*. The Parliamentary Manpower Committee has held a few dialogue sessions with the majority of trade union federations, current and independent trade unions, in accordance with the Government's plan of action. The Government adds that the draft Law was expected to be submitted to the Parliament plenary in October for promulgation.

The Committee notes that the latest draft of the Labour Code shared by the Government in 2017 addresses a variety of issues raised under this and other Conventions but observes that the following comments in relation to the 2003 Labour Code still remain unaddressed: the legal obligation for workers' organizations to specify in advance the duration of a strike, an infringement of which is considered to be serious misconduct liable to dismissal (sections 201 and 121(8) of the draft); the ability to have recourse to compulsory arbitration at the request of only one of the parties (sections 186 and 198); and the prohibition of industrial action in vital or strategic enterprises where stoppage of work would compromise national security or basic services provided for citizens to be designated in a decree by the Prime Minister (section 203).

The Committee urges the Government to ensure that the new Labour Code is adopted in the near future and that it will take fully into account the above comments. It requests the Government to provide information in its next report on the progress made in this regard and to supply a copy of the Labour Code once adopted.

The Committee further notes with respect to its previous comments on the exclusion of certain categories of workers from the draft Labour Code that the Government has announced that it would prepare a new draft Law regulating domestic work and protecting domestic workers' rights while government officials are covered by the new Civil Service Law No. 81 of 2016. **The Committee requests the Government to provide a copy of the Law regulating domestic work once it is adopted and will examine the impact of the Civil Service Law of 2016 on the rights of public servants under this Convention once a**

translation is available.

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

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

Observation 2017

Article 2 of the Convention. Insertion of labour clauses in public contracts. In its previous comments, the Committee requested the Government to make every effort to take all appropriate measures to ensure the effective application of the Convention in practice. It also expressed the hope that the Ministry of Manpower and Migration would provide the necessary instructions so that the two new bidding terms set out in General Circular No. 8 of 2008 could be incorporated as standard clauses into all future public procurement contracts (whether for construction works, supply of goods or performance of services) concluded between public authorities and private contractors. The Committee notes the Government's indication that, in 2015, the Ministry of Manpower and Migration promulgated Decision No. 329 which issued the Financial and Administrative Regulation for the employment and welfare of informal workers, including those employed in construction work and similar workers. The Government indicates that all government entities, as well as public and private bodies, are required to comply with the provisions of the Regulation, including by adopting all measures necessary to protect and ensure the welfare of such workers, especially with respect to wages, health care and a safe working environment. *The Committee requests the Government to provide a copy of the Financial and Administrative Regulation issued by Decision No. 329 of 2015, and to indicate the manner in which this Regulation is applied. The Committee further requests the Government to continue to provide updated information on measures taken and envisaged to ensure the effective application of the Convention.*

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

Observation 2017

Article 1(a) of the Convention. Penal sanctions involving compulsory labour as a punishment for holding or expressing political views, or views ideologically opposed to the established political, social or economic system. Since 1964, the Committee has been drawing the Government's attention to certain provisions under which penal sanctions involving compulsory prison labour (pursuant to sections 16 and 20 of the Penal Code) may be imposed in situations covered by *Article 1(a)*, namely:

- section 178(3) of the Penal Code, as amended by Act No. 536 of 12 November 1953 and by Act No. 93 of 28 May 1995, regarding the production or possession with a view to the distribution, sale, etc., of any images which may prejudice the reputation of the country by being contrary to the truth, giving an inexact description, or emphasizing aspects which are not appropriate;

- section 80(d) of the Penal Code, as amended by Act No. 112 of 19 May 1957, in so far as it applies to the wilful dissemination abroad by an Egyptian of tendentious rumours or information relating to the internal situation of the country for the purpose of reducing the high reputation or esteem of the State, or the exercise of any activity which will prejudice the national interest;

- section 98(a)bis and (d) of the Penal Code, as amended by Act No. 34 of 24 May 1970, which prohibits the following: advocacy, by any means, of opposition to the fundamental principles of the socialist system of the State; encouraging aversion or contempt for these principles; constituting or participating in any association or group pursuing any of the foregoing aims, or receiving any material assistance for the pursuit of such aims;

- sections 98(b) and (b)bis, and 174 of the Penal Code concerning advocacy of certain doctrines;

- section 102bis of the Penal Code, as amended by Act No. 34 of 24 May 1970, regarding the dissemination or possession of means for the dissemination of news or information, false or tendentious rumours, or revolutionary propaganda which may harm public security, spread panic among the people or prejudice the public interest;

- section 188 of the Penal Code concerning the dissemination of false news which may harm the public interest;

- the Public Meetings Act (No. 14 of 1923), and the Meetings Act (No. 10 of 1914), granting general powers to prohibit or dissolve meetings, even in private places.

The Committee also previously noted that the following provisions are enforceable with sanctions of imprisonment for a term of up to one year which may involve an obligation to perform labour in prison:

- section 11 of Act No. 84/2002 on non-governmental organizations prohibits associations from performing activities threatening national unity, violating public order or calling for discrimination between citizens on the grounds of race, origin, colour, language, religion or creed;

- sections 20 and 21 of Act No. 96/1996 on the reorganization of the press prohibit the following acts: attacking the religious faith of third parties; inciting prejudice and contempt for any religious group in society; and attacking the work of public officials.

In addition, the Committee noted the Government's explanations in its 2015 report that, Act No. 95 of 2003, which repealed Act No. 105 of 1980 concerning the establishment of state security courts, abolished the sanction of hard labour, and therefore the sanctions to which the Committee was referring had been amended. The Government also added that section 41 of Act No. 96/1996 on the reorganization of the press, as amended by Act No. 1 of 2012, specifies that detention shall not be authorized by the judge pending investigation of press related charges. Subsequent to the 2012 amendment, section 20 of the Penal Code has also been amended to provide that the judge shall hand down a sentence of hard labour whenever the period of punishment exceeds one year. The Government states that, as the penalties imposed for the violations cited in section 11 of Act No. 84 of 2002, and also those set out in sections 20 and 21 of Act No. 96/1996, are for less than one year, they are not incompatible with the Convention.

With regard to the Government's explanations on the abolition of the sanction of "hard labour", the Committee observed that under section 20 of the Penal Code, penalties of imprisonment still involve compulsory prison labour. The Committee drew the Government's attention to the fact that the application of the Convention is not restricted to sentences of "hard labour" or other particularly arduous forms of labour, as opposed to ordinary prison labour. The Convention prohibits the use of "any form" of compulsory prison labour, as a sanction for holding or expressing political views, or views ideologically opposed to the established political, social or economic system.

Finally, the Committee noted the Government's indication that Act No. 10 of 1914 which grants general powers to prohibit or dissolve meetings, even in private places, only prohibits assemblies which threaten public peace, and the penalties specified in this Act do not include imprisonment, unless the persons assembled have weapons, cause any death, or inflict intentional damage on public buildings and bodies, which reflects a violation of public peace. Moreover, Law No. 107 of 2013 on the right to public meetings and peaceful assemblies repealed Act No. 14 of 1923 on public meetings. According to the Government, Act No. 107 only punishes acts which violate the rules regulating the holding of meetings, processions and peaceful demonstrations.

While having noted the above explanations, the Committee observed that the European Parliament and the UN Human Rights Council had referred to Law No. 107 of 2013 on the right to public meetings and peaceful assemblies, and had called on the Government to end all acts of violence, intimidation and censorship against political dissenters, journalists and trade unionists. In this regard, the Committee urged the Government to take the necessary measures to bring the above legislation into conformity with the Convention.

The Committee notes with *regret* an absence of information on this point in the Government's report. The Committee observes that in a joint letter dated 29 July 2016 (Case No. EGY7/2016) issued by several bodies of the United Nations, including the Working Group on Arbitrary Detention, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and the Special Rapporteur on the situation of human rights defenders (pursuant to Human Rights Council resolutions 24/7, 24/5, 24/6, 25/13 and 25/18) underlined that Law No. 107 of 2013, which severely limits freedom of peaceful assembly and association, is regularly invoked by the authorities to crack down on protesters with excessive or unnecessary force to disperse unauthorized demonstrations and other public gatherings, often resulting in serious injuries, detention and sometimes even death of protesters. According to the same document, nearly 60,000 persons have been detained for political reasons from July 2013 to July 2016.

The Committee further notes that in his report presented to the UN General Assembly in June 2017, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, reiterated his utmost concern at the past year's serious escalation of the crackdown on independent civil society, including on human rights defenders, lawyers, trade unions, journalists, political opponents and protestors in Egypt. The Special Rapporteur received a large amount of information regarding interrogations, judicial harassment, torture, ill-treatment, arbitrary detention, unfair trials, asset freezes, travel bans and closure orders of civil society organizations in Egypt. He expressed particular concern that the abovementioned persons appear to be targeted for peacefully carrying out their human rights activities as well as for legitimately exercising their rights to freedom of expression and freedom of association. He underlines that such attacks may be representative of intent by the authorities to intimidate and silence media, trade unions, organizations and human rights defenders operating in Egypt (A/HRC/35/28/Add.3, paragraph 548).

In view of the above, the Committee *deplores* that despite the comments it has been making for a number of years, the Meetings Act (No. 10 of 1914), Act No. 107 of 2013 on the right to public meetings and peaceful assemblies, Act No. 84/2002 on non-governmental organizations, Act No. 1 of 2012 on the reorganization of the press, as well as sections 80, 98, 102, 174 and 188 of the Penal Code, have not been amended to bring them into conformity with the Convention. The Committee once again recalls that restrictions on fundamental rights and liberties, including freedom of expression, may have a bearing on the application of the Convention if such measures are enforced by sanctions involving compulsory labour. Referring to its General Survey on the fundamental Conventions, 2012, paragraph 302, the Committee points out that the range of activities which must be protected from punishment involving compulsory labour, under *Article 1(a)*, include the freedom to express political or ideological views (which may be exercised orally or through the press and other communications media), as well as various other generally recognized rights, such as the right of association and of assembly, through which citizens seek to secure the dissemination and acceptance of their views, and which may also be affected by measures of political coercion. The Committee finally emphasizes that the protection conferred by the Convention is not limited to the expression or manifestation of opinions diverging from established principles; even if certain activities aim to bring about fundamental changes in state institutions, such activities are protected by the Convention as long as they do not resort to or call for violent means to these ends. ***The Committee therefore once again urges the Government to take the necessary measures to ensure that no prison sentences involving compulsory labour are imposed on persons who, without having recourse to violence, express political opinions or views opposed to the established political, social or economic system. The Committee expresses the firm hope that the necessary measures will be taken to bring the above legislation into conformity with the Convention, and requests the Government to provide information on the progress made 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 2018.]

C118 - Equality of Treatment (Social Security) Convention, 1962 (No. 118)

Observation 2017

With reference to its previous observation, the Committee notes the Government's statement that the Ministry of Social Solidarity has been informed of the issues raised therein and will take these into account when drafting the new social insurance law which is intended to replace the 2010 legislation on pensions. ***The Committee reiterates the hope that, in the context of this reform, the Government will take the necessary measures with a view to giving effect to the following provisions of the Convention to which it has been drawing the Government's attention since the Convention was ratified.***

The Committee notes with *regret* that the Government's report does not contain any reply to the previous comments which read as follows:

Article 3 of the Convention. Equality of treatment. According to section 2(2) of the Social Insurance Act (No. 79 of 1979), the provisions of this Act apply to foreign nationals on condition that the duration of their contract is not less than one year, and that there is a reciprocity agreement between their country of origin and Egypt, subject to non-violating the provisions of conventions ratified by Egypt. The Government states nevertheless that the nationals of countries which have ratified Convention No. 118, enjoy insurance benefits provided under the Social Insurance Act regardless of the duration of their contracts or the existence of the reciprocity agreement. The same statement is made by the Government in its report of 2007 on Convention No. 19. The Committee takes due note of these statements and understands that the Convention has a higher rank in the national legal system than the law. The Committee notes that the Government has not supplied any documentary evidence requested by the Committee proving that the above interpretation given by the Government is applied in practice by the social security institutions. The Committee also recalls that in its previous reports on the application of Conventions Nos 19 and 118 the Government has been consistently making the opposite statement that foreign nationals could enjoy social insurance benefits subject to the duration of their contract being not less than one year. ***In this situation and in order to dissipate any doubts as to the fact that the requirements of the Convention overrule the abovementioned limitations contained in the Social Insurance Act, the Committee asks the Government to instruct the responsible social security institutions in the country to disregard the duration of contract and reciprocity agreement requirements under section 2(2) of the Social Insurance Act with respect to the nationals of 37 countries which have also ratified Convention No. 118, and for the accident compensation benefits, with respect to the nationals of 120 countries which have also ratified Convention No. 19.***

Article 5. Payment of benefits abroad. Referring to the issues raised in the Committee's previous comments, the Government indicates that beneficiaries residing abroad are classified by country of residence. Insurance and pension benefits are regularly transferred each month without any financial burden on beneficiaries in cases where bilateral agreements have been concluded with the country of residence of the beneficiary. This has so far been the case with Cyprus, Greece, Netherlands, Sudan and Tunisia and the Government is willing to conclude further such agreements. In the absence of bilateral agreement, beneficiaries need to justify pension entitlements with the Egyptian embassies or consulates at their place of residence in order to have their pensions paid to their bank accounts inside Egypt. They may afterwards transfer their pensions to their countries of residence through the international banking system.

While it takes due note of this information, the Committee once again stresses that with respect to its own nationals and nationals of any other Member that has accepted the Convention's obligations for the branches in question, *Article 5* obliges the ratifying States to export benefits abroad even in the absence of any bilateral social security agreements with the country of nationality or the country of residence of the beneficiary concerned and to take unilateral measures to

this effect. By placing the obligation to transfer benefits abroad on the State, *Article 5* of the Convention specifically seeks to prevent situations where beneficiaries would have to make their own individual arrangements for the transfer of their entitlements abroad at their own expense. By ratifying the Convention, the Government has undertaken to ensure that the responsible social insurance institutions shall deliver the abovementioned benefits to the new place of residence of the beneficiary outside Egypt and shall bear the cost of such transfer. For this purpose, appropriate banking arrangements shall be put in place with the help of the National Bank, if need be, and use shall be made of the administrative assistance of the countries concerned, which they have to afford to Egypt free of charge under *Article 11* of the Convention. The Committee observes that, in the absence of any bilateral agreement, the lack of practical methods for pensions transfer outside of Egypt often leads beneficiaries in practice to apply for lump sums (in accordance with sections 27 and 28 of the Social Insurance Act), which is contrary to the letter and the very purpose of the Convention, even when this is done at the request of the beneficiary. ***The Committee therefore once again urges the Government to institute an effective system for the transfer of Egyptian social security benefits abroad by taking appropriate measures either unilaterally or within the framework of bilateral and multilateral social security agreements with the countries with the highest number of pension beneficiaries. The Committee reminds the Government of the availability of technical assistance concerning the existing international legal frameworks for the maintenance of the acquired rights and rights in the course of acquisition mentioned in Articles 7 and 8 of the Convention.***

Article 10. Coverage of refugees and stateless persons. Referring to the Committee's previous comments, the Government states that Palestinian and South Sudanese refugees are treated on an equal basis with Egyptian nationals with respect to social security. ***The Committee understands that all refugees and stateless persons other than the ones mentioned above also benefit from the provisions of the Convention without any condition of reciprocity and asks the Government to confirm such understanding.***

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

Observation 2017

Article 1 of the Convention. National policy on the effective abolition of child labour and application of the Convention in practice. The Committee previously noted that, according to the findings of the National Child Labour Survey of 2010 conducted by the ILO and the Central Agency for Public Mobilization and Statistics, out of Egypt's 17.1 million children, an estimated 1.59 million children aged between 5 and 17 years were engaged in child labour (approximately 9.3 per cent), 21 per cent of whom were girls and 79 per cent boys. Almost half of the employed children were engaged in hazardous non-wage work, mostly as unpaid family workers: about 9 per cent of working children between the ages of 5 and 9 years were engaged in hazardous wage work; this proportion increased steadily with age, reaching 48 per cent for 15 to 17 year-old boys and 28 per cent for 15 to 17 year-old girls. The majority of children worked in agriculture (63.8 per cent), followed by 17.7 per cent in the industrial sector and 18.5 per cent in services.

The Committee notes the Government's information in its report regarding the measures taken to combat child labour in Egypt. The Government indicates that, as a result of the project implemented in collaboration with the ILO and the World Food Programme, "Combating Worst Forms of Child Labour by Reinforcing Policy Response and Promoting Sustainable Livelihoods and Educational Opportunities in Egypt" 2010–2014 (CWCLP), awareness-raising activities were conducted aimed at children who were exposed to child labour, and their families; 1,365 community schools in 16 governorates were identified for a needs assessment; 156 schools were readapted to be able to integrate targeted children; and 110,000 children were withdrawn from the labour market. The Government also indicates that a Memorandum of Understanding was signed with the ILO, that two workshops on the formulation of a national plan following the project were held in June 2014, and that a first draft of a national plan was prepared, which is currently under examination for all purposes of developing and implementing its final version. In this regard, the Committee notes that the ILO continues its work in supporting the national constituents in combating child labour through a project aimed at strengthening the capacity of the Egyptian Government, workers' and employers' organizations from 2016 to 2017. Among the expected outcomes of the project are the finalization of a National Action Plan on Combating the Worst Forms of Child Labour (NAP-WFCL) in Egypt and supporting the constituents and relevant partners in its implementation; the promotion of an upgraded apprenticeship system for working age girls and boys; and raising awareness on the notion of child labour among constituents, institutions and society.

However, the Committee notes that, according to the 2016 UNICEF report "Children in Egypt 2016: A Statistical Digest", 7 per cent of children aged from 5 to 17 years were involved in child labour in 2014. While noting the measures taken by the Government, the Committee must express its ***concern*** at the situation and number of working children in Egypt. ***The Committee therefore encourages the Government to continue strengthening its efforts to ensure the progressive elimination of child labour. It requests that the Government continue providing information on the measures taken and the results achieved in terms of the number of children who are effectively removed from child labour, in particular through the implementation of the NAP-WFCL, once adopted.***

Article 6. Apprenticeship. The Committee notes that the Government developed draft Labour Code, for which it requested ILO technical assistance. It notes that sections 26 and 58 of the draft Labour Code provide for a minimum age for admission to apprenticeship or training of 13 years. The Committee recalls that *Article 6* of the Convention provides that training or apprenticeship performed in undertakings shall only be permitted for children of at least 14 years of age, where such work is an integral part of: a course of education or training for which a school or training institution is primarily responsible; a programme of training mainly or entirely in an undertaking, which has been approved by the competent authority; or a programme of guidance or orientation designed to facilitate the choice of an occupation or of a line of training. ***The Committee therefore requests that the Government take steps to ensure that sections 26 and 58 of the draft Labour Code are amended to raise the minimum age of admission to apprenticeship or training from 13 to 14 years of age, in accordance with Article 6 of the Convention.***

Article 7. Determination of types of light work. The Committee previously noted the provisions of section 64 of the Child Law permitting children between the ages of 12 to 14 years, by decree of the governor concerned, with the agreement of the Minister of Education, to perform seasonal work which is not prejudicial to their health or development and does not interrupt their education. The Committee noted, at the time, that the minimum age for employment or work was 14 years in Egypt, but that it has since been raised to 15 years, in accordance with *Article 2(2)* of the Convention.

The Committee observes that, regarding the conditions and situation of employment of children of different age groups, section 59 of the draft Labour Code refers to the provisions of the Child Law, which includes section 64 on light work. The Committee recalls that, in accordance with *Article 7(1)* of the Convention, light work is only permitted for persons from 13 to 15 years of age, given that Egypt has specified 15 years as the minimum age for admission to employment or work. ***The Committee therefore requests that the Government take the necessary measures to ensure that section 64 of the Child Law is amended to raise the minimum age of admission to light work to 13 years, in accordance with Article 7(1) of the Convention.***

The Committee is raising another matter in a request addressed directly to the Government.

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

Observation 2017

Articles 3(a), 6 and 7(1) of the Convention. Sale and trafficking of children, programmes of action and penalties. The Committee previously noted that the

Egypt

Government adopted and implemented the National Plan of Action against Human Trafficking 2011–13 (NAP-HT), with the aim of preventing human trafficking, protecting and assisting the victims of trafficking, ensuring effective penalties for traffickers and promoting and facilitating national and international cooperation in order to meet these objectives. It noted that the National Coordinating Committee planned to continue its anti-trafficking activities within the framework of the second NAP-HT (2013–15), including the establishment of a unit to combat trafficking in children (TIC unit) within the National Council for Children and Motherhood (NCCM). The Committee also noted the various measures taken to train law enforcement officials on how to deal with victims and aimed at strengthening the capacity of police officers both as first responders as well as investigators of cases of trafficking in persons. The Committee noted, however, that the 2011 Research Project to Study Trafficking Patterns in Egyptian Society conducted by the National Centre for Social and Criminological Research (NCSCR study report) identified the most prevailing forms of trafficking in persons in Egypt as the trafficking of children for labour and sexual exploitation and the trafficking of street children for sexual exploitation and begging.

The Committee notes the Government's information in its report that it implemented the NAP-HT (2013–15) in collaboration with several bodies led by the National Coordinating Committee against Human Trafficking, the Ministry of the Interior, the Office of the Public Prosecutor, the Ministry of Justice, the Ministry of Social Solidarity, the Ministry of Health and Population, UN bodies, and the International Organization for Migration (IOM). It notes that a third NAP HT for the years 2016–21 was adopted, which aims to maintain referral mechanisms, train law enforcement officials and combat the trafficking of street children.

However, while noting these measures, the Committee notes that the Government does not provide information on the number of investigations and prosecutions in cases of child trafficking for labour or sexual exploitation. ***The Committee therefore requests the Government to take the necessary measures to ensure the thorough investigation and robust prosecution of perpetrators of child trafficking for labour or sexual exploitation, and to provide information on the penalties applied. It also requests the Government to continue providing information on the impact of the measures taken within the framework of the NAP-HT 2016–21.***

Article 3(b). Use, procuring or offering of a child for prostitution. The Committee previously noted that while the Government's report provided information on the penalties for persons who violate the right of a child to protection against commercial sexual exploitation pursuant to section 291 of the Penal Code (as amended), this section does not address the issue of the criminal liability of the child victim of this offence. It noted that section 94 of the 2008 Child Law provides that the age of criminal responsibility starts at 7 years. The Committee noted that although section 111 of the Child Law prohibits handing down criminal sentences amounting to the death sentence, life imprisonment or hard labour to children under 18 years of age, it provides that children over 15 years of age are liable to confinement in jail for not less than three months or to the measures stated in section 101. In this regard, it noted the Government's reference to section 101 of the Child Law, which states that a child under the age of 15 years who has committed a crime shall be subjected to the following sanctions: reprimand; being institutionalized; following a course of training and rehabilitation; carrying out specific duties; judicial testing; performing work for the public interest which is not hazardous; and placement at one of the specialized hospitals or at social welfare institutions. Moreover, the Committee observed that the Committee on the Rights of the Child, in its concluding observations under the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography of July 2011, noted with particular concern that children over 15 years of age who enter prostitution on their own free will are held responsible under domestic legislation which criminalizes prostitution (CRC/C/OPSC/EGY/CO/1, paragraph 35).

The Committee notes the Government's indication that the protection of the rights of child victims and witnesses is ensured through the UN Guidelines on the Protection of Child Victims of Trafficking, which aim to provide remedies to child victims of crimes, and include the right of child victims to be treated as victims and not as criminals. However, the Committee notes that the Government reiterates that the provisions of the Child Law and of the Penal Code protect children, although these provisions have previously been deemed by the Committee to be insufficient to protect children who are used, procured or offered for the purpose of prostitution, as they allow for child victims of prostitution who are over 15 years of age to be held criminally responsible. The Committee reminds the Government that ***Article 3(b)*** of the Convention prohibits the procuring, offering of use of a child for prostitution, and that the child's consent does not preclude it from the prohibition (see General Survey on the fundamental Conventions, 2012, paragraphs 508–509). Therefore, children 15 to 18 years of age who enter prostitution "on their own free will" are still victims of commercial sexual exploitation. ***The Committee once again urges the Government to take the necessary measures to ensure that all child victims of prostitution who are under the age of 18 years are treated as victims rather than offenders. To this end, the Committee urges the Government to amend section 111 of the Child Law to ensure that children under 18 years of age who are victims of prostitution are not criminalized and/or imprisoned.***

Clause (d). Identifying and reaching out to children at special risk. Children in street situations. The Committee previously noted that there were some 1 million children in street situations in Egypt. It noted that, according to the NCSCR study report, at least 20 per cent of street children, most of whom were in the age group of 6–11 years, were victims of trafficking who were exploited by a third party for sexual purposes and for begging. Almost 40 per cent of street children did not commence formal education, while 60 per cent acquired minimum education through primary and preparatory education.

The Committee notes the Government's information pertaining to the measures taken to protect children under 18 years of age from trafficking, commercial sexual exploitation and begging, including the development and implementation of preventive activities aimed at reducing child trafficking in Egypt, the strengthening of the capacity of officials at the relevant Ministries, government bodies and NGOs that work with children exposed to danger, and the collaboration with civil society organizations and regional and international organizations. However, the Government does not provide information on the impact that the measures taken thus far have had on reducing the phenomenon of children in street situations in Egypt. ***Recalling that children in street situations are particularly exposed to the worst forms of child labour, the Committee encourages the Government to strengthen its efforts to ensure that children under 18 years of age living and working on the streets are protected from the worst forms of child labour, particularly trafficking, commercial sexual exploitation and begging. The Committee once again requests the Government to provide information on the impact of the measures taken, including the number of children who have been removed from the streets, provided with assistance and socially integrated into education or vocational training.***

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

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

Observation 2017

The Committee notes with *deep concern* that the Government's report has not been received. It is therefore bound to repeat its previous comments made in 2012. The Committee also notes that the Government has been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

The Committee again recalls that it has been asking the Government for a number of years to: (i) amend section 5 of Act No. 12/1992, which provides that employees' organizations may be occupational or sectoral – so that workers may, if they so desire, establish enterprise trade unions; (ii) amend section 10 of Act No. 12/1992, which provides that for an occupational association to obtain legal personality it must, inter alia, have a minimum of 50 employees – so as to reduce the number of workers required to a reasonable level; (iii) confirm that, as a result of a revision of the Fundamental Act in 1995 (Act No. 1 of 1995), the right to strike is recognized in public utilities and is exercised under the conditions laid down by law; (iv) provide information on the services deemed to be essential, and on how the minimum services to be ensured are determined, as provided for in section 37 of Act No. 12/1992; and (v) state whether public servants who do not exercise authority in the name of the State enjoy the right to strike (section 58 of the Fundamental Act).

The Committee again urges the Government to take the necessary steps to amend the legislation in order to bring it into full conformity with the provisions of the Convention and to send information in its next report on any measures taken or contemplated in this respect. The Committee expresses the strong hope that the Government will take all possible steps without delay to resume a constructive dialogue with the ILO.

Furthermore, the Committee had noted the comments of the International Trade Union Confederation (ITUC) on the application of the Convention and the persistent refusal to register various trade unions, namely the Trade Union of Workers of Equatorial Guinea (UST), the Independent Services Union (SIS), the Teachers' Trade Union Association (ASD) and the Agricultural Workers' Organization (OTC). The Committee recalls once again that the discretionary power of the competent authority to grant or reject a registration request is tantamount to the requirement for previous authorization, which is not compatible with *Article 2 of the Convention* (see the 1994 General Survey on freedom of association and collective bargaining, paragraph 74). **Under these conditions, the Committee once again urges the Government to register without delay those trade unions which have fulfilled the legal requirements and to provide information in this respect in its next report.**

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

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

Observation 2017

The Committee notes with *deep concern* that the Government's report has not been received. It is therefore bound to repeat its previous comments made in 2012. The Committee also notes that the Government had been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

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.

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

Observation 2017

The Committee notes with *regret* that, in spite of the numerous requests, the Government failed once again to submit a report. The Committee notes that the Government did not take the opportunity provided by the enactment of the Fundamental Act of Equatorial Guinea, on 16 February 2012, and of the General Labour Reforms Act (No. 10/2012), on 24 December 2012, to address the matters raised by the Committee in its previous comments initially made in 2008.

Article 1(1)(a) of the Convention. Prohibited grounds of discrimination. The Committee notes that section 15 of the Fundamental Act of 2012 (previously section 15 of the Fundamental Act of 1995) provides that any bias or discrimination on tribal, ethnic, gender-related, religious, social, political or any other similar grounds, when duly ascertained, is punishable by law. Further, under section 1(3)(d) of the General Labour (Reforms) Act of 2012 (previously section 1(4) of the General Labour Act, 1990) the State guarantees equality of opportunity and treatment in employment and occupation and provides that no one may be subjected to discrimination, that is, to any distinction, exclusion or preference on grounds of race, colour, sex, political opinion, national extraction, social origin or trade union affiliation. The Committee notes that while section 1(3)(d) of the General Labour (Reforms) Act of 2012, continues to omit reference to religion as one of the prohibited grounds of discrimination, that ground is included in section 15 of the Fundamental Act of 2012. The Committee recalls that where provisions are adopted in order to give effect to the principles in the Convention, they should include at least all of the grounds of discrimination laid down in *Article 1(1)(a)* (see General Survey on the fundamental Conventions, 2012, paragraph 853). **The Committee therefore urges the Government to take steps to add the ground of "religion" to the list of prohibited grounds of discrimination at the earliest opportunity. The Committee once again asks the Government to provide information on the practical application of section 15 of the Fundamental Act of 2012, and of section 1(3)(d) of the General Labour (Reforms) Act of 2012, and to indicate whether any administrative or judicial decisions have been handed down concerning these provisions, and if so, to provide details thereof.**

Articles 1(1)(b) and 5. Other grounds. Special measures. The Committee notes that section 1(4) of the General Labour Act of 1990 (now section 1(3)(d) of

Equatorial Guinea

the General Labour (Reforms) Act of 2012) makes provision for facilitating the recruitment of older workers and those with reduced working capacity. The Committee had previously requested a copy of the National Employment Policy (Reforms) Act No. 6/1999 of 6 December 1999. It notes that section 62 of the National Employment Policy Act No. 6/1992 of 3 January 1992, as amended by the National Employment Policy (Reforms) Act of 1999, provides for the adoption of governmental programmes aimed at promoting employment among workers facing obstacles to entering the labour market, especially young first-time jobseekers, women, men older than 45 years of age and persons with disabilities. ***The Government is asked to supply information on the practical application of the abovementioned provisions as it relates to older workers, young first-time jobseekers, and persons with disabilities.***

Articles 2 and 3. National policy to promote equality of opportunity and treatment. The Committee recalls that discrimination in employment and occupation is a universal phenomenon that is constantly evolving, and that some manifestations of discrimination have acquired more subtle and less visible forms. It is therefore essential to acknowledge that no society is free from discrimination and that continuous action is required to address it. Moreover, the results achieved in the implementation of the national equality policy and programmes must be periodically assessed so that they can be adapted to the population's needs, particularly for those groups that are most vulnerable to discrimination (see General Survey, 2012, paragraphs 731 and 847). ***The Committee asks the Government to indicate whether it has a national policy designed to promote equality of opportunity and treatment in respect of employment and occupation, and describe how it is implemented (legal procedures, practical measures, etc.) in each of the following spheres: (i) access to vocational training; (ii) access to employment and to particular occupations; (iii) terms and conditions of employment. The Committee asks the Government to take specific steps with a view to assessing the results of the implementation of the national equality policy and to provide information on its impact on the different sections of the population and to supply statistical data disaggregated by sex, race, ethnic origin and religion on employment and vocational training and any other information which would enable the Committee to evaluate more fully the manner in which the Convention is applied in practice.***

Article 4. Measures affecting individuals suspected of activities prejudicial to the security of the State. ***The Committee once again asks the Government to provide information concerning the practical application of Article 4 of the Convention, as well as specific information on the procedures establishing the right to appeal to a competent and independent body.***

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

Observation 2017

The Committee notes the observations of the International Organisation of Employers (IOE), received on 30 August 2017, as well as the Government's reply to these observations, received on 26 October 2017.

Articles 1(1) and 2(1) of the Convention. Compulsory national service. In the context of their previous examinations of the application of the Convention, both the Committee on the Application of Standards of the International Labour Conference and the Committee of Experts have urged the Government to amend or repeal the Proclamation on National Service (No. 82 of 1995) and the 2002 statement concerning the Warsai Yakaalo Development Campaign in order to bring an end to the generalized and systematic practice of the exaction of compulsory labour from the population in the context of programmes related to the obligation of national service.

The Committee noted that, at the legislative level, the Constitution establishes the obligation for citizens to perform their duty of national service (article 25(3)) and that the Proclamation on National Service specifies that this obligation concerns all citizens aged between 18 and 50 years (article 6). This obligation includes active national service and service in the reserve army. Active national service, which concerns all citizens aged between 18 and 40 years, is divided into two periods: six months of active national service in the National Service Training Centre; and 12 months of active military service and development tasks in the military forces (article 8). The objectives of national service include the establishment of a strong defence force based on the people to ensure a free and sovereign Eritrea. The objectives also include creating a new generation characterized by love of work and discipline, ready to participate and serve in the reconstruction of the nation, and to develop and reinforce the economy of the nation by "investing in development work of our people as a potential wealth" (article 5). The Committee also noted that, in practice, the conscription of all citizens between the ages of 18 and 40 years for an indeterminate period had been institutionalized through the Warsai Yakaalo Development Campaign, approved by the National Assembly in 2002. In this respect, the Government confirmed that, in the context of their national service, conscripts could be called upon to perform other types of work and that in practice they participated in many programmes, including the construction of roads and bridges, reforestation, soil and water preservation, reconstruction and activities intended to improve food security.

Both the Committee of Experts and the Conference Committee have emphasized that work exacted from the population as part of compulsory national service, including a broad range of activities, some of which relate to national development, is not of a purely military character. Such work therefore goes beyond the exception set out in *Article 2(2)(a)* of the Convention, under the terms of which any work or service exacted in virtue of compulsory military service laws is only excluded from the scope of application of the Convention on condition that it consists of work of a purely military character. This condition is explicitly intended to prevent the requisitioning of conscripts for the performance of public works, and has its corollary in *Article 1(b)* of the Abolition of Forced Labour Convention, 1957 (No. 105), which prohibits the exaction of forced labour "as a method of mobilising and using labour for purposes of economic development". The Committee has also concluded, in light of the information on the duration and extent of the work exacted in the context of compulsory national service and the purposes for which the authorities have recourse to such labour, that this obligation goes beyond the power to mobilize labour envisaged in *Article 2(2)(d)* of the Convention, which shall be limited to genuine cases of emergency, or force majeure, that is a sudden, unforeseen happening calling for instant counter-measures.

The Committee notes that the Government reiterates that the duration of national service has been prolonged due to unrelenting threats and the state of belligerency of Ethiopia. The Warsai Yakaalo Development Campaign is a national strategy for the eradication of poverty and to safeguard the well-being of citizens, and is intended to achieve a policy of self-reliance based on the dedication of the people. The Government refers in this respect to the objectives of national service, as set out in Article 5 of the Proclamation on National Service, namely participation in the reconstruction of the nation and the strengthening of the national economy. The Government adds that, despite the threat of war, the Government has taken several measures to demobilize conscripts and to rehabilitate them within the civil service. An adequate salary scale has been introduced for members of the national service who have completed their duties successfully. Their status as civil servants demonstrates that they are no longer members of the national service. While the demobilization process was initially implemented successfully, the subsequent phases were terminated with the state of belligerency of Ethiopia. The Government reiterates that it has no option but to take the necessary measures of self-defence that are proportionate to the threat faced by Eritrea. In respect of this situation in practice, the Government views that the power to mobilize labour is related to a genuine situation of force majeure as it is designed for a certain or unforeseen happening in the future, and is therefore compatible with *Article 2(2)(d)* of the Convention.

The Committee notes that the IOE, in its observations, indicates that it is highly concerned by the situation described by the Committee for a number of years, and by the findings of the Commission of Inquiry on human rights in Eritrea, established by the United Nations Human Rights Council, and of a considerable number of NGOs, which report a large-scale and systematic practice of imposing compulsory labour on the population for an indefinite period of time within the framework of compulsory national service. The IOE emphasizes the urgency of bringing an end to this situation, which has been criticized in several international forums. Reiterating the concerns expressed by the Employer members in the Conference Committee with regard to the application of the Convention by Eritrea, the IOE observes that, although the Government indicated its commitment to work towards the abolition of forced labour, it has not sought ILO technical assistance or demonstrated any will to cooperate with the ILO.

In reply to the IOE's observations, the Government reiterates the explanations provided in its report on the reasons why the process of demobilization has been interrupted and the national service has been prolonged. It also emphasizes that the work exacted from the population in the framework of the programmes of the Warsai Yakaalo Development Campaign is afforded only to the interest of the community and not for the benefit of private companies or individuals. Overall, the purposes for which these programmes are used are limited to what is strictly required for the exigencies of the situation in Eritrea. Therefore, according to the Government, it is far from the truth to contend that the reality in Eritrea amounts to the systematic practice of imposing compulsory labour on the population.

Finally, the Committee notes that, in their latest reports, the Commission of Inquiry on human rights in Eritrea and the Special Rapporteur on the situation of human rights in Eritrea, both appointed by the United Nations Human Rights Council, have noted the absence of improvements in terms of reforming military/national service programmes (A/HRC/32/47 and A/HRC/32/CRP.1, of 9 May and 8 June 2016, and A/HRC/35/39 of 7 June 2017, respectively). The Committee observes that these two reports continue to refer to: the indefinite and arbitrary duration of conscription, which goes beyond the 18 months envisaged in the 1995 Proclamation, often being extended for several years; the use of conscripts to perform compulsory labour in a whole range of economic activities, including the public service and for private enterprises; and the non-voluntary nature of military service beyond the statutory 18-month duration. The Commission of Inquiry emphasizes that "current programmes serve primarily to boost economic development, to profit state-endorsed enterprises and to maintain control over the Eritrean population in a manner inconsistent with international law". The Committee also notes that the Special Rapporteur recognizes that the non-implementation of the decision of 2002 of the Eritrea-Ethiopia Boundary Commission (EEBC) is of particular concern, but nevertheless considers that the failure to implement this decision cannot serve as justification for the open-ended and arbitrary nature of Eritrea's military/national service programmes.

The Committee recalls that, although the Convention explicitly provides for a limited number of cases in which ratifying States may exact compulsory labour from the population, particularly in the context of normal civic obligations, compulsory military service and situations of emergency, the conditions under which compulsory labour is exacted are strictly defined and the work involved must respond to precise requirements to be excluded from the definition of forced labour. In light of the above and the information available to it, the Committee reaffirms that, in view of its duration, scope, objectives (reconstruction, action to combat poverty and reinforcement of the national economy), and the broad range of work performed, labour exacted from the population in the framework of compulsory

national service goes beyond the exceptions authorized by Convention No. 29 and constitutes forced labour. It is also in violation of *Article 1(b)* of Convention No. 105, which prohibits the use of compulsory labour “as a method of mobilising and using labour for purposes of economic development”. The Committee notes with *deep concern* that no progress has been achieved in law or practice to strictly limit the use of compulsory labour to the exceptions authorized by the Convention. *The Committee therefore urges the Government to take the necessary measures as soon as possible to amend or repeal Proclamation No. 82 of 1995 on National Service and the 2002 Declaration on the Warsai Yakaalo Development Campaign with a view to: (a) limiting the work exacted from the population within the framework of compulsory national service to military training and work of a purely military character; and (b) limiting the exaction of compulsory work or services from the population to genuine cases of emergency, or force majeure (that is, a sudden and unforeseen happening), by ensuring that the duration and extent of such compulsory work or services are limited to what is strictly required by the exigencies of the situation.*

The Committee recalls that the Government can avail itself of the technical assistance of the ILO to help address the situation noted.

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 107th Session and to reply in full to the present comments in 2018.]

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

Observation 2017

The Committee notes with *regret* that the Government's report has not been received. It is therefore bound to repeat its previous comments made in 2014. The Committee also notes that the Government had been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

The Committee notes the Government's comments on the observations submitted by the International Trade Union Confederation (ITUC) in 2012, which relate to the right to elect trade union representatives in full freedom. As to the ITUC allegations that all unions, including the National Confederation of Eritrean Workers and its affiliates, are kept under close scrutiny by the Government, and that public gatherings of over seven persons are prohibited, the Committee recalls that the rights of trade unions to organize their administration and activities and to hold public meetings and demonstrations are essential aspects of freedom of association. *The Committee requests the Government to provide further information as to how it ensures the respect of these rights in practice.*

Article 2 of the Convention. Right of workers without distinction whatsoever, to establish and join organizations. In its previous comments, the Committee hoped that the Civil Servants' Proclamation would be adopted shortly so that all civil servants have the right to organize, in accordance with the Convention. The Government once again states that the drafting process of the Proclamation is at the final stage for approval, and that civil servants will have the right to organize under its section 58(1). *Observing with concern that the Government has been referring to the imminent adoption of the Civil Servants' Proclamation for the last 12 years, the Committee urges the Government to take all necessary measures to expedite the adoption process of the Proclamation so as to grant without further delay the right to organize to all civil servants, in conformity with the Convention. The Committee reminds the Government that it may avail itself of the technical assistance of the Office in this regard, if it so wishes.*

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

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

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

Observation 2017

The Committee notes with *regret* that the Government's report has not been received. It is therefore bound to repeat its previous comments made in 2014. The Committee also notes that the Government had been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

Articles 1 and 2 of the Convention. Protection against anti-union discrimination and interference. The Committee had hoped that the Government would take the necessary measures without delay to amend the 2001 Labour Proclamation to strengthen the protection against anti-union discrimination. In its last report, the Government again indicates that the Ministry of Labour and Human Welfare has currently engaged in a drafting process to amend section 23 of the Labour Proclamation with a view to broadening the protection by covering all acts of anti-union discrimination and by protecting workers against dismissal linked to trade union membership or activity, the best solution being considered to be reinstatement. *The Committee requests the Government to expedite the process in order to guarantee in the very near future the protection against anti-union discrimination of both trade union officials and members (it being understood that reinstatement remains the best redress) through adequate compensation both in financial and occupational terms and its extension to recruitment and any other prejudicial acts during the course of employment including dismissal, transfer, relocation or demotion.*

Applicable sanctions in cases of anti-union discrimination or acts of interference. The Committee had previously recalled that the fine of 1,200 Eritrean nakfa (ERN) (approximately US\$80), established in section 156 of the Labour Proclamation as a penalty for anti-union discrimination or acts of interference, is not severe enough and requested the Government to provide information on any progress made in amending that provision. The Government reiterates that sections 703 and 721 of the Transitional Penal Code would prevail in the event of repeated violations of the right to organize established in the national legislation, though to date no sentences have been handed down for such violations, and that it is currently involved in the drafting process to amend section 156 of the Labour Proclamation. *The Committee requests the Government to take necessary measures without delay to provide for sufficiently dissuasive sanctions for anti-union dismissals and other acts of anti-union discrimination as well as acts of interference.*

Articles 1, 2, 4 and 6. Domestic workers. In its previous comments, the Committee had hoped that the new regulation on domestic work would explicitly grant the rights set out in the Convention to domestic workers. The Government again states that domestic workers are not expressly exempted from the definition of “employee” in section 3 of the Labour Proclamation and thus are not prohibited from the right to organize and to collective bargaining; but that the Government will take measures to include the rights guaranteed in the Convention in the forthcoming regulation applicable to domestic employees. *Recalling that under section 40 of the Labour Proclamation the Minister may by regulation determine the provisions of the Proclamation applicable to domestic employees, the Committee expresses the firm hope that the guarantees enshrined in the Convention will soon be explicitly afforded to domestic workers either by way of a regulation issued under section 40 or by way of the new regulation on domestic employees announced by the Government.*

Article 6. Public sector. The Committee had hoped that the new Civil Service Proclamation would explicitly recognize the rights laid down in the Convention for civil servants in the Central Personnel Administration (CPA) who are not engaged in the administration of the State. The Government again indicates that public servants are split into two categories, those who work in the CPA and those who work in public or semi-public enterprises; that the latter are covered by the Labour Proclamation and have therefore, like other workers, the rights to organize and to bargain collectively. The Government also states that, as regards CPA workers, the draft Civil Service Proclamation has not yet been enacted, and that up to now no collective bargaining has been undertaken between the

Government and civil servants. *The Committee requests the Government to provide specific information on the status of the draft Civil Service Proclamation and to transmit a copy of the draft. It expresses the firm hope that more than 10 years after ratification of the Convention the Government will soon be in a position to report the adoption of the above Proclamation thus ensuring that civil servants not engaged in the administration of the State benefit from the rights enshrined in the Convention, particularly the right to collective bargaining.*

Articles 4 and 6. Collective bargaining in practice. The Committee notes the Government's comments in reply to the 2012 observations of the International Trade Union Confederation (ITUC). *It once again requests the Government to indicate any measures taken or contemplated to promote the development of collective bargaining in the private and public sectors.*

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

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

Observation 2017

Article 1(a) of the Convention. Penal sanctions involving compulsory labour as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system. In its previous comments, the Committee requested the Government to take the necessary measures to ensure that no prison sentences (under the terms of which compulsory labour may be required) are imposed on persons who, without having recourse to violence, express political opinions or views opposed to the established political, social or economic system. In this respect, it noted that several provisions of Press Proclamation No. 90/1996 establish restrictions on printing and publishing (concerning the printing or reprinting of an Eritrean newspaper or publication without a permit; printing or disseminating a foreign newspaper or publication prohibited from entering Eritrea; publishing inaccurate news or information disturbing public order (Article 15(3), (4) and (10))), which are punishable with penalties of imprisonment. Under the terms of Article 110 of the Transitional Penal Code of 1991, persons convicted to imprisonment are subject to the obligation to work in prison. The Committee noted in this regard that, in her May 2014 report, the United Nations Special Rapporteur on the situation of human rights in Eritrea indicated that violations of rights, such as infringements of freedom of expression and opinion, assembly, association and religious belief, were still as numerous.

The Committee notes the Government's indication in its report that it is well known that expressing a political opinion or belief is not a crime in Eritrea. Since independence, no citizen has been detained for expressing his or her opinion or for criticizing the Government. The only restrictions on freedom of expression are related to the rights of others, morality, sovereignty and national security. The Government refers to the 1997 Constitution which not only protects fundamental freedoms, such as freedom of expression and opinion, assembly, association and religious belief, but also provides judicial and administrative remedies in case of violation. With regard to religious freedom, the Government refers to Proclamation No. 73/1995 respecting religious institutions and activities and indicates that no interference is allowed in the exercise of the rights of any religion or creed on condition that they are not used for political purposes and are not prejudicial to public order or morality. The Committee also notes the Government's view that the situation described in the report of the United Nations Special Rapporteur on the situation of human rights in Eritrea is misrepresented and that several of the allegations contained in the report, to which the Committee referred, are untrue.

The Committee notes that, in its latest resolution on the situation of human rights in Eritrea, adopted in June 2017, the United Nations Human Rights Council expresses its "deep concern at the severe restrictions on the right to freedom to hold opinions without interference, freedom of expression, including the freedom to seek, receive and impart information, liberty of movement, freedom of thought, conscience and religion, and freedom of peaceful assembly and association, and at the detention of journalists, human rights defenders, political actors, religious leaders and practitioners in Eritrea" (A/HRC/RES/35/35). The Committee also notes that, in the context of the Working Group on the Universal Periodic Review, the Government accepted the recommendations of certain countries encouraging it to "reform legislation in the area of the right to freedom of conscience and religion"; ensure that "the rights of all its people to freedom of expression, religion, and peaceful assembly are respected"; and take the "necessary measures to ensure respect for human rights, including the rights of women, political rights, the rights of persons in detention and the right of freedom of expression as it pertains to the press and other media" (A/HRC/26/13/Add.1).

The Committee recalls that the Convention protects persons who hold or express political views or views ideologically opposed to the established political, social or economic system by prohibiting the imposition of penalties which may involve compulsory labour, including sentences of imprisonment including compulsory labour. Freedom of opinion, belief and expression are exercised through various rights, such as the right of assembly and association and freedom of the press. The exercise of these rights enables citizens to secure the dissemination and acceptance of their views, or to practice their religion. While recognizing that certain limitations may be imposed on these rights as a safeguard for public order to protect society, such limitations must be strictly within the framework of the law. *In light of these considerations, the Committee expresses the firm hope that the Government will take all the necessary measures to ensure that the legislation that is currently in force, as well as any legislation that is being prepared concerning the exercise of the rights and freedoms referred to above, does not contain any provision which could be used to punish the expression of political opinions or views ideologically opposed to the established political, social or economic system, or the practice of a religion, through the imposition of a sentence of imprisonment under which labour could be imposed (as is the case for sentences of imprisonment in Eritrea). In this regard, the Committee requests the Government to provide information on any sentences of imprisonment imposed for violations of the provisions of the Press Proclamation (No. 90/1996) or Proclamation No. 73/1995 respecting religious institutions and activities, with an indication of the acts which gave rise to conviction to such penalties.*

Article 1(b). Compulsory national service for purposes of economic development. The Committee refers to its observation concerning the Forced Labour Convention, 1930 (No. 29), in relation to the broad range of types of work exacted from the population as a whole in the context of compulsory national service, as set out in the Proclamation on National Service No. 82 of 1995 and the 2002 Declaration on the "Warsai Yakaalo" Development Campaign. The Committee expresses **deep concern** at the absence of progress in law and practice to circumscribe the obligation of service within the limits authorized by the two forced labour Conventions. It recalls that this national service obligation, to which all citizens between the ages of 18 and 40 years are subject for an indeterminate period of time, has the objectives of the reconstruction of the country, action to combat poverty and the reinforcement of the national economy and, consequently, is in blatant contradiction with the objective of this Convention which, in *Article 1(b)*, prohibits recourse to compulsory labour "as a method of mobilising and using labour for purposes of economic development". *The Committee therefore strongly urges the Government to take the necessary measures without delay for the elimination in law and practice of any possibility of using compulsory labour in the context of national service as a method of mobilizing labour for the purposes of economic development.*

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 2018.]

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

Observation 2017

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2014. The Committee also notes that the Government has been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

Article 1 of the Convention. National policy and application of the Convention in practice. In its previous comments, the Committee expressed its concern regarding the widespread child labour in Eritrea and the lack of data and comprehensive measures to ensure that children are protected from economic exploitation. The Committee also recalls the 2008 concluding observations of the Committee on the Rights of the Child (CRC) (CRC/C/ERI/CO/3, paragraphs 12 and 13), which recommended that the Government adopt a national plan of action for children and requested that the Government, with the support of the ILO, UNICEF and NGOs, develop a comprehensive assessment study and plan of action to prevent and combat child labour.

The Committee notes the Government's indication that it has collected data and information to formulate a national policy and that an upcoming Comprehensive National Child Policy document is expected to strengthen efforts to provide sustained services to children.

The Committee notes with **concern**, however, that despite these preliminary measures, the Government's report describes very little concrete action that has been undertaken to combat child labour, notwithstanding its prevalence in the country. The Committee notes, in this respect, the reports of the UN Human Rights Council (A/HRC/26/L.6 and A/HRC/26/45) in 2014, which continue to highlight child labour in the country, including military conscription, as well as work in hazardous activities such as harvesting and construction. The Committee further notes with **concern** the Government's indication in its fourth periodic report to the CRC (CRC/C/ERI/4, paragraph 22) that, because no case of child labour practices had been filed in Eritrean courts, the Government's efforts to control child labour must have been effective. **Observing with deep concern the continuing widespread child labour in Eritrea, including in hazardous activities, the Committee strongly urges the Government to intensify its efforts to implement concrete measures, such as by adopting a national plan of action to abolish child labour once and for all, in cooperation with the employers' and workers' organizations concerned, as well as strengthening the capacity of the labour inspection system. The Committee also strongly encourages the Government to seek technical assistance from the ILO.**

Article 2(3) and (4). Age of completion of compulsory schooling and minimum age for admission to employment. In previous comments, the Committee noted the Government's indication that education is compulsory for eight years (five years of elementary school and three years of middle school), meaning that compulsory education would be completed at 14 years of age. Nevertheless, the Committee noted its concern at the low school enrolment rates and the significant number of children who leave school prior to completing primary education.

The Committee notes the measures described in the Government's report to provide free education to all school children up to the middle school level as well as its policies, in particular the Nomadic Education Policy, to make education inclusive to all children. The Government further indicates that it endeavours to expand secondary school education and bring those schools closer to rural areas. The Committee also notes the 2013–16 UNICEF Country Programme Document for Eritrea (E/ICEF/2013/P/L.1), which highlights certain measures that the Government has undertaken to improve basic education, including the free elementary education and nomadic education projects.

While taking due note of the Government's efforts, the Committee also notes that, according to the statistical information contained in the draft proposal within the Strategic Partnership Cooperation Framework (SPCF) 2013–16 between the Government and the United Nations system, the net enrolment rate declined from 52.5 per cent in 2005 to 49.6 per cent in 2010, with disparities by location and gender. The Committee further notes the information contained in the Government's fourth periodic report to the CRC (CRC/C/ER/4, paragraph 301 and table 28), according to which student enrolment at the elementary school level decreased by 9 per cent and female enrolment decreased by 8 per cent in 2009–10. **Noting that increasing access to quality basic education is included among the priorities of the SPCF 2013–16, as well as the Eritrea Country Programme with UNICEF, the Committee requests the Government to continue to cooperate with the UN bodies to improve the functioning of, and access to, the education system so as to increase school enrolment rates and reduce school drop-out rates for children at least up to the age of completion of compulsory education, particularly with regard to girl children.**

Article 3(2). Determination of the types of hazardous work. The Committee recalls that the Government has been referring to the upcoming adoption of a list of hazardous activities prohibited to young employees under section 69(1) of the Labour Proclamation since 2007. The Committee notes that the Government again repeats this indication but also states that the provisions specified under the current section 69 of the Labour Proclamation are sufficient because they include the list of hazardous activities. The Committee notes, however, that section 69 merely authorizes the minister, by regulation, to issue such a list. Therefore, in lieu of a ministerial regulation, by its own terms, the list contained in section 69 remains hypothetical. **The Committee accordingly urges the Government, without delay, to finalize the ministerial regulation issuing the list of hazardous activities prohibited to persons under the age of 18.**

Article 9(3). Keeping of registers by employers. The Committee previously noted the Government's indication that the requirement for employers to maintain a register for persons employed who are under 18 years would be addressed in an upcoming regulation. The Committee notes, however, the Government's latest indication that the Ministry of Labour and Human Welfare is still undertaking studies to develop this regulation. **Noting that the Government has been repeating its aim to adopt implementing legislation since 2007, the Committee urges the Government, without further delay, to take the necessary measures to adopt the regulation concerning the registers kept by employers and to transmit a copy once finalized.**

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.

C100 - Equal Remuneration Convention, 1951 (No. 100)**Observation 2017**

Articles 1 and (2)(a) of the Convention. Work of equal value. Private sector. Legislation. Since 2007, the Committee has been recalling that sections 14(1)(b) and 87(1) of the Labour Proclamation No. 377/2003, while prohibiting discrimination based on sex in respect of remuneration, do not specify that equal remuneration is required where men and women perform different work which is nevertheless work of equal value. The Committee recalls that the concept of "work of equal value" lies at the heart of the fundamental right of equal remuneration for men and women for work of equal value, and the promotion of equality. It permits a broad scope of comparison, including, but going beyond equal remuneration for "equal", "the same" or "similar" work, and also encompasses work that is of an entirely different nature, which is nevertheless of equal value (see General Survey on the fundamental Conventions, 2012, paragraphs 672–679). The Committee notes with *regret* that the Government merely reiterates that the Committee's comments will be taken into account in the ongoing process of amending the Labour Proclamation. *The Committee therefore asks the Government to adopt the necessary measures in the near future to give full legislative expression to the principle of equal remuneration for men and women for work of equal value in the Labour Proclamation, and to provide information on the concrete steps taken in this respect.*

C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111)**Observation 2017**

Article 1(1)(a) of the Convention. Prohibited grounds of discrimination. Legislation. The Committee recalls the absence of explicit legislative protection against discrimination in all aspects of employment and occupation on the grounds of colour, social origin and national extraction in both the Labour Proclamation (No. 377/2003) and the Federal Civil Service Proclamation (No. 515/2007). The Committee also recalls that, in accordance with section 26(2) of the Labour Proclamation, the following grounds shall not be deemed to constitute legitimate grounds for termination of the employment contract: trade union membership or activities, nationality, sex, religion, political outlook, marital status, race, colour, family responsibility, pregnancy, lineage or social status. The Committee notes that the Government reiterates that it considers that the grounds of social origin and national extraction are substantially covered by the expression "any other conditions" or "any other grounds", used respectively in section 14(1)(f) of the Labour Proclamation, and section 13(1) of the Federal Civil Service Proclamation. While acknowledging the Government's view, and given the persisting patterns of discrimination on the grounds set out in the Convention the Committee wishes to draw the Government's attention to the need for comprehensive legislation containing explicit provisions defining and prohibiting direct and indirect discrimination on at least all of those grounds, and in all aspects of employment and occupation, in order to enable workers to avail themselves of their right to non-discrimination, and to ensure the full and effective application of the Convention. *The Committee therefore once again asks the Government to take concrete steps to amend the Federal Civil Service Proclamation No. 515/2007 and the Labour Proclamation No. 377/2003 in the context of its current revision, with a view to specifying colour, social origin and national extraction as prohibited grounds of discrimination and to ensure that discrimination is prohibited in all aspects of employment and occupation on the basis of all the grounds enumerated in the Convention. The Committee trusts that the Government will soon be in a position to report progress in this regard.*

Scope of application. The Committee notes the Government's indication that the issue of amending the Labour Proclamation to provide explicitly that workers and candidates for employment are protected against discrimination is still under consideration. *The Committee urges the Government to take steps to ensure that not only workers but also candidates for employment are explicitly protected against discrimination in all aspects of employment and occupation, and asks the Government to provide information on any progress made in this regard.*

Equality of opportunity and treatment irrespective of race and colour. Indigenous communities. Further to its request for information on the situation of pastoralists, the Committee notes the Government's general indication that it has been taking steps to develop pastoralist communities, such as establishing infrastructures, launching mega projects, establishing mobile schools and training centres for pastoralists. The Government further indicates that it usually undertakes prior consultation with concerned parts of the community in areas where large-scale farming and other projects are going to take place, by raising awareness of these projects and allowing the communities affected to participate actively in the implementation process. The Committee notes that in 2013, the United Nations Special Rapporteur on the Rights of Indigenous Peoples had expressed concerns at some resettlements as part of the "Villagization" Programme and the situation of indigenous agro-pastoralists. The Special Rapporteur had noted in particular that, based on the information received and on other reliable sources, there were strong indications that the indigenous agro-pastoralists affected by the resettlements had been living in the lower Omo Valley area for many years, maintaining their culturally distinctive land tenure and way of life, including their traditional flood retreat agriculture practice (A/HRC/24/41/Add. 4, 2 September 2013, paragraphs 84–86). The Committee recalls that one of the main issues faced by indigenous peoples relates to the lack of recognition of their rights to land, territories and resources, undermining their right to engage in traditional occupations and that steps should be taken to ensure equality of opportunity and treatment of indigenous peoples in employment and occupation, including the right to engage without discrimination in traditional occupations and livelihoods. Recognition of the ownership and possession of the lands they traditionally occupy and access to their communal lands and natural resources for traditional activities is essential. Access to credit, marketing facilities, agricultural extension and skills-training facilities should also be provided on an equal footing with other parts of the population (see General Survey of 2012 on the fundamental Conventions, paragraph 768). *With a view to achieving equal opportunity and treatment of indigenous communities with the rest of the population with respect to employment and occupation, in particular traditional occupations, the Committee asks the Government to ensure that due consideration is given to the land-based pastoralists' livelihood and way of life in establishing and implementing the national policy and planning frameworks, including in the context of the programmes undertaken to develop pastoralist communities, taking into consideration their specific needs. The Committee asks the Government to provide information on the steps taken in cooperation with pastoralist communities to assess their ability to pursue their traditional activities, in particular with respect to their traditional land rights, and the results of such steps.*

Follow-up to the recommendations of the Tripartite Committee (representation made under article 24 of the ILO Constitution). The Committee recalls that the final award of damages in respect of claims made was determined on 17 August 2009. The Committee notes that the Government reiterates its previous statement that since the Eritrean Government has not yet settled the payment to Ethiopian workers, the final award has not yet been enforced. *Recalling that the Claims Commission, in its decision of 27 July 2007, recognized that each State party had full authority to determine the use and distribution of any damages awarded to it, the Committee once again asks the Government to identify the steps taken or envisaged to grant actual relief or remedies to the workers displaced following the outbreak of the 1998 border conflict.*

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

C156 - Workers with Family Responsibilities Convention, 1981 (No. 156)**Observation 2017**

Article 2 of the Convention. Scope. Legislation. The Committee notes with *regret* that, since 1995, it has been requesting the Government to provide

Ethiopia

information on the manner in which the Convention is applied to workers excluded from the scope of the Labour Proclamation No. 377/2003 (and previously No. 42/1993), as amended, other than those covered by the Federal Civil Servants Proclamation No. 515/2007 (that is, workers under contracts for the purpose of upbringing, treatment, care or rehabilitation; for educating or training, other than as apprentices; for those holding managerial posts in undertakings; for personal service for non-profit-making purposes; for members of the armed forces or the police force, employees of the state administration, judges and prosecutors for self-employment under a contract of service). *Recalling that the Convention applies to all branches of economic activity and all categories of workers and in the absence of a reply in the Government's report, the Committee asks once again the Government to provide more detailed information on all regulations or specialized legislation providing protection, at least equivalent to that afforded under the Convention, to the categories of workers excluded from the application of the Labour Proclamation No. 377/2003.*

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

C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**Observation 2017**

In its previous comments, further to the observations of the International Trade Union Confederation (ITUC) relating to restrictions on the right to strike in the public sector on the repeatedly invoked grounds of ensuring public safety, the Committee asked the Government to provide information on the number of strikes called in the public sector as a whole, the individual sectors concerned and the number of strikes prohibited on the grounds of a possible disruption of public order. The Committee notes the Government's indication that trade unions within a number of government departments, including customs, taxation, higher education, national education, health and social affairs, have availed themselves of their right to strike. Moreover, the Government indicates that the National Congress of Education Sector Unions (CONASYSED) held its latest strike at the Martine Oulabou Public School without being removed from the premises and without the right to strike being prohibited. *While taking note of the information provided by the Government on examples of strikes called in the public sector, the Committee requests once again that the Government provide detailed information on the number of strikes that have been called in the public sector, and the number of strikes prohibited on the grounds of a possible disruption of public order.*

Moreover, further to the observations previously received from Education International (EI), denouncing the adoption of various regulations which are making the exercise of union activities in the education sector increasingly difficult, the Committee asked the Government to indicate the measures taken in the education sector to ensure that trade unions have access to educational establishments so that they can perform their representative functions and defend their members' interests. The Committee notes with *regret* that there has been no reply from the Government on this matter. *The Committee reiterates its request and expects that the Government will take all necessary steps to provide the requested information.*

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

C100 - Equal Remuneration Convention, 1951 (No. 100)**Observation 2017**

Article 1(b) of the Convention. Equal remuneration for work of equal value. Legislation. For more than two decades, the Committee has been emphasizing the need to amend section 140 of the Labour Code so that it clearly and fully reflects the principle of equal remuneration for men and women for work of equal value. The Committee recalls that the concept of "work of equal value" lies at the heart of the fundamental right of equal remuneration for men and women for work of equal value, and the promotion of equality. It permits a broad scope of comparison, including but going beyond equal remuneration for "equal", "the same" or "similar" work, and also encompasses work that is of an entirely different nature, which is nevertheless of equal value (see the General Survey on the fundamental Conventions, 2012, paragraphs 672–679). The Committee notes the Government's indication that the draft revised version of the Labour Code has taken account of the various proposed amendments, including that of section 140, but that it is still in the process of being adopted. *The Committee trusts that the draft revised version of the Labour Code will be adopted soon and requests the Government to take the necessary steps to ensure that the provisions of section 140 fully reflect the principle of the Convention. It also asks the Government to send a copy of the new provisions once they have been adopted.*

C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111)**Observation 2017**

Articles 1(1)(a) and 3(c) of the Convention. Discrimination on the basis of sex. Legislation. The Committee recalls that it has been emphasizing since 2005 that certain provisions of the Civil Code (section 253, under the terms of which the husband is the head of family; section 254, under which the husband determines the place of family residence; and section 261 respecting the exercise of an occupation by the wife) by their nature, limit the freedom of women to work and can result in discrimination in employment and occupation. In its most recent comments (in 2013), the Committee noted that two Bills to repeal and replace the Civil Code (Act No. 19/89 of 30 December 1989) had been submitted to Parliament and it expressed the firm hope that the provisions of the Civil Code that have a discriminatory effect on women would be repealed in the near future. With reference to paragraph 787 of its General Survey on the fundamental Conventions, 2012, the Committee recalls that the laws governing personal and family relations which do not yet provide for equal rights of men and women also continue to have an impact on the enjoyment of equality with respect to work and employment. Distinctions based on civil status, marital status, or more specifically family situation (particularly with regard to responsibilities for dependent persons), are contrary to the Convention when they have the effect of imposing a requirement or condition on an individual of a particular sex that would not be imposed on an individual of the other sex. It also recalls that the protection provided by the Convention against discrimination applies equally to either sex, and the adoption of national legislation which ensures equal rights and responsibilities for men and women is an important step in the pursuit of equality in society. The Committee observes that the Government states that the draft revised versions of the Civil Code and the Labour Code are still before Parliament and have not yet been adopted. The Committee also notes that the Government's report does not contain any information on the content of the draft revised version of the Labour Code. *The Committee asks the Government to take the necessary steps to ensure that the provisions of the Civil Code that have a discriminatory impact on women's employment are repealed in the near future and to provide a copy of the amended Civil Code. Regarding night work by women, as regulated by sections 167 and 169 of the Labour Code, the Committee asks the Government as part of the revision of the Labour Code which has been in progress for a number of years, to critically review these provisions in the light of the principle of equality of opportunity and treatment for men and women, while examining whether measures need to be adopted for the security of the workers and the development of adequate means of transport.*

Article 1(1)(a). Sexual harassment. The Committee notes that the Government's report merely states that the Government will send copies of the legislative standards that will be adopted to give effect to the law. The Committee notes that the Government, in its replies to the questions concerning its report to the United Nations Committee on the Elimination of Discrimination against Women (CEDAW), indicates that the draft revised version of the Labour Code contains provisions defining sexual harassment as subjecting a person at work or in the workplace to pressure or verbal, physical or moral violence for one's personal satisfaction or to gain a sexual favour for oneself or for a third party (CEDAW/C/GAB/Q/6/Add.1, 30 January 2015, paragraph 13). The Committee observes that this definition is too restrictive to cover the full range of behaviour that constitutes sexual harassment since it omits conduct or remarks that create an intimidating, hostile or offensive work environment (see General Survey, 2012, paragraphs 789–794). *The Committee trusts that the draft revised version of the Labour Code will be adopted soon and asks the Government to take the necessary steps to ensure that the provisions relating to sexual harassment define and explicitly prohibit both quid pro quo and hostile work environment sexual harassment. It also asks the Government to take practical steps to raise awareness of the issue of sexual harassment among workers, employers and their respective organizations, and also among labour inspectors, lawyers and magistrates, including through the production and dissemination of information and advisory leaflets and radio or TV programmes, or through campaigns or information meetings. The Committee asks the Government to specify any steps taken towards this end.*

Discrimination on the basis of national extraction, race, colour or religion. The Committee notes the Government's undertaking to remain vigilant in the implementation of the "Gabonization" employment policy, so that this policy "does not overstep international standards". *Recalling the risk of discriminatory*

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practices based on national extraction, race, colour or religion in the context of the implementation of such a policy, the Committee asks the Government to periodically review its impact on the hiring or dismissal of Gabonese nationals who, on account of their foreign origin, race, colour or religion, might be treated as non-nationals. The Committee also asks the Government to provide data on the number of jobs affected each year by the policy of the "Gabonization" of employment.

*Article 2. National policy on equality. Equality of opportunity and treatment for men and women in employment and occupation. The Committee notes with regret that the Government's report does not contain any information on the implementation of the National Equality and Gender Equity Strategy, adopted in 2010, or on any measures to promote gender equality. However, the Committee recalls that the strategy document contained an analysis of gender inequalities and disparities, according to which women were poorer, at greater risk of unemployment, less educated and less well-trained than men, faced problems in terms of access to land, means of production and credit, and were unaware of their rights. The Committee also notes that CEDAW, in its concluding observations, expressed concern "at the persistence of adverse cultural norms, practices and traditions and patriarchal attitudes and deep-rooted stereotypes regarding the roles, responsibilities and identities of women and men in the family and society" (CEDAW/C/GAB/CO/6, 11 March 2015, paragraph 20). The Committee has also learned that the Government has approved a proposal to create the "Women Business Center", a platform wholly dedicated to women entrepreneurs. **The Committee asks the Government to take steps to promote equality of opportunity and treatment for men and women in employment and occupation, including by effectively combating stereotypes regarding women's aspirations, preferences and capabilities and their role in society and enabling them to have access to a wider range of jobs and occupations, through vocational guidance and training which are free from gender bias. The Committee asks the Government to provide information on the steps taken and their results and also on the activities of the Ministry of Equal Opportunities in relation to this matter. Lastly, the Committee asks the Government once again to take steps in the near future to resolve the difficulties that women face in gaining access to resources and the means of production, particularly credit and land, and to encourage women's entrepreneurship. The Committee asks the Government to provide information on all steps taken in this respect.***

C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**Observation 2017**

The Committee notes with *concern* that the Government's report has not been received. The Committee also notes that the Government had been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 1 September 2017, which contain allegations of arrests of several leaders of the Gambian National Transport Control Association (GNTCA), the death of Mr Sheriff Diba, one of the arrested leaders, while in detention, and the ban imposed on the activities of the GNTCA. *The Committee expresses concern at the gravity of these allegations and requests the Government to provide its comments thereon.*

C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)**Observation 2017**

The Committee notes with *concern* that the Government's report has not been received. It is therefore bound to repeat its previous comments made in 2011. The Committee also notes that the Government had been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

Scope of the Convention. Civil servants, prison officers and domestic workers. In its previous comments, the Committee had requested the Government to guarantee that the rights afforded by the Convention were ensured for prison officers, domestic workers and civil servants not engaged in the administration of the State. The Committee noted with regret that the new Labour Act did not apply to the abovementioned categories of workers (section 3(2)). The Committee recalled that only the armed forces, the police and public servants engaged in the administration of the State can be excluded from the guarantees of the Convention. The Committee notes that the Government had indicated that the right to collective bargaining under Part XIII of the Labour Act is a communal right guaranteed to all workers. The Committee observes that although prison officers, domestic workers and civil servant are excluded from the application of the Labour Act, section 3(3) entitles the Secretary of State to extend the Act's application by an order published in the gazette, to any excluded category of workers. *The Committee therefore requests the Government to indicate if the excluded employees under section 3(2) of the Labour Act are afforded the rights to collective bargaining under Part XIII of the Labour Act as a result of an order published in the gazette by the Secretary of State and if so, to provide a copy of the said Order. The Committee also requests the Government to indicate how these categories of workers are afforded adequate protection against acts of anti-union discrimination and interference, in accordance with Articles 1 and 2 of the Convention.*

Article 4. Measures to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or their organizations and workers' organizations. In its previous comments, the Committee had noted that according to section 130 of the Act, in order to be recognized as a sole bargaining agent, a trade union should represent a certain percentage of employees under a contract of service (30 per cent in the case of a single union and at least 45 per cent if the establishment in question employs at least 100 people; in this case, the bargaining agent could be composed of two or more trade unions). The Committee recalled that where, under a system for nominating an exclusive bargaining agent, there is no union representing the required percentage to be so designated, collective bargaining rights should not be denied to other unions in the unit, at least on behalf of their own members. The Committee further noted that section 131 of the Act provides that an employer may, if he or she wishes, organize a secret ballot to establish a sole bargaining agent. The Committee recalled that the organization of a ballot for determining representativeness should be carried out by the authorities or an independent party upon a request presented by a union. The Committee requested the Government to take the necessary measures in order to bring the legislation into conformity with the Convention in accordance with the abovementioned principles. The Committee noted the Government's indication that the Department of Labour is in consultation with the Central Government for amendments to be tabled before Parliament for approval. *The Committee requests the Government to provide information on any development in this regard.*

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

C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111)**Observation 2017**

The Committee notes with *deep concern* that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2011. The Committee also notes that the Government had been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

Article 1(1)(a) of the Convention. Discrimination in employment and occupation. Legislation. The Committee previously pointed out that the provisions of the Constitution regarding discrimination did not include any reference to the prohibition of direct and indirect discrimination in employment and occupation and only concerned discriminatory treatment by public officials (section 33(3)). It also noted that the Labour Act 2007 neither defines nor prohibits discrimination in employment and occupation on the basis of any of the grounds enumerated in the Convention, except in the case of dismissal and disciplinary action (section 83(2)). The Committee notes that the Government provides no response to its request regarding the need to amend the legislation. The Committee recalls once again that, although general constitutional provisions regarding non-discrimination are important, they are generally not sufficient to address specific cases of discrimination in employment and occupation, and comprehensive anti-discrimination legislation is generally needed to ensure the effective application of the Convention, based on at least all the grounds of discrimination listed in *Article 1(1)(a)* and in all areas of employment and occupation. *The Committee asks the Government to take steps in order to include legislative protection against direct and indirect discrimination at all stages of employment and occupation based on, as a minimum, all of the grounds enumerated in the Convention, namely, race, colour, sex, religion, political opinion, national extraction and social origin. The Committee also asks the Government to include in legislation provisions establishing dissuasive sanctions and appropriate remedies in cases of discrimination. Please provide specific information on progress made in this regard.*

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

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

C094 - Labour Clauses (Public Contracts) Convention, 1949 (No. 94)**Observation 2017**

Articles 1 and 2 of the Convention. Scope and purpose of the Convention. The Committee notes the Government's reference in its report to the adoption of the Public Procurement (Amendment) Act, 2016 (Act 914) (hereinafter the 2016 PPA), amending Part Two of the Public Procurement Act, 2003 (Act 663) on procurement structures. The Committee notes that the amendments added the requirement that procurement shall use the appropriate standard tender documents stipulated in the Sixth Schedule, with the minimum changes acceptable to the Procurement Board (section 50(1) of the 2016 PPA). There is no mention of the labour clauses required under the Convention, nor does section 59 on the evaluation of tenders contain any such reference. Recalling paragraphs 98 and 99 of its 2008 General Survey on labour clauses in public contracts, the Committee observes that these general references do not meet the core requirement of the Convention under *Article 2*, which calls for the mandatory insertion of appropriate labour clauses in the public contracts covered by the Convention. Finally, the Committee notes that, according to section 15(1) of the 2016 PPA, the minister responsible for finance may declare an entity, a subsidiary, an agency or a natural person to be a procurement entity, if the public procurement procedures are deemed unsuitable due to the strategic nature of the procurement. The Committee further notes that such entity is legally and financially autonomous and operates under commercial law (section 15(2)(a) of the 2016 PPA) at the ministerial, departmental, agency, metropolitan, municipal or district levels (section 19(1) of the 2016 PPA). **The Committee therefore once again requests the Government to take all necessary measures to bring its national legislation into conformity with the Convention, and encourages it to avail itself of the technical assistance from the Office, if it so wishes. It is also requested to provide information on the terms of the clauses to be included in the standard tender documents as referred to in section 50 and the Sixth Schedule of the 2016 PPA. The Committee requests the Government to indicate the measures adopted to ensure that bidders in a public procurement process are made aware of the terms of the clauses required. It further requests the Government to provide information on the nature and outcome of consultations held with the social partners prior to amending the Public Procurement Act of 2003.**

Application in practice. **The Committee requests the Government to provide information on the manner in which the Convention is applied in the country including, for instance, extracts from official reports and information on any practical difficulties in the application of the Convention.**

C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)**Observation 2017**

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 1 September 2017, the content of which is being examined under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

Articles 1 and 3 of the Convention. Adequate protection against anti-union discrimination. In its previous observation, the Committee requested the Government to provide detailed information on the nature and outcome of the inquiries carried out into allegations of anti-union discrimination made by the ITUC in 2009 and 2011 and to ensure the application of sufficiently dissuasive sanctions in all cases where they proved to be well founded. The Committee *regrets* that the only information transmitted by the Government with regard to these allegations is a mere reference to the Labour Act, 2003 (Act 651) and provisions concerning termination of appointment by the employers. **The Committee, once again, firmly requests the Government to provide detailed information on the nature and outcome of the inquiries carried out into allegations of anti-union discrimination made by the ITUC, including information on any sanctions or remedies applied in any cases in which the allegations were found to be substantiated.**

Article 4. Collective bargaining certification. In its previous comments, the Committee requested the Government to take the necessary measures to ensure that the legislation clearly provides for an election with a view to determining the most representative union for the purposes of collective bargaining in the event of plurality of trade unions in workplaces. The Committee notes that the Government reiterates that in practice, the Chief Labour Officer calls a meeting to discuss with the union representatives the mode of verification and venue for elections to determine the most representative union and that elections are held when a consensus is reached by all the stakeholders. The Committee takes note that this process is based on section 10(1) of the Labour Regulations, 2007. **Recalling that the criteria to be applied to determine the representative status of organizations for the purpose of bargaining must be objective, pre-established and precise so as to avoid any opportunity for partiality or abuse (see the 2012 General Survey on the fundamental Conventions, paragraph 228), the Committee requests the Government to indicate the procedure to be followed in the event that no consensus is reached by all the stakeholders with regard to the mode of verification and venue of elections for the determination of the most representative union.**

Article 5. Prison staff. In its previous comments, the Committee requested the Government to take the necessary measures to ensure that prison staff enjoyed the right to organize and bargain collectively whether through amendment to the Labour Act or other legislative means. The Committee notes that the Government indicates that prisons services staff are excluded from the right to form a union guaranteed by the Labour Act because they have their own mode of handling their social and welfare issues, but that the concerns raised are being considered by the appropriate authorities. **Recalling once again that the provisions of the Convention apply to prison staff, the Committee requests the Government to take the necessary measures to ensure that prison staff may exercise the guarantees in the Convention through organizations capable of defending their interests, including in collective bargaining, and to provide information on development made by the appropriate authorities in this regard.**

C182 - Worst Forms of Child Labour Convention, 1999 (No. 182)**Observation 2017**

Article 3(d) of the Convention. Hazardous work in cocoa farming. The Committee previously noted the Government's activities within the framework of the National Programme for the Elimination of Worst Forms of Child Labour in the Cocoa Industry (NPECLC) and its action plan for 2010–11. It further welcomed the development of the manual for agents of change in communities in Ghana, which was developed with ILO-IPEC assistance in 2014 with a view to, among others, eliminate child labour in hazardous work in Ghana's cocoa farms. It noted, however, the statistical data contained in the manual, according to which most children aged 5–17 years engaged in labour in the country were found in the agricultural sector, with 23.3 per cent of the children covered (1,846,126) engaged in at least one hazardous activity with 10 per cent in cocoa-specific hazardous activities. The Committee noted with concern the significant number of children below 18 years of age engaged in hazardous conditions of work in the agricultural sector, including in the cocoa industry, and requested the Government to strengthen its efforts to eliminate this worst form of child labour.

The Committee notes with *regret* the absence of information in the Government's report on this issue. **The Committee therefore urges the Government to undertake the necessary measures to eliminate the hazardous work of children under 18 years of age in cocoa farming, and requests the Government to provide information on any initiatives taken in this regard and the results achieved.**

Article 4(3). Revision of the list of hazardous types of work. The Committee previously noted the Government's indication that it envisaged to review and update as necessary section 91 of the Children's Act, including the list of types of hazardous work so as to be in compliance with the Convention. The Committee noted that a new list of hazardous work had been finalized in the cocoa sector within the framework of the NPECLC. The Committee also noted that

the National Plan of Action (NPA) for the Elimination of the Worst Forms of Child Labour in Ghana (2009–15) identified the need to expand the list of hazardous activities under the Children's Act. It further noted that the Economic Community of West African States (ECOWAS) "Peer Review of Child Labour Elimination Activities in Ghana", which was carried out in April 2014 with ILO technical assistance, described the Hazardous Child Labour Activity Framework that was elaborated in 2012 and was to be disseminated in 2014. The Committee further noted that, according to the Government's first report submitted under Convention No. 138, the National Steering Committee of the Child Labour Unit (CLU) had validated a list of hazardous types of work under the Hazardous Child Labour Activity Framework, entitled the "Ghana Hazardous Child Labour List" (GHAHCL), although the Government indicates that it had not yet become national law.

The Committee notes with *regret* the absence of information in this regard. ***Noting that the list of hazardous types of work under the Hazardous Child Labour Activity Framework has been elaborated and validated since 2012, the Committee urges the Government to take the necessary measures to ensure that it is adopted in the near future. The Committee also requests the Government to provide information on any progress made in this regard.***

Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour and 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.

1. *Trafficking.* The Committee previously noted that ILO–IPEC was supporting a national programme which focused on, among others, the worst forms of child labour in traditional fishing. The Committee also noted the Analytical Study on Child Labour in Lake Volta Fishing in Ghana, which was carried out in 2013 with ILO–IPEC assistance, which found that working children are engaged in hazardous fishing activities and are confronted with poor working conditions. Among the children engaged in fishing activities, 11 per cent were aged 5–9 years and 20 per cent were aged 10–14 years. Furthermore, according to the study, 47 per cent of children engaged in fishing in Lake Volta were victims of trafficking, 3 per cent were involved in bondage, 45 per cent were engaged in forced labour and 3 per cent were engaged in sexual slavery. The Committee expressed its deep concern at the prevalence of children who have been trafficked or sold into fishing activities, or are otherwise engaged in hazardous fishing activities in the Lake Volta region.

The Committee notes with *regret* the absence of information in this regard in the Government's report. However, the Committee notes from the Government's replies to the list of issues in relation to the initial report of Ghana under the International Covenant on Civil and Political Rights of 13 June 2016, that the Government is implementing the Child Protection Compact Agreement aimed at combating child trafficking, child slavery, and child labour in the Greater Accra, Volta and Central Regions. Currently, standard operating procedures and the database of trafficking in persons are being developed to identify victims of trafficking and follow up on various assistance interventions (CCPR/C/GHA/Q/1/Add.1, paragraph 74). The Committee also notes that, there are two government-owned shelters in Osu and Madina in Accra, which will be soon under renovation (paragraph 75). The Committee further notes that, the General Agriculture Workers Union (GAWU) project is being implemented in Kpondo Torkor to eliminate trafficking and child labour in the fishing sector (Volta Lake). The project puts a focus on the communities to protect children and send them to school. Moreover, a speedboat was launched in April 2015 to assist volunteers to monitor activities, arrest perpetrators and rescue children on the lake (paragraph 76). ***While taking due note of the measures undertaken by the Government, the Committee once again urges the Government to strengthen its efforts to ensure that these children are removed from the worst forms of child labour and provided with appropriate support services for their rehabilitation and social integration. It also once again requests the Government to provide information on the results achieved in this regard, including the number of child victims of trafficking who have been removed and rehabilitated, as a result of the measures taken.***

2. *Trokosi system.* The Committee previously noted that, despite the Government's efforts to withdraw children from *trokosi* (a ritual in which teenage girls are pledged to a period of service at a local shrine to atone for another family member's sins), the situation remained prevalent in the country. The Committee also noted that, under the NPA for the Elimination of the Worst Forms of Child Labour (2009–15), the Government aims to implement programmes to facilitate change in attitudes with regard to traditional practices towards children's rights.

The Committee notes with *regret* that the Government's report provides no new information on its programmatic measures to prevent and remove children from the *trokosi* system. It also notes that the Human Rights Committee is concerned about the persistence of certain harmful practices, including the *trokosi* system, notwithstanding their prohibition by law, in its concluding observations of 9 August 2016 (CCPR/C/GHA/CO/1, paragraph 17). The Committee notes with *deep concern* the prevalence of the *trokosi* practice affecting children in the country. ***The Committee therefore strongly urges the Government to take immediate and effective measures to prevent the engagement of children into trokosi ritual servitude and to put an end to this traditional practice as a matter of urgency. It once again requests the Government to indicate the measures taken in this regard and the results achieved, taking account of the special situation of girls. It once again requests the Government to provide information on the number of children under 18 years of age who are affected by the trokosi system in the country, and on how many are removed from this system and rehabilitated. To the extent possible, this information should be disaggregated by age and by gender.***

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

C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**Observation 2017**

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2017, and of the National Employers' Council of Guinea, transmitted with the Government's report, which cover matters examined by the Committee.

Article 3 of the Convention. Right of organizations to organize their activities and to formulate their programmes. In its previous comments, the Committee requested the Government to provide information on the determination of minimum services in the context of collective disputes through the framework for concerted social dialogue, and particularly to indicate the minimum services determined in the transport and communications services, where difficulties had previously been reported. The Committee notes with *interest* the Government's indication that, following the development of the National Social Dialogue Charter, Decree No. 256 of 23 August 2016 establishing a National Social Dialogue Council was adopted. The Committee notes that, in accordance with section 4 of the Decree, the Council is responsible for ensuring permanent dialogue between the State and all the social partners, and that section 5(2) provides that the Council shall be consulted on major disputes. The Committee further notes that section 7 of the Decree provides for the tripartite composition of the Council and the appointment of its members. The Government adds that it will take every measure for its effective implementation, including the appointment of its members. The Committee notes the indication by the National Employers' Council of Guinea, suggesting that the Council could also address, in addition to the transport and telecommunications sectors, services such as banking and insurance, health, education and microfinance. *The Committee requests the Government to provide information on the work of the National Employers' Council of Guinea in resolving disagreements concerning the determination of minimum wages. The Committee once again requests the Government to indicate the minimum services determined in the transport and communications services, where difficulties had previously been reported, including by the ITUC in its observations referred to above.*

The Committee recalls that in its previous comment it noted that, under the terms of section 431(5) of the Labour Code, employees are entitled to cease working completely, on condition that indispensable security measures and a minimum service are ensured. In this regard, the Committee previously requested the Government to take the necessary measures to amend section 431(5) of the Labour Code in order to limit the possibility to establish a minimum service to the following situations: (i) in services the interruption of which would endanger the life, personal safety or health of the whole or part of the population (that is, essential services "in the strict sense of the term"); (ii) in services which are not essential in the strict sense of the term, but in which strikes of a certain magnitude and duration could cause an acute crisis threatening the normal conditions of existence of the population; or (iii) in public services of fundamental importance (see the 2012 General Survey on the fundamental Conventions, paragraph 136). The Committee also noted that, under the terms of sections 433(1) and 434(4) of the Labour Code, read in conjunction, recourse to arbitration may be compulsory in a dispute of such a nature as to compromise the normal functioning of the national economy. In this regard, the Committee recalled that compulsory recourse to arbitration to bring an end to a collective labour dispute or a strike is only acceptable in cases where strikes may be subject to restrictions, or even prohibited, namely: (i) in the case of disputes concerning public servants exercising authority in the name of the State; (ii) in disputes in essential services in the strict sense of the term; or (iii) in situations of acute national or local crisis, but only for a limited period of time and to the extent necessary to meet the requirements of the situation (see General Survey op. cit., paragraph 153). The Committee also noted the possibility envisaged in section 434(4) of the Labour Code to make executory an arbitration award despite the expressed opposition of one of the parties within the time limits set out in the law, which amounts to empowering the public authorities to bring an end to a strike, instead of the highest judicial authorities. The Committee therefore requested the Government to take the necessary measures to amend section 434(4) of the Labour Code as indicated above. The Committee notes the Government's indication that it has established a commission to review the Labour Code, with a view to its revision, and that sections 431(5) and 434(4) will be analysed and discussed by this commission. *The Committee welcomes the establishment of the commission to review the Labour Code and hopes that sections 431(5) and 434(4) of the Labour Code will be amended in the near future. The Committee requests the Government to report any progress achieved in this regard.*

C094 - Labour Clauses (Public Contracts) Convention, 1949 (No. 94)**Observation 2017**

Article 2 of the Convention. Inclusion of labour clauses in public contracts. The Committee notes the Government's report and the three texts implementing the Labour Code of 2014 sent by the Government, regulating the use of foreign labour, determining protected jobs in the private and related sectors, and setting fees for work permits in the Republic of Guinea. The Government indicates that other texts have been drawn up and will be submitted to the next session of the Labour and Social Legislation Advisory Committee. The Committee notes once again that the Government's report does not contain any reply to its previous comments, only providing information that the Committee considers unrelated to the content of the Convention and the issue of its scope. It recalls that in ratifying this Convention the State undertakes, among other things, to guarantee that contracts awarded by a public authority involving the employment of workers by the other party to the contract shall include clauses ensuring to the workers concerned conditions of work which are not less favourable than those established for work of the same character in the trade or industry concerned in the same region. The Committee is once again bound to conclude that for the last 40 years no tangible progress has been made in applying the provisions of the Convention either in law or in practice. *The Committee therefore expects that the Government will make a sincere effort to maintain a meaningful dialogue with the ILO supervisory bodies and once more urges the Government to take all necessary steps without further delay to bring its national law and practice into conformity with the specific terms and objectives of the Convention.*

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

C138 - Minimum Age Convention, 1973 (No. 138)**Observation 2017**

Article 1 of the Convention. National policy and application of the Convention in practice. Further to its previous comments, the Committee notes the measures to which the Government refers in its report, including the development and adoption of a national social protection policy, the implementation of a children's Parliament and the creation, with the National Employment Directorate, of a division responsible for combating child labour.

The Committee nevertheless notes the Government's indication that no national policy to abolish child labour has yet been developed. Moreover, it notes with *deep concern* that, according to the estimates contained in the report "The twin challenges of child labour and educational marginalisation in the ECOWAS region", prepared as part of the Understanding Children's Work Programme (2014 UCW Report), 35.2 per cent of children between the ages of 5 and 14 years work, or 1,010,729 children in absolute terms, of whom 33 per cent are aged 5 to 11 years and 41.3 per cent are aged 12 to 14 years (the latter figure excludes children engaged in light work) (page 16, table 4). The 2014 UCW Report also indicates that in Guinea, 76.2 per cent of working children aged 10 to 14 years are in the agriculture sector, which is one of the most dangerous sectors and in which they face serious hazards, including the operation of dangerous equipment, pesticide exposure, heavy loads and excessive physical exertion (page 23, paragraph 29 and table 10). *Observing once again that a significant number of children work under the minimum age for admission to employment, of 16 years, including in hazardous conditions, the Committee urges*

the Government to take the necessary steps to ensure the adoption of a national policy to abolish child labour and to provide information on the progress achieved in this regard. It also requests that the Government provide information on the impact of the other measures taken by the Government to abolish child labour, in particular on the division responsible for combating child labour.

Article 2(1). Scope of application and labour inspection. The Committee previously noted that 6 per cent of economically active children aged 5 to 17 years in Guinea, or approximately 91,940 children, were self-employed workers. The Committee noted the Government's indication that the Children's Code (Act No. L/2008/011/AN), adopted on 19 August 2008, protects all children, including those who are not bound by an employment relationship. The Committee however observed that section 412 provides that it is prohibited for an employer to allow a child under the age of 16 years to perform work without having first obtained the consent of the person exercising parental authority. The Committee therefore noted that the Children's Code only appears to impose a minimum age for admission to employment on employers, without addressing situations in which children work on their own account. The Committee reminded the Government that the Convention applies to all branches of economic activity and that it covers all types of employment or work, whether or not it is performed on the basis of an employment relationship and whether or not it is remunerated. It requested that the Government provide information on the manner in which children working on their own account benefit from the protection afforded by the Convention.

The Committee notes the Government's indication that, with the help of partners, the resources at the disposal of the labour inspectorate will be strengthened to ensure the effective monitoring of the situation of children working on their own account. In this regard, the Committee observes that, in its report under the Labour Inspection Convention, 1947 (No. 81), the Government refers to certain measures taken to provide the labour inspection services with the necessary human, material and financial resources that are crucial to ensuring their normal operation, such as the provision of a number of young officials. The Government also indicates that it has established a training programme for new recently recruited labour inspectors and that one of the implementation phases of this programme was held in March 2017 with ILO support. The Government has also developed and adopted, with ILO support, methodological guidelines for labour inspection.

Referring to the General Survey of 2012 on the fundamental Conventions (paragraph 407), the Committee emphasizes the importance of ensuring that the labour inspection system effectively monitors working children in all areas and sectors. *The Committee therefore encourages the Government to continue to strengthen the capacities of the labour inspectorate so that it can monitor children working on their own account, and to provide information on the impact of the measures taken to detect such children. It also requests that the Government provide information on the manner in which the inspections conducted by labour inspectors are carried out in practice in order to monitor child labour, including information on the number of violations reported and extracts from the reports of labour inspectors.*

Article 2(3). Age of completion of compulsory schooling. In its previous comments, the Committee noted the Government's indication that compulsory schooling in Guinea only covers primary education, that is up to the age of 13 years. However, the Committee observed that the minimum age for admission to work specified by Guinea when ratifying the Convention is 16 years. The Committee nevertheless noted that, despite the significant progress achieved in relation to school enrolment and equity in education, a considerable number of children who have not yet reached the minimum age for admission to employment did not attend or had ceased to attend school and that, in parallel, the proportion of economically active children rises with age.

The Committee notes the information provided by the Government in which it reiterates that the age of completion of compulsory schooling is 13 years, but that by extending basic education to lower secondary education (year ten) and thus to all children aged 6 to 16 years, the Government wishes to eliminate child labour through compulsory schooling. The Committee nevertheless notes that, although basic education may now include lower secondary education, the age of completion of compulsory schooling remains 13 years of age.

In this regard, the Committee notes with *concern* that, according to the 2014 UCW Report, the attendance gap between working and non-working children is particularly pronounced in Guinea (22 percentage points) (paragraph 45). Referring to the General Survey of 2012 on the fundamental Conventions (paragraph 371), the Committee observes that, if compulsory schooling comes to an end before children are legally entitled to work, there may arise a vacuum which regrettably opens the door for the economic exploitation of children. *Recalling that compulsory schooling is one of the most effective means of combating child labour, the Committee strongly encourages the Government to take the necessary measures to make education compulsory up to the minimum age for admission to employment, that is, 16 years. It also once again requests that the Government provide a copy of the national legislation on education.*

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

C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)***Observation 2017***

The Committee notes with *concern* that the Government's report has not been received. It is therefore bound to repeat its previous comments made in 2011. The Committee also notes that the Government had been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

The Committee notes the comments of 4 August 2011 by the International Trade Union Confederation (ITUC) referring to wage bargaining under the National Tripartite Council for Social Consultation and to the inadequate provisions in the General Labour Act regarding protection against anti-union discrimination. The Committee also notes the comments of 30 August 2011 by the National Workers Union of Guinea (UNTG-CS) referring to the need to strengthen the capacity of the general labour inspectorate and the courts to enforce the labour legislation. ***The Committee requests the Government to send its observations thereon.***

Articles 4 and 6 of the Convention. Scope of the Convention. Agricultural workers and dockworkers. The Committee noted previously the Government's intention to pursue revision of the General Labour Act, Title XI of which contains provisions on collective bargaining and the adoption of measures to guarantee agricultural workers and dockworkers the rights laid down in the Convention. The Committee notes that, in its report, the Government states that the revision of the legislation is still in process. The Committee noted previously the Government's statement that the draft Labour Code provided for adaptation of the application of its provisions to the specific characteristics of the work performed by agricultural workers and dockworkers. ***The Committee requests the Government to provide information on the status of the draft legislation and trusts that it will guarantee for agricultural workers and dockworkers the rights laid down in the Convention.***

The Committee notes that the Government states that there is no specific legislation on this subject, which is dealt with in bodies created for the purpose such as the Standing Committee on Social Consultation. The Committee reminds the Government that it requested information on measures taken to adopt the special legislation which, under section 2(2) of Act No. 8/41 on freedom of association, was to regulate the right to collective bargaining of public servants who are not engaged in the administration of the State. ***The Committee once again requests the Government to send information on this matter.***

The Committee requested the Government to provide information on any developments regarding the promotion of collective bargaining in the public and private sectors (training and information activities, seminars with the social partners, etc.), and to provide statistics on the collective agreements concluded (by sector) and the number of workers they cover. The Committee noted that the ITUC's comments show that the collective bargaining situation is not satisfactory. It again reminds the Government that *Article 4* of the Convention provides that "measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiations between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreement". ***The Committee requests the Government to take specific measures to promote greater use in practice of collective bargaining in the private and public sectors, and to report any developments in the situation, indicating the number of new agreements concluded and the number of workers covered. The Committee hopes that the Government's next report will contain full information on the matters raised and on the ITUC's comments.***

The Committee reminds the Government that it may seek technical assistance from the Office should it so wish.

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

C105 - Abolition of Forced Labour Convention, 1957 (No. 105)**Observation 2017**

Article 1(a) of the Convention. Penal sanctions involving compulsory labour as a punishment for expressing political views. Penal Code and the Public Order Act. For many years, the Committee has been referring to certain provisions of the Penal Code and the Public Order Act, under which sentences of imprisonment may be imposed as a punishment for participating in certain meetings and gatherings or the publication, distribution or importation of certain kinds of publications. These sentences involve compulsory labour under Rule 86 of the Prison Rules. The Committee has been referring, in particular, to section 5 of the Public Order Act (Cap. 56), under which the police is entitled to control and direct the conduct of public gatherings and has extensive powers to stop or prevent the holding of public gatherings, meetings and processions (section 5(8)–(10)), contraventions being punishable with imprisonment (sections 5(11) and 17), which involves compulsory labour. The Committee has been also referring to section 53 of the Penal Code, under which printing, publishing, distributing, offering for sale, etc. of any prohibited publication is punishable with imprisonment; under section 52 of the Penal Code any publication can be declared a prohibited publication if it is necessary in the interests of public order, public morality or public health.

The Committee observes an absence of information on this point in the Government's report.

The Committee once again recalls 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. Referring to paragraph 303 of its 2012 General Survey on the fundamental Conventions, the Committee points out that 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 fall within the scope of the Convention if they enforce a prohibition of the peaceful expression of views or of opposition to the established political, social or economic system, whether the prohibition is imposed by law or by an administrative decision. Such views may be expressed orally or through the press or other communications media or through the exercise of the right of association (including the establishment of political parties or societies) or participation in meetings and demonstrations.

The Committee observes that the scope of the provisions of the Penal Code and the Public Order Act referred to above is not limited to acts of violence or incitement to violence and their application may lead to the imposition of penalties involving compulsory labour as a punishment for various types of non-violent actions relating to the expression of views through certain kinds of publications and participation in public gatherings. *The Committee therefore, once again expresses the firm hope that the provisions of the Penal Code and the Public Order Act referred to above will be brought into conformity with the Convention (e.g. by limiting their scope to acts of violence or incitement to violence or by replacing sanctions involving compulsory labour with other kinds of sanctions, such as fines) and that the Government will soon be in a position to report on the progress made in this regard.*

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

C143 - Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)**Observation 2017**

The Committee notes that the Government's report contains no reply to its previous comments. It hopes that the next report will contain full information on the matters raised in its previous comments initially made in 2012.

Articles 10, 12 and 14(a) of the Convention. National policy on equality of opportunity and treatment, and free choice of employment. For a number of years, the Committee has addressed the issue of the existing policy of "Kenyanization" of employment which was considered by the Committee as contrary to the principle established by the Convention of equality of opportunity and treatment between national and foreign workers provided that foreign workers are residing lawfully in the country of employment. The Committee notes with *interest* that section 5 of the Employment Act 2007 provides that the Minister, labour officers and the Industrial Court shall promote and guarantee equality of opportunity for a person who is a migrant worker or a member of his or her family lawfully within Kenya. Section 5 also prohibits direct and indirect discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, pregnancy, mental status or HIV status, with respect to recruitment, training, promotion, terms and conditions of employment, termination of employment or other matters arising out of employment. Besides, it establishes that an employer shall pay his or her employees equal remuneration for work of equal value. The Committee further notes the adoption of the National Gender and Equality Commission Act, 2011 and the Citizens and Foreign Nationals Management Service Act, 2011. *The Committee requests the Government to indicate the manner in which section 5 of the Employment Act 2007 is applied in practice, namely how it is translated into a national policy designed to promote and to guarantee equality of opportunity and treatment in respect of employment and occupation, social security, trade union and cultural rights and individual and collective freedoms for persons who, as migrant workers or as members of their families are lawfully within its territory, as provided in Articles 10 and 12(a) (g) of the Convention. Please provide information on the functioning of and the measures adopted on these issues by the National Gender and Equality Commission and the Citizens and Foreign Nationals Management Service.*

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

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

C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**Observation 2017**

Article 3 of the Convention. Right of workers' and employers' organizations to organize their activities and formulate their programmes. The Committee had previously noted that section 198F of the Labour Code grants specific advantages to trade unions representing more than 35 per cent of employees, and that section 198G(1) of the Labour Code provides that only members of registered trade unions representing more than 35 per cent of the employees in enterprises employing ten or more employees were entitled to elect workplace union representatives. The Government had indicated that the issue would be examined by the National Advisory Committee on Labour which was working on a reform of the labour legislation. The Committee had trusted that the Government would ensure, through the reform of the labour legislation, that the distinction between most representative and minority unions did not result in granting privileges that would unduly influence workers' free choice of organization. The Committee *regrets* that no information has been provided by the Government in its report in this respect and recalls that workers' freedom of choice may be jeopardized if the distinction between most representative and minority unions results, in law or in practice, in granting privileges such as to influence unduly the choice of organization by workers. The Committee further recalls that the distinction should be limited to the recognition of certain preferential rights (for example, for such purposes as collective bargaining, consultation by the authorities or the designation of delegates to international organizations). *The Committee requests the Government to take measures, including in the context of the ongoing labour law reform, to ensure that the distinction between most representative and minority unions does not result, in law or in practice, in granting privileges that would unduly influence workers' free choice of organization. It requests the Government to provide information on all progress made in this respect.*

Articles 2, 3 and 5. Public officers' associations. In its previous comments, the Committee had requested the Government to indicate if public officers' associations were subject to the obligations requiring a registered society to supply to the Registrar-General, upon his or her order at any time, a list of office bearers and members of the society, the number and place of meetings held within the preceding six months, and such accounts, returns and other information as he or she thinks fit (section 14(1)(b), (c) and (d) of the Societies Act), or whether they fall within the exception of section 14(2) of the Societies Act (which provides that the Registrar-General shall not order a political association to furnish its minutes, information on its meetings, accounts, correspondence or lists of its members, except to the extent that is necessary to ascertain the constitution, rules and office bearers of that association). In addition, the Committee expressed the hope that measures would be taken to ensure that public officers under the Public Service Act were able to establish and join federations and confederations, and affiliate with international organizations.

The Committee notes the Government's indication that public officers' associations are not exempted under section 14(2) of the Societies Act. However, the Committee also notes the Government's indication that, in the context of discussions between the Ministry of Labour and Employment and the Ministry of Public Service concerning possible legislative amendments, the Ministry of Public Service's Strategic Plan for 2016–19 has been endorsed by the Cabinet. It notes with *interest* that the Strategic Plan includes amending the Public Service Act to accommodate trade unionism, under priority 6 concerning the enhancement of public officers' welfare, with a projected time frame of April to July 2017 for start and completion dates. It further notes the Government's indication that the Ministry of Labour and Employment has successfully developed a draft Labour Policy, which will be tabled in the Cabinet. The draft Policy underlines the application of international labour standards to all workers across sectors, including public servants, and the Government indicates that accordingly, the rights under the Convention will be enjoyed by public servants. *The Committee welcomes this explanation and requests the Government to pursue its efforts to amend the Public Service Act to ensure organizations of public officers are not subject to the obligations outlined in section 14(1)(b), (c) and (d) of the Societies Act, and that their supervision is limited to the obligation of submitting periodic financial reports or where there are serious grounds for believing that the actions of an organization are contrary to its rules or the law. It further firmly hopes that the Government will take the necessary measures to ensure that public officers are able to establish and join federations and confederations, and affiliate with international organizations. It requests the Government to provide information on developments in this regard, including any legislation adopted in this respect.*

The Committee reminds the Government that it may avail itself of the technical assistance of the Office in this regard.

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

C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)**Observation 2017**

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 1 September 2017 that are addressed under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

Article 4 of the Convention. Promotion of collective bargaining. Recognition of the most representative union. The Committee previously noted that section 198A(1)(b) of the Labour Code defines a representative trade union as a "registered trade union that represents the majority of the employees in the employ of an employer", and that section 198A(1)(c) specified that "a majority of employees in the employ of an employer means over 50 per cent of those employees". It recalled that if no union covers more than 50 per cent of the workers, collective bargaining rights should be granted to all the unions in the unit, at least on behalf of their own members. The Government indicated in that respect that the ongoing consolidation of labour legislation would include the issues raised by the Committee.

The Committee notes the Government's statement that in the current process of revision of the labour legislation, there is an introduction of the concept of organizational rights as opposed to bargaining rights. The Government indicates that regulations on organizational and bargaining rights are anticipated upon completion of the labour law reform. The Committee notes in this regard that the drafting instructions for the 2016 consolidation and revision of the Labour Code highlight the Committee's previous request in this respect, and state that the revised Code should provide for bargaining rights in the scenario where unions are sufficiently representative but there is an absence of any union with a more than 50 per cent membership. The Committee recalls that the determination of the threshold of representativeness 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. *The Committee requests the Government to take the necessary measures in the context of the labour law reform to ensure that if there is no union that reaches the required majority to be designated as the collective bargaining agent, minority unions should be given the possibility to bargain collectively, jointly or separately, at least on behalf of their own members. It requests the Government to provide information on measures taken in this respect, and to provide a copy of any legislation or subsequent regulations adopted.*

Representativeness requirements for certification of a union as the exclusive bargaining agent. The Committee previously noted that section 198B(2) of the Labour Code provides that the arbitrator may conduct a ballot "if appropriate" in the determination of disputes concerning trade union representativity. In that respect, it trusted that disputes which required the holding of a vote to determine which trade union was most representative would be disposed of by means of a ballot. It further recalled that new organizations, or organizations with a sufficiently large number of votes, should be able to ask for a new election after a reasonable period has elapsed since the previous election.

In this respect, the Committee notes that the drafting instructions for the 2016 consolidation and revision of the Labour Code refer to the introduction of a formal requirement for ballots to be held in determining trade union representativeness, removing the arbitrator's discretion as to whether a ballot is appropriate.

The Committee requests the Government to pursue its efforts to ensure that, in the context of the labour law reform, disputes which require the holding of a vote to determine which trade union is most representative are in fact disposed of by means of a ballot. Additionally, the Committee requests the Government to take the necessary measures to amend the Labour Code so as to ensure that new organizations, or organizations failing to secure a sufficiently large number of votes, may ask for a new election after a certain period has elapsed since the previous election.

Collective bargaining in the education sector. The Committee previously requested information on any collective bargaining agreements reached for teachers in the public and private sectors. In this regard, the Committee notes the Government's indication that drafting instructions have been submitted to the Office of Parliamentary Counsel for drafting concerning the amendment of the Education Act in order to bring it into conformity with the rights enshrined in the Convention. It notes in this respect that the drafting instructions for the 2016 consolidation and revision of the Labour Code identify that, with regard to changes required in respect of other pieces of legislation, the Education Act should be clarified to state that teachers enjoy collective bargaining rights. In addition, with respect to the public sector, the Committee notes the Government's reference to section 64 of the Education Act of 2010, which provides that a teacher has a right to form or become a member of any teacher formation, and that a teachers' formation representing more than 40 per cent of practising teachers may apply for recognition to the Minister. With respect to the private sector, the Government indicates that the rights of teachers in that sector to form and to join trade unions are also protected by section 64 of the Education Act and the Labour Code (Amendment) Act No. 1 of 2010, and that collective bargaining is permissible provided that the required threshold is achieved. The Government further indicates that teacher formations are consulted for concerted decisions every time the Ministry of Education has an issue that concerns its members. *The Committee requests the Government to provide information on the amendment to the Education Act aimed at bringing the Act into conformity with the Convention and to, in the context of this revision, take into account the Committee's above indications concerning the need to ensure that if there is no union that reaches the required threshold to be designated as the collective bargaining agent, minority unions should be given the possibility to bargain collectively, jointly or separately, at least on behalf of their own members. In the meantime, the Committee requests the Government to provide information on the application of section 64 of the Education Act in practice, including the number of teachers' associations that have applied to the Minister for recognition, the number of associations recognized, and the rights accompanying such recognition. The Committee once again requests the Government to indicate if any collective bargaining agreements have been reached with teachers in the public and private sectors, and if so, to provide details of such agreements. Lastly, it once again requests the Government to provide a copy of the Labour Code (Amendment) Act No. 1 of 2010.*

C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**Observation 2017**

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 1 September 2017 concerning issues that have been raised since 2012 and which are examined in the present observation, as well as matters that are being dealt with by the Committee on Freedom of Association in the framework of Cases Nos 3081 and 3202.

Legislative developments. The Committee recalls that for many years it has been commenting on the need to amend or repeal the following provisions of Title 18 of the Labour Act, which are not in conformity with the Convention: (i) section 4506, prohibiting workers in state enterprises and the public administration from establishing trade unions; (ii) section 4601-A, prohibiting agricultural workers from joining industrial workers' organizations; and (iii) section 4102(10) and (11), providing for the supervision of trade union elections by the Labour Practices Review Board. The Committee notes with *satisfaction* that, as indicated by the Government in its report, Title 18 of the Labour Practices Law has been repealed by the Decent Work Act 2015 (the Act) which came into force on 1 March 2016. The Committee wishes to raise the following points with respect to the Act.

Scope of application. The Committee notes that section 1.5(c)(i) and (ii) of the Act excludes from its scope of application work falling within the scope of the Civil Service Agency Act. The Committee recalls, in this respect, that in its previous comment, it had noted the Government's indication that the legislation guaranteeing the right of public employees to establish trade unions (the Public Service Ordinance) was being revised with the technical assistance of the Office. The Committee notes that no new information has been provided by the Government in that respect. ***The Committee expects that the revision of the Ordinance will make it possible to give full effect to the Convention in relation to public employees and requests the Government to report any developments in this regard.***

The Committee notes that section 1.5(c)(i) and (ii) of the Act also excludes from its scope of application, officers, members of the crew and any other persons employed or in training on vessels. ***Noting that no information has been provided by the Government on the legislation guaranteeing the right to establish and join organizations to those working on vessels, the Committee requests the Government to indicate how maritime workers, including trainees, are ensured the rights enshrined in the Convention, including any laws or regulations adopted or envisaged covering this category of workers.***

Article 1 of the Convention. Right of workers, without distinction whatsoever, to establish and join organizations. The Committee notes that section 2.6 of the Act provides that all employers and workers, without distinction whatsoever, may establish and join organizations of their own choosing without prior authorization, and subject only to the rules of the organization concerned. The Committee also notes that section 45.6 of the Act recognizes the right of foreign workers to join organizations. ***The Committee requests the Government to indicate whether, in addition to the right to join organizations, foreign workers are entitled to establish organizations of their own choosing.***

Article 3. Determination of essential services. The Committee notes that the National Tripartite Council (established by virtue of section 4.1 of the Act) has the function to identify and recommend to the Minister services that are to be considered essential (section 41.4(a) of the Act). The Committee notes with *interest* that essential services are defined in section 41.4 of the Act as services which, if interrupted, would endanger the life, personal safety or health of the whole or any part of the population. The section also provides that the President shall, upon considering the recommendations of the National Tripartite Council, decide whether or not to designate any part of a service as an essential service and publish a notice of designation of that essential service in the *Official Gazette*. The Committee notes that the final decision on the determination of a service as essential rests with the President, who is neither bound by nor obliged to follow the recommendations of the National Tripartite Council. ***The Committee requests the Government to indicate whether, in determining services which are to be considered essential, the President is bound by the definition of essential services set out in section 41.4 of the Act. The Committee also requests the Government to provide information on how section 41.4 has operated in practice with respect to the designation of essential services.***

C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)**Observation 2017**

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 1 September 2017 concerning issues examined in the present observation as well as matters that are being dealt with by the Committee on Freedom of Association in the framework of Cases Nos 3081 and 3202.

Legislative developments. The Committee notes the Government's indication that the Decent Work Act adopted in 2015 came into force on 1 March 2016 and that it ensures the rights enshrined in the Convention. The Committee recalls that for many years it has been commenting on the need to adopt legal provisions guaranteeing: (i) adequate protection against anti-union discrimination at the time of recruitment and during the employment relationship, accompanied by sufficiently effective and dissuasive sanctions; (ii) adequate protection for workers' organizations against acts of interference by employers and their organizations, including sufficiently effective and dissuasive sanctions; and (iii) the right to collective bargaining for employees in state-owned enterprises and public servants who are not engaged in the administration of the State.

Scope of the Convention. The Committee notes that section 1.5(c)(i) and (ii) of the Decent Work Act of 2015 (the Act) excludes from its scope of application work falling within the scope of the Civil Service Agency Act. The Committee recalls, in this respect, that in its previous report, the Government had indicated that the legislation guaranteeing the right of collective bargaining of public servants and employees in state enterprises (Ordinance on the public service) was under revision with the technical assistance of the Office. The Committee notes that no information has been provided by the Government in that respect. ***The Committee expects that the revision of the Ordinance on the public service will make it possible to give full effect to the Convention in relation to employees in state enterprises and public servants not engaged in the administration of the State and requests the Government to report any developments in this regard.***

The Committee notes that section 1.5(c)(i) and (ii) of the Act also excludes from its scope of application, officers, members of the crew and any other persons employed or in training on vessels. ***Noting that no information has been provided by the Government on legislation guaranteeing the right of collective bargaining to maritime workers, the Committee requests the Government to indicate how the rights enshrined in the Convention apply to these workers, including any laws or regulation, adopted or envisaged, covering them.***

Article 1 of the Convention. Adequate protection against anti-union discrimination. The Committee recalls that for many years it has been requesting the Government to take measures to introduce in the legislation provisions that would ensure an effective protection against anti-union discrimination. The Committee notes that section 2.6 of the Act provides that the right to form organizations and to bargain collectively are fundamental rights and that section 2.7 prohibits discrimination in the exercise of the rights conferred by the Act. The Committee also notes that section 2.11 of the Act provides for the protection of workers' freedom of association (stipulating, inter alia, that no person may prejudice or threaten to prejudice a worker because of past, present or anticipated membership of an organization of workers) and that section 2.12 of the Act provides for the protection of employers' freedom of association. The Committee notes that sections 2.11 and 2.12 provide that they operate in addition to, and to the fullest extent possible together with section 2.7 of the Act, under which discrimination overall is prohibited. The Committee notes that, while the Act does not expressly prohibit termination of employment based on anti-union discrimination, section 14.8 prohibits termination because of the exercise of rights conferred by the Act. It also notes that complaints for the violation of the rights

guaranteed in the Act can be lodged to the Ministry and that the Ministry's decisions can be appealed before the Labour Court (Chapters 9 and 10 of the Act). *Emphasizing the importance of ensuring effective protection against acts of anti-union discrimination and of providing for sufficiently dissuasive sanctions in this regard, the Committee requests the Government to provide further information on the sanctions applied in cases of acts of anti-union discrimination. It also requests the Government to provide statistics on the number of cases of discrimination examined, the duration of the procedures and the type of penalties and compensation ordered.*

Article 2. Adequate protection against acts of interference. The Committee recalls that for many years it has been requesting the Government to take measures to introduce in the legislation provisions guaranteeing adequate protection for workers' organizations against acts of interference by employers and their organizations, including sufficiently effective and dissuasive sanctions. The Committee notes with *regret* that the Act still contains no specific provisions on protection against interference. The Committee recalls that under the terms of *Article 2* of the Convention, workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration (see the 2012 General Survey on the fundamental Conventions, paragraph 194). *The Committee requests the Government to take the necessary measures to introduce in the legislation a prohibition of acts of interference as well as rapid appeal procedures and dissuasive sanctions against such acts. It requests the Government to report on any development in this regard.*

Article 4. Promotion of collective bargaining. The Committee notes that section 37.1(a) of the Act provides that trade unions that represent the majority of the employees in an appropriate bargaining unit are able to seek recognition as exclusive bargaining agents for that bargaining unit. It also notes that a trade union that no longer represents the majority of the employees in the bargaining unit must acquire majority within three months, if not, the employer shall withdraw recognition from that trade union (section 37.1(k)). The Committee recalls that while it is acceptable that the union which represents the majority or a high percentage of workers in a bargaining unit should enjoy preferential or exclusive bargaining rights, it considers that in cases where no union meets these conditions, or does not enjoy such exclusive rights, minority trade unions should at least be able to conclude a collective or direct agreement on behalf of their own members (see General Survey, op. cit., paragraph 226). *The Committee requests the Government to indicate whether, if no union represents the majority of the employees in an appropriate bargaining unit, the minority unions in the same unit enjoy collective bargaining rights, at least on behalf of their members.*

Settlement of disputes affecting national interest. The Committee notes that section 42.1 of the Act provides that if the President considers it in the national interest, the President may: (i) request the Minister to appoint a conciliator to conciliate any dispute, or potential dispute, between employers and their organizations on the one hand and employees and their trade unions on the other hand; or (ii) in consultation with the National Tripartite Council, appoint a panel of persons representing the interests of employers, employees and the State to investigate any industrial conflict or potential conflict for the purpose of reporting and making recommendations to the President. *Recalling that, pursuant to Article 4 of the Convention, the settlement of collective disputes must be consistent with the promotion of free and collective bargaining, the Committee requests the Government to provide additional information with respect to the prerogatives under section 42.1 of the Act, and to indicate the extent to which this provision provides the parties with complete freedom of collective bargaining and does not alter the principle of voluntary arbitration.*

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

Observation 2017

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2016.

Article 1 of the Convention. Legislative developments. For more than 15 years, the Committee has been referring to the fact that there was no legislation or national policy to implement the Convention. The Committee notes the adoption in June 2015 of the Decent Work Act which provides comprehensive protection against discrimination in the private sector. Specifically, the Committee notes that sections 2.4 and 2.7 of the Act define and prohibit direct and indirect discrimination against all persons who work or who seek to work on all the grounds protected under *Article 1(1)(a)* of the Convention, as well as on a range of additional grounds including tribe, indigenous group, economic status, community, immigrant or temporary resident status, age, physical or mental disability, gender orientation, marital status or family responsibilities, pregnancy and health status including HIV or AIDS status. It also notes that section 2.7(a), which prohibits discrimination against a person "who works or who seeks to work in Liberia in an employment practice", read together with section 2.9 of this Act, which defines "employment practice" broadly to include, inter alia, access to vocational training, access to employment, and particular occupations or jobs, including advertising, recruitment process, selection procedures, appointment, promotion, remuneration security of tenure and termination, extend the above prohibition to all aspects of employment. The Committee further notes that section 2.8 of the Act defines and prohibits both quid pro quo and hostile environment sexual harassment. *The Committee welcomes the provisions concerning non-discrimination and equality in the Decent Work Act of 2015, and requests the Government to provide information on their application in practice, including details on specific obstacles encountered.*

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.

C112 - Minimum Age (Fishermen) Convention, 1959 (No. 112)

Observation 2017

The Committee notes that in its reports sent on the application of a number of fishing Conventions the Government indicates that the Liberian Maritime Law, RLM-107 (hereinafter the "Maritime Law") and the Liberian Maritime Regulations, RLM-108 (hereinafter the "Regulations") were amended in 2013 addressing the Committee's previous comments on the application of the Conventions, without providing any further information. *Recalling that for more than 20 years the Government has been requested to provide information on the applicability of existing legislation to fishers and noting that it is not clear from the Government's response whether there are adequate provisions in the amended texts to cover fishers, the Committee requests the Government once again to clarify this issue.*

In order to provide a comprehensive view of the issues to be addressed in relation to the application of the fishing Conventions, the Committee considers it appropriate to examine them in a single comment, as follows.

Minimum Age (Fishermen) Convention, 1959 (No. 112)

Article 1 of the Convention. Scope of application. Minimum age. The Committee notes that section 326(2) of the Maritime Law states that "persons under the age of 16 shall not be employed or work on Liberian vessels registered under this Title, except on vessels upon which only members of the same family are employed, school ships or training ships". The Committee recalls that according to *Article 2* of the Convention, children under the age of 15 years shall not be employed or work on fishing vessels. The Committee also recalls that the exclusion of vessels upon which only members of the same family are employed is not provided for under the Convention. The Committee further notes that according to section 290 of the Maritime Law, its Chapter 10 – which deals with merchant seamen and minimum age – only applies to persons engaged on board vessels of at least 75 net tons. Moreover, section 326 of the same chapter, fixing the minimum age at sea, only applies to vessels registered under the Maritime Law. In this connection, section 51 limits the registration procedure to specific

vessels, namely: (a) vessels of at least 20 net tons, owned by a citizen or national of Liberia and engaged solely in coastwise trade between ports of the country or between those of Liberia and other West African countries; and (b) seagoing vessels of more than 500 net tons engaged in foreign trade, owned by a citizen or national of Liberia. The Committee recalls that pursuant to *Article 1* of the Convention, the term "fishing vessel" includes all ships and boats, of any nature whatsoever, whether publicly or privately owned, which are engaged in maritime fishing in salt waters, with the only exception of fishing in ports and harbours or in estuaries of rivers, or to individuals fishing for sport or recreation. *The Committee requests the Government to clarify whether Chapter 10 of the Maritime Law applies to fishers. If that is the case, recalling that the Convention applies to all fishing vessels irrespective of tonnage or of the fact that only members of the same family are employed, the Committee requests the Government to adopt the necessary measures without delay in order to give full effect to the Convention. If that is not the case, the Committee requests the Government to indicate the national provisions giving effect to the requirements of the Convention.*

Medical Examination (Fishermen) Convention, 1959 (No. 113)

Application of the Convention. The Committee had previously requested the Government to provide clarifications on the applicable legislation to fishers with regard to medical certification. The Committee had noted the information provided by the Government that existing legislation only applied to fishing vessels of 500 tons or more. Recalling that the Convention applies to all fishing vessels irrespective of tonnage, the Committee had requested the Government to adopt the necessary measures to ensure that fishers employed on board fishing vessels of less than 500 tons are subject to the same medical certification requirements in accordance with the provision of the Convention. The Committee *regrets* to note that the Government has not provided a reply to its previous observation. *The Committee therefore once again requests the Government to adopt without delay the necessary measures to give full effect to the provisions of the Convention.*

Fishermen's Articles of Agreement Convention, 1959 (No. 114)

Application of the Convention. In its previous comments, the Committee had requested the Government to explain how effect is given to the provisions of the Convention and to provide clarifications on the application of the existing legislation to fishing vessels. The Committee *regrets* to note that the Government provides no information in this regard. *The Committee therefore once again requests the Government to adopt the necessary measures without delay to give full effect to the provisions of the Convention.*

[The Government is asked to reply in full to the present comments in 2019.]

C113 - Medical Examination (Fishermen) Convention, 1959 (No. 113)

Observation 2017

The Committee notes that in its reports sent on the application of a number of fishing Conventions the Government indicates that the Liberian Maritime Law, RLM-107 (hereinafter the "Maritime Law") and the Liberian Maritime Regulations, RLM-108 (hereinafter the "Regulations") were amended in 2013 addressing the Committee's previous comments on the application of the Conventions, without providing any further information. *Recalling that for more than 20 years the Government has been requested to provide information on the applicability of existing legislation to fishers and noting that it is not clear from the Government's response whether there are adequate provisions in the amended texts to cover fishers, the Committee requests the Government once again to clarify this issue.*

In order to provide a comprehensive view of the issues to be addressed in relation to the application of the fishing Conventions, the Committee considers it appropriate to examine them in a single comment, as follows.

Minimum Age (Fishermen) Convention, 1959 (No. 112)

Article 1 of the Convention. Scope of application. Minimum age. The Committee notes that section 326(2) of the Maritime Law states that "persons under the age of 16 shall not be employed or work on Liberian vessels registered under this Title, except on vessels upon which only members of the same family are employed, school ships or training ships". The Committee recalls that according to *Article 2* of the Convention, children under the age of 15 years shall not be employed or work on fishing vessels. The Committee also recalls that the exclusion of vessels upon which only members of the same family are employed is not provided for under the Convention. The Committee further notes that according to section 290 of the Maritime Law, its Chapter 10 – which deals with merchant seamen and minimum age – only applies to persons engaged on board vessels of at least 75 net tons. Moreover, section 326 of the same chapter, fixing the minimum age at sea, only applies to vessels registered under the Maritime Law. In this connection, section 51 limits the registration procedure to specific vessels, namely: (a) vessels of at least 20 net tons, owned by a citizen or national of Liberia and engaged solely in coastwise trade between ports of the country or between those of Liberia and other West African countries; and (b) seagoing vessels of more than 500 net tons engaged in foreign trade, owned by a citizen or national of Liberia. The Committee recalls that pursuant to *Article 1* of the Convention, the term "fishing vessel" includes all ships and boats, of any nature whatsoever, whether publicly or privately owned, which are engaged in maritime fishing in salt waters, with the only exception of fishing in ports and harbours or in estuaries of rivers, or to individuals fishing for sport or recreation. *The Committee requests the Government to clarify whether Chapter 10 of the Maritime Law applies to fishers. If that is the case, recalling that the Convention applies to all fishing vessels irrespective of tonnage or of the fact that only members of the same family are employed, the Committee requests the Government to adopt the necessary measures without delay in order to give full effect to the Convention. If that is not the case, the Committee requests the Government to indicate the national provisions giving effect to the requirements of the Convention.*

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Fishermen's Articles of Agreement Convention, 1959 (No. 114)

Application of the Convention. In its previous comments, the Committee had requested the Government to explain how effect is given to the provisions of the Convention and to provide clarifications on the application of the existing legislation to fishing vessels. The Committee *regrets* to note that the Government provides no information in this regard. *The Committee therefore once again requests the Government to adopt the necessary measures without delay to give full effect to the provisions of the Convention.*

[The Government is asked to reply in full to the present comments in 2019.]

C114 - Fishermen's Articles of Agreement Convention, 1959 (No. 114)

Observation 2017

The Committee notes that in its reports sent on the application of a number of fishing Conventions the Government indicates that the Liberian Maritime Law, RLM-107 (hereinafter the "Maritime Law") and the Liberian Maritime Regulations, RLM-108 (hereinafter the "Regulations") were amended in 2013 addressing the Committee's previous comments on the application of the Conventions, without providing any further information. *Recalling that for more than 20 years the Government has been requested to provide information on the applicability of existing legislation to fishers and noting that it is not clear from the Government's response whether there are adequate provisions in the amended texts to cover fishers, the Committee requests the Government once again to clarify this issue.*

In order to provide a comprehensive view of the issues to be addressed in relation to the application of the fishing Conventions, the Committee considers it appropriate to examine them in a single comment, as follows.

Minimum Age (Fishermen) Convention, 1959 (No. 112)

Article 1 of the Convention. Scope of application. Minimum age. The Committee notes that section 326(2) of the Maritime Law states that "persons under the age of 16 shall not be employed or work on Liberian vessels registered under this Title, except on vessels upon which only members of the same family are employed, school ships or training ships". The Committee recalls that according to *Article 2* of the Convention, children under the age of 15 years shall not be employed or work on fishing vessels. The Committee also recalls that the exclusion of vessels upon which only members of the same family are employed is not provided for under the Convention. The Committee further notes that according to section 290 of the Maritime Law, its Chapter 10 – which deals with merchant seamen and minimum age – only applies to persons engaged on board vessels of at least 75 net tons. Moreover, section 326 of the same chapter, fixing the minimum age at sea, only applies to vessels registered under the Maritime Law. In this connection, section 51 limits the registration procedure to specific vessels, namely: (a) vessels of at least 20 net tons, owned by a citizen or national of Liberia and engaged solely in coastwise trade between ports of the country or between those of Liberia and other West African countries; and (b) seagoing vessels of more than 500 net tons engaged in foreign trade, owned by a citizen or national of Liberia. The Committee recalls that pursuant to *Article 1* of the Convention, the term "fishing vessel" includes all ships and boats, of any nature whatsoever, whether publicly or privately owned, which are engaged in maritime fishing in salt waters, with the only exception of fishing in ports and harbours or in estuaries of rivers, or to individuals fishing for sport or recreation. *The Committee requests the Government to clarify whether Chapter 10 of the Maritime Law applies to fishers. If that is the case, recalling that the Convention applies to all fishing vessels irrespective of tonnage or of the fact that only members of the same family are employed, the Committee requests the Government to adopt the necessary measures without delay in order to give full effect to the Convention. If that is not the case, the Committee requests the Government to indicate the national provisions giving effect to the requirements of the Convention.*

Medical Examination (Fishermen) Convention, 1959 (No. 113)

Application of the Convention. The Committee had previously requested the Government to provide clarifications on the applicable legislation to fishers with regard to medical certification. The Committee had noted the information provided by the Government that existing legislation only applied to fishing vessels of 500 tons or more. Recalling that the Convention applies to all fishing vessels irrespective of tonnage, the Committee had requested the Government to adopt the necessary measures to ensure that fishers employed on board fishing vessels of less than 500 tons are subject to the same medical certification requirements in accordance with the provision of the Convention. The Committee *regrets* to note that the Government has not provided a reply to its previous observation. *The Committee therefore once again requests the Government to adopt without delay the necessary measures to give full effect to the provisions of the Convention.*

Fishermen's Articles of Agreement Convention, 1959 (No. 114)

Application of the Convention. In its previous comments, the Committee had requested the Government to explain how effect is given to the provisions of the Convention and to provide clarifications on the application of the existing legislation to fishing vessels. The Committee *regrets* to note that the Government provides no information in this regard. *The Committee therefore once again requests the Government to adopt the necessary measures without delay to give full effect to the provisions of the Convention.*

[The Government is asked to reply in full to the present comments in 2019.]

C122 - Employment Policy Convention, 1964 (No. 122)**Observation 2017**

Articles 1, 2 and 3 of the Convention. Implementation of an active employment policy. Consultations with the social partners. For a number of years, the Committee has been requesting the Government to provide information on the manner in which employment objectives are achieved, as well as on the situation and trends of the labour market. The Committee notes the Government's indication that, since the adoption and application of the employment policy in 2004 by the Planning Council, several amendments had to be made to the policy in view of developments in the country in recent years, with the aim of bringing the policy into conformity with the reality on the ground and achieve full employment. The Government indicates that a committee was commissioned in 2012 to modify the labour market strategy. It adds that the proposed strategy focuses on several pillars, which include: measures to combat unemployment resulting from the halting of development projects due to the war; education and training measures to meet the needs of the labour market; and measures focusing on the informal economy and the participation of migrants in labour-intensive activities. The Government points out that, due to the war, companies have left the country and the number of young persons with disabilities has increased. In addition, the Government reports that irregular migration has increased dramatically, leading to growing competition with the national labour force and impinging negatively on the labour market. The Committee notes that the most recent statistics provided by the Government are from 2012. For example, the Government indicates that the number of qualified jobseekers increased from 39,880 in 2007 to 149,808 in 2012, especially among women (from 26,009 to 94,379). The Government indicates that upon the adoption of the labour market strategy, it would inform the Committee of the policies adopted targeting full employment. ***While acknowledging the complexity of the situation prevailing on the ground, the Committee hopes that the Government will soon be in a position to provide updated and detailed information on the envisaged labour market strategy and the manner in which employment objectives are achieved, as well as up-to-date statistical data on the situation, level and trends in employment, unemployment and underemployment, disaggregated by sex and age. It also requests the Government to provide information on the involvement of the social partners, in accordance with Article 3 of the Convention, which requires that their views and experiences be fully taken into account when designing and implementing an active employment policy.***

Article 2. Labour market information. The Committee recalls its previous comments stressing the importance of establishing a system for the collection and analysis of labour market data to enable an assessment and review of measures taken to attain the objectives of the Convention. ***The Committee therefore reiterates its request that the Government provide information on any progress achieved in this regard, and invites the Government to avail itself of the assistance of the Office, should it wish to do so.***

Promotion of small and medium-sized enterprises. ***The Committee reiterates its request that the Government provide information in its next report on the measures adopted to promote the establishment and development of small and medium-sized enterprises, taking into account the guidance set out in paragraph 5 of the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189).***

Workers vulnerable to decent work deficits. ***The Committee requests the Government to provide information, including statistical data disaggregated by age and sex, on the impact of measures, including vocational education and training measures, to increase the labour market participation rate of persons vulnerable to decent work deficits, including women, young persons, persons with disabilities, migrant workers, workers in rural areas and those in the informal economy.***

C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**Observation 2017**

The Committee notes the observations of the International Trade Union Confederation (ITUC) and of the Confederation of Malagasy Workers (CTM), received on 25 September and 26 October 2017, respectively, on the application of the Convention in practice, and notes the Government's comments in this regard. The Committee notes the observations of the Christian Confederation of Malagasy Trade Unions (SEKRIMA), received on 20 September 2017, containing allegations of restrictions on the right to organize, and especially the right of trade unions to organize their management and training activities, and also on the difficulties encountered in establishing trade unions. *The Committee requests the Government to provide its comments on the observations of SEKRIMA.*

Restrictions on trade union activities in the maritime sector. In its previous comments, the Committee urged the Government to ensure that the independent inquiry conducted into anti-union acts in the maritime sector is concluded as soon as possible. The Committee notes that no information has been provided by the Government in this regard. *The Committee therefore reiterates its previous request and once again urges the Government to ensure that the independent inquiry is concluded as soon as possible and to communicate the findings thereof.*

Legislative matters

Article 2 of the Convention. Workers governed by the Maritime Code. In its previous comments, the Committee noted that a new Maritime Code was to be adopted and hoped that the right of seafarers to establish and join trade unions would be recognized. The Committee notes the Government's indication that a roadmap on the adoption of the Maritime Code has been established and received the approval of the tripartite partners. The Committee also notes that a plan of action has been adopted to put into practice the efforts of the Malagasy Government to comply with the provisions of the Convention, and that the Maritime Code that will soon be adopted will take this plan into account. *The Committee requests the Government to provide information on any progress achieved in this regard and to provide a copy of the Maritime Code as proposed or adopted, and to ensure that the Code establishes the right of seafarers to establish and join trade unions.*

Article 3. Representativeness of workers' and employers' organizations. In its previous comments, the Committee noted the adoption of Decree No. 2011 490 on employers' and workers' organizations and representativeness and asked the Government to provide information on its application and its impact on the determination of the employers' and workers' organizations that participate in social dialogue at the national level. The Committee notes the Government's indication that the Decree is to be implemented in several phases, the first of which is the holding of elections for staff delegates at the enterprise level. The Committee notes that, according to the Government, the election process began in 2014, but was slowed down by the adoption of Order No. 34-2015 on the determination of trade union representativeness, as an appeal was lodged to set aside the result of the elections. The Committee notes the Government's indication that, in early 2017, the Council of State (CE) issued a decision rejecting the appeal, and that the process to determine representativeness was relaunched. Moreover, the Committee notes the Government's indications that a tripartite meeting on the issues of representativeness and the composition of the National Labour Council (CNT) was held on 10 November 2017. Lastly, the Committee notes that a new ministerial order (Decree No. 2017-843), which envisages the optimization of the CNT and tripartite labour councils with a view to facilitating the determination of employers' and workers' representativeness, has been adopted. *The Committee requests the Government to provide information on any progress made in the election of staff delegates at the enterprise level and on the application and impact from such election in the determination of the employers' and workers' organizations that participate in dialogue at the national level.*

Right of workers' organizations to organize their activities and formulate their programmes. Compulsory arbitration. In its previous comments, the Committee requested the Government to take all necessary measures to amend sections 220 and 225 of the Labour Code, which provide that if mediation fails, the collective dispute is referred by the Minister of Labour and Social Legislation to a process of arbitration and that the arbitral award ends the dispute and the strike. The Committee recalled that, in a collective dispute, a compulsory arbitration order is acceptable only where strikes may be prohibited, namely in the case of public servants exercising authority in the name of the State, in essential services in the strict sense of the term and in the event of an acute national crisis. The Committee also asked the Government to take the necessary measures to amend section 228 of the Labour Code on the requisitioning of striking employees, so as to replace the concept of the disruption of public order by the concept of acute national crisis. The Committee notes the Government's indication that a compilation of the Committee's observations, in relation to the requested legislative amendments, has been made so that it can be transmitted to the CNT for examination and adoption. *The Committee encourages the Government to take all the necessary measures to amend sections 220 and 225 of the Labour Code on arbitration, as well as section 228 of the Labour Code on requisitioning, in order to bring them into conformity with the above principles, and to provide information on any progress made in this regard.*

C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)**Observation 2017**

The Committee notes the observations made by the International Trade Union Confederation (ITUC) and the Christian Confederation of Malagasy Trade Unions (SEKRIMA) in communications received on 1 and 4 September 2017, respectively, concerning points being examined by the Committee and, according to SEKRIMA, new acts of anti-union discrimination in various sectors (telecommunications, banking, textiles, the salt industry and fishing). The Committee also notes the Government's comments in reply to the observations made by SEKRIMA in 2015 and by the ITUC in 2015 and 2017. With regard to allegations of anti-union dismissals in the mining sector, the Government indicates that the Council of State of the Supreme Court, in a judgment dated 9 December 2015, ruled in favour of the trade union leader Barson Rakotomanga, suspending implementation of the decision by the Minister for the Public Service, Labour and Social Legislation opposing his reinstatement in the enterprise; and that in other cases the Antananarivo Labour Court ruled that the dismissals of trade union activists were procedurally flawed and therefore gave entitlement to the payment of damages. With regard to another case concerning the situation of two workers at a Malagasy mattress manufacturing company, the Government refers to intervention by the competent services of the labour administration and inspectorate, which resulted in amicable termination of the employment contract in one case and reinstatement in the company in the other case. *Emphasizing the persistence of allegations of anti-union discrimination in numerous sectors, the Committee requests the Government to continue sending information on this matter. The Committee also requests the Government to ensure that all the events reported are the subject of investigation by the public authorities and, if acts of anti-union discrimination are proven, that these will give rise to full compensation for the damage suffered, in both occupational and financial terms, and to the imposition of penalties that constitute an effective deterrent.*

Article 1 of the Convention. Adequate protection against acts of anti-union discrimination. In its previous comments, the Committee asked the Government to provide information on the number of cases of anti-union discrimination examined by the labour inspection services and labour courts, and on the corresponding penalties actually applied by these institutions. The Committee notes the Government's indications that the Ministry of Labour has taken steps to direct the activities of the Regional Labour Services (SRT) to enable the collection of the required data. In this regard, it notes that a suitable report template taking account of data on cases of anti-union discrimination is being prepared by the Inspection Support Service at the Directorate for Labour and Social Legislation and that the reports drawn up in relation to this template will be compiled centrally every six months from 2018 onwards, with a view to analysing them and setting up a database containing reliable information. *The Committee hopes that the Government will soon be a position, as a result of these new tools,*

to provide information on the number of cases of anti-union discrimination examined by the labour inspectorate and the labour courts, and also on the corresponding penalties actually applied by the aforementioned bodies.

Articles 1, 2, 4 and 6. Public servants not engaged in the administration of the State. The Committee recalls that its previous comments were concerned with the need to adopt formal provisions clearly recognizing the protection of all public servants and public sector employees not engaged in the administration of the State against acts of anti-union discrimination and interference and their right to bargain collectively their conditions of employment. The Committee noted the Government's indication that contractual public employees, governed by Act No. 94-025 of 17 November 1994, are not covered by specific provisions relating to acts of anti union discrimination or interference or the right to bargain collectively. The Committee notes that, according to the Government, the recommended measures will be taken into account in the context of the future National Public Service Policy (PNFOP) and the revision of the legal framework governing the public service, including texts concerning civil servants and contractual public employees (Act No. 2003-011 of 3 September 2003 issuing the general conditions of service of public servants and Act No. 94-025 of 17 November 1994 issuing the general conditions of service of contractual public employees). ***While noting this information, the Committee expects that the Government will be in a position in the near future to provide information on the measures taken to clearly recognize the protection of all public servants and public sector employees not engaged in the administration of the State against acts of anti union discrimination and interference and their right to bargain collectively their conditions of employment. The Committee reminds the Government that it may avail itself of technical assistance from the Office in this regard.***

Article 4. Promotion of collective bargaining. Representativeness criteria. With regard to the implementation of the representativeness criteria determined by Decree No. 2011-490 on trade unions and representativeness, the Committee notes the Government's indication that an appeal was lodged seeking the cancellation of Order No. 34/2015 determining trade union representativeness for 2014–15. In this regard, the Committee refers to its observation on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

Collective bargaining in sectors subject to privatization. The Committee notes the information provided by the Government on the situation of collective agreements in the energy sector, particularly that of the Malagasy Electricity and Water Company (JIRAMA), the revision of which is reportedly in progress. It notes that information on the Télécom Malagasy (TELMA) company will be provided in due course. The Committee further notes that, according to SEKRIMA, collective bargaining in privatized sectors continues to pose problems, in that the privatization operations have resulted in the collective agreements in force being discarded. ***Recalling that the restructuring or privatization of an enterprise should not in itself result automatically in the extinction of the obligations resulting from the collective agreement in force and that the parties should be able to take a decision on this subject and to participate in such processes through collective bargaining, the Committee requests the Government to take all necessary steps to promote the full use by the parties concerned of collective bargaining mechanisms in privatized sectors. The Committee hopes that the Government will be in a position in the very near future to report tangible progress in this regard.***

Collective bargaining for seafarers. In its previous comments, the Committee noted that the Labour Code excluded maritime workers from its scope of application and requested the Government to take the necessary measures to ensure the adoption of specific provisions guaranteeing the collective bargaining rights of seafarers governed by the Maritime Code. The Committee notes the Government's reference to a roadmap relating to the ratification of the Maritime Labour Convention, 2006 (MLC, 2006), and to the adoption of the Maritime Code due in May 2018. ***The Committee expects that the Government will be able to report, in the near future, the adoption of the new Maritime Code and that this Code will make provision for maritime workers to enjoy the rights guaranteed by the Convention.***

Promotion of collective bargaining in practice. Further to its previous requests, the Committee requests the Government to provide information on the number of collective agreements concluded in the country, including in enterprises employing fewer than 50 workers, the sectors concerned and the number of workers covered by these agreements.

C122 - Employment Policy Convention, 1964 (No. 122)

Observation 2017

Articles 1 and 2 of the Convention. Implementation of an active employment policy. In its previous comments, the Committee expressed the hope that the Government would soon be in a position to report progress in the formulation and implementation of an employment policy. In this regard, the Committee notes with *interest* the Government's indications that Act No. 2015-040 of 9 December 2015 determining the orientation of the National Employment and Vocational Training Policy (PNEFP) has been adopted and is the subject of an awareness-raising campaign. It adds that the National Plan of Action for Employment and Training (PANEF) has been replaced by the Operational Plan of Action (PAO), which contains the various policy priorities implemented by the PNEFP. The Government indicates that the objective of the PNEFP, together with the implementation of the General State Policy (PGE), the National Development Plan (PND) and the Sustainable Development Objective (ODD), is to eradicate unemployment and underemployment by 2020 through the creation of sufficient numbers of formal jobs to absorb jobseekers. The PNEFP also has the goal of establishing a relevant information system on the labour market and vocational training and of designing and introducing a harmonized system of certification and training. The Government adds that four employment fairs were organized in December 2015 and that 1,119 young school-leavers were trained and integrated into small-scale rural occupations within the context of a partnership with UNESCO. Also in relation to employment promotion, the Government reports two "Rapid Results" initiatives of the Ministry of Employment, Technical Education and Vocational Training (MEETFP), which it indicates have been fully achieved. The first initiative focused on the matching of training and employment in 12 growth sectors. The second established a vocational training centre in the town of Andranofeno Sud with a view to employment generation. The centre provides training to around 100 students in six main areas: tourism, hotels and catering, agriculture and livestock, wood art and trades, automobile mechanics, construction and public works. The Government adds that 1,058 rural young school-leavers have been trained in 15 types of trades in several regions and that 59 persons with disabilities were trained by the National Training Centre for Persons with Disabilities (CNFPSSH) in the regions of Analanjirofo and Sava. The National Employment and Training Observatory has been transformed into the National Employment and Training Office. With regard to the upgrading of technical education and vocational training, the Government reports the rehabilitation in 2015 of five technical and vocational schools, 60 classrooms and the accreditation of 97 public and private technical establishments. The Government adds that four vocational training centres for women are now operational. ***The Committee requests the Government to continue providing information on any developments relating to the implementation of the National Employment and Vocational Training Policy, as well as on its impact on the employment rate and the reduction of unemployment, and on the transition from the informal economy to the formal economy. The Committee once again requests the Government to provide information to enable it to examine the manner in which the main components of economic policy, in such areas as monetary, budgetary, trade or regional development policies, contribute "within the framework of a coordinated economic and social policy" to the achievement of the employment objectives set out in the Convention. The Committee also requests the Government to provide updated information on the measures adopted or envisaged to create lasting employment, reduce underemployment and combat poverty, particularly for specific categories of workers, such as women, young people, persons with disabilities, rural workers and workers in the informal economy. In this regard, it requests the Government to provide further information on the types of training provided by the CNFPSSH to persons with disabilities.***

Coordination of education and training policy with employment policy. The Committee notes with *interest* that, under the terms of section 2 of the PNEFP, its objective is the implementation of a policy for massive job creation and the promotion of vocational training. Section 10 of the PNEFP specifies that the policy

includes in particular activities for employment creation, enterprise support, labour market mediation, the direct promotion of employment for young persons, women and vulnerable categories, the promotion of decent work and the extension of social security. In section 5, it establishes the right to training and qualifications irrespective of a person's individual and social situation and educational level. The Committee further notes that section 46 calls for the creation of partnership between the State, territorial communities and technical and financial partners with a view to launching and financing employment promotion action for young persons, women and disadvantaged categories of workers. The Government indicates that the action taken for youth employment includes, on the one hand, the promotion of self-employment and traditional or informal enterprises and, on the other, support for integration into enterprises and traditional activities. The objectives of this action include support for young persons in their vocational projects and the reinforcement of financing capacities. The Ministry provides training to young persons with a view to promoting self-employment and the creation of small and medium-sized enterprises and industry. During the course of 2015 and the first half of 2016, training of this type was provided to 1,436 young persons from six regions. *The Committee requests the Government to continue providing information on the results of the action taken to ensure the coordination of vocational education and training policy with employment policy. It once again requests the Government to indicate the results achieved through the implementation of these programmes in terms of the access of qualified young persons to lasting employment. The Committee further requests the Government to indicate the impact of the measures taken to promote the creation of small and medium-sized enterprises.*

Compilation and use of employment data. The Government indicates that the Periodic Household Survey was commenced and then replaced by the global population census in light of the State's priorities due to the significant increase in the population. However, it reports the preparation of a partnership project with the International Labour Office with a view to establishing a system of reliable databases on employment. The National Employment and Training Office will be responsible for the management of the system. The Government adds that in 2016 the MEETFP started to establish Regional Employment Services (SRIE) in Regional Departments, and that there are now SRIEs in nine Regional Departments and that they are responsible for managing the regional employment information system, which involves matching young jobseekers and enterprises. *The Committee requests the Government to provide information on the progress achieved by the project in the establishment of a system of reliable databases on employment. It also requests the Government to provide further information on the impact of the SRIEs in relation to the compilation and use of employment data.*

Article 3. Participation of the social partners in the formulation and implementation of policies. The Government indicates that a National Agreement on Employment and Vocational Training was concluded with the social partners in October 2015 and with enterprise groups in the five priority areas in November 2015. The Government also reports the conclusion of two other agreements including the social partners, namely the agreement on the financing of the Technical Support Team for the PNEFP and the agreement on the fund for its implementation. *The Committee requests the Government to continue providing updated information on the consultations held with the representatives of the social partners on the subjects covered by the Convention. The Committee once again requests the Government to provide detailed information on the consultations held with the representatives of the most disadvantaged categories of the population, and particularly with the representatives of workers in rural areas and the informal economy.*

C124 - Medical Examination of Young Persons (Underground Work) Convention, 1965 (No. 124)

Observation 2017

The Committee notes the observations from the Christian Confederation of Malagasy Trade Unions (SEKRIMA), received on 4 September 2017 and requests the Government to provide its comments in this respect.

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2012.

The Committee takes note of the Government's report and the communication of 27 August 2012 from the General Confederation of Workers' Unions of Madagascar (CGSTM).

Article 2(1) of the Convention and Part V of the report form. Medical examination of persons under 21 years of age prior to underground work in mines and application of the Convention in practice. The Committee noted previously that section 82 of Decision No. 58-AR of 8 May 1958 setting forth the safety rules applying to mines and quarries provides that no worker may be assigned to underground work without first undergoing a medical examination finding him to be fit for such employment. The Committee also noted that sections 7, 8 and 9 of Order No. 2806 of 8 July 1968 to organize occupational medical services provide in particular that employers must have regular visits organized for periodic medical examinations and that all workers are required to undergo a medical examination that includes an x-ray film of the lungs prior to taking up employment or in the month following at the latest. Furthermore, the Committee noted with interest that by virtue of section 8 of Decree No. 2003-1162 of 17 December 2003 to organize occupational medicine, every worker, before being hired or at the latest in the month after being hired, "shall undergo a medical examination consisting of at least an x ray film of the lungs". Pursuant to sections 7 and 9 of the Decree, periodical medical examinations are also compulsory and include "special medical examinations for workers exposed to the risk of occupational diseases".

The Committee notes the CGSTM's assertion that to its knowledge, there are no longer any mining companies in Madagascar's formal sector that carry on underground work and employ young persons within the meaning of the Convention. The problem does arise, however, in family undertakings in the informal sector, for example in the sapphire mines of the Ilakaka region, in which minors work up to 50 meters underground without proper safety precautions or ventilation. The CGSTM reports that the absence of adequate legislation means that these young people undergo neither a pre-employment medical examination to ascertain their fitness nor any regular medical checks. Lastly, the CGSTM states that the Government has not as yet undertaken any action to resolve the problem.

The Committee observes that children working in family undertakings on an informal basis appear not to be covered by the legislation regarding medical examinations. The Committee points out that according to *Article 2* of the Convention, a thorough medical examination for fitness for employment and periodic re-examinations at intervals of not more than one year shall be required for the employment or work underground in mines of persons under 21 years of age, regardless of whether the work is performed in the formal sector or the informal economy and whether or not it is based on an employment relationship. *The Committee asks the Government to take steps to ensure that all children and young persons under 21 years of age enjoy the protection afforded by the Convention, particularly those who work in family undertakings in mining and quarrying in the informal sector. It asks the Government to provide information on these matters in its next report, and particularly on the effect given in practice to the provisions requiring a pre-employment medical examination and subsequent periodic re-examinations for young persons under 21 years of age working underground in family undertakings in the informal sector.*

Article 5(4) and (5). Records pertaining to employees under 21 years of age. In its previous comments the Committee noted that according to the Government, a record must be kept by the employer and must consist of three parts: personal particulars, data concerning the worker's position within the undertaking and a separate section for visas, observations and warnings issued by the labour inspector to the undertaking. The Committee noted that although the sample record provided by the Government in its report clearly indicates the employee's date of birth, it contains no indication of the nature of the work and does not include a certificate attesting fitness for employment, as required by *Article 4(4)* of the Convention. The Committee nonetheless noted that by virtue of section 6 of Decree No. 2007-563 on child labour, the employer must keep a record showing the full identity, the type of work, the wage, the number of hours of work, the state of health, the schooling and the situation of the parents of each child employee under the age of 18 years.

The Committee notes the information supplied by the Government to the effect that Order No. 129-IGT of 5 August 1957 establishing a standard employer's

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register, pursuant to section 252 of the Labour Code, is still in force. The Government states that the Order needs revision in order to adapt it to present circumstances and that the Committee's recommendations will be forwarded to the National Labour Council, a body for tripartite consultation. The Committee accordingly observes that it would appear that there is still no requirement for employers' records to contain a certificate of fitness for employment in respect of young persons aged from 18 to 21 years engaged in underground work. *The Committee again asks the Government to take the necessary steps to ensure that employers are required to keep a record showing the date of birth, duly certified wherever possible, an indication of the nature of the occupation and a certificate attesting fitness for employment, for all persons between 18 and 21 years of age who are employed or work underground, and to make these records available to the workers' representatives at their request. It asks the Government to supply information on progress made in this regard in its next report.*

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

C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**Observation 2017**

The Committee notes that the Government's report has not been received. It notes nonetheless the Government's response to the 2014 observations of the International Trade Union Confederation (ITUC) which refer to the matters examined by the Committee.

Article 3 of the Convention. Right of organizations to freely organize their activities and formulate their programmes. In its previous comments, the Committee had requested the Government to provide information on any development concerning the establishment and composition of the subcommittee of the Tripartite Labour Advisory Council and the advancement of its work on the review of the final version of the Labour Relations (Amendment) Bill (LRA Bill), notably with regard to the establishment of the list of essential services, as well as to transmit the final version of the LRA Bill. The Committee notes that in its reply to the ITUC's observations, the Government indicates that, preliminary work being concluded, the process of the drawing up of a list of essential services is now under way, and that the social partners have been asked to consult their constituents, after which a tripartite meeting will be convened to agree on the list. **The Committee requests the Government to indicate the outcome of the tripartite meeting and expects that the list of essential services will be limited to those services the interruption of which would endanger the life, personal safety or health of the whole or part of the population, and that adequate protection will be afforded to the affected workers so as to compensate for the restrictions imposed on their freedom of action. The Committee requests the Government to transmit the final version of the LRA Bill.**

Article 4. Dissolution or suspension of organizations by administrative authority. The Committee previously referred more than once to the need to amend section 18(4) of the LRA Bill which provides that if an organization fails to comply with the provisions of subsection (1) (which require an organization to annually submit audited financial statements, a list of the names and postal addresses of its officers, and its number of members) after being given a reasonable opportunity to do so, the Registrar may suspend and even cancel the registration and certificate of an organization. The Committee had furthermore noted that section 18(4) and (5) provides that the Registrar may suspend and even cancel the registration and certificate of an organization which fails to comply with the requirements of section 18(1) and had noted, in this connection, that section 18(6) of the LRA Bill provides that an organization may appeal against a decision of the Registrar to suspend or cancel its registration and certificate of registration. The Committee had requested the Government to indicate: (i) whether an organization's appeal has the effect of suspending the administrative decision, pending the issuance of a final decision by the judiciary; and (ii) whether the judiciary, upon hearing an appeal, is able to deal with the substance of the case and to decide whether or not the provisions pursuant to which the administrative measures in question were taken constitute a violation of the rights guaranteed by the Convention. The Committee had considered that in the event that either of these judicial safeguards against dissolution is not provided for, the Government should take the necessary measures to amend section 18(4), (5) and (6) of the LRA Bill so that measures of dissolution of trade union organizations only occur in extremely serious cases and following a judicial decision. **In the absence of any new information, the Committee reiterates its previous request and expects that the Government will take whatever measures are necessary to bring section 18(4), (5) and (6) into conformity with the Convention.**

C144 - Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)**Observation 2017**

The Committee notes with *concern* that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2013.

Tripartite consultations required by the Convention. **The Committee refers to its previous observations and invites the Government to submit a report containing detailed information on the tripartite consultations held on each of the matters related to international labour standards covered by Article 5(1) of the Convention. It also requests the Government to include information on the nature of any reports or recommendations made as a result of such consultations.**

Article 5(1)(c) and (e) of the Convention. Prospects of ratification of Conventions and proposals for the denunciation of ratified Conventions. In reply to the Committee's previous comments, the Government indicates that it will consult with the social partners regarding the denunciation of Conventions Nos 50, 64, 65, 86, 104 and 107. The Committee recalls that the ILO's Governing Body recommended the denunciation of Conventions Nos 50, 64, 65, 86, 104 and 107 concerning indigenous workers and the ratification of the most updated instrument, the Indigenous and Tribal Peoples Convention, 1989 (No. 169). In the Committee's 2010 direct request on the Underground Work (Women) Convention, 1935 (No. 45), the Committee noted that the Tripartite Labour Advisory Council approved the denunciation of Convention No. 45 and that the Government was consulting with the social partners on the possible ratification of the Safety and Health in Mines Convention, 1995 (No. 176). **The Committee invites the Government to include in its next report information on the progress achieved to re-examine unratified Conventions – such as Conventions Nos 169 and 176 – in order to promote, as appropriate, their implementation or ratification and to denounce outdated Conventions.**

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

C182 - Worst Forms of Child Labour Convention, 1999 (No. 182)**Observation 2017**

The Committee notes with *regret* that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2013.

Articles 3 and 7 of the Convention. Worst forms of child labour and penalties. Clause (a). All forms of slavery or practices similar to slavery. Sale and trafficking of children. In its previous comments, the Committee noted that section 179(1) of the Child Care, Protection and Justice Act provides that a person who takes part in any transaction involving child trafficking is liable to life imprisonment. The Committee observed, however, that according to section 2(d) of the same Act, a "child" means a person below the age of 16 years. The Committee reminded the Government that by virtue of *Article 3(a)* of the Convention, member States are required to prohibit the sale and trafficking of all children under 18 years of age.

The Committee notes the Government's indication that it has taken note of this observation and that this matter will be taken up with the Malawi Law Commission. The Government further indicates that it will provide information on the application in practice of the Child Care, Protection and Justice Act in subsequent reports, since the Act has only recently come into force. The Committee further notes that, according to the concluding observations of the Human Rights Committee of 18 June 2012, in consideration of the reports submitted under the International Covenant on Civil and Political Rights (CCPR/C/MW/CO/1, paragraph 15), Malawi has drafted an anti-trafficking bill which should be considered by Parliament soon. **The Committee accordingly once again urges the Government to take immediate measures to ensure that the Child Care, Protection and Justice Act is amended to extend the prohibition of sale and trafficking to cover all children under the age of 18, as a matter of urgency, and to ensure that the anti-trafficking bill prohibits the sale and trafficking of all children under the age of 18, and is adopted as soon as possible. The Committee also, once again, requests the Government to provide information on the application in practice of this Act, as well as of the anti-trafficking bill once adopted, including in particular, statistics on the**

number and nature of violations reported, investigations, prosecutions, convictions and penal sanctions imposed.

Clause (b). Use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances. In its previous comments, the Committee noted the Government's statement in its report to the Committee on the Rights of the Child (CRC) of 17 July 2008, that, while there are no data available on the number of children involved in sexual exploitation, including prostitution and pornography, these are recognized problems in the country (CRC/C/MWI/2, paragraph 323). In this regard, it noted that section 87(1)(d) of the Child Care, Protection and Justice Act only provides that a social welfare officer who has reasonable grounds to believe that a child is being used for the purposes of prostitution or immoral practices, may remove and temporarily place the child in a place of safety. The Committee reminded the Government that *Article 3(b)* of the Convention requires member States to prohibit the use, procuring or offering of a child under 18 years for prostitution, for the production of pornography or for pornographic performances.

The Committee once again notes the Government's indication that it will endeavour to include the prohibition against the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances, in the labour laws currently under review. The Government also indicates that, meanwhile, the Censorship Board is doing its best to censor pornography. However, the Committee must once again express its **deep concern** at the continued lack of regulation to prohibit the commercial sexual exploitation of children, and once again draws the Government's attention to its obligation under *Article 1* to take immediate measures to prohibit the worst forms of child labour, *as a matter of urgency*. **The Committee accordingly, once again, urges the Government to take the necessary measures, as a matter of urgency, to ensure the adoption of national legislation prohibiting the use, procuring or offering of both boys and girls under 18 years of age, for the purpose of prostitution, for the production of pornography or for pornographic performances, and to include sufficiently effective and dissuasive sanctions in this legislation. It requests the Government to provide information on the progress made in this regard with its next report.**

Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour and providing assistance for the removal of children from these types of work and for their rehabilitation and social integration. Children engaged in hazardous work in commercial agriculture, particularly tobacco estates. In its previous comments, the Committee noted that the CRC, in its concluding observations of 27 March 2009, expressed concern that many children between 15–17 are engaged in work that is considered as hazardous, especially in the tobacco and tea estate sector, which continues to be a major source of child labour (CRC/C/MWI/CO/2, paragraph 66). The Committee noted the Government's information that labour inspections were undertaken in the tobacco sector, to help withdraw children from this sector, to rehabilitate and then to send them back to school. It further noted that it is indicated in the National Action Plan (NAP) on Child Labour that the agricultural sector, including tobacco plantations and family farms, constitutes one of its sectoral priorities, as it accounts for 53 per cent of child labour in the country.

The Committee notes that, according to the 2011 surveys conducted in Mzimba, Mulanje and Kasungu, child labour continues to be dominated by the agricultural sector. In Mzimba, 36.6 per cent of the interviewed children worked in agriculture; and in Mulanje and Kasungu, 23 per cent and 20.4 per cent of the interviewed children respectively had worked in a plantation, farm or garden. All three surveys reported that these children often worked in hazardous conditions without protective gear, and with hazardous equipment such as hoes, ploughs, saws, sickles, panga knives and sprayers. **Expressing its concern at the number of children engaged in hazardous work in agriculture, the Committee once again urges the Government to strengthen its efforts to protect children from hazardous work in this sector, in particular in tobacco plantations, through measures taken within the framework of the NAP on Child Labour. In this regard, it once again requests the Government to provide concrete information on the number of children who have been thus prevented or withdrawn from engaging in this type of hazardous work, and then rehabilitated and socially integrated.**

Clause (e). Special situation of girls. The Committee previously noted that, according to the Malawi Child Labour Survey of 2002, all the child victims of commercial sexual exploitation were girls. Half of these girls had lost both of their parents, while 65 per cent of them did not attend school past the second year. The Committee also noted that the Committee on the Elimination of Discrimination Against Women (CEDAW), in its concluding observations of 5 February 2010, expressed concern at the extent to which women and girls are involved in sexual exploitation, including prostitution, and the limited statistical data regarding these issues (CEDAW/C/MWI/CO/6, paragraph 24). It therefore requested the Government to provide information on the measures taken to protect girls under the age of 18 from commercial sexual exploitation.

The Committee once again urges the Government to strengthen its efforts to prevent girls under the age of 18 from becoming victims of commercial sexual exploitation, and to remove and rehabilitate victims of this worst form of child labour, within the framework of the NAP on Child Labour or otherwise. It once again requests the Government to provide information on the concrete measures taken in this regard, as well as information on the impact of these measures, with its next report. To the extent possible, all information provided should be disaggregated by age and sex.

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

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

C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)**Observation 2017**

The Committee notes the observations of the International Trade Union Confederation (ITUC), received in September 2017, concerning allegations of discrimination against trade union leaders in the health sector and belonging to a trade union of the national police, including their dismissal. **The Committee requests the Government to provide its comments in response to these allegations.**

Article 4 of the Convention. Promotion of collective bargaining. Determination of the representativeness of trade union organizations. The Committee previously requested the Government to provide information on the organization of occupational elections, as provided for under the Labour Code. The Committee notes the report of the high-level mission which visited Mali in June 2015 at the request of the Government, to address the issue of the representativeness of trade union organizations. The mission met with all the national social partners and reported on the unanimity expressed about the use of occupational elections to measure trade union representativeness, and regarding the urgent need to organize them. The Committee notes the Government's indication in its report that these occupational elections have not yet been held owing to a persistent disagreement between the trade union organizations as to the method of voting, but that it expects to resume the process in September 2017. The Committee welcomes the Government's efforts to reach an agreement on the issue of trade union representativeness, and recalls the urgent need for a solution in order to give full effect to the provisions of the Labour Code relating to collective bargaining. **The Committee therefore encourages the Government to take all the necessary measures to determine as soon as possible, after consultation of the organizations concerned, the procedures for occupational elections. It expects that the Government will soon be able to report on the holding of these elections and that the results will make it possible to determine clearly the representative organizations for the purpose of collective bargaining at all levels.**

Right to collective bargaining in practice. **The Committee requests the Government to provide full information on the number of agreements concluded in the country, the sectors concerned and the number of workers covered.**

C100 - Equal Remuneration Convention, 1951 (No. 100)**Observation 2017**

Articles 1–3 of the Convention. Legislative developments. Definition of the term "remuneration". Equal remuneration for work of equal value. Objective job evaluation. Since 2014, the Committee has been highlighting the fact that section L.95 of the Labour Code does not reflect the principle of the Convention. The Committee notes with **satisfaction** that Act No. 2017-021 of 12 June 2017, amending Act No. 92-020 of 23 September 1992 issuing the Labour Code, amends section L.95. New section L.95 contains a definition of the term "remuneration" which corresponds to that of the Convention and fully reflects the principle of equal remuneration for men and women for work of equal value since it provides that "any employer is required to ensure, for the same work or work of equal value, equal remuneration for employees, whatever their origin, sex, age, status or disability". It also provides that "occupational categories and classifications and criteria for occupational promotion must be common to workers of both sexes" and that "job classification methods must be based on objective considerations". **In view of the foregoing, the Committee requests the Government to adopt measures to promote awareness among workers, employers and their respective organizations, labour inspectors and judges of the application of the principle of equal remuneration for men and women for work of equal value as provided for in section L.95, as amended, of the Labour Code. It also requests the Government to indicate the measures taken, in collaboration with workers' and employers' organizations, to promote the development and use of objective job evaluation methods which are free of any gender bias, and to provide information on all progress made and any difficulties encountered in this regard.**

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

C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111)**Observation 2017**

Articles 1 and 5 of the Convention. Changes in the legislation. Definition of discrimination. Grounds of discrimination covered. Exceptions. The Committee notes with **interest** the adoption of Act No. 2017-021 of 12 June 2017 amending Act No. 92-020 of 23 September 1992 issuing the Labour Code, which introduces provisions relating to discrimination in employment and occupation into the Labour Code. New section L.4 contains a definition of discrimination which corresponds to that of the Convention, covers the seven grounds of discrimination listed by the Convention, adds invalidity, disability and HIV/AIDS, and establishes the possibility of exceptions in accordance with *Articles 1(2) and 5* of the Convention (inherent requirements for a particular job and special measures). **The Committee asks the Government to take the necessary steps to raise awareness among workers, employers and their respective organizations, labour inspectors and judges of the new provisions of section L.4 of the Labour Code relating to discrimination. It also asks the Government to provide information on the application of the provisions in practice, including the number of complaints made on this basis and the outcome thereof and the number and nature of cases of discrimination detected by the labour inspectorate.**

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

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

Observation 2017

The Committee notes the observations of the International Trade Union Confederation (ITUC) and the General Confederation of Workers of Mauritania (CGTM), received on 1 and 4 September 2017 respectively, as well as those by the International Organisation of Employers (IOE), received on 1 September 2017.

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 106th Session, June 2017)

Articles 1(1), 2(1) and 25 of the Convention. Slavery and the vestiges of slavery. In its previous comments, the Committee noted the report of the direct contacts mission, which visited Mauritania in October 2016, and requested the Government to continue taking action to combat slavery and its vestiges. It particularly insisted on the need to: (a) reinforce the criminal investigation and prosecution system, particularly the three special criminal courts competent in matters relating to slavery, to ensure the effective application of the 2015 Act criminalizing slavery and punishing slavery-like practices (hereinafter the 2015 Act); (b) have reliable data on the nature and prevalence of slavery-like practices; (c) ensure that the multisectoral approach and inter-ministerial coordination applied to combat slavery is accompanied by an inclusive approach involving the social partners and civil society; and (d) strengthen the protection of victims so that they can assert their rights and stand up to any social pressure.

The Committee notes the discussion in June 2017 in the Conference Committee and notes that the Conference Committee urged the Government to continue its efforts to combat slavery and its vestiges. It expressed its deep concern at the persistence of slavery and the low number of prosecutions brought against the perpetrators of the crime of slavery. The Conference Committee requested the Government to take a series of measures, detailed below, and to request ILO technical assistance and accept a high-level mission.

The Committee welcomes the fact that the Government accepted a high-level mission in April 2018 and the continuation of the ILO technical cooperation project to support implementation of the 2015 Act and strengthen the Government's efforts to bring an end to the vestiges of slavery. The Committee also welcomes the fact that the Government revised, with those responsible for the technical cooperation project, the activities to be undertaken, taking into account the 12 recommendations made by the Conference Committee to the Government. ***The Committee trusts that the Government will take all the necessary measures, both in the framework of the technical cooperation project and the inter ministerial committee responsible for implementing the roadmap, to implement the recommendations of the Conference Committee as well as those by this Committee.***

(a) Effective enforcement of the legislation

With regard to the effective enforcement of the 2015 Act, the Committee previously emphasized that it was indispensable for the three special criminal courts competent in matters relating to slavery to operate effectively and that, in general, the whole of the criminal investigation and prosecution system should be reinforced. The Conference Committee also recalled the importance of creating specialized units in the Office of the Public Prosecutor and the forces of order to gather proof and ensure that the actions brought before the criminal courts are processed within a reasonable period. In its report, the Government refers to the organization, by the Ministry of Justice, with the support of the technical cooperation project, of seminars on the implementation of the 2015 Act in various regional capitals and in the three regions in Nouakchott. Consultations have also been held to evaluate the knowledge and training needs of the staff of the special criminal courts, the forces of order and the administrative and municipal authorities concerning the scope of application of the 2015 Act. The training modules have therefore been discussed with all stakeholders concerned. In addition, a group of experts has been established to prepare specific training modules on the effective management of complaints for all those who intervene in judicial procedures.

The Committee notes that, in its observations, the ITUC indicates that the effective enforcement of the 2015 Act still poses a major challenge. Therefore, even though they have been established for two years, the special criminal courts in Nouakchott and Nouadhibou have not issued a single ruling. The court in Nema issued one decision in May 2016 in which the penalties imposed fell far short of those set out in law. The ITUC adds that civil society organizations are not aware of any other cases under way or even scheduled to come before the special criminal courts. The reasons for this include the reluctance of the police and the judicial authorities to investigate or launch proceedings after cases have been brought to their attention by associations; the reclassification of crimes as less serious offences; the settling of some cases informally; and the absence of a mechanism for the identification and protection of victims before and during proceedings.

The Committee recalls that, under the terms of *Article 25* of the Convention, member States are obliged to ensure that the penalties provided for by law for the exaction of forced labour are really adequate and strictly enforced. While noting the efforts made to raise awareness of the 2015 Act and strengthen the training of the various actors in the enforcement system in this regard, the Committee notes that these efforts have not yet been demonstrated in practice in the form of the examination of a certain number of cases of slavery by the special criminal courts. ***The Committee therefore expresses the firm hope that the Government will continue to take the necessary measures to strengthen the knowledge and capacities of all the actors involved in the enforcement system for the 2015 Act to ensure that no cases of slavery go unpunished. Recalling, in this regard, that it is essential that these authorities are in a position to gather evidence, assess the facts correctly and initiate the corresponding judicial procedures, the Committee requests the Government to provide information on the creation of specialized units in the Office of the Public Prosecutor and the forces of order. Lastly, the Committee reiterates its request for information on the number of cases of slavery reported to the authorities, the number which resulted in judicial action, and the number and nature of the convictions handed down. Please also indicate whether victims of slavery have been compensated for the damage they suffered, in accordance with section 25 of the 2015 Act.***

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

In its previous comments, the Committee noted that the direct contacts mission considered 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 also indicated that "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 need to conduct a study has been emphasized for some years by the Committee of Experts as well as the Conference Committee, which requested the Government, in June 2017, to conduct a complete analysis in relation to the nature and incidence of slavery as a basis for improving targeted actions to eradicate slavery. The Committee welcomes the Government's indication, in a communication of 27 September 2017, according to which the terms of reference of a qualitative study have been elaborated and will be approved at a round table which will be organized before the end of the year, in cooperation with the competent ILO services. The study will assess the recruitment procedures, working conditions and vulnerabilities which may arise in an exploitative relationship, thereby providing a basis for assessing situations involving the risk of forced labour.

The Committee recalls that the relationship between victims and their master is multidimensional. The direct contacts mission emphasized in this regard that the economic, social and psychological dependence of victims varies in degree and results in a broad range of situations. ***The Committee expects that the Government will take the necessary measures to conduct rapidly, with ILO assistance, the planned study and that this study will provide reliable data on the nature and prevalence of slavery-like practices in Mauritania. In this regard, the Committee firmly encourages the Government to ensure that the issue of economic, social and psychological dependence is taken into consideration when assessing whether a person has expressed free and informed consent to work and whether the consent expressed is truly devoid of all threat or pressure. The Committee also draws the Government's attention to the need to involve, as early as possible, all the actors concerned, particularly the social partners, in the process of conducting the study (terms of reference, definitions, implementation).***

(c) Inclusive and coordinated action

The Committee previously noted the multisectoral approach and the inter ministerial coordination which have been established to combat slavery and its vestiges, through the adoption of the roadmap to combat the vestiges of slavery. It noted that the implementation of the recommendations of the roadmap lay with an Inter-ministerial Technical Committee chaired by the Prime Minister and that 70 per cent of the recommendations had been implemented. The Committee expressed the hope that, following the implementation of the 29 recommendations provided for by the roadmap, the Inter-ministerial Technical Committee would undertake an evaluation of the impact of the measures taken. The Committee notes that the Government indicated to the Conference Committee that the evaluation had been conducted in April 2017. The Committee *regrets* that the Government has not provided more specific information on the evaluation carried out and its findings. *Recalling that action to combat slavery requires the commitment of all actors within the framework of coordinated action carried out at the highest level, the Committee once again requests the Government to provide information on the findings of the evaluation of the implementation of the roadmap, specifying the results achieved and the obstacles identified. Please also specify the decisions taken by the Inter-ministerial Committee in this regard. The Committee requests the Government to indicate the new actions identified and to specify how civil society organizations engaged in combating slavery and its vestiges, and the social partners, have been involved throughout this process.*

(d) Identification, protection and reintegration of victims

The Committee previously emphasized that victims of slavery are in a situation of great vulnerability which requires specific action by the State. Both the Committee of Experts and the Conference Committee have requested the Government to ensure that victims who are identified or who report their situation are protected against reprisals or social pressure; that they benefit from social and economic integration measures; and that they receive compensation for the damages suffered. The Committee notes the information communicated in this regard on the activities undertaken within the framework of the technical cooperation project. Regarding the identification of victims, the General Labour Directorate, in close coordination with the labour inspectorate, is preparing a technical proposal for a victim identification mechanism. The adaptation of the ILO list of indicators of forced labour to the national context is also under examination. With regard to the suggestion of the direct contacts mission to implement a mechanism to provide shelter for victims, the Government emphasizes that this function is fulfilled by the Tadamoun Agency (National Agency to Combat the Vestiges of Slavery) and civil society organizations which receive State subsidies. With regard to the reintegration of victims, the Government indicates that the Ministry of Labour and the Tadamoun Agency are developing a joint initiative intended to promote means of subsistence for victims, the two pillars of which will be vocational training and strengthening of entrepreneurial capacity. Lastly, the Committee notes the detailed information concerning the activities carried out by the Tadamoun Agency in the areas of basic infrastructure construction (schools, sanitation facilities, water supply, social housing) and the fight against poverty (modernization of the means of agricultural production, micro-projects for income-generating activities). The Committee notes the targeted measures taken by the Government to reduce the severe poverty of a section of the population. The Committee considers that these activities contribute to reducing the risk of these persons being in a situation of economic and social dependence which could lead to their exploitation. *The Committee encourages the Government to pursue this type of preventive action.*

However, regarding the victims of slavery, the Committee notes that their identification and effective assistance remains a challenge to be overcome. This is evidenced by the lack of information on the number of victims identified by the public authorities, the number who have benefited from legal support and social assistance, and those who have obtained compensation. *The Committee trusts that the Government will take all the necessary measures to ensure that all the competent authorities are trained in the identification and protection of victims and that they cooperate with the civil society organizations to this end. It requests the Government to indicate the number of cases in which the Tadamoun Agency has been party to civil proceedings, and the number of victims who have been supported by the Agency during the investigations and judicial proceedings. Lastly, the Committee requests the Government to provide information on the assistance provided to victims of slavery with a view to their economic and social reintegration.*

(e) Awareness raising and action to combat stigmatization

The Committee notes that, in its observations, the CGTM emphasizes that awareness raising is one of the most effective main approaches to the eradication of slavery, which is deeply rooted. The CGTM refers to the need to overcome the obstacles of ignorance, conservatism and the low level of social progress. The ITUC also indicates that the persons considered as belonging to the slave caste, but who no longer live in slavery, are victims of stigmatization and discrimination and are marginalized both economically and politically. Lastly, the Committee notes that both the CGTM and the ITUC refer to the harassment and detentions to which certain activists are subjected as a result of their action to denounce slavery. The Committee notes the information communicated by the Government concerning the awareness-raising measures taken, such as the organization of a new awareness-raising campaign; the selection and formulation of key messages based on the roadmap; and the organization of events for the national day to combat the vestiges of slavery.

The Committee expects that the Government will continue to develop action, not only to raise awareness of the 2015 Act, but also to delegitimize slavery and combat the stigmatization and discrimination to which victims and their descendants are subjected. It requests the Government to refer to its comments on the application by Mauritania of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). The Committee also urges the Government to ensure that the persons and civil society organizations who denounce slavery and carry out peaceful activities to this end are not subjected to any intimidation.

C081 - Labour Inspection Convention, 1947 (No. 81)**Observation 2017**

The Committee notes the observations of the Free Confederation of Mauritanian Workers (CLTM), received on 25 July 2017, and the Government's reply to them. It also notes the observations of the General Confederation of Workers of Mauritania (CGTM), received on 4 September 2017. *The Committee requests the Government to send its comments on the observations of the CGTM.*

The Committee emphasizes that, further to a request for technical assistance from the Government, the ILO undertook in 2016 an audit of the needs of the labour administration and inspectorate (2016 audit). Noting that the recommendations of the audit correspond to a large extent to the Committee's previous comments, the Committee welcomes the fact that a roadmap has been drawn up to implement a number of these recommendations.

Article 3(2) of the Convention. Additional duties. Conciliation and mediation. Noting the recommendations of the 2016 audit in this regard, the Committee notes with *interest* the Government's indications that Order No. 0743 of 23 August 2017 establishing the structure and territorial competencies of regional labour inspectorates has separated the structures dealing with enforcement of the labour legislation from those responsible for dealing with labour disputes. The Committee notes that, under section 2 of the Order, regional labour departments are now responsible for settling labour disputes while labour divisions and districts are exclusively responsible for enforcing the labour legislation and regulations. *The Committee requests the Government to indicate the number of labour inspectors and controllers (assistant inspectors) who only have to perform primary duties, as provided for in Article 3(1) of the Convention.*

Articles 6 and 15(a). Status and conditions of service of labour inspectors and controllers such as to ensure their stability of employment and independence from changes of government and from improper external influences. The Committee notes the findings of the 2016 audit concerning the existence of a real pay gap between staff of the labour inspectorate and staff of other government inspection departments, who receive better remuneration (such as tax inspectors or education inspectors). According to the audit, the existing career model is unlikely to increase the motivation of labour inspectors, who continue to leave the service to take up posts in the private or the semi-public sector that appear to offer better conditions of employment. The Committee notes the observations of the CLTM that the labour inspectorate continues to be subjected to undue influence by employers and the Government, thereby reducing the effectiveness of

inspection activity. The Committee notes that the Government denies that it has influence over the work of the labour inspectorate. *Noting the Government's commitment to take measures in this regard, if resources allow, the Committee encourages the Government once again to take all necessary steps to provide labour inspectors and controllers with conditions of service, including adequate remuneration, that ensure stability of employment and career prospects. The Committee requests the Government to keep it informed in this regard.*

Articles 10, 11 and 16. Financial and material resources available to the labour inspection services and number of inspectors for the effective discharge of inspection duties. The Committee notes the recommendations of the 2016 audit concerning the need for a substantial, long-term increase in budget allocations for the labour administration. The audit recommends the reinforcement of transport resources and the provision of personal protective equipment for labour inspectors. The audit also recommends that the number of labour inspectors and support staff should be increased, noting that many labour inspectors and controllers will retire between 2016 and 2020 and that inspections are few in number and tend to be reactive in nature. The Committee also notes the observations of the CLTM that the lack of material and human resources prevents labour inspectors from discharging their duties effectively and that without transport facilities it is impossible for them to have access to the workplaces in remote areas for which they are responsible.

The Committee welcomes the Government's indications that ten new labour inspectors and nine new labour controllers have been appointed in the various inspection departments. The Government also refers to a project that is being negotiated to equip the inspection services with the vehicles and IT equipment needed for them to perform their duties. *The Committee requests the Government to provide information on all follow-up measures taken in relation to the recommendations of the 2016 audit concerning financial and material resources available to the labour inspection services, including the provision of personal protective equipment. It also requests the Government to indicate the number of labour inspectors and controllers and how they are distributed within the various inspection services. It further requests the Government to provide information on the measures referred to by the Government in its report to strengthen the transport facilities needed to ensure the discharge of labour inspectors' duties, including in inspection services furthest removed from urban centres.*

Articles 19, 20 and 21. Preparation, publication and communication to the ILO of an annual inspection report. The Committee notes that no annual inspection report has been received. The Committee notes the findings of the 2016 audit that the labour inspection services do not have an integrated database of enterprises which keeps an inventory of inspections. It also notes the recommendation of the 2016 audit that there is a need to improve the control sheet and the system for the classification and archiving of documents, and to strengthen the ministry's capacities for the collection and analysis of statistical and administrative data. *Noting the Government's indication that it will take the necessary measures in this respect, the Committee requests the Government once again to take the necessary steps, including with ILO technical assistance, to develop a system for the collection and compilation of data so that local inspection offices can draw up periodic reports, which can then enable the central inspection authority to draw up an annual report in conformity with the Convention.*

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

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

Observation 2017

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2017, and the observations of the General Confederation of Workers of Mauritania (CGTM), received on 4 September 2017, denouncing violent repression resulting in deaths during trade union demonstrations and the systematic arrest of trade unionists during these demonstrations. *The Committee notes these allegations with concern and requests the Government to provide its comments in this respect.* The Committee notes the observations of the Free Confederation of Mauritanian Workers (CLTM), received on 31 August 2017, and the Government's reply thereon.

Article 3 of the Convention. Trade union elections. The Committee previously noted the process initiated in 2014 for the adoption of a legal framework for the determination of criteria for the representativity of trade unions in the private and public sectors with a view to the organization of the corresponding elections and it requested the Government to provide information on the progress achieved. The Committee notes that the Government undertakes to include all the organizations concerned in consultations on the legislative reform process that it has commenced in relation to elections. The Committee also notes the observations of the CGTM to the effect that, despite a Memorandum of Understanding agreed between the social partners in 2017, the process is slow to achieve fruition and enterprises have still not received any notification of the process. However, the Committee notes the Government's indication that three orders respecting staff delegates and the procedures for their election, the consolidation of election results and practical procedures for the organization and operation of the National Social Dialogue Council have been adopted since 2014. *The Committee requests the Government to provide copies of these orders and to continue providing information on the progress achieved and on the legislative reform process that has been initiated with a view to the holding of elections.*

Articles 2 and 3. Legislative amendments. The Committee recalls that for several years it has been requesting the Government to amend certain provisions of the Labour Code to bring them into full conformity with the Convention. *The Committee once again expresses the firm hope that in the near future the Government will report tangible progress in the revision of the Labour Code with a view to bringing it fully into conformity with the Convention. The Committee expects that the Government will take due account in this regard of all the points recalled below:*

--Right of workers to establish and join organizations of their own choosing without prior authorization. The Committee requests the Government to take measures to amend section 269 of the Labour Code so as to remove any obstacles that prevent the exercise of the right to organize by minors who have access to the labour market (14 years of age, in accordance with section 153 of the Labour Code), whether as workers or apprentices, without the permission of their parents or guardian being necessary.

--Right to organize of magistrates. The Committee recalls that for many years it has been requesting the Government to take measures to ensure that magistrates enjoy the right to establish and to join organizations of their own choosing, in accordance with Article 2 of the Convention. *Noting the Government's indication that magistrates now have their own organization in which they exercise their trade union rights to the full, the Committee requests the Government to indicate the legal basis that has enabled this progress.*

--Right of workers' organizations to freely elect their representatives and to organize their administration and activities in full freedom, without interference from the public authorities. The Committee recalls that the combined implementation of sections 268 and 273 of the Labour Code is liable to be an obstacle to the right of organizations to elect their representatives in full freedom, by preventing them from electing qualified persons or depriving them of the experience of certain leaders when they do not have among their own ranks sufficient numbers of competent persons. *The Committee therefore requests the Government to make the conditions less rigid for eligibility as trade union leaders or officers, for example by removing the requirement to belong to the occupation for a reasonable proportion of leaders. The Committee also requests the Government to amend section 278 of the Labour Code with a view to ensuring that any change in the administration or leadership of a trade union can take effect as soon as it has been notified to the competent authorities, and without the latter's approval being necessary.*

--Compulsory arbitration. The Committee requests the Government to take measures to amend section 350 of the Labour Code to ensure that the possibility for the Minister of Labour to have recourse to compulsory arbitration in the event of a collective dispute is limited to cases involving an essential service in the strict sense of the term, that is a service the interruption of which would endanger the life, personal safety or health of the

whole or part of the population, and situations of acute national crisis.

--*Duration of mediation. Recalling that the maximum duration (120 days) of a mediation procedure before a strike may be called, as set out in section 346 of the Labour Code, is excessive, the Committee requests the Government to take measures to amend this provision in order to reduce the maximum duration.*

--*Strike pickets.* The Committee recalls that the restrictions imposed on strike pickets and the occupation of premises should be limited to cases in which the action ceases to be peaceful or in which the observance of the right to work of non-strikers or the right of the management to enter the premises of the enterprise is impaired. *The Committee therefore requests the Government to take measures to amend section 359 of the Labour Code in order to abolish the prohibition of the peaceful occupation of workplaces or their immediate surroundings, and to provide for penal sanctions only in cases where action during a strike is not peaceful.*

C114 - Fishermen's Articles of Agreement Convention, 1959 (No. 114)

Observation 2017

The Committee notes the adoption on 15 October 2013 of Act No. 2013-029 issuing the Merchant Marine Code.

Article 3(1) of the Convention. Examination of agreement before signing. In its previous comments, noting that the Merchant Marine Code contained no provisions allowing for fishers to examine the articles of agreement before they are signed, the Committee asked the Government to indicate how it ensures observance of this provision of the Convention. The Committee notes with *interest* that section 394(2) of the new Merchant Marine Code gives full effect to this provision of the Convention, by providing that "The agreement shall be signed by the seafarer before the departure of the vessel in conditions in which he has the opportunity to examine the terms and conditions and is able, where necessary, to seek advice and accept them freely before signing them."

Article 5. Record of employment. The Committee previously requested the Government to indicate how the keeping of employment records is organized and how the records are made available to fishers. The Committee notes in this respect that section 404 of the new Merchant Marine Code establishes that, upon discharge, the shipowner or the master shall provide the seafarer with a certificate of service. The Committee also notes that section 45 of the Maritime Labour Collective Agreement 2006 provides that any seafarer may demand upon discharge a certificate of work from the master or shipowner indicating exclusively the name and address of the employer and the nature of the employment or, where appropriate, the successive jobs occupied by the seafarer. *The Committee takes note of this information.*

Article 6(3). Particulars to be contained in the agreement. The Committee previously requested the Government to indicate which legislative provisions give effect to this provision of the Convention, namely regarding the inclusion of the following particulars in the fisher's articles of agreement: (a) the surname and other names of the fisher, the date of his birth or his age, and his birthplace; (b) the place at which and date on which the agreement was completed; (c) the name of the fishing vessel or vessels on board which the fisher undertakes to serve; (d) the voyage or voyages to be undertaken, if this can be determined at the time of making the agreement; and (e) the amount of his wages, or the amount of his share and the method of calculating such share. The Committee notes that the new Merchant Marine Code does not set out a list of particulars to be contained in the agreement. *The Committee therefore invites the Government to indicate the measures adopted or envisaged to give effect to this provision of the Convention.*

Article 11. Immediate discharge. The Committee previously requested the Government to indicate the provisions of the law or regulations which determine the circumstances in which the fisher can request immediate discharge. The Committee notes in this respect that section 399 of the new Merchant Marine Code lists the circumstances in which the fisher can terminate the maritime employment agreement without notice. *The Committee takes note of this information.*

C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**Observation 2017**

The Committee notes with *interest* the adoption of the Police (Membership of Trade Unions) Act 2016 granting police officers the right to organize.

Article 2 of the Convention. Right of workers to establish and join organizations without distinction whatsoever. Migrant workers. In its previous comment, the Committee had requested the Government to provide information on measures taken or envisaged to ensure that migrant workers may effectively exercise in practice the right to establish and join organizations of their own choosing. The Committee notes the information provided by the Government on the activities undertaken by the Special Migrant Workers' Unit. It further notes the statistics provided by the Government on the membership of ten trade unions also operating in export processing zones (EPZs) and open for migrant workers to join, and notes the Government's indication that no records are available with regard to the number of migrant workers who are union members, as trade unions are not bound by law to disclose the nationality of their members. The Committee observes in this regard that, under section 13 of the Employment Relations Act 2008 (ERA), both a citizen of Mauritius and a non-citizen holding a work permit are entitled to be a member of a trade union. *Noting the Government's indication that a revision of the Employment Rights Act and the ERA is under way, the Committee requests the Government to take necessary measures, within the framework of the current labour law review, to ensure that all migrant workers, whether in a regular or irregular situation, enjoy, in law and in practice, the right to establish as well as join organizations without distinction whatsoever. Noting from the information supplied by the Government that two out of ten trade unions operating in EPZs are in the process of dissolution, the Committee also requests the Government to provide information on the precise grounds therefor and the outcome of any related proceedings, and the impact on the rights of migrant workers to exercise their rights under Article 2 of the Convention.*

Self-employed workers. The Committee notes the Government's indication in its 2016 report under the Right of Association (Agriculture) Convention, 1921 (No. 11), that there is no legal provision in the current labour legislation granting trade union rights to self-employed workers in the agricultural or any other sector in Mauritius. *The Committee requests the Government to hold consultations with social partners and other interested parties with the aim of ensuring, within the framework of the current revision of the Employment Rights Act and the ERA, that all workers, including self-employed workers, enjoy the right to establish and join organizations without distinction whatsoever.*

The Committee reminds the Government that it may avail itself of technical assistance from the Office with respect to all issues raised in its present comments.

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

C094 - Labour Clauses (Public Contracts) Convention, 1949 (No. 94)**Observation 2017**

Article 1(3) of the Convention. Scope of application. Subcontractors. In its previous comments, the Committee noted the Government's indications that, while there was initially a consensus on extending the provisions of section 46(5) of the Public Procurement Act, 2006, concerning the insertion of labour clauses to subcontractors and assignees, it was ultimately left to the main contractor to ensure compliance and to submit evidence of compliance to the public procurement authority. The Committee noted that section 46(8) of the 2006 Act does not place any responsibility on the main contractor to ensure compliance on the part of a subcontractor or to produce evidence of such compliance. The Committee once again draws the Government's attention to the 2008 General Survey on labour clauses in public contracts, paragraphs 75–81, which provide guidance in this area. In particular, paragraph 75 points out that *Article 1(3) of the Convention* requires the competent authorities to take appropriate measures to ensure that labour clauses of the type required by the Convention are applied to work carried out by subcontractors or assignees of contracts. *In light of the foregoing, the Committee once again requests the Government to take, without further delay, all necessary measures to ensure that labour clauses in public contracts apply fully to the work carried out by subcontractors and assignees, as required by Article 1(3) of the Convention, and to provide information on the progress achieved in this regard.*

Article 2. Insertion of labour clauses. In its previous comments, the Committee requested the Government to clarify the reasons why the standard bidding documents for procurement of goods do not contain labour clauses of the type required by the Convention, while these clauses are contained in other standard bidding documents. The Committee notes the Government's indication that the standard bidding documents for the procurement of goods is based on World Bank guidelines which do not contain the labour clauses required. *The Committee wishes to draw the attention of the Government to its obligations under Article 2 and urges the Government to take measures to ensure full implementation with the requirements of the Convention.*

Article 5(1). Adequate sanctions. *The Committee requests the Government to indicate the measures taken or contemplated to ensure the application of adequate penalties for failure to respect the labour clauses contained in public contracts, as required under Article 5(1) of the Convention.*

Application of the Convention in practice. The Committee notes the Government's indication that the current system is not structured to capture up to date information on the practical application of the Convention, including statistics on the number and types of public contracts and activity reports of the Central Procurement Board or the Procurement Policy Office on the implementation of the public procurement legislation. *The Committee hopes that the Government will make every effort to collect and provide up-to-date information, including statistical information, enabling a general appreciation of the manner in which the Convention is implemented in practice.*

C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)**Observation 2017**

The Committee notes the observations received on 1 September 2017 from Business Mauritius and the International Organisation of Employers (IOE), which relate to issues examined by the Committee below. It also notes the Government's comments thereon, as well as on the 2016 observations from the Confederation of Private Sector Workers (CTSP) and the General Trade Unions Federation (GTUF).

Article 1 of the Convention. Adequate protection against acts of anti-union discrimination. The Committee had requested the Government to provide information on the application of *Article 1* in practice, including statistical data on the number of complaints of anti-union discrimination brought before the competent authorities (labour inspectorate and judicial bodies), the outcome of relevant judicial or other proceedings and their average duration, as well as the number and nature of sanctions imposed or remedies provided. The Committee notes that the Government refers to the legislative provisions providing protection against acts of anti-union discrimination: section 31 of the Employment Relations Act 2008 (ERA) (prohibiting anti-union discrimination and providing for a maximum fine of Mauritian rupees (MUR) 100,000 (US\$2,936)); and sections 38(1)(d) and (f) (prohibiting anti-union dismissal), 46(5B) (providing for reinstatement or severance pay of three months' wages per year of service) and 67(1)(e) and (2) (providing for a maximum fine of MUR25,000 (\$733) or imprisonment of two years), of the Employment Rights Act 2008. Business Mauritius enumerates, in addition, the reversal of the burden of proof under section 31 of the ERA. The Committee further observes the Government's statement that, as per its records, no complaint of anti-union discrimination has been reported to the competent authorities from 1 June 2016 until 31 May 2017; and that, since 2013, four cases of termination of employment of union delegates have been registered at the labour office (one case was settled following an amicable settlement on the agreed sum of MUR30,000; in one case, the worker was reinstated

on the same terms and conditions of employment; in another case, the Industrial Court gave judgment in favour of the worker for unjustified termination of employment and the employer was ordered to pay a sum of MUR800,000 (\$23,631) as severance allowance; and the fourth case is being processed for court action). In this regard, the Committee wishes to recall the CTSP 2016 allegations of frequent harassment, intimidation, threats, discrimination and unfair dismissals of trade union representatives when trade unions are established in export processing zones (EPZs), and of frequent acts of anti-union discrimination in the private sector including a recent drastic increase in anti-union dismissals of trade union leaders and delegates without compensation. *The Committee requests the Government to pursue its efforts, in particular in the EPZs, so as to ensure that all allegations of anti-union discrimination give rise to expeditious investigations and, if need be, to the imposition of dissuasive sanctions. It also requests the Government to continue to provide statistical data on the number of complaints of anti-union discrimination, including anti-union dismissals, brought before the competent authorities (labour inspectorate and judicial bodies), their outcome and the number and nature of sanctions imposed or remedies awarded.* With regard to the CTSP 2016 allegation of judicial proceedings in rights disputes taking six to seven years, the Committee notes the Government's indication that, in the absence of an amicable settlement, cases are referred to the Industrial Court, which at a preliminary stage tries to conciliate the parties, failing which the matter is fixed for trial and a judgment is delivered without a time limit set for the determination of the case. *Highlighting that an excessive delay in processing cases of anti union discrimination could give rise to a denial of justice, the Committee requests the Government to take measures with a view to accelerating relevant judicial proceedings and to provide statistical data on their average duration.*

Article 4. Promotion of collective bargaining. The Committee requested the Government to redouble its efforts, in particular in EPZs, in the garment sector and in the sugar industry, to promote and encourage the greater development and utilization of procedures of voluntary negotiations between employers or employers' organizations and workers' organizations to regulate the terms and conditions of employment through collective bargaining agreements. It also requested the Government to continue to supply, or if necessary to compile, statistical information on the functioning of collective bargaining in practice as well as on the use of conciliation services. The Committee welcomes the Government's indication that: (i) workers' education sessions through seminars and talks are still being conducted on an ongoing basis by the Ministry of Labour targeting workers of different sectors including the EPZ/textile sector: from 1 June 2016 until 31 May 2017, 33 training/sensitization activities were carried out for the benefit of 323 male and 500 female employees of the EPZ/textile sector, wherein emphasis was laid on legal provisions and rights at work including those pertaining to the right to collective bargaining and unionization as guaranteed in the labour law; (ii) sensitization of workers in this regard is also effected on an ongoing basis during inspection visits at workplaces: during the abovementioned period, 79 inspection visits were carried out in the EPZ sector, covering 26,045 local workers (11,652 male/14,393 female), and 672 inspection visits in undertakings in the manufacturing sector, which employs 32,286 migrant workers (28,084 male/4,202 female); and (iii) from the 14 collective agreements registered with the Ministry of Labour as of June 2016 to date, one agreement pertains to the EPZ sector. The Committee observes that the information provided by the Government concerning the type of measures it has been taking to promote collective bargaining, is identical to that supplied in its last report. The Committee also notes that, according to Business Mauritius, the ERA sets out in a structured manner the conditions for the harmonious development of collective bargaining, and there is no impediment in the ERA preventing EPZ or migrant workers from embarking in collective bargaining. *Taking due note of the legislative provisions which the Government enumerates as aiming at the promotion of collective bargaining (sections 4–6, 36, 37, 40, 41, 43, 51, 53 and 54 and Part VI of the ERA), the Committee expects that the Government will continue to carry out inspections and sensitization activities as described above. The Committee requests the Government, in consultation with the social partners, to strengthen these activities, in particular in the textile sector, sugar industry, manufacturing sector and other sectors employing EPZ workers and migrant workers, in order to promote and encourage in practice the greater development and utilization of procedures of voluntary negotiations between employers or employers' organizations and workers' organizations with a view to the regulation of terms and conditions of employment by means of collective bargaining agreements.*

The Committee notes the information provided by the Government on the use of conciliation services in practice. In particular, as regards the CTSP 2016 allegation of an excessive length of the conciliation proceedings (not less than seven months) due to lack of human resources and logistic support, the Committee notes the Government's explanations that, in practice: (i) trade unions report a dispute to the Commission for Conciliation and Mediation (CCM), as soon as the recommended duration for collective bargaining negotiations (90 days) has lapsed, without meeting the condition of a deadlock in the negotiations (section 64(2) of the ERA); and (ii) as a result, true collective bargaining negotiations start only after the dispute has been reported to the CCM, so that the 30-day period in which conciliation should be completed pursuant to section 69(3) of the ERA, is usually extended by the parties, as allowed for by section 69(4) of the ERA. *Observing the divergence of views between the Government and the social partners, and considering that voluntary conciliation procedures should be expeditious, the Committee invites the Government to engage in a dialogue with the national social partners with a view to identifying the possible adjustments to be made to improve the rapidity and efficiency of the conciliation proceedings, and to provide information in this regard. The Committee also requests the Government to continue to supply statistics on the functioning of collective bargaining in practice (number of collective agreements concluded in the private sector, especially in EPZs; branches and number of workers covered).*

Interference in collective bargaining. With regard to the alleged Government interference in collective bargaining in the sugar sector, the Committee trusted that, in the future, the Government would continue to refrain from having recourse to compulsory arbitration with the effect of bringing to an end collective labour disputes in that sector. The Committee notes the Government's indication that it has already submitted its comments on the matter in 2015 and that it has taken due note of the comments and recommendations of the Committee. *The Committee expresses the hope that the Government will continue to refrain from unduly interfering in and will give priority to, collective bargaining of a voluntary nature as the means of determining terms and conditions of employment in the sugar sector in particular and in the private sector in general.*

The Committee also takes note of the view of Business Mauritius that the Remuneration Orders of the National Remuneration Board (NRB) are so elaborated and prescriptive that they act as a disincentive to collective bargaining, and suggests that the authorities: (i) implement the decision of the International Labour Conference Committee on the Application of Standards and render collective bargaining voluntary; (ii) provide for a more conducive statutory framework for the conduct of collective bargaining; and (iii) review the functioning of the industrial relations institutions such as the CCM and the Employment Relations Tribunal in order to support the collective bargaining process by providing more speedy and free conciliation, mediation and arbitration services. Business Mauritius believes that the harmonious development of industrial relations would be promoted, if the authorities, when tackling the issue of the loss of workers' purchasing power, were to adopt solutions, which did not entail modifications of what had been agreed upon by workers' and employers' organizations, without the consent of both parties. Business Mauritius stresses that, currently, the Additional Remuneration Act modifies unilaterally duly negotiated collective agreements without the consent of the parties. This interference into the process of free and voluntary collective bargaining is a disincentive for parties to engage in collective bargaining. *The Committee requests the Government to provide its comments in respect of the observations of Business Mauritius.*

Article 6. Collective bargaining in the public sector. As regards the public sector, the Committee had previously noted the Government's indication that consultations were held by the Pay Research Bureau (PRB) in the context of the review of pay, grading structures and other conditions of service with federations and trade unions; and discussions and negotiations on general terms and conditions of employment as reviewed by PRB were carried out centrally at the Ministry of Civil Service and Administrative Reform with the federations of civil service unions, but no agreements were signed. The Committee had also noted the statement of the Worker member of Mauritius at the Conference Committee in 2016, according to which: (i) collective bargaining did not exist at all in the public sector; and (ii) while the salaries of public servants were decided unilaterally by the PRB, conditions of service were determined at bipartite meetings between the Ministry of Civil Service and Administrative Reform and the PRB, without faithful and meaningful tripartite negotiations. The Committee had requested the Government to provide further information on the manner in which collective bargaining took place in the case of public servants other than those

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engaged in the administration of the State. The Committee notes that the Government states that the PRB acts as a permanent and independent body, which adopts a consultative approach with workers' organizations and the Ministry of Civil Service and Administrative Reform, before making its recommendation to the Government. The Committee notes that, according to Business Mauritius, as Mauritius has ratified the Convention, the right to collective bargaining should be recognized in the public sector as well, subject to special modalities fixed in accordance with the Labour Relations (Public Service) Convention, 1978 (No. 151). The Committee recalls that, pursuant to *Article 6* of the Convention, all public servants, other than those engaged in the administration of the State, should enjoy collective bargaining rights, and that, under this Convention, the establishment of simple consultation procedures for public servants who are not engaged in the administration of the State (such as employees in public enterprises, employees in municipal services, public sector teachers, etc.), instead of real collective bargaining procedures, is not sufficient. ***The Committee invites the Government, together with the professional organizations concerned, to study ways in which the current system could be developed so as to effectively recognize the right to collective bargaining of public servants who are not engaged in the administration of the State.***

Technical assistance of the Office. The Committee recalls that, in its conclusions ensuing from the debate in June 2016, the Conference Committee requested the Government to accept technical assistance from the Office to comply with the conclusions. The Committee notes the Government's indication that the formulation of the second-generation Decent Work Country Programme (DWCP) for Mauritius is being prepared with ILO assistance since April 2017, and that the issues raised by the Committee will be taken up within this framework. It also notes that Business Mauritius would welcome ILO technical assistance in relation to the promotion of collective bargaining, including through legislative amendments, since collective bargaining at enterprise or sectoral level is the best mechanism for regulating terms and conditions of employment and should gain momentum. ***Noting the Government's indication that the revision of the Employment Rights Act and the ERA is under way, the Committee reminds the Government that it may, if it so wishes, avail itself of the technical assistance of the Office, with a specific focus on the issues raised in the present observation.***

C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**Observation 2017**

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2015.

In its previous comments, the Committee noted the 2010 observations made by the International Trade Union Confederation (ITUC) concerning the application of the Convention. *The Committee once again requests the Government to provide its comments in this respect. With regard to the ITUC's observations of 2008 relating to serious acts of violence against striking workers in the sugarcane plantation sector, the Committee requests the Government to provide information on investigations carried out in relation to these matters and, in cases in which the alleged violations are found to be true, to take the appropriate measures to remedy them.*

Article 2 of the Convention. Registration of workers' and employers' organizations. In its previous comments, the Committee requested the Government to take the necessary measures to revise section 150 of the Labour Act, which allows the central authority of the labour administration a period of 45 days to register a trade union or an employers' organization. While noting that the Government had indicated in a previous report that this period is justified by the fact that the country does not have a modern computerized communications system, the Committee recalls that the excessive duration of the registration procedure represents a serious obstacle to the establishment of organizations, and that this time requirement should be shortened to a reasonable length, for example, not exceeding 30 days. *The Committee therefore requests the Government to initiate consultations with the social partners with a view to amending section 150 of the Labour Act as indicated, and to provide information on any progress achieved in this regard.*

Article 3. Penal responsibility of striking workers. In its previous comments, the Committee requested the Government to take the necessary measures to amend section 268(3) of the Labour Act, under the terms of which any violation of sections 199 (freedom to work of non-strikers), 202(1) and 209(1) (minimum services) constitutes a breach of discipline for which workers who are on strike are liable under both civil and penal law. Noting that the Government's report does not reply to the Committee's comment on this point, the Committee recalls that penal sanctions may only be envisaged where, during a strike, violence is committed against persons or property, or other serious breaches of the law, and only in accordance with the provisions punishing such offences. *The Committee therefore requests the Government to take the necessary measures to amend section 268(3) of the Labour Act as indicated, and to provide information on any progress achieved in this regard.*

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

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

C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)**Observation 2017**

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2015.

In its previous comments, the Committee noted the 2010 observations of the International Trade Union Confederation (ITUC) referring once again to acts of anti-union discrimination in export processing zones and the consistent violation of collective agreements. *Recalling that similar observations had already been brought to its attention and noting that the Government has still not provided information in reply, the Committee urges the Government to provide its comments in this respect and to ensure that the provisions of the Convention are applied in this sector.*

Articles 1 and 2 of the Convention. Protection against anti-union discrimination and interference. In its previous comments, the Committee requested the Government to provide information on the number of complaints received concerning acts of anti-union discrimination and interference, and the amount of the fines imposed, with a view to being able to assess whether the penalties envisaged (between five and ten minimum wages, which may be doubled in the event of repeat offences) are sufficiently dissuasive in practice. The Committee notes with *regret* that the Government has still not provided information on this point. *The Committee therefore once again requests the Government to provide detailed information on the number of complaints received concerning acts of anti-union discrimination and interference, and the amount of the fines imposed, including in export processing zones which, according to the ITUC, are the areas most frequently subject to anti-union discrimination and interference.*

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.

C122 - Employment Policy Convention, 1964 (No. 122)**Observation 2017**

Articles 1 and 2 of the Convention. Formulation and implementation of an active employment policy. The Committee notes with *interest* that following ILO technical assistance, Mozambique adopted a National Employment Policy (NEP) in 2016. The NEP's principle objectives are: to promote job creation, entrepreneurship and sustainable employment to contribute towards the economic and social development of the country and the well-being of the population. The NEP includes, among its main targets, the creation of new jobs (particularly in the private sector); implementation of programmes contributing to increased productivity, competitiveness and the development of human capital; establishment of the institutional conditions necessary to improve the functioning of the labour market; and ensuring the harmonization of sectoral policies as well as an institutional framework for employment and self-employment. The Committee notes the publication of the Fourth National Poverty Assessment in 2016, which places the national poverty rates in the range of about 41 per cent to 45 per cent of the population (representing between 10.5 and 11.3 million extremely poor people). The report also states that, due to the concentration of Mozambique's workforce in subsistence agriculture and low productivity informal enterprises, the country is characterized by high levels of individual and household vulnerability, particularly in rural zones in the north and central areas of the country. *The Committee requests the Government to provide comprehensive information on the results achieved and the challenges encountered in attaining the objectives established in the NEP, particularly on the outcome of the programmes established to stimulate growth and economic development, raise working and living standards, respond to labour market needs and address unemployment and underemployment.*

Article 2(a). Collection and use of labour market information. The Committee notes the development of the Household Survey by the National Statistics Institute (INE) 2014–15. It observes that, according to statistical information included in the Employment Policy report, in 2015 the unemployment rate was 25.3 per cent. The main source of employment was self-employment (73.1 per cent of the economically active population (EAP)), while wage employment represented 20 per cent of the EAP. In addition, 15 per cent of the EAP was employed as unpaid family workers (8.5 per cent were men and 21 per cent were women), 7.3 per cent were temporary workers and 9 per cent were casual workers. The Committee also notes that the NEP calls for the improvement of the country's labour market information system. *The Committee requests the Government to provide up-to-date information, including statistical data disaggregated by economic sector, sex and age, on the current situation and trends regarding the active population, employment, unemployment and underemployment throughout the country.*

Youth employment. The Committee notes that the NEP's principal targets include promoting investment to create employment for young women and men

and stimulating professional training and labour mobility for young people. To achieve these objectives the NEP sets out lines of action that call for promoting youth entrepreneurship through training programmes, particularly in rural areas, as well as increasing access to credit; investing in youth training and increasing the number of traineeships. The Government indicates that in 2015 awareness raising conferences on Pre-occupational Traineeship Regulations were held at the national and provincial levels to encourage enterprises to engage trainees. In addition, the Government refers to the establishment of financial programmes to support entrepreneurial initiatives developed by young people. ***The Committee requests the Government to provide detailed information on the manner in which the implementation of the NEP, the Pre occupational Traineeship Regulations and other programmes providing education and vocational training for young persons or supporting entrepreneurship of young women and men have increased access of young people to full, productive and sustainable employment.***

Women's employment. The Committee notes that the NEP calls for strengthened initiatives promoting gender equality in economic and social development programmes. The lines of action set out in the NEP include: promoting women's employment, including in traditionally male occupations; prioritizing education and vocational training with a view to promoting equal employment opportunities for women and men; and eliminating gender discrimination in access to employment. ***The Committee requests the Government to provide updated detailed information on the results of the specific measures adopted and implemented under the NEP to promote equal employment and income opportunities for women and men and to eliminate the gender gap in education, particularly in relation to literacy rates.***

Education and vocational training. The Committee previously requested the Government to provide information on the results achieved under the Employment and Vocational Training Strategy (EEFP) 2006–15 and the Integrated Programme for Vocational Education Reform (PIREP). The Committee notes from the Employment Policy report that access to secondary education is limited and the completion rate remains very low at 13 per cent. The report adds that the relevance of education and vocational training to the needs of the labour market is also very low. The Government indicates that reforms have been introduced in the areas of education and vocational training to address these challenges. In particular, the Government refers to the adoption of the Vocational Education Law in the framework of the PIREP, which provides that the National Authority for Vocational Training, whose executive board includes representatives of the social partners, is the body responsible for the Vocational Training System. Moreover, vocational training centres and technical institutes in the country have been renovated. Finally, the Government indicates that in 2014, in the framework of the EEFP, 2,490,672 jobs (464,413 for women) were created and 633,971 people participated in the training (219,260 women). ***The Committee requests the Government to continue to provide information, including statistical information disaggregated by age and sex, on the impact of the measures taken in the area of education and vocational training and on their relationship to prospective employment opportunities.***

Article 3. Consultations with the social partners. The Committee notes that, prior to its adoption, the NEP was examined by the social partners within the Labour Advisory Commission in May 2016. Moreover, the Employment Policy establishes that the Labour Advisory Commission and the Development Observatory are the bodies entrusted with the responsibility of following up on the implementation of the NEP. ***The Committee requests the Government to continue to provide detailed information on the involvement of the social partners in the promotion and implementation of the NEP.***

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

Observation 2017

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2017, alleging violation of the right to strike in various sectors. ***The Committee requests the Government to provide its comments thereon.***

Article 2 of the Convention. Right to organize of prison staff. In its previous observation, the Committee had requested the Government to take all necessary steps to expedite the process for adoption of legislative amendments to ensure that prison staff enjoy the guarantees under the Convention. The Committee notes the Government's indication that a Tripartite Task Working Committee has been established and is currently reviewing the Labour Act together with the prison service issues; an appropriate recommendation is expected on this matter. ***The Committee expects that the relevant legislative amendments will soon be adopted in order to ensure that prison staff have the right to establish and join organizations for furthering and defending their interests. It requests the Government to provide information on any progress made in this regard.***

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

Observation 2017

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2017, alleging violations of the Convention in specific enterprises and public institutions. ***The Committee requests the Government to provide its comments in this regard.***

Articles 1 and 4 of the Convention. Adequate protection against anti-union discrimination and promotion of collective bargaining in export processing zones (EPZs). In its previous observation, the Committee had requested the Government to indicate the steps that it was taking to ensure the full application of the Convention in EPZs in practice, in particular by promoting collective bargaining and effective protection against anti-union discrimination. The Committee notes the Government's indication that the Convention as well as the freedom of association provisions of the Labour Act are fully applicable in EPZs. The Committee welcomes the example of the mining sector provided by the Government according to which the Mineworkers Union of Namibia (MUN) has been granted exclusive bargaining status in a mineral processing EPZ company. ***The Committee requests the Government to continue to provide examples in practice and to indicate the concrete measures taken to ensure protection against anti-union discrimination and the promotion of collective bargaining in EPZs. The Committee also requests the Government to supply information on the number of complaints alleging anti-union discrimination and their outcome as well as the number of collective agreements signed in the EPZs and the number of workers covered.***

Article 6. Rights of prison staff. In its previous observation, the Committee trusted that the Government would take steps to ensure that the prison services enjoy the guarantees under the Convention in the near future, and had requested the Government to provide information on developments in relation to the adoption of new legislation in this regard. The Committee notes the Government's statement in its report on the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), for the year 2017, in which it indicates that a Tripartite Working Committee has been established and is currently reviewing the Labour Act, including the prison service issue. ***The Committee expects and firmly hopes that the comments it has been making in this regard for a number of years will be taken into account during the legal review, in order to ensure that prison staff enjoy the rights enshrined in the Convention. It requests the Government to provide information on any progress made in this regard.***

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

C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**Observation 2017**

Article 2 of the Convention. Scope of application. In its previous comments, the Committee requested the Government to take the necessary steps to amend section 191 of the Labour Code, which provides that workers over 16 years of age but under the age of majority may join trade unions, to ensure that the minimum age for membership to a trade union is the same as that fixed by the Labour Code for admission to employment (14 years, according to section 106 of the Code). **While noting the commitment given by the Government to take this request into consideration when amending Act No. 2012-45 issuing the Labour Code, the Committee requests the Government to provide information on all progress made in this regard.**

Articles 3 and 10. Provisions on requisitioning. In its previous comments, the Committee recalled that it had been asking the Government for many years to amend section 9 of Ordinance No. 96-009 of 21 March 1996 regulating the exercise of the right to strike of state employees and local authority employees so as to limit the restrictions on the right to strike to public officials exercising authority on behalf of the State, to essential services in the strict sense of the term, or to cases in which work stoppages may provoke an acute national crisis. The Committee noted a number of steps taken by the Government to determine the representativeness of employers' and workers' organizations on the basis of occupational elections. The Committee notes the Government's indication that the occupational elections process, the purpose of which is to revive the ordinance review mechanism, is proceeding normally and that it remains open to negotiations with the social partners. **Recalling that it has been requesting action on this matter for a number of years, the Committee invites the Government to take all necessary measures to accelerate this process and requests it to provide information on any developments in this regard.**

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

C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)**Observation 2017**

Articles 1, 2, 3 and 6 of the Convention. Adequate protection against acts of anti-union discrimination and interference. Public servants not engaged in the administration of the State. In its previous comments, the Committee requested the Government to take the necessary measures for the adoption of specific legislative measures providing adequate protection for public servants not engaged in the administration of the State against acts of anti-union discrimination and interference and, for that purpose, establishing expeditious and effective penalties and procedures. The Committee notes that the Government confines itself to indicating that freedom of association and the right to collective bargaining are recognized by article 9 of the Constitution of 10 November 2010 and that several categories of personnel who are not governed by either the provisions of the Labour Code or of the General Public Service Regulations have established trade unions. **The Committee therefore once again requests the Government to take the necessary measures without delay to include in the legislation provisions protecting public servants not engaged in the administration of the State against acts of anti-union discrimination and interference and to provide information on any developments in this regard.**

Article 4. Promotion of collective bargaining. The Committee takes due note of the Government's indications in reply to its previous comments concerning the conditions for the deposit, publication and translation of collective agreements established by sections 52–54 of the Regulations of the Labour Code. The Committee also notes the Government's indication that it is the organizations of employers and workers which appoint their representatives to the bargaining commissions referred to in section 242 of the Labour Code.

Criteria for the representativity of employers' and workers' organizations. In its previous comments, the Committee requested the Government to provide information on the holding and outcome of occupational elections with a view to determining the representativity of workers' and employers' organizations. The Committee notes that the Government refers to a document prepared by the National Occupational Election Commission (CONEP), entitled *Origins of occupational elections in Niger*, of which it has not however provided a copy. **Recalling that the procedures for determining the representativity of workers' and employers' organizations must be based on objective, precise and pre-established criteria and implemented by an independent body which has the confidence of the parties, the Committee once again requests the Government to provide information on the organization and holding of occupational elections and their results.**

Articles 4 and 6. Right to collective bargaining of public servants not engaged in the administration of the State. In its previous comments, after noting with satisfaction the conclusion between 2012 and 2014 of four major collective agreements concerning workers in both the public and private sectors, the Committee invited the Government to ensure that the legislation in force is aligned with the practice relating to the recognition and exercise of the right to collective bargaining in the public sector and to continue providing information on the number of collective agreements signed, the sectors concerned and the workers covered. **In the absence of further information from the Government on these two issues, and recalling that it is not aware of precise legislative provisions guaranteeing the right to collective bargaining of public servants not engaged in the administration of the State who are governed by a specific legislative or regulatory status, and accordingly excluded from the application of section 252 of the Labour Code, the Committee reiterates the requests referred to above.**

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

Observation 2017

The Committee recalls that it had previously requested the Government to provide its comments on the allegations made by the International Trade Union Confederation (ITUC) of denial of the right to join trade unions, massive dismissals for trying to join trade unions, mass persecution and arrests of union members and other violations. The Committee notes that, in its report, the Government generally indicates that it continuously ensures that the rights of workers are protected through strict compliance with the Trade Unions Act and the Labour Act, thus ensuring a peaceful industrial relations climate in the country and that the presence of security agents in any gathering is due to security risks such a gathering might have posed. The Committee takes note of the observations of the ITUC and the Nigeria Labour Congress (NLC) received on 1 and 8 September 2017, respectively, containing similar allegations of arrests, reprisals and dismissals against union leaders and members. ***The Committee regrets that the Government limits itself to a general statement and once again requests the Government to provide a detailed reply on each specific allegation made by the ITUC in 2015, 2016 and 2017, as well as on the observations made by the NLC in 2017.***

Civil liberties. The Committee had previously requested the Government to provide detailed information on the results of the judicial proceedings regarding the prosecution of the eight suspects arrested in connection with the assassination of Mr Alhaji Saula Saka, the Lagos Zonal Chairman of the National Union of Road Transport Workers. The Committee notes the Government's indication that, on 5 May 2017, the Federal Ministry of Labour and Employment requested the Inspector General of Police for an update on the judicial process and was awaiting the reply. ***Recalling that the events occurred in 2010, the Committee deeply regrets that no resolution has been reached and therefore urges the Government to provide detailed information on the results of the judicial proceedings, and, in the case of conviction, on the nature and implementation of the sentence.***

Article 3 of the Convention. Right of workers to join organizations of their own choosing. In its previous comments, the Committee had noted that the dispute between the Association of Senior Civil Servants of Nigeria (ASCSN) and the Nigeria Union of Teachers (NUT), with regard to the allegation that, teachers in federal educational institutions have been coerced to join the ASCSN and denied the right to belong to the professional union of their own choice, was referred to the National Industrial Court of Nigeria (NICN). The Committee had noted the Court's judgment of 20 January 2016, according to which: (i) the right of choice of a trade union to join is not absolute, as section 8 of the Trade Unions Act provides that "the qualification for membership of a trade union which shall include the provision to the effect that a person shall not be eligible for membership unless he or she has been normally engaged in the trade or industry which the trade union represents"; (ii) however, any worker who wishes to disassociate from the ASCSN can write to the employer stating so and directing that the deduction of the check off dues be stopped; and (iii) he or she can then join the NUT. The Committee had requested the Government to provide information on the practical application of section 8 of the Trade Unions Act, including the frequency of workers exercising their option to disassociate from a legislatively assigned trade union and any complaints filed in this regard, and to take any necessary measures to ensure the full respect of the right of workers to establish and join organizations of their own choosing. The Committee notes the Government's indications that according to section 12(4) of the Trade Unions Act and sections 9(6) and 5(3) of the Labour Act: (i) membership of a trade union by employees shall be voluntary; (ii) no employee shall be forced to join any trade union or be victimized for refusing to join or remain a member; (iii) no contract shall make it a condition of employment that a worker shall or shall not join a trade union; and (iv) the workers have the right to opt out of a trade union in writing. The Government further indicates that following the NICN's judgment, some of the education officers displeased with it have exercised their right to opt out of the ASCSN. ***In light of the information provided by the Government, the Committee requests it to continue to provide information on the practical application of the abovementioned provisions and in particular, whether teachers of the federal education institutions continue to be automatically affiliated to the ASCSN (albeit with an option of subsequent dissociation). It further requests the Government to engage with the relevant organizations with a view to amend section 8 of the Trade Unions Act so as to ensure the right of workers to establish and join organizations of their own choosing.***

Freedom of association in export processing zones (EPZs). The Committee recalls that its previous comments related to issues of unionization and entry for inspection in the EPZs, as well as to the fact that certain provisions of the EPZ Authority Decree, 1992, make it difficult for workers to join trade unions as it is almost impossible for worker representatives to gain access to the EPZs. The Committee had noted the establishment of a tripartite committee under the chairmanship of the Federal Ministry of Labour and Employment to review and update the Federal Ministry of Labour and Productivity Guidelines on Labour Administration and Issues in Contract Staffing/Outsourcing in the Oil and Gas Sector and to incorporate emerging trends in the world of work. The Committee had expressed the hope that concrete measures would be taken in order to ensure that EPZ workers enjoy the right to establish and join organizations of their own choosing, as well as other guarantees under the Convention. The Committee notes the Government's indication that workers in EPZs are now exercising their right to join a trade union of their own choosing and labour officers have been accessing the EPZs to carry out routine labour inspection. The Committee ***regrets***, however, that the Government does not provide any information on the review and update of the guidelines related to the provisions of the EPZ Authority Decree (1992). ***The Committee requests the Government to provide, without delay, information on the review and update of the ministerial guidelines. The Committee further requests the Government to provide statistics on the number of trade unions operating in EPZs and the membership thereof.***

Articles 2, 3, 4, 5 and 6. The Committee recalls that in its previous comments, it had requested the Government to amend the following provisions: --section 3(1) of the Trade Union Act, which requires a minimum of 50 workers to establish a trade union, so as to explicitly indicate that the minimum membership requirement of 50 workers does not apply to the establishment of trade unions at the enterprise level (while this minimum membership would be permissible for industry trade unions, it could have the effect of hindering the establishment of enterprises organizations, particularly in small enterprises); --section 7(9) of the Trade Union Act, which provides that the Minister may revoke the certificate of registration of any trade union, by repealing the broad authority of the Minister to cancel the registration; --sections 30 and 42 of the Trade Union Act, which impose compulsory arbitration, require a majority of all registered union members for calling a strike, define "essential services" in an overly broad manner, contain restrictions relating to the objectives of strike action, impose penal sanctions including imprisonment for illegal strikes and outlaw gatherings or strikes that prevent aircraft from flying or obstruct public highways, institutions or other premises, so as to lift these restrictions on the exercise of the right to strike; and --sections 39 and 40 of the Trade Union Act, which grant broad powers to the registrar to supervise the union accounts at any time, so as to limit this power to the obligation of submitting periodic financial reports, or in order to investigate a complaint.

The Committee welcomes the Government's indication that it has established a Tripartite Technical Committee (TTC) for the purpose of bringing into conformity the relevant sections of the Labour Standards Bill (LSB), Collective Labour Relations Bill (CLRB), Labour Institutions Bill (LIB) and Occupational Safety and Health Bill (OSH Bill) with international labour standards. The Committee notes the Government's indication that five meetings were held and appropriate amendments were made, and that the proposed review of the LSB will give the opportunity to the social partners to consider the amendments to sections 3(1), 7(9), 30, 39, 40 and 42 of the Trade Union Act. ***The Committee expects that the laws referred to above will be adopted in the near future, and that they will take into account the Committee's comments. The Committee requests the Government to provide information on all progress made in this respect, and to furnish a copy of the texts when enacted.***

The Committee notes that there are currently no proposals to amend the following legislative provisions:

--section 3(2) of the Trade Union Act, which restricts the possibility of other trade unions from being registered where a trade union already exists. The Committee notes that the Government explains that the purpose of this provision is to bring order and good administrative structure of trade unionism in Nigeria. *Recalling that it is important for workers to be able to change trade union or to establish a new union for reasons of independence, effectiveness or ideological choice and that trade union unity imposed directly or indirectly by law is contrary to the Convention (see the 2012 General Survey on the fundamental Conventions, paragraph 92), the Committee once again requests the Government to take all necessary measures to amend section 3(2) of the Trade Union Act and to indicate all progress made in this regard;*

--section 11 of the Trade Union Act, which denies the right to organize to employees in the Customs and Excise Department, the Immigration Department, the prison services, the Nigerian Security Printing and Minting Company Limited, the Central Bank of Nigeria, and Nigeria Telecommunications. The Committee notes the indication of the Government that for security reasons, the initial section 11 of the Act has not been modified but a subsection has been added creating Joint Consultative Committees (JCC) in the establishments concerned, which perform similar functions to trade unions. *The Committee recalls that all workers, without distinction whatsoever, shall have the right to establish and join organizations of their own choosing and that the only authorized exception are the members of the police and the armed forces. The Committee once again requests the Government to take measures to amend section 11 so as to bring it into conformity with the Convention;*

--section 8(a)(1), (b) and (g) of the Trade Unions (Amendment) Act 2005 and section 1 of the 1996 Trade Unions (International Affiliation) Act, which require federations to consist of 12 or more trade unions in order to be registered and that the application of a trade union for international affiliation shall be submitted to the Minister for approval. The Committee takes note of the Government's indication that the Trade Unions (International Affiliation) Act provides for the right of any union or central labour organization to affiliate with any international labour organization and that the Nigeria Labour Organization and the Trade Union Congress are members of various international labour organizations. While taking note of this information, the Committee observes that this does not address the Committee's concern. *The Committee therefore once again requests the Government to take the necessary measures to amend section 1 of the 1996 Trade Unions (International Affiliation) Act, so as to ensure that the international affiliation of trade unions does not require the Government's permission. It further once again requests the Government to take measures to amend section 8(a)(1), (b) and (g) of the Trade Unions (Amendment) Act 2005 so as to lower to a reasonable minimum the number of affiliated trade unions necessary for the registration of a federation.*

C088 - Employment Service Convention, 1948 (No. 88)

Observation 2017

Articles 1 and 3 of the Convention. Contribution of the employment service to employment promotion. In its previous comments, the Committee invited the Government to provide information on the impact of the measures taken to ensure that sufficient employment offices are established to meet the specific needs of employers and jobseekers in each of the geographical areas of the country. The Committee also invited the Government to provide information on the National Employment Policy (NEP) and other measures taken to build institutions for the realization of full employment. It also encouraged the Government and the social partners to consider the possibility of ratifying the Employment Policy Convention, 1964 (No. 122), a significant governance instrument. The Government indicates in its report that the Federal Ministry of Labour and Employment has a network of 45 employment exchanges and 17 professional and executive registries that are strategically located in city centres where jobseekers can easily access employment services. It adds that district labour offices are also located in states with a high concentration of industries. According to the Bulletin of Labour Statistics, in 2014 there were 2,254 jobseekers registered with employment exchanges, with 829 vacancies notified and 916 individuals placed in employment. The Government indicates that the final draft of the NEP endorsed by the Government in 2002 has been validated by the social partners and is pending approval by the federal Government. *The Committee requests the Government to communicate information on the current status of the National Employment Policy and to transmit a copy as soon as it is adopted. It also requests the Government to provide detailed information on the nature and scope of the activities carried out by the employment service to ensure the best possible organization of the labour market, as required by Article 1 of the Convention. The Government is also requested to provide statistical information on the number and location of employment exchanges and professional and executive registries established, the number of applications for employment received, vacancies notified and persons placed in employment by such offices.*

Articles 4 and 5. Consultations with the social partners. Referring to its previous comments, the Committee once again requests the Government to provide information on the consultations held in the National Labour Advisory Board on the organization and operation of the employment exchanges and the professional and executive registries and the development of employment service policies and programmes.

Article 6. Organization of the employment service. In response to the Committee's previous comments, the Government indicates that the employment exchanges and the professional and executive registries perform a range of functions free of charge. These include: the registration of jobseekers and their placement in employment; provision of vocational career guidance and counselling; collection of labour market information from employers and their dissemination of this information to the public; collection and analysis of employment and unemployment statistics for economic planning purposes; and provision of guidance and counselling for potential young school-leavers. *The Committee requests the Government to provide updated information on the organization and activities of the employment exchanges, professional and executive registries and any other services engaged in giving effect to the Convention, such as the district labour offices and the manner in which they ensure the effective placement of jobseekers.*

Article 7. Activities of the employment service. The Government indicates that the public employment service is open to all categories of jobseekers, and provides services to vulnerable groups of jobseekers, such as those with disabilities. It adds that the public employment service provides proper counselling to persons with disabilities on career choices, and advises employers not to discriminate against persons with disabilities and to reserve a certain percentage of employment for them. The Government also trains and equips persons with disabilities to be self-employed through various programmes of the National Directorate of Employment. In its 1998 General Survey on Vocational Rehabilitation and Employment of Disabled Persons, paragraph 88, the Committee stressed the importance of vocational guidance in opening a broad range of occupations to persons with disabilities free of considerations based on stereotypes or outdated conceptions according to which specific trades or occupations are supposedly reserved for specified categories of persons. *The Committee once again requests the Government to provide information on the results of the measures taken by the employment service concerning various occupations and industries. It also requests the Government to provide detailed information on the nature of the career choice counselling given to persons with disabilities. The Committee is further requested to provide information on the nature and scope of the programmes implemented by the National Directorate of Employment to promote employment and self-employment opportunities for persons with disabilities and on the impact of such programmes, indicating the number of persons benefiting from these programmes.*

Article 8. Measures to assist young persons. The Government indicates that the Employment Exchanges have been upgraded in 12 states of the country with internet facilities linked to the National Electronic Labour Exchange (NELEX). The Committee notes that the Government provides no information on specific measures aimed at assisting young persons in finding employment. *Referring to its previous comments, the Committee reiterates its request that the Government provide information on the impact of measures taken or envisaged by the employment service to assist young persons in finding suitable employment. It also requests the Government to provide information on the impact of the National Directorate of Employment and the*

National Poverty Eradication Programme measures aimed at assisting young persons to access employment.

Article 10. Measures to encourage full use of employment service facilities. The Committee reiterates its previous request that the Government provide information on the measures taken or envisaged by the employment service, with the cooperation of the social partners, to encourage the full use of employment service facilities.

Article 11. Cooperation between public and private employment agencies not conducted with a view to profit. The Government indicates that annual private employment agency workshops have been held in 2014, 2015 and 2016, with the aim of further strengthening existing cooperation between the public employment service and private employment agencies. It adds that the next annual workshop is planned for the third quarter of 2017. The workshops provide a platform for discussions and exchanges of ideas on fair recruitment, as well as on measures to ensure compliance with government regulations. The Committee requests the Government to continue to provide information on the measures taken to ensure effective cooperation between the public employment service and private employment agencies not conducted with a view to profit, including information on the content and outcome of the annual workshops on private employment agencies.

C097 - Migration for Employment Convention (Revised), 1949 (No. 97)

Observation 2017

Article 1 of the Convention. Information on national laws and policies. The Committee notes with interest the National Policy on Labour Migration 2014, which was developed in consultation with the social partners and other stakeholders, and with the assistance of the ILO and the International Organization for Migration (IOM). It notes that the Policy aims to establish an effective, responsive and dynamic labour migration governance system in Nigeria. It notes the overall objectives of the Policy relating to good governance, the protection and welfare of migrant workers, and the promotion of employment and development benefits of migration. Specific objectives of the Policy include, among other things: to enact a legislative framework as a foundation of labour migration governance; ensure a gender responsive policy at all levels; to promote the right to decent work, including social protection; to ensure non-discrimination and equality of all workers, migrants and nationals, abroad and at home; to promote and protect rights of migrant workers in recruitment for employment abroad through supervision and monitoring of recruitment agencies; and to link migration and employment policy and practice. The Committee also notes the detailed action plan for the implementation of the National Policy which includes activities, inter alia, to initiate action to ratify the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143); to harmonize legislation with international and regional standards; to review guidelines and procedures for recruitment abroad; to establish an Advisory Board on Labour Migration which would include the social partners; to review national law and administrative regulations to ensure that non-discrimination and equality are expressly provided for; and to review national labour law and regulations to ensure that migrant workers are covered. The Committee requests the Government to provide detailed information on the measures taken and results achieved under the Action Plan to implement the National Policy on Labour Migration 2014.

Articles 2, 4 and 7. Information and assistance services to migrant workers. The Committee notes from the document on the National Policy on Labour Migration 2014, that migrants are often poorly or misinformed about conditions governing entry and work, residence and skills required, as well as their rights and obligations in the countries of destination. The Committee notes that the Action Plan to implement the National Policy on Labour Migration includes activities to conduct awareness raising and pre-departure training programmes for potential migrant workers. The Government also indicates it has established two Migrant Resource Centres in Lagos and Abuja, which provide free information to nationals who intend to migrate and referral services to returning migrants. The Committee asks the Government to provide more detailed information on the type of services being provided for outgoing and returning migrant workers. Noting that already in 2006, Nigeria counted 600,000 foreigners, the Committee also requests the Government to indicate the measures taken to maintain adequate and free services to assist foreign workers, and to provide them with accurate information.

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

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

Observation 2017

The Committee notes the new observations of the International Trade Union Confederation (ITUC), received on 1 September 2017, relating to legislative issues and referring to a high number of allegations of anti-union discrimination and of impediments to collective bargaining. The Committee recalls that, since 2010, it has received many observations from trade union organizations containing serious allegations of violations of the Convention in practice and notes with regret that the Government still has not sent its comments. *Noting with concern, in particular, the persistence of many and serious allegations of acts of anti-union discrimination and interference, the Committee urges the Government to ensure that the events reported since 2010, through the various comments of the ITUC, Education International (IE) and the Nigeria Union of Teachers (NUT), have been or are being investigated by the public authorities. The Committee urges the Government to send information in this respect.*

The Committee notes with concern that the Government's report has not been received. It is therefore bound to repeat its previous comments, initially made in 2012.

In its previous comments, the Committee noted that certain comments submitted by international trade union organizations concerned in particular the fact that: (1) according to the Trade Disputes Act, certain categories of workers are denied the right to organize (such as employees of the Customs and Excise Department, the Immigration Department, the Nigerian Security Printing and Minting Company Limited, the prison services and the Central Bank of Nigeria) and therefore are deprived of the right to collective bargaining; (2) every agreement on wages must be registered with the Ministry of Labour, which decides whether the agreement becomes binding according to the Wages Board and Industrial Council Acts and to the Trade Dispute Act (it is an offence for an employer to grant a general or percentage increase in wages without the approval of the Minister); (3) section 4(e) of the 1992 Decree on Export Processing Zones states that "employer-employee" disputes are not matters to be handled by trade unions but rather by the authorities managing these zones; and (4) section 3(1) of the same Decree makes it very difficult for workers to form or join trade unions as it is almost impossible for workers' representatives to gain free access to the export processing zones (EPZs).

The Committee had noted that the Government had indicated that: with respect to point (1), the Collective Relations Bill has taken care of the mentioned exemptions from the rights to organize and bargain collectively; and as regards points (3) and (4), unionization has commenced, for example, the Amalgamated Union of Public Corporations, Civil Service, and Technical and Recreational Services Employees has started organizing its members within the EPZs. The Committee takes note of this information.

Concerning point (2), the Committee had previously noted a similar more recent allegation of the ITUC (2009) that private sector collective bargaining rights are restricted by the requirement of government approval for any collective agreements on wages. The Committee notes that the Government had indicated in its report that this practice seeks to ensure that there is no undue economic disruption in a particular industry as there is usually a benchmark agreed to by the relevant employers and trade unions. In this regard, the Committee recalls that legal provisions which make collective agreements subject to the approval of the Ministry of Labour for reasons of economic policy, so that employers' and workers' organizations are not able to fix wages freely, are not in conformity with

Article 4 of the Convention respecting the promotion and full development of machinery for voluntary collective negotiations. *The Committee requests the Government to ensure that the relevant provisions are amended to give effect to the principle of free collective bargaining.*

The Committee had noted the Government's statement that the Collective Labour Relations Bill, which has been elaborated with the technical assistance of the ILO, is still before the National Assembly and will be forwarded when passed. *The Committee expects that the Collective Labour Relations Act will be in full conformity with the requirements of the Convention. It requests the Government to send the new law once adopted.*

Lastly, the Committee once again invites the Government to accept an ILO mission in order to tackle the pending issues.

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

C123 - Minimum Age (Underground Work) Convention, 1965 (No. 123)

Observation 2017

Article 4(5) of the Convention. *Employer's obligation to make available to the workers' representatives, at their request, the list of persons employed in work underground.* The Committee previously noted that under section 62 of the Labour Act, every employer is required to keep a register of all young persons in his or her employment with particulars of their ages, the date of employment and the conditions and nature of their employment, and to produce the register for inspection when required by an authorized labour officer. It further noted that under section 91(1) of the same Act, "young person" means a person under the age of 18 years and "industrial undertaking" includes mines, quarries and other works for the extraction of minerals from the earth.

The Committee notes the Government's indication, in its report, that the Labour Standards Bill of 2008 (the Labour Standards Bill) which was pending before the National Assembly, has been removed for further revision. The Committee notes that section 10 of the Labour Standards Bill provides that every employer of young persons shall keep a register of all young persons in his or her employment with particulars of their ages, the date of employment and the conditions and nature of their employment, and such other particulars as may be prescribed, and shall produce the register for inspection when required by a labour officer. Section 60 defines a "young person" as being any person under the age of 18 years. The Committee notes with *regret* that the Labour Standards Bill does not provide for the employer to make that register of young persons in employment available to the workers' representatives at their request. The Committee, once again, observes that for a number of years it has been requesting the Government to indicate the measures taken to give effect to the Convention (*Article 4(5)*), under which the employer shall make available to the workers' representatives, at their request, the list of the persons who are employed in work underground and who are less than two years older than the minimum age specified by the Government, which is 16 years. The list should contain the dates of birth of the employees, as well as dates at which they were employed or worked underground in the undertaking for the first time. *The Committee therefore requests that the Government take the necessary measures to revise the Labour Standards Bill to ensure that the register of young persons in employment is made available to workers' representatives, at their request, in order to bring its national legislation into conformity with the provisions of Article 4(5) of the Convention. The Committee requests the Government to provide information on the progress made in this regard.*

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

Observation 2017

Article 1 of the Convention. National policy and application of the Convention in practice. The Committee previously noted the adoption of a National Policy on Child Labour, 2013, followed by a National Action Plan for the Elimination of Child Labour 2013–17 (NAP). It noted that the ultimate goal of the National Policy on Child Labour is to provide standardized guidelines for actors implementing the NAP with a view to drastically reducing the prevalence of child labour by 2015 and its total elimination by 2020. The Committee noted from the Government's report that the National Policy on Child Labour would be implemented through cost-effective measures. The Committee further noted that according to a report entitled "The twin challenges of child labour and educational marginalization in the ECOWAS region" by Understanding Children's Work, a joint ILO–UNICEF–World Bank interagency research cooperation project, among the ECOWAS countries, Nigeria has the largest number of 5–14 year olds in child labour, with 10.5 million children involved in child labour. The Committee expressed its deep concern at the large number of children under the minimum age for admission to employment who are working in Nigeria.

The Committee notes the Government's information in its report that it has taken the initiative to avail itself of ILO technical support in strengthening the implementation of the NAP. In this regard, the Government reports that meetings have been held with various stakeholders and a national reporting template on child labour has been developed. It further indicates that the reporting template will serve as a monitoring and evaluation mechanism thereby ensuring that the activities of each stakeholder are harmonized. It will also provide a benchmark for the annual report on child labour activities in the country. The Committee takes note, from the ILO Office in Abuja, that this reporting template has been validated by the members of the National Steering Committee on child labour, along with guidelines for completing the reporting template. These documents will help the Child Labour Unit monitor the interventions on the elimination of child labour at the national level. *While noting the steps taken by the Government, the Committee urges it to strengthen its efforts to ensure the elimination of child labour. The Committee further requests that the Government continue to provide detailed information on the implementation of the NAP and the results achieved in eliminating child labour in the country, in particular results from the reporting templates. Lastly, the Committee requests that the Government provide information on the manner in which the Convention is applied in practice, including updated statistical data on the employment of children and young persons, especially regarding children working in the informal economy, as well as extracts from the reports of inspection services and information on the number and nature of violations detected and penalties applied. To the extent possible, this information should be disaggregated by age and gender.*

Article 2(1). Scope of application. 1. Self-employment and work in the informal economy. The Committee previously noted that according to section 2 of the Labour Standards Bill of 2008 (Labour Standards Bill), the Labour Act applies to all employees. An "employee", according to section 60 of the Bill, means any person employed by another under oral or written contract of employment, whether on a continuous, part-time, temporary or casual basis, and includes a domestic servant who is not a member of the family of the employer. The Committee observed that children working outside a formal labour relationship, such as children working on their own account or in the informal economy, are excluded from the provisions giving effect to the Convention. In this regard, the Committee noted from the document on the National Policy on Child Labour, 2013, that child labour is more prevalent in the informal sector, which includes crafts and artisanal work and street-related activities, as well as in semi-formal sectors which includes activities in commercial agricultural plantations, domestic and hospitality services, the transport industry, and garment manufacturing. The Committee noted the statement made by the Government representative of Nigeria to the Conference Committee on the Application of Standards of June 2016 that the Government had commenced the process of withdrawing the Labour Standards Bill, which was pending before the National Assembly, for further revision. The Government representative further indicated that this revision would be done in consultation with the social partners, and would take into consideration the issues relating to ensuring protection for all working children, including self-employed children and children working in the informal economy. The Committee urged the Government to take the necessary measures to revise the Labour Standards Bill, thereby ensuring the protection for all working children, including self-employed children and children working in the informal economy. It also requested that the Government take the necessary measures to strengthen the capacity and expand the reach of the labour inspectorate to the informal economy with a view to ensuring such protection in this sector.

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The Committee notes the Government's information that the Labour Standards Bill has been withdrawn from the National Assembly and is now being reviewed by the Tripartite Technical Committee. The Government indicates that the Tripartite Technical Committee has made the necessary amendments to ensure that the definition of an "employee" gives protection to all working children in both the formal and informal economy. This is reflected in the minutes of the Stakeholders Committee on the Review of the National Labour Bills of 4 May 2017, attached to the Government's report. ***The Committee urges the Government to take the necessary measures to ensure that the Labour Standards Bill, which establishes the protection of all working children, including self-employed children and children working in the informal economy, is officially adopted in the near future. It requests that the Government provide information on any progress made in this regard. It further requests that the Government provide information on the measures taken with regard to strengthening the capacity and expanding the reach of the labour inspectorate to the informal economy.***

2. ***Minimum age for admission to work.*** The Committee previously noted with concern the various minimum ages, some of them too low, prescribed by the national legislation. It noted that section 8(1) of the Labour Standards Bill prohibits the employment of a child (defined as persons under the age of 15 years (section 60)), in any capacity, except where he/she is employed by a member of his/her family on light work of an agricultural, horticultural or domestic character. The Committee observed that section 8(1) which establishes a minimum age of 15 years for employment or work as specified at the time of ratification is in conformity with *Article 2(1)* of the Convention.

The Committee takes note of the indication of the Government that the minimum age for employment or work is 15 years, as per the minutes of the Stakeholders Committee on the Review of the National Labour Bills of 4 May 2017. ***The Committee urges the Government to take the necessary steps to ensure that the Labour Standards Bill, which establishes a minimum age of 15 years for employment or work, is adopted in the near future. It requests that the Government provide information on any progress made in this regard.***

Article 3(2). Determination of hazardous work. The Committee previously noted from a report entitled "List of hazardous child labour in Nigeria", 2013, by the Federal Ministry of Labour and Productivity, that a study was conducted to identify and determine the most hazardous conditions to which children under 18 years are exposed in various occupations in Nigeria. The study identified certain hazardous types of work, including agriculture (cocoa and rice farming), quarrying, artisanal mining, traditional tie and dye, processing of animal skin, domestic services, scavenging and recycling collection, street work, begging, construction and transport works. The Committee noted that at the Conference Committee, the Government representative of Nigeria stated that the "List of hazardous child labour in Nigeria", which provided maximum protection for children from extremely hazardous working conditions, had been adopted. The Committee noted with concern that the copy of the hazardous list, which the Government representative of Nigeria was referring to and which had been sent along with its recent report, was not a regulation prohibiting hazardous types of work, but a study that was conducted by a technical subcommittee set up by the National Steering Committee to identify the most hazardous conditions to which children under 18 years are exposed in Nigeria. The report based on the study, in its recommendations, states that "the urgent need to prohibit the involvement of children in identified tasks/activities should be accorded priority". The Committee further noted the ILO-IPEC information that the final list of hazardous work identified in the study has been validated by the National Steering Committee and is currently awaiting official endorsement.

The Committee notes the Government's information that the necessary amendments were made to establish the list of hazardous work prohibited to children under 18 years of age. It notes from the minutes of the Stakeholders Committee on the Review of the National Labour Bills of 4 May 2017, that in relation to the list of hazardous work drafted by the National Steering Committee, section 60 of the Labour Standards Bill should have as its first schedule, section 7(2)(d): "List of hazardous work". ***The Committee once again urges the Government to take the necessary measures, without delay, to ensure that the list of types of hazardous child labour is adopted and implemented, thereby prohibiting hazardous types of work to children under 18 years of age. It requests that the Government provide information on the progress made in this regard.***

Article 6. Apprenticeship. The Committee previously noted that section 49(1) of the Labour Act permitted a person aged 12–16 years to undertake an apprenticeship for a maximum period of five years, while section 52(a) and (e) empowered the Minister to issue regulations on the terms and conditions of apprenticeship. It observed that sections 46 and 47 of the Labour Standards Bill of 2008 lay down the terms and conditions for entering into a contract of apprenticeship, but do not specify a minimum age. The Committee noted the statement made by the Government representative to the Conference Committee that the revision of the Labour Standards Bill would establish a minimum age of 14 years for apprenticeship programmes.

The Committee notes the Government's information that the Stakeholders Committee on the Review of the National Labour Bills has agreed to establish the minimum age of 14 years for apprenticeship programmes, and therefore amend section 46 of the Labour Standards Bill accordingly. ***The Committee urges the Government to take the necessary steps to ensure that the Labour Standards Bill, establishing a minimum age of 14 years for apprenticeship programmes, is revised and adopted in the near future. It requests that the Government provide information on any progress made in this regard.***

Article 7(1). Minimum age for admission to light work. The Committee previously observed that the Labour Act did not provide for a minimum age for admission to light work. It also noted that section 8 of the Labour Standards Bill, while allowing the employment of children under the age of 15 years in light work of an agricultural, horticultural or domestic character, does not indicate the lower minimum age at which such work may be permitted. In this regard, the Committee noted that according to the Multiple Indicator Cluster Survey Report of 2011 (UNICEF–National Bureau of Statistics, Nigeria), 47 per cent of children aged between 5 and 14 years were engaged in child labour. It reminded the Government that, according to *Article 7(1)* of the Convention, national laws or regulations may permit children aged 13–15 years to perform light work which is: (a) not likely to be harmful to their health or development; and (b) not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority, or their capacity to benefit from the instruction received. The Committee noted the statement made by the Government representative to the Conference Committee that the revision of the Labour Standards Bill would fix the lower minimum age of 13 years for admission to light work.

The Committee notes the Government's indication that the Stakeholders Committee on the Review of the National Labour Bills has agreed to establish the minimum age of 13 years for admission to light work. ***The Committee accordingly urges the Government to take the necessary steps to ensure that the Labour Standards Bill establishing a minimum age of 13 years for admission to light work is adopted in the near future. It requests that the Government provide information on any progress made in this regard.***

Article 7(3). Determination of light work. In its previous comments, the Committee observed that the conditions in which light work activities may be undertaken and the number of hours during which such work may be permitted were not clearly defined in the Labour Act. It also observed that the maximum working hours of eight hours per day prescribed under section 59(8) of the Labour Act would necessarily prejudice the attendance of young persons below the age of 15 years at school or vocational orientation or training programmes, as laid down under *Article 7(1)(b)* of the Convention. It noted that the Labour Standards Bill did not contain any provision regulating the employment of children in light work. The Committee drew the Government's attention to Paragraph 13(b) of the Minimum Age Recommendation, 1973 (No. 146), which states that, in giving effect to *Article 7(3)* of the Convention, special attention should be given to the strict limitation of the hours spent at work in a day and in a week, and the prohibition of overtime, so as to allow enough time for education and training, for rest during the day and for leisure activities. The Committee noted the statement made by the Government representative that the revision of the Labour Standards Bill would ensure that the light work activities by children aged 13 years and above is regulated.

The Committee notes the Government's indication that the Stakeholders Committee on the Review of the National Labour Bills agreed with the ILO recommendations on light work conditions and maximum hours of work, but requests further ILO technical assistance for the drafting of the list of light work conditions. ***The Committee accordingly urges the Government to take the necessary measures, during the current revision of the Labour Standards Bill, to regulate the employment of persons between 13 and 15 years of age in light work, by determining the number of hours during which, and the conditions in which, light work in the agricultural, horticultural and domestic sectors may be undertaken, as well as the types of activities that***

constitute light work. It requests that the Government provide information on the measures taken in this regard.

The Committee expresses the hope that the Government will continue to take into consideration the Committee's comments while currently revising the Labour Standards Bill. It further expresses the firm hope that the revised Bill will be adopted in the near future. The Committee once again reminds the Government that it may avail itself of ILO technical assistance in order to bring its legislation into conformity with the Convention.

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

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

Observation 2017

The Committee notes with *concern* that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2012.

Consultations with representative organizations. The Committee recalls that it is important for employers' and workers' organizations to enjoy the right to freedom of association, without which there could be no effective system of tripartite consultation. *The Committee asks the Government to report on the results of the legislative reform and its impact on the improvement of consultations with representative organizations that enjoy freedom of association, as required under this Convention.*

Tripartite consultations required by the Convention. The Government indicates in its report that its replies to questionnaires concerning items on the agenda of the International Labour Conference and comments on proposed texts are usually forwarded to the social partners for their input. It also states that social partners participate in the rendering of reports. The Committee recalls that the tripartite consultations covered by the Convention are essentially intended to promote the implementation of international labour standards and concern, in particular, the matters enumerated in *Article 5(1) of the Convention*. *The Committee therefore requests the Government to provide full and detailed information on the content and outcome of tripartite consultations dealing with:*

·(a) the Government's replies to questionnaires concerning items on the agenda of the Conference and the Government's comments on proposed texts to be discussed by the Conference; and

·(b) questions arising out of reports to be made to the International Labour Office under article 22 of the ILO Constitution.

Prior tripartite consultations on proposals made to the National Assembly. The Committee hopes that the Government and the social partners will examine the measures to be taken with a view to holding effective consultations on the proposals made to the National Assembly when submitting the instruments adopted by the Conference, as required by the Convention.

Operation of the consultative procedures. The Committee once again requests the Government to indicate whether, in accordance with Article 6, the representative organizations have been consulted in the preparation of an annual report on the working of the consultation procedures provided for in the Convention and, if so, to indicate the outcome of these consultations.

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

C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**Observation 2017**

Article 2 of the Convention. Right of workers, without distinction whatsoever, to establish organizations of their own choosing. In its previous comments, the Committee had requested the Government to review the provisions of Ministerial Order No. 11 referred to below to ensure that the procedure for the registration of employers' and workers' organizations is fully in conformity with the Convention:

-- *Judicial record.* Under the terms of section 3(5) of Ministerial Order No. 11, of September 2010, an occupational organization of employers or workers, in order to be registered, has to be able to prove that its representatives have never been convicted of offences with sentences of imprisonment equal to or over six months. In the view of the Committee, conviction on account of offences the nature of which is not such as to call into question the integrity of the person concerned and is not such as to be prejudicial to the exercise of trade union functions should not constitute grounds for disqualification from holding trade union office.

-- *Time limits for registration.* Under the terms of section 5 of Ministerial Order No. 11, the authorities have a time limit of 90 days to process the application for the registration of a trade union. The Committee recalls that a long registration procedure is a serious obstacle to the establishment of organizations without previous authorization, in accordance with *Article 2* of the Convention.

The Committee *regrets* that the Government provides no information on the measures taken or envisaged in this respect. ***The Committee once again requests the Government to take the necessary measures in consultation with the social partners to amend the abovementioned provisions, so as to ensure that the procedure for the registration of employers' and workers' organizations is fully in conformity with the Convention.***

Right of public servants to join a union of their own choosing. In its previous comments, the Committee had noted Act No. 86/2013, of 19 September 2013, on the General Statute of Public Servants, section 51 of which recognizes the right of public servants to join a union of their own choosing. It had requested the Government to indicate whether public servants, in addition to the right to join a trade union, also enjoy the right to establish a union of their own choosing, and to indicate the relevant legislative provisions. The Committee *regrets* that the Government has not responded to this query. ***In the absence of a reply on this matter, the Committee reiterates its previous request.***

Article 3. Right of organizations to freely organize their activities and to formulate their programmes. In its previous comments, the Committee had noted that, under the terms of section 124 of the Labour Code, any organization requesting recognition as the most representative organization has to authorize the labour administration to check the register of its members and property. In this respect, the Government had previously indicated that the need to amend this provision was being reviewed in consultation with the social partners, and now indicates that a tripartite meeting agreed that the authorization requirement should remain. The Committee takes due note of this information.

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

C094 - Labour Clauses (Public Contracts) Convention, 1949 (No. 94)**Observation 2017**

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2012.

Articles 1 and 2 of the Convention. Insertion of labour clauses in public contracts. The Committee has been commenting for over 30 years on the Government's failure to enact legislation or adopt other measures with a view to implementing the basic requirements of the Convention. In its last report, the Government refers to Ministerial Order No. 5 of 13 July 2010 concerning written contracts of employment, which, however, bears little relevance to public contracts within the meaning of *Article 1(1)* of the Convention or to the labour clauses that public contracts should include as required under *Article 2(1)* of the Convention. The Committee once again recalls that the fact that the general labour legislation applies to workers engaged in the execution of public contracts, as provided for in section 96 of the Public Procurement Act of 2007, does not in itself give effect to *Article 2* of the Convention which requires the insertion, in all public contracts to which the Convention applies, of labour clauses ensuring that the workers concerned benefit from wages, hours of work and other conditions of labour which are not less favourable than those established for work of the same character in the same area by collective agreement, arbitration award or national laws or regulations.

As the Committee has pointed out on a number of occasions, the legislation to which the Government refers in most cases lays down minimum standards, for instance as regards wage levels, and does not necessarily reflect the actual working conditions of workers. Thus, if the legislation lays down a minimum wage but workers in a particular profession are actually receiving higher wages, the Convention would require that any workers engaged in the execution of a public contract – in the same area and for work of the same character – be entitled to receive the prevailing wage rather than the minimum wage prescribed in the legislation.

In other terms, the application of the general labour legislation is not sufficient to ensure the application of the Convention, in as much as the minimum standards fixed by law are often improved upon by means of collective agreement or otherwise. ***The Committee therefore asks the Government once more to take steps without further delay in order to bring the national legislation into conformity with the provisions of the Convention, especially as regards: the determination of the terms of the labour clauses to be included in contracts after consultation with organizations of employers and workers concerned (Article 2(3)); the dissemination of those clauses, by advertising specifications or otherwise, so that tenderers are aware of the terms of the clauses (Article 2(4)); the posting of notices in conspicuous places to ensure that workers are informed of the conditions of work applicable to them (Article 4(a)(iii)); and the system of adequate sanctions, by the withholding of contracts or of payments due, for failure to apply the provisions of labour clauses (Article 5). Moreover, noting that under the Public Procurement Act of 2007, the Rwanda Public Procurement Authority (RPPA) is responsible for regulating and monitoring all public procurement operations, the Committee requests the Government to provide detailed information on any measures taken or planned by the RPPA with a view to ensuring fair labour conditions for those engaged in the execution of public contracts.***

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

C100 - Equal Remuneration Convention, 1951 (No. 100)**Observation 2017**

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2016.

Articles 1(b) and 2 of the Convention. Equal remuneration for work of equal value. Legislation. The Committee recalls that the definition of the expression "work of equal value" which appears in section 1.9 of Law regulating Labour No. 13/2009 of 27 May 2009 refers only to "similar work" and is therefore too narrow

to fully implement the principle of the Convention. It also recalls that this law does not contain any substantial provisions prescribing equal remuneration for men and women for work of equal value and the Constitution only refers to “the right to equal wage for equal work”. The Committee notes that the Government continues to repeat that, in practice, there is no discrimination between men and women with regard to remuneration, and that full legislative expression will be given to the principle of equal remuneration for men and women for work of equal value in the ongoing revision process of Law No. 13/2009. The Government also indicates that the revision will also address the linguistic differences between the Kinyarwanda and English versions of section 12. The Committee once again refers to paragraphs 672–679 of its General Survey of 2012 on the fundamental Conventions explaining the meaning of the concept of “work of equal value” which not only covers “equal”, the “same” or “similar” work but also addresses situations where men and women perform different work that is nevertheless of equal value. *Noting that no progress has been made in this respect for a number of years, the Committee urges the Government to take the necessary steps without delay to amend Law No. 13/2009 of 27 May 2009 regulating Labour, including sections 1.9 and 12, so as to give full legislative effect to the principle of equal remuneration for men and women for work of equal value.*

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

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

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

Observation 2017

Article 1(a) of the Convention. Prison sentences involving compulsory labour imposed as a punishment for expressing political views. The Committee previously noted that, according to section 50(8) of Law No. 34/2010 of 12 November 2010 on the establishment, functioning and organization of Rwanda Correctional Service, an incarcerated person has the main obligation, inter alia, to perform activities for the development of the country, himself/herself and the prison. The Committee further took note of the Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association who conducted an official visit to Rwanda in January 2014 (A/HRC/26/29/Add.2). The Special Rapporteur noted with concern the Government’s prevailing hostility towards peaceful initiatives by its critics and the existence of a legal framework that silences dissent. In this regard, the Special Rapporteur referred to several provisions of the Penal Code which provide for sanctions of imprisonment for persons expressing political views (sections 116, 136, 451, 462, 463, 468 and 469 of the Penal Code). Noting that any reference made to compulsory prison labour had been removed from the Penal Code, the Committee requested the Government to provide information on the measures taken in order to harmonize the Code of Penal Procedure with the Penal Code. The Committee also requested the Government to provide a copy of the draft Ministerial Order on the nature of income-generating activities which can be performed by prisoners.

The Committee notes the Government’s information in its report that Law No. 30/2013 of 24 May 2013 relating to the Code of Penal Procedure has removed the reference to compulsory prison labour. However, the Committee notes that section 50(8) of Law No. 34/2010 remains valid, under which an incarcerated person can be obliged to work for the development of the country, himself/herself and the prison. The Government also considers sections 116, 136, 451, 462, 463, 468 and 469 of the Penal Code as compatible with the Convention without providing further explanation, and indicates that there are no court decisions in this regard. However, the Committee notes that the UN Human Rights Committee expressed its concern in its concluding observations on the fourth periodic report of Rwanda of 2 May 2016, at the prosecution of opposition politicians, journalists and human rights defenders as a means of discouraging them from freely expressing their opinions (CCPR/C/RWA/CO/4, paragraphs 39 and 40).

The Committee once again recalls that *Article 1(a)* of the Convention prohibits the use of compulsory labour, including compulsory prison labour, as a punishment for peacefully holding or expressing political views or views ideologically opposed to the established political, social or economic system. It once again draws the attention of the Government to the fact that the abovementioned sections of the Penal Code are worded in terms broad enough to lend themselves to the application as a means of punishment for peacefully expressing political views and, in so far as they are enforceable with sanctions of imprisonment which involve compulsory labour, they may fall within the scope of the Convention. The Committee further notes that the draft Ministerial Order on the nature of income-generating activities which can be performed by prisoners is not attached as indicated in the Government’s report. *The Committee therefore requests the Government to ensure that no penal sanctions involving compulsory prison labour may be imposed on persons for peacefully expressing political views, for example, by amending section 50(8) of Law No. 34/2010 following the adoption of Law No. 30/2013. The Committee also requests the Government to provide information on the application of sections 116, 136, 451, 462, 463, 468 and 469 of the Penal Code in practice, including any legal proceedings defining or illustrating their scope. The Committee finally once again requests the Government to provide a copy of the draft Ministerial Order on the nature of income-generating activities which can be performed by prisoners.*

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

Observation 2017

The Committee notes that the Government’s report has not been received. It is therefore bound to repeat its previous comments initially made in 2016.

Article 1 of the Convention. Protection against discrimination. Legislation. With regard to the scope of application of the legislation, the Committee notes the Government’s reaffirmation that the prohibition of discrimination provided for in section 12 of Act No. 13/2009 of 27 May 2009 issuing labour regulations, covers all stages of employment, including recruitment. The Government indicates that the French version of this section, which prohibits discrimination “during employment”, will be amended to avoid any confusion with regard to its scope of application. *The Committee once again requests the Government to take the necessary steps to align the various linguistic versions of section 12 so that they explicitly prohibit any direct or indirect discrimination in employment and occupation in accordance with Article 1(3) of the Convention, namely with regard to access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.*

Discrimination on the basis of sex. Sexual harassment. In its previous comments, the Committee welcomed the adoption of Act No. 59/2008 of 10 September 2008 on the prevention and punishment of gender-based violence, and the inclusion in Act No. 13/2009 of provisions prohibiting “gender-based violence” in employment and direct or indirect moral harassment at work. While having noted that the combination of these legislative provisions covered the two essential elements of sexual harassment at work, as set out in its 2002 general observation, the Committee invited the Government to consider taking the necessary measures to adopt a clear and precise definition of sexual harassment in the workplace, ensuring that this definition covers both quid pro quo and hostile working environment sexual harassment. The Committee notes the Government’s indication that a clearer and more precise definition of sexual harassment covering both quid pro quo and hostile working environment sexual harassment will be inserted into Act No. 13/2009 issuing labour regulations when it will be revised. *The Committee trusts that the Government will soon be in a position to report progress in the revision process of Act No. 13/2009 and the adoption of new provisions covering the two forms of sexual harassment in employment and occupation. The Committee once again requests the Government to provide information on any measures taken to prevent and eliminate sexual harassment in the workplace (educational programmes, campaigns to raise awareness of appeal mechanisms, etc.).*

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

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

C159 - Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159)

Observation 2017

Articles 2 and 3 of the Convention. Implementation of a national policy for the vocational rehabilitation and employment of persons with disabilities. In its previous comments, the Committee requested the Government to provide the text of the Basic Act for Persons with Disabilities and to provide information on the provisions of the Labour Code directly related to the promotion of employment for persons with disabilities. In this respect, the Committee notes with *interest* the entry into force of the Basic Act for Persons with Disabilities No. 7/2012. In particular, it notes that section 17 establishes the obligation of the State, inter alia, to guarantee the right to work of persons with disabilities and develop measures with all government institutions at all levels to ensure equality of opportunity and treatment for persons with disabilities. It also notes that section 27 states that the Government shall give priority to the formulation of a policy on employment, vocational training and social security for persons with disabilities. Under this provision, the government body responsible for implementing the policy on employment and vocational training for persons with disabilities is obliged, inter alia, to: (i) develop special programmes with a view to promoting self-employment; (ii) implement the Initial Employment Act; (iii) ensure quality vocational training for persons with disabilities; (iv) adapt posts for persons with disabilities; (v) provide vocational training for persons with disabilities in vocational training centres, vocational rehabilitation centres and similar and related institutions; and (vi) guarantee mandatory social protection for all persons with disabilities, in accordance with the Basic Act on Social Protection. The Committee further notes that the second paragraph of section 27 establishes a quota system for the employment of persons with disabilities in the public and private sectors. The Government reports that progress has been observed in the past few years thanks to the adoption of Act No. 7/2012, particularly in relation to the construction of access ramps for persons with disabilities, as all new buildings have been required to have such ramps since the Act entered into force. Moreover, the Government adds that persons with disabilities have their own association through which they can assert their rights. ***The Committee requests the Government to provide specific and detailed information on the application of the Basic Act for Persons with Disabilities No. 7/2012, indicating the government body responsible for implementing the policy on employment and vocational training for persons with disabilities, and the impact of the Act on the inclusion of persons with disabilities in the open labour market. The Committee also requests the Government to provide statistical data on the labour market integration of persons with disabilities, disaggregated, where possible, by sex, age, type of disability, economic sector and region. Lastly, the Committee requests the Government to provide a copy of the national employment policy once it has been adopted.***

Article 5. Consultations with the social partners. The Government indicates that its report was forwarded to the representative organizations of employers and workers, which agreed with the content. However, the Government does not provide additional information on the consultations with the social partners required under *Article 5*. ***The Committee once again requests the Government to provide information on the manner in which the social partners have been consulted in the formulation and implementation of a national policy for the vocational rehabilitation and employment of persons with disabilities, and to provide information on the consultations held with the organizations of and for persons with disabilities.***

Article 7. Accessible employment services for persons with disabilities. In its previous comments, the Committee requested the Government to provide information on employment, vocational guidance and vocational training services designed to enable persons with disabilities to have access to and advance in employment. The Government states that both the Constitution and Act No. 7/2012 require all educational establishments to provide education to persons with disabilities. The Government adds that all the existing vocational training centres in the country have their own structures and that the persons who use their services receive, without any discrimination, vocational rehabilitation. ***The Committee requests the Government to provide detailed information on the number and geographical distribution in the country of employment services available to persons with disabilities, as well as the results of the vocational guidance and vocational training measures that have been adopted to enable persons with disabilities to have access to and advance in employment. The Committee requests the Government to provide statistical data in this respect, disaggregated, where possible, by sex and age.***

Article 8. Access to services in rural areas and remote communities. The Committee notes that the Government does not provide any information in this regard. ***The Committee once again requests the Government to provide information on the employment, vocational guidance and vocational training services made available to persons with disabilities living in rural areas and remote communities.***

Article 9. Training of staff qualified. The Committee notes that the Government does not provide any information in this regard. ***The Committee once again requests the Government to provide information on the measures adopted to ensure the availability of qualified vocational rehabilitation staff.***

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

Observation 2017

Article 1 of the Convention. Work of equal value. Legislation. Since 2007, the Committee has been emphasizing that section L.105 of the Labour Code, which provides that “where conditions of work, vocational qualifications and output are equal, wages shall be equal for all workers, irrespective ... of gender”, does not give full effect to the principle of equal remuneration for men and women for work of equal value established by the Convention. In its previous comments, the Committee recalled that, in accordance with the Convention, men and women workers are entitled to equal remuneration, not only where conditions of work, vocational qualifications and output are equal, but also where these aspects are different and their work as a whole, that is, the combination of tasks performed by men and women workers is of equal value. It also noted that section L.86(7) of the Labour Code provides that collective agreements must contain “provisions concerning procedures for the application of the principle of equal pay for equal work for women and young persons”. The Committee notes that, up to now, the Government has reiterated its willingness to take the necessary measures to ensure the incorporation of the principle established by the Convention into the legislation, and indicated that a draft bill concerning non-discrimination at work, amending and supplementing certain provisions of the Labour Code, had been drawn up and was in the process of being adopted. The Committee notes, however, the Government’s indication in its report that the draft bill has still not been adopted, and that the adoption of such legislative provisions and the implementation of the concept of “equal value” might lead to implementation or practical difficulties as no classification of jobs or work of equal value yet exist. The Committee recalls that the concept of “work of equal value” is the cornerstone of the Convention and that legal provisions that do not give full effect to the principle established by the Convention impede the elimination of discrimination against women with regard to remuneration. In the absence of a clear legislative framework requiring equal remuneration for men and women for work of equal value, it is difficult for a country to demonstrate that this right is ensured in practice. The Committee also wishes to draw the Government’s attention to the fact that, while the Convention is flexible regarding the measures to be used and the timing in achieving its objective, it allows no compromise in the objective to be pursued (General Survey on the fundamental Conventions, 2012, paragraph 670). ***The Committee therefore once again asks the Government to take the necessary measures, without delay, to give full legislative expression to the principle of equal remuneration for men and women for work of equal value, and to provide information on the progress made in amending sections L.86(7) and L.105 of the Labour Code.***

Article 3. Objective job evaluation. Since 2006, the Committee has been drawing the Government’s attention to the need to use objective and non-discriminatory criteria, such as the required skills, effort, responsibility and working conditions, to evaluate a job and analyse the tasks involved. It also noted that a study conducted in 2009, with ILO support, found that it was necessary to establish an objective classification of jobs. The Committee notes that the Government indicates the need for the intervention of several different institutions for this purpose, each with its own priority measures to be taken, and that for this reason, measures to improve the way in which jobs are objectively evaluated have not yet been implemented. The Government also indicates in its report that it will take action in this respect, but gives no further information on the timing envisaged for this purpose, or on the measures planned to promote a job evaluation method based on objective and non-discriminatory criteria. The Committee wishes to recall that the concept of equal value necessarily implies the adoption of a method that allows for the relative value of different jobs to be measured and compared objectively, whether at the enterprise or sector level, national level, in the framework of collective bargaining or through wage-setting mechanisms. Regarding the Government’s suggestion that the ILO provide its member States with a universal job classification system to facilitate their task, the Committee draws the Government’s attention to the fact that it may avail itself of ILO technical assistance, if it so wishes. ***The Committee once again invites the Government to examine the measures to be taken to implement objective job evaluation methods to address the persistent gender pay gap. It encourages the Government to carry out, in cooperation with the social partners, awareness raising activities on the concept of “work of equal value” and the importance of using objective job evaluation systems, free from gender bias (namely under evaluation of skills considered as “natural” for women, such as dexterity and those required in caring professions, and the over-evaluation of skills traditionally considered as “masculine”, such as physical force), and requests the Government to provide information on any measures taken in this regard.***

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

C029 - Forced Labour Convention, 1930 (No. 29)**Observation 2017**

The Committee notes with *regret* that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2013. The Committee also notes that the Government had been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

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

Articles 1(1) and 2(1) of the Convention. Compulsory agricultural work. For many years, the Committee has been referring to section 8(h) of the Chieftain Councils Act (Cap. 61), under which compulsory cultivation may be imposed on "natives". On numerous occasions, the Government indicated that this legislation would be amended. The Government also indicated that section 8(h) of the Act was not applied in practice and, as it was not in conformity with article 9 of the Constitution, it was unenforceable.

The Committee notes the Government's statement that, at the time of ratification, chiefs with administrative authority requested forced or communal labour from their communities, but that measures have been taken to address these occurrences, including through the establishment of the Human Rights Commission of Sierra Leone. Nonetheless, the Government states that, despite the prohibition on forced or compulsory labour, minor violations do occur. In this regard, the Government indicates that a report was filed with the Human Rights Commission relating to the undertaking of communal work by a village. **Noting that the Government had previously indicated its intention to amend this Act, the Committee urges the Government to take the necessary measures to repeal section 8(h) of the Chieftain Councils Act, to bring it into conformity with the Convention. It requests the Government to continue to provide information on the application of this Act in practice with regard to the exaction of compulsory labour, including information on the reports filed in this respect with the Human Rights Commission.**

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

C088 - Employment Service Convention, 1948 (No. 88)**Observation 2017**

The Committee notes with *deep concern* that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2009. The Committee also notes that the Government has been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

Contribution of the employment service to employment promotion. ILO technical assistance. The Committee previously noted the Government's statement, contained in a report received in June 2004, indicating that the legislation on employment services has been included on the agenda of the Joint Advisory Commission for discussion. It was the Government's intention to provide a new mandate to employment services so that they are transformed into dynamic labour market information centres. The new employment services will have to cover not only urban centres but also rural areas and ensure the provision of information, planning and the application of employment policies throughout the country. The Government also stated that ILO technical assistance is required to achieve its objectives. The Committee welcomed the fact that the Government was proposing to strengthen employment services. It also recalled that the Office provided support for programmes for the generation of employment opportunities by strengthening employment services for young persons. **The Committee hopes that the Government will be in a position to describe in its next report the manner in which the employment services reforms have contributed to securing their essential duty, which is to ensure "the best possible organization of the employment market as an integral part of the national programme for the achievement and maintenance of full employment and the development and use of productive resources" (Article 1 of the Convention), in cooperation with the social partners (Articles 4 and 5). In this respect, the Committee would be grateful if the Government would provide the statistical information that has been compiled concerning the number of public employment offices established, the number of applications for employment received, the number of vacancies notified and the number of persons placed in employment by such offices (Part IV of the report form).**

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

C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)**Observation 2017**

The Committee notes with *deep concern* that the Government's report has not been received. It is therefore bound to repeat its previous comments made in 2010. The Committee also notes that the Government had been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

The Committee notes the allegations of the International Trade Union Confederation (ITUC) in 2013 concerning restrictions to collective bargaining in the mining sector. **It requests the Government to provide its observations thereon.**

Articles 1 and 2 of the Convention. Need to adopt specific provisions accompanied by sufficiently effective and dissuasive sanctions for the protection of workers and workers' organizations against acts of anti-union discrimination and acts of interference. The Committee had previously noted that the revision of the labour laws, prepared with ILO technical assistance, had already been submitted to tripartite meetings, that the comments of the tripartite body had been received and that the document had just been forwarded to the Law Officers' Department. The Committee had asked the Government to keep it informed of any further progress made in the preparation of the final draft document and to provide a copy of the revised legislation as soon as it had been adopted. **Noting that, according to the information previously sent by the Government, the revision of the labour laws was submitted to the Law Officers' Department in 1995, the Committee requests the Government once again to make every effort to take the necessary action for the adoption of the new legislation in the very near future and to indicate the progress made in this regard.**

Article 4. The Committee requests the Government to provide detailed information on the collective agreements in force in the education sector and in other sectors.

The Committee therefore requests the Government to provide a detailed report on the application of the Convention, accompanied by copies of any legal texts concerning freedom of association adopted since 1992 (year of a draft Industrial Relations Act).

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

C125 - Fishermen's Competency Certificates Convention, 1966 (No. 125)**Observation 2017**

The Committee notes with *deep concern* that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2005.

Articles 3–15 of the Convention. Certificates of competency. The Committee has been commenting for a number of years on the absence of laws and regulations giving effect to the Convention. *The Committee asks the Government to provide detailed information on any concrete progress made in respect of the adoption of national laws implementing the Convention.* The Committee understands that the Office remains ready to offer expert advice and to respond favourably to any specific request for technical assistance in this regard. *Finally, the Committee requests the Government to supply up-to-date information concerning the fishing industry, including statistics on the composition and capacity of the country's fishing fleet and the approximate number of fishers gainfully employed in the sector.*

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

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

Observation 2017

Article 2(1) of the Convention. Scope of application. The Committee previously noted that, according to section 129 of the Child Rights Act of 2007 (Child Rights Act), the provisions related to the employment of children apply to employment in the formal and informal economies. However, according to sections 52 and 53 of the Employers and Employed Act of 1960, children under the age of 15 years shall not be employed or work in any public or private industrial undertaking, or in any branch thereof or on any vessel, other than an undertaking or vessel in which only members of the same family are employed.

The Committee notes the absence of information in the Government's report in this regard. *Noting the discrepancies on the application of the minimum age provisions, the Committee once again requests the Government to take the necessary measures to harmonize the provisions of the Employers and Employed Act with the Child Rights Act, so as to ensure that children working in all branches of economic activity, including family undertakings, also benefit from the protection laid down in the Convention.*

Article 3(2). Determination of the types of hazardous work. The Committee previously noted that, according to section 128(3) of the Child Rights Act, hazardous types of work prohibited to children under 18 years of age include: going to sea; mining and quarrying; portage of heavy loads; manufacturing industries where chemicals are produced or used; work in places where machines are used; and work in places such as bars, hotels and places of entertainment where a person may be exposed to immoral behaviour. It also noted that section 126 of the Child Rights Act and section 48 of the Employers and Employed Act prohibit night work of persons under the age of 18 years. The Committee further noted the Government's indication that the Ministry of Labour and Social Security (MLSS) had developed a list of types of hazardous work prohibited to children under 18 years of age after consultations with the social partners, child protection agencies and civil society organizations. This list of hazardous types of work had been validated and was awaiting Cabinet approval as a *Statutory Supplementary Instrument*.

The Committee notes the Government's information in its report that the list of hazardous types of work is still awaiting Cabinet approval. *The Committee once again expresses the firm hope that the Government will take the necessary measures to ensure that the list of types of hazardous work prohibited to children under the age of 18 years is adopted in the near future. It requests that the Government provide information on any progress made in this regard.*

Article 3(3). Admission to hazardous types of work from the age of 16 years. The Committee previously noted that section 54(2) of the Employers and Employed Act permits underground work in mines of male persons who have attained the age of 16 years with a medical certificate attesting fitness for such work. However, there appear to be no provisions which establish the requirement to ascertain that young persons between the ages of 16 and 18 years engaged in hazardous work receive adequate specific instruction or vocational training in the relevant branch of activity as required by *Article 3(3)* of the Convention.

The Committee notes the absence of information on this point. The Committee once again reminds the Government that according to *Article 3(3)* of the Convention, national laws or regulations or the competent authority may, after consultation with the organizations of employers and workers concerned, where such exist, authorize employment or work as from the age of 16 years, on condition that the young persons receive adequate specific instruction or vocational training in the relevant branch of activity. *The Committee therefore once again requests that the Government take the necessary measures to ensure compliance with the conditions set out in Article 3(3) of the Convention.*

Labour inspectorate. The Committee previously noted that according to the provisions of section 132 of the Child Rights Act, a district labour officer shall carry out an inquiry he may consider necessary in order to satisfy himself that the provisions of Part VIII of the Act dealing with the employment of children and young persons in the formal economy are being strictly observed. For the purposes of this section, any person may be interrogated by the district labour officer. Furthermore, if a district labour officer is reasonably satisfied that the provisions of this Part are not being complied with, they shall report the matter to the police who shall investigate the matter and take the appropriate steps to prosecute the offender. The Committee also noted that similar provisions are laid down under section 133 of the Child Rights Act with regard to the enforcement of the provisions related to the employment of children in the informal economy by the District Council. The Committee also noted the Government's information that the Child Labour Unit established within the MLSS was also mandated to monitor child labour in workplaces. The Government's report further indicated that the inspections carried out in the formal sector revealed the non-existence of child labour; however, only limited inspections were carried out in the informal economy and therefore no relevant data on child labour in this sector was available. Moreover, the Government stated in its report that the labour inspectors, investigators and other key enforcement agencies were still operating on old legislation and that they lacked proper training on child labour monitoring.

The Committee notes that, in its comments of 2013 under the Labour Inspection Convention, 1947 (No. 81), the Committee had noted that the labour inspectorate in Sierra Leone was practically inoperative. *The Committee therefore once again requests that the Government take the necessary measures to strengthen the functioning of the labour inspectorate to ensure the effective monitoring of children working in the formal and informal economy. The Committee also once again requests the Government to provide information on the functioning of the Child Labour Units with regard to the child labour inspections carried out and on the number and nature of violations detected.*

Application of the Convention in practice. The Committee previously noted that the data released by the ILO on 12 June 2008 indicated that more than half of all the children between the ages of 7 and 14 years were child labourers. While noting the measures taken by the Government, the Committee expressed its concern at the high number of children below the legal minimum age who were engaged in child labour in Sierra Leone. The Committee also noted from the project report of the ILO-IPEC project entitled "Tackle Child Labour through Education" (TACKLE project) that the TACKLE project and the Statistical Information and Monitoring Programme on Child Labour (SIMPOC) conducted a National Child Labour Survey in 2010–11 in Sierra Leone, the report of which had not yet been published.

The Committee notes that the Government provided results of the National Child Labour Survey 2011 in its written replies to the list of issues in relation to the combined third to fifth periodic reports to the Committee on the Rights of the Child (CRC) of September 2016 (CRC/C/SLE/Q/3-5/Add.1, Annex II), according to which, 45.9 per cent of children aged 5–17 year of age were involved in child labour. Particularly, 31 per cent of children between 5 and 14 years of age were engaged in child labour, while 22 per cent of children between 5 and 17 years of age were involved in hazardous work. The Committee further notes that, according to the State of the World's Children 2014 (UNICEF), more than a quarter (26 per cent) of children aged 5–17 years were involved in hazardous work. The Committee expresses its *deep concern* at the large number of children involved in child labour and hazardous work. *It urges the Government to pursue*

its efforts to prevent and eliminate child labour within the country. It also requests the Government to provide information on the manner in which the Convention is applied in practice, including statistical data on the employment of children and young persons.

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

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

Observation 2017

The Committee notes with *deep concern* that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2004. The Committee also notes that the Government has been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

Effective tripartite consultations. The Committee notes the Government's report supplied in June 2004 indicating its commitment to promote tripartite consultation throughout the country as well as supporting the tripartite delegation to the International Labour Conference. *The Committee hopes that the Government and the social partners will examine how the Convention is applied and that the Government's next report will contain indications on any measures taken in order to implement effective tripartite consultation in the sense of the Convention (Articles 2 and 5 of the Convention).*

The Committee recalls that the Office has the technical capacity to help strengthen social dialogue and support the activities that governments and employers' and workers' organizations undertake for the consultations required by the Convention.

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

C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)***Observation 2017***

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

The Committee had previously noted the 2015 observations of the Federation of Somali Trade Unions (FESTU) alleging 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 notes the observations from the International Trade Union Confederation (ITUC), received on 1 September 2017, referring to the same issues which, in the meantime, have been examined by the Committee on Freedom of Association (CFA) in a case brought by the FESTU (Case No. 3113). In this regard, the Committee notes that in its latest conclusions the CFA referred to a communication dated September 2017 whereby the Government: (i) acknowledged that the Ministry of Labour and Social Affairs sought advice from the state Attorney-General over the case and that the latter wrote to relevant ministries and guided concerned authorities to comply with the recommendations of the CFA; (ii) acknowledged that the FESTU, led by Mr Omar Faruk Osman, is the most representative workers' organization in the country; (iii) indicated that it was seeking to resolve political differences between the FESTU and policymakers within the Government; and (iv) requested the assistance of the Office to facilitate a constructive dialogue and to find a solution to the long-standing dispute in a harmonious manner (see Case No. 3113, 383rd Report). *The Committee welcomes the commitment of the Government to engage in finding solutions with the assistance of the Office. The Committee expects that the Government will also take all necessary measures to provide without delay its first report on the application of the Convention, as well as information on meaningful progress made on the issues raised by the ITUC and the FESTU.*

C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)***Observation 2017***

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

The Committee had previously noted the 2015 observations of the Federation of Somali Trade Unions (FESTU) denouncing interference by the authorities in the activities of trade unions and harassment of trade union leaders, in particular in the telecommunications and media sector. The Committee notes the observations from the International Trade Union Confederation (ITUC), received on 1 September 2017, referring to the same issues which, in the meantime, have been examined by the Committee on Freedom of Association (CFA) in a case brought by the FESTU (Case No. 3113). In this regard, the Committee notes that in its latest conclusions the CFA referred to a communication dated September 2017 whereby the Government: (i) acknowledged that the Ministry of Labour and Social Affairs sought advice from the State General Attorney over the case and that the latter wrote to relevant ministries and guided concerned authorities to comply with the recommendations of the CFA; (ii) acknowledged that the FESTU, led by Mr Omar Faruk Osman, is the most representative workers' organization in the country; (iii) indicated that it was seeking to resolve political differences between the FESTU and policymakers within the Government; and (iv) requested the assistance of the Office to facilitate a constructive dialogue and to find a solution to the long-standing dispute in a harmonious manner (see Case No. 3113, 383rd Report). *The Committee welcomes the commitment of the Government to engage in finding solutions in relation to the serious allegations of infringement of trade union rights in the telecommunications and media sector, with the assistance of the Office, and expects that the Government will also take all necessary measures to provide without delay its first report on the application of the Convention as well as information on meaningful progress made on the issues raised by the ITUC and the FESTU.*

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

Observation 2017

The Committee notes the observations made by the Solidarity Trade Union (South Africa) received 12 May 2017 and the Government's response received 17 August 2017.

Articles 1 and 2 of the Convention. Discrimination based on race, colour and national extraction. Affirmative action. The Committee notes that in its observations, the Solidarity Trade Union raises concerns about the application of the Government's affirmative action policy, including the Employment Equity Act (EEA), and the Broad-Based Black Empowerment (BBE) Act. While recognizing the need for special measures, including affirmative action, on account of the legacy of the system of apartheid, the Solidarity Trade Union emphasizes that such measures should be designed within the spirit of the Constitution and should not create new forms of racial discrimination. The Union maintains that the Government undermines the constitutional obligations of non-racialism and the right to equality through a system of racial representativity which is endorsed by the courts and which is aimed at achieving a workforce which reflects the economically active population. The Union provides examples of court decisions and draws particular attention to the decision of the Constitutional Court (Case CCT 78/15) in *Solidarity v. Department of Correctional Services*, [2016] ZACC 18 of 16 July 2016 confirming that the EEA seeks to achieve a constitutional objective that every workforce or workplace should be broadly representative of the people of South Africa. Arguing that the affirmative action programme is not of a temporary nature, the Solidarity Trade Union submits examples of employment equity plans that have been implemented by the Department of Correctional Services during the past 16 years, and calls for a "sunset clause". While supporting the constitutional objective of a civil service that is "broadly reflective" of the people of South Africa, the Solidarity Trade Union argues that other factors in furtherance of this objective should be taken into consideration, including the ability of the candidates to do the work and the specific demographics of the diverse communities.

The Committee notes that, in its reply, the Government emphasizes that article 9(2) of the Constitution makes explicit provision for affirmative action measures, and affirms that its affirmative action programme is a temporary measure until reasonable progress is made towards achieving the purpose of the EEA, i.e. the elimination of unfair discrimination and the achievement of the equitable representation of designated groups across all occupational levels in the workplace. Regarding the Solidarity Trade Union's call for a "sunset clause", the Government responds that the EEA already has an entrenched "sunset clause" against which the implementation of the Act should be measured, based on goal oriented flexible target setting, rather than on strictly time-bound and quota oriented goals that create absolute barriers. The Committee further notes the Government's indication that with the entry into force in 2014 of the Employment Equity Amendment Act No. 47 of 2013, the need has arisen to review all provisions affected by the amendment and that a draft amended Code of Good Practice on the preparation, implementation and monitoring of the Employment Equity Plan was published on 30 September 2016. The Government indicates that, despite the comprehensive legal framework in place, the pace of change has been slow. According to the Government, there have been a number of implementation challenges which have contributed to this situation, including, among other things, resistance by employers to embracing employment equity.

The Committee notes that the Government provides statistics from the annual report of the Employment Equity Commission (EEC) which indicate that in 2016 certain groups were still visibly under-represented in certain positions. It notes, among other things, that in 2016 the economically active population was distributed as follows: African: 78 per cent (42.8 per cent men and 35.2 per cent women); Coloured: 9.8 per cent (5.3 per cent men and 4.5 per cent women); Indian: 2.8 per cent (1.8 per cent men and 1 per cent women); and White: 9.5 per cent (5.3 per cent men and 4.2 per cent women). The EEC report also shows that White persons continue to be over-represented at the higher occupational levels, in top and senior level management (in 2016, 14.4 per cent African: 4.9 per cent Coloured: 8.9 per cent Indian: 68.5 White at the top management level; and 22.1 per cent African, 7.7 per cent Coloured, 10.6 per cent Indian and 58.1 per cent White at the senior management level). In contrast, the African and Coloured groups are over-represented in the semi-skilled and unskilled professions (in 2016, 76.1 per cent of the positions in semi-skilled and 83.2 per cent in unskilled occupations were occupied by Africans, and respectively 12.3 per cent and 11.4 per cent by Coloured). Africans continue to be the most represented group in government and state-owned companies and gender gaps persist in the representation of especially Black women and persons with disabilities particularly in the middle-to-upper occupational levels.

The Committee recognizes the particularly complex reality of South Africa where racial segregation has been deeply entrenched during apartheid including in employment and occupation. The Committee has previously noted that in order to give effect to article 9(2) (affirmative action measures) of the Constitution, section 2 of the EEA places an obligation on "designated employers" to implement "affirmative action measures to redress disadvantages in employment experienced by designated groups, in order to ensure their equitable representation in all occupational categories and levels in the work force". The Committee notes that the judgment of the Constitutional Court reiterates earlier case law supporting the affirmative action policy of the Government. The Committee recalls that in the context of measures to implement the national equality policy required under *Article 2* of the Convention, treating certain groups differently may be required to eliminate discrimination and to achieve substantive equality for all groups covered by the Convention (General Survey on the fundamental Conventions, 2012, paragraph 844). The Convention therefore allows for affirmative action measures which are aimed at ensuring equality of opportunity in practice, taking into account the diversity of situations of the persons concerned, so as to halt discrimination, redress the effects of past discriminatory practices and restore a balance. They are part of a broader effort to eliminate all inequalities and an important component of the national equality policy, required under *Article 2* of the Convention. To be in accordance with the Convention, such measures must genuinely pursue the objective of equality of opportunity, be proportional to the nature and scope of the protection or assistance needed or of the existing discrimination, and be examined periodically in order to ascertain whether they are still needed and remain effective. Affirmative action grounded on prior consultation and the consent of the stakeholders, including workers' and employers' organizations, helps to ensure that the measures taken are broadly accepted, effective and in line with the principle of non-discrimination (see General Survey, 2012, paragraph 862). *Taking into account the unique situation of South Africa and the particular challenges the Government faces in implementing special measures to address inequalities, the Committee asks the Government to strengthen its efforts in promoting equality of treatment and opportunities in employment and occupation of all the designated groups, irrespective of race and colour, and of the inclusion of African and Coloured workers in the labour market, and to report on the action taken in this regard. The Committee also asks the Government, in consultation with workers' and employers' organizations and other stakeholders, to examine the impact of its affirmative action measures on all the affected groups, especially the most disadvantaged and vulnerable among them, in the spheres of employment and occupation with a view to determining whether the measures continue to pursue the objective of equality of opportunity, remain effective, and are in line with the principle of non-discrimination.*

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

C029 - Forced Labour Convention, 1930 (No. 29)**Observation 2017**

Articles 1(1) and 2(1) of the Convention. Abolition of forced labour practices. In its earlier comments, the Committee noted that in regions of the country where there was armed conflict, the abduction and forced labour of thousands of women and children had taken place. The Committee noted the allegations from the International Trade Union Confederation (ITUC) that there continued to be serious problems with regard to abductions for the purpose of forced labour, as well as compensation for victims of forced labour. The Committee also noted that in his 2013 report, the UN Independent Expert on the situation of human rights in the Sudan indicated that in the three areas of Abyei, South Kordofan and Blue Nile, outbreaks of fighting have led to widespread human rights violations and large-scale displacements. The Independent Expert pointed out that widespread human rights violations and large scale civilian displacements due to the persistence of fighting between the Sudanese Armed Forces (SAF) and armed opposition groups continued to occur in the region of Darfur (A/HRC/24/31, paragraphs 11 and 13). Moreover, the Committee noted the information from the Report of the Secretary-General on the African Union–United Nations Hybrid Operation in Darfur (UNAMID), of 14 October 2013, that between 1 April and 30 June 2013 there were 21 abductions in which the local civilian population was targeted, and ten such abductions between 1 July and 30 September 2013 (S/2013/607, paragraph 26). In this regard, the Committee requested the Government to take urgent measures, in accordance with the recommendations of the relevant international bodies and agencies, to put an end to all human rights violations and impunity.

The Committee notes the Government's indication in its report that no evidence has been found regarding cases of abductions. However, the Committee notes from the 2016 report of the UN Independent Expert on the situation of human rights in the Sudan, that during the reporting period (from October 2015 to June 2016), the security situation in Darfur was marked by an escalation in fighting between Government forces and the Sudan Liberation Movement-Abdul Wahid. The Independent Expert was concerned by the detrimental effects of the conflict on civilians in the light of allegations of human rights violations and serious violations of international humanitarian law, including indiscriminate killings, destruction and burning of villages, abduction of and sexual violence against women, as well as large-scale displacement of civilians. Moreover, during the first five months of 2016, around 80,000 people were reportedly newly displaced across Darfur. An additional 142,000 people were also reportedly displaced (A/HRC/33/65, paragraphs 41 and 42). ***In light of the above, the Committee urges the Government to take the necessary measures to put an immediate stop to cases of abductions for the exaction of forced labour and to guarantee that the victims are fully protected from such abusive practices. The Committee also reiterates the need for the Government to take urgent measures, in accordance with the recommendations of the relevant international bodies and agencies, to put an end to all human rights violations and impunity, which would help to ensure the full observance of the Convention. Lastly, the Committee requests the Government to provide, in its next report, detailed information on measures taken in this regard.***

Article 25. Penalties for the exaction of forced labour. In its previous comments, the Committee noted that special courts were established in some conflict regions to eradicate any activity involving forced labour, and that a Special Prosecutor for Darfur crimes had been appointed. The Committee also noted that in his 2013 report, the Independent Expert raised concerns about the slow pace of prosecution of the Darfur conflict-related crimes (A/HRC/24/31, paragraph 43). The Committee requested the Government to indicate the number of prosecutions undertaken by the Special Prosecutor for Darfur which relate to abductions for the exaction of forced labour, as well as the number of convictions and the nature of penalties applied.

The Committee notes the Government's indication that with regard to the statistical information on the number of prosecutions undertaken by the Special Prosecutor for Darfur, none of the prosecutions were related to cases of abductions for forced labour. The Government also indicates that various institutions currently exist to facilitate access to justice to victims of human rights violations, including the National Human Right Commission and the High Council for Children. ***Recalling the importance of imposing appropriate criminal penalties on perpetrators so that recourse to forced labour practices does not go unpunished, the Committee requests the Government to take immediate and effective measures in this regard. The Committee also requests the Government to provide statistical information on the number of prosecutions undertaken by the Special Prosecutor for Darfur which relate to abductions for the exaction of forced labour, as well as the number of convictions and the specific penalties applied.***

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

C105 - Abolition of Forced Labour Convention, 1957 (No. 105)**Observation 2017**

Article 1(a) of the Convention. Punishment for expressing political views or views ideologically opposed to the established political, social or economic system. In its earlier comments, the Committee noted that penalties of imprisonment (involving an obligation to perform prison labour) could be imposed by virtue of sections 50, 66 and 69 of the Criminal Act (committing an act with the intention of destabilizing the constitutional system, publication of false news with the intention of harming the prestige of the State and committing an act intended to disturb public peace and tranquility). The Committee also noted that the 2013 report of the United Nations Independent Expert on the situation of human rights in the Sudan indicated that parts of the national legal framework, including the Criminal Act, infringe fundamental human rights and freedoms, and that restrictions on civil and political rights and the curtailment of freedom of expression and the press persist (A/HRC/24/31, paragraph 13). According to the Independent Expert, a committee had been set up to study the reform of some laws, including the Criminal Procedure Act and the Criminal Act. This Committee had submitted its recommendations to the Government for consideration (paragraph 18). The Committee had requested the Government to take the necessary measures to ensure that sections 50, 66 and 69 of the Criminal Code are repealed or amended.

The Committee notes the Government's indication in its report that the right to freedom of peaceful assembly and freedom of expression and peaceful protest are universally guaranteed rights, but their exercise is subject to restrictions in accordance with the national legislation and the obligations of the State under international human rights Conventions. Nevertheless, the Committee notes that in its 2014 concluding observations, the UN Human Rights Committee (HRC) was concerned by the numerous allegations indicating that State officials have curtailed the full and effective enjoyment of the right to freedom of expression by, inter alia, closing newspapers without court orders, confiscating entire newspaper editions and subjecting journalists to intimidation and harassment. The HRC was also concerned about the obligations placed on journalists by the 2009 Press and Publication Act and about prosecutions for disseminating "false news". Lastly, the HRC was also concerned at allegations indicating that State Officials have subjected opponents and perceived opponents of the Government, human rights defenders and other activists to harassment, intimidations, arbitrary arrest and detention, and torture and ill treatment (CCPR/C/SDN/CO/4, paragraph 21).

In addition, the Committee notes that in his 2016 report, the Independent Expert on the situation of human rights in the Sudan highlighted that the National Security Act and the Criminal Act of 1991, and parallel legislation specific to Darfur, such as the emergency laws, continue to infringe on fundamental rights and freedoms. Moreover, restrictions on civil and political rights and the curtailment of the rights to freedom of expression, association and peaceful assembly, as well as freedom of the press have persisted. Increasing demands by political opposition groups, civil society organizations and students for democratic reforms have been met with repressive measures by the Sudanese authorities, including arrests and detention. Human rights defenders, political opponents and journalists continue to be targeted and impunity remains a recurring problem (A/HRC/33/65, paragraph 63).

The Committee once again recalls that *Article 1(a)* of the Convention prohibits all recourse to compulsory labour, including compulsory prison labour, as a means of political coercion or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or

economic system. It also points out that the protection conferred by the Convention is not limited to activities expressing or manifesting opinions diverging from established principles; even if certain activities aim to bring about fundamental changes in state institutions, such activities are protected by the Convention, as long as they do not resort to or call for violent means to these ends. *Therefore, the Committee once again urges the Government to take the necessary measures to ensure that sections 50, 66 and 69 of the Criminal Act are repealed or amended so that no prison sentence (involving compulsory labour) can be imposed on persons who, without using or advocating violence, express certain political views or opposition to the established political, social or economic system. It requests the Government to provide information on the progress made in this regard. Pending the adoption of such amendments, the Committee requests the Government to provide information on the application of sections 50, 66 and 69 of the Criminal Act in practice. Lastly, the Committee once again requests the Government to provide copies of the amendments to the Criminal Procedures Act of 20 May 2009, as well as a copy of the 2009 Press and Publication Act.*

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

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

Observation 2017

Article 3(2) of the Convention. Determination of hazardous work. In its previous comments, the Committee noted that within the framework of the ILO-IPEC project "Tackling child labour through education" (TACKLE Project), the Child Labour Unit was taking the lead on the development of the list of types of hazardous work. In January 2012, the National Steering Committee had endorsed a list of hazardous activities and the list was awaiting ministerial decree.

The Committee notes the Government's indication in its report that a copy of the list of hazardous activities will be sent to the Committee as soon as it is adopted. The Committee recalls that, pursuant to *Article 3(2)* of the Convention, the types of hazardous employment or work shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned. *Noting that the Government has been referring to the adoption of the list of hazardous activities since 2006, the Committee urges the Government to take the necessary steps without delay to ensure the adoption, in the very near future, of legal provisions determining the types of hazardous work to be prohibited for persons under 18 years of age. It also requests that the Government provide a copy of the list, once adopted.*

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

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

Observation 2017

Articles 3 and 7(1) of the Convention. Worst forms of child labour and penalties. Clause (a). Slavery and practices similar to slavery. 1. Abductions and the exaction of forced labour. In its early comments, the Committee noted the various legal provisions in Sudan which prohibit the forced labour of children (and abductions for that purpose), including article 30(1) of the Constitution of 2005, section 32 of the Child Act of 2004, and section 312 of the Penal Code. However, the Committee noted the allegations of the International Trade Union Confederation (ITUC) regarding cases of abduction of women and children by the Janjaweed militia. The Committee also noted that with reference to several reports of United Nations bodies, such as the report of the Secretary-General on Children and Armed Conflict, cases of abduction of children with a view to their labour exploitation had been reported in Abyei, Blue Nile and South Kordofan.

The Committee notes the Government's indication in its report that special courts were set up to eliminate the practice of abduction. Moreover, psychological and social support, education, work opportunities, and skills training were also provided to children who had been abducted. In addition, training was provided to 78 specialists from the Ministries of Social Affairs and of Education, and other partners working on social psychological rehabilitation with the participation of society in the process of reintegration and rehabilitation.

With regard to the penalties imposed on the offenders who abduct children for the exaction of forced labour, the Committee further notes the Government's indication in its report submitted under the Forced Labour Convention, 1930 (No. 29), that among the prosecutions undertaken by the Special Prosecutor for Darfur, none of the prosecutions were related to cases of abductions for forced labour. The Committee also notes that according to the 2016 report on children and armed conflict of the UN Secretary-General, although impunity for grave violations against children continued to be a concern, there was progress, with arrests being made for sexual violence and the killing and maiming of children. The Secretary-General called upon the Government to ensure accountability for all grave violations (A/70/836 S/2016/360, paragraph 147). *The Committee urges the Government to continue to strengthen its efforts to eradicate abductions and the exaction of forced labour from children under 18 years of age, and to provide information on the effective and time-bound measures taken to this end. The Committee also urges the Government to take immediate measures to ensure that thorough investigations and robust prosecutions of offenders are carried out and that sufficiently effective and dissuasive sanctions are imposed in practice. Lastly, the Committee requests the Government to indicate whether the Committee for the Eradication of Abduction of Women and Children (CEAWC) – referred to in its previous reports – is still operational, and to provide information on its current activities.*

2. Forced recruitment of children for use in armed conflict. In its previous comments, the Committee noted with concern that children were being recruited and forced to join illegal armed groups or the national armed forces in practice.

The Committee notes the Government's indication that the legislation, including the Child Labour Law, the Police Law, and the Civil Service Law specify that no child under 18 years of age shall be recruited in the army, and that penalties are imposed in cases of recruitment. The Government also indicates that a national campaign for the support of child rights was organized, and carried out by the National Council for Childhood. Several workshops and symposia were held at the national level in addition to the preparation and distribution of awareness-raising and guiding posters in support of the issues of child protection, while paying special attention to the issue of child recruitment in the armed forces. Moreover, the National Council for Childhood, in collaboration with the Child Rights Unit at the Ministry of Defence, carried out a few training courses for officers and other members of the armed forces on children's rights and protection in armed conflict, as well as training courses on children's rights and protection across borders.

However, the Committee notes that in its 2014 concluding observations, the UN Human Rights Committee (HRC) was concerned by reports indicating that children are still being recruited and used in armed conflict, and that efforts at monitoring this practice are insufficient. The HRC also recommended that the country redouble its efforts to detect and eradicate the recruitment and use of child soldiers as well as to ensure their prompt disarmament, demobilization and reintegration. The HRC finally recommended that alleged perpetrators be brought to justice and, if convicted, adequately sanctioned (CCPR/CSDN/CO/4, paragraph 24). Furthermore, the Committee observes that according to the 2016 report on children and armed conflict of the UN Secretary-General (A/70/836-S/2016/360, paragraphs 133, 134, 139 and 146) during the reporting period (January to December 2015), four cases of recruitment and use of children by the Sudanese Armed Forces were documented. Two boys were also recruited by the Liberation Movement-North Sudan (SPLM-N) from refugee settlements in South Sudan, and 28 incidents of killing and maiming were documented, affecting 43 and 38 children, respectively. The abduction of eight children, including five in Abyei was also documented. The children were released and reunited with their families following engagement by the UN. Moreover, the country task force on monitoring and reporting verified the recruitment of four boys by the Sudanese Armed Forces in West Darfur, including one who reportedly participated in fighting along with the Abbas faction of the Justice and Equality Movement (JEM). The UN Secretary-General also stated that, during

her visit in March 2016, the Special Representative for Children and Armed Conflict was given access to 21 children detained by the National Intelligence and Security Service since April and August 2015. The children had allegedly been recruited in Southern Kordofan and South Sudan and used in combat in Darfur and South Sudan. The Special Representative advocated further access by the UN to the children and their release and reunification with their families. Lastly, the Special Representative highlighted that the Sudan signed in March 2016 an Action Plan to end and prevent the recruitment and use of children by its security forces. While noting certain measures taken by the Government to raise awareness on the issue of children in armed conflict, the Committee expresses its *deep concern* with regard to the persistence of this practice, especially as it leads to other violations of the rights of children, in the form of abductions, murders and maiming. ***In this regard, the Committee urges the Government to take immediate and effective measures, in collaboration with the UN bodies operating in the country, to put a stop in practice to the compulsory recruitment of children for use in armed conflict by armed groups and the armed forces. The Committee requests the Government to take the necessary measures to ensure that the Action Plan to end and prevent the recruitment and use of children in the armed forces, signed in 2016 with the UN is promptly and effectively implemented.***

Article 7(2). Effective and time-bound measures. Clause (b). Removing children from the worst forms of child labour and providing for their rehabilitation and social integration. Child soldiers. In its previous comments, the Committee noted that the Child Soldier Unit was established in order to improve the situation of children associated with armed forces. Its efforts had resulted in the demobilization and reintegration of a considerable number of children in Sudan. The Unit had established a database of child soldiers, with information relating to their registration, reintegration, and follow-up. The Committee also noted that the Government had been facing certain difficulties regarding the funding of the Child Soldier Unit.

The Committee notes the Government's indication that the Disarmament and Demobilization Commission has adopted the concept of full reintegration of children who were recruited by armed groups and movements, based on societal work. The Commission carried out its work in all regions of the country where there are "vagrant children" in the Blue Nile, Al Qadarif, Kassala, Port Sudan and Al-Junaynah. It consists of providing moral and psychological support as well as raising awareness on the impact of recruitment among children's groups, in addition to providing services to children in conflict areas and emergency situations. In this regard, in 2015, the Minimum Standards on Protection of Children in Emergency and Crisis Situations were launched. ***The Committee urges the Government to continue to take effective and time-bound measures to remove children from armed conflict and ensure their rehabilitation and social integration. It also requests the Government to indicate whether the Child Soldier Unit is still functional, and to provide information on its recent activities. Lastly, the Committee requests the Government to supply information on the number of child soldiers removed from armed forces and groups and reintegrated through the actions undertaken by the Disarmament and Demobilization Commission.***

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

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

Observation 2017

Article 1 of the Convention. National policy. The Committee previously noted the allegations made by the Swaziland Federation of Trade Unions (SFTU) that there was no national policy or action programme for the elimination of the worst forms of child labour, and that there was no political will on the part of the Government to address the legislative and policy issues concerning child labour. The Committee noted the Government's indication that the redrafting of the proposed Employment Bill and of the National Action Programme on the Elimination of the Worst Forms of Child Labour (NAP-WFCL) had been finalized by the Labour Advisory Board (LAB) and that both would soon be submitted to Cabinet for adoption and publication.

The Committee notes the Government's indication in its report that the adoption of the NAP-WFCL and of the Employment Bill was delayed from 2013 to 2015 due to the fact that the tripartite structures of the country, including the LAB, were not functioning. In 2015, the tripartite structures were once again established, leading to the adoption of the NAP-WFCL by the LAB. As for the Employment Bill, the Government requested technical assistance from the ILO on the drafting of the Bill before being further processed through the legislative channels. However, the revision of the Employment Act was shelved by the Government due to the fact that other laws needed to be amended as a matter of priority, such as the Public Service Act, Terrorism Act, and Law and Order Act. The Government indicates that once the final review by the consultant is finished, the Employment Bill will be referred to the Attorney General for further and appropriate processing. **Noting that the Government has been referring to the Employment Bill for several years, the Committee urges the Government to take the necessary steps to ensure that it is adopted without delay, taking into consideration the comments made by the Committee, and requests that the Government provide a copy of the enacted Employment Act. The Committee also requests that the Government provide a copy of the NAP-WFCL, as well as information on its impact on the elimination of child labour.**

Article 2(1). Scope of application. Informal economy, including family undertakings. The Committee previously observed that, in practice, children appeared to be engaged in child labour in a wide range of activities in the informal economy. Yet, the Committee noted that, pursuant to section 2 of the Employment Act, domestic employment, agricultural undertakings and family undertakings were not included in the definition of "undertaking" and therefore not covered by the minimum age provisions of section 97. While the Committee observed that the draft Employment Bill also exempted family undertakings from the minimum age provisions, it noted the Government's indication that the Employment Bill, once adopted and promulgated, would include all workers, even those working in the informal economy, so as to be in line with the Convention. Moreover, the Committee noted the Government's information that, with technical assistance from the ILO, the Ministry of Labour and Social Security had been training labour inspectors on child labour issues and on how to identify child labour in all sectors of the economy.

The Committee notes the Government's indication that it will continue to adapt and strengthen the labour inspectorate in order to improve its capacity to identify cases of child labour in the informal economy and to ensure the effective application of the Convention. Moreover, the Government indicates that cases of child labour were reported, handled and resolved by the Ministry of Labour and Social Security. The Committee also notes the Government's information that the ILO provided technical assistance to increase the capacity of labour inspectors on matters relating to child labour through trainings which covered approximately 50 per cent of the labour inspectors.

However, the Government indicates that new inspectors have since been employed who also require such training. In addition, the Committee notes the Government's information that due to the low number of labour inspectors, the Labour Inspectorate has not been able to conduct inspections in the informal sector of the economy, where child labour is the most prevalent. The Committee notes that, in its report submitted under the Labour Inspection Convention, 1947 (No. 81), the Government shares statistics on the number of inspections conducted, violations detected and penalties applied in 2016. While the Government does not provide information related to child labour violations, the Committee observes that 2,596 inspections were conducted during which 76 violations were detected, but no penalties were imposed, which means that no penalties were imposed for any violations of the labour law provisions prohibiting child labour.

While taking note of the measures taken by the Government, the Committee must emphasize the importance of ensuring that the labour inspection system effectively monitors working children in all areas and sectors (see General Survey on the fundamental Conventions, 2012, paragraph 407). **The Committee therefore urges the Government to take the necessary steps to adapt and strengthen the labour inspectorate in order to improve the capacity of labour inspectors and allow them to identify cases of child labour in the informal economy, so as to ensure that the protection afforded by the Convention is effectively applied to all child workers. It requests that the Government provide information on the progress made in this regard.**

Article 2(3). Age of completion of compulsory education. The Committee previously noted the Government's indication that it enacted the Free Primary Education Act of 2010, which contains provisions requiring parents to send their children to school until the completion of primary schooling. However, the Committee noted with concern that primary schooling finishes at the age of 12 years, while the minimum age for admission to employment is 15 years in Swaziland.

The Committee notes the Government's indication that it took due note of the Committee's request for extending compulsory education up to the age of 15 years, and that it has made education free for all primary grades. However, the Committee underlines that *Article 2(3)* of the Convention requires that the specified minimum age for admission to employment or work, which is 15 in Swaziland, not be less than the age of *compulsory* schooling. Referring to its 2012 General Survey on the fundamental Conventions (paragraph 369), the Committee recalls that compulsory education is one of the most effective means of combating child labour. It thus stresses the importance of adopting legislation providing for compulsory education up to the minimum age for admission to employment or work, because where there are no legal requirements establishing compulsory schooling, there is a greater likelihood that children under the minimum age will be engaged in child labour. **Considering that compulsory education is one of the most effective means of combating child labour, the Committee once again urges the Government to take the necessary steps to make education compulsory (and not only free) for students at the primary and lower secondary levels, up until the minimum age for admission to employment, which is 15 years in Swaziland.**

Article 3(2). Determination of hazardous work. The Committee noted the Government's statement that upon the adoption of the Employment Bill, measures would be taken in consultation with the social partners to develop a list of types of hazardous work prohibited to children and young persons, as envisaged by section 10(2) of the Employment Bill. The Committee reminded the Government that, under the terms of *Article 3(2)* of the Convention, the types of hazardous work prohibited to children under 18 years of age shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned. The Committee noted the Government's indication that the multi-stakeholder Child Labour Committee initiated talks to determine the list of hazardous work and that this list would be sent to the LAB for consideration before being transmitted to the Minister of Labour and Social Security.

The Committee notes the Government's indication that the adoption of the list of hazardous work now hinges on the process of enacting the Employment Bill, and that it will keep the Committee informed of the developments in this regard. **The Committee therefore once again requests that the Government take the necessary measures to ensure that the types of hazardous work prohibited to children under 18 years of age are determined and that the list is adopted in very near future. It requests that the Government provide information on the progress made in this regard.**

Article 7. Light work. The Committee previously noted that 9.3 per cent of children between the ages of 5 and 14 years were engaged in child labour in Swaziland. The Committee noted that the Employment Bill did not appear to set a minimum age for light work, including work in family undertakings. Noting that national legislation did not regulate light work and that a significant number of children under the minimum age were engaged in child labour, the Committee requested the Government to envisage the possibility of adopting provisions to regulate and determine the light work activities performed by children between

13 and 15 years of age, in accordance with *Article 7* of the Convention.

The Committee notes the Government's information that a provision on light work has been included in the Employment Bill in the part dealing with the prohibition of child labour and employment of young persons. ***The Committee requests that the Government provide information on the progress made in adopting the Employment Bill, including the provisions regulating light work in accordance with Article 7 of the Convention.***

Application of the Convention in practice. The Committee previously noted the Government's information that, due to a lack of resources, the labour inspection management system was not operational, and that data was still being compiled manually. However, it noted the Government's indication that the Labour Force Survey was being conducted and that this survey included questions on the employment of children. In addition, the Government indicated that the Central Statistical Office was being assisted by the ILO in order to conduct a fully-fledged survey on child labour.

The Committee notes with ***concern*** the Government's information that statistics on child labour are not available due to the fact that the 2013–14 Integrated Labour Force Survey did not cover issues related to child employment. It notes the Government's indication that child employment statistics will be included in future surveys. ***The Committee requests that the Government take measures to ensure sufficient updated statistical information on the situation of working children in Swaziland is made available, including for example data on the number of children and young persons below the minimum age who are engaged in economic activities, and statistics relating to the nature, scope and trends of their work.***

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

Observation 2017

Articles 2, 3 and 5 of the Convention. Representativeness. Effective tripartite consultations. Representation of the social partners. In its previous comments, the Committee requested the Government to provide information on the content and outcome of the tripartite consultations held on the matters regarding international labour standards covered by the Convention (*Article 5*) and the measures taken to select the most representative organizations of employers and workers in the tripartite bodies discussing international labour standards. The Government reports that there are two institutionalized national social dialogue structures in Swaziland: the Labour Advisory Board (LAB) and the National Steering Committee on Social Dialogue (NSCSD). Pursuant to section 2 of the Industrial Relations Act, No. 1 of 2000, the LAB is mandated to: examine items or texts to be discussed by the International Labour Conference (ILC); prepare for the submission of Conventions and Recommendations to the competent authorities; provide measures for the implementation of Recommendations or the ratification of Conventions; address questions arising out of reports submitted under articles 19 and 22 of the ILO Constitution; and examine the possible denunciation of ratified Conventions. The Government adds that the tripartite consultations relating to international standards, as required under *Article 5* of the Convention, are carried out in the LAB. In contrast, the NSCSD was established to facilitate social dialogue in respect of all other socio-economic issues which are not within the scope and mandate of the LAB. The Government indicates that one of the key challenges affecting social dialogue in Swaziland is the absence of clear criteria for determining the most representative employers' and workers' organizations for purposes of the Convention. It adds that discussions in this regard are currently pending before the NSCSD. The Committee refers to its General Survey on tripartite consultations, 2000, paragraph 34, in which it indicates that if in a particular country there are two or more organizations of employers or workers which represent a significant body of opinion, even though one of them may be larger than the others, they may all be considered to be "most representative organizations" for the purpose of the Convention. The Government should endeavour to secure an agreement of all the organizations concerned in establishing the consultative procedures provided for by the Convention, but if this is not possible it is in the last resort for the Government to decide, in good faith, in the light of the national circumstances, which organizations are to be considered as the most representative. ***The Committee reiterates its request to the Government to provide detailed information on the frequency, content and outcome of the tripartite consultations held in the Labour Advisory Board on the matters regarding international labour standards covered by the Convention under Article 5(1)(a)–(e). It also requests the Government to communicate information regarding the tripartite discussions held and the measures taken or envisaged with respect to the development of clear and transparent criteria for selecting the most representative organizations of employers and workers for purposes of the Convention.***

Article 5(1)(c) and (e). Prospects of ratification of unratified Conventions and proposals for the denunciation of ratified Conventions. The Government indicates that a time-bound work plan to consider the ratification of the Domestic Workers Convention, 2011 (No. 189), was agreed upon by the LAB on 17 August 2016, but that implementation of the work plan has been delayed due to reasons beyond the parties' control. Therefore, the LAB will discuss revising the timelines set in the work plan in order to envisage the ratification of the Convention, No. 189, before the end of November 2017. The Government undertakes to keep the Committee informed of progress made in this regard. ***The Committee requests the Government to provide updated information on the content and outcome of tripartite consultations held regarding the possible ratification of up-to-date Conventions as well as in relation to the possible denunciation of outdated Conventions.***

C029 - Forced Labour Convention, 1930 (No. 29)**Observation 2017**

Articles 1(1), 2(1) and 25 of the Convention. Trafficking in persons. Penalties and law enforcement. The Committee previously noted the adoption of the Anti-Trafficking in Persons Act (No. 6 of 2008). Pursuant to section 4 of the Act, trafficking in persons is an offence, punishable with a fine of between 5 million Tanzanian shillings (TZS) and TZS100 million (approximately US\$3,172–\$63,577), or to imprisonment for a term of not less than two years and not more than ten years, or both. Pursuant to section 5 of the Act, a person who promotes, procures or facilitates the commission of trafficking in persons commits an offence, and is liable to a fine of between TZS2 million and TZS50 million (approximately \$1,272–\$31,083), or to imprisonment for a term of not less than one year, but not more than seven years, or both. The Government stated that training on human trafficking was conducted for officers of command districts as well as criminal investigation officers responsible for human trafficking. The Committee therefore requested the Government to provide information on the application of the Act in practice.

The Committee notes the Government's information in its report that, in 2016, around 100 human trafficking cases were investigated, of which 23 offenders were prosecuted in the courts of law, and 19 traffickers were convicted. Among them, one perpetrator was sentenced to ten years' imprisonment, two to seven years' imprisonment and three to five years' imprisonment. However, the Committee notes that, according to the Government's replies to the list of issues of the UN Committee on the Elimination of Discrimination against Women (CEDAW), in February 2015, an Indian man involved in the trafficking of eight Nepalese girls was convicted and sentenced to ten years' imprisonment or to pay a fine of TZS15 million. The perpetrator paid the fine and was released (CEDAW/C/TZA/O/7-8/Add.1, paragraph 84). Referring to paragraph 319 of the 2012 General Survey on the fundamental Conventions, the Committee recalls that, when the sanction consists only of a fine or a very short prison sentence, it does not constitute an effective sanction in light of the seriousness of the violation and the fact that the sanctions need to be dissuasive. The Committee also notes that, in its concluding observations of 2016, the CEDAW expressed its concern at the persistence of trafficking in, and sexual exploitation of, women and girls in the country and reports of trafficking in girls for domestic work and sexual exploitation (CEDAW/C/TZA/CO/7-8, paragraph 24). **The Committee therefore requests the Government to take the necessary measures to ensure that the Anti-Trafficking in Persons Act is applied so that sufficiently effective and dissuasive penalties of imprisonment are imposed and enforced in practice in all cases. The Committee also requests the Government to continue providing information on the application of the Anti-Trafficking in Persons Act, including the number of investigations and prosecutions, as well as the penalties applied.**

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

C094 - Labour Clauses (Public Contracts) Convention, 1949 (No. 94)**Observation 2017**

Articles 1, 2, 4 and 5 of the Convention. Insertion of labour clauses in public contracts. Notice. Sanctions. In its previous comments, the Committee requested the Government to take the necessary legislative, administrative or other measures to ensure the insertion in all public contracts specified in *Article 1* of the Convention of the labour clauses required under paragraph 1 of *Article 2* of the Convention and for the enforcement of such clauses in the manner prescribed by *Articles 4* and *5* of the Convention. The Government indicates in its report that the Standard Tendering Documents are in effect and available for use by the procuring entities, in the procurement of works through medium and large contracts through national and international competitive tendering procedures. The Committee notes that section 20.1 of the General Conditions of Contract in the Standard Tendering Document for Medium and Large Works provide that a contractor is duty-bound to comply with all the relevant labour laws applicable in the country, including laws relating to workers' employment, working hours, health, safety, welfare and immigration, and shall allow them all their legal rights. Pursuant to section 20.2 of these General Conditions of Contract, the contractor is also required to take all reasonable precautions to maintain the health and safety of personnel. The Committee notes, however, that the Standard Tendering Documents for the procurement of works for medium and large contracts do not refer to or contain any labour clauses to ensure that workers engaged under such contracts enjoy conditions of labour, including wages and hours of work, which are not less favourable than those established for work of the same character in the same district, as required under this provision of the Convention. Similar provisions are included in the General Conditions of Contract for the Standard Tendering Document for the procurement of smaller works (sections 21.1 and 21.2). Moreover, neither the Standard Tendering Documents for the procurement of goods or those for the procurement of consultancy services provide for application for either the general labour law or for the insertion of appropriate labour clauses. The Committee is once again compelled to draw the Government's attention to its 2008 General Survey on labour clauses in public contracts, paragraph 45, in which the Committee emphasized that the mere fact that contractors under public contracts are required to adhere to general labour legislation does not release the Government from its obligation to draft and include appropriate labour clauses of the type required in *Article 2(1)* of the Convention in public contracts, whether for construction works, manufacture of goods or supply of services. As the Committee pointed out in its previous comments, this is because general labour legislation establishes only minimum standards, which are often improved through collective bargaining or arbitration awards. If this is the case, under the Convention, the workers concerned must enjoy working conditions which are at least aligned to the most advantageous conditions set through collective agreement or arbitral award. Moreover, *Article 2* establishes that the terms of the labour clauses to be included in public contracts must be determined after consultation with the employers' and workers' organizations concerned (*Article 2(3)*) and brought to the knowledge of tenderers in advance of the selection process (*Article 2(4)*). In addition, notices informing the workers of their conditions of work must be posted at the workplace (*Article 4(a)(iii)*). **The Committee therefore once again requests the Government to take the necessary measures – legislative, administrative or others – for the insertion in all public contracts covered by this Convention of labour clauses that comply with the requirements of Article 2 of the Convention and for the enforcement of such clauses in the manner prescribed by Articles 4 and 5 of the Convention. It also requests the Government to provide information on the manner in which effect is given to the central requirement of the Convention under Article 2. The Committee also requests the Government to indicate the relevant provisions establishing that the obligations under the Convention apply also to subcontractors or assignees, as required under Article 1(3) of the Convention.**

Articles 4 and 5. Notice of working conditions. Sanctions. In its previous comments, the Committee requested the Government to take measures to ensure the enforcement of labour clauses in the manner prescribed by *Articles 4* and *5* of the Convention. Moreover, notices informing the workers concerned of their conditions of work must be posted in conspicuous places at the establishments and workplaces concerned (*Article 4(a)(iii)*). **The Committee requests the Government to indicate the measures taken or envisaged to give effect to Articles 4 and 5 of the Convention.**

C144 - Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)**Observation 2017**

Article 5 of the Convention. Effective tripartite consultations. The Government reports that the Minister responsible for labour matters has appointed new members to constitute the Labour, Economic and Social Council (LESCO). It adds that the newly constituted LESKO is composed of representatives of the

Tanzania, United Republic of

Government, employers, workers and other members appointed by virtue of their professions. The Committee notes that the Government has provided no information enabling it to evaluate the application of the Convention. *Accordingly, the Committee requests the Government to provide specific information on the frequency, object, content and outcome of the tripartite consultations held by the competent tripartite bodies for purposes of the Convention, such as the LESCO and the Zanzibar Labour Advisory Board, on all matters concerning international labour standards set out in Article 5(1) of the Convention, including consultations on the re-examination of unratified Conventions with its social partners.*

Article 4. Administrative support and financing of training. The Government reports that it is making every possible effort to strengthen the capacities of the newly appointed members to support effective consultations and functioning of the LESCO. In reply to the Committee's previous comments, the Government indicates that it will consider availing itself of ILO technical assistance in this regard. *The Committee requests the Government to provide updated information on any arrangements made to provide administrative support for the functioning of the LESCO and the Zanzibar Labour Advisory Board and to finance training for their members on the consultative procedures required by the Convention.*

C100 - Equal Remuneration Convention, 1951 (No. 100)**Observation 2017**

The Committee notes that the Government's report contains no reply to its previous comments. It is therefore bound to repeat its previous comments initially made in 2016. The Committee also notes that the Government had been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

Articles 1 and 2 of the Convention. Equal remuneration for work of equal value. Legislation. In its previous comments, the Committee noted that section 5bis of the Labour Code establishes, in general, the principle of equality between men and women and that the Government had indicated that the general regulations of the public service and the general regulations pertaining to employees in public enterprises also recognized this principle. It reminded the Government that although these provisions are important in the context of equal remuneration, they are not sufficient to give full effect to the principle of the Convention. The Committee notes that the Government's report once again refers to the abovementioned provisions of national legislation. It also notes that article 40 of the new Constitution, adopted on 26 January 2014, stipulates that "all citizens have the right to work in favourable conditions and with a fair living wage". The Committee draws the Government's attention to the fact that if the right to a fair living wage or the general prohibition on sex-based wage discrimination constitute important prerequisites for the application of the principle of the Convention, they are not sufficient as they do not capture the concept of "work of equal value" (see 2012 General Survey on the fundamental Conventions, paragraph 676). *Recalling that it considers that the full and complete recognition in law of the principle of equal remuneration between men and women for work of equal value is of utmost importance to ensure the effective application of the Convention, the Committee trusts that the Government will take measures to fully integrate the principle of the Convention in its national legislation, in collaboration with the employers' and workers' organizations, particularly within the context of legislative reforms following the adoption of the new Constitution. The Committee requests the Government to ensure that the new legal provisions cover not only equal remuneration between men and women for work of equal value or performed in the same conditions, but also for work of an entirely different nature which is nevertheless of equal value within the meaning of the Convention. It requests the Government to provide information on any progress made in this regard, as well as on the manner in which the application of the principle of the Convention is ensured in practice. It also requests the Government to provide copies of any administrative or judicial decisions issued on the matter.*

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

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

C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111)**Observation 2017**

The Committee notes that the Government's report contains no reply to its previous comments. It is therefore bound to repeat its previous comments initially made in 2016. The Committee also notes that the Government has been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

Articles 2 and 3 of the Convention. Equality of opportunity and treatment for men and women. For several years, the Committee has been requesting the Government to provide information on measures taken to promote real equality of opportunities between men and women in employment and occupation, particularly by combating segregation between men and women in the labour market and stereotypes concerning the capacities and aspirations of women. The Committee notes the Government's indication once again in its report that section 5bis of the 1994 Labour Code generally prohibits discrimination on the basis of sex. The Committee also notes that the new Constitution, adopted on 26 January 2014, provides that the State undertakes to protect, support and improve women's rights, and that it guarantees equal opportunity between men and women when taking on different responsibilities in all areas (article 46). While noting the Government's indication that it is continuing its efforts to more effectively integrate women into economic life, the Committee notes that, despite the fact that school attendance rates in secondary and higher education are higher for girls than for boys, and that two-thirds of higher education graduates are girls (67 per cent in 2014), women's participation in the economy remains particularly limited. The Committee notes that, according to statistics of the National Statistics Institute (INS), in the second quarter of 2016, while women represented 50.9 per cent of the working-age population, their already low rate of participation in the workforce further decreased between 2014 and 2016, falling from 28.6 per cent to 26 per cent. Women's unemployment rate is nearly twice as high as men's (23.5 per cent compared with 12.4 per cent for men). The Committee notes that the rate of unemployment is highest for women who have graduated from higher education (40.4 per cent compared with 19.4 per cent for men). With reference to its comments relating to the application of the Equal Remuneration Convention, 1951 (No. 100), the Committee notes that women are particularly concentrated in traditionally female-dominated areas of study, such as the arts, which offer few or no job prospects or lead them to occupy lower-paid jobs. The Committee also notes that only 6.5 per cent of heads of enterprises are women and that women are barely represented in positions of responsibility (30.8 per cent of senior positions). *The Committee requests the Government to provide detailed information on the nature and impact of measures taken to promote secondary and higher education for girls and boys in non-traditional areas of study which offer real job prospects, and to combat gender stereotypes and occupational gender segregation with a view to promoting women's participation in the labour market by enabling them to access a wider range of occupations, particularly occupations performed predominantly by men, and at senior and management levels. The Committee requests the Government to provide updated statistics on the situation of men and women in different economic activities, in both the private and public sector, specifying the proportion of men and women in management positions.*

Discrimination on grounds other than sex. For many years, the Committee has been noting with regret the absence of information from the Government on measures taken to combat discrimination based on race, colour, national extraction, religion, political opinion and social origin in the context of a national policy of equality of opportunity and treatment, in accordance with the provisions of the Convention. In its previous comments, the Committee noted the adoption of the new Constitution, which, notably, provides for the equality of citizens before the law without discrimination (article 21) and provides that all citizens have the right to decent working conditions and fair pay (article 40). The Committee notes with *concern* that the Government's report still does not contain any information on measures taken or envisaged with a view to expressly prohibiting all discrimination on grounds other than sex, set out in *Article 1(1)(a)* of the Convention. It is therefore bound to recall that the purpose of the Convention is to protect all persons against discrimination in the field of employment and occupation, on the basis of race, colour, sex, religion, political opinion, national extraction or social origin. Noting that the new Constitution does not appear to afford protection against discrimination for the country's citizens, the Committee draws the Government's attention to the fact that the Convention applies to all workers, both nationals and non-nationals, in all sectors of activity, in the public and the private sectors, and in the formal and informal economy (see 2012 General Survey on the fundamental Conventions, paragraph 733). *Given that the elimination of discrimination in employment and occupation requires the development and implementation of a national policy of equality of opportunity and treatment in multiple areas, the Committee urges the Government to provide detailed information on:*

- (i) measures taken or envisaged, in collaboration with the workers' and employers' organizations, to expressly prohibit all discrimination on the basis of race, colour, national extraction, religion, political opinion or social origin in law and practice;*
- (ii) awareness-raising and training activities conducted for workers and employers, and their organizations, as well as for labour inspectors and*

judges to ensure better knowledge and understanding of the provisions of the Convention and to thereby foster equality of opportunity and treatment in employment and occupation in practice; and

·(iii) the number and nature of cases of discrimination examined by labour inspectors; and to send copies of any administrative or judicial decisions issued on this matter.

·The Committee reminds the Government in this regard that it may avail itself of the technical assistance of the International Labour Office.

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

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

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

Observation 2017

Article 3 of the Convention. Worst forms of child labour. Clauses (a) and (d). Forced or compulsory labour and hazardous work. Child domestic workers. In its previous comments, the Committee noted that a high number of children are victims of sexual abuse in Tunisia, particularly those engaged in domestic work.

The Committee notes the Government's indication in its report that the study entitled "Monitoring the situation of children and women: Multiple indicator cluster survey", conducted in 2011–12, shows that, among children aged between five and 14 years, 3 per cent are engaged in work, essentially in household work. The prevalence of children engaged in work is higher as they grow older, with 6 per cent of children aged 14 years being engaged in work. The Committee also notes the study entitled "Child domestic workers in Tunisia" (ILO, 2017). According to this study, although the law establishes the minimum age for entry into the labour market at 16 years (section 53 of the Labour Code), many children, and particularly young girls, are economically exploited as domestic workers at ages lower than 16. All of them work without written contracts and have no social coverage. They work around ten hours a day. Daily working hours amount to 12 for nearly 20 per cent of girls and exceed 13 hours for nearly 14 per cent of them. The younger the girls, the more likely they are to be called upon to work for periods exceeding ten hours. One third of girls aged under 12 years and half (52.1 per cent) of those between the ages of 12 and 16 years indicate that they have worked more than ten hours per day, while nearly 75 per cent of girls aged over 16 years indicate that they work less than ten hours a day (page 47). The study emphasizes that the extensive hours of work amounting to the exploitation of child domestic workers, does not constitute a brief episode in their lives. The children interviewed spent more than two years on average with the same employer. In certain cases, the exploitation would last up to eight years (page 48). The study also shows that girl domestic workers are often victims of health problems related to the arduous nature and long hours of work, and highlights the dangers to which children may be exposed in the performance of various household tasks and other types of work performed in the employer's house (page 96). Finally, the study stresses the absence of a clear strategy to combat child domestic work in Tunisia, as well as, the obstacles of a legal nature, essentially related to the access of the places where children work, which impairs their action (page 70).

The Committee expresses *deep concern* at the exploitation of children under 18 years of age performing domestic work in Tunisia in hazardous conditions, which could result in situations of forced labour. The Committee draws the Government's attention to the fact that domestic work carried out by children under conditions of forced labour or under particularly arduous and hazardous conditions, is one of the worst forms of child labour under the terms of *Article 3(a) and (d)* of the Convention, and shall be eliminated as a matter of urgency. *In this regard, the Committee urges the Government to take immediate and effective measures to ensure the full protection of children under 18 years of age against exploitation in domestic work under hazardous conditions or conditions amounting to forced labour. It requests the Government to provide information on the specific measures adopted to address the situation of child domestic workers, particularly as a follow-up to the recommendations of the 2017 study referred to above, and the results achieved in this regard.*

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

C105 - Abolition of Forced Labour Convention, 1957 (No. 105)**Observation 2017**

Article 1(a) of the Convention. Penal sanctions involving compulsory labour as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system. For a number of years, the Committee has been referring to the following provisions of the national legislation, under which penal sanctions involving compulsory prison labour, by virtue of section 62 of the Prisons Regulations, may be imposed:

- the Public Order and Security Act, No. 20 of 1967, empowering the executive to restrict an individual's association or communication with others, independently of the commission of any offence and subject to penalties involving compulsory labour; and
- sections 54(2)(c), 55, 56 and 56(a) of the Penal Code, empowering the minister to declare any combination of two or more people an unlawful society and thus render any speech, publication or activity on behalf of, or in support of, such a combination, illegal and punishable with imprisonment (involving an obligation to perform labour).

The Committee requested the Government to take the necessary measures to ensure that the above provisions are amended or repealed so as to ensure the compatibility of the legislation with the Convention.

The Committee notes the Government's indication in its report that both the Public Order and Security Act and the Penal Code are in conformity with the Convention.

However, the Committee notes the statements made by a certain number of governments in the 2016 report of the Working Group on the Universal Periodic Review (report to the UN Human Rights Council (HRC)), recommending the amendment of the Public Order Management Act of 2013, in order to ensure full respect of freedom of association and peaceful demonstration (A/HRC/34/10, paragraphs 115.101, 117.8, 117.18 and 117.52). Moreover, the Committee notes that, according to the Report of the HRC of 2017, a certain number of stakeholders regretted that Uganda failed to fully implement its commitments from the first Universal Periodic Review regarding freedom of expression, peaceful assembly and association. They also expressed concern over physical assaults on journalists and the harassment of political activists as well as human rights defenders, and urged for reforms to the Penal Code, the Press and Journalists Act and the Public Order Management Act of 2013 (A/HRC/34/2, paragraphs 688, 692, 693 and 694).

The Committee further notes with *concern* that penalties of imprisonment (involving compulsory prison labour) may be imposed under the following provisions of the Public Order Management Act, 2013: section 5(8) (disobedience of statutory duty in case of organizing a public meeting without any reasonable excuse); and section 8(4) (disobedience of lawful orders during public meetings).

In this regard, the Committee is bound to recall that *Article 1(a)* of the Convention prohibits all recourse to sanctions involving an obligation to perform labour, as a means of political coercion or as a punishment for holding or expressing political views, or views ideologically opposed to the established political, social or economic system. It also points out that the protection conferred by the Convention is not limited to activities expressing or manifesting opinions diverging from established principles: even if certain activities aim to bring about fundamental changes in state institutions, such activities are covered by the Convention, as long as they do not resort to, or call for, violent means to these ends. *In light of the above considerations, the Committee urges the Government to take the necessary measures to ensure that the abovementioned provisions of the Public Order and Security Act, No. 20 of 1967, the Penal Code, and the Public Order Management Act of 2013 are amended or repealed so as to ensure that no prison sentence entailing compulsory labour can be imposed on persons who, without using or advocating violence, express certain political views or opposition to the established political, social or economic system. It requests the Government to provide information on measures taken in this regard.*

Article 1(d). Penal sanctions involving compulsory labour as a punishment for having participated in strikes. The Committee previously noted that the Labour Disputes (Arbitration and Settlement) Act, 2006, contains provisions concerning the resolution and settlement of labour disputes which could lead to the imposition of compulsory arbitration procedures, thus making strikes or other industrial action unlawful. Strikes may be declared unlawful, for example, where the minister or the labour officer refers a dispute to the Industrial Court (section 28(4)) or where the Industrial Court makes an award which has come into force (section 29(1)). The organization of strikes in these circumstances is punishable with imprisonment (involving compulsory prison labour) pursuant to sections 28(6), 29(2) and (3) of the Act, and the Committee accordingly reminded the Government that such penalties were not in conformity with the Convention. In addition, the Committee noted that, under section 34(5) of the Labour Disputes (Arbitration and Settlement) Act, 2006, the minister may refer disputes in essential services to the Industrial Court, thus making illegal any collective withdrawal of labour in such services, with violation of this prohibition being punishable with imprisonment (involving an obligation to perform labour) (section 33(1) and (2) of the Act). The Committee requested the Government to take the necessary measures to bring the abovementioned provisions of the Labour Disputes (Arbitration and Settlement) Act, 2006 into conformity with the Convention.

The Committee notes the absence of information on this point in the Government's report. *The Committee therefore once again requests the Government to take the necessary measures to bring the abovementioned provisions of the Labour Disputes (Arbitration and Settlement) Act, 2006, into conformity with the Convention, either by removing the penalties of imprisonment involving compulsory labour, or restricting their scope to essential services in the strict sense of the term (namely those services, the interruption of which would endanger the life, personal safety or health of the whole or part of the population), or to situations of acute national crisis. The Committee requests the Government to provide information on measures taken in this regard.*

C122 - Employment Policy Convention, 1964 (No. 122)**Observation 2017**

Articles 1 and 2 of the Convention. Coordination of employment policy with poverty reduction. In its previous comments, the Committee requested the Government to provide information on the results achieved and the difficulties encountered in attaining the employment policy objectives set out in its National Employment Policy (NEP). The Committee notes the detailed information contained in the evaluation of the implementation of the NEP conducted by the Ministry of Finance, Planning and Economic Development. According to the evaluation findings, the overarching development agenda addressed the most pressing employment challenges, but did not effectively translate into a coherent implementation strategy due to inadequate coordination across the government, inadequate labour market information, conflicting policy objectives and a bias towards short-term priorities over longer-term sustainable progress. In addition, the National Employment Council, the governmental body responsible for coordinating, guiding, streamlining and monitoring efforts towards implementation of the NEP, has not yet been established. The Committee notes that the country has registered a modest increase in total employment in recent years and that lower-productivity activities, such as subsistence agriculture and petty trade have expanded. In this regard, the Committee observes that the percentage of the formal and informal labour engaged in low productivity agricultural activities increased from 69 per cent in 2009 to 72 per cent in 2012–13. Moreover, according to the Uganda Bureau of Statistics (UBOS), the rate of unemployment under the newly revised definition (which counts subsistence farmers as employed persons) was 9.4 per cent in 2012–13, while the underemployment rate during the same period was 8.9 per cent, being especially common in the agricultural sector. Furthermore, while the percentage of people living below the poverty line decreased from 24.3 per cent in 2009–10 to 19.7

per cent in 2012–13, significant disparities in poverty levels persist across regions and between rural and urban areas, with the highest levels of poverty reported in Northern Uganda (44 per cent). The Committee notes the adoption of the second National Development Plan 2015/16–2019/20 (NDPII) in June 2015, whose principal objective is “strengthening the country’s competitiveness for sustainable wealth creation, employment and inclusive growth”. *The Committee requests the Government to provide information on the results achieved and the challenges encountered in attaining the employment policy objectives set out in the second National Development Plan (NDPII), including results of the programmes established to stimulate growth and economic development, raise living standards, respond to labour force needs and address unemployment and underemployment. The Committee further requests the Government to continue providing up-to-date information, including statistical data disaggregated by economic sector, sex and age, on the current situation and trends regarding the active population, employment, unemployment and underemployment throughout the country and in the different regions.*

Promotion of youth employment. The Committee previously requested the Government to provide information on the results of the programmes adopted concerning education and vocational training for young persons as well as on efforts made to improve the employment situation for young persons. The Committee notes that, according to the NDPII, young persons make up 21.3 per cent of the total population and 57 per cent of the labour force. According to the UBOS, the number of young persons in employment increased from 63.1 per cent in 2013 to 64.5 per cent in 2015; however, the unemployment rate for young persons also increased from 9.7 per cent in 2013 to 14.7 per cent in 2015. Moreover, the vast majority of all young workers (92 per cent) were engaged in informal employment in 2015. The Committee notes that, in response to high rates of unemployment and poverty among young persons, in December 2016 the Government launched the Youth Livelihood Programme (YLP) under the Ministry of Labour, Gender and Social Development (MLGSD) and with the participation of key stakeholders. The YLP provides young persons with vocational skills and interest-free loans to assist them in becoming self-employed. In relation to the education of the labour force, the Committee notes that the school-to-work transition survey (SWTS–2015) developed by the ILO shows that 68 per cent of young Ugandans not in school had only completed a primary education, while only 3.4 per cent had completed a tertiary education. In this regard, the Committee notes the adoption of the National Adult Literacy Policy 2014 and Action Plan (2011/12–2015/16) intended to guide the provision and coordination of adult literacy services. In addition, during 2009–13, enrolment in formal business, technical, vocational education and training (BTJET) increased by 73 per cent (with 66 per cent men and 34 per cent women). Enrolment in higher education increased by 18 per cent, with a significant increase in female enrolment. Nevertheless, according to the SWTS–2015 findings, young persons with a tertiary level of education had higher levels of unemployment (12 per cent) than the national average. Despite the adoption of the BTJET Strategic Plan 2011–20 in 2011, persistent challenges highlighted by the NDPII in the area of vocational education and training include: inadequate skills to support increased production and expansion; poor work readiness of many young people leaving formal education and entering the labour market; inadequate linkages between employers and workplace learning; and lack of literacy. *The Committee requests the Government to provide detailed information on the manner in which the implementation of the Youth Livelihood Programme (YLP) and other programmes providing education and vocational training for young persons has promoted access for young people to full, productive and freely chosen employment. The Committee also requests the Government to provide information on the measures envisaged or adopted to reduce the unemployment rate of young people, particularly those with higher levels of education, and to reduce the percentage of young people in informal employment.*

Promotion of women’s employment. In its previous comments, the Committee requested the Government to provide information on the measures adopted to improve job creation and increase the labour market participation of women. The Government reports that, according to data derived from the Uganda National Household Survey (UNHS) data 2012–13, 45 per cent of the total employed population were women, but only 39.1 per cent were in wage employment. The NDPII indicates that there has been improvement in the number of women in political leadership and in terms of gender parity in enrolment of boys and girls at the primary school level, in addition to increased ownership of land by women. The Committee also notes the prioritization of gender equality in Uganda’s Vision Statement 2020 as a cross-cutting enabler for socio-economic transformation, and the implementation of the Uganda Women Entrepreneurship Programme (UWEP) under the MLGSD, with the aim of contributing to the creation of self-employment and household wealth through activities such as the mobilization and sensitization of communities, training and capacity development, and provision of access to credit, appropriate technology and markets. The Committee notes, however, that despite the progress made, the conditions sustaining gender inequality persist: gender disparities in access and control over productive resources such as land (only 27 per cent of registered land is owned by women); the limited share of women in wage employment in the non-agricultural sector; higher rates of illiteracy among the female labour force than the male labour force (27.6 per cent of women and 12.3 per cent of men have no formal schooling).

Recalling the Committee’s 2014 comments under the Equal Remuneration Convention, 1951 (No. 100), concerning the occupational segregation of women and its contribution to the gender pay gap, the Committee requests the Government to provide information on the measures taken or envisaged to combat the persistence of occupational segregation on the basis of sex (both vertical and horizontal) and to increase the labour force participation rate of women in the formal labour market.

Informal economy. In its previous comments, the Committee requested the Government to provide information on the measures adopted or envisaged to extend access to justice, property rights, labour rights and business rights to the informal economy workers and business, and to indicate the manner in which Government initiatives relating to micro-enterprises had contributed to improving working conditions in the informal economy. The Committee notes the growing importance of the informal economy, which has absorbed four out of five new entrants into the labour market. According to the SWTS–2015, 92 per cent of young workers were involved in informal employment (93 per cent women and 91 per cent men). The rate of informal employment in rural areas was higher (94 per cent) than that in urban areas (87 per cent). The Government indicates, moreover, that the informal economy is characterized by widespread labour right violations and decent work deficits. In particular, workers in the informal sector are excluded from social security protection and there are important gaps in terms of social dialogue. The Committee notes that the majority of micro-, small and medium-sized enterprises (MSMEs), operate informally. In this respect, the Committee notes the adoption, in consultation with stakeholders, of the Micro-, Small and Medium Enterprise (MSME) Policy in June 2015, which provides opportunities for informal MSMEs to increase their expertise through skills upgrading and certification, and encourages them to formalize their operations in order to enjoy greater legitimacy through government protection. *Noting that a growing proportion of the labour force is employed in the informal economy, the Committee requests the Government to provide information on the efforts made to extend access to justice, property rights, labour rights and business rights to informal economy workers and business (see General Survey of 2010 on employment instruments, paragraph 697). It also requests the Government to indicate the manner in which the Micro-, Small and Medium Enterprise (MSME) Policy has contributed to improving working conditions in the informal economy, particularly for young persons.*

Article 3. Participation of the social partners. The Committee notes that the NDPII was formulated in collaboration with stakeholders, including ministries, local governments, the private sector, civil society organizations and international agencies. In addition, the NDPII emphasizes that the Government should take overall responsibility for its implementation with the participation of the private sector, development partners, the civil society and other non-state actors. *The Committee requests the Government to provide detailed information on the involvement of the social partners in the implementation of the second National Development Plan (NDPII).*

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

Observation 2017

Article 1 of the Convention. National policy designed to ensure the effective abolition of child labour and application of the Convention in practice. In its previous comments, the Committee noted that, according to the National Labour Force and Child Activities Survey 2011–12 of July 2013, a total of 2.009 million children aged 5–17 years were in child labour (approximately 16 per cent of all children). Moreover, a total of 507,000 children aged 5–17 years were found in hazardous work (25 per cent of the children in child labour). The Committee also noted that the Government acknowledged the problem of child labour in the country and recognized its dangers. It took due note of the Government's indication that the National Action Plan for the elimination of the worst forms of child labour in Uganda (NAP) was launched in June 2012. This NAP is a strategic framework that will set the stage for the mobilization of policy-makers and for awareness raising at all levels, as well as provide a basis for resource mobilization, reporting, monitoring, and evaluation of performance and progress of the interventions aimed at combating child labour. The Committee requested that the Government provide detailed information on the implementation of the NAP and its impact on the elimination of child labour.

The Committee notes the Government's information in its report that the NAP is in the process of being reviewed by the Government with support from the ILO. It also notes, from the ILO–IPEC field office, that a total of 335 children (156 girls and 179 boys) have been withdrawn from child labour and were given skills and livelihood training. Moreover, the child labour agenda has been promoted through the Education Development Partners Forum, Stop Child Labour Partners Forum and other national forums within the education and social development sectors. The Committee finally notes from the 2016 UNICEF Annual Report on Uganda that 7,226 children aged 5–17 years were withdrawn from child labour (page 28). While noting the measures taken by the Government, the Committee must express its **concern** at the number of children involved in child labour in the country, including in hazardous work. **The Committee once again urges the Government to strengthen its efforts to ensure the effective elimination of child labour, especially in hazardous work. In this regard, it requests that the Government provide detailed information on the implementation of the reviewed NAP, once adopted. It also requests that the Government supply information on the application of the Convention in practice, particularly statistics on the employment of children under 14 years of age.**

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

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

Observation 2017

Articles 2 and 5(1) of the Convention. Effective tripartite consultations. In its 2016 observation, the Committee reiterated its request that the Government provide information on the consultations held within the National Tripartite Council and the other tripartite bodies on the matters set out in *Article 5(1)(a)–(e)* of the Convention. The Government indicates in its report that it has constituted a national task force on the review of the application of Conventions and reports on international labour standards to address the issues raised by the Committee in its previous reports. It adds that consultations were held on international labour standards covered by *Article 5(1)* of the Convention and on the implementation of the Decent Work Country Programme, minimum wages, and matters related to the Industrial Court. **The Committee once again requests the Government to provide specific information on the content and outcome of tripartite consultations held within the National Tripartite Council, as well as other tripartite bodies on all matters concerning international labour standards as set out in Article 5(1)(a) through (e) of the Convention, in particular replies to questionnaires on Conference agenda items (Article 5(1)(a)); proposals to be made to the competent authority or authorities in connection with the submission of instruments adopted by the Conference to Parliament (Article 5(1)(b)); the re examination at appropriate intervals of unratified Conventions and Recommendations to which effect has not yet been given (Article 5(1)(c)); and reports to be presented on the application of ratified Conventions (Article 5(1)(d)).**

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

Observation 2017

Article 3 of the Convention. Worst forms of child labour. Clause (b). Use, procuring or offering of a child for prostitution. The Committee previously requested the Government to take the necessary measures to ensure that the procuring or offering of boys under 18 years of age for prostitution is prohibited, to impose criminal responsibility on clients who use boys and girls under 18 years of age for prostitution, and to ensure that boys and girls under 18 years of age who are used, procured or offered for prostitution are treated as victims rather than offenders. The Committee noted that the Director of the Directorate of Public Prosecutions had indicated that efforts were being made to amend the Children's Act of 2000 to fully comply with the Convention on the prohibition of the use, procuring or offering of children for prostitution.

The Committee notes with **satisfaction** that section 8A of the Children's (Amendment) Act of 2016 provides that a person shall not engage a child in any work or trade that exposes the child to activities of a sexual nature, whether remunerated or not. It notes that the perpetrator is liable to a fine not exceeding one hundred currency points or to a term of imprisonment not exceeding five years.

Clause (d). Hazardous types of work. Children working in mines. The Committee observes that, according to the UNICEF Situation Analysis of 2015, the Karamoja region has a high incidence of child labour in hazardous mining conditions (page 13). The Committee also observes, from the UNICEF Annual Report of 2016, that 344 girls and 720 boys were removed from the worst forms of child labour, such as mining, as a result of the support of the Ministry of Gender, Labour and Social Development to the strategic plan for the national child helpline. Moreover, the Committee notes that section 8 of the Children's (Amendment) Act of 2016 prohibits hazardous work, and that the list of hazardous occupations and activities in which the employment of children is not permitted (first schedule of the Employment of Children Regulations of 2012) includes the prohibition of children working in mining. The Committee notes with **concern** the situation of children working in mines under particularly hazardous conditions. **The Committee urges the Government to take the necessary measures to ensure the effective application of the Children's (Amendment) Act of 2016 and of the Employment of Children Regulations of 2012, so as to prevent children under 18 years of age from working in mines, and to provide the necessary and appropriate direct assistance for their removal.**

Article 7(2). Effective and time-bound measures. Clause (d). Identifying and reaching out to children at special risk. 1. Orphans and vulnerable children. The Committee previously noted the Government's information that a range of factors has contributed to the problem of child labour, such as orphanhood arising from the HIV/AIDS pandemic. The Committee noted that orphans and vulnerable children (OVCs) in Uganda were recognized in both the Policy on orphans and other vulnerable children and the National Strategic Plan on OVCs. The Committee also noted that the policies and activities of the National Action Plan on Elimination of the Worst Forms of Child Labour in Uganda 2013–17 (NAP) include orphans and HIV/AIDS affected persons in its target groups. However, noting with concern the large number of children orphaned as a result of HIV/AIDS, the Committee urged the Government to intensify its efforts to ensure that such children are protected from the worst forms of child labour.

The Committee notes the absence of information on this point in the Government's report. The Committee however notes that, according to a report by the Uganda AIDS Commission, entitled: "The Uganda HIV and AIDS country progress report: July 2015–June 2016", approximately 160,000 OVCs received social support services and a mapping of OVC actors was conducted, among other achievements. The Committee also notes that the Second National Development Plan 2015/16–2019/20 outlines two programmes to support OVCs: the SUNRISE–OVC (Strengthening the Ugandan National Response for Implementation of Services for OVCs), and the SCORE (Strengthening Community OVC Response). While taking due note of the strategic plans developed by the Government

and the decrease in the number of OVCs, the Committee notes with *concern* that there are still approximately 660,000 HIV/AIDS orphans in Uganda, according to UNAIDS estimates for 2015. *Recalling that children orphaned as a result of HIV/AIDS and other vulnerable children are at particular risk of becoming involved in the worst forms of child labour, the Committee urges the Government to strengthen its efforts to protect these children from the worst forms of child labour. It requests the Government once again to provide information on specific measures taken in this respect, particularly in the framework of the Policy on orphans and other vulnerable children, the National Strategic Plan on OVCs, the SUNRISE-OVC and the SCORE, and the results achieved.*

2. *Child domestic workers.* The Committee previously noted that the list of hazardous occupations and activities prohibits the engagement of children under 18 years of age in several activities and hazardous tasks in the sector of domestic work. However, the Committee noted that, according to the National Labour Force and Child Activities Survey 2011–12 of July 2013, approximately 51,063 children, that is 10.07 per cent of the number of children aged 5–17 years engaged in hazardous work in Uganda, are domestic housekeepers, cleaners and helpers. In this regard, the Committee observed that domestic workers form a group targeted by the NAP, and requested the Government to provide information on the impact of the NAP on the protection of child domestic workers.

The Committee notes the absence of information from the Government in this regard. *Recalling that children in domestic work are particularly vulnerable to the worst forms of child labour, including hazardous work, the Committee once again requests the Government to provide information on the impact of the NAP on the protection of child domestic workers, particularly the number of child domestic workers engaged in hazardous work who have benefited from initiatives taken in this regard.*

3. *Refugee children.* The Committee observes that, according to the UNICEF Uganda situation report of 31 May 2017, there are over 730,000 refugee children in Uganda, among more than 1.2 million refugees. The Committee also observes from the joint Updated regional framework for the protection of South Sudanese and Sudanese refugee children (July 2015–June 2017), developed by UNHCR, UNICEF and NGOs, that South Sudanese and Sudanese refugee children are subjected to child labour in Uganda (page 5). The Committee finally notes that a Uganda Solidarity Summit on Refugees took place in Kampala in June 2017 to showcase the Uganda model of refugee protection and management, to highlight the emergency and long-term needs of the refugees and to mobilize resources. *While acknowledging the difficult refugee situation prevailing in the country and the efforts provided by the Government, the Committee strongly urges the Government to take effective and time-bound measures as a matter of urgency to specifically protect refugee children from the worst forms of child labour and to provide the necessary and appropriate direct assistance for their removal and for their rehabilitation and social integration. It requests the Government to provide information on the measures taken in this regard.*

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

C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)**Observation 2017**

The Committee notes the Government's reply in relation to the observations of the International Trade Union Confederation (ITUC) of 2012 concerning the dismissal of protesting miners and the decision of the High Court of 30 March 2011 (2006/HK/385) ruling in favour of the dismissed workers. The Committee notes the observations of the ITUC, received on 1 September 2017, concerning legislative matters and new allegations of anti-union dismissals in the mining industry as well as harassment of unionized university staff members. *Recalling that acts of harassment and intimidation carried out against workers or their dismissal by reason of trade union membership or legitimate trade union activities seriously violate the principles of freedom of association enshrined in the Convention, the Committee requests the Government to provide its comments in this regard.*

Articles 1–4 of the Convention. Adequate protection against acts of anti union discrimination and promotion of free and voluntary collective bargaining. In its previous comments, the Committee had noted the adoption of Industrial and Labour Relations (Amendment) Act No. 8 of 2008 (ILRA) but that most of its comments had not been taken into account when reviewing the law and that they would be considered under the next review. However, the Committee notes that the Government in its last report failed to offer further information in this respect. The Committee thus recalls its previous comments on the following provisions of the ILRA:

--Section 85(3) of the ILRA provides that the court shall dispose of the matter before it (including disputes between an employer and an employee, as well as the matters affecting trade unions and collective bargaining rights) within a period of one year from the day on which the complaint or application is presented to it. The Committee had recalled that when allegations of violations of trade union rights are concerned, both the administrative bodies and the competent judges should be empowered to give a ruling rapidly. *While noting from the Government's report the attempts of the judiciary to reduce the backlog of cases within the one-year time frame, the Committee requests the Government to endeavour to take the necessary measures to shorten the maximum period within which a court should consider the matter and issue its ruling thereon.*

--Section 78(1)(a) and (c) and section 78(4) of the ILRA allow, in certain cases, either party to refer the dispute to a court or arbitration. In its previous comments the Committee had noted from the Government's report that the ILRA provisions relating to arbitration cater for the involvement of both parties. While taking note of the point of the Government that arbitration is by nature voluntary and consensual, the Committee wishes to reiterate that its comments refer specifically to the fact that both parties involved in the dispute need to accept the arbitration proceedings, for the latter to be voluntary. The Committee therefore cannot but recall that, in accordance with the principle of voluntary negotiation of collective agreements, arbitration imposed by legislation at the request of just one party is only acceptable in relation to public servants engaged in the administration of the State (*Article 6 of the Convention*), essential services in the strict sense of the term and acute national crises. *The Committee once again requests the Government to give consideration to amending the above provisions so as to ensure that arbitration in situations other than those mentioned above can take place only at the request of both parties involved in the dispute.*

The Committee firmly hopes that the necessary amendments to bring the Act into full conformity with the provisions of the Convention will be adopted in the very near future. Recalling that it can avail itself of the technical assistance of the Office, the Committee requests the Government to provide information on any progress achieved in this respect.

C138 - Minimum Age Convention, 1973 (No. 138)**Observation 2017****Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 106th Session, June 2017)**

The Committee notes the in-depth discussion on the application of the Convention by Zambia in the Committee on the Application of Standards at the 106th Session of the International Labour Conference in June 2017. The Committee notes that, while taking into account the legislative evolution of this case, the Conference Committee noted with concern that the national legislation does not define schoolgoing age and the age of completion of compulsory education. The Conference Committee called upon the Government to strengthen its efforts to ensure the elimination of child labour both in the formal and informal sectors of the economy, including under hazardous conditions; to take the necessary measures to ensure that the amended Education Act sets the age of completion of compulsory education at 15 years of age and is effectively implemented in practice; to provide detailed information on the implementation of Statutory Instrument No. 121 of 2013 on the prohibition of employment of children and young persons (hazardous labour); to strengthen the capacity of the district child labour committee and the labour inspectorate; and to pay special attention to the needs of girls and other vulnerable persons. Finally, the Conference Committee requested the Government to avail itself of ILO technical assistance to ensure the full and effective application of the Convention, including the adoption of a time-bound action plan, and to provide information on the measures taken in this regard for examination by the Committee of Experts in 2017.

The Committee notes that the Government's report has not been received. It hopes that the next report will contain full information on the matters raised in its previous comments initially made in 2016.

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 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*

Zambia

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 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.