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

Observations 2017

Regional file by country -

Asia and the Pacific

Afghanistan

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 implementation of the various measures taken by the Ministry of Labour, Social Affairs, Martyrs and Disabled (MoLSAMD) to prevent child labour, including: the National Child Labour Strategy, 2012, followed by a National Action Plan to prevent child labour in brick kilns; a National Strategy for the Protection of Children at Risk; and a National Strategy for Working Street Children, 2011. However, the Committee noted, that children in Afghanistan are engaged in child labour and often in hazardous conditions, including in agriculture, carpet weaving, domestic work, street work, and brick making. Moreover, 27 per cent of children between the ages of 5 and 17 years (2.7 million children) are engaged in child labour with a higher proportion of boys (65 per cent). Of this, 46 per cent are children between 5 and 11 years of age. At least half of all child labourers are exposed to hazardous working conditions such as dust, gas, fumes, extreme cold, heat or humidity. Moreover, 56 per cent of brick makers in Afghan kilns are children and the majority of these are 14 years of age and below.

The Committee notes that the Government's report contains no new information in this regard. The Committee once again notes with *concern* that a significant number of children under the age of 14 years are engaged in child labour, of which at least half are working in hazardous conditions. *The Committee therefore urges the Government to strengthen its efforts to ensure the progressive elimination of child labour in all economic activities, both in the formal and informal sectors, and requests that the Government provide information on the measures taken in this regard, as well as the results achieved.*

Article 2(1). Scope of application. The Committee noted that according to sections 5 and 13 of the Labour Law, read in conjunction with the definition of a "worker", the Law applies only to labour relations on a contractual basis and, therefore, that the provisions of the Labour Law did not appear to cover the employment of children outside a formal employment relationship, such as children working on their own account or in the informal economy.

Noting the absence of information provided in this regard in the Government's report, the Committee recalls that the Convention applies to all sectors of economic activity and covers all forms of employment and work, whether or not there is a contractual employment relationship. *The Committee therefore requests, once again, that the Government take the necessary measures to ensure that all children, including children working outside a formal employment relationship such as children working on their own account or in the informal economy, benefit from the protection laid down by the Convention. In this regard, the Committee encourages, once more, the Government to review the relevant provisions of the Labour Law in order to address these gaps as well as to take measures to strengthen the capacity and expand the reach of the labour inspectorate to the informal economy with a view to ensuring such protection in this sector.*

Article 7(1) and (3). Minimum age for admission to light work and determination of light work. The Committee previously noted that section 13(2) of the Labour Law sets 15 years as the minimum age for employment in light work in industries and section 31 prescribes a weekly working period of 35 hours for young persons between 15 and 18 years of age. It observed that the minimum age for light work of 15 years is higher than the minimum age for admission to employment or work of 14 years, specified by Afghanistan.

Noting the absence of information provided in this regard by the Government, the Committee once again draws the Government's attention to the fact that *Article 7(1)* of the Convention is a flexibility clause which provides that national laws or regulations may permit the employment or work of persons aged 13–15 years in light work activities which are not likely to be harmful to their health or development and not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority, or their capacity to benefit from the instruction received.

The Committee notes the lack of information contained in the Government's report and recalls once again that *Article 7(4)* permits member States who have specified a general minimum age for admission to employment or work of 14 years to substitute a minimum age for admission to light work of 12–14 years to that of the usual 13–15 years of age (see General Survey on the fundamental Conventions, 2012, paragraphs 389 and 391). *In view of the fact that a high number of children under 14 years of age are engaged in child labour in the country, the Committee once again requests that the Government regulate light work activities for children between 12 and 14 years of age to ensure that children who, in practice, work under the minimum age are better protected. The Committee also requests that the Government take the necessary measures to determine light work activities that children of 12–14 years of age are permitted to undertake and to prescribe the number of hours and conditions of such work, pursuant to Article 7(3) of the Convention.*

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

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 the in-depth discussion on the application of the Convention by Afghanistan in the Committee on the Application of Standards at the 106th Session of the International Labour Conference in June 2017.

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

Articles 3(a) and 7(2)(b) of the Convention. All forms of slavery or practices similar to slavery and effective and time-bound measures. Compulsory recruitment of children for use in armed conflict and providing the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour, and for their rehabilitation and social integration. In its previous comments, the Committee noted that the Law on prohibiting the recruitment of child soldiers criminalizes the recruitment of children under the age of 18 years into the Afghan Security Forces. The Committee also noted that a total of 116 cases of recruitment and use of children, including one girl, were documented in 2015. Out of these: 13 cases were attributed to the Afghan National Defence and Security forces; five to the Afghan National Police; five to the Afghan Local Police; and three to the Afghan National Army; while the majority of verified cases were attributed to the Taliban and other armed groups who used children for combat and suicide attacks. The United Nations verified 1,306 incidents resulting in 2,829 child casualties (733 killed and 2,096 injured), an average of 53 children were killed or injured every week. A total of 92 children were abducted in 2015 in 23 incidents.

In this regard, the Committee noted the following measures taken by the Government:

·-The Government of Afghanistan signed an Action Plan with the United Nations on 30 January 2011 to end and prevent the recruitment and use of children by the Afghan National Security Forces, including the Afghan National Police, Afghan Local Police and Afghan National Army.

·-A roadmap to accelerate the implementation of the Action Plan was endorsed by the Government on 1 August 2014.

·-The Government endorsed age-assessment guidelines to prevent the recruitment of minors.

·-In 2015 and early 2016, three additional child protection units were established in Mazar e Sharif, Jalalabad and Kabul, bringing the total to seven. These units are embedded in Afghan National Police recruitment centres and are credited with preventing the recruitment of hundreds of children.

The Committee notes that the Conference Committee recommended that the Government take measures as a matter of urgency to ensure the full and immediate demobilization of all children and to put a stop, in practice, to the forced recruitment of children into armed forces and groups. It further recommended the Government to take immediate and effective measures to ensure that thorough investigations and prosecutions of all persons who forcibly recruit children for use in armed conflict are carried out, and that sufficiently effective and dissuasive penalties are imposed in law and practice. Finally, the Conference Committee recommended the Government to take effective and time-bound measures to provide for the rehabilitation and social integration of children who are forced to join armed groups.

The Committee notes the IOE's indication that children are engaged in armed conflict in Afghanistan. The Committee notes the Government representative's indication to the Conference Committee that the Law on the Prohibition of Children's Recruitment in the Armed Forces (2014), along with other associated instruments, has helped prevent the recruitment of 496 children into national and local police ranks in 2017. Moreover, the Ministry of Interior, in cooperation with relevant government agencies, was effectively implementing Presidential Decree No. 129 which prohibits, among others, the use or recruitment of children in police ranks. Inter-ministerial commissions tasked with the prevention of child recruitment in national and local police have been established in Kabul and the provinces, and child support centres have been set up in 20 provinces, with efforts under way to establish similar centres in the remaining provinces. Finally, the Committee notes the Government's indication that the National Directorate of Security has recently issued Order No. 0555, prohibiting the recruitment of underage persons and that the Order is being implemented in all security institutions and monitored by national and international human rights organizations. *While acknowledging the complexity of the situation on the ground and the presence of armed groups and armed conflict in the country, the Committee requests the Government to continue its efforts in taking immediate and effective measures to put a stop, in practice, to the recruitment of children under 18 years by armed groups, the national armed forces and police authorities, as well as measures to ensure the demobilization of children involved in armed conflict. It once again urges the Government to take immediate and effective measures to ensure that thorough investigations and robust prosecutions of persons who forcibly recruit children under 18 years of age for use in armed conflict are carried out, and that sufficiently effective and dissuasive penalties are imposed in practice. Finally, it requests the Government to take effective and time-bound measures to remove children from armed groups and armed forces and ensure their rehabilitation and social integration, and to provide information on the measures taken in this regard and on the results achieved.*

Articles 3(b) and 7(2)(b). Use, procuring or offering of children for prostitution and providing the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. The Committee previously noted that concerns remained regarding the cultural practice of *bacha-bazi* (dancing boys), which involves the sexual exploitation of boys by men in power, including the Afghan National Defence and Security Forces' commanders. It also noted that there are many child victims of *bacha bazi,* particularly boys between 10 and 18 years of age who have been sexually exploited for long periods of time. The Committee further noted that some families knowingly sell their children into forced prostitution, including for *bacha-bazi.*

The Committee notes that the Conference Committee recommended the Government to take immediate and effective measures to eliminate the practice of *bacha-bazi.* It also recommended the Government to take effective and time bound measures to provide for the rehabilitation and social integration of children who are sexually exploited.

The Committee notes the Government representative's indication to the Conference Committee that the Child Protection Law has been submitted to Parliament for adoption and makes the practice of *bacha-bazi* a criminal offence. The Committee also notes the new Law on Combating Human Trafficking in Persons and Smuggling of Migrants of 2017 (Law on Human Trafficking of 2017). It notes that section 10(2) of this Law punishes the perpetrator of trafficking to eight years' imprisonment when the victim is a child or when the victim is exploited for the purpose of dancing. *The Committee urges the Government to take the necessary measures to ensure the effective implementation of the prohibition contained in section 10(2) of the Law on Human Trafficking of 2017. It requests the Government to provide information on the results achieved to effectively eliminate the practice of bacha-bazi, to remove children from this worst forms of child labour and to provide assistance for their rehabilitation and social integration. It also requests the Government to provide information on the adoption of the Child Protection Law, and its effective implementation.*

Article 7(2). Clauses (a) and (e). Preventing the engagement of children in the worst forms of child labour and taking into account the special situation of girls. Access to free basic education. The Committee previously noted the Government's statement that as a result of the past three decades of conflict, insecurity and drought, children and youth are the most affected victims, a majority of whom are deprived of proper education and training. The Committee noted that Afghanistan is among the poorest performers in providing sufficient education to its population. A large number of boys and girls in 16 out of 34 provinces had no access to schools by 2013 due to insurgents' attacks and threats that lead to the closure of schools. In addition to barriers arising from insecurity throughout 2015, anti-government elements deliberately restricted the access of girls to education, including closure of girls' schools and a ban on girls' education. More than 369 schools were closed partially or completely, affecting at least 139,048 students, and more than 35 schools were used for military purposes in 2015. Finally, the Committee noted the low enrolment rate of girls, in particular at the secondary school level, high dropout rates especially in rural areas owing to a lack of security in the journey to and from school, and the increased number of attacks on girls' schools and written threats warning girls to stop going to school by non-state armed groups.

The Committee notes the Government representative's statement at the Conference Committee that many households respond to poverty by taking their children out of school and forcing them into labour. The Government indicates that child labour is not only a law enforcement matter but a fundamental problem which requires a comprehensive understanding and a robust response mechanism. With a view to providing preschool support to children under the age of six, the Ministry of Labour, Social Affairs, Martyrs and Disabled has established over 366 local kindergartens which house over 27,000 children. The Government also indicates it is taking strong action against the exploiters as well as the families who knowingly force their children into prostitution and expects a sharp decline in the practice in the coming years. Finally, the Committee notes the Government's indication that school burnings and the imposition of bans in Taliban-controlled areas prevented girls and children from attending school. *While acknowledging the difficult situation prevailing in the country, the Committee urges the Government to take the necessary measures to raise awareness among households that education is key in preventing the engagement of children in the worst forms of child labour. Additionally, it once again urges the Government to take the necessary measures to improve the functioning of the education system and to ensure access to free basic education, including by taking measures to increase the school enrolment and completion rates, both at the primary and secondary levels, particularly of girls.*

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

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

Observation 2017

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

Articles 1 and 2 of the Convention. Legislative developments and enforcement. Gender equality. Federal. The Committee notes that in its observations the ACTU emphasizes the importance of maintaining coherent and effective legislative provisions with vigorous monitoring mechanisms in light of the findings of widespread discrimination in practice, in particular related to pregnancy and parental leave, in the national review undertaken by the Sex Discrimination Commissioner, on behalf of the Australian Human Rights Commission (AHRC). The ACTU points out that the adverse action provisions of the Fair Work Act 2009 are in need of strengthening and that they apply only to the extent the adverse treatment is a breach of the relevant State anti-discrimination law and therefore are subject to State-based inconsistencies and onerous burden of proof requirements. The Committee notes the Government's indication that the proposal to consolidate the five Commonwealth anti-discrimination Acts into a single comprehensive federal law was withdrawn and does not form a part of the current Government policy. Thus, the provisions of the Fair Work Act 2009 (sections 351 and 361) thus continue to be limited (in a way reflecting State-based inconsistencies) (as indicated above). The Government reports that amendments have been made to the Fair Work Act 2009 through the Fair Work Amendment Act 2012, the Fair Work Amendment Act 2013 and the Fair Work Amendment Regulation 2013 (No. 2). The Committee notes that many of these amendments respond to the recommendations made by the Review Panel of the Fair Work Act 2009 concerning family friendly provisions which the Committee addresses in its observation under the Workers with Family Responsibilities Convention, 1981 (No. 156). The Committee also refers to its previous observation under the Equal Remuneration Convention, 1951 (No. 100), where it noted the amendments to the Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 (No. 1) which are aimed at streamlining workplace gender equality reporting requirements from the 2015–16 reporting period onwards while still meeting the gender policy objectives of the legislation. According to the ACTU, in addition to reducing reporting on remuneration, information relating to the number of applications and interviews conducted and the number of requests and approval of leave is no longer collected. *The Committee asks the Government to continue to report on amendments made to the Fair Work Act 2009, its application in practice particularly related to any findings of discrimination. The Government is also asked to report on the application in practice of the federal anti-discrimination laws. The Committee also asks the Government to report on any developments relating to the adoption of comprehensive anti-discrimination legislation at the federal level. Further to its previous observation under Convention No. 100, the Committee asks the Government to provide information on any evaluation undertaken of the amendments made to the Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 (No. 1) and their impact in light of the requirements of this Convention, in particular, that effective equality of opportunity and treatment be ensured.*

States. Victoria. Discrimination based on religion. The Committee recalls from its previous comment the concern raised over sections 82(2) and 83(2) of the *Victoria* Equal Opportunity Act 2010, which provides exemptions to the prohibition of discrimination for religious bodies and schools that conform to the doctrines, beliefs or principles of a religion, or when it is reasonable to avoid injury to the religious sensitivities of adherents to the religion. The Committee notes the Government's reply that the Victorian Government is committed to amending the religious exemptions in the Equal Opportunity Act 2010 to reinstate an "inherent requirements" test for employment by a religious body or religious school. *The Committee asks the Government to provide information on any amendments to the Equal Opportunity Act 2010 with a view to bringing the provisions regarding religious exemptions into conformity with the Convention by establishing an "inherent requirements" test.*

Discrimination on the basis of race, colour and social origin. Indigenous peoples. Federal. The Committee recalls that for a number of years it has been raising issues in its observations related to restrictions on the rights of indigenous peoples to land and property recognition and use. The Committee notes from the Government's report that the Council of Australian Governments (COAG) announced in 2014 that it would conduct an urgent investigation into indigenous land administration and use, to enable traditional owners to develop their land and to provide jobs and economic advancement for indigenous peoples, and that an Expert Indigenous Working Group was established in 2015 to provide guidance to the investigation, including through leadership on consultations and engagement with indigenous stakeholders. The Committee notes that, on 11 December 2015, the COAG published its report on its investigation into indigenous land administration. The investigation identified that indigenous land can and does support economic development and that the land systems are in a period of transition from a focus on recognition of rights to the use of rights for economic development. The report identifies five key areas where governments should focus their efforts: gaining efficiencies and improving effectiveness in the process of recognizing rights; supporting bankable interests in land; improving the process for doing business on indigenous land and land subject to native title; investing in the building blocks of land administration; and building capable and accountable land holding and representative bodies. The report makes six key recommendations to take forward this agenda, including many proposed amendments to the Native Title Act 1993. The Committee also notes that the AHRC facilitated an indigenous leaders' round table on property rights, in May 2015, in Broome to better enable economic development within the indigenous estate. The Committee notes that the National Anti-Racism Strategy includes a nationwide public awareness campaign against racism and the promotion of anti-racism initiatives including a training tool on systematic racism against Aboriginal and Torres Strait Islander peoples and a Workplace Cultural Diversity Tool. Recalling that the Racial Discrimination Act applies to discrimination against indigenous peoples in employment and occupation, the Committee notes the Government's indication that it is unaware of any significant indigenous employment discrimination cases brought under the Act. The Committee places importance on the new emphasis on the use of indigenous rights in land for the promotion of economic development including employment and occupational opportunities of indigenous peoples. *The Committee asks the Government to provide specific information on the follow-up implementation to the COAG Report recommendations and the Broome consultations and any other steps taken to ensure that indigenous people have access to land and resources to allow them to engage in their traditional occupations and to access employment without discrimination. It also asks the Government to provide information on the impact of the measures introduced to implement the National Anti-Racism Strategy and the Racial Discrimination Act, and to monitor any related cases of discrimination submitted by members of indigenous peoples.*

Equality of opportunity and treatment of indigenous peoples. Constitutional recognition. The Committee recalls the steps undertaken to examine, raise awareness and build support for the constitutional recognition of Aboriginal and Torres Strait Islander peoples, including the adoption of the Aboriginal and Torres Strait Islander Peoples Recognition Act 2013. It further notes that the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples tabled its final report which recommended that a referendum on constitutional recognition should be held when it has the greatest chance of success, without specifying any time frame. The Committee notes that a Referendum Council was established to give advice on Aboriginal and Torres Straight Island Peoples, which issued a final report on 30 June 2017. It notes the "Uluru Statement from the Heart", adopted at the National Constitutional Convention 2017, by the Aboriginal and Torres Straight Island Peoples calling for a "First Nations Voice", and the Referendum Council's call to amend the Constitution to provide for a national indigenous representative assembly to constitute a "Voice to Parliament". The Committee notes, however, that the Government rejected the Referendum Council's call for constitutional recognition. *The Committee asks the Government to continue to provide information on the status of the process to recognize specifically Aboriginal and Torres Strait Islander peoples in the Constitution.*

National policy and programmes for indigenous peoples. The Committee notes the "Closing the Gap Strategy" which is a formal commitment by federal, state and territory governments to achieve equality for Aboriginal and Torres Strait Islander peoples within 25 years. The COAG has set measureable targets to monitor improvements in the strategy which include halving the gap in employment outcomes between indigenous and non-indigenous persons by 2018. The Committee notes from the Closing the Gap Prime Minister's Report of 2017 that the employment target is not being met, and that while there has been an increase in the employment rate of indigenous peoples since 1994, there has been a decline since 2008. In 2014–15 only 35 per cent of indigenous peoples of

working age in very remote areas were employed compared to 57.5 per cent of those living in major cities. To improve progress, the strategy calls for employment programmes to continue to link indigenous Australians with employment targets across the public sector and large infrastructure projects, and to help build the skills required for sustainable employment. In this regard the Committee notes that the Indigenous Procurement Policy has awarded contracts to 493 indigenous businesses. It also notes that under the Indigenous Advancement Strategy, the Government allocated 4.9 billion Australian dollars in 2015–16 to fund and deliver a range of programmes aimed at jobs, land and economic development. It also notes the new agreement on Northern Territory Remote Aboriginal Investment on getting children to school, adults into work and making communities safer, and the new community development programme which aims to ensure employment services are tailored to the unique labour markets and economic conditions in remote Australia.

States. The Committee notes the range of initiatives being undertaken in some of the states and territories to promote equality of opportunity and treatment of indigenous peoples and to address discrimination. The Committee notes the detailed information in the Social Justice and Native Title Report 2016, on the stolen wage reparations programmes undertaken in *Queensland, New South Wales (NSW)* and *Western Australia* to establish inquiries and to provide trusts and claims procedures for indigenous peoples whose economic participation and wages have been restricted in those jurisdictions regarding *Queensland,* the Committee notes the adoption of the Multicultural Recognition Act No. 1 of 2016 which requires the preparation of a multicultural policy and a multicultural action plan to implement the policy. It also notes that, in 2015, the NSW Public Service Commission launched the NSW Public Sector Aboriginal Employment Strategy 2014–17 to increase the Aboriginal workforce across the NSW public sector. In *Western Australia,* the Aboriginal Employment Strategy has been developed by the Public Service Commission to attract Aboriginal people to public sector training and employment. Further in *South Australia,* the Strategic Plan provides a set of targets addressing discrimination against indigenous peoples including in employment and occupation; and in *Tasmania,* the minister in charge of the state service has issued a directive regarding the employment of Aboriginal and Torre Strait Islanders.

Noting that despite the numerous measures and initiatives, the indigenous peoples continue to be disadvantaged and that employment targets are not met, the Committee asks the Government to continue to reinforce its efforts and to provide information on any evaluations or reviews aimed at assessing and improving the impact of these measures and initiatives on employment and occupation outcomes. It also asks the Government to continue to provide detailed information on the policies and programmes developed and measures adopted to address discrimination and to promote equality of opportunity and treatment in employment and occupation for indigenous peoples at the federal, state and territory levels and their impact, including with regard to the "Closing the Gap" targets.

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

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

Observation 2017

The Committee notes the observations of the Australian Council of Trade Unions (ACTU) received on 4 October 2017. *The Government is requested to provide its comments in this regard.*

Articles 1 and 2 of the Convention. Employment trends and active labour market measures. The Government indicates that labour market conditions have improved over the past three years to May 2017. The number of persons in employment increased to 12,152,600 in May 2017 and the unemployment rate declined from 5.9 per cent in May 2014 to 5.5 per cent in May 2017. Although the participation rate increased to 64.9 per cent over the reporting period, up to May 2017, groups in situations of vulnerability, including the long-term unemployed, youth, the mature aged, persons with disabilities and indigenous Australians, continue to be disadvantaged in the labour market. The Committee notes that the Government is committed to promote workforce participation and to provide additional support to specific groups, with a particular focus on disadvantaged parents of young children, indigenous Australians and older people. The Committee notes that the range of targeted assistance has increased since the last report, with the introduction of the Transition to Work and ParentsNext. ParentsNext, which became operational in April 2016, is a pre employment programme assisting parents belonging to specific groups in preparing for employment, including indigenous Australians, women, youth and culturally and linguistically diverse Australians. The Committee also notes a structural change in the employment market over the past 25 years. Given that the share of employment in the services industries has risen, the Government is seeking to reskill retrenched workers to take up opportunities in industries that are experiencing growth through, for example, the Growth Fund initiative. The Committee also notes a rise in part-time employment over the past three years, which coincides with increased underemployment. In its observations, the ACTU indicates that underemployment is at a record high and reiterates that precarious work is one of the most pressing issues in the labour context, with 40 per cent of all workers working under non-standard work arrangements. While the ACTU recognizes that these forms of employment have their legitimate purposes, it maintains that these arrangements are increasingly being used to avoid the responsibilities associated with a permanent ongoing employment relationship. The ACTU refers to its 2012 Independent Inquiry into Insecure Work which includes recommendations directed at improving the level of permanent employment among the Australian workforce. *The Committee requests the Government to specify how it keeps under review, coordinates and adapts the measures and policies adopted according to the results achieved in pursuit of the objectives of full, productive and freely chosen employment. The Committee also requests the Government to include information on the results of the measures taken to address long-term unemployment, underemployment and precarious work, including information on the number of programme beneficiaries obtaining lasting employment.*

Youth employment. The Committee notes that youth unemployment fell from 13.6 per cent in 2014 to 12.7 per cent in 2017 and that youth employment increased by 3.6 per cent over the three years prior to May 2017. However, the Committee notes that young people continue to experience disadvantage in the labour market and that the underemployment rate for young persons has increased from 15.8 per cent in May 2014 to 18.5 per cent in May 2017. The ACTU observes that the youth underemployment rate is approximately three times that of the rest of the workforce. The Committee takes note of a series of measures, enacted in the context of the Youth Employment Strategy since 2015, to assist young people at risk of long-term unemployment and welfare reliance. The Government indicates that the Empowering YOUth Initiatives support innovative approaches from not-for-profit and non-governmental organizations to help unemployed young people, while the Transition to Work service provides intensive, pre-employment assistance to improve the work readiness of young people who have disengaged from work and study. Furthermore, ParentsNext assists, inter alia, young parents to prepare for employment. Among these projects, the Committee notes with *interest* the initiatives taken under the Government's Youth Employment Strategy, targeting the improvement of employment outcomes for young people with mental illness. The Committee notes that Youth Jobs PaTH provides training and voluntary work experience placement through PaTH internships and wage subsidies. It also notes, however, that the ACTU expresses concern that PaTH internships replace real, entry-level jobs and carry with them a risk of exploitation for vulnerable young jobseekers, indicating that participants are not given the legal protections to which employees are typically entitled, since they are paid significantly below the minimum wage, are not provided meaningful qualifications and are not granted legal protections to which employees are typically entitled. The Encouraging Entrepreneurship and Self-Employment initiative aims to expand government services for young unemployed who wish to start their own business and includes an expansion of the New Enterprise Incentive Scheme. The Government is also funding Community Development Programme (CDP) providers to implement youth engagement strategies to help engage young people in remote Australia. The Growing Jobs and Small Business Package is aimed at providing targeted support for young people who are more susceptible to long-term unemployment. The Queensland Government has implemented a number of programmes to reduce youth unemployment, including the Back to Work Regional Employment Package and Skilling Queenslanders for Work programme, the Back to Work South East Queensland Employment Package and the Employment Skills Development Program. With regard to Western Australia, the annual Western Australia State Training Plans focus on youth training aimed at connecting young people's competencies with

industry needs. *The Committee requests the Government to provide detailed information, including statistical data disaggregated by sex and age, on the impact of the measures taken to encourage and support employment levels of young people and reduce youth unemployment. The Committee requests the Government to provide detailed information, including statistical data disaggregated by sex and age, on the numbers of young persons participating in each of the abovementioned programmes, and on the impact of each of these programmes on the employment rate among young persons.*

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

Observation 2017

The Committee notes the observations by the Australian Council of Trade Unions (ACTU) of 31 August 2016.

Article 3 of the Convention. National policy. Non-discrimination. The Committee notes from the information provided by the ACTU that balancing work and family is an issue of high priority for both men and women and the most important driver of job satisfaction. It also notes the findings of widespread discrimination in practice, in particular related to pregnancy and parental leave, set out in the 2014 national review undertaken by the Sex Discrimination Commissioner on behalf of the Australian Human Rights Commission. The Committee notes from the Government's report that a number of legislative amendments have been made to the Fair Work Act 2009 (FWA) and Fair Work Regulations 2009 between 2013 and 2015 to support women and men in balancing work and caring responsibilities in the home and that they respond in part to the recommendations contained in the final reports on Supporting Working Parents: Pregnancy and Return to Work National Review (2014) by the Australian Human Rights Commission. These changes include broadening the application of the right to request flexible working arrangements, requiring employers to consult the requesting employee about roster changes and decisions relating to requests for extension of unpaid parental leave, increasing the period of concurrent unpaid parental leave taken by both parents, and ensuring that all women have the right to transfer to a safe job while pregnant and that they do not lose unpaid parental leave when taking special maternity leave due to pregnancy-related illness. While welcoming these amendments, the Committee notes that according to the ACTU the current regulatory framework has been ineffective in driving the change in attitudes and practice that is required in order to address discrimination experienced by workers with family responsibilities. Specifically, the ACTU observes that the provisions (sections 65 and 76 of the FWA) do not place an obligation on employers to reasonably accommodate a request for flexible working arrangements, that the reasonable business grounds basis for refusal of a request as permitted by the FWA is very broad, and that there is no right of appeal for refusals unless made part of a workplace agreement. *Drawing attention to the importance of ensuring that the needs of workers with family responsibilities in their terms and conditions of work are taken into account, the Committee asks the Government to provide information on the steps taken to ensure effective equality of opportunity and treatment of workers with family responsibilities through ensuring the existence of an adequate legal framework and improving the application in practice of the relevant provisions in the FWA 2009 and the Fair Work Regulations 2009, as amended, and the Sex Discrimination Act 1984, and the Workplace Gender Equality Act 2012 in accordance with the Convention. The Committee also asks the Government to continue to provide summaries of judicial or administrative decisions addressing discrimination for reason of family or care responsibilities.*

Article 4. Paid leave and working arrangements. The Committee notes with ***interest*** that the Paid Parental Leave Act 2010 was amended in 2012 to extend the scheme of parental leave to eligible working fathers and partners, including adopting fathers and parents in same sex couples and that since its commencement on 1 January 2013 and 30 June 2015, 173,140 persons have received "Dad or Partner Pay". The Committee notes the concerns of the ACTU over the intention of the Government announced in April 2016 to pursue cuts to the existing Paid Parental Leave Scheme established under the Paid Parental Leave Act 2010. *The Committee asks the Government to provide information on any changes made to the provisions and implementation of the Paid Parental Leave Act 2010. It also asks the Government to continue to provide statistical information on the practical application of sections 65 and 76 of the FWA, disaggregated by sex, including the number of requests granted and denied for changes in working arrangements and parental leave.*

Article 5. Childcare services. The Committee notes from the Government's report that the number of early childhood education and care services has expanded substantially over the reporting period and that workforce participation rates of mothers with a child under 15 years has grown from 57 to 67 per cent over the past two decades. It notes the Government funded childcare assistance provided through the Child Care Benefit and Child Care Rebate and the National Partnership to support states' and territories' pre-school programmes. It also notes the observation of the ACTU that notwithstanding this expansion, access to affordable early education and childcare still remains a significant problem. It refers to the Productivity Commission Inquiry Report on Childcare and Early Childhood Learning, 2014 which estimates that there are approximately 165,000 parents who would like to work, or increase their hours but are unable to do so because of difficulties in accessing childcare. In response to recommendations of the Productivity Commission's review, the Government has announced the Jobs for Families Care Package designed to create a simpler, more flexible, affordable and sustainable childcare system targeted to those who need it most. The Committee notes that the ACTU is concerned about a number of the elements in the Package as well as its funding. *Noting the Productivity Commission's Report, the Government's response to it and the concerns of the ACTU, the Committee requests the Government to provide information on the Jobs for Families Care Package, in particular on how it has affected low- and middle-income families in terms of balancing work and family responsibilities.*

Article 6. Information and education. The Committee notes from the Government's report that over the past few years the Australian Human Rights Commission and the Fair Work Ombudsman have released a number of best practice resources, including guides and websites, for employers and employees on combining work and family responsibilities. It also notes the issuance of guidelines on flexible workplaces issued by the *South Australia* Commissioner for Public Sector Employment and the publications on creating flexible work arrangements issued under the Public Service Commission of *Queensland. The Committee hopes that the federal government institutions as well as those of the states and territories will undertake more affirmative public education outreach programmes targeted at employers and supervisors, particularly in small and medium-sized businesses, with the aim of promoting the rights and benefits relating to reconciling work and family responsibilities and reducing organizational obstacles and biases against accommodating workers with family and care responsibilities.*

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

Observation 2017

The Committee notes the observations of the Australian Council of Trade Unions (ACTU) received on 31 August 2016.

Article 2(2)(b) of the Convention. Exclusion of workers serving a qualifying period of employment. The ACTU continues to express concerns regarding the time limits for lodging claims for unfair dismissal and unlawful termination. It also considers that the Small Business Fair Dismissal Code provides less protection from unfair dismissal for small business employees – those employed in businesses employing less than 15 workers – from unfair dismissal in comparison with the Fair Work Act, 2009 (FWA), as small business employees are required to complete a 12-month qualifying period of employment while other employees are subject only to a six-month qualifying period before becoming eligible for protection against unfair dismissal. The ACTU also reiterates its view that the FWA provides insufficient safeguards against redundancy and precarious forms of employment. In reply to the Committee's previous request and the ACTU's

observations concerning the continuing existence of different rules for small business employees, the Government indicates that the Fair Work Commission (FWC) has continued to apply the FWA to extend protection against unfair dismissal to temporary, probationary and casual employees in a number of cases alleging unfair dismissal. The Committee notes the FWC rulings provided by the Government, in which casual employees employed on a regular and systematic basis were deemed to have satisfied the minimum period of employment and were recognized as protected persons within the meaning of the FWA. Responding to the ACTU's observations regarding the 12-month qualifying period for small business employees, the Government indicates that the Productivity Commission's report of the public inquiry undertaken in 2014 was released in 2015. The report evaluated the performance of the workplace relations framework – including the FWA – and made recommendations for improvement. The Government indicates that retaining the requirement of a 12-month qualifying period before small business employees may be protected under the unfair dismissal laws is necessary to balance the needs of small business employees for protection from unfair dismissal against the resourcing difficulties faced by small businesses, which require them to screen and verify the performance of new employees over a longer period of time. It adds that, as small enterprises frequently employ workers at the margins of the labour market – who may be particularly vulnerable to stricter employment protection – the extension of the probationary period for such businesses constitutes a "regulatory tiering" through which compliance burdens may be reduced without substantively reducing compliance. In contrast, the ACTU considers that this lengthier qualifying period has the effect of excluding a substantial number of employees from unfair dismissal protection. It points out that, of the 11.98 million employees employed by small businesses in May 2016, 2.3 million had been with their current employer for less than 12 months, of which a significant percentage were low-skilled laborers and persons from other vulnerable groups, such as young workers (aged 15–34). *The Committee requests the Government to provide detailed information regarding the measures taken or envisaged to implement the recommendations of the Productivity Commission relevant to the application of the Convention. It also requests the Government to communicate data disaggregated by economic sector, on the number of small business employees dismissed after completing six and 12 months of employment, respectively, as well as the number of large business employees dismissed after completing six and 12 months of employment.*

Article 2(3). Adequate safeguards against recourse to contracts of employment for a specified period of time. The Committee notes the Government's reply to its previous request in which it addressed the ACTU's concerns about recourse to precarious forms of employment as a means of avoiding the protection resulting from the Convention. The Government indicates where an employment contract is for a specified period of time, a specified task or for the duration of a specified season, and the employment has terminated at the end of the specific period, task or season, unfair dismissal protections do not apply. It adds that if the termination occurs before the end of the period, task or season specified, the employee may still access remedies against unfair dismissal, provided they have satisfied the relevant requirements, such as completing the minimum qualifying employment period (six months for employees of larger enterprises and 12 months for small businesses). The Government indicates that, moreover, section 123(2) of the FWA provides that exclusions will not be applied to employees who are ostensibly engaged on a fixed-term contract if a substantial reason for engaging them on such a contract or series of contracts is to avoid notice of termination and redundancy entitlements. In such circumstances, employees will be deemed to fall within the scope of the unfair dismissal legislation (citing *Hope* v *Rail Corporation New South Wales* [2014] FWC 42 (3 January 2014)). In addition, the Government indicates that the FWA provides safeguards against "sham contracting arrangements" (understood as the misrepresentation of a person in an employment relationship as an independent contractor), prohibiting an employer from dismissing or threatening to dismiss an employee in order to hire him or her as an independent contractor to perform the same or substantially the same work. *The Committee requests the Government to indicate the measures taken or envisaged in all states and territories to ensure the provision of adequate safeguards against recourse to contracts of employment for a specified period of time in order to avoid the protections provided under the Convention. It further requests the Government to continue to provide examples of decisions issued by the FWC or other relevant bodies with regard to contracts of employment for a specified period of time.*

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), 2(1) and 25 of the Convention. 1. *Trafficking in persons.* The Committee previously noted the adoption of the Human Trafficking Deterrence and Suppression Act, 2012, section 6 of which prohibits trafficking in persons. The Act also provides for the establishment of a Human Trafficking Prevention Fund, as well as a National Anti-Trafficking Authority. Additionally, the Act contains provisions on the protection and rehabilitation of victims, including access to compensation and legal and psychological counselling. The Committee noted further the adoption of the National Plan of Action for Combating Human Trafficking (NPA) for the period of 2012–14, as well as various other measures taken to address trafficking in persons which are described in detail in the annual anti-trafficking country reports of the Ministry of Home Affairs.

The Committee notes the Government's information in its report that, in 2017, three implementing rules to the Human Trafficking Deterrence and Suppression Act, 2012, were adopted, namely the Prevention and Suppression of Human Trafficking Rule, the Human Trafficking Suppression Authority Rule and the Human Trafficking Fund Rule. The NPA 2015–17 has been adopted and is currently being implemented, with five strategic goals: prevention, protection, promoting legal justice, developing partnerships and effective monitoring. A counter trafficking committee is set up in each district. The Committee also notes that, according to the Government's written replies to the UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) of 21 March 2017, from 2012 to 2016 (November), a total of 2,966 cases of human trafficking have been registered, and 6,046 victims have been rescued. Of registered cases, trials in 192 cases have been completed and convictions were secured in 26 cases. The victims of trafficking also received prompt assistance. Upon their rescue, they are taken to shelter homes and are provided with medical treatment and psychosocial counselling. The Government runs a victim support centre, and a number of civil society organizations are working to provide legal assistance to the trafficking victims (CMW/C/BGD/Q/1/Add.1, paragraph 42). While taking due note of the increase in the number of trafficking investigations and prosecutions and the measures undertaken for the protection of victims, the Committee expresses its concern at the low number of convictions. *The Committee therefore requests the Government to take the necessary measures to ensure that all persons who engage in trafficking and related offences are subject to thorough investigations and robust prosecutions. The Committee requests the Government to continue providing information on the number of convictions and the specific penalties applied, as well as on the difficulties encountered by the competent authorities in convicting perpetrators. It also requests the Government to continue providing information on the specific measures taken and concrete results achieved with regard to victims' protection, assistance and rehabilitation.*

2. *Forced labour practices.* The Committee previously noted that section 9 of the Human Trafficking Deterrence and Suppression Act, 2012, criminalizes the use of forced or bonded labour. Pursuant to this provision, the act of unlawfully forcing an individual to work against their will, or compelling them to provide labour or services, or holding a person in debt bondage by threat or use of force in order to perform any work or service is punishable with five to 12 years' imprisonment. The Committee requested the Government to provide information on its application in practice.

The Committee notes that, in its concluding observations of 2017, the CMW expresses its concern at undocumented nationals of Myanmar working in Bangladesh, including children, who are frequently subject to sexual and labour exploitation, including forced labour. Indian migrant workers are also subject to debt bondage in the brick kiln sector (CMW/C/BGD/CO/1, paragraph 31). In this regard, the Committee notes with *regret* the Government's information that no cases of forced or compulsory labour have been detected. *The Committee therefore requests the Government to take the necessary measures to strengthen the capacity of law enforcement agencies to detect and investigate forced labour cases, and to provide information on any results achieved or progress made in this regard. The Committee also requests the Government to provide information in its next report, on the application in practice of section 9 of the Human Trafficking Deterrence and Suppression Act, 2012, including the number of investigations and prosecutions carried out, convictions handed down and the specific penalties applied.*

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

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

Observation 2017

Articles 2, 4 and 23 of the Convention. Labour inspection in export processing zones (EPZs) and special economic zones (SEZs). In its previous comments, the Committee noted that the Bangladesh Export Processing Zones Authority (BEPZA) remained responsible for securing the rights of workers in EPZs (and that the labour inspectorate of the Ministry of Labour and Employment did not carry out any inspections in these zones), and expressed deep concern that the Government had not yet given effect to the 2014 conclusions of the Committee on the Application of Standards (CAS) to bring EPZs within the purview of the labour inspectorate. In this respect, the Committee noted that a draft EPZ Labour Act had been prepared, in relation to which the International Trade Union Confederation (ITUC) raised a number of concerns, including that the supervision of EPZs would remain vested with the BEPZA, and that the powers and functions of the EPZ labour courts and the EPZ Labour Appellate Tribunal would be severely limited in comparison with courts established under the Bangladesh Labour Act (BLA), 2006.

Further to the Committee's reiterated request to bring EPZs and SEZs under the purview of the labour inspectorate, the Committee notes the Government's indication in its report that it is proposed to modify the current draft EPZ Labour Act to provide for labour administration and inspection in EPZs under the BLA, and that a relevant draft would be shared with the Office in due course. However, the Committee notes that the information provided in the Government's report under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No.87), which suggests that, despite structural changes being made, the administration and inspection in EPZs will remain separate from those under the BLA. In this context, the Committee also notes that the Government expresses the view that the BEPZA has successfully performed its duties in the area of compliance for the last 35 years, through the use of counsellors in the area of labour, environment, industrial relations, fire and building safety. *Noting with deep concern that it has now been more than three years since the CAS request on this matter, the Committee urges the Government to complete its revised draft in the very near future so that the EPZ Labour Act will bring EPZs under the purview of the labour inspectorate, as requested by the CAS in 2014, and that the same will be done in relation to SEZs.*

Article 6. Status and conditions of service of labour inspectors. In its previous comments, the Committee noted that retaining labour inspectors within the labour inspection services was problematic and that a number of recently recruited labour inspectors had left the Department of Inspection for Factories and Establishments (DIFE), after having been trained, to take up work with other government services. In this regard, the Committee requested that the Government review the professional profiles and grades of labour inspectors to ensure that they reflect the career prospects of public servants exercising similar functions within other government services, such as tax inspectors or the police.

The Committee notes that the Government, in reply to the Committee's request, refers to a revised salary structure for all government employees, available on the website of the Ministry of Finance in the Bengali language. According to the Government, the revised salary structure provides similar conditions for tax inspectors, labour inspectors and police officers. The Government also refers to a study to be undertaken with the assistance of the ILO, to discover the causes for the high attrition rate. *Recalling from the report of the 2015 direct contacts mission (undertaken at the request of the CAS) that career prospects within the labour inspection services are not as favourable as those in the career civil service, the Committee once again requests the Government to provide information on the professional grade structure enjoyed by labour inspectors and other government employees exercising similar*

functions as well as further information on the salary and benefit structure applicable to labour inspectors. The Committee also requests the Government to provide information on the outcome of the study on the reasons for the high attrition rate of labour inspectors.

Articles 7, 10 and 11. Strengthening the human and material resources of the labour inspectorate. The Committee previously welcomed the increase in the number of labour inspectors from 43 to 283 (between 2013 and 2015), but noted with regret that the Government had failed to provide any new information in 2016 on the progress made with the recruitment of labour inspectors for the filling of the 575 approved labour inspection positions. The Committee notes the information provided by the Government in its report that 230 of the 575 positions still remain vacant, and that recruitment is ongoing. The Committee also notes the Government's indication, in reply to the Committee's request for further information on the material resources available to the labour inspectorate, that the budgetary allocation of the DIFE has continued to significantly increase; representing a fourfold increase from 2013–14 to 2017–18. In addition, the Committee notes the Government's indication that an important project to further strengthen the capacity of the DIFE is under way. The Committee further notes, in reply to the Committee's request, the information provided by the Government on the increase in equipment and transport facilities available to the labour inspectorate. *The Committee requests the Government to specify the current number of labour inspectors working at the DIFE and to provide information about the training provided to new recruits including the subjects covered and the duration of such training. The Committee encourages the Government to continue to make every effort to fill all of the 575 labour inspection posts that have already been approved, with a view to ensuring the recruitment of an adequate number of qualified labour inspectors, taking into account the number of workplaces liable to inspection. The Committee also requests that the Government continue to provide information on the level of equipment and facilities available to the labour inspectorate.*

Articles 12(1), 15(c) and 16. Inspections without previous notice. Duty of confidentiality in relation to complaints. In its previous comment, the Committee noted that in 2014, only 2.5 per cent of all inspections were random or complaints driven inspections without prior notice and it emphasized that, in that situation, the duty to maintain confidentiality of labour inspectors that an inspection was made as a result of a complaint, and the efficiency of inspections, were put at risk. In this respect, the Committee notes the Government's reply, in relation to the Committee's request for steps to ensure that a sufficient number of unannounced labour inspections (random or complaints-driven inspections implemented without prior notice) is undertaken, that during 2016–17, 20 per cent of all inspections were unannounced. The Committee notes that the Government reiterates, in reply to its previous requests to enshrine in law a requirement that the existence of a complaint and its source are kept confidential, that the absence of such a provision in the BLA, does not undermine confidentiality in practice. However, the Government adds that it is open to considering the codification of this duty in the context of the proposed review of the BLA. *The Committee urges the Government to codify the duty of confidentiality, either in the context of the proposed review of the BLA or in other regulations or guidelines concerning labour inspection, for the purpose of legal clarity. The Committee requests that the Government provide information on the results of unannounced inspections covering investigations of accidents or addressing of complaints, including the nature of resolutions reached, violations identified and sanctions applied.*

Articles 17 and 18. Legal proceedings, effective enforcement and sufficiently dissuasive penalties. The Committee notes that the Government, in reply to the Committee's request for statistical information to enable the assessment of effective enforcement by the labour inspectorate, once again provides information on the number of workplaces inspected and the cases filed with the labour courts, but that it does not provide the requested information on penalties proposed by the inspectorate in connection with their detected violations or on the specific outcome of these cases (such as the imposition of fines or sentences of imprisonment). The Committee also notes that the Government, in reply to the Committee's request for information on the measures taken to ensure that penalties for labour law violations are sufficiently dissuasive, indicates that the review of the amount of penalties might be considered in the context of the proposed review of the BLA. *The Committee requests the Government to provide information on the measures introduced or envisaged, in the context of the proposed legislative reform, to ensure that penalties for labour law violations are sufficiently dissuasive and, where applicable, to improve the proceedings for the effective enforcement of the legal provisions. The Committee also once again requests that the Government specify how many legal staff with responsibility for the enforcement of legal provisions are employed at the DIFE, and to provide information on the penalties recommended by the inspectorate, along with any relevant guidelines, and the outcome of the cases referred to the labour courts.*

The Committee previously noted that freedom of association cases (including cases of anti-union discrimination) are addressed by the Department of Labour (DOL) which is, among other things, responsible for conciliation and mediation, and it indicated that cases of anti-union discrimination are not generally appropriate for conciliation or mediation and in any event must not undermine strict enforcement of applicable laws. *The Committee requests the Government to provide information as to why violations of freedom of association are dealt with by the DOL, rather than the DIFE, and to provide detailed information on the manner in which it secures the enforcement of the legal provisions relating thereto.*

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 due 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 with regard to the individual case of Bangladesh. The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 1 September 2017. The Committee notes the Government's reply to both of these observations, as well as to those received from the ITUC in 2015 and 2016.

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: (i) ensure that the Bangladesh Labour Act and the Bangladesh Labour Rules (BLR) are brought into conformity with the provisions of the Convention regarding freedom of association, paying particular attention to the priorities identified by the social partners; (ii) ensure that the draft EPZ Labour Act allows for freedom of association for workers' and employers' organizations and is brought into conformity with the provisions of the Convention regarding freedom of association, with consultation of the social partners; (iii) continue to investigate, without delay, all alleged acts of anti-union discrimination, including in the Ashulia area, ensure the reinstatement of those illegally dismissed, and impose fines or criminal sanctions (particularly in cases of violence against trade unionists) according to the law; and (iv) ensure that applications for union registration are acted upon expeditiously and are not denied unless they fail to meet clear and objective criteria set forth in the law. The Conference Committee also urged the Government to continue to effectively engage in ILO technical assistance to address the above recommendations and to report in detail on the measures taken to implement these recommendations to the next meeting of the Committee of Experts in November 2017.

Civil liberties. In its previous comments, having noted the serious incidents of violence, retaliation and harassment against workers alleged by the ITUC, the Committee requested the Government to provide detailed information on the outcome of investigations and trials into these allegations. The Committee notes the Government's reply to the allegations raised, as well as its general statement that all cases of alleged violence and harassment are investigated neutrally and impartially by the relevant authorities. The Committee observes, however, that the Government did not provide information on the investigations or any measures with respect to a number of specific allegations raised in the ITUC comments. The Committee further notes with *concern* the new allegations of arrest, detention, surveillance, violence and intimidation of workers contained in the 2017 ITUC communication. The Committee notes the Government's

comments thereto and observes that no information was provided in respect of: (i) the alleged incidents of violence, intimidation and false criminal charges against 70 union leaders and their families in May 2017 in Chittagong; and (ii) the alleged police intervention in a labour training and intimidation of its participants in January 2017. The Committee also notes the Government's general statement that references to threats, physical assaults and other coercive measures contained in the ITUC communication are fabricated and are not based on facts. Recalling that it has been receiving serious allegations of violence against trade union members for a number of years and that allegations of systematic anti-union retaliation have also been addressed by the Committee on Freedom of Association (see 382nd Report of the Committee on Freedom of Association, Case No. 3203, paragraphs 170–171) and discussed in the Conference Committee, the Committee expresses ***deep concern*** at the continued violence and intimidation of workers and emphasizes in this regard 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. ***The Committee urges the Government to provide information on the remaining specific allegations of violence and intimidation, including to report on prosecutions initiated, convictions obtained, and criminal sanctions imposed for any past incidents, and to take all necessary measures to prevent such incidents in the future and ensure that, if they occur, they are properly investigated.***

Article 2 of the Convention. Right to organize. Registration of trade unions. The Committee had previously requested the Government to provide information on the reasons for which a high number of registration applications were refused in 2016, to continue to provide statistics on the registration of trade unions and the use of the online registration application and to take measures to ensure that the registration process is a simple formality. The Committee had also recalled the recommendations of the high-level tripartite mission to devise standard operating procedures (SOPs) and to establish a public database on registration. The Committee notes the Government's indication that: (i) the registration process is clearly spelled out in the law and the reasons for rejecting an application are communicated to the applicant within 60 days; (ii) trade union registration increased remarkably after the 2013 amendment of the Bangladesh Labour Act, 2006 (BLA) – before the amendment, there were 6,726 registered trade unions in the country and 161 federations, whereas as of July 2017, the numbers increased to a total of 7,779 registered trade unions and 175 federations, with a membership of 2,917,627 workers; (iii) in the ready-made garment (RMG) sector, 470 new trade unions and 48 federations were registered between 2013 and 2017, bringing the total number of registered trade unions to 602; (iv) since the beginning of 2017, the registration rate in Dhaka was 75 per cent; (v) the online registration system guarantees transparency and deprives the Joint Director of Labour (JDL) of any discretionary power; (vi) since March 2015, a total of 801 online applications were received through the online system, out of which 291 were granted; (vii) a public database on union registration, developed with the support of the ILO Country Office, is available on the website of the Directorate of Labour (DoL) and contains relevant information regarding registration of trade unions, including reasons for rejecting an application; (viii) as of August 2017, the information on the status of 191 applications for registration was made available in the database, out of which 129 were accepted and 62 rejected; (ix) SOPs for trade union registration, developed in consultation with the concerned stakeholders, were adopted in May 2017 and introduced specific time frames within which each step of the registration process – examination, rectification and decision – must be completed; (x) the SOPs should expedite the registration process and increase its transparency; and (xi) the JDL has already started using the SOPs and training for internal staff has begun. The Government adds that it has also initiated the *upgradation* of the Directorate of Labour to a Department, which will result in an increase of manpower from 712 to 921 and that this process is at the final stage pending approval by the highest authority.

The Committee takes note of the detailed information provided by the Government and notes with ***interest*** the creation of a public database on union registration and the adoption of the SOPs on registration, both of which have the potential to improve the rapidity and transparency of the registration procedure. The Committee also welcomes the envisaged increase of manpower of the DoL. While further noting the reported increase in the number of registered trade unions and federations, the Committee observes from the information provided by the Government that a mere 36 per cent of applications for registration submitted through the online registration system (291 out of 801) were accepted, whereas the status of the remaining 64 per cent is unclear, and that more than a third of the applications for registration available in the database on registration (62 out of 191) are marked as rejected without a clear indication as to the reasons. Furthermore, the Committee notes that, according to the ITUC, obstacles to registration remain: the JDL retains discretionary power to refuse registration; in 2017, 22 out of 50 applications in the RMG sector were so far rejected and in Chittagong, 15 out of 20 applications were rejected; and trade unions in many sectors face repeated refusal of registration. The Committee further observes that the Committee on Freedom of Association also examined allegations of continued arbitrary denial of trade union registrations and noted with concern the severe implications that the alleged recurrent practice of factory management to seek injunctive relief from the courts to stay union registrations that have been properly granted, thus freezing union activities for prolonged periods of time, may have on the functioning of trade unions (see 382nd Report of the Committee on Freedom of Association, Case No. 3203, paragraphs 172–173). ***Observing that the number of rejected applications for registration remains high, and that a substantial proportion of rejections come without explanation, the Committee requests the Government to continue to take all necessary measures to ensure that registration is a simple, objective and transparent process, which does not restrict the right of workers to establish organizations without previous authorization. The Committee expects that the use of the SOPs, the reduction of time limits for registration and the online database will have a positive impact on the registration rate of trade unions and requests the Government to provide all relevant statistics in this regard, including the average time taken for registration. The Committee also requests the Government to continue to provide updated statistics as to the overall number of applications for registration (whether online or otherwise) received, accepted and/or rejected, the reasons given for all rejections, and to clarify the status of the 509 applications submitted through the online system, which were not granted.***

Minimum membership requirements. In its previous comments, the Committee had requested the Government to take the necessary measures to review sections 179(2), 179(5) and 190(f) of the BLA with a view to their amendment so as to reduce the excessive 30 per cent threshold necessary for forming a union and maintaining its registration. The Committee notes the Government's indication that workers and employers have contradictory opinions with regard to the minimum membership requirement, as a result of which the Government placed the following proposals for amendment: repeal of section 190(f) of the BLA, which allows for cancellation of a trade union if its membership falls below the minimum membership requirements, and amendment to section 179(2) according to which the minimum membership requirement for trade union registration would depend on the total number of workers employed in an establishment: if there are less than 2,000 workers in an establishment, the requirement would remain 30 per cent; for enterprises with 2,001 to 5,000 workers it would be 27 per cent; 5,001 to 7,500 workers – 24 per cent; and 7,501 workers or more – 20 per cent. While welcoming the Government's attempt to reduce the minimum membership requirement and adapt it to the size of the enterprise, despite a lack of agreement among the social partners in this regard, the Committee ***regrets*** that the proposed amendments do not respond to its longstanding concerns and notes with ***concern*** that the minor reduction in the minimum membership requirements proposed by the Government is not likely to have an impact on a large number of enterprises and thus would not, in any meaningful manner, contribute to the free establishment of workers' organizations. ***The Committee therefore urges the Government to continue to take the necessary measures to review sections 179(2) and 179(5) of the BLA without delay, in consultation with the social partners, with a view to truly reducing the minimum membership requirement. The Committee expects that the Government will engage in meaningful discussions with the social partners and that it will be able to report progress in this regard in the near future, in particular on any new proposals for reducing the minimum membership requirements. The Committee also requests the Government to provide information on the approximate number of enterprises falling within each of the mentioned enterprise categories for the purpose of establishing adequate minimum membership requirement and to indicate the sectors in which they operate.***

The Committee had also previously requested the Government to clarify whether Rule 167(4) of the BLR establishes a minimum membership requirement of 400 workers to establish an agricultural trade union, and if so, to align it with the BLA and in any event, to lower it to ensure conformity with the Convention. The Committee notes the Government's indication that Rule 167(4) sets the requirement to form a trade union to 400 farm workers but that this issue has been resolved through a gazette notification dated 5 January 2017. ***Observing that it is unclear from the Government's comments whether the requirement of***

400 workers was repealed or lowered, the Committee requests the Government to clarify this point and to provide a copy of the gazette notification.

Articles 2 and 3. Right to organize, elect officers and carry out activities freely. Bangladesh Labour Act. In its previous comments, the Committee had urged the Government, in consultation with the social partners, to take the necessary measures to review and amend a number of provisions of the BLA to ensure their conformity with the Convention. The Committee notes the Government's indication that while the newly established Tripartite Technical Committee (TTC) met on several occasions to make suggestions on the possible amendment of the BLA, the latter being applicable to a large number of sectors, broad consultations with stakeholders are necessary and certain provisions are thus still under examination. The Government adds that a special committee headed by a senior government official was also established to coordinate and give suggestions for the final approval of amendments to the BLA and the draft Bangladesh Export Processing Zones Labour Act (EPZ Labour Act). The Government states that in November 2017, a further tripartite committee for amendment of the BLA was formed by the Ministry of Labour and Employment (MOLE) and prepared a report with recommendations on how to address the pending ILO observations. The Committee welcomes the Government's efforts to review the BLA and notes the following proposed amendments: extension of the scope of the Act to certain industries previously excluded from it (repeal of clauses (e), (h) and (n) of section 2(4)); broadening of the definition of worker to include members of the watch and ward staff, firefighting staff and confidential assistant of any establishment (deletion of the corresponding restriction from section 175); clarification that workers in the informal sector do not need to provide identity cards issued by an establishment to apply for registration (section 178(2)(a)(iii)); replacement of the obligation to obtain approval from the Government by an obligation to inform the Government of any funds received from any national or international source, except the union dues (section 179(1)(d)); reduction of the time limit for the DoL to register a trade union (section 182(1), (2) and (4)); addition of section 182(7) instructing the Government to adopt SOPs for the registration of trade unions; repeal of section 184(2)–(4) and amendment of section 185 which impose excessive restrictions on organizing in civil aviation and for seafarers, including trade union monopoly; deletion of the possibility for the DoL to cancel trade union registration if it has been obtained by fraud or misinterpretation of facts (repeal of section 190(1)(c)); deletion of the possibility to cancel a trade union if, in an election for determination of collective bargaining agent, it obtains less than 10 per cent of the total votes cast (repeal of section 202(22)); and repeal of section 211(8) prohibiting strikes in an establishment for a period of three years from the commencement of its production.

While taking due note of these proposed amendments, the Committee observes that many of the changes it has been requesting for a number of years have either not been addressed or addressed only partially. In this regard, the Committee emphasizes once again the need to further review the BLA to ensure its conformity with the Convention regarding the following matters: (1) scope of the law – restrictions on numerous sectors and workers remain (sections 1(4), 2(49) and (65) and 175); (2) restriction on organizing in civil aviation (section 184(1)); (3) restrictions on organizing in groups of establishments (sections 179(5) and 183(1)); (4) restrictions on trade union membership (sections 2(65), 175, 193 and 300); (5) interference in trade union activity (sections 196(2)(a) and (b), 190(1)(d)–(e) and (g), 192, 229, 291 and 299); (6) interference in trade union elections (section 180(1)(a) read in conjunction with section 196(2)(d), and sections 180(b) and 317(4)(d)); (7) interference in the right to draw up constitutions freely (sections 179(1) and 188 (in addition, there seems to be a discrepancy as section 188 gives the DoL the power to register and, under certain circumstances, refuse to register any amendments to the Constitution of a trade union and its Executive Council whereas Rule 174 of the BLR only refers to notification of such changes to the DoL who will issue a new certificate)); (8) excessive restrictions on the right to strike (sections 211(1) and (3)–(4) and 227(c)) accompanied by severe penalties (sections 196(2)(e), 291(2)–(3) and 294–296); and (9) excessive preferential rights for collective bargaining agents (sections 202(24)(c) and (e) and 204). While further noting that the proposed amendments would decrease by half the maximum prison sentence imposable on workers for a series of violations – unfair labour practices, instigation and participation in an illegal strike or a go-slow and for participation in activities of unregistered trade unions (sections 291(2)–(3), 294–296 and 299) – the Committee recalls that it has been requesting the Government to eliminate such penalties from the BLA and to let the penal system address any possible criminal acts. The Committee also notes that the proposed amendment to section 210(10)–(12), which would enable the Conciliator to refer an industrial dispute to an arbitrator even if the parties do not agree, could result in compulsory arbitration contrary to the Convention. *In view of the above and recalling the conclusions of the Conference Committee, the Committee urges the Government to take the necessary measures, in consultation with the social partners, to continue to review and amend the relevant provisions of the BLA in order to ensure that any restrictions on the exercise of the right to freedom of association are in conformity with the Convention. The Committee firmly hopes that the Government will be able to report progress in this regard in the near future.*

Bangladesh Labour Rules. The Committee had previously requested the Government to review the following BLR provisions so as to ensure that workers' organizations are neither restricted nor are subject to interference in the exercise of their activities and internal affairs, that unfair labour practices are effectively prevented and that all workers, without distinction whatsoever, may participate in the election of representatives: Rule 188 (employer participation in the formation of election committees which conduct the election of worker representatives to participation committees in the absence of a union); Rule 190 (prohibition on certain categories of workers to vote for worker representatives to participation committees); Rule 202 (general restrictions on actions taken by trade unions and participation committees); Rule 350 (broad powers of inspection of the DoL); lack of provisions providing appropriate procedures and remedies for unfair labour practice complaints; as well as the possible impact of Rule 169(4), which limits eligibility to the union executive committee to permanent workers, on the right of workers' organizations to elect their officers freely. The Committee notes the Government's statement that since the BLA is under review, further amendments to the BLR may also be necessary. The Committee welcomes the Government's indication that that SOPs on unfair labour practices and anti-union discrimination were recently adopted to facilitate the handling and investigation of such allegations in a transparent manner and that the outcome of the investigations is available in a public database (this point is examined in more detail in the Committee's comments on the Right to Organise and Collective Bargaining Convention, 1949 (No. 98)). The Committee further notes that, as indicated by the ITUC, Rule 2 contains a broad definition of administrative and supervisory officers who are excluded from the BLA; Rule 85, Schedule IV, sub-rule 1(h) prohibits members of the Safety Committee from initiating or participating in an industrial dispute; and Rule 204 determines that only subscription-paying workers can vote in a ballot to issue a strike, whereas section 211(1) of the BLA refers to union members. In this regard, the Committee recalls that the rights under the Convention are granted to all workers without distinction or discrimination of any kind, including managerial and supervisory staff, and that matters of internal administration should be left to the discretion of the members of the trade union without any intervention by the public authorities. *In the absence of any changes made to the mentioned provisions and recalling that the Conference Committee called upon the Government to ensure that the Bangladesh Labour Rules are brought into conformity with the Convention, the Committee reiterates its previous request and expects that during the revision process of the BLR, which should involve the social partners, its comments will be duly taken into account.*

Right to organize in export processing zones (EPZs). In its previous comments, the Committee had requested the Government to revise the draft EPZ Labour Act so as to provide equal rights of freedom of association to all workers and bring the EPZs within the purview of the labour inspectorate. The Committee notes the Government's indication that the draft EPZ Labour Act was recalled from Parliament for a thorough review to align it with core ILO Conventions and that the Bangladesh Export Processing Zones Authority (Zone Authority) conducted a number of meetings, as a result of which Chapters IX, X and XV have been redrafted through tripartite consultations on the basis of ILO observations, as well as comments of collective bargaining agents and investors. The Government further indicates that some requested amendments were not taken into account due to the concerns raised by workers and investors and informs that: (i) both workers and investors agree that to ensure harmonious industrial relations in EPZs only one Workers' Welfare Association (WWA) should be formed within a company – as of November 2017, WWAs have been formed and are active in 74 per cent of eligible enterprises; (ii) a provision allowing formation of higher-level organizations through affiliation of WWAs within a Zone will be incorporated in the redrafted EPZ Labour Act, even though no WWA has expressed an interest in this respect and no practical effectiveness has been found of such further affiliation; (iii) to avoid any unrest relating to workers' benefits which vary from enterprise to enterprise, WWA activities should be kept within the territorial limit of the enterprise; (iv) both workers and investors considered it necessary to include a provision in the law enabling the Zone Authority to approve funds from outside the Zone so as to prevent funding for illegal and subversive activities,

but funds from any legal source for the welfare of workers are never denied; (v) since a WWA is the collective bargaining agent for the whole industrial unit where it was created, election of its Executive Council is open to all workers and not only WWA members; (vi) although employers and investors in EPZs are not interested in forming higher-level organizations, their associations are allowed to do so through affiliation among themselves; (vii) the Zone Authority developed its own mechanism of labour inspection, which is effective, transparent, accountable and scalable and also assists workers and employers to solve disputes through the Alternative Dispute Resolution (ADR) method; (viii) through massive structural changes, the administration system of the EPZs has been brought in line with the BLA and, similarly as under the Department of Inspection for Factories and Establishments (DIFE), an Additional Secretary of the Government will be the Inspector General; (ix) training programmes can be arranged to exchange information and technical know-how between the DIFE and the Zone Authority; and (x) both workers and investors are satisfied with the inspection and administration system of the EPZs and involvement of another authority could create dual administration issues, confusion among the parties and even unrest (234 WWAs and 335 investors provided their observations in writing regarding imposition of inspection other than the one conducted by the Zone Authority). The Committee welcomes the Government's efforts to align the draft EPZ Labour Act with the BLA and notes some of the proposed amendments, including simplification of the formation and registration of WWAs through the repeal of section 96(2)–(3) establishing an excessive referendum requirement to constitute a WWA; repeal of section 98 prohibiting to hold a new referendum to form a WWA during one year after a failed one; repeal of sections 99(2) and 101 authorizing the Zone Authority to form a committee to draft a WWA constitution and to approve it; and repeal of section 115(1) allowing for deregistration of a WWA at the request of 30 per cent of eligible workers even if they are not members of the association and of section 115(5) prohibiting the establishment of a new association within one year after such deregistration. *The Committee further welcomes the Government's indication that a provision allowing for the formation of higher-level organizations within a Zone will be incorporated in the redrafted EPZ Labour Act. The Committee however recalls that to ensure full conformity with the Convention, it is also necessary to enable associations to affiliate beyond the Zone and engage with actors outside their Zone and enterprise. Therefore the Committee encourages the Government to add this to the list of proposed amendments (section 102(2) of the draft EPZ Labour Act currently restricts WWA activities to the territorial limits of the enterprise thus banning any engagement with actors outside the enterprise, including for training or communication, and section 102(4) prohibits association or affiliation with another WWA in the same Zone, another Zone or beyond the Zone and thus to form higher-level organizations).*

The Committee *regrets,* moreover, that many changes requested by the Committee are still not addressed by the proposed amendments and emphasizes the need to further review the 2016 draft EPZ Labour Act to ensure its conformity with the Convention regarding the following matters: (1) scope of the law – specific categories of workers continue to be excluded from the law (workers in supervisory and managerial positions – section 2(49)) or from Chapter IX dealing with WWAs (members of the watch and ward, drivers, confidential assistants, cipher assistants, casual workers, workers employed by kitchen or food preparation contractors and workers employed in clerical posts – section 93); (2) excessive minimum membership requirement to create a WWA – 30 per cent of eligible workers of the industrial unit have to demand formation of a WWA (sections 94(2) and 97(5)); (3) the imposition of association monopoly at enterprise and industrial unit levels (sections 94(6), 97(5), paragraph 2, (6)–(7), 100 and 101); (4) detailed requirements as to the content of the WWA's constitution which go beyond formal and may thus hinder the free establishment of the WWAs and constitute interference in the right to draw up constitutions freely (section 96(2)(e)–(f) and (p)); (5) limitative definition of the main functions of WWA members (section 102(3)); (6) prohibition to function without registration and to collect funds for such association (section 111); (7) interference in internal affairs by prohibiting expulsion of certain workers from a WWA (section 146); (8) broad powers and interference of the Zone Authority in internal union affairs by approving funds from an outside source (section 96(3)), approving any amendment in a WWA Constitution and Executive Council (section 99), arranging elections to the Executive Council of WWAs (section 103(1)) and approving it (section 104), determining the legitimacy of any WWA and its capacity to act as a collective bargaining agent (section 175(c)) and monitoring any WWA elections (section 185(1)); (9) interference in the election of officers through a mandatory opening of election of Executive Council members to all workers and not only WWA members (section103(2)); (10) only workers having worked during a specific period of time at the enterprise can elect and be elected to the Executive Council (section 103(5)(b)–(d)); (11) restrictions imposed on the eligibility of workers to the Executive Council (section 107); (12) prohibition to hold an election to the Executive Council during a period of one year, if a previous election was ineffective in that less than half of the eligible workers cast a vote (section 103(2)); (13) legislative determination of the tenure of the Executive Council (section 105); (14) broad definition of unfair labour practices, which also include participation in any WWA activities without permission from the employer, and imposition of penal sanctions for their violation (sections 115(1), 115(2)(a) and (f), 150(2)–(3)); (15) excessive requirement to issue a strike notice (consent of three-quarters of members of the Executive Council – section 126(2)); (16) power of the Conciliator appointed by the Zone Authority to determine the validity of a strike notice, without which a lawful strike cannot take place (section 127(2)); (17) possibility to prohibit strike or lockout after 30 days or at any time if the continuance of the strike or lockout causes serious harm to productivity in the Zone or is prejudicial to public interest or national economy (section 130(3)–(4)); (18) possibility of unilateral referral of a dispute to the EPZ Labour Court which could result in compulsory arbitration (sections 130(3)–(5) and 143); (19) prohibition of strike or lockout for three years in a newly established enterprise and imposition of obligatory arbitration (section 130(9)); (20) possibility to hire temporary workers during a legal strike in cases where the Executive Chairman of the Zone Authority is satisfied that complete cessation of work is likely to have the risk of causing serious damage to the machinery or installation of the industry (section 114(1)(g)); (21) excessive penalties, including imprisonment, for illegal strikes (sections 154 and 155); (22) prohibition of activities not within the aims and objects of the association as specified in its Constitution and prohibition to form or maintain any linkage with any political party or any non-governmental organization, as well as possible cancellation of such association and prohibition to form a WWA within one year after such cancellations (section 173(1)–(3)); (23) cancellation of a WWA on grounds which do not appear to justify the severity of the sanction (sections 109(1)(c)–(h), 173(3)); (24) power of the Government to exempt any owner, group of owners, enterprise or worker from any provision of the Act making the rule of law a discretionary right (section 179); (25) excessive requirements to form an association of employers (section 113(1)); (26) prohibition of an employer association to associate or affiliate in any manner with another association (section 113(2)); and (27) excessive powers of interference in employers' associations' affairs (section 113(3)). The Committee also notes that section 198 provides the possibility for the Zone Authority, with the approval of the Government, to establish regulations, which could further restrain the right of workers and their organizations to carry out legitimate trade union activities without interference. The Committee further recalls its previous comments that Chapter XIV (previously Chapter XV) on administration and labour inspection runs counter to the notion of an independent public authority to apply the laws fairly. Finally, the Committee notes that while according to the information provided by the Government to the Conference Committee, administration and inspection of factories in EPZs would fall under the BLA, the information provided in the Government's report suggests that despite structural changes being made, the administration and inspection in the EPZs will remain separate from those under the BLA. *Observing that a very large number of provisions would need to be repealed or substantially amended to ensure the compatibility of the draft EPZ Labour Act with the Convention and recalling the conclusions of the Conference Committee, the Committee requests the Government to continue to review the draft EPZ Labour Act, in consultation with the social partners, to address all the issues highlighted above and to bring the EPZs within the purview of the Ministry of Labour and the Labour Inspectorate.*

The Committee once again recalls the critical importance which it gives to freedom of association as a fundamental human and enabling right. In view of the Government's commitment to uphold the workers' rights to freedom of association and their right to strike for realizing their legal demands, expressed at the Conference Committee, the Committee expresses its firm hope that significant progress will be made in the very near future to bring the legislation and practice into conformity with the Convention.

Noting the Government's request for additional assistance in strengthening its capacity to improve industrial relations at the enterprise level and to provide training for EPZ industrial relations officers and counsellors-cum-inspectors, the Committee hopes that the Office will continue to provide

all technical support needed in this respect.

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 referring to matters addressed below and the Government's reply thereto. The Committee also notes the Government's comments on the 2015 and 2016 ITUC observations submitted under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), as well as the information provided to the 2017 Conference Committee on the Application of Standards, when examining the individual case of Bangladesh under Convention No. 87, to the extent that they address matters falling within the scope of the present Convention.

Articles 1 and 3 of the Convention. Adequate protection against acts of anti-union discrimination. In its previous comments, the Committee requested the Government to continue to provide training and capacity building to labour officers to bolster their capacity to inquire into allegations of anti-union discrimination and to provide detailed statistics on the number of complaints filed, their follow-up in the labour inspectorate and sanctions imposed. The Committee notes the Government's indication that: (i) from 2013 to 2017, 112 complaints were lodged with the Joint Director of Labour (JDL), out of which 103 were settled (39 criminal cases filed and 64 complaints settled amicably) and nine are under investigation (in 2016, all 71 cases were settled, bringing the disposal rate to 100 per cent); (ii) an online database was created on the website of the Directorate of Labour (DoL) to make the process publicly available and more transparent and it currently contains information on the status of 76 cases of anti-union discrimination or unfair labour practices (51 settled cases and 25 ongoing); (iii) the database will include detailed information as to the evolution of the complaint, including time taken to resolve a case, remedies imposed, numbers of reinstatement with or without back pay, number of remedies accepted by the employer versus appealed to courts, time taken for judicial proceedings, percentage of cases where employers' appeals succeeded and sanctions ultimately imposed; (iv) standard operating procedures (SOPs) for anti-union discrimination and unfair labour practices were recently adopted in order to facilitate and accelerate the handling and investigation of such allegations in a transparent manner following a uniform procedure, and will be piloted in 500 enterprises; and (v) the Government has initiated the upgrading of the DoL to a department, which will result in an increase of manpower from 712 to 921. The Committee further notes the detailed information provided by the Government on the type and number of training and capacity-building activities provided to labour officials, judges, lawyers, workers and employers on matters relevant to the Convention and welcomes, in particular, the specialized and regular training activities conducted to bolster the capacity of labour officials to investigate allegations of anti-union discrimination and unfair labour practices, to develop a credible, efficient and transparent system of arbitration and conciliation and to facilitate effective labour management relations, collective bargaining and prompt and efficient settlement of labour disputes. The Committee also notes the envisaged establishment of a Workers' Resource Centre, which will act as a centre for excellence for training and awareness-raising of labour officials, workers and employers on conciliation, anti-union discrimination and unfair labour practices. *Noting with interest the development of the SOPs and the establishment of a publicly available database on anti-union discrimination, as well as the ongoing training activities conducted for labour officials and the envisaged increase of manpower of the DoL, the Committee expects that all of these measures will contribute to an expedient, efficient and transparent handling of anti-union discrimination complaints.*

While taking note of the information provided on the number of complaints lodged to the JDL, the Committee observes that the Government did not indicate the particulars previously requested by the Committee in relation to the handling of complaints of anti-union discrimination and their follow-up in the labour inspectorate (time taken to resolve the disputes, remedies imposed, including the number of cases of reinstatement, the number of remedies accepted by the employers versus appealed to judicial proceedings, time taken for judicial proceedings and the percentage of cases where employers' appeals succeeded, and sanctions ultimately imposed following full proceedings) but notes that these elements are explicitly enumerated in the SOPs and should, according to the Government, form part of the online database. *The Committee requests the Government once again to provide detailed statistics on the number of complaints of anti-union discrimination received by the relevant authorities and their follow-up, including all of the abovementioned elements, so as to demonstrate the effectiveness of the SOPs with regard to complaints of anti-union discrimination and unfair labour practices. Further observing that penalties envisaged for unfair labour practices and acts of anti-union discrimination are not sufficiently dissuasive (a fine of maximum 10,000 Bangladeshi taka (BDT) which equals US$120 – section 291(1) of the Bangladesh Labour Act, 2006 (BLA)), the Committee requests the Government to take the necessary measures, after consultation with the social partners, to increase the penalties envisaged for such acts, so as to ensure their sufficiently dissuasive character. The Committee also requests the Government to indicate the outcome of the 39 mentioned complaints that gave rise to criminal cases.*

In its previous comment under Convention No. 87, the Committee had requested the Government to continue to provide information on the helpline for submission of labour-related complaints targeting the ready-made garment (RMG) sector in the Ashulia area and its expansion to other industrial sectors and geographical areas. The Committee notes the Government's indication that as of September 2017, a total of 2,068 complaints (mostly concerning issues of wages, overdue payments and job termination) were received from the RMG sector workers in Ashulia, out of which 501 were settled. The Government indicates that the Department of Inspection for Factories and Establishments (DIFE) is already dealing with complaints from other geographical areas and industrial sectors, that once sufficient experience is gained, the model will be formally expanded, and that a system is also being developed to prioritize, record and forward labour disputes to the relevant authority, as well as to update statistics to improve transparency and governance in dealing with complaints. *Taking due note of this information, the Committee requests the Government to continue to provide detailed updates on the functioning of the helpline, including the number and nature of allegations raised, the nature of the follow-up to calls, including steps taken to prevent reprisals against helpline users and preserve their anonymity, the number and nature of investigations undertaken and their outcome. The Committee also requests the Government to clarify the status of the 1,567 complaints that have not been settled.*

The Committee further recalls that the Conference Committee had called on the Government to continue to investigate, without delay, all alleged acts of anti-union discrimination, including in the Ashulia area, ensure the reinstatement of those illegally dismissed, and impose fines or criminal sanctions according to the law. The Committee notes the Government's indication that: (i) the law enforcement authority is empowered to arrest any person considered to be involved in an unrest and seek redress through courts, which may result in an individual being arrested; (ii) the employer can terminate a worker if it is deemed appropriate following the legal procedures; and (iii) all those who were arrested after the Ashulia incident were released on bail, eight out of 11 cases were disposed of after investigation and the remaining three cases are being investigated. The Committee further notes the information provided by the Government on the role of the Ready-Made Garment Sector Tripartite Consultative Council (RMG TCC) in investigating allegations of anti-union violence and discrimination in two garment factories in Chittagong, in particular that a five-member tripartite investigating committee interviewed the concerned parties, examined relevant documents and prepared a final report and that the situation in the concerned garment factories is currently calm. The Committee also observes that, according to the ITUC, baseless criminal charges remain pending against workers for their involvement in the Ashulia incident and there is little prospect of reinstatement for workers not covered by the agreement concluded after the incident between the Government and IndustriALL. The ITUC also expresses concerns as to the long-standing pattern of unlawful and violent acts, including illegal dismissals of trade union leaders, in a garment group in Chittagong and alleges that the investigating committee established by the RMG TCC, despite being tripartite, showed serious flaws, irregularities and pro management bias both in its investigating process and the final report. The Committee recalls in this regard that allegations of systematic anti-union retaliation were also addressed by the

Committee on Freedom of Association (see 382nd Report of the Committee on Freedom of Association, Case No. 3203, paragraphs 170–171). *The Committee requests the Government to take the necessary measures to ensure that any pending proceedings in relation to the Ashulia incident are concluded without delay and that all workers dismissed for anti-union reasons who wish to return to work are reinstated. The Committee requests the Government to provide information on any progress made in this regard. The Committee expects that any future investigations into concrete allegations of anti-union discrimination will be done in full independence and impartiality and that the Government will continue to take all necessary measures to prevent repeated and institutionalized acts of anti-union discrimination.*

In its previous comments, the Committee also requested the Government to provide information on the outcome of the judicial proceedings concerning dismissed workers in the mining sector who were charged with illegal activities (Case No. 345/2011). The Committee notes the Government's indication that while the first instance court acquitted the accused workers, an appeal for cancellation of this judgment was filed to the District Sessions Court, Dinajpur, and was granted but to date, the defendants have not attended court. *The Committee requests the Government to provide information on the outcome of the case once the judgment of the District Sessions Court, Dinajpur has been rendered.*

Protection of workers in export processing zones (EPZs) against acts of anti-union discrimination. In its previous comments, the Committee requested the Government to consider setting up a publicly accessible database specific to the EPZs to render the treatment of anti-union discrimination complaints more transparent; to clarify the role of counsellors-cum-inspectors in addressing such complaints; to provide the Bangladesh Export Processing Zones Authority (BEPZA or Zone Authority) circular on the application of section 62(2) of the Export Processing Zones Workers' Welfare Associations and Industrial Relations Act, 2010 (EWWAIRA); and to provide statistics on the number of anti-union discrimination complaints brought to the competent authorities, their follow-up and the remedies and sanctions imposed. The Committee notes the Government's indication that: (i) there are no reported cases of anti-union discrimination in the RMG sector but if evidence of such actions is found, appropriate action will be taken; (ii) no workers' welfare association (WWA) leader or member has ever been dismissed by the Zone Authority for the exercise of their labour rights, WWA members are protected under section 62(2) of the EWWAIRA and to avoid any discrimination, the Zone Authority conducts neutral investigations and personal hearings of the concerned workers, who also have full freedom to submit a complaint to the EPZ Labour Tribunals or the EPZ Labour Appellate Tribunal; (iii) counselor-cum-inspectors are engaged in regular monitoring of compliance issues and handling of labour disputes and there are currently 60 counsellors-cum-inspectors, three conciliators and a panel of arbitrators to resolve allegations of unfair labour practices; (iv) the labour inspection system established by the Zone Authority is effective, transparent, accountable and scalable and assists workers and employers in solving disputes through the Alternative Dispute Resolution (ADR) method; (v) through massive structural changes, the administration system of the EPZs has been brought in line with the BLA and both workers and investors are satisfied with the existing inspection and administration system and consider that involvement of another authority could create dual administration issues, confusion among the parties and even unrest; and (vi) as of May 2017, 161 cases were filed to the EPZ Labour Tribunals and the EPZ Labour Appellate Tribunal, out of which 86 were settled. *Noting the Government's affirmation that there are no reported cases of anti-union discrimination in the RMG sector but observing that, to avoid discrimination, the Zone Authority conducts hearings of the concerned workers, the Committee requests the Government to clarify whether such hearings are done on a preventive basis or as a follow-up to complaints filed by workers. The Committee requests the Government once again to establish an online database for anti-union discrimination complaints specific to the EPZs, so as to ensure full transparency of the process, and to continue to provide statistics on the number of anti-union discrimination complaints brought to the competent authorities, their follow-up and the remedies and sanctions imposed. The Committee also requests detailed information on whether the Government's helpline for submission of labour-related complaints targeting the RMG sector is fully operational for EPZ workers. Further recalling that according to the information provided by the Government to the Conference Committee, administration and inspection of factories in EPZs would fall under the BLA, the Committee requests the Government once again to take the necessary measures to bring the EPZs within the purview of the Ministry of Labour and the Labour Inspectorate. The Committee is also obliged once again to request the Government to provide a copy of the BEPZA circular on the application of section 62(2) of the EWWAIRA.*

The Committee further notes the Government's indication that Chapters IX, X and XV of the draft Bangladesh Export Processing Zones Labour Act (EPZ Labour Act) have been redrafted through tripartite consultations on the basis of ILO observations and comments of collective bargaining agents and investors but observes the need to continue to review the draft law to ensure its conformity with the Convention regarding the following matters: specific categories of workers continue to be excluded from the law (workers in supervisory and managerial positions – section 2(49)) or from Chapter IX dealing with WWAs (members of the watch and ward, drivers, confidential assistants, cipher assistants, casual workers, workers employed by kitchen or food preparation contractors and workers employed in clerical posts – section 93); power of the Executive Chairperson to rule on the legitimacy of a transfer or termination of a WWA representative (section 120); lack of specific measures to remedy acts of anti-union discrimination except in case of WWA officials covered by section 120; insufficiently dissuasive fines for unfair labour practices – a maximum of US$600 (section 150(1)); and Chapter XIV (previously Chapter XV) on administration and labour inspection runs counter to the notion of an independent public authority to apply the laws fairly. In this regard, the Committee also refers to its detailed comments made under Convention No. 87. *In view of the above, the Committee requests the Government to take the necessary measures, in the framework of the ongoing revision of the draft EPZ Labour Act and in consultation with the social partners, to ensure that all workers covered by the Convention are adequately protected against acts of anti-union discrimination, including through recourse to an independent authority, adequate remedies and sufficiently dissuasive sanctions.*

Articles 2 and 3. Lack of legislative protection against acts of interference. For several years, the Committee has been requesting the Government, in consultation with the social partners, to review the BLA with a view to including adequate protection for workers' organizations against acts of interference by employers or employers' organizations, which would also cover financial control of trade unions or trade union leaders and acts of interference in internal affairs. The Committee notes that the Government reiterates that legislative reform is a continuous process which has to take into account feedback from the stakeholders and the changing socio-economic context of the country. The Committee further notes the Government's indication that a Tripartite Technical Committee (TTC) was recently established to suggest and identify areas for amendment of the BLA and that after several meetings, an initial draft of the BLA was prepared. The Government states that in November 2017, a further tripartite committee for amendment of the BLA was formed by the Ministry of Labour and Employment (MOLE) and prepared a report with recommendations on how to address the pending ILO observations. While welcoming these initiatives to review the BLA, the Committee *regrets* that the proposed amendments do not address the Committee's long-standing concerns with regard to comprehensive protection against acts of interference and that, as a result, protection in this regard remains limited: section 202(13) of the BLA prohibits employer's interference in the conduct of elections for a collective bargaining agent and Rule 187(2) of the Bangladesh Labour Rules (BLR) prohibits interference in elections of workers' representatives to participation committees but these provisions do not cover all acts of interference prohibited under *Article 2* of the Convention. *The Committee requests the Government to take all necessary measures to ensure that the need for explicit provisions granting full protection against acts of interference is given adequate attention in the ongoing review of the BLA, so as to ensure that workers' and employers' organizations are effectively protected against acts of interference both in law and in practice. The Committee expects that the social partners will be fully consulted in this process and firmly hopes that the Government will be able to report progress in this regard in the near future.*

Lack of legislative protection against acts of interference in the EPZs. In its previous comment, having observed that neither the EWWAIRA nor the EPZ Labour Act contained a comprehensive protection against acts of interference in trade union affairs, the Committee requested the Government to take the necessary measures, in consultation with the social partners, to review the relevant legislation in this respect. The Committee welcomes the initiative to review the EPZ Labour Act mentioned above and notes that while the draft contains certain provisions prohibiting interference by workers' and employers' organizations

in each other's internal affairs (sections 114(1)(f) and 115(3)), they do not cover all acts of interference prohibited under *Article 2* of the Convention. *The Committee requests the Government to take the necessary measures to continue to review the relevant legislation, in consultation with the social partners, so as to ensure a comprehensive protection against all acts of interference of workers' and employers' organizations in each other's establishment, functioning or administration, including acts designed to promote the establishment of workers' organizations under the domination of an employer, to support workers' organizations by financial or other means with the objective of placing them under the control of an employer or an employers' organization, to exercise pressure in favour or against any workers' organization, etc.*

Article 4. Promotion of collective bargaining. In its previous comment, the Committee requested the Government to provide information on the practical application of section 202A(1) of the BLA, which enables collective bargaining agents and employers to contact experts for assistance in collective bargaining. The Committee notes that the Government simply reiterates the content of the provision without providing any information as to its application in practice. *The Committee, therefore, requests the Government once again to indicate whether and how section 202A(1) of the BLA has been used in practice in the context of collective bargaining.*

The Committee further notes the information provided by the Government in relation to the Committee's previous concerns as to the possible undermining of trade unions by participation committees, in particular that section 205(6a) of the BLA was adopted to redress the interests of workers in an establishment where there is no trade union and their function is thus to improve workers' welfare and not to substitute for trade unions, that under the proposed amendment to section 205 of the BLA, there will be no need to establish a participation committee where there is a trade union and that should any concrete allegations of participation committees undermining trade unions be brought to the Government's attention, it will take the necessary measures to remedy the situation.

The Committee also observes that, according to the ITUC, Rule 4(4) of the BLR gives the Inspector General total discretion to shape the outcome of service rules and determine their conformity with the law, whereas such rules are often the subject of collective bargaining in enterprises with trade unions, and that Rule 202, which prohibits certain trade union activities is drafted so broadly as to impinge on the right to freedom of association and collective bargaining, as any bargaining on wages, hiring and transfers could constitute a prohibited action. *The Committee requests the Government to provide information on the application of Rule 202 in practice, in particular, to indicate whether collective bargaining has been prohibited, suspended or penalized as a result of the application of this provision and to ensure that Rule 4(4) is not used to limit collective bargaining in enterprises where trade unions are established.*

Higher-level collective bargaining. The Committee had previously requested the Government to consider, in consultation with the social partners, amending sections 202 and 203 of the BLA in order to clearly provide a legal basis for collective bargaining at the industry, sector and national levels and to continue to provide statistics on the number of higher-level collective agreements concluded, the areas of industry to which they apply and the number of workers covered. The Committee notes that the Government reiterates that there is no restriction on settlement of disputes and different issues through bipartite negotiation or conciliation at industry, sector or national levels and indicates that between September 2013 and 2016, 41 collective bargaining agreements were concluded. *While taking note of the information provided, the Committee observes that no legislative changes have been introduced to the relevant provisions despite the ongoing review of the BLA and requests the Government once again to consider, in consultation with the social partners, amending sections 202 and 203 of the BLA to clearly provide a legal basis for collective bargaining at the industry, sector and national levels. Further observing that the information provided by the Government lacks certain elements previously called for, the Committee requests the Government to continue to provide statistics on the number of higher-level collective agreements concluded (at the sectoral and national levels), the areas of industry to which they apply and the number of workers covered.*

Determination of collective bargaining agents. The Committee had previously noted that where there is more than one trade union in an enterprise, a collective bargaining agent will be determined, upon application by a trade union or the employer, through a secret ballot and that the trade union that secures the highest number of votes will be declared as the collective bargaining agent, providing that it obtains the votes of at least one third of the total workers employed in the establishment (section 202(15) of the BLA). The Committee had recalled that such percentage requirements for the recognition of a collective bargaining agent could impair in certain cases, in particular in large enterprises, the development of free and voluntary collective bargaining but had observed the Government's indication that the percentage requirement had been repealed. The Committee observes, however, that section 202(15) still provides that a trade union may not become a collective bargaining agent unless it obtains the votes of at least one third of the total number of workers employed in the establishment. *The Committee therefore requests the Government to provide clarification on the exact requirements for a trade union to become a collective bargaining agent and recalls that if, under a system for nominating an exclusive bargaining agent, there is no union representing the required percentage to be so designated, unions should be able to bargain collectively, at least on behalf of their own members.*

Compulsory arbitration. The Committee observes that according to the proposed amendments to section 210(10)–(12) of the BLA, if an industrial dispute is not settled through conciliation, the conciliator shall refer the dispute to an arbitrator, whose award is final without any possible appeal. The Committee recalls in this regard that the imposition of arbitration with compulsory effects in cases where the parties have not reached an agreement is one of the most radical forms of intervention by the authorities in collective bargaining and is contrary to *Article 4* of the Convention which aims at promoting free and voluntary collective bargaining. Arbitration with compulsory effects should only be possible where both parties agree to it, or in essential services in the strict sense of the term, in disputes in the public service involving public servants engaged in the administration of the State (*Article 6* of the Convention) or in the event of acute national or local crisis. *The Committee requests the Government to take the necessary measures to ensure that any proposed amendment takes into account the situations enumerated above.*

Promotion of collective bargaining in the EPZs. In its previous comment, the Committee requested the Government to provide examples of collective bargaining agreements concluded in the EPZs and to continue to provide statistics in this regard. The Committee notes the Government's indication that as of November 2017, WWAs have been formed and are active in 74 per cent of eligible enterprises and that during the last four years, WWAs submitted 411 charters of demands, all of which were settled amicably and agreements were signed, thus demonstrating that EPZ workers enjoy the right to collective bargaining. Further observing that section 175(c) of the draft EPZ Labour Act allows the Executive Chairperson of the Zone Authority to determine the legitimacy of any WWA and its capacity to act as a collective bargaining agent, the Committee recalls that the determination of bargaining agents should be carried out by a body offering every guarantee of independence and objectivity. *The Committee requests the Government to provide information on any cases where the Executive Chairperson rejected the legitimacy of a WWA and its capacity to act as a collective bargaining agent, and further requests the Government to take the necessary measures to ensure that the determination of collective bargaining agents in EPZs is the prerogative of an independent body. The Committee requests the Government to continue to provide statistics on the number of collective bargaining agreements concluded in the EPZs and the number of workers covered, along with some sample agreements.*

Emphasizing the desirability of providing equal protection to workers in EPZs and outside the zones in terms of the right to organize and bargain collectively, the Committee requests the Government to continue to review the draft EPZ Labour Act, in consultation with the social partners, to bring it in line with the BLA (as revised in line with the Committee's comments) and the Convention.

Articles 4 and 6. Collective bargaining in the public sector. In its previous comments, the Committee requested the Government to provide details on the manner in which organizations of public servants not engaged in the administration of the State can bargain collectively and copies of any agreements reached. The Committee notes the Government's statement that in some public sector organizations, agencies and corporations, employees below the rank of officers who usually perform non-administrative jobs are allowed to negotiate through employees' associations, whose elected representatives can submit claims to the competent authority, which evaluates them in the socio-economic context of the country. According to the Government, this system of negotiation has been

practiced for a long time without any major objection from the employees, an administrative appellate tribunal has been established to settle disputes in the public service and aggrieved persons may also appeal to High Courts and Supreme Courts. Observing that, according to the Government, collective bargaining only takes place in some public sector organizations and agencies and is only allowed for lower ranking officers, the Committee recalls that recognition of the right to collective bargaining is general in scope and all workers in the public and private sectors must benefit from it, with the only possible exception of the armed forces, the police and public servants engaged in the administration of the State. *In view of the above, the Committee requests the Government to clarify what specific categories of workers in the public sector can bargain collectively and to indicate the criteria based on which this right is granted. The Committee requests the Government to take the necessary measures to endeavour to extend the right to collective bargaining to all public sector workers covered by the Convention and to provide examples of collective agreements concluded in the public sector.*

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

Observation 2017

Article 1(a) of the Convention. Sanctions involving the obligation to work as a punishment for the expression of political views or views ideologically opposed to the established political, social or economic system. 1. *Penal Code.* The Committee previously requested the Government to provide information on the application in practice of section 124A of the Penal Code, which provides that whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law shall be punished with imprisonment for life or any shorter term, to which a fine may be added, or with imprisonment which may extend to three years, to which a fine may be added, or with a fine. According to section 53 of the Penal Code, rigorous imprisonment and imprisonment for life involve compulsory hard labour, while simple imprisonment does not involve an obligation to work.

The Committee notes the Government's indication in its report that the Penal Code does not interfere in employer–worker relations, and is applied to impose penalties on violence, incitement to violence or engagement in acts aimed at violence. Referring to paragraph 263 of the 2012 General Survey on the fundamental Conventions, the Committee reminds the Government that the purpose of the Convention is to ensure that no form of forced or compulsory labour is used in the circumstances specified in the Convention, which are closely interlinked with civil liberties, not limited to employer–worker relations. The Committee recalls that the Convention does not prohibit punishment by penalties involving compulsory labour of persons who use violence, incite to violence or engage in preparatory acts aimed at violence. But sanctions involving compulsory labour fall within the scope of the Convention where they enforce a prohibition of peaceful expression of views or of opposition to the established political, social or economic system, whether such prohibition is imposed by law or by a discretionary administrative decision. In this connection, the Committee observes that, referring to incitement to contempt or disaffection towards the Government, section 124A of the Penal Code is worded in terms broad enough to lend itself to application as a means of punishment for the expression of views, and in so far as it is enforceable with sanctions involving compulsory labour, it falls within the scope of the Convention. *The Committee therefore requests the Government to take the necessary measures to ensure that no penalties involving compulsory labour may be imposed for the peaceful expression of political views, or views opposed to the established system, for example by clearly restricting the scope of section 124A of the Penal Code to situations connected with the use of violence or incitement to violence, or by repealing sanctions involving compulsory labour. The Committee requests the Government to provide information on any progress made in this respect, as well as information on the application of this section in practice, including any prosecutions conducted or court decisions handed down, indicating the penalties imposed.*

2. *Information and Communication Technology Act.* The Committee notes that, section 57 of the Information and Communication Technology Act of 2006 (ICT) criminalizes several forms of online expression, including defamation, expressions tarnishing the image of the state or an individual and statements hurting religious sentiments, among others. As amended in 2013, the offences under this section are punishable by imprisonment of seven–14 years. The Committee also notes that, in its concluding observations of 27 April 2017, the UN Human Rights Committee (HRC) expresses its concern at the arrest of at least 35 journalists, "secular bloggers" and human rights defenders in 2016 under the ICT Act of 2006 (amended in 2013), a de facto blasphemy law that limits freedom of opinion and expression using vague and overbroad terminology to criminalize publishing information online, that "hurts religious sentiment" and information that prejudices "the image of the State" with a punishment of seven to 14 years (CCPR/C/BGD/CO/1, paragraph 27). The Committee further notes that, pursuant to section 46(3) of the Prison Act of 1894, any inmate who violates prison rules may be punished by hard labour for a period not exceeding seven days, even if he/she has not been sentenced to rigorous imprisonment, which involves an obligation to work. *The Committee therefore requests the Government to take the necessary measures to ensure that no punishment involving compulsory labour is imposed in practice on persons who, without having recourse to violence, express political opinions or views opposed to the established political, social or economic system. It also 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.

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

Observation 2017

Article 5(1). Effective tripartite consultations. In its previous comments, the Committee invited the Government to take advantage of the tripartite consultation procedures required under the Convention in order to move forward with ratification and application of the ILO instruments relevant to the occupational safety and health (OSH) framework, in accordance with the Tripartite Statement of Commitment adopted in 2013 after the tragic events of Rana Plaza and the Tazreen Factory. It also invited the Government to re-examine certain other unratified Conventions in consultation with the social partners, specifically the Minimum Age Convention, 1973 (No. 138), a fundamental Convention; the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Employment Policy Convention, 1964 (No. 122), both of which are governance Conventions; the Indigenous and Tribal Peoples Convention, 1989 (No. 169), whose ratification would result in the immediate denunciation of the Indigenous and Tribal Populations Convention, 1957 (No. 107); the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185); and the Maritime Labour Convention, 2006 (MLC, 2006). The latter two instruments, were both ratified in 2014 by Bangladesh. The Government indicates that ratification of the Conventions mentioned by the Committee is not feasible in the near future, as it would take considerable time to create the necessary administrative and legal systems prior to ratifying these instruments. The Government adds that, while it has not ratified the OSH instruments, it is nevertheless committed to ensure enforcement of existing legislation related to OSH and work-related injuries. The Committee notes that the Government does not provide information on the consultations held by the Tripartite Consultative Council on the other matters covered under *Article 5(1)* of the Convention. *The Committee therefore urges the Government to provide specific and detailed information on the content and outcome of the tripartite consultations held on all matters concerning international labour standards covered by the Convention, particularly relating to the questionnaires on Conference agenda items (Article 5(1)(a)); 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

Articles 3(a) and 7(1) of the Convention. Worst forms of child labour and penalties. Sale and trafficking of children. The Committee previously took note of the Prevention and Suppression of Human Trafficking Act No. 3 of 2012 (Trafficking Act) which provides that the trafficking of children under 18 years for labour and sexual exploitation is punishable by rigorous imprisonment of not less than five years and with a fine of 50,000 takas (approximately US$603). The Committee noted that the Trafficking Act provides for the establishment of an Anti-Human Trafficking Offence Tribunal at the district level wherein the offences under this Act shall be tried.

The Committee notes the Government's information in its report that to effectively implement the Trafficking Act, it has formulated three rules in 2017: the Prevention and Suppression of Human Trafficking Rule; the Human Trafficking Suppression Authority Rule; and the Human Trafficking Fund Rule. The Committee also notes the Government's indication that, as of July 2017, there were 2,663 human trafficking cases pending trial and 540 cases under investigation. While the Committee observes that the Government does not provide statistics related to the number of penalties imposed on persons found guilty of child trafficking specifically, it notes that, according to the 2016 UNODC Global Report on Trafficking in Persons, 232 child victims of trafficking were identified by the police between May 2014 and April 2015.

However, in the list of issues of 14 February 2017 in relation to the initial report of Bangladesh under article 40 of the International Covenant on Civil and Political Rights (ICCPR), the Human Rights Committee pointed out that there seem to be numerous acquittals in human trafficking cases for the number of prosecutions (indeed the Government indicates that in 820 cases filed against traffickers, only 15 persons were convicted and sentenced to life imprisonment in 2014 and 2015) (CCPR/C/BGD/1/Add.1, item 12). *The Committee urges the Government to take the necessary measures to ensure that, in practice, thorough investigations and robust prosecutions are carried out for persons who engage in the trafficking of children, and that sufficiently effective and dissuasive sanctions are imposed. In this regard, the Committee once again requests the Government to provide information on the number of investigations, prosecutions, convictions and penal sanctions applied by the Anti-Human Trafficking Offence Tribunal for the offence of trafficking in persons under 18 years of age, in accordance with the provisions of the Trafficking Act.*

Article 5. Monitoring mechanisms. Labour inspection. In its previous comments, the Committee noted that the Department of Inspection for Factories and Establishments (DIFE) had been expanded by recruiting an additional 262 inspectors, thereby having a total staff of 575 inspectors in 2014.

The Committee notes the Government's information that, as of 2016, a total of 95 cases have been filed by the DIFE against employers having employed children in violation of section 34(1) of the Bangladesh Labour Act 2006 (as amended in 2013), which prohibits the employment of a child under 14 years of age. The Committee notes that, in its report under the Labour Inspection Convention, 1947 (No. 81), the Government provides detailed information on the measures taken to strengthen the capacity of the labour inspectors of the DIFE, including the organization of several training programmes, seminars and workshops. The Government also indicates that the DIFE inspects the ready-made garment (RMG) sector and maintains a database of 4,808 RMG factories, which includes basic information of workers employed in the factories. The Committee further notes that, in its replies to the list of issues of 14 February 2017 in relation to the initial report of Bangladesh under article 40 of the ICCPR (CCPR/C/BGD/1/Add.1, item 14), the Government indicates that the officials of the DIFE also regularly inspect shrimp and dried fish industries, the construction sector, brick factories and tanneries.

The Committee notes, however, that according to the National Child Labour Survey conducted in 2013 and published in 2015, 1.28 million children aged 5 to 17 were found to be engaged in hazardous work. The Survey reveals that hazardous child labour, which is defined as working in one of the types of work listed as hazardous by law or working more than 42 hours per week, is most often found in manufacturing (39 per cent); agriculture, forestry and fishing (21.6 per cent); wholesale and retail (10.8 per cent); construction (9.1 per cent); and transportation and storage (6.5 per cent). The Survey also reveals that children as young as 6 years of age can be found in hazardous work: 32,808 children aged 6–11 were found to be working in hazardous conditions in manufacturing, agriculture, construction, wholesale, and other service activities.

Considering the significantly high number of children working in hazardous conditions, the Committee expresses its ***concern*** at the low number of cases detected by the labour inspectors of the DIFE, and at the fact that those cases do not include children under the age of 18 found in hazardous work. Referring to its 2012 General Survey on the fundamental Conventions (paragraph 632), the Committee recalls that strengthening the capacity of labour inspectors to detect children engaged in hazardous work is essential, particularly in countries where children are, in practice, engaged in hazardous work but no such cases (or only a small number of cases) have been detected by the labour inspectorate. *The Committee therefore requests the Government to continue taking measures to strengthen the capacity and improve the ability of labour inspectors of the DIFE to detect all children under the age of 18 engaged in hazardous work, and to provide information on the progress achieved in this regard. In addition, the Committee requests the Government to provide information on the inspections carried out and on the number and nature of violations detected by both the DIFE, and other units of labour inspection, involving children under 18 years of age in all sectors where the worst forms of child labour exist.*

Article 7(2). 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 took due note of the measures taken by the Government, including the adoption of the National Education Policy 2010 in order to ensure compulsory primary education up to grade eight with scope for vocational education as well as to ensure enrolment and retention of students in primary and secondary education.

The Committee notes the Government's information according to which, in order to reach the goals of ensuring inclusive and quality education for all, and of achieving a 100 per cent net enrolment rate for both primary and secondary education, to which the Government subscribed by adopting the Sustainable Development Goals and the Seventh Five Year Plan (2016–20), it is continuing its efforts by undertaking different policies and activities. Among these are the nationalization (shifting to State control) of 26,193 private primary schools, the provision of free primary education, the distribution of free textbooks at primary and secondary levels, and the construction of various infrastructure essential for education. The Committee notes the Government's information that the net enrolment rate in primary education rose from 94.8 per cent in 2010 to 97.94 per cent in 2016 (97.10 per cent for boys and 98.82 per cent for girls).

However, the Committee notes with ***concern*** that, while the drop-out rate at the secondary level dropped from 55.31 per cent in 2010 to 38.47 per cent in 2016, enrolment at the secondary level has significantly decreased, going down from 72.95 per cent in 2010 to 54.50 per cent in 2016. In addition, the Committee observes that, in its concluding observations of 30 October 2015, the Committee on the Rights of the Child, while welcoming the adoption of the National Education Policy, expresses concern about the limited implementation of the policy due to the lack of adequate resources; the quality of education not being up to national standards; and the persistent drop-out rates due to fees and other costs, such as for books and uniforms; to violence and harassment on the way to and from and at school; and to the lack of sanitation facilities that are separate for girls and boys (CRC/C/BDG/CO/5, para. 66). In addition, while commending the State party for achieving gender parity in primary and secondary education, the Committee on the Elimination of Discrimination against Women, in its concluding observations of 25 November 2016, notes with concern that the number of girls in school drops by half between the primary and secondary levels of education owing, among other things, to child marriage, sexual harassment, the low value placed on girls' education, poverty and the long distances to schools in rural and marginalized communities (CEDAW/C/BGD/CO/8, para. 28(a)). *Considering that education is one of the most effective means of preventing the engagement of children in the worst forms of child labour, the Committee strongly encourages the Government to strengthen its efforts to provide access to free basic education for all children, with a particular attention to girls, thereby ensuring enrolment and retention of students both in primary and secondary education. The Committee also requests the Government to continue providing updated*

statistical data on school enrolment and drop-out rates, disaggregated by age and gender.

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), 2(1) and 25 of the Convention. 1. *Trafficking in persons.* The Committee previously noted the Government's indication that, within the framework of the National Action Plan of 2011–13 on the suppression of trafficking and sexual exploitation, it had monitored places where prostitution may occur; provided advice and rehabilitation to sex workers; and instructed over 700 business owners on issues related to sexual exploitation. It had also taken measures to inform recruitment agencies on the risks associated with the use of false documentation, as well as on the importance of providing pre-departure training for migrants. The Committee further noted the statistical information provided by the Government on the number of cases of trafficking in persons and sexual exploitation brought before the courts, as well as the number of victims identified and individuals accused. The Committee noted, in particular, that the number of victims of trafficking and sexual exploitation identified appeared to have decreased substantially during the period of implementation of the National Action Plan. However, no information was provided on the number of convictions, the penalties imposed on perpetrators or the specific action taken to protect and assist victims.

The Committee notes the Government's information in its report that, in 2014, the police arrested 127 suspects, while the courts examined 74 cases and convicted 31 persons with a punishment of imprisonment; in 2015, the police arrested 144 suspects, while the courts examined 250 cases and convicted 201 persons with a punishment of imprisonment; and in 2016, the police arrested 113 suspects, while the courts examined 138 cases and convicted 103 persons with a punishment of imprisonment. The Government also indicates that, in 2016, the National Committee for Counter Trafficking (NCCT), in collaboration with its partners, provided 1,362 victims and vulnerable persons with assistance, including health checks, consultations, food and accommodation, training, etc. The Committee also notes that the Nation Action Plan for 2014–18 (NAP 2014–18) was adopted. Within the framework of its implementation, the Guidelines on Forms and Procedures for Identification of Victims of Human Trafficking for Appropriate Service were endorsed in 2015. The Committee further notes from a report of the United Nations Office on Drugs and Crime (UNODC) *Trafficking in persons from Cambodia, Lao PDR and Myanmar to Thailand* of August 2017 that trafficking in persons from Cambodia to Thailand for sexual exploitation has declined in recent years. However, Cambodia has become a destination country for sex trafficking from Viet Nam and experiences high levels of internal trafficking. *The Committee therefore requests the Government to continue to take the necessary measures to ensure that thorough investigations and prosecutions are carried out against perpetrators of trafficking in persons, and to continue providing information on the number of judicial proceedings initiated, as well as on the number of convictions and the specific penalties applied. The Committee also requests the Government to continue providing information on the measures taken to protect victims of trafficking and to facilitate their access to assistance and remedies.*

2. *Vulnerability of migrant workers to conditions of forced labour.* The Committee previously noted the Report of the International Trade Union Confederation (ITUC) for the World Trade Organization (WTO) General Council Review of the Trade Policies of Cambodia that migrant workers from Cambodia are vulnerable to situations of forced labour, particularly women domestic workers in Malaysia and men on fishing boats in Thailand. In this regard, the Committee also noted the adoption of Sub-Decree No. 190 of 2011 on "the Management of the Sending of Cambodian Workers Abroad through Private Recruitment Agencies", as well as of eight *Prakas* (Proclamations) supplementing the 2011 Sub-Decree. With regard to international cooperation measures, the Government stated that the draft Memorandum of Understanding (MoU) with the Government of Malaysia was under discussion. The Government further indicated that additional employees had been appointed to manage labour migration issues in the Embassies of Cambodia in Malaysia and Thailand.

The Committee notes the Government's information that in 2016, 40 inspections were carried out on private recruitment agencies, 54 cases have been received and settled involving 187 workers (129 females), and 46 training sessions of pre-departure orientation were held, in which 1,740 workers have participated. The Committee also notes that, according to the midterm evaluation report of the NAP 2014–18, an MoU with China was completed in late 2016. Efforts continue at finalizing an MoU with Malaysia and the MoU with Thailand is still being reviewed. According to the Report of the Tripartite Committee of the Governing Body set up to examine the representation alleging non-observance by Thailand of the Convention of 20 March 2017, there are 701,540 Cambodian migrant workers and a significant number of undocumented migrants who work in the fishing sector (GB.329/INS/20/6, paragraph 43). They are often deceived into this sector by brokers, and not able to leave given the fear of arrest and deportation, as well as the need to pay off debts (paragraph 15). The Committee further notes the Migration and Development Brief No. 28 of October 2017 by the World Bank that, the Government has announced plans to send 360 officials to Thailand between mid-September and December of 2017 for a 100-day campaign to assist a targeted 160,000 undocumented Cambodians in Thailand to obtain proper papers. *While taking note of the measures undertaken by the Government, the Committee requests it to continue its efforts to ensure that all migrant workers are fully protected from abusive practices and conditions that amount to forced labour, and to continue providing information in this regard. The Committee also requests the Government to continue providing information on the application in practice of Sub-Decree No. 190 of 2011 on labour migration and private recruitment agencies, as well as its supplementing Prakas, indicating the concrete 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

The Committee notes the observations of the International Organisation of Employers (IOE), received on 1 September 2017.

The Committee takes note of the comments of the Government in reply to the 2016 observations from the International Trade Union Confederation (ITUC), which denounced that a large number of trade union leaders and activists had been charged with criminal offences for union activities since 2014, as well as that an increasing number of injunctions and requisition orders against trade unions and workers had been granted in labour disputes to restrict trade union activities and industrial action. The Government states that it is reviewing each case to determine its legal basis and verify whether it has been settled. As to cases under court proceedings the Government indicates that it will report on the outcome once it receives final judgments. The Committee further notes the observations made by the ITUC received on 1 September 2017 on matters examined in this comment, as well as alleging a number of violations of the Convention in practice, building on its previous observations and denouncing the criminalization of trade union activities through harassing lawsuits, arrests and long-pending trials before courts whose independence is questioned. The ITUC further alleges the use of short-term contracts to terminate employment of trade union leaders and members so as to weaken active trade unions. In addition, according to the ITUC, the zero draft of the Minimum Wages Law (2016) contains provisions which prohibit legitimate trade union activities. *The Committee notes with concern the seriousness of these allegations and requests the Government to provide its comments on the 2016 and 2017 ITUC observations, in particular on the specific cases mentioned and the outcome of any pending court proceedings, as well as on the allegations of extended use of short-term contracts to undermine freedom of association, and of provisions in the draft law on the minimum wage criminalizing legitimate trade union activities concerning the discussion and setting of the minimum wage.*

The Committee also takes note of the report of the direct contacts mission (DCM) that visited the country from 27 to 31 March 2017, following a request by the Conference Committee on the Application of Labour Standards in June 2016.

Follow-up to the discussion 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 by Cambodia. The Committee notes that, in its conclusions, the Conference Committee requested the Government to: (i) ensure that freedom of association can be exercised

in a climate free of intimidation and violence against workers, employers and their respective organizations; (ii) provide the reports of the three committees charged with investigations into the murders of, and violence perpetrated against, trade union leaders to the Committee of Experts, and ensure that the perpetrators and instigators of the crimes are brought to justice; (iii) ensure that acts of anti-union discrimination are swiftly investigated and that, if verified, adequate remedies and dissuasive sanctions are applied; (iv) keep under review the Trade Union Law, closely consulting employers' and workers' organizations, with a view to finding solutions that are compatible with the Convention; (v) ensure that workers are able to register trade unions through a simple, objective and transparent process; (vi) ensure that teachers, civil servants, domestic workers and workers in the informal economy are protected in law and practice consistent with the Convention; (vii) ensure that all trade unions have the right to represent their members before the Arbitration Council; (viii) complete, in consultation with workers' and employers' organizations, the proposed legislation and regulations on labour disputes, in conformity with the Convention, so as to ensure that the labour dispute settlement system has a solid legal basis that allows it to fairly reconcile the interests and needs of workers and employers involved in the disputes; and (ix) develop a roadmap to define time-bound actions in order to implement the conclusions of the Conference Committee.

The Committee notes the Government's indication that the Ministry of Labour and Vocational Training convened a tripartite meeting on 25 August 2017 to discuss actions to implement the conclusions of the Conference Committee and that, as a result, a roadmap was being prepared in consultation with the social partners. After the submission of its report the Government shared a draft roadmap with the ILO for its review and technical assistance. *The Committee expects that, through comprehensive social dialogue and with the assistance of the ILO, the roadmap will soon be finalized to give full effect to the conclusions of the Conference Committee, and in this respect draws the Government's attention to the matters raised below.*

Trade union rights and civil liberties

Murders of trade unionists. With regard to its long-standing recommendation to carry out expeditious and independent investigations into the murders of trade union leaders Chea Vichea and Ros Sovannareth (in 2004) and Hy Vuthy (in 2007), the Committee had previously noted the Government's indication that an Inter-Ministerial Commission for Special Investigations was established in August 2015 to ensure thorough and expeditious investigations of these criminal cases, and that a tripartite working group attached to the Secretariat of the Commission was established thereafter in order to allow the employers' and workers' organizations to provide information in relation to the investigations and to provide their feedback on the findings of the Commission. The Committee notes that the Government indicates that it has been unable to expedite the investigations since it has been facing challenges, including the lack of collaboration from the victims' families, but that it is committed to undertaking all necessary measures and will continue undertaking its utmost efforts to conclude the investigations and bring the perpetrators and the instigators to justice. The Committee notes from the conclusions of the Committee on Freedom of Association in its examination of Case No. 2318 (see 383rd Report, November 2017) that the National Police Commissariat created an investigation taskforce in 2015, that the Inter-Ministerial Commission held a second meeting in January 2017 and that no progress is reported as to the operation of the tripartite working group. The Committee must express its *deep concern* with the lack of concrete results concerning the investigations. *Recalling the need to conclude the investigations and to bring to justice the perpetrators and the instigators of these crimes in order to end the prevailing situation of impunity in the country with regard to violence against trade unionists, the Committee urges the competent authorities to take all necessary measures to expedite the process of investigation, and firmly requests the Government to keep the social partners duly informed of developments and to report on concrete progress.*

Incidents during a demonstration in January 2014. In its previous observations, the Committee requested the Government to provide information on any conclusions and recommendations reached by the three committees set up following the incidents that occurred during the strikes and demonstrations of 2–3 January 2014, which resulted in serious violence and assaults, death and arrests of workers as well as alleged procedural irregularities in their trial. The Committee had also noted that the ITUC maintained that the committees established to investigate the incidents were not credible, that an independent investigation into the events was still necessary and that those responsible for the acts of violence – which led to the death of five protesters and the wrongful arrest of 23 workers – must be held accountable. The Committee notes that the Government states that the conclusions of the three committees were submitted to the competent courts for further court proceedings and that the Government will not be able to provide them until they become available after conclusion of the court proceedings. The Committee also notes that the Committee on Freedom of Association Case No. 3121 (see 383rd Report, November 2017) urged the Government: (i) to clarify whether the specific allegations of killings, physical injury and arrest of protesting workers following the January 2014 demonstrations are being investigated in the context of the mentioned fact-finding committees and, if so, to provide the specific findings of the committees in this regard; and (ii) should the ongoing investigations not cover this issue, to institute an independent inquiry into the serious allegations without delay and to inform it of the outcome and the measures taken as a result. The Committee further notes that the DCM, recalling the importance of providing assistance and training to police forces with a view to ensuring their full respect for trade union rights, reminded the Government that it could avail itself of the technical assistance of the Office in this regard, with a view, for example, to the development of guidelines, a code of practice or a handbook on handling industrial and protest action. *The Committee, recalling that the intervention of the police should be in proportion to the threat to public order and that the competent authorities should receive adequate instructions so as to avoid the danger of excessive force in trying to control demonstrations that might undermine public order, encourages the Government to consider availing itself of the technical assistance of the Office in relation to the training of police forces, with a view, for example, to the development of guidelines, a code of practice or a handbook on handling industrial and protest action.*

Legislative issues

Article 2 of the Convention. Right of workers and employers, without distinction whatsoever, to establish and join organizations. The Committee notes that the Government states that freedom of association is guaranteed to all workers through two pieces of legislation: (i) the Law on Trade Unions (LTU), applicable to the private sector – including domestic workers and workers in the informal economy meeting the LTU's requirements to form a union; and (ii) the Law on Associations and Non-Governmental Organizations (LANGO) providing for the right to organize of judges, teachers and other civil servants – as well as domestic workers and workers in the informal economy that do not meet the requirements of the LTU. The Government also indicates that further measures will be undertaken through the roadmap to implement the conclusions of the Conference Committee. The Committee must recall once again that some provisions in the LANGO contravene freedom of association rights of civil servants under the Convention, as it lacks provisions recognizing to civil servants' associations the right to draw up constitutions and rules, the right to elect representatives, the right to organize activities and formulate programmes without interference of the public authorities, or the right to affiliate to federations or confederations, including at the international level, and subjects the registration of these associations to the authorization of the Ministry of Interior. While noting that the Government indicated to the DCM that registration can only be rejected if it endangers or adversely affects public safety or public order, the Committee must recall that these grounds afford the authorities a discretionary power that is incompatible with *Article 2* of the Convention and emphasizes in this regard the 2017 Conference Committee conclusion that the registration process must be simple, objective and transparent. The Committee further notes that the DCM observed in its conclusions that workers' organizations and associations expressed deep concern at: (i) the lack of protection of teachers' trade union rights (referring in particular to sanctions and threats to teachers seeking to organize); and (ii) the difficulties faced by domestic workers and workers in the informal economy in general seeking to create or join unions, since the LTU provides for an enterprise union model, whose requirements are often very difficult to meet by these workers, and does not allow for the creation of unions by sector or profession. In addition, the Committee notes the ITUC claim that the absence of any structure for sectoral representation results in the exclusion from the right to organize of hundreds of thousands of workers in the informal sector. *The Committee must once again urge the Government to take appropriate measures, in consultation with the social partners, to ensure that civil servants – including teachers – who are not covered by the LTU are fully ensured their freedom of association rights under the Convention, and that the legislation is amended accordingly. The Committee further encourages the Government to promote the full and effective enjoyment of these rights by domestic workers and workers in the informal economy and, to this effect, submit to tripartite consultations in the context of the application of the roadmap to give effect to the conclusions of the Conference Committee, the possibility of*

allowing the formation of unions by sector or profession.

Article 3. Right to elect representatives freely. Requirements for leaders, managers, and those responsible for the administration of unions and of employer associations. In its previous comments, the Committee had requested the Government to take the necessary measures to amend sections 20, 21 and 38 of the LTU – requiring those wishing to vote, to stand as a candidate for election, or be designated to leadership or management positions in unions or employer associations to meet a minimum age requirement (18), minimum literacy requirements and make a declaration that they have never been convicted for any criminal offence. The Committee notes that the Government states that the requirements of literacy and age are indispensable to ensure the sound and effective operation of worker unions. It also indicates that a minor who is deemed emancipated and with soundness of mind, as stipulated under the Civil Code, will be able to have full legal capacity and be treated as having the minimum legal age (18 years old). The Committee welcomes the Government's indication that further discussions with the social partners will be conducted as recommended by the Committee. As to the minimum age and the literacy criteria, the Committee recalls once again that it considers to be incompatible with the Convention the requirements that candidates for trade union office should have reached the age of majority, or be able to read and write (see the 2012 General Survey on the fundamental Conventions, paragraph 104). Duly noting that the Government indicates that the civil code emancipation procedure already provides for the possibility to recognize full legal capacity to minors, the Committee considers that the Government could remove the age of majority requirement from the LTU for minors who have reached the statutory minimum age for wage employment (persons of 15 years of age, under section 177 of the Labour Law). Furthermore, the Committee recalls that it considers that conviction for an act 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 performance of trade union duties should not constitute grounds for disqualification from trade union office (see General Survey, op. cit., paragraph 106). *The Committee once again requests the Government to, in the context of its ongoing consultations on the application of the LTU, take the necessary measures to amend sections 20, 21 and 38 of the LTU to: (i) guarantee the right of minors who have reached the statutory minimum age for wage employment to be candidates for trade union office; (ii) to remove the requirement to read and to write Khmer from the eligibility criteria; and (iii) to ensure full respect with the abovementioned principle concerning disqualification from trade union office because of criminal offences.*

Article 4. Dissolution of representative organizations. In its previous comments the Committee had requested the Government to amend paragraph 2 of section 28 of the LTU, providing that a union is automatically dissolved in the event of a complete closure of the enterprise or establishment. The Committee notes that the Government states that the provision is not contrary to the Convention as it only contemplates the automatic dissolution of the union resulting from the closure of its enterprise or establishment – and it does not constitute a decision of the administrative authority. The Committee observes in this regard that a union may have a legitimate interest to continue to operate after the dissolution of the enterprise concerned (for example, to defend any claims of its members). *Recalling that the dissolution of a workers' or employers' organization should only be decided under the procedures laid down by their statutes, or by a court ruling, the Committee requests the Government to take the necessary measures to amend section 28 of the LTU accordingly by removing its paragraph 2.*

Grounds to request dissolution by Court. In its previous comments the Committee had requested the Government to take the necessary measures to amend section 29 of the LTU, which affords any party concerned or 50 per cent of the total of members of the union or the employer association the right to file a complaint to the Labour Court to request a dissolution. The Committee notes that the Government states that the provision aims to ensure freedom of association as well as democracy and the interests of union members and recalls that only the Court has the full power to dissolve any trade union upon receiving a complaint. The Committee recalls once again that the manner in which members may request dissolution should be left to the organization's by-laws. *The Committee requests the Government to take the necessary measures to amend section 29 of the LTU to leave to the unions' or employers' associations own rules and by-laws the determination of the procedures for their dissolution by their members.*

The Committee had further requested the Government to take the necessary measures to amend paragraph (c) of section 29, which provides that a union or an employers' association shall be dissolved by the Labour Court in cases where leaders, managers and those responsible for the administration were found guilty of committing a serious act of misconduct or an offence on behalf of the union or the employer association. The Committee notes that the Government states that: (i) the provision does not refer to any personal or individual offence of leaders or persons responsible for the administration of the union; and (ii) only offences committed by leaders and persons responsible for the administration on behalf of the trade union will lead to the dissolution of the trade union (in other words, the trade union itself must be held responsible for the serious offence committed). The Committee must recall that if it is found that trade union officers have committed serious misconduct or offences through actions going beyond the limits of normal trade union activity – including actions carried out on behalf of the trade union – they may be prosecuted under the applicable legal provisions and in accordance with ordinary judicial procedures, without triggering the dissolution of the trade union and depriving it of all possibility of action. *The Committee requests the Government to take the necessary measures to amend section 29 of the LTU by removing its paragraph (c).*

Application of the Convention in practice

Independent adjudication mechanisms. The Committee notes that the Government indicates that a draft of the Law on Procedure of Labour Disputes Judgement was completed in August 2017 and that, with the support from the ILO, a tripartite consultative workshop is to be conducted to discuss the draft and receive comments with a view to improving it further and with a view to submitting the draft law to Parliament for adoption by the end of 2017. The Government clarifies that the draft law also aims to strengthen and empower the Arbitration Council (AC). The Government states that it shares with social partners a recognition of the effectiveness of the AC, and that it intends to promote its role, including by empowering it to hear individual disputes. In this respect, the Committee takes note of the recommendations of the DCM, which, acknowledging the Government's commitment to strengthen the AC, trusted that all necessary measures would be undertaken to enable the AC to continue to be easily accessible and to play its important role in relation to the handling of collective disputes and to ensure that its awards, when binding, are duly enforced (the DCM had observed that workers' organizations claimed that often the awards of the AC, even when legally binding, were not followed – a concern that is reiterated in the latest observations of the ITUC). The Committee further notes the serious concerns raised by the ITUC, as well as by national workers' organizations to the DCM, on the alleged lack of independence of the judiciary and its use to criminalize and curtail legitimate trade union activities. In this respect, the Committee recalls that one of the principal findings of the direct contracts mission, which visited the country in 2008, concerned the lack of an effective and impartial judiciary. The 2008 mission noted, in particular, that the judicial system's ability to discharge its mandate was compromised by lack of capacity, as evidenced by the fact that court decisions and proceedings were often unrecorded and unpublished, and that the judiciary was subject to political interference and has been unable to exercise its functions in an impartial and independent manner (see Case No. 2318, 351st Report, paragraph 250). The mission referred to the need to take the necessary steps to ensure the independence and effectiveness of the judicial system, including through capacity-building measures and the institution of safeguards against corruption. *The Committee expects that the Government will take all necessary measures to complete expeditiously the adoption of the Law on Labour Procedure of the Labour Court, in full consultation with the social partners, in order to ensure the effectiveness of the judicial system as a safeguard against impunity, and an effective means to protect workers' freedom of association rights during labour disputes, as well as to address the serious concerns raised on the independence of the judiciary and its impact on the application of the Convention, through the measures outlined above. The Committee welcomes the Government's commitment to strengthen the AC and trusts that the Council will continue to remain easily accessible and to play its important role in the handling of collective disputes, and that any necessary measures will be undertaken to ensure that its awards, when binding, are duly enforced.*

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. Sanctions involving the obligation to work as a punishment for the expression of political views or views ideologically opposed to the established political, social or economic system. The Committee previously noted that, according to section 41 of the Law on Political Parties of 1997, various offences related to the administration or management of a political party which has been dissolved, or whose activities have been suspended by a court, or whose registration has been refused, are punishable with sanctions of imprisonment for a term of up to one year, which involves compulsory labour pursuant to section 68 of the Law on Prisons of 2011. The Committee also noted that, pursuant to the Penal Code of 2009, the offences of public defamation and insult (sections 305–309) are punishable with fines only. The Committee further noted the adoption of the Law on Peaceful Demonstrations of 2009 and the arrest of seven opposition members of Parliament in July 2014 during protests against the ban on demonstrations imposed by the Government in January 2014 after the number of protests in the country escalated in late 2013.

The Committee notes the Government's information in its report that no political party has been dissolved by a court decision under the Law on Political Parties of 2007. The Government also indicates that a demonstration may not be carried out in the event that it endangers or may adversely affect the public order, safety and security. Moreover, perpetrators of the criminal offence of riots or leading of riots were arrested in accordance with the Penal Code.

The Committee also notes that the Law on Political Parties of 2007 was amended in 2017, pursuant to which section 42 of the amended version retains the provisions of section 41 of the previous version. Moreover, several sections under the Penal Code of 2009 providing for a penalty of imprisonment may still be used in situations covered by *Article 1(a)* of the Convention, including sections 494 and 495 on incitement to disturb public security by speech, writing, picture or any audio-visual communication in public or to the public; section 522 on publication of commentaries intended to unlawfully coerce judicial authorities; and section 523 on discrediting judicial decisions. The Committee further notes the adoption of the Law on Associations and Non-Governmental Organizations in 2015 and the adoption of the Law on Trade Unions in 2016. Additionally, the legislation on cybercrime is currently being drafted.

The Committee notes that, according to the Report of the UN Special Rapporteur on the situation of human rights in Cambodia of 5 September 2016, in the case of many laws, the degree of their compliance with international human rights laws lies in the interpretation and application of the law by law enforcement and judicial officials (A/HRC/33/62, paragraph 29). In her report of 27 July 2017, the Special Rapporteur expressed her concern at the raft of laws (on associations and NGOs, on the election of members of the National Assembly, on trade unions and on peaceful demonstrations) that can be used to restrict freedom of assembly and association and freedom of expression (A/HRC/36/61, paragraph 47).

The Committee also notes that, the report of the Special Rapporteur of 2017 indicates that several senior member of the Cambodia National Rescue Party (CNRP), the largest opposition party, have been the subject of convictions and sentences (paragraph 6). Senator Hong Sok Hour was sentenced to seven years' imprisonment on 9 November 2016 for forgery and incitement in connection with a Facebook post. Senator Thak Lany, who is currently in exile, was convicted in absentia to 18 months' imprisonment on charges of defamation and incitement in connection with a video clip on Facebook purportedly of a speech with comments on the death of a political activist, Kem Ley (paragraph 7). Moreover, the High Commissioner for Human Rights of the United Nations expressed his serious concern in a statement of 4 September 2017 at the arrest of Kem Sokha, the current president of CNRP. Kem Sokha is accused of treason and faces a prison term of between 15 and 30 years if convicted, based on a video of a speech he made in 2013, which has been publicly available since then.

The Committee further notes that, according to the report of the Special Rapporteur of 2017, many NGO representatives, trade union members and human rights defenders are still subjected to threats, harassment, arrest, pre-trial detention and prosecution (paragraph 45). Notably, in 2016, five members of the Cambodian Human Rights and Development Association (CHRDA) were arrested and kept in pre-trial detention for over a year. They were released under judicial supervision in June 2017, while the trial dates are still pending (paragraphs 21 and 22). Moreover, a number of protesters related to the "black Monday" campaign against the arrest of these staff of the CHRDA were arrested and prosecuted for defamation, public insult and various public order offences under the Penal Code. Among others, Tep Vanny was prosecuted following her participation in a black Monday event on 15 August 2016. She was then charged with "intentional violence with aggravating circumstances" relating to another protest in 2013, and sentenced to two and a half years' imprisonment on 23 February 2017 (paragraph 45). Moreover, an independent political analyst, Kim Sok, has been in pre-trial detention since 17 February 2017 on defamation and incitement charges for publically expressing his opinion that the ruling party was responsible for the killing of Kem Ley (paragraph 48).

The Committee notes that although the offences of public defamation and insult are punishable with fines only under the Penal Code of 2009, those provisions have been applied to the various persons mentioned above to punish them with penalties of imprisonment. The Committee is bound to express its *deep concern* over the detentions of, and prosecutions against members of the opposition party, NGO representatives, trade union members and human rights defenders and recalls that restriction on fundamental rights and liberties, including freedom of expression, may have a bearing on the application of the Convention if such restrictions are enforced by sanctions involving compulsory labour. The Committee draws the Government's attention to the fact that legal guarantees of the rights to freedom of thought and expression, freedom of peaceful assembly, freedom of association, as well as freedom from arbitrary arrest, constitute an important safeguard against the imposition of compulsory labour as a punishment for holding or expressing political or ideological views, or as a means of political coercion or education (see General Survey on the fundamental Conventions, 2012, paragraph 302). *The Committee therefore urges the Government to take immediate measures to ensure that no penalties involving compulsory labour may be imposed for the peaceful expression of political views or views opposed to the established system, both in law and in practice. In this regard, the Committee requests the Government to ensure that section 42 of the Law on Political Parties as amended in 2017, as well as sections 494, 495, 522 and 523 of the Penal Code of 2009 are amended, by clearly restricting the scope of these provisions to situations connected with the use of violence or incitement to violence, or by repealing sanctions involving compulsory labour. It also requests the Government to take the necessary measures to ensure that the application of the Penal Code, the Law on Trade Unions, the Law on Associations and Non governmental Organizations and the Law on Peaceful Demonstration in practice does not lead to punishment involving compulsory labour in situations covered by Article 1(a) of the Convention. Lastly, the Committee requests the Government to provide a copy of the legislation on cybercrimes, once adopted.*

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.]

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 took note of the Government's efforts to coordinate plans of action and cooperate with the social partners to eliminate child labour in the country. It noted, however, that according to the Cambodia Labour Force and Child Labour Survey of 2012, of the estimated 755,245 economically active children in Cambodia, 56.9 per cent (429,380) were engaged in child labour in violation of the Convention, 55.1 per cent (236,498) of which were engaged in hazardous labour. Of those children engaged in hazardous labour, approximately 5.3 per cent were children aged 5–11 years, 15.8 per cent were children aged 12–14 years, and 42 per cent were children aged 15–17 years. The Committee expressed its concern over the significant number of children below the minimum age for admission to employment who were working in Cambodia, including in hazardous work.

The Committee notes the Government's information in its report that the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation (MoSALVY) is reinforcing and strengthening its efforts to combat all forms of child labour. The Committee notes with ***interest*** the Government's information that a new National Plan of Action on the Reduction of Child Labour and Elimination of the Worst Forms of Child Labour was adopted for 2016–25 (NPA–WFCL). It notes the Government's indication that the NPA–WFCL, along with the Decent Work Country Programme (2016–18) and other national policies, form the roadmap for the elimination of all forms of child labour. The Government adds that the National Committee for Combating Child Labour (NCCL), which is newly established and whose mandate extends beyond that of the former Sub-national Committee on Child Labour, is an effective coordinating and inter-ministerial body led by the Ministry of Labour and Vocational Training (MoLVT) that monitors the effective implementation of policies and laws, and increases the awareness of the public regarding the issues surrounding child labour.

Finally, the Committee notes that, in collaboration with the ILO, a project on expanding the evidence base and reinforcing policy research for scaling-up and accelerating action against child labour 2010–17 (Child Labour Data project) aims to promote generating data on child labour and to effectively use this data in the design and revision of comprehensive national policies and programmes aimed at addressing child labour by improving livelihoods. ***The Committee encourages the Government to continue to strengthen its efforts, including within the framework of the NPA–WFCL and the Decent Work Country Programme, to eliminate child labour, particularly in hazardous work, and to provide information on the results achieved. The Committee also requests that the Government continue to provide any updated statistical information on the employment of children and young persons that is obtained as a result of the Child Labour Data project.***

Article 2(1). Scope of application and labour inspection. 1. *Children working in the informal economy.* In previous comments, the Committee noted that the Government had drafted amendments to Cambodian labour law to ensure the application of the minimum age for admission to all types of work outside an employment relationship, including self-employment. It also noted that the MoLVT had developed new administrative orders *(Prakas)* on child labour in tobacco and other agricultural sectors. The Government also indicated that the MoLVT was seeking technical and financial assistance to conduct research concerning the costs and benefits of further extending the minimum working age to informal economic sectors.

The Committee notes the Government's statement in its report that, with regard to the minimum age for employment or work, the Labour Law applies to all working children except those working in the domestic sector, regardless of whether they have a formal or informal employment relationship. However, the Committee observes that, according to section 1 of the Labour Law, the law "governs relations between employers and workers resulting from employment contracts". Section 3 provides that a worker is a person "who has signed an employment contract in return for remuneration, under the direction and management of another person". Therefore the Committee observes that the Labour Law does not apply to workers working on their account or in the informal economy. The Committee nevertheless notes the Government's information that the MoLVT created, in 2015, a Commission in charge of drafting and amending legislation and regulations [(MoLVT Law Commission)] in the area of labour law. The Commission is currently taking measures to collect information on the application of labour laws and regulations in force, with the aim of improving working conditions and ensuring better protection of children in the labour market.

The Committee recalls that the Convention applies to all branches of economic activity and covers all types of employment or work, whether or not there is a contractual employment relationship and whether or not the work is remunerated. In this regard, referring to the 2012 General Survey 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 takes due note of the Government's information that the MoLVT has established standardized inspection guidelines, i.e. adopted a labour inspection checklist, to increase the effectiveness of child labour law enforcement and to focus on monitoring and inspecting cases of child labour. ***The Committee expresses the hope that, in strengthening the capacity of labour inspectors with a view to increasing their effectiveness in monitoring child labour, the situation of children working on their own account or in the informal economy will also be covered. In this regard, the Committee requests the Government to continue to adapt and strengthen the labour inspection services in order to ensure that the protection established by the Convention is secured for children working in these sectors, and to provide information on the results achieved.***

2. *Child domestic workers.* The Committee previously noted that, by virtue of section 1(e), the Labour Law does not apply to domestic workers or household servants, who are defined as workers who are engaged to take care of the homeowner or of the owner's property in return for remuneration. It noted that children, primarily girls between the ages of 7 and 17 years, working in domestic service in third-party homes where they are particularly vulnerable to hazardous work, were in need of protection. In this regard, the Committee took note of the project funded by the US Department of Labor which aimed to extend the protection of the Convention to domestic workers and household servants under the minimum age for work.

The Committee notes with ***concern*** that the minimum age for employment or work still does not apply to domestic workers and household servants. It notes the Government's indication that it strongly believes that, following the creation of the MoLVT Law Commission, new legal instruments will be adopted and promulgated in order to provide effective and full protection to all working children. ***The Committee urges the Government to take the necessary measures, through the MoLVT Law Commission or otherwise, to extend the protection of the Convention to domestic workers and household servants under the minimum age for admission to work. It requests that the Government provide information on the progress made in this regard.***

Article 2(3). Compulsory schooling. In its previous comments, the Committee noted the information provided by the Government that "schooling is compulsory for nine years and primary and secondary schools are free" (section 68 of the Constitution and Royal Decree No. NS/RKT/0796/52 dated 26 July 1996). The Committee noted that, in accordance with the Cambodian education system, children started school at 6 years of age and completed schooling at 15 years of age.

The Committee notes, however, while children begin schooling at 6 years of age and basic education lasts for nine years, the provisions of the Education Law of 2007 indicate that while basic education is free, it is not compulsory. The Education Law provides that citizens have the right to access education for at least nine years free of charge (section 31), but that parents only have the obligation to enrol their children in grade 1 of the general education programme at the age of 6 (section 36). Referring to the General Survey of 2012 (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. ***The Committee therefore urges the Government to take the necessary measures to implement compulsory education, up to the minimum age for admission to employment.***

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

Articles 3(a) and 7(1) of the Convention. Sale and trafficking of children and penalties. The Committee previously noted the statement of the International Trade Union Confederation (ITUC) that children in Cambodia were exposed to trafficking for sexual and labour exploitation. Cambodian girls and ethnic Vietnamese girls from rural areas were trafficked to work in brothels, massage parlours and salons. Children from Vietnam, many of whom were victims of debt bondage, travelled to Cambodia and were forced into commercial sex. Moreover, corruption at all levels of the Cambodian Government continued to severely limit the effective enforcement of the Law on suppression of human trafficking and sexual exploitation. The Committee noted that, in its conclusions adopted at the 104th Session of the Conference Committee on the Application of Standards in June 2015, the Conference Committee urged the Government to effectively

enforce anti-trafficking legislation.

The Committee notes the Government's information in its report that it is taking measures to ensure that all perpetrators of child trafficking, including complicit government officials, are subjected to investigations and prosecutions. The Government indicates that, according to the 2016 annual report on combating human trafficking, six cases of illegal removal of minors were identified with six suspects arrested and 30 victims rescued, and 25 cases of child sexual exploitation were identified with 25 suspects arrested and 61 victims rescued. In addition, the Government indicates that all cases of trafficking of children were processed through legal procedures and trials. While the Government informs that 138 cases of human trafficking were prosecuted and 103 suspects were convicted and imprisoned, it does not provide specific statistics regarding child trafficking. *The Committee strongly encourages the Government to continue taking measures aiming to ensure that the Law on Suppression of Human Trafficking and Sexual Exploitation is effectively applied. It also encourages the Government to take the necessary measures to strengthen the capacity of law enforcement agencies, including through the allocation of financial resources and adequate training, to combat the sale and trafficking of children under 18 years of age, and to provide information on the progress made in this regard. It further requests the Government to provide information on the number of investigations, prosecutions, convictions and penal sanctions applied, specifically in cases of child trafficking for labour or sexual exploitation.*

Articles 3(d), 4(1) and 5. Hazardous work and monitoring mechanisms. 1. *Hazardous work in the garment and footwear sectors.* The Committee previously noted ITUC's allegations that children, particularly girls, worked long shifts even during the night, often with dangerous machinery, in garment and shoe factories. In this regard, the Committee noted that, the Conference Committee, in its conclusions adopted in June 2015, urged the Government to increase its efforts on preventing children from being exposed to the worst forms of child labour, including through increased labour inspections in the formal as well as in the informal economy.

The Committee notes the Government's information that it has taken concrete measures to prevent and protect children under 18 years of age from performing hazardous work. The Government indicates that labour inspectors have conducted regular and special monitoring where hazardous work for children is prohibited. In addition, the Committee notes with *interest* that the Ministry of Labour and Vocational Training (MoLVT), in cooperation with the ILO, has developed and implemented guidelines for conducting effective and regular child labour inspections. According to the MoLVT annual report for 2016, 57 garment factories employed 635 children aged between 15 and 18 years in lawful conditions respectful of the Labour Law. The Government further indicates that the MoLVT is working closely with all social partners, including the ILO, to investigate suspected child labour cases. The Government indicates that, as a result, there were decreases in cases of children engaged in hazardous work, going from 34 cases in 2014, to seven in 2015, and four in 2016. The Committee notes that this general trend is corroborated in the June 2016 synthesis report of Better Factories Cambodia (BFC), which is a programme developed in partnership with the ILO and the International Finance Corporation, in the framework of which independent assessments of working conditions in Cambodian apparel factories have been conducted since 2001. According to this 33rd synthesis report, while child labour was found in 2 per cent of the factories where BFC confirmed the presence of underage workers (normally between 12 and 15 years of age), the number of confirmed child labour cases dropped from 65 in 2013, to 28 in 2014, and 16 in 2015. The BFC was able to work with the Garment Manufacturers Association of Cambodia to place these underage workers in vocational training centres. *Taking due note of the measures taken, the Committee encourages the Government to continue its efforts in protecting children under 18 years of age from being employed in hazardous work in the garment and footwear sectors, and to continue providing information on the results achieved.*

2. *Hazardous work in the sugarcane sector.* The Committee previously noted the ITUC's allegation that child labourers in Cambodia are engaged in hazardous work in agriculture, particularly in sugar cane farms, such as the handling and spraying of pesticides and herbicides and cutting, tying and carrying heavy bundles of sugar cane.

The Committee notes the Government's indication that provincial labour inspections continue to take preventive measures and advocate in small-household sugarcane farms against children performing hazardous work. It notes, however, that according to the "Rapid assessment on child labour in the sugarcane sector in selected areas in Cambodia" of 2015, conducted by the Cambodia Institute of Development Study, children were found working in sugarcane fields in all locations surveyed, some of them as young as 7 years old. The findings showed that 54 per cent of the working children surveyed worked in excess of permissible hours. This was especially prevalent for boys working on commercial plantations, where 82 per cent worked more than the number of hours permissible by Cambodian regulations. In addition, it was found that the work environment and tasks carried out by children, such as working around sharp cane leaves in excessively hot and humid conditions, cutting sugarcane, and operating hand tractors, were extremely dangerous. Therefore, it was found that the work performed by children in the sugarcane sector qualified as hazardous. *The Committee therefore urges the Government to strengthen its efforts to protect children under 18 years of age from being employed in hazardous work in both commercial and household sugarcane fields. It requests the Government to continue providing information on the progress achieved and on the number of violations detected.*

Article 8. International cooperation. Trafficking. In its previous comments, the Committee took note of the measures taken by the Government to increase international cooperation to combat trafficking in children and requested it to enhance its efforts in this regard.

The Committee notes the Government's information that the MoLVT has been working closely with Thailand and other Mekong subregion countries, based on various memoranda of understanding (MoUs) and the Subregional Plan of Action 2015–18 of the Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT SPA IV), to enhance its tight cooperation in combating human trafficking and assisting the victims. The Government indicates that, based on the MoLVT's 2016 annual report, 360,000 undocumented migrants were under the process of regularization through the bilateral action plan between Cambodia and Thailand (2016–18), and 517 children (230 girls) who were found working in construction sites and cassava farms in Thailand were returned with their families and integrated into communities through the national referral mechanism to support victims of trafficking. Furthermore, through COMMIT SPA IV, the countries of the Mekong subregion exchanged knowledge, information and capacity building. Trainings on victim identification and standard operation procedures were also conducted.

However, the Committee notes, according to the UNODC report "Trafficking in persons from Cambodia, Lao PDR and Myanmar to Thailand" of August 2017, that while trafficking in persons from Cambodia to Thailand for sexual exploitation has declined in recent years, Cambodia has become a destination country for sex trafficking from Viet Nam and experiences high levels of internal trafficking. *The Committee requests the Government to continue taking measures to enhance international cooperation to combat trafficking in children, particularly as regards identification, protection and assistance of child victims of trafficking from Viet Nam. It also requests the Government to continue providing information on the impact of COMMIT SPA IV, in terms of the number of child victims of trafficking detected, assisted and returned to their countries of origin.*

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

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 welcomes the detailed information provided by the Government in its report, in which it indicates that it places a priority on the employment stabilization and expansion for economic and social development and to improve livelihoods and alleviate poverty. In this regard, the Government aims to strengthen the links between macroeconomic and employment policies, with a view to supporting economic development through employment transformation. The Committee notes that China's 13th Five-Year Plan (2016–20) on Promoting Employment, launched in 2017, sets out the Government's principal objectives in relation to employment promotion. These objectives are also reflected in additional documents provided by the Government, such as in the 2017 report "Opinions on Facilitating Employment and Entrepreneurship Currently and in the Future" (the 2017 Opinions report). The Committee notes that the stated objectives include enhancing economic development to create jobs while preventing unemployment, particularly for targeted groups such as young persons, women, migrant workers, persons with disabilities, rural workers and laid-off workers. The Government refers to its policies on employment assistance, stating that, from 2014 to June 2017, it provided employment services to 6,080,000 jobseekers. The Government is also focusing on promoting equitable cross-regional development and employment services in both urban and rural areas. The Committee notes, however, that the Government has not provided information on specific measures taken, nor has it provided statistical data enabling the Committee to examine the effectiveness and impact of the active labour market measures implemented. *The Committee therefore reiterates its request that the Government provide detailed information, including statistical information, disaggregated by sex, age and economic sector and region, on active employment policies and other measures taken during the reporting period, and on their impact in terms of promoting full, productive, freely chosen and sustainable employment opportunities, as contemplated in Article 1 of the Convention. The Committee further requests the Government to indicate how the employment policy objectives contained in the Five-Year Plan (2016–20) on Promoting Employment are related to other economic and social objectives. The Committee requests the Government to indicate the manner in which it is ensured that employment policy measures are kept under periodic review within the framework of a coordinated economic and social policy.*

Article 2. Employment trends. Labour market information. The Government indicates that, in 2014–16, 39.48 per cent of persons were employed in urban areas, and the registered unemployment rate in urban areas was 4.05 per cent during this period. The Committee notes the Government's indication that it aims to improve its labour market information system and gradually integrate gender and other indicators. The Committee recalls that the Government has established a system for compiling and analysing information on job supply and demand in more than 100 representative cities on a quarterly basis. This information is used as a basis for adjusting employment policies as needed. The Government also periodically disseminates this information through internet, the public employment service and the media to provide guidance for jobseekers and employers. *The Committee requests the Government to provide updated statistics concerning the size and distribution of the labour force, the type and extent of employment, unemployment and underemployment and trends both in urban and rural areas. It also requests the Government to provide information on measures taken or envisaged to improve the labour market information system, particularly with regard to the inclusion of indicators that capture additional factors, such as new or non-standard forms of employment and job creation through entrepreneurship development. The Committee also requests the Government to provide updated information on the manner in which the labour market information obtained is used in the formulation, evaluation, modification and implementation of active labour market measures.*

Employment of young persons. The Government places a priority on the employment of college graduates in all regions through a range of activities, including entrepreneurship and training guidance, thereby, encouraging graduates to launch small and micro-enterprises. In 2014–16, 1,651,000 college graduates started up their own businesses. *The Committee requests the Government to provide detailed information, including updated statistical information disaggregated by age, sex and region, on the type and impact of labour market measures aimed at meeting the employment needs of young persons, especially college graduates. The Committee also requests the Government to indicate the measures enacted or envisaged to facilitate the transition of young persons from school to work.*

Employment of women. The Government stresses that one of its primary objectives is to promote fair employment for women, offering targeted employment services and standardizing recruitment processes to prevent sexual discrimination and protect women's right to equality of opportunity and treatment. The Committee refers to its 2016 comments concerning the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), in which it noted the different statutory retirement age provisions for men and women. In addition, referring to the ILO publication *Women in the labour market in China (2015),* the Committee noted that the labour force participation rate of women decreased between 1990 and 2013, falling from 72.7 to 63.9 per cent, and that the gap between men and women in this regard widened from 12.1 per cent in 1990 to 14.4 per cent in 2013. The ILO publication took note of decreased institutional support provided to workers with family responsibilities for childcare, and observed that sectoral and occupational segregation persists. *The Committee requests the Government to provide information, including updated statistical information, on the impact of labour market measures taken to increase the labour force participation rate of women and address both vertical and horizontal occupational segregation, including information disaggregated by region and occupation. The Committee also requests the Government to indicate any measures taken or envisaged to expand the provision of institutional childcare with a view to encouraging women's participation in the labour market, as well as to indicate the measures taken to establish the same statutory retirement age for women and men.*

Employment of migrant workers. The Government indicates that as of 2016 there were 281.71 million migrant workers, including rural migrant workers, in the country. The Committee notes that, according to the 2015 Opinions on Further Improving the Employment and Entrepreneurship in the New Situation, the Government aims to enhance the vocational skills of migrant workers. *The Committee requests the Government to provide information, including updated statistical information, on the measures taken or envisaged to meet the employment needs of migrant workers, including internal rural migrants.*

Employment of rural workers. The Committee notes that the Government is undertaking to enhance employment services and vocational skills training to promote rural employment and eradicate poverty in poorer rural areas of the country. The Government is also encouraging those returning to rural areas to start their own business. The Committee notes the "hukou reform", which aims to promote the employment of migrant workers in rural areas. *The Committee requests the Government to provide information on the impact of the measures taken to promote the employment of rural workers, including updated statistical data on the employment situation and trends. The Committee also requests the Government to provide more information on the status of the "hukou reform" and its impact on regional disparities.*

Persons with disabilities. In its 2016 direct request concerning the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159), the Committee noted that two out of three persons with disabilities in China live in rural areas, and that a considerable percentage of these persons are living in poverty. In addition, the Committee notes the ILO report on the Inclusion of People with Disabilities in China, which notes that 36 per cent of persons with disabilities aged 15 or older in China are illiterate. The Government refers to employment services tailored to the needs of persons with disabilities, indicating that it seeks to ensure respect of the rights of persons with disabilities in the workplace. It provides employment assistance to persons with disabilities, helping them to access jobs by providing subsidies to employers. *The Committee requests the Government to provide updated detailed information on the nature and impact of active employment measures taken to promote the employment of persons with mental and physical disabilities, particularly on the open labour market.*

Strengthening employment services. The Government reports on measures taken to improve the quality and effectiveness of public employment services, especially for college graduates and rural workers. The Government indicates that, from 2014 to 2016, a total of 9,821,000 employers were registered with the

public employment service, who employed a total of 167,184,000 registered jobseekers. Furthermore, there were 124,427,000 registered jobseekers, 51,949,000 people were offered vocational guidance and 11,852,000 people were offered entrepreneurship-related services. *The Committee requests the Government to continue providing information on the operation of public employment services and private employment agencies and the measures taken to improve the public employment services and ensure cooperation between the public employment service and private employment agencies.*

Development of small and medium-sized enterprises, entrepreneurship and new forms of employment for job creation. The Committee notes the Government's indication that small and micro-enterprises (SMEs) constitute a principal source of employment and that the promotion of SMEs is therefore one of the main objectives set out in the 2017 Opinions report. The Committee notes that the Government introduced a series of measures supporting the development of small and micro-enterprises, inter alia, through providing subsidies and other financial support, establishing an entrepreneurship model, and providing more advantageous tax policies to encourage business development. The Government indicates that, by the end of 2015, there were more than 20 million small and micro-enterprises and more than 54 million private businesses, with 80 per cent of urban jobs provided by SMEs. In 2016, there were 15,000 new enterprises being established in China every day, an increase of 3,000 new enterprises a day compared with 2015. The Committee notes that the Government also encourages the creation of jobs through promoting entrepreneurship and entrepreneurship services, especially for returning migrant workers, and non-standard forms of employment. *The Committee requests the Government to continue to provide information on the impact of the measures taken to generate employment through the promotion of small and micro-enterprises, entrepreneurship and new forms of employment. It also requests the Government to provide information on the creation of new forms of employment, including information on whether these new or non-standard forms of employment are considered to fall within the informal economy.*

Vocational education and training. The Committee notes the Government's indication that it is undertaking measures to strengthen vocational education and training services available to jobseekers. The Committee notes that, by the end of 2016, national human resources service agencies provided 280,000 training classes. *The Committee requests the Government to provide detailed information on the impact of education and training measures implemented on employment opportunities and on consultations held with the social partners in the development of education and training programmes that meet the needs of the labour market. It also reiterates its request that the Government transmit information on the manner in which coordination is ensured between human resource development policies and active labour market measures developed and implemented.*

Article 3. Consultation with the social partners. The Committee requests the Government to provide information on the nature and extent of the involvement of the social partners in the formulation and implementation of active employment policy measures and programmes. It also requests the Government to indicate to what extent consultations have been held with the representatives of the persons affected by the measures taken, such as women, young people, persons with disabilities, rural and migrant workers.

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

Observation 2017

Article 3(1) of the Convention. Hazardous work performed through work–study programmes. The Committee previously noted the Government's indication that the Ministry of Education had repeatedly issued circulars and increased its inspection efforts with a view to ensuring healthy development in work–study programmes. The Government also indicated that the work–study programmes must be incorporated into, and must abide by, normal teaching programmes and may not, for example, modify hours of work without prior permission. In addition, it indicated that schools that organize work–study programmes must ensure the safety of students by prohibiting participation in toxic, hazardous or dangerous types of activities or labour which exceed their physical capacity, and that local governments are required to analyse the manner in which work–study programmes are carried out on a local basis. The Committee noted, however, the 2014 report on the labour protection of interns in Chinese textile and apparel enterprises, carried out with ILO assistance, according to which 52.1 per cent of interns continue to work in conditions that do not meet national minimum standards for labour protection, and 14.8 per cent of interns are engaged in involuntary and coercive work. The Committee therefore noted with concern that a significant number of school children continue to engage in hazardous work within the context of work–study programmes. It also recalled that the technical assistance missions undertaken within the context of the Special Programme Account (SPA) project in 2013 addressed ways in which the legal framework could be strengthened with respect to protecting young persons engaged in work–study programmes.

The Committee notes the absence of information in this regard in the Government's report. However, the Committee notes that the Ministry of Education, the Ministry of Finance, the Ministry of Human Resources and Social Security (MoHRSS), the State Administration of Work Safety and the China Insurance Regulatory Commission jointly issued the Management Regulations on internship of vocational-school students in 2016. Section 15 provides that students under 16 years of age shall not be engaged in on-job learning or on-job internship programmes, and that students under 18 years of age shall not be engaged in tasks which are prohibited by the Regulations on the special protection of minor workers. Section 16 of the Regulations prohibits work during public holidays, night work and overtime work for students. The Management Regulations further provide for the conclusion of internship agreements (section 12), the payment of remuneration (section 17), and the arrangement of compulsory insurance covering the whole internship period (section 35). According to section 27, the involvement of students under 16 years of age in on-job learning or internships shall be investigated and punished in accordance with the Regulations banning child labour. *The Committee therefore requests that the Government take the necessary measures to ensure that the Management Regulations on internships for vocational-school students are effectively applied in practice, and to provide statistical information concerning the number and nature of infringements detected, as well as the specific penalties applied.*

Article 8. Artistic performances. The Committee previously noted that section 13(1) of the 2002 Regulations Banning Child Labour provides that organizations for performing arts and sports may recruit professional artists and athletes under the age of 16 years upon consent from their parents or legal guardians. According to the report from the 2013 SPA technical assistance mission, there were 2.01 million performances in China in 2012, including 13,000 registered performing groups, half of which included children. The report noted the Government's indication that employing units were responsible for children's health and protection, and applicants had to provide proof that children were enrolled in compulsory education. According to the report, the Government representative indicated that no system of individual permits existed, although it had existed in the past but had been repealed by the 2002 Regulations Banning Child Labour. Finally, the Committee noted the consensus between the ILO and the MoHRSS that the issue of children and young persons engaged in artistic performances needed to be regulated in legislation.

The Committee notes the Government's information in its report that, according to the working rules of school art education (Ministry of Education Order No. 13 of 2002), no entities or schools shall organize students to participate in any commercial artistic activities or commercial celebration activities. Further, the organization of students to participate in competitive activities or artistic activities organized by social groups, cultural sectors and other social organizations shall be reported to the higher authorities (section 11). However, the Government indicates that, as internal working rules of the education sector, this normative document lacks wider legal effect, and that the Ministry of Education is making efforts to incorporate it into the legislative process. The Government also states that the participation of children and adolescents in commercial performances mainly concerns artistic activities of public interest or for local tourism promotion, as well as other activities specially organized for children. The Committee recalls that, by virtue of *Article 8* of the Convention, children below the minimum age of admission to employment or work of 16 years, who are employed in artistic activities, must apply for permits granted by the competent authority. Moreover, permits so granted shall limit the number of hours during which and prescribe the conditions in which employment or work is allowed. *The Committee therefore*

once again requests the Government to take the necessary measures to enact national legislation that is in conformity with Article 8 of the Convention and which specifies that children below the minimum age of admission to employment or work of 16 years, who are employed in artistic activities, must apply for permits granted by the competent authority. Moreover, noting the absence of information, it once again requests that the Government provide information on the number of children who currently participate in commercial artistic performances and professional sports activities, and who fall within the exception provided for by section 13(1) of the 2002 Regulations Banning Child Labour.

Article 9(1). Labour inspectorate and penalties. The Committee previously noted that it was difficult to assess the extent of child labour owing to a lack of official reporting on cases and the lack of transparency in statistics. The Committee also noted that the Government had employed labour security advisers from trade unions and other institutions, to monitor the compliance of employers with national labour laws and regulations. The Government indicated that the labour inspectorate implements the provisions of national legislation prohibiting child labour and regularly monitors implementation through routine and ad hoc inspections, investigation of complaints and verification of cases reported by informants, written requests and other forms of supervision and law enforcement.

The Committee notes the Government's information that, by the end of 2016, the labour inspection system consisted of 4,672 labour security inspection departments, 26,000 full-time labour security inspectors, 26,700 part-time inspectors, and 72,100 inspection assistants. The labour inspectorate carries out law enforcement activities jointly with departments of public security, industry and commerce, administration of work safety and public health, with regard to child labour. The Government states that the illegal use of child labour is rare, and to date, no case has been found concerning the complicity by labour inspectors in this regard.

The Committee notes with *regret* the Government's statement that the data on investigations and penalties regarding child labour is considered confidential and cannot to be provided. However, the Committee notes that, according to the Measures on the Disclosure of Major Labour Violations to the Public (MoHRSS Order No. 29 of 2016), the Departments of Human Resources and Social Security must publish the cases of major labour violations which have been investigated and closed, including the violations of the Regulations Banning Child Labour, among others (section 5(5)). Moreover, the information published shall include the name and address of the perpetrators, the nature of violations and the decisions made by the competent authority (section 6). The Committee reminds the Government that, *Article 9(1)* of the Convention requires that the Government take all necessary measures to ensure the effective enforcement of the Convention, and that, as required by Part V of the report form, the Government shall provide information on statistical data on the employment of children and young persons, extracts from the reports of inspection services, information on the number and nature of contraventions reported, etc., which give a general appreciation of the manner in which the Convention is applied. *The Committee therefore once again urges the Government to take the necessary steps to ensure that sufficient updated data on the situation of working children in China 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. It also once again requests that the Government provide information on the number and nature of violations detected by the labour inspectorate, the number of persons prosecuted and the penalties imposed.*

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

Articles 3(a) and (b), and 7(1) of the Convention. Sale and trafficking of children and penalties. The Committee previously noted that China is a source, transit and destination country for international trafficking in women and children and that, despite various projects and national plans, the phenomenon of trafficking for the purposes of forced labour and prostitution was worsening and that cross-border trafficking appeared to be on the rise. The Committee also noted the Government's information concerning the Plan of Action against Human Trafficking (2013–20), as well as the Anti-Trafficking Inter-Ministerial Joint Meeting (IMJM) of the State Council, which involves coordinating the implementation of action plans against trafficking in persons, comprehensively sanctioning trafficking crimes, and improving the long-term anti-trafficking mechanisms with respect to prevention, prosecution, assistance and rehabilitation. The Committee further noted that, between June 2010 and May 2014, 12,752 persons were prosecuted in 6,154 cases for abducting and trafficking women and children under section 240 of the Criminal Code, and 1,122 persons in 286 cases were convicted of buying trafficked women and children under section 241.

The Committee notes the Government's information in its report that Amendment IX to the Criminal Law came into effect in November 2015, section 241 of which provides that whoever "buys an abducted woman or child" commits a crime and is punishable by imprisonment of not more than three years or criminal detention. The Government indicates that, from June 2014 to June 2017, court decisions were handed down for 2,519 cases of women and children who were trafficked with 3,944 perpetrators involved and for 173 cases of purchase of abducted women and children with 456 perpetrators involved. The Committee also notes that the Supreme Court issued judicial interpretations on the application of laws regarding trafficking of women and children in December 2016 (No. 28 of 2016), in order to facilitate the effective application of related legislation in practice. However, the Committee notes that section 9 of Judicial Interpretation No. 28 of 2016 defines children under sections 240 and 241 of the Criminal Code as persons under 14 years of age. The Committee observes therefore that boys aged 14 to 18 years may not be protected under the provisions criminalizing trafficking in persons. *The Committee therefore requests the Government to indicate the measures taken or envisaged to protect boys aged 14 to 18 years from trafficking. The Committee also requests the Government to continue its efforts to ensure thorough investigations and robust prosecutions against persons who engage in the trafficking of children, and to provide information on the number of investigations, prosecutions and convictions, as well as the specific penalties imposed in this respect.*

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 a punishment for expressing certain political views or views ideologically opposed to the established political, social or economic system. The Committee previously noted the following legislative provisions, under which penalties of imprisonment (involving compulsory prison labour, pursuant to section 38 of the Prison Rules) may be imposed:

·-printing, publishing, selling, distributing, importing, etc., of seditious publications or uttering seditious words (section 10 of the Crimes Ordinance, Cap. 200);

·-various violations of the prohibition on printing and publication (sections 18(i) and 20 of the Registration of Local Newspapers Ordinance, Cap. 268; regulations 9 and 15 of the News Agencies Registration Regulations, Cap. 268A; regulations 8 and 19 of the Newspaper Registration and Distribution Regulations, Cap. 268B; regulations 7 and 13 of the Printed Documents (Control) Regulations, Cap. 268C);

·-various contraventions of regulations of public meetings, processions and gatherings (section 17A of the Public Order Ordinance, Cap. 245).

The Committee noted that, in its concluding observations regarding the report of Hong Kong, China, the UN Human Rights Committee expressed concern about the application in practice of certain terms contained in the Public Order Ordinance, such as “disorder in public places” (as provided for by section 17B) and “unlawful assembly” (as provided for by section 18), which may facilitate excessive restriction on civil and political rights. It also expressed concern about the increasing number of arrests of, and prosecutions against, demonstrators.

The Committee notes the Government’s repeated statement in its report that freedom of the press, as well as freedom of opinion and expression are protected under the Basic Law and the Hong Kong Bill of Rights Ordinance (Cap. 383). The Government once again indicates that no cases relating to the application of the Convention have been brought before the courts.

However, the Committee notes that, in its concluding observations of 3 February 2016, the UN Committee against Torture (CAT) expressed its concern at consistent reports of massive detentions of persons in the context of demonstrations and the alleged restriction to the detainees’ legal safeguards. According to the information provided by the Government to the CAT, 511 persons were arrested in connection with an assembly that followed an annual march on 1 July 2014 (CAT/C/CHN-HKG/CO/5, paragraph 12). The CAT also expressed its concern at consistent reports of excessive use of tear gas, batons and sprays against protesters during the 79-day protest of the so-called “umbrella” or “occupy” movement in 2014, as well as at consistent reports that police resorted to violence against more than 1,300 people, and around 500 were subsequently admitted to hospitals (paragraph 14).

The Committee also notes that, on 18 August 2017, a court decision was handed down against three persons in relation to the mass demonstration in 2014 for inciting others to take part in an unlawful assembly, or for taking part in an unlawful assembly under section 18 of the Public Order Ordinance. During the first instance, three defendants respectively received 80 hours’ community service, 120 hours’ community service and three weeks’ imprisonment with probation for one year. Upon the application of the Public Prosecutors for the review of the case, the Court of Appeal considered that the sentences of the first instance were inadequate and could not possibly reflect the gravity of the offences. It therefore sentenced the three defendants to 6–8 months’ imprisonment respectively.

The Committee once again recalls that *Article 1(a)* of the Convention prohibits punishment by penalties involving compulsory labour, including compulsory prison labour, of persons who, without having recourse to violence, express political opinions or views 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. *The Committee therefore urges the Government to take the necessary measures to ensure that, both in law and in practice, no sanctions involving compulsory labour can be imposed as a punishment for holding or expressing political views. In order to ascertain that the above provisions are not applied to acts through which citizens seek to secure the dissemination and acceptance of their views, the Committee requests the Government to continue to provide information on their application in practice, supplying copies of court decisions defining or illustrating their scope.*

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(1) and 3(1) of the Convention. Effective tripartite consultations. Election of representatives of the social partners. The Committee has been requesting for some years that the Government and the social partners promote and strengthen tripartism and social dialogue in order to facilitate the operation of the procedures ensuring effective tripartite consultations, including ensuring the meaningful participation of the Hong Kong Confederation of Trade Unions (HKCTU) in the consultation process. In its previous comments, the Committee noted the observations of the HKCTU, which once again expressed its concern regarding ineffective consultation in relation to the current electoral system for representation on the Labour Advisory Board (LAB), the designated tripartite body for tripartite consultations for purposes of the Convention. The HKCTU noted that the LAB has six workers’ representatives, five of whom are elected by registered trade unions, with a sixth representative appointed *ad personam* by the Government. It pointed out that union votes are counted with equal weight regardless of size of membership according to the principle of “one union, one vote”. The electoral system allows voters to vote for a slate of five candidates in one ballot, hence the securing of more than half of the votes would allow a slate of five candidates to win all five seats. In its observations, the HKCTU maintained that this electoral system is unjust and has prevented it from being elected to the LAB, despite its status as the second largest trade union confederation. The Committee requested the Government to provide information on all measures taken or envisaged to ensure the HKCTU’s meaningful participation as part of the consultative process within the most representative organization of workers, and requested the Government to report on the results thereof.

In its response, the Government indicates that it fully recognizes the importance of tripartite consultations and social dialogue with the participation of organizations of employers and workers. With reference to the Committee’s previous comments, the Government adds that it fully understands that the term “most representative organizations of employers and workers”, within the meaning of *Article 1* of the Convention, does not mean only the largest organization of employers and the largest organization of workers, and that representative organizations, as referred to in the Convention, are the most representative organizations of employers and workers that enjoy the right of freedom of association and are free to choose their representatives in the tripartite consultations.

Moreover, the Committee notes the Government’s indication that all registered trade unions, regardless of their affiliations with any trade union group, are invited to participate in the election of workers’ representatives to the LAB by nominating candidates to stand for election and freely electing representatives to the LAB by secret ballot. More specifically, each registered trade union is free to vote for one or more candidates, up to the maximum number of workers’ representatives eligible for election to the LAB, enabling the expression of preferences for the choices of workers’ representatives to the fullest extent. The Government adds that more than half of the registered trade unions in the Hong Kong Special Administrative Region (HKSAR) are not affiliated to any major trade union group, and none of the trade union groups has any dominating number of affiliates. As all registered trade unions are eligible to exercise their free choice in these elections, the Government considers that there is no question of any particular trade union group being excluded from the election. The

Government adds that there is no evidence suggesting any unfairness in the current election method, noting that the method of returning workers' representatives to the LAB through an election by all registered trade unions is well established in the HKSAR. The method is transparent, well tested and widely accepted by the labour sector as best representing the views of workers and most suitable to local conditions. The Government undertakes to continue to ensure that each and every registered trade union, including those affiliated to the HKCTU, enjoys the same right to nominate candidates and to vote in the election of workers' representatives of the LAB. Nevertheless, the Government considers that it would be improper and inappropriate if the system of electing workers' representatives to the LAB were to be changed for the advantage of a particular organization.

The Government indicates that it will continue to observe tripartite consultations set out in the Convention and take into account the views of employers and workers in formulating labour policies. During the tripartite consultative process, representatives of employers and workers participate equally in various committees under the auspices of the LAB, including members from different trade union groups, including the HKCTU. All trade unions and trade union groups, including the HKCTU and its affiliated trade unions, are also free to communicate their views to the HKSAR Government. The Government further indicates that the principle of tripartite consultations is also applied in addressing other labour matters, such as the Minimum Wage Commission (MWC). The Committee recalls its previous comments, in which it expressed concern that, under the process of voting for a slate of labour organization candidates, as described by the HKCTU, there is a risk that the second largest trade union confederation in the country may have been excluded from meaningful participation within the most representative organization of workers. *The Committee therefore urges the Government to make every effort, together with the social partners, to ensure the promotion of tripartism and social dialogue in order to facilitate the procedures ensuring effective tripartite consultations. The Committee also once again requests the Government to communicate information on all measures taken or envisaged to ensure the HKCTU's meaningful participation in the consultative process within the most representative organization of workers.*

Article 5(1). Effective tripartite consultations. The Government indicates that, during the reporting period, the LAB's Committee on the Implementation of International Labour Standards (CIILS) was consulted on all reports to be submitted under article 22 of the ILO Constitution. The procedures for preparing these reports and copies of the reports were communicated to all LAB members. Members of the CIILS were also informed of the progress of the legislative amendment exercise for the application of the Maritime Labour Convention, 2006 (MLC, 2006), in the Hong Kong Special Administrative Region, and members shared their views freely in the meeting. The Committee notes the report of the LAB for 2015–16, communicated with the Government's report. *The Committee requests the Government to continue to provide up-to-date information on the content and outcome of the consultations held on all matters concerning international labour standards covered by the Convention (Article 5(1)(a)–(e)).*

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

Observation 2017

The Committee notes the observations of representative organizations of workers communicated with the Government's report, but observes that the Government does not indicate the names of these organizations. The Committee further notes the Government's reply to the 2014 observations of the International Trade Union Confederation (ITUC) but observes that the Government fails to address the alleged interference in trade union activities in the gaming sector and restrictions, in practice, on freedom to organize of migrant workers due to ineffective law enforcement. *The Committee requests the Government to provide further comments on those specific allegations.*

Articles 2 and 3 of the Convention. Right to organize of all categories of workers. Right of organizations to organize their activities. The Committee recalls that it had previously noted the Government's indication that freedom of association, procession and demonstration, as well as the right and freedom to form and join trade unions and to strike is guaranteed to all Macao residents by section 27 of the Basic Law of the Macao Special Administrative Region, and that in line with section 2(1) of the Regulation on the Right of Association (Law No. 2/99) everyone can form associations freely and without obtaining authorization. It had also noted that two bills were in discussion in the Legislative Assembly – the Labour Relations Law and the Law on Fundamental Rights of Trade Unions. The Labour Relations Law was adopted in 2008 but does not include a chapter on the right to organize and collective bargaining. Noting that the draft Law on Fundamental Rights of Trade Unions, which would give effect to these rights, has been pending adoption since 2005, the Committee had requested the Government to provide information on any developments in relation to this draft Law and to take the necessary measures to ensure that the right to strike could be effectively exercised. It further requested the Government to adopt legislative frameworks that would allow part-time workers and seafarers, excluded from the application of the Labour Relations Law, to exercise the rights enshrined in the Convention.

The Committee notes the Government's indication that the draft Seafarers' Labour Relations Law is still under discussion to ensure its compatibility with the relevant international conventions and that in March 2014 and November 2015, representatives of employers and workers provided written comments on the draft Part-Time Labour Relations Law, but their opinions on the subject remain divergent and the Government is, therefore, conducting a comprehensive study and analysis to readjust the text and proceed to adoption as soon as possible. The Government further states that after six failed attempts between 2005 and 2015, the draft Law on Fundamental Rights of Trade Unions was again submitted to the Legislative Assembly in January 2016 but failed to pass because legislators considered that due to the current socio-economic situation, such legislation would be unfavourable to investment and unnecessary, as residents enjoyed freedom of association and the social partners communicated effectively through the tripartite Social Coordination Committee. The Committee notes, however, that according to representative organizations of workers, the Special Administrative Region lacks implementing regulations to put freedom of association into practice, resulting in insufficient protection of the relevant rights. They also consider that the Government has the responsibility to further promote legislative work on a trade union law, including by encouraging extensive public consultations and awareness raising on the importance and necessity of such legislation. *Bearing in mind the concerns expressed by workers' organizations and recalling that the draft Law on Fundamental Rights of Trade Unions has been pending adoption for more than a decade, the Committee strongly encourages the Government to intensify its efforts to achieve consensus on the draft Law and to bring about its adoption in the near future. The Committee expects that this Law will explicitly grant the rights enshrined in the Convention to all categories of workers (with the only permissible exception of the police and the armed forces), including domestic workers, migrant workers, part-time workers, seafarers and apprentices, so as to ensure that freedom of association, including the right to strike, can be effectively exercised. The Committee requests the Government to provide information on any developments in this regard.*

The Committee also requests the Government to provide information on developments regarding the adoption of legislative frameworks regulating rights of specific categories of workers excluded from the Labour Relations Law and expects that any such instruments will be in full conformity with the Convention.

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

Observation 2017

The Committee notes the observations of workers' organizations communicated with the Government's report but observes that the Government does not indicate the names of these organizations. The Committee further notes the Government's reply to the 2013 and 2014 observations of the International Trade Union Confederation (ITUC) but observes that the Government fails to address most of the issues raised in the latter observations, including allegations of unfair dismissals of union members and teachers, anti-union measures in the gaming sector and absence of collective bargaining. *The Committee requests the Government to provide its comments on these specific allegations.*

Legislative developments. The Committee refers to its observations made under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in which it recalls that while the Labour Relations Law, 2008, contains some provisions that prohibit anti-union discrimination and provide sanctions for such acts, it does not include a chapter on the right to organize and collective bargaining, and that the Legislative Assembly has not yet been able to adopt the draft Law on Fundamental Rights of Trade Unions. *The Committee strongly encourages the Government to intensify its efforts in order to achieve the adoption, in the near future, of a legislation that would explicitly grant the various rights enshrined in the Convention and address the Committee's pending comments. The Committee requests the Government to provide information on any developments in this regard.*

Scope of application of the Convention. The Committee recalls that in its previous comments, after having observed that both seafarers and part-time workers were excluded from the Labour Relations Law, it had requested the Government to ensure that the legal frameworks to be adopted concerning these two categories of workers would allow them to exercise their right to organize and to bargain collectively. The Committee notes the Government's indication that the draft Seafarers' Labour Relations Law is still under discussion to ensure its compatibility with the relevant international Conventions and that in March 2014 and November 2015, representatives of employers and workers provided written comments on the draft Part-Time Labour Relations Law, but their opinions on the subject remain divergent and the Government is, therefore, conducting a comprehensive study and analysis to readjust the text and proceed to adoption as soon as possible. *In light of the above, the Committee once again requests the Government to provide information on any developments regarding the adoption of legislative frameworks regulating the rights of seafarers and part-time workers and expects that any such instruments will, in full conformity with the Convention, allow these categories of workers to exercise their right to organize and to bargain collectively.*

Article 1 of the Convention. Adequate protection against acts of anti-union discrimination. Having previously noted that fines imposed by section 85(1)(2) of the Labour Relations Law for acts of discrimination against workers due to their union membership or the exercise of their rights might not be sufficiently dissuasive, particularly for large enterprises (from 20,000 to 50,000 Macau patacas (MOP) equivalent to US$2,500–6,200), the Committee requested the Government to indicate the measures taken or envisaged to strengthen the existing sanctions. The Committee notes in this respect that the workers' organizations affirm in their observations that, especially in the context of the current social conditions, penalties for acts of anti-union discrimination and interference should be raised in order to enhance the intensity of deterrence and increase the costs of infringements. On the other hand, the Committee notes the Government's indication that: (i) section 85 establishes three categories of fines for minor infractions depending on their severity; (ii) deterrence of employees from exercising their trade union rights is punishable by the highest fine; (iii) if an act constitutes a criminal offence, the Penal Code will also apply; and (iv) the Labour Affairs Bureau investigates and follows up any labour dispute cases and if labour rights are found to have been impaired it opens a case and

initiates investigations, so as to effectively safeguard the legitimate labour rights of employees. While taking due note of the Government's explanation, the Committee observes that the amount of fines which can be imposed for acts of anti-union discrimination has not been modified and, therefore, still appears to be insufficiently dissuasive, particularly for large enterprises. *In light of the above, the Committee requests the Government to provide clarification on the use, if any, of other sanctions provided for in the Penal Code, to which the Government makes reference. The Committee requests the Government once again to take the necessary measures to strengthen the existing pecuniary sanctions applicable to acts of anti-union discrimination in order to ensure their sufficiently dissuasive character.*

The Committee further notes the Government's indication that section 70 of the Labour Relations Law, which allows rescission of contract without just cause accompanied by compensation, was amended in 2015 by increasing the maximum amount on which compensation is calculated. The Committee also notes in this regard that according to the 2014 ITUC observations, this provision is in practice used to punish union members when they take part in union activities or industrial actions. *Recalling that anti-union discrimination is explicitly prohibited by section 6 of the Labour Relations Law and Article 1 of the Convention, the Committee requests the Government to take the necessary measures, including legislative, if necessary, to ensure that section 70 of this Law is not used for anti-union purposes.*

Article 2. Adequate protection against acts of interference. The Committee had previously noted that sections 10 and 85 of the Labour Relations Law did not explicitly prohibit all acts of interference as described in *Article 2* of the Convention, or guarantee adequate protection by means of dissuasive sanctions and rapid and effective procedures. The Committee had therefore requested the Government to take the necessary measures to amend the legislation so as to include express provisions to this effect. The Committee notes the Government's indication that: (i) section 4 of the Regulation on the Right of Association provides that any person who compels or intimidates another person to join or withdraw from an association can be subject to imprisonment of up to three years in line with section 347 of the Penal Code; (ii) workers may apply to court for protective or preventive measures if there is serious and irreparable damage to their rights (sections 25 and 26 of the Labour Procedure Code); (iii) labour proceedings triggered by unilateral termination of contract and requests for preventive measures are of an urgent nature allowing for prompt and effective handling of workers' labour rights (section 5 of the Labour Procedure Code and section 327 of the Code of Civil Procedure); and (iv) a Labour Tribunal was established in 2013 to deal with civil and minor violations and issues arising from labour law relations. While taking due note of this information, the Committee emphasizes the need for legislation to explicitly protect workers' and employers' organizations against any acts of interference by each other or each other's members, including, for instance, acts which are designed to promote the establishment of workers' organizations under the domination of employers or employers' organizations, and to make express provisions for rapid appeals procedures against such acts, coupled with effective and dissuasive sanctions. *In light of these considerations, the Committee requests the Government to take the necessary measures to ensure that the relevant legislation includes provisions explicitly prohibiting acts of interference and providing for sufficiently dissuasive sanctions and rapid and effective procedures against such acts. The Committee also requests the Government to provide statistical information on the functioning, in practice, of the Labour Affairs Bureau and the Labour Tribunal, including the number of cases of anti-union discrimination and interference brought before them, the duration of the proceedings and their outcome.*

Articles 1, 2 and 6. Protection of public servants not engaged in the administration of the State against acts of anti-union discrimination and interference. Having observed that the General Provisions on the Personnel of the Public Administration in Macao did not contain any provisions against anti union discrimination and interference, the Committee had previously requested the Government to indicate which provisions afford to public servants adequate protection against such acts and, if necessary, to take the necessary measures to amend the legislation accordingly. The Committee notes that the Government enumerates legislative instruments regulating the rights, obligations, rewards, penalties, promotion, appraisal and benefits of civil servants and indicates that participation of civil servants in trade union activities does not have any impact on their promotion, appraisal or benefits, let alone discrimination or interference. The Committee observes, however, that the Government does not point to any specific provisions that would explicitly provide protection to public servants against acts of anti-union discrimination and interference. *In these circumstances, recalling that the scope of the Convention covers public servants not engaged in the administration of the State, the Committee requests the Government to take the necessary measures to amend the legislation so that it explicitly prohibits acts of anti-union discrimination and interference and grants public servants not engaged in the administration of the State adequate protection against such acts.*

Articles 4 and 6. Absence in legislation of provisions on collective bargaining for the private sector and public servants not engaged in the administration of the State. In its previous comments, the Committee requested the Government to take the necessary measures to ensure the full application of *Article 4* of the Convention both in the public and private sectors. Recalling that the Labour Relations Law does not contain a chapter on collective bargaining and that the draft Law on Fundamental Rights of Trade Unions is still pending adoption, the Committee notes the Government's indication that despite the absence of legislation on collective bargaining, the Government will, in the formulation of relevant legislation and labour policies, consult and seek the views of the social partners, either through the tripartite coordination mechanism in the private sector or the permanent consultation mechanism established by the Civil Service Pay Review Council for civil servants. According to the Government, employers and workers also safeguard their respective rights and interests through the tripartite Standing Committee for the Coordination of Social Affairs. While recalling that collective bargaining referred to in the Convention is of a bipartite nature, the Committee notes the ITUC affirmation that this mechanism lacks transparency and fails to ensure balanced representation and consultation of independent trade unions. *In light of the above, the Committee once again requests the Government to take the necessary measures in the very near future to ensure the full application of Article 4 of the Convention both for the private sector and public servants not engaged in the administration of the State, whether through the adoption of the draft Law on Fundamental Rights of Trade Unions or any other legislation, and to provide information on any developments in this regard.*

Collective bargaining in practice. The Committee requests the Government to provide statistics as to the number of collective agreements concluded, specifying the sectors concerned, their level and scope, as well as the number of enterprises and workers covered.

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 the production of pornography or for pornographic performances. The Committee previously noted that section 3(b) of Law No. 10/78/M on the Sale, Display and Exhibition of Pornography and Obscene Materials prohibits any sale to children, or marketing through children under 18 years of age, of pornographic or obscene materials, while section 166(4)(b) of the Penal Code only criminalizes the use of children under 14 years of age for the production of pornography. The Government indicated that Law No. 10/78/M was being revised pending suggestions from the public. The Committee therefore requested the Government to take the necessary measures to ensure the prohibition on the use, procuring or offering of a child under 18 years of age for the production of pornography or for pornographic performances.

The Committee notes with *satisfaction* the Government's information in its report that Act No. 8/2017 (Amendment to the Penal Code) adds section 170(a) to the Penal Code, which prohibits the use of children under 18 years of age for the production of pornography or for pornographic performances, or inducing them to participate in such activities, with a penalty of imprisonment of up to eight years. *The Committee therefore requests the Government to provide information on the application of section 170(a) of the Penal Code in practice, including the number of investigations, prosecutions and convictions, as well as the penalties applied.*

China - Macau Special Administrative Region

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

Observation 2017

Article 1(a) of the Convention. Sanctions of 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. The Committee previously noted that under the provisions of the Crimes Decree No. 44, 2009, sanctions of imprisonment (involving compulsory labour pursuant to section 43(1) of the Prisons and Corrections Act 2006) may be imposed in situations covered by *Article 1(a)* of the Convention, such sanctions being therefore incompatible with the Convention:

·-section 65(2) provides for sanctions of imprisonment for: (a) making any statement or spreading any report, by any communication whatsoever including electronic communication, or by signs or by visible representation intended by the person to be read or heard, which is likely to: (i) incite dislike or hatred or antagonism of any community; or (ii) promote feelings of enmity or ill will between different communities, religious groups or classes of the community; or (iii) otherwise prejudice the public peace by creating feelings of communal antagonism; and (b) making any intimidating or threatening statement in relation to a community or religious group other than the person's own which is likely to arouse fear, alarm, or insecurity among members of that community or religious group;

·-section 67(b), (c) and (d) provides for sanctions of imprisonment for any person who utters any seditious words; prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication; or imports any seditious publication.

The Committee also noted the Government's indication that sections 65(2) and 67(a), (b) and (c) of the Crimes Decree aim to protect the peace of all people and communities in Fiji, in particular, with regard to ethnic tensions that culminated in coups d'état in 1987 and 2000. The Government also stated that no persons or groups of persons have ever been charged under the mentioned provisions.

The Committee further observed that the Public Order (Amendment) Decree No. 1, 2012, amends certain provisions of the Public Order Act (POA), 1969, so as to strengthen sanctions of imprisonment applicable to the following circumstances:

·-section 10, which amends section 14(b) of the POA, increases from three months to three years the sanction of imprisonment for: (a) using threatening, abusive or insulting words; or behaving with intent to provoke a breach of the peace in any public place or at any meeting; or (b) having been given by any police officer any directions to disperse or to prevent obstruction or for the purpose of keeping order in any public place, without lawful excuse, contravenes or fails to obey such direction;

·-section 13, which amends section 17 of the POA, establishes a new element under the offence of "inciting racial antagonism" (spreading any report or making any statement which is likely to undermine or sabotage or attempt to undermine or sabotage the economy or financial integrity of Fiji, section 17(1)(a)(v)), and increases from one to ten years the sanction of imprisonment applicable to any person violating section 17 and its subsections.

The Committee observed that the provisions of the Crimes Decree and of the Public Order (Amendment) Decree referred to above are formulated in such general terms that they may lead to the imposition of penalties involving compulsory labour as a punishment for the peaceful expression of views or of opposition to the established political, social or economic system, and that such penalties are incompatible with the Convention. It therefore requested the Government to take measures to review the abovementioned provisions in order to bring them into conformity with the Convention.

The Committee notes the absence of information in the Government's report. *The Committee therefore urges the Government to take the necessary measures to amend the abovementioned provisions, either by repealing them, by limiting their scope to acts of violence or incitement to violence, or by replacing sanctions involving compulsory labour with other kinds of sanctions (e.g. fines), in order to ensure that no form of compulsory labour (including compulsory prison labour) may be imposed on persons who, without using or advocating violence, express certain political views or oppositions to the established political, social or economic system. It also 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.

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

Observation 2017

Article 7(2). Effective and time-bound measures. Clause (e). Taking account of the special situation of girls. Child victims of commercial sexual exploitation. In its previous comments, the Committee took note of the serious problem of child prostitution, particularly in sex tourism, in the country and noted the concern expressed by the UN Committee on the Elimination of Discrimination against Women about the exploitation of underage girls in commercial sex work. The Committee took note of the Government's reference to a task force subcommittee of the National Coordinating Committee on Children (NCCC), which is comprised of "Homes of Hope", the ILO and "Empower Traffic", and which is working with the Department of Women and Social Welfare (DOW) in managing and intervening in children's rights cases. The Government stated that the Police Department intervenes if the DOW receives reports of child victims of prostitution or sexual abuse. The Committee further noted the Government's commitment to ensure that children who are removed from such circumstances are placed under the care of the State and undergo rehabilitation programmes before they are reintegrated into educational or vocational programmes. It also noted the Government's endeavours to continue to strengthen the network between government ministries, particularly the Ministry of Labour and the Ministry of Education, along with non-governmental organizations and faith-based organizations, to ensure the care and protection of children. The Committee took due note of the Government's efforts to combat the commercial sexual exploitation of children. However, it noted the information contained in the report "Child Labour in Fiji – A survey of working children in commercial sexual exploitation, on the streets, in rural agricultural communities, in informal and squatter settlements and in schools" (Child Labour in Fiji report), produced by the ILO Country Office for South Pacific Island Countries and ILO–IPEC, according to which the commercial sexual exploitation of children and child sex tourism continue to occur. The Committee expressed its concern regarding the continuation of child commercial sexual exploitation, including child sex tourism, and requested the Government to take effective and time-bound measures and to provide information in this regard.

The Committee notes the absence of information in this regard in the Government's report. It notes however that, according to its 2014 concluding observations, the Committee on the Rights of the Child notes with deepest concern that sexual exploitation and abuse of children is prevalent in Fiji, including through organized child prostitution networks and brothels (CRC/C/FJI/CO/2-4, paragraph 32). The Committee on the Rights of the Child is furthermore gravely concerned about Fiji being a source country for children subjected to sex trafficking and forced labour, with child trafficking victims being exploited in brothels, local hotels, private homes and other rural and urban locations (paragraph 69). *The Committee once again urges the Government to take effective and time-bound measures to remove children from the worst forms of child labour, taking into account the special situation of girls. The Committee also once again requests the Government to provide concrete information on the intervention strategies and rehabilitation programmes aimed at providing direct assistance to child victims of commercial sexual exploitation, and on the number of these children who have been effectively*

rehabilitated and socially integrated.

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 made by the International Organisation of Employers (IOE) received on 1 September 2017, reiterating the statements made by the Employer members during the discussion of the application of the Convention by India in the Conference Committee on the Application of Standards (CAS) in 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 2017 conclusions of the CAS on the application of this Convention by India. The Committee recalls that this case was also discussed by the CAS at the 104th Session of the International Labour Conference in June 2015.

Articles 6, 10 and 11 of the Convention. Material and human resources at the central and state levels. The Committee notes that the Government provided written information to the CAS in 2017 on the number of labour inspectors (in relation to 32 of 36 states). It also notes that the Government refers, in its report, to budgetary constraints, but indicates that the strength of the staff is generally adequate for inspection needs and that, where necessary, staff is employed on a temporary basis. With respect to the hiring of temporary staff, the Committee recalls that, pursuant to *Article 6,* the status and conditions of service of inspection staff should be such that they are assured of stability of employment and are independent of changes of government and of improper external influences. *The Committee requests the Government, in line with the 2017 conclusions of the CAS, to increase the resources at the disposal of the central and state government inspectorates, and to provide information on the working conditions and transport facilities of the labour inspection services therein. It requests the Government to continue to provide information on the number of labour inspectors in all states. Recalling that, as public servants, labour inspectors are generally appointed on a permanent basis (General Survey on labour inspection, 2006, paragraph 203), the Committee further requests the Government to specify the manner in which it is ensured that temporary inspectors are independent of changes of Government and of improper external influences, and to provide information on the number of temporary staff employed during the reporting period.*

Articles 10 and 16. Coverage of workplaces by labour inspections. Self-inspection scheme. The Committee previously noted that mandatory self-assessments (required by employers employing more than 40 workers) are among the sources of information used by the Central Analysis and Intelligence Unit (CAIU) to draw a conclusion on a prima facie evidence of labour law violations, and a decision to enter (or not) the relevant workplace in the computerized system for inspection visits to be carried out. In this context, the Committee noted the observations made by the Centre of Indian Trade Unions (CITU) and the Bharatiya Mazdoor Sangh (BMS) pursuant to which there was an absence of any mechanism for the verification of information supplied through the self-certification scheme.

The Committee notes the Government's indication to the CAS in 2017 that self-inspections had been adopted with a view to encouraging voluntary compliance for health and safety issues at workplaces and were different from inspections. Self-inspections did not replace labour inspections but were rather an additional mechanism for compliance. The Committee notes the additional information provided by the Government that the scheme of self-certification had been adopted by a large number of states, but had not yet become operational in most of them. The Government adds that in the few states in which the self-certification scheme had become operational, it was backed by a very effective system of random inspections and inspections in response to complaints. *The Committee once again requests the Government, in line with the 2017 conclusions of the CAS, to provide information on how the information submitted through self-certificates is verified by the labour inspectorate, in particular in relation to health and safety inspections.*

Articles 12 and 17. Free initiative of labour inspectors to enter workplaces without prior notice, and discretion to initiate legal proceedings without previous warning. Code on the Wages Bill and ongoing legislative reform. The Committee notes that the Code on Wages, 2017 Bill (the Bill) currently before Parliament is proposed to repeal the Payment of Wages Act, 1936 and the Minimum Wages Act, 1948, which specify the powers of labour inspectors, including the entry into workplaces, to enforce wage-related legislation. The Committee notes that the Bill does not explicitly refer to the principles contained in *Article 12(1)(a)* and *(b*), but provides that the governments at the state level may lay down separate inspection schemes (including the generation of a web-based inspection schedule). Moreover, the Bill renames labour inspectors as "facilitators" and requires inspectors to give previous warning and provide additional time to rectify a violation before any penal procedures may be initiated. The Committee notes that this Bill is part of an ongoing legislative reform, and recalls that the CAS requested the Government in 2015 and 2017 to take measures to ensure that any legislation developed was in conformity with the Convention. *The Committee requests the Government, in line with the request of the CAS, to ensure that any legislation prepared in the context of the ongoing legislative reform complies with the principles of the Convention and to provide information on the consultations undertaken with the social partners thereon. In this respect, the Committee requests the Government to take the necessary measures to ensure that the Code on Wages explicitly includes the free initiative of labour inspectors to enter workplaces without prior notice, in conformity with Article 12(1)(a) and (b) of the Convention. The Committee also requests the Government, in line with the 2017 conclusions of the CAS, to provide information on the discretion of labour inspectors to initiate prompt legal proceedings without previous warning, where required, by indicating the total number of violations detected and the number of legal proceedings initiated by labour inspectors, distinguishing between those cases where a prior warning had been issued beforehand and where immediate enforcement action had been implemented.*

Articles 2, 4 and 23. Labour inspection in special economic zones (SEZs). In its previous comments, the Committee noted the Government's indication that very few inspections had been carried out in SEZs. The Committee notes that the Government provided written information to the CAS in 2017, indicating that a tripartite meeting was held in May 2017 to discuss the effectiveness of labour inspection following the delegation of inspection powers to the Development Commissioners, and that a regular review of the implementation of labour laws in SEZs would be developed in due course. The Government also expressed the view that, despite their function of attracting investment, Development Commissioners are able to exercise their functions without a conflict of interest. In addition, the Committee notes that the Government, in reply to the request of the CAS in 2017, provides some statistical information on the number of inspection visits, violations detected and penalties imposed in relation to five SEZs in which inspection powers have been delegated to the Development Commissioners and six SEZs in which inspection powers have not been delegated. Unannounced inspection visits have been undertaken during 2016–17 in only one of the five SEZs exercising delegated inspection powers, and in only two of these five SEZs during the prior two years (2014–15 and 2015–16). The Government's information further indicates that, for the same three-year period, unannounced inspections have been carried out in only two of the six SEZS where inspection powers have not been delegated. Finally, the Government's statistical information indicates that penalties have been imposed in only two of the five SEZs exercising delegated inspection powers, and in only five cases in those two SEZs during 2016–17. *The Committee requests the Government, in line with the 2017 conclusions of the CAS, to ensure that effective labour inspections are conducted in all of the existing SEZs. It also requests the Government to specify the number of SEZs in which enforcement powers have been delegated to Development Commissioners and to provide detailed statistical information on labour inspections in all SEZs, including the number of enterprises and workers in each SEZ and the number and nature of offences reported, the number of penalties imposed, the amounts imposed and collected and criminal prosecutions and prison terms imposed, if any.*

Articles 4, 20 and 21. Availability of statistical information on the activities of the labour inspection services at the central and state levels. The Committee notes that, once again, no annual report on the work of the labour inspection services has been communicated to the Office. It notes from the information provided by the Government to the CAS in 2017 that, in view of the federal structure of the country and the sovereignty of the states, there is no statutory mechanism for the states to furnish data to the central Government. Such information is provided by the states on a voluntary basis on various labour-related matters, and the Government provided information to the CAS in relation to those states for which information was available. During the discussion in the CAS,

the Government referred to the strengthening and modernization of the collection of statistics by the Labour Bureau, and it reiterated its willingness to seek technical advice from the ILO regarding the preparation of annual labour inspection reports and establishments of registers of workplaces liable to inspection. The Committee also notes the observations made by the IOE that the federal structure of the country does not justify the failure to communicate information. *The Committee urges the Government to take the necessary measures to ensure that the central authority, at the central level or the state level, publish and submit to the ILO annual reports on labour inspection activities containing all the information required by Article 21. The Committee encourages the Government to pursue its efforts towards the establishment of registers of workplaces at the central and state levels and the computerization and modernization of the data collection system, and to provide detailed information on any progress made in this respect.*

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.]

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

Observation 2017

Article 1(b) of the Convention. Equal remuneration for work of equal value. In its previous observation, the Committee recalled that since 2002 it had been pointing out the more limited nature of the provisions of the Constitution of India (Article 39(d)) and the Equal Remuneration Act (ERA), 1976 (sections 2(h) and 4), when compared to the principle of equal remuneration for men and women for work of equal value as set out in the Convention. In particular, the Committee noted that under the above legislative provisions, the principle of equal remuneration is applied to "work of a similar nature", whereas the concept of "work of equal value" in the Convention requires a broader scope of comparison including, but going beyond equal remuneration for "equal", "the same" or "similar" work, in order to encompass also work that is of an entirely different nature, but which is nevertheless of equal value. The Committee also noted that the judicial interpretations of the ERA maintain a narrow reading of these provisions, which do not give full expression to the principle of the Convention. The Committee therefore urged the Government to take immediate and concrete measures to ensure that the legislation clearly establishes the right to equal remuneration for men and women for work of equal value in accordance with the Convention.

The Committee notes the information provided by the Government in its report which merely recalls the provisions of the ERA, and does not provide responses to the Committee's comments. The Committee also notes the Government's indication that no specific research has been undertaken by the Centre for Gender and Labour of the V.V. Giri National Labour Institute (VVGNLI) on the adequacy, effectiveness and implementation of the ERA. The Committee understands that the Government is in the process of consolidating its labour legislation in four codes, including a Wages Code, which will cover some of the matters addressed in the ERA, notably equal remuneration. *Recalling that legal provisions that do not give expression to the concept of "work of equal value" hinder progress in eradicating gender-based pay discrimination, the Committee urges the Government to take specific measures without delay to ensure that the national legislation gives full expression to the principle of equal remuneration for men and women for work of equal value as enshrined in the Convention, including by amending the ERA as needed, and seizing the opportunity provided by the codification process to clearly incorporate the principle of the Convention into national legislation, and to provide information on the steps taken in this respect. The Committee reminds the Government that it can avail itself of ILO technical assistance to this end. The Committee also hopes that the VVGNLI will soon be in a position to share its findings and recommendations from its evaluation of the ERA, in particular with respect to the application of the principle of equal remuneration.*

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

Article 1(1)(a) of the Convention. Discrimination based on sex. Sexual harassment. In relation to its previous comments on the scope of application of the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act 2013, the Committee notes the Government's indication that agricultural workers as well as workers from workplaces employing less than ten workers can file complaints concerning sexual harassment with the Local Complaint Committee established at the district level. The Committee notes that, in reply to its comments, no further information is provided concerning the practical application of the Act. The Committee notes that the United Nations Committee on the Elimination of Discrimination Against Women (CEDAW) raised concerns about continued sexual harassment and violence against women and girls, which has repercussions on their school attendance and participation in the labour market. CEDAW notes the stark increase in violent crimes against women, especially rape and abduction, and the escalation of caste-based violence, including rape, against women and girls (CEDAW/C/IND/CO/4-5, 24 July 2014, paragraphs 10(a)–(c) and 26). The Committee recalls that the Act only addresses sexual harassment against women and that the Committee had previously recommended that men should also be protected against this serious form of sex discrimination. *The Committee asks the Government to provide specific information on the practical application of the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act 2013, and any other measures adopted or envisaged to combat sexual harassment and violence against women related to the workplace. The Committee also asks the Government to supply information on the number of sexual harassment cases filed with internal and local complaints committees and their outcomes, including remedies provided and penalties imposed. It again asks the Government to review the impact of section 14 of the Act (action against malicious or false complaints or false evidence) on the willingness of women and other persons to file complaints of sexual harassment without fear of reprisals. This should also include information on reprisals and efforts to prevent reprisals at workplaces employing less than ten employees and in agricultural workplaces. The Government is also asked, when the opportunity of the revision of the Act arises, to amend the Act to ensure that men, as well as workerplaces in the unorganized sector with more than ten employees, are also protected against sexual harassment in the workplace, and to provide information on any developments in this regard.*

Articles 1–3. Measures to address discrimination based on social origin. The Committee notes the Government's indication that the quota system for scheduled castes in the public sector has contributed to increasing the representation of these groups in the public sector. According to the Government's report, whereas in 1965 scheduled castes represented 13.17 per cent of the personnel in government services, in 2012 they accounted for 17.3 per cent of the staff. In this regard, the Committee notes that the quota for scheduled castes in the public sector, in direct recruitment on an all-India basis by open competition, is 15 per cent. The quota in direct recruitment on an all-India basis other than by open competition is 16.66 per cent. The Committee notes that various "special recruitment drives" have been launched in recent years to fill the backlog of reserved vacancies for scheduled castes and tribes. The overall success rate of the last drive held in 2012 was 74.85 per cent. The Committee further notes the information provided by the Government concerning the various schemes put in place with a view to fostering education and economic empowerment of scheduled castes. According to the Government's report, the positive impact of these schemes is reflected in the enhanced representation of scheduled castes in the public sector. No information is, however, provided concerning the impact of these schemes beyond the fulfilment of the quotas.

Regarding affirmative action measures in the private sector, the Committee notes the information concerning some initiatives taken by the Apex Industry

Chambers, such as providing skills training, entrepreneurship development programmes, and coaching and scholarships to more disadvantaged sections of society. The Government also indicates that some of the industry associates have prepared a voluntary code of conduct in which emphasis is placed on increasing opportunity in employment for disadvantaged sections of society through skills upgrading, continuous training and scholarships, among other matters. As regards the steps taken to intensify awareness raising on the prohibition and unacceptability of caste-based discrimination in employment and occupation, the Government indicates that it has addressed a set of recommendations, in its advisory capacity under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, to the chief secretaries of all states/union territories (UTs). These recommendations include: (i) creating awareness through print and electronic media; (ii) developing a community monitoring system to verify cases of violence, abuse and exploitation and taking necessary steps to curb such cases; (iii) involving the community at large in creating and spreading such awareness; and (iv) organizing legal literacy and legal awareness workshops. The Committee notes that no information is, however, provided by the Government on the specific measures taken at central and local government levels to raise awareness about discrimination based on social origin in employment and occupation. *Recalling that continuous measures are required to put an end to discrimination in employment and occupation due to real or perceived membership of a certain caste and noting the absence of specific information on the impact of the various schemes and measures, except for the implementation of the quota system, the Committee asks the Government to undertake a comprehensive assessment of the progress made to date in addressing caste-based discrimination in employment and occupation. It also asks the Government to identify the additional measures needed in order to advance equality of opportunity and treatment for all men and women, irrespective of social origin and to provide information in this respect. This information should include the results of any study conducted by the National Commission for Scheduled Castes with regard to education, training, employment and occupation. The Committee also asks the Government to step up its efforts to raise public awareness of the prohibition of caste-based discrimination and to provide information on the specific measures taken to this end, including steps taken in cooperation with the social partners. The Government is also asked to continue to provide information on the affirmative action measures adopted in the private sector to combat caste-based discrimination and to promote equality of opportunity and treatment, irrespective of social origin, and on their impact. Noting the Government's indication that the implementation of the quota system for Dalit Muslims and Dalit Christians has been brought to the attention of the Supreme Court, the Committee further asks the Government to provide information on any progress made on this matter.*

Manual scavengers. The Committee refers to its previous observations in which it asked the Government to take vigorous and comprehensive steps to put an end to the continuing degrading and inhumane practice of manual scavenging and welcomed the adoption of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act 2013 (MS Act, 2013). The Committee notes that in December 2013, the Prohibition of Employment as Manual Scavengers and their Rehabilitation Rules (MS Rules, 2013) were also enacted. Concerning the implementation of the Act, the Committee notes the Government's indication that the Ministry of Social Justice and Empowerment has been holding review meetings with the concerned states and UT administrations with a view to raising awareness about the problem of manual scavenging; outlining the actions that need to be taken under the various provisions of the Act, and assessing the actions taken so far. The Government has also informed the Committee that a survey on manual scavengers in statutory towns has been completed in 27 of the 35 states/UTs and action is being taken to gather information on the rehabilitation needs of the identified scavengers and their dependants. The Committee notes that all manual scavengers, irrespective of their caste and religion, are eligible for the rehabilitation assistance under the Act, as specified in rule 11(22) of the MS Rules 2013. The Government also indicates that the manual scavengers who left their jobs prior to the coming into force of the Act can access concessional loans for self-employment and training under the schemes of the National Safai Karamcharis Finance and Development Corporation. The Committee, however, also notes that, according to the report of the UN Special Rapporteur on minority issues, the practice of manual scavenging persists despite the adoption of the Act, and is institutionalized through state practice, with local governments and municipalities employing manual scavengers (A/HRC/31/56, 28 January 2016, paragraph 72). *The Committee asks the Government to step up its efforts in order to ensure the full application of the MS Act 2013, in practice, and to provide comprehensive information on the steps taken to this end, including detailed information, disaggregated by sex, on the number of persons who are benefiting or have benefited from the rehabilitation measures provided for under the Act, and their impact. The Committee also asks the Government to provide information on the results of the assessments made concerning the actions taken so far by the states/UTs and to supply the results of the survey on manual scavengers in statutory towns where already completed. The Committee again asks the Government to provide information on the activities of the district and state and central level vigilance and monitoring committees, district magistrates and inspectors as regards the application of the Act, and on the number and nature of offences registered, investigations and prosecutions instigated, and penalties imposed on private and public bodies. The Government is also asked to supply information on the impact of the National Safai Karamcharis Finance and Development Corporation scheme on the rehabilitation of manual scavengers who ended this activity before the entry into force of the MS Act 2013.*

Equality of opportunity and treatment between women and men. The Committee notes that in its concluding observations the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) has expressed concerns about the declining participation of women in the labour force, both in rural and urban areas, and the fact that women own only 9 per cent of land (CEDAW/C/IND/CO/4-5, 24 July 2014, paragraph 28). The Committee notes from the Government's report that, according to data for 2011–12, nearly 75 per cent of women in rural areas were engaged in agriculture, 10 per cent in manufacturing and 6.6 per cent in construction works. With regard to urban areas, according to the same set of data, 53 per cent of women were engaged in services and 29 per cent in manufacturing. The Committee notes the Government's indication that under the 12th Five-Year Plan (2012–17) the Ministry of Women and Child Development is implementing a specific scheme to support training and employment for women (STEP programme). *The Committee again asks the Government to identify the specific steps taken to promote equality of opportunity and treatment between men and women in employment and occupation, including improving access to land, credit and other material goods needed to engage in an occupation, and on their impact. The Committee is also asked to supply specific information on the impact of the STEP programme and other relevant schemes, including the National Rural Livelihood Mission, in advancing gender equality and addressing occupational gender segregation. The Committee also asks the Government to provide updated statistical information on the participation of men and women in employment and occupation, according to sector and employment status, in order to monitor progress over time.*

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

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

Observation 2017

Articles 1 and 2 of the Convention. Formulation and implementation of an active employment policy. In its previous comments, the Committee invited the Government to provide information on the extent to which the measures implemented under the 11th Five-Year Plan (2007–12) had managed to improve the quality of the employment generated and alleviate unemployment and underemployment. The Government indicates in its report that it has been implementing various employment generation and poverty alleviation programmes across the country, with particular emphasis on programmes targeting young persons and workers in the unorganized sector. Budget allocations under these programmes, including the Prime Minister's Employment Generation Programme, have increased substantially. It is expected that higher investment will generate a greater number of employment opportunities for the benefit of people from all segments of society. The Committee notes that the "Pradhan Mantri Rojgar Protsahan Yojana" scheme, included in the 2016–17 Budget, aims to promote

employment in the formal economy. Under this scheme to promote the creation of new formal sector jobs, the Government will pay the Employee Pension Scheme contribution of 8.33 per cent for all new employees enrolling in the Employees' Provident Fund Organisation (EPFO) during the first three years of their employment. In order to target semi-skilled and unskilled workers, the scheme will apply only to those workers receiving a salary of up to Indian rupees (INR) 15,000 per month. The Committee further notes that the 12th Five-Year Plan (2012–17) contemplated the creation of 50 million new employment opportunities in the non-farm sector, and skill certification for an equivalent number of persons. In addition, the Government has introduced "Make in India", a new national programme designed to facilitate foreign investment, foster innovation and enhance skills development. The National Manufacturing Policy aims to create an additional 100 million jobs by 2022. The Committee notes the Government's indication that the Ministry of Labour and Employment is in the process of formulating a National Employment Policy. To this end, an Inter-Ministerial Committee has been constituted and consultations with different stakeholders are ongoing. *The Committee requests the Government to provide further information on the development of the National Employment Policy in consultation with the social partners and to provide a copy of the policy once it is adopted. It also requests the Government to provide further information on the impact of the increased budgetary allocations on employment creation, as well as detailed information, including statistical information, disaggregated by age, sex and disadvantaged group, such as scheduled castes and scheduled tribes, on the impact of employment programmes targeting workers in the informal economy. In this respect, the Government may consider it useful to consult the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204).*

Labour market trends. The Committee notes that the workforce increased from 459 million in 2004–05 to 474 million in 2011–12. In comparison, the increase in employment from 2004–05 to 2009–10 was just 1.1 million. The total workforce was estimated at 487 million in 2016, of which approximately 57 per cent were employed in the non-farm sector. The Committee further notes the statistical information provided by the Government on the labour force participation rate and unemployment rate. Unemployment increased to 4.9 per cent in 2013–14, up from 3.8 per cent in 2011–12. The Committee notes in this regard that the statistics indicate that the labour force participation rate was highest among the scheduled tribes, followed by the scheduled castes, and "other backward classes", as these terms are referred to in the Constitution of India and national legislation. It also observes the continued significant differences in labour force participation between women and men. *The Committee requests the Government to continue to provide updated statistical data, disaggregated as much as possible by age, sex, skills, disadvantaged group, such as scheduled castes and scheduled tribes, state and sector, on the situation and trends of labour force participation, employment, unemployment and underemployment, in both the formal and informal economies. It also requests the Government to provide information on its labour market information system and how it plans to produce timely employment data to help design more effective employment policies.*

Employment programmes. In its previous comments, the Committee invited the Government to provide information on the impact of the Mahatma Gandhi National Rural Employment Guarantee Act programme (MGNREGA), a demand-driven wage employment programme, and other employment schemes. The Government indicates that it developed and launched a "Project for Livelihoods in Full Employment" (Project LIFE-MGNREGA) in the framework of the MGNREGA programme in April 2015. The Project seeks to promote self-reliance and improve the skills of MGNREGA workers, helping them to develop skills to enable them to move from being dependent on Government support into accessing full employment and better incomes. The Government adds that implementation of the MGNREGA has: (i) reduced distress migration among the rural poor; (ii) smoothened rural consumption in the lean season; (iii) set high standards of transparency; (iv) addressed underemployment; (v) created assets that improved livelihoods; (vi) boosted financial inclusion; (vii) strengthened Gram Panchayats; (viii) improved wage levels in rural areas, increasing the income levels of the poorest of the poor; (ix) set standards for decent working conditions; and (x) brought fallow lands into cultivation. The Committee notes that the MGNREGA programme generated 2.2 billion total person-days in 2013–14 and 2.35 billion total person-days in 2015–16. *The Committee requests the Government to continue to provide information on the impact of employment programmes adopted, including the MGNREGA, in enhancing job growth and sustainable employment. It also requests the Government to provide further information on employment programmes aimed at increasing the labour force participation of women as well as those aimed at increasing the labour force participation of vulnerable groups, including persons with disabilities and those belonging to the scheduled castes and scheduled tribes.*

Article 3. Consultation with the social partners. The Government indicates that the social partners are actively involved in the implementation of the major employment generation programmes through tripartite consultation. It adds that tripartite consultations are held at regular intervals in the Indian Labour Conference. *The Committee requests the Government to provide detailed information on the consultations held with the representatives of employers' and workers' organizations concerning the formulation and implementation of an active employment policy and employment programmes. It also requests the Government to provide information on the scope and frequency of the consultations held within the Indian Labour Conference on the matters covered by the Convention.*

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 Trade Union Confederation (ITUC) dated 1 September 2017 and the Confederation of Indonesian Trade Unions (KSPI) and the Indonesia Trade Union Prosperity (KSBSI) dated 30 August 2017 and the Government's replies thereon. The Committee further notes the Government's detailed reply to the 2016 ITUC observations, as well as to the 2016 observations from the International Organisation of Employers (IOE) and the Indonesian Chamber of Commerce and Industry (APINDO).

Trade union rights and civil liberties. The Committee recalls that its previous comments concerned police inaction in relation to violence during a demonstration in Bekasi in 2013. While observing the KSPI and KSBSI statement that it had not received a copy of the police investigation report, the Committee notes the Government's reply that the report had been submitted to the complainant.

The Committee previously noted the recommendation of the direct contacts mission (DCM), which visited the country in October 2016, that the 2005 Police Guidelines on the conduct of police in handling law and order in industrial disputes be used as a basis for full consultations with all stakeholders, led by the Ministry of Manpower, in order to disseminate information on the Guidelines, ensure their implementation and consider their review. The Committee notes that the KSPI and the KSBSI complain that the Government has yet to take any initiative in this regard, while the Government indicates that it has disseminated information about the Guidelines to trade unions, employers' associations and local government. *The Committee requests the Government to engage in tripartite discussion on the most effective manner of ensuring the effective implementation of a code of conduct for workers' demonstrations and industrial action and to provide information on the progress made in this regard.*

As regards the Committee's previous requests to the Government to take the necessary measures to repeal or amend sections 160 and 335 of the Penal Code, respectively on "instigation" and "unpleasant acts" against employers, the Committee notes from the Government's report that the Bill on the Penal Code is currently under discussion in the House of Representatives. It further notes, however, the concerns raised by the KSPI and the KSBSI as to the continuing vague drafting of these provisions and the absence of tripartite consultation in this regard. In addition, the Committee notes that the KSPI and KSBSI provide an example of two federation leaders who were charged in June 2017 under these sections for questioning management policy, while the Government replies that this case was settled by the Provincial Manpower Office. *The Committee expects that the clarifications necessary to ensure that these sections are not applied to abstract trade union activities will be made without delay, and again requests the Government to provide a copy of the revised Penal Code once it is adopted.*

Article 2 of the Convention. Right to organize of civil servants. In its previous comments, the Committee requested the Government to guarantee the freedom of association of civil servants, pursuant to section 44 of Act No. 21 of 2000 concerning trade unions, through issuing the implementing regulations called for in the Act. The Committee notes the Government's indication that Law No. 5 of 2014 on State Civil Servants, which stipulates that the civil servants organization is the Professional Corps of Indonesian State Civil Apparatuses (KPPASN), will be further promulgated in the implementing government regulation that is still being discussed through coordination meetings with the Ministry of State Apparatus Reform. The Government further expresses its gratitude for the offer of ILO technical assistance in this regard. *The Committee underlines once again the importance of giving effect to the right of all civil servants to form and join the organization of their own choosing, and trusts that the implementing regulations under the 2000 Act will be adopted in the near future, taking advantage of the technical assistance that the Office may provide.*

Article 3. Right of workers' organizations to organize their activities. The Committee recalls its previous comments concerned a number of requirements in relation to the exercise of the right to strike and requested the Government to provide statistics on the number of interest disputes referred to conciliation, mediation and arbitration without the consent of the parties. The Committee notes the information provided by the Government that there were 100 reported interest disputes as of June and that these were resolved through mediation with the average period taken corresponding to that provided in Act No. 2. *The Committee requests the Government to continue to provide information on the number of interest disputes referred to conciliation and mediation and in particular to specify the number of interest disputes referred to the industrial court for a final determination without the consent of both parties and any relevant information on the circumstances of such cases.*

The Committee further observes that the KSPI and the KSBSI continue to raise concerns about Presidential Decree No. 63 of 2004 on the security of national vital objects and Ministry of Industry Decree No. 466/2014 which enable companies or industrial areas to request assistance from the police and the military in the event of disruption and threat to national vital objects in their jurisdiction. The Committee notes the Government's reiteration that these safeguards are not intended to restrict the exercise of freedom of association and that the placement of police aims to ensure protection and provide services to maintain security and public order and enable workers and employers to exercise their right to strike, demonstrate or lockout legally and peacefully. *Observing that the KSPI and the KSBSI claim that these Decrees are used in practice to suppress the exercise of freedom of association and refer to examples in this regard, the Committee invites the Government to discuss the effect of these decrees within the framework of the National Tripartite Council and to provide information on the outcome.*

Article 4. Dissolution and suspension of organizations by the administrative authority. In its previous comments, the Committee requested the Government to provide information on any measures taken to ensure that unions may not be dissolved or suspended simply due to delays in informing of constitutional changes or foreign aid, as well as on any use of this authority. *The Committee welcomes the Government's indication that delays taken for the notification of constitutional changes or receipt of foreign aid will not result in the dissolution of trade unions, and requests the Government to inform the Committee if section 42 should be used in conjunction with sections 21 and 31 for the dissolution of a union in the future.*

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

Observation 2017

The Committee takes note of the observations of the International Trade Union Confederation (ITUC) dated 1 September 2017 and the Confederation of Indonesian Trade Unions (KSPI) and the Indonesia Trade Union Prosperity (KSBSI) dated 30 August 2017 and the Government's replies thereon.

Articles 1 and 3 of the Convention. Adequate protection against acts of anti-union discrimination and employer interference. In its previous comments, the Committee had requested the Government to take steps to amend the legislation to ensure comprehensive protection against anti-union discrimination, providing for effective procedures that may impose sufficiently dissuasive sanctions against such acts. It further requested the Government to provide statistics on the number of complaints of anti-union discrimination and interference filed with: (a) the police; (b) the labour inspectorate; and (c) the courts, as well as the steps taken to investigate these complaints, the remedies and sanctions imposed, and the average duration of proceedings under each category. It also requested the Government to provide a copy of Decree No. 03 of 1984 of the Minister of Manpower.

The Committee notes the information provided in the Government's report on a number of labour-related cases reported to the police, as well as on complaints submitted to the Ministry of Manpower on broad range of issues. *The Committee requests the Government to continue to provide statistics most specifically as regards complaints of anti-union discrimination and to provide information on any remedies or sanctions imposed and whether any of these complaints were brought to the courts.*

Article 2. Adequate protection against acts of interference. The Committee's previous comments concerned the need to amend section 122 of the Manpower

Act so as to discontinue the presence of the employer during a voting procedure held in order to determine which trade union in an enterprise shall have the right to represent the workers in collective bargaining. *Noting the Government's indication that it will convey the steps taken in this regard when the Government next reviews the Manpower Act, the Committee requests it to provide information on any developments to ensure that workers may carry out their activities without undue interference from the employer.*

Article 4. Promotion of collective bargaining. In its previous comments, the Committee had requested the Government to take measures to amend sections 5, 14 and 24 of Act No. 2 of 2004 concerning industrial relations dispute settlement, which enables either of the parties to an industrial dispute to file a legal petition to the Industrial Relations Court for final settlement of the dispute if conciliation or mediation has failed. The Committee notes that the Government once again affirms that the Act has no relation with collective bargaining in the process of resolving industrial relations disputes but only bargaining for the drafting of a collective employment agreement. The Committee once again emphasizes that compulsory arbitration at the initiative of one party engaged in negotiations for a collective bargaining agreement does not promote voluntary collective bargaining. *The Committee once again requests the Government to take the necessary measures to review sections 5, 14 and 24 of Act No. 2 of 2004 after consultations with the social partners concerned, so that the recourse to compulsory arbitration during collective bargaining can only be invoked in the case that both parties agree, or in the case of public servants engaged in the administration of the State (Article 6 of the Convention), essential services in the strict sense of the term and acute national crises. It further requests the Government once again to provide information on the number of cases referred to compulsory arbitration by only one party to the dispute and the circumstances involved in those cases.*

Recognition of organizations for the purposes of collective bargaining. In its previous comments, the Committee noted that under section 119(1) and (2) of the Manpower Act, in order to negotiate a collective agreement, a union must have membership equal to more than 50 per cent of the total workforce in the enterprise or receive more than 50 per cent support in a vote of all the workers in the enterprise and if it does not obtain this majority, may only request to engage in collective bargaining after a period of six months. The Committee had requested the Government to provide information on the manner in which collective bargaining could be conducted in the event that no union represented 50 per cent of the workers and notes the information provided in the Government's report that in such cases the union may be part of a bargaining team that represents more than half of the workforce. *The Committee requests the Government to provide statistics in its next report on the number of collective bargaining agreements concluded at enterprise level and the coverage of workers by such collective agreements.*

Federations and confederations. The Committee previously noted the Government's indication that there has been no report of federations or confederations of trade unions having signed collective agreements, and requested it to ensure that such information is publicly available and to continue to provide information concerning collective agreements signed by federations or confederations. The Committee had noted the Government's indication that it welcomed the recommendation of the direct contacts mission, which visited the country in October 2016, for a pilot exercise promoting collective bargaining in Bekasi. The Committee notes the indication in the Government's latest report that national tripartite consultations took place in this regard on 10 May 2017 near Bekasi and that the constituents had recommended capacity building for a better bipartite collaboration, collective bargaining, dispute settlement and improved capacity of trade unions and the employers' organization to increase their membership. The Government adds that tripartite dialogue will take place in Bekasi as a follow-up to this activity to discuss priority activities. *The Committee requests the Government to continue to provide information on the developments concerning this pilot exercise and its impact on collective bargaining at the sectoral and regional levels.*

Export processing zones (EPZs). In its previous observations, the Committee had repeatedly requested the Government, pursuant to allegations of violent intimidation and assault of union organizers, and dismissals of union activists in EPZs, to provide information on the number of collective agreements in force in EPZs and the percentage of workers covered, as well as on the number of complaints of anti-union discrimination and employer interference in EPZs and the relevant investigation and remediation measures. The Committee notes the Government's affirmation in its report that the labour law is applied throughout the zones and there is no different treatment of workers or unions in the zones. The Committee observes however that several specific cases were raised in the observations provided by the ITUC, the KSPI and the KSBSI and the Government in its reply has referred to a variety of efforts to address these concerns. *The Committee invites the Government to examine these matters within the framework of the National Tripartite Council with a view to most effectively addressing the specific concerns and to enable consideration of whether broader steps should be taken to ensure that freedom of association is effectively protected in EPZs. It requests the Government to provide detailed information on of the results of the tripartite consideration of this matter.*

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

Observation 2017

Article 1(b) of the Convention. Equal remuneration for work of equal value. Legislation. The Committee recalls that for a number of years it has been noting that section 38 of the Labour Code is narrower than the principle in the Convention, as it provides for the payment of equal remuneration for men and women for equal work under equal conditions. The Committee notes from the Government's report that it has submitted a revision of section 38 of the Labour Code to the Islamic Consultative Parliament for adoption, after it was approved by the Cabinet of Ministers and signed by the President on 3 December 2012. According to the Government, the amendment would provide that "women and men in the same workplace must be paid equal remuneration for performance of work of equal value". The Committee notes that the amendment is currently under investigation by Parliamentary committees. The Committee welcomes the proposed amendment to include "work of equal value" into section 38. It would also like to draw the Government's attention to the fact that the Convention includes, but does not limit application of the principle of equal remuneration for work of equal value to men and women "in the same workplace", and provides that this principle should be applied across different enterprises to allow for a much broader comparison to be made between jobs performed by women and men. The Convention thus calls for the reach of comparison between jobs performed by men and women to be as wide as possible in the context of the level at which wage policies, systems and structures are coordinated (see the General Survey on the fundamental Conventions, 2012, paragraphs 697 and 698). *The Committee hopes the Government will be in a position in its next report to indicate that section 38 of the Labour Code has been amended to include the principle of equal remuneration for work of equal value for men and women. It also hopes the Government will ensure that the principle of work of equal value applied to men and women in employment, as far as is consistent with wage fixing, and not only to those within the same workplace. The Committee also asks the Government to supply copies of the Directives issued on 30 December 2013 and 21 February 2015 which implement sections 38 and 49 of the Labour Code and address discrimination in payments, establish justice and pay parity and regulate the job classification system.*

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 of the International Trade Union Confederation (ITUC) received on 1 September 2016.

The Committee recalls its previous observation noting the detailed report of the high-level mission which took place from 4 to 8 May 2014, following the request of the Conference Committee on the Application of Standards in June 2013. The Committee recalls that in its conclusions, the Conference Committee urged the Government to take concrete and immediate action to end discrimination against women, and ethnic and religious minorities in law and in practice, to take decisive action to combat stereotypical attitudes, underlying discriminatory practices and to address sexual and other forms of harassment. It also underlined the need to take effective measures to ensure protection against discrimination based on political opinion and respect for freedom of expression and to address the continued absence of an environment conducive to freedom of association. The Committee recalls the Government's willingness to continue to engage in dialogue on many of the issues addressed by this Committee and the Conference Committee and its intention to move forward in a positive direction to implement the Convention. It further recalls the strong statements made by President Hassan Rouhani in 2014 that no discrimination would be tolerated between men and women or in relation to the minorities in the country.

Articles 1 and 2 of the Convention. Legal restrictions on women's employment. Section 1117 of the Civil Code. The Committee recalls that for a number of years it has been raising the issue of the need to repeal or amend section 1117 of the Civil Code, which allows a husband to prevent his wife from engaging in an occupation or technical profession which, in his view, is incompatible with the family's interests or the dignity of him or his wife. The Committee notes that the ITUC reiterates its concern over the vague and broad nature of section 1117 which essentially allows a husband to exercise absolute control over his wife's right to work. The Committee recalls that the Government indicated in its last report that section 1117 was to be revised and that section 18 of the Family Protection Act, which related to the implementation of this section, had been repealed. The Committee notes the Government's statement that the request for an amendment, which it made after initial coordination with the judiciary and with the collaboration of the Parliament Research Center, is now before the Parliament Legal and Judiciary Committee for review. *The Committee urges the Government to take steps to repeal or amend section 1117 of the Civil Code to ensure that women have the right in law and practice to pursue freely any job or occupation of their own choosing.*

Draft comprehensive population and family excellence plan and other measures. The Committee recalls its previous comment concerning a draft comprehensive population and family excellence plan (Bill No. 315) which established a hierarchy in hiring practices by both public and private institutions. Bill No. 315 provided that employment was to be given first to men with children, then to married men without children and then to women with children. While seemingly excluding single women, the Bill included provisions directed at support for maternity protection and women with children. The Committee notes the observations of the ITUC which detailed their concern at how Bill No. 315 directly and indirectly discriminates against women on the basis of sex, marital and family status. In addition to being directly discriminatory by excluding women, the ITUC observes that many provisions of the Bill were intended to encourage women to stay at home, such as extensions of maternity leave, possibilities for part-time work and provision of extra leave benefits for mothers with young children. The Committee further notes the concerns expressed by the ITUC that in practice women's employment is being terminated after taking maternity leave and that they are already restricted in accessing employment by reason of the introduction of quotas for men and women in examinations for employment in the public sector, the result of which was that only 639 women secured educational posts out of the 3,703 posts available. The Committee notes that the Government reports that this plan on population remains under review by a task force set up by the Parliament Cultural Committee.

The Committee further notes, however, that Bill No. 315 has been revised by a new draft of the Comprehensive Population and Family Excellence Plan (Bill No. 264) which is pending before Parliament as of May 2017. The new Bill No. 264 has the same objective as the former Bill, that is, to achieve a fertility rate of 2.5 children per woman by 2025. The Committee notes that while many provisions in the former Bill have been modified, Bill No. 264 maintains some of the hiring priorities: section 10 provides that governmental and non-governmental departments shall give priority in employment to married men with children and to married men without children and that employment of single persons is permitted only in the absence of qualified married applicants. Women with children are no longer mentioned as having priority. However, the Bill provides that in occupations such as medicine and teaching, due to gender segregation, women will be given priority, as an exception to this section, and where there is a need to consider women, priority will be given to women with children and married women without children. The financial incentive for private sector institutions following the priority hiring set out in section 10 has been removed. Pursuant to section 11, five years after the Act comes into force, priority will be given to married persons over single persons in faculty appointments in universities and higher education, research institutions and in the case of school teachers in public and private institutions at all levels. The Bill further restricts the issuance of licences for lawyers who practice family law to married persons. Bill No. 264 also maintains most of the provisions concerning support to women in relation to maternity protection and family responsibilities, such as extended paid maternity leave for nine months with a right to return. Section 22 provides that government and public and private non-governmental sectors are to adopt effective methods to accommodate female employees who are either pregnant or have children under 3 years of age to work flexible hours or to reduce hours, or to work from home, and it also provides for their job security. The new Bill also has provisions to promote healthy pregnancies and child and mother benefits and calls for all public and private offices and workplaces covered by the Labour Code to establish

childcare services at the workplace or close to it. The Committee considers that many of the concerns raised by the ITUC on the discriminatory provisions and impact of Bill No. 315, also apply to Bill No. 264. The Committee also notes the adoption of a new Act on the Reduction of Working Hours for Women in Specific Circumstances, adopted on 23 August 2016. This Act provides for a small reduction of weekly hours of work for women who work 40 hours per week and who have children under the age of six years, a spouse or a child with a severe disability, or who occupy female-headed households, without loss of salary or benefits. It also provides for breastfeeding leave and it prohibits the employer from dismissing, transferring or replacing women who take advantage of the provisions of this law. *While understanding the importance of a population policy, the Committee is deeply concerned about the approach taken to restricting women's access to employment, particularly single women and women without children, in contravention of the protection against discrimination set out in the Convention. The Committee strongly urges the Government to remove all of the restrictions on women's employment in the plan and to review the prioritization of men's employment and to ensure that in practice restrictive measures are not taken such as those referred to in the ITUC's observation, concerning the introduction of quotas which serve to limit women's employment in the public sector. The Committee asks the Government to ensure that the measures taken to promote maternity protection and the reconciliation of work and family responsibilities do not impair women's access to, retention in, or security of, employment.*

Sexual harassment. The Committee recalls from the mission's report that the Government recognized that legal and practical measures were needed to prevent and address sexual harassment in employment, and that a Bill on Women's Security and the establishment of a national centre on the prevention of violence and the protection of women was to be examined by the Government. The Committee notes the Government's indication that in view of overlapping functions in the relevant bodies, including the President's Centre for Women and Family Affairs and the Judiciary, the Government decided not to establish the centre, but to continue to entrust issues of violence against women to the judicial and executive bodies. The Committee further notes the Government's detailed explanation of the general disciplinary provisions set out in the Labour Code, the Regulations on Determining Failure and Breach of Labour Disciplinary Directives and Regulations in the Workshops under section 27(2) of the Labour Code, which the Government attached to its report, and the sample disciplinary by-laws that have been developed to provide examples for workplace disciplinary committees to follow. The Government indicates that these disciplinary measures will cover actions within the scope of the Convention, including discrimination or prejudice and abuse of authority, position or business principles, and that the workplace disciplinary committees could rely on these disciplinary provisions to provide women with protection and redress against sexual harassment. The Committee notes, however, that so far there have not been any complaints or incidents of sexual harassment brought to the attention of, or observed by, the workplace disciplinary committees. The Committee also notes that the Act on Women's Rights and Responsibilities 2004 provides general protections for women's safety and prohibits exploitation and trade of women and girls in illegal occupations. *While noting that the Labour Code and regulatory provisions provide general protection at the workplace, in order for that protection to be practically effective, the Committee urges the Government to amend the Labour Code to explicitly define and prohibit all forms of sexual harassment at work, both quid pro quo and hostile work environment and provide information on any action taken. The Committee asks the Government to clarify whether the Bill on Women's Security has been withdrawn along with the decision to establish the centre on prevention of violence and the protection of women. The Government is also asked to provide a copy of the sample disciplinary by-laws that have been developed to provide examples for workplace disciplinary committees.*

Equality of opportunity and treatment between men and women. The Committee notes the Government's indication that women are being encouraged to participate in higher education; that women and girls in disadvantaged areas have a right to specific educational support and that women continue to have the right to participate in policy-making, decision-making, management of academic education, and in cultural and academic assemblies. The Government also reports on various measures taken to promote women in political decision-making, and reports on the first woman appointed as an ambassador of the country. The Government also refers to the establishment of a women's committee in the sixth Parliament in 2015 to address issues relating to women. Currently women account for 3 per cent of members of Parliament. The Government also indicates that women's participation in the urban and rural Islamic councils continues to increase. The Committee also notes the statistics on the number of female judges and prosecutors.

The Committee notes that the number of female students in universities grew from 145,000 in 1994 to 2 million in 2013 and that, as of 2012, 22 per cent of the overall faculty members were women, which is more than double the number in 2001. The Committee welcomes the Government's indication that it will reintroduce the internship plan that had been successful in 2006 and 2007 for young women and men. The Government also provides information on the development of skills of female jobseekers and those in the labour force through non-formal skills and vocational training for women in a range of training institutions. Between 1996 and 2011, the Committee notes that the number of technical and vocational training centres has substantially increased along with the diversity of the fields of training including electronics, chemical industries, general drafting as well as food technology. However, the Committee notes a decreasing trend in the enrolment of girls in technical and vocational schools between 2014 and 2016.

The Government indicates that within the sixth development plan it is addressing female-headed households and that measures are being taken to promote microbusiness and increase access for men and women from disadvantaged groups to banking facilities in order to alleviate poverty and support livelihoods. The Committee notes that the Government has implemented a number of measures in order to coordinate work and family responsibilities which appear to be targeted only at women and include: the housewives insurance plan; rural women's insurance, particularly for female-headed households; promotion of home work and self-employment for women, particularly in the agricultural sector. Nevertheless, the Committee notes that the economic participation rate of women remains very low at 12.7 per cent in 2014, having increased from 9.1 per cent in 1996. The Government reports that women represent nearly 30 per cent of the workers in agriculture and represent 51 per cent of the workers in the services sector. The Committee notes that the Government reiterates that it does not discriminate against women and believes that the rate of growth represents progress in the implementation of policies and programmes for women.

The Committee asks the Government to continue to examine and address the obstacles that exist in practice, including cultural and stereotypical barriers to women's equality of opportunity and treatment, and to provide information on the steps taken to promote and encourage the participation of women in the labour market and decision-making positions on an equal basis with men, including up-to-date statistics disaggregated by sex and occupation in both the public and private sectors. The Government is also asked to continue to provide statistics on the number of women and men in the judiciary and the number of judgments handed down by female judges, and the fields concerned. The Committee also asks the Government to continue to provide information on steps taken to ensure that women's access to the labour market is not restricted to a limited number of jobs and occupations or to being housebound. Furthermore, the Committee asks the Government to continue to provide information on steps taken to support women's entrepreneurship, including those aimed at the disadvantaged groups, rural and nomadic women, and "female-headed households". The Government is also asked to continue to provide information, including statistics on the number of women and men enrolled as students in universities and vocational and technical training institutions and their fields of study.

Discrimination based on religion and ethnicity. The Committee notes the information provided by the Government concerning the representation and respect given to the recognized minorities and the cultural integration of ethnic minorities. It notes that no new information on labour market participation or training of these groups is provided. The Committee recalls that for a number of years it has been raising the issue of the situation of the non-recognized minorities, in particular the Baha'i, and it notes that no new information has been provided by the Government in this regard. The Committee recalls that the practical impact of the Selection Law, which requires prospective state officials and employees to demonstrate allegiance to the state religion *(gozinesh*), remains an outstanding issue of concern. *The Committee asks the Government to provide information on the participation rates of men and women of recognized religious minorities in employment and occupation. The Committee continues to ask the Government to take steps to eliminate discrimination in law and practice against members of non-recognized religious groups in education, employment and occupation, and to adopt measures to foster respect and tolerance in society of all religious groups. Noting that no information was provided on the role or action of the special adviser to the President*

for religious and ethnic minority affairs, the Committee trusts that the Government will provide such information in its next report. The Committee also asks the Government for information on the Selection Law and its application in practice to employment in both the public and private sectors, as well as to training and to educational institutions.

Enforcement. The Committee notes the information on the labour inspection cases and the disputes handled by the labour dispute authorities, particularly concerning the application of the occupational classification system and the payment of wages. It notes that in 2015, 528 cases concerned the elimination of discrimination between men and women. The Committee also notes that training courses have been provided to workers and employers relevant to the Convention. *The Committee notes the Government's request for technical cooperation and training in conjunction with the International Training Centre in Turin on international labour standards and its willingness to host a judges training. It trusts that this cooperation will take place in the near future. The Committee asks the Government to continue to provide information on the number and nature of claims and disputes filed related to employment discrimination, and to indicate the number of these cases that were based on sex discrimination. It further asks the Government to provide information on the activities of the Islamic Human Rights Commission, and any complaints submitted to it or the courts or any other administrative body concerning discrimination in employment and occupation. The Committee also asks the Government to continue to provide information on awareness raising, education and capacity-building measures aimed at employers and workers in order to ensure a better understanding of how to identify and address discrimination and to better promote equality in employment and occupation.*

Social dialogue. The Committee asks the Government to provide information on the activities and efforts of the employers' and workers' organizations in promoting the application of the Convention including through the various tripartite committees.

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

Observation 2017

The Committee notes the observations made by the Japanese Trade Union Confederation (JTUC–RENGO) and the Japan Business Federation (NIPPON KEIDANREN) submitted with the Government's report, the latter of which were also sent in a joint communication with the International Organisation of Employers (IOE).

Articles 3(1)(b) and 13 of the Convention. Preventive measures for workers engaged in decommissioning work and decontamination work with radioactive materials. The Committee takes due note of the information provided by the Government, in its report in response to the Committee's previous request, that the rate of violations detected in inspections in the Fukushima prefecture related to decontamination and decommissioning works has declined since 2013. In 2014 and 2015, the number of business operators subject to inspections increased in both decommissioning work (from 226 business operators to 309) and decontamination work (from 1,152 business operators to 1,299), while the percentage of those operators where violations were detected decreased, from approximately 60 per cent to 54 per cent in decommissioning work and from approximately 67 per cent to 65 per cent in decontamination work. The Government states that in workplaces where violations are acknowledged, measures are taken that are necessary for ensuring the working conditions provided for in labour standards and for the safety and health of workers. The Government indicates that business operators who acknowledged committing these violations were given guidance for rectification and many of them had already made rectifications. The Government further indicates that since the earthquake in 2011, four business operators engaged in decommissioning work and ten business operators engaged in decontamination work had been referred to the Public Prosecutor's Office by the Fukushima Labour Bureau including a case of covering dosimeters with lead covers to disable dose verification and a case of failure to provide notification of industrial accidents, without delay, to the Chief of the Labour Standards Inspection Office. Regarding the disabling of dosimeters, the Committee notes the information provided by the Government in its report on the Radiation Protection Convention, 1960 (No. 115), concerning the measures taken to prevent subsequent violations, including requiring the undertaking of a survey on the actual status of radiation dose management at the Fukushima Daiichi Nuclear Power Station, and measures to verify if there are inconsistencies by requiring workers to wear glass badges and audible alarm personal dosimeters. These measures are verified by the Labour Standards Inspection Office and workers engaged in decommissioning work are surveyed on a regular basis to enable anonymous complaints on inappropriate radiation dose measurements.

The Committee notes the statement by the JTUC–RENGO that the incidence of violations related to decommissioning work of the Fukushima Daiichi Nuclear Power Station has been increasing, and that there are many business operators who are operating in violation of regulations. It further indicates that it is necessary to further strengthen guidance and supervision with respect to violations of labour regulations. *With reference to its comment on Convention No. 115, and noting that inspectors continue to detect violations in the majority of inspections undertaken with respect to both decommissioning and decontamination work, the Committee urges the Government to indicate the causes of the violations and to strengthen its efforts to secure the enforcement of applicable labour standards in those areas. It requests the Government to continue to provide information on the number of inspections undertaken with respect to decommissioning and decontamination works, the number and nature of violations detected, the number of anonymous complaints and how often these result in detection of violations, and the number of cases referred to the Public Prosecutor's Office. It further requests the Government to provide detailed information on the outcome of the 14 cases relating to decontamination work referred to the Public Prosecutor's Office, including the specific penalties applied.*

Articles 10 and 16. Sufficient number of labour inspectors. The Committee previously noted that while the number of labour inspectors had decreased between 2011 and 2013, the policy of reducing the number of new recruits (instituted in 2011) had been reversed in 2014.

The Committee notes the statement of NIPPON KEIDANREN that Labour Standards Inspection Offices exert their best efforts to strengthen supervision and that they must monitor in a more efficient and cost-effective manner. The Committee also notes the indication of the JTUC–RENGO that the Labour Standards Inspection Offices must be reinforced by securing adequate numbers of labour standards inspectors to ensure the efficacy of labour standards-related regulations over the long term.

The Committee notes the Government's indication that efforts have been made to ensure that there is the necessary number of inspectors to strengthen the Labour Standards Inspection Offices, and that these efforts will continue. In this respect, it notes with *interest* the Government's indication that as of March 2017, there were 4,002 inspectors (up 54 from 2014, and higher than the number of inspectors previously noted over the 2011–14 period). It notes that 212 inspectors were appointed in 2016, including 61 female inspectors, a greater number than recruited each year since 2010. The Government further indicates that, in order to carry out effective inspections of workplaces, inspection plans have been formulated by each Labour Standards Inspection Office and efforts are being made to maximize the volume of inspections by simplifying and rationalizing clerical work within the agencies. The Government indicates that efforts will continue to be made to secure the number of labour standards inspectors and efficiently carry out inspection. The Committee notes in this respect a slight decrease in the number of inspections undertaken, from more than 178,000 inspections undertaken in 2013 (and between 173,000 and 176,000 in 2011 and 2012) to 170,000 inspections undertaken in 2015, including fewer periodic inspections. *Taking due note of the measures undertaken by the Government, the Committee requests the Government to continue to provide information on the measures taken to ensure that the number of labour inspectors is sufficient to secure the effective discharge of the duties of the inspectorate. It requests the Government to continue to provide information on the number of labour inspectors, disaggregated by both prefecture and gender.*

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 made by the Japanese Trade Union Confederation (JTUC–RENGO) dated 24 July 2017 and communicated with the Government's report, as well as the Government's reply thereto, and the observations by the Japan Business Federation (NIPPON KEIDANREN) dated 3 August 2017 which were also forwarded with the Government's report. The Committee takes note of the observations received on 1 September 2017 from the International Organisation of Employers (IOE) endorsing the observations of NIPPON KEIDANREN. The Committee further notes the observations by the National Confederation of Trade Unions (ZENROREN) dated 21 September 2017 on violations of trade union rights in the public service and the Government's reply thereto. The Committee observes that the Government's report and comments also provide replies to the observations received in 2014 from ZENROREN and the Federation of Prefectural and Municipal Workers' Unions (JICHIROREN).

Article 2 of the Convention. Right to organize of firefighting personnel and prison officers. The Committee recalls its previous comments concerning the need to recognize the right to organize for firefighting personnel and prison officers. With regard to firefighting personnel, the Committee had previously noted that a committee on the right to organize of fire defence personnel, established within the Ministry of Internal Affairs and Communications to study the right to organize of firefighting personnel in view of both respect for basic labour rights and assurance of reliability and safety for the people, issued a report in December 2010 which found no practical obstacles to granting the right to organize to firefighters. The Committee had also noted the information provided by the Government on efforts made over the past decade and a half to introduce the Fire Defence Personnel Committee System to guarantee fire defence personnel participation in determining working conditions. The Government, however, informed that the Bill on Labour Relations of Local Public Service Employees which would have

granted the right to organize for fire defence personnel was dropped by the Parliament and further meetings to exchange views were conducted by the Minister in charge of civil service reform.

The Committee recalls that in its 2014 observations, JICHIROREN indicated that the Fire Defence Personnel Committee System functioned since 1995 with defects that remained uncorrected and cannot stand as the compensatory scheme for the right to organize of firefighters as contended by the Government. The Committee also notes the renewed concern by the JTUC–RENGO in relation to the ongoing denial of the right to organize to firefighters and its apprehension that the denial of this fundamental right will become permanently enshrined. The JTUC–RENGO also denounces an increasing number of incidents of harassment at the firefighters' workplace, which it regards as the result of the denial of the right to organize. Measures against harassment taken in July 2017 by the Fire and Disaster Management Agency of the Ministry of Internal Affairs and Communications in this regard are considered as insufficient stopgap measures. The Committee takes note of the information provided in the Government's latest report in relation to the concerns raised. It notes the indication that the Fire and Disaster Management Agency advised all fire departments to take measures in relation to the proposals made in July 2017 by a working group on countermeasures against harassment. The Committee further notes that the Government is considering a new initiative comprising fact-finding surveys on how the Fire Defence Personnel Committee System is being administered which will allow both the management and the staff nationwide to express their opinions through a questionnaire. The Government indicates that further measures will be taken based on the results of the initiative. *The Committee requests the Government to provide information on the conduct of the surveys, their outcome and the measures taken or contemplated as a result. The Committee expects that this new engagement of the Government will contribute to further progress towards ensuring the right to organize for firefighting personnel.*

In respect of prison officers, the Committee notes the Government's reiteration, supported by NIPPON KEIDANREN, that it considers prison officers by the nature of their duties to be included in the category of police; they are therefore denied the right to organize in accordance with *Article 9* of the Convention. The Government provides details on the number of prison officers (17,600 in 2017) and on the distinction among staff in penal institutions: (i) prison officers with a duty of total operation in penal institutions, including conducting security services with the use of physical force, who are allowed to use small arms and light weapons; (ii) penal institution staff other than prison officers, who are engaged directly in the management of penal institutions or the treatment of inmates; and (iii) penal institution staff designated, by virtue of the Code of Criminal Procedure, to carry out duties of the judicial police officials with regard to crimes which occur in penal institutions and who have the authority to arrest, search and seize. The Committee also notes that, according to the JTUC–RENGO, the Government has not given concrete consideration to the issue of the right to organize of prison officers despite the Committee's request. The Committee considers that even though some of these officers are authorized by virtue of the law to carry a weapon in the course of their duties, this does not mean that they are members of the police or armed forces. *Noting the clarification from the Government on the distinction among staff in penal institutions, the Committee requests the Government, in consultation with the national social partners and other concerned stakeholders, to take the necessary measures to ensure that prison officers other than those with the specific duties of the judicial police may form and join the organization of their own choosing to defend their occupational interests. The Committee requests the Government to provide information on progress made in this regard.*

Article 3. Right to strike of public sector employees. The Committee recalls its long-standing comments on the need to ensure that public service employees could enjoy the right to strike without risk of sanctions, with the possible exceptions of public servants exercising authority in the name of the State and workers employed in essential services in the strict sense of the term. In that connection, the Committee had previously observed that the bills establishing the new labour relations system had not been adopted by the Diet and that the Amendment Act which was adopted in April 2014 provided that the Cabinet Bureau of Personnel Affairs would "make efforts to reach agreements on measures for the autonomous labour–employer relations system, based on section 12 of the Civil Service Reform Law, gaining the understanding of the people, hearing from employees' organizations". In its report, the Government indicates that the Cabinet Bureau of Personnel Affairs has since been exchanging continuously with employees' organizations on various topics. These exchanges, however, led the Government to observe that there are still various issues to be considered in addition to the changing environment in labour relations. The Government therefore intends to continue to consult employees' organizations on the measures for the autonomous labour–employer relations system. The Committee notes the JTUC–RENGO's observations regretting the absence of progress in the recognition of the right to strike of public service employees. *Noting that there is no meaningful progress despite the continuous dialogue between the Government and the social partners on measures for the autonomous labour–employer relations system, the Committee expects that the Government will make every effort to expedite its consultation with the social partners concerned, and that it will adopt measures for the autonomous labour–employer relations system that will ensure basic labour rights for public service employees. The Committee requests the Government to report any progress made in this regard, and in particular any measure taken or envisaged to ensure that public service employees who are not exercising authority in the name of the State and who are not working in essential services in the strict sense of the term can enjoy the right to strike and to exercise industrial action without risk of sanction.*

In respect of the compensatory guarantees for workers who are deprived of the right to carry out industrial action, the Committee had previously noted the authority of the National Personnel Authority (NPA). The Committee notes the observations made by the JTUC–RENGO reiterating that the NPA recommendation system is defective as a compensatory measure. In particular, the JTUC–RENGO is of the view that the NPA is subordinated to the Government and its recommendations are left to political decision. The Committee notes the Government's indication that in order to perform its compensatory functions properly, the NPA has established a Deputy Director-General for Employees' Organizations' Affairs and a Counsellor to hear opinions from the employees' organizations. In 2016, the NPA held 217 official meetings with employees' organizations and made recommendations. The Government concludes that the NPA is fully functional as a compensatory measure for the restrictions on basic labour rights of public service employees. *In view of the persistent divergent views on the adequate nature of the NPA as a compensatory measure for restrictions placed on basic labour rights of public service employees, the Committee encourages the Government to consult the social partners concerned in search of the most appropriate mechanisms which would ensure impartial and speedy conciliation and arbitration procedures, in which the parties have confidence and can participate at all stages, and in which the awards, once made, are binding and fully and promptly implemented. The Committee requests the Government to provide information on any progress made in this regard and, in the meantime, to continue to provide information on the functioning of the NPA recommendation system.*

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

Observation 2017

The Committee notes the observations made by the Japanese Trade Union Confederation (JTUC–RENGO) dated 24 July 2017 and communicated with the Government's report, as well as the Government's reply thereto, and the observations by Japan Business Federation (NIPPON KEIDANREN) dated 3 August 2017 which were also forwarded with the Government's report. The Committee takes note of the observations received on 1 September 2017 from the International Organisation of Employers (IOE) endorsing the observations of the NIPPON KEIDANREN. The Committee further notes the observations by the National Confederation of Trade Unions (ZENROREN) dated 21 September 2017 on obstacles to collective bargaining in practice and the Government's reply thereto. The Committee observes that the Government's report and comments also provide replies to the observations received in 2014 from ZENROREN.

Articles 4 and 6 of the Convention. Collective bargaining rights of public service employees not engaged in the administration of the State in the context of the civil service reform. The Committee recalls that its previous comments concerned the need for measures to ensure the promotion of collective bargaining for

public employees who are not engaged in the administration of the State in the framework of ongoing consultations on the reform of the civil service. The Committee previously regretted that the package of reform bills, which was the fruit of long consultations with the social partners and civil society over many years and which provided for a new framework in the national public service where both parties to labour–employer relations negotiate and determine autonomously the issue of working conditions and promote reform of the personnel management and remuneration system, was ultimately not adopted by the Diet. As a result, a number of public servants not engaged in the administration of the State remained deprived of their collective bargaining rights. The Committee had requested the Government to provide information on the steps taken by the Cabinet Bureau of Personnel Affairs to engage in consultation with the social partners as required by the Civil Service Reform Law so as to ensure collective bargaining rights for all public servants not engaged in the administration of the State.

The Committee notes the JTUC–RENGO's observations that there has been no progress in the consultations requested by the Committee due to failure to act and pro forma responses by the Government. More specifically, the JTUC–RENGO alleges that since the inception of the Cabinet Bureau of Personnel Affairs the Government has not engaged in any meaningful consultation with public service employees' trade unions on the issues. According to the JTUC–RENGO, in spring 2017 in reply to the request from the Public Service Employee Trade Union Liaison Council (a consultative organization consisting of trade unions affiliated with the JTUC–RENGO and related to non-worksite public service employees), the Minister in charge of national public service employees had merely repeated the same response for three years in succession: "Regarding an autonomous industrial relations system, since a wide range of issues are involved, I would like to engage in prudent considerations while exchanging views with all of you." On the other hand, the Committee notes the Government's indication that the Cabinet Bureau of Personnel Affairs has, since its establishment, been exchanging continuously with employees' organizations on various topics. These hearings, however, led the Government to observe that there are still wide-ranging issues to be considered in addition to the changing environment in labour relations. The Government therefore intends to continue to consult employees' organizations on the measures for the autonomous labour–employer relations system. The Committee notes the observations from the NIPPON KEIDANREN supporting the Government's position.

Furthermore, the Committee notes the Government's indication that after the Cabinet Bureau of Personnel Affairs was established, the National Personnel Authority (NPA) remained fully functional as a compensatory measure for the restrictions on basic labour rights of public service employees, and actually the Government had revised remuneration of public employees according to the NPA recommendation made after consultation with the social partners in an independent manner. The Committee notes the observations from the JTUC–RENGO that recommendations from the NPA are subordinated to the political decision of the Government. In the case of the recommendation on remuneration, the JTUC–RENGO regretted that the wage revision processes had been conducted in a unilateral and confusing way by the Government, which was illustrative of the fact that the NPA recommendation system is defective as a compensatory measure. *Noting the lack of meaningful progress, despite the continuous dialogue between the Government and the social partners on measures for the autonomous labour–employer relations system, the Committee expects that the Government will make every effort to expedite its consultation with the social partners concerned and that it will adopt measures for the establishment of the autonomous labour–employer relations system that will ensure, in the near future, collective bargaining rights for all public servants not engaged in the administration of the State. In the meantime, the Committee requests the Government to continue to provide information on the functioning of the NPA recommendation system as a compensatory measure to the denial of collective bargaining rights to the public service employees.*

The Committee recalls that, following observations from the JTUC–RENGO deploring the removal of collective bargaining rights from the national forestry project staff, it requested the Government to indicate the steps taken to ensure that national forestry project staff is afforded the full guarantees of the Convention, including the right to bargain collectively. The Committee notes the Government's indication that at the time of the revision of the system, a supplementary resolution providing that "in order to ensure the fulfilment of various roles required for national forestry businesses, including maintenance/promotion of the public interest functions and promotion of integrated development/maintenance with privately owned forests, etc., efforts should be made in promoting and securing the appropriate level of the ceiling of the number of officials taking into account severe financial situations and the actual situation of site management, establishment of structures/systems, development of human resources, and transfer of skills, etc. and developing the working conditions of employees engaged in national forestry businesses" was adopted by the Committee on Agriculture, Forestry and Fisheries of the House of Representatives. The Government intends to consider the purport of this resolution by exchanging opinions on the working conditions of employees engaged in national forestry businesses. *The Committee recalls once again its previous observation in which it highlighted that national forestry project staff are not among the category of workers that may be excluded from the scope of the Convention. The Committee firmly hopes that the Government will provide in its next report information on the consultations held and the measures taken to ensure that national forestry project staff is afforded the full guarantees of the Convention, including the right to bargain collectively.*

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

Observation 2017

The Committee notes the observations of the Japanese Trade Union Confederation (JTUC–RENGO) which were annexed to the Government's report received on 28 October 2016. It further notes the observations of the National Confederation of Trade Unions (ZENROREN), received on 3 October 2016, the observations of the Japanese Federation of Co-op Labour Unions (SEIKYO–RÖREN), received on 24 May 2016, and the observations of Zensekiyu Showa–Shell Labour Union (ZSSLU), received on 8 February 2016.

Follow-up to the recommendations of the tripartite committee (representation made under article 24 of the Constitution of the ILO)

The Committee recalls the report adopted on 11 November 2011 of the tripartite committee set up by the Governing Body to examine the representation submitted by the ZSSLU (GB.312/INS/15/3). The tripartite committee concluded that further measures were needed, in cooperation with workers' and employers' organizations, to promote and ensure equal remuneration for men and women for work of equal value in law and practice in accordance with *Article 2 of the Convention,* and to strengthen the implementation and monitoring of the existing legislation and measures, including measures to determine the relative value of jobs (paragraph 57).

Articles 1 and 2. Work of equal value. Legislation. The Committee recalls that for a number of years it has been pointing out that section 4 of the Labour Standards Act, which provides that "an employer shall not engage in discriminatory treatment of a women as compared to a man with respect to wages by reason of the worker being a women", does not fully reflect the principle of the Convention. The Government once again expresses the view in its report that it considers the requirements of the Convention to be met as long as the payroll system does not allow discrimination in wages between men and women solely on the basis of the worker being a women. The Committee is bound once again to observe that the protection against wage discrimination in section 4 is too limited because it does not capture the concept of "work of equal value" which is fundamental to the full application of the Convention. The Committee notes that JTUC–RENGO, ZENROREN and ZSSLU all hold the view that section 4 is inadequate to protect against the gender-based wage discrimination that exists in the country and that guidance on the interpretation of section 4 does not help address the indirect discrimination, for example based on job classifications, that constitutes a substantial cause of the gender pay gap. According to JTUC–RENGO, the law reflects Government policy to promote only equal pay for equal work between men and women, and does not address the gender pay gap resulting from job ratings, job types or employment status. The Committee also recalls that the Equal Employment Opportunity Act, which prohibits discrimination in recruitment, appointment and promotion, does not prohibit discrimination in remuneration.

The Committee notes the adoption of a new Law on the Promotion of Women's Participation and Advancement in the Workplace (Law No. 64 of 2015) which entered into force on 1 April 2016. This Law calls on national and local government agencies and private sector employers with over 300 employees to: collect and analyse data on the ratio of women and men within the enterprise in areas such as new hires, hours worked, years of service and classification levels; and formulate and announce enterprise-level action plans containing quantitative targets and actions for their achievement within specified timeframes. The Act also provides for incentives and certification of companies that are proactive in the promotion of women. The Government considers that through the steady implementation of the Act, the ratio of women in management positions will increase and the disparity between men and women in the number of years of service will be diminished, thereby reducing the gender wage disparity which it believes is caused significantly by these two factors. From the Government's report and the summary of the White Paper on Gender Equality issued by the Cabinet Office of the Government in June 2017, the Committee notes the information on the implementation of Act No. 64 of 2015, in both the public and private sectors, as well as other measures taken to encourage women's participation in employment and to support the reconciliation of work and family responsibilities. While the Committee welcomes the new Act and hopes that it will serve to enhance the position of women in employment, particularly in career track and management positions, it notes that the Act is implemented through voluntary compliance, without the requirement for labour–management dialogue; the setting of goals and targets is also left to the discretion of each company without any encouragement to employers to address the pay scales of women and men based on the principle of equal remuneration for work of equal value. The Committee is taking up other aspects of the Act concerning the balancing of work and family responsibilities in its comments on the Workers with Family Responsibilities Convention, 1981 (No. 156).

Given that the wage disparity between men and women narrowed only very slightly between 2012 and 2015 with a remaining wage gap of 26.3 per cent, the Committee once again urges the Government to take immediate and concrete action to ensure the existence of a legislative framework clearly establishing the right to equal remuneration for men and women for work of equal value. The Committee asks the Government to continue providing detailed information on the measures taken and progress achieved in this regard, as well as information on the application of the existing legislation which has a demonstrated impact on equal remuneration between men and women, including any administrative guidance issued. Noting the Government's reliance on the implementation of the new Law on Promotion of Women's Participation and Advancement in the Workplace to improve the employment situation of women in practice, the Committee asks the Government to consider adding "the ratio of women's pay to men's pay" as additional data required to be collected under the Act, analysed and included in the announced action plans. The Committee asks the Government to continue stepping up its efforts to tackle all the areas that directly and indirectly contribute to the significant gender pay gap, including horizontal and vertical occupational gender segregation.

Non-regular employment: part-time and fixed-term employment. The Committee notes that the majority of women continue to be employed in non regular employment (part-time or fixed-term) and the majority of men continue to be employed in regular employment. The Government provides statistics indicating that 70 per cent of part-time workers are women. Women who work fewer than 35 hours a week represent 46.7 per cent of the total number of female employees. In its observations, ZENROREN points out that the number of non regular workers is increasing, that the ratio of women to men non-regular workers is rising in certain fields, and that there are many women who wish to return from childbirth or childrearing into regular employment. It points to the low wages of non-regular employees in relation to their job content and indicates that there are no systems in place to correct the wage gaps between non regular employment female dominated occupations and positions in regular employment. The Committee considers that the difference of treatment between regular and non-regular employment with respect to remuneration impinges on the application of the Convention. It notes that a number of initiatives have been taken to address issues related to non-regular employment, including amendments to the Part-time Workers Act, the Labour Contracts Act, the Dispatched Workers Act and the preparation of new equal pay legislation and guidance on equality between non-regular and regular employment. The ZSSLU indicates that the current reviews of non-regular work under these Acts do not take into account the gender discrimination dimension, nor are they aimed at tackling the structural gender inequalities created through the different treatment of regular and non-regular employment. The ZENROREN is of the view that the principle of equal treatment between regular and non-regular workers is still not applied. The ZSSLU questions whether the changes in the organization of dispatched workers, pursuant to the amendment of 2015 to the Dispatched Workers Act, will help address the disparities faced by these workers, many of whom are women. It believes that the provision of the Labour Contracts Act that requires the elimination of unreasonable discrepancies between workers with indefinite and fixed-term contracts may not be fully adequate for dispatched workers. ZSSLU further notes that the new equal pay legislation only guides policy and does not ensure any rights of workers, nor does it provide for appraisals of the value of jobs. *Recalling that the Convention applies to both regular and non-regular employment, and taking into account the gender dimension of the employment structure, including the high number of women in part-time work and the resulting impact on the gender pay gap, the Committee asks the Government to provide information on the measures taken to address the undervaluation of female dominated occupations, to facilitate objective job evaluations and adjust remuneration levels across regular and non-regular employment classifications in both the public and private sectors, and on the measures taken to improve women's opportunities to enter and re-enter regular employment. The Committee understands that new draft guidelines on the employment of regular and non-regular workers are under development and asks the Government to supply a copy of the guidelines when they have been adopted and information on the measures taken to promote their application in practice. The Committee also asks the Government to continue providing statistics, disaggregated by sex, on participation and salary levels of men and women in temporary work, dispatch labour, as well as part-time, fixed term and full-time indefinite employment.*

Part-time work. Further to its previous comments on part-time work, the Committee recalls the adoption of Act No. 27 of 2014 to amend the Part-time Workers Act, which extended the protection against discriminatory treatment to fixed-term, as well as indefinite duration contracts, where disparities are considered to be unreasonable. It further recalls that the provisions of the Part-time Workers Act before the revision were very limited and had little impact on women in part time work. The Government indicates that the most recent revision should have the effect of improving the treatment and increasing the wages of part-time workers and that the Ministry of Health, Labour and Welfare is actively promoting the Act by providing advice to employers, but that no statistics on the impact of the Act are yet available. The JTUC–RENGO and SEIKYO–RORENN, however, question whether the revision will be sufficient to have a positive impact on gender equality and the JTUC–RENGO believes that guidelines are needed to clarify the interpretation of new section 8 concerning which disparities would not be permitted.

With respect to temporary and part-time local government officials, the Committee notes that women continue to be concentrated in temporary and part time positions in local government and that job categories are highly gender segregated. The Committee notes that in 2012 women represented 57.3 per cent of temporary part-time staff in prefectures, 68.7 per cent in the Cabinet Office and 80.3 per cent in municipalities, where they were highly concentrated in occupations such as general office workers, nurses, childcare professionals and school cooks. It notes the Government's indication that local governments shall, under the terms of the notification of the Ministry of Internal Affairs and Communications of 4 July 2014, continue to ensure the treatment of temporary and part time employees in accordance with the content of their duties and responsibilities. JTUC–RENGO observes that these workers are subject to different criteria for appointment on each workplace, even where the job types and work duties are the same. To resolve the confusion, it calls on the Government to undertake a survey of job types and work duties and to establish a framework for revising the pay scales of local government organizations. *The Committee asks the Government to provide information on how section 8 of the Part-time Workers Act has been interpreted, including any guidance issued, and its impact on part-time workers, including the number of men and women whose treatment and wage rates have changed as a result of the amendment. Noting that the amendment to the Labour Contracts Act on the right to request conversion from fixed-term to indefinite employment will come into effect in 2018, the Committee asks the Government to provide information on the conversions that have been requested, including from part-time to full-time, and from fixed-term to indefinite positions, and to provide this statistical information disaggregated by sex. The Committee also requests*

the Government to provide information on the measures taken to address the issues raised by JTUC–RENGO with respect to the classification of jobs in the local public service.

Career-tracking systems. Further to its previous comments, the Committee reiterates its concern at the impact on pay disparity between men and women of the career-tracking system introduced by the employment management categories in the context of Guidelines issued under the Equal Employment Opportunity Act (EEO), due to the low representation of women in the main (integrated) career track. The Committee notes the observations of JTUC–RENGO that this system permits a gender-based classification system of employment management in which men are viewed as belonging to a main career track and women to a non-career track. The Committee notes that the EEO Guidelines were revised in 2014 to provide additional examples of how to manage the differences of treatment in the two tracks in accordance with the law. The Committee notes that both JTUC–RENGO and ZENROREN believe that the Guidelines only encourage the gender pay gap. The ZSSLU is of the view that these classifications limit the promotion and employment opportunities of women and are more responsible for the wage disparity than years of service. It adds that, despite the Guidelines, broad discretion is left to companies for the classification of employment management categories; that jobs should be objectively evaluated and compared across career tracks and not only within tracks; and, that mobility requirements should not be the determining element for placement in the integrated career track. In this regard, the Committee welcomes the consensus reached by the Government and representatives of employers and employees to widen the scope of unlawful indirect discrimination, in order to provide that transfers cannot be a requirement in recruitment, employment, promotion or change in job type, without reasonable grounds. The Committee also notes from the summary of court cases in the Government's report that the different employment management categories continue to operate in practice, at least in some cases, and have the effect of perpetuating gender-based salary classifications, and are not based on skills or job-related inherent requirements. *Given the persistently low representation of women in the main career track and the consequent impact on pay disparity, the Committee urges the Government to step up its efforts to increase the percentage of women in the integrated career track, including both new hires and conversions from the general track, and to provide information on any measures taken to promote objective job evaluations across the tracks. The Committee also requests the Government to provide information on the impact of the changes on the widening of the scope of prohibited indirect discrimination based on transfer requirements and the manner in which the concept of "reasonableness" has been interpreted.*

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

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

Observation 2017

General observation of 2015. The Committee wishes to draw the Government's attention to its general observation of 2015 under the Convention, and in particular to the request for information contained in paragraph 30 thereof.

The Committee notes the observations made by the Japanese Trade Union Confederation (JTUC–RENGO), submitted with the Government's report.

Articles 2, 12 and 13 of the Convention. Application of the Convention to all activities involving exposure of workers to ionizing radiations in the course of their work and medical surveillance. 1. *Emergency workers.* The Committee previously noted that, due to the accident at the Fukushima Daiichi Nuclear Power Plant following the earthquake in 2011, an Ordinance on special measures was in force between March and December 2011 which raised the emergency radiation exposure dose limit to 250 mSv. Following the stabilization of the nuclear reactors, the emergency radiation exposure dose limit was returned to 100 mSv. However, the Ordinance on the prevention of ionizing radiation hazards (No. 41) was amended in 2015 to provide that the Minister of Health, Labour and Welfare may set a special dose limit not exceeding 250 mSv in situations in which it is difficult to observe the dose limit of 100 mSv during exceptional emergency works.

The Committee notes that the Government states, in response to its previous request, that workers engaged in exceptional emergency work are limited to those who have given their consent in advance, received necessary education, and are designated as nuclear disaster prevention staff by business operators. The Government further states that section 7-3 of Ordinance No. 41 disallows those other than nuclear disaster prevention staff (as outlined in section 8 of the Act on Special Measures Concerning Nuclear Emergency Preparedness (Act No. 156 of 1999)) from engaging in exceptional emergency work, and when nuclear operators appoint nuclear disaster prevention staff, labour contracts can only be concluded after a clear indication of the working conditions, including engagement in exceptional emergency work. The Government states that should workers have to engage in emergency work in the future, their wishes must be considered to the extent possible in the assignment of work. The Government indicates that, in accordance with Ordinance No. 41 and the Special Education Rule for Exceptional Emergency Works (Ministry of Health, Labour and Welfare Notification No. 361 of 2015), workers engaged in emergency work must be provided with a minimum of 12.5 hours of education covering the health effects of ionizing radiation and the required methods of work. The Committee notes the Government's indication that a database has been established of workers engaged in emergency work, as well as a database for the long-term health management of these workers, which is used to implement cancer screenings.

The Committee once again refers to paragraph 37 of its general observation of 2015, which states that, in emergency situations, reference levels should be selected to be within, or if possible below, the 20–100 mSv band. Measures should be taken to ensure that no emergency worker is subject to an exposure in an emergency in excess of 50 mSv. As indicated in paragraph 22 of the general observation, response organizations (as defined in note n.19 of the general observation, "a response organization is an organization designated or otherwise recognized by a State as being responsible for managing or implementing any aspect of an emergency response") and employers should ensure that emergency workers who, in exceptional situations, undertake actions in which the doses received might exceed 50 mSv do so voluntarily; have been clearly and comprehensively informed in advance of the associated health risks, as well as of available measures for protection and safety; and that they are, to the extent possible, trained in the actions that they may be required to take. *The Committee urges the Government to take further measures to ensure that the protection provided in the Convention applies to emergency workers. Particularly, noting the Government's indication concerning the training and information provided to emergency workers, as well as the Government's indication that the workers' wishes must be considered to the extent possible in the assignment of emergency work, the Committee requests the Government to take measures to ensure that workers who may be exposed to the exceptional emergency dose limits do so voluntarily. Recalling that Article 6 of the Convention provides that maximum permissible doses of ionizing radiations shall be kept under constant review in the light of current knowledge, the Committee requests the Government to provide information on measures taken to review the maximum permissible dose established for this category of workers. In addition, and taking due note of the information provided by the Government, the Committee further requests the Government to continue to provide detailed information on the long-term measures taken to monitor those workers exposed to higher doses of ionizing radiation following the 2011 earthquake.*

2. *Workers engaged in decommissioning and decontamination work.* The Committee previously noted the observations of the JTUC–RENGO that further protective measures were necessary with respect to workers engaged in the decommissioning of the Fukushima Daiichi Nuclear Power Plant. It noted that the Ordinance on the prevention of ionizing radiation hazards for decontamination and related works (No. 152) required employers engaged in decontamination works to carry out: dose monitoring; exposure reduction measures, including a preliminary survey of worksites; measures for the confinement of contamination including surface screening of workers and equipment; training of workers; and health-care management.

The Committee notes the statement of the JTUC–RENGO calling for the extension of long-term health management efforts to workers who have been exposed to a threshold radiation dose even though they are not directly engaged in emergency work, and to extend radiation exposure management to all

workers engaged in the decommissioning of the Fukushima Daiichi Nuclear Power Plant, even after employment separation. The Committee notes that the Ministry of Health, Labour and Welfare formulated in 2015 the Guidelines on Occupational Safety and Health Management at the Fukushima Daiichi Nuclear Power Plant, which require the contractor to implement health management measures for workers. In this respect, the contractor has established a system to ensure that workers of primary contractors and their subcontractors receive medical examinations and that subsequent measures are taken based on the results. In addition, the Ministry has established telephone consultations with doctors for business operators on health management methods, available every day, and contact points within the premises of the Fukushima Daiichi Nuclear Power Plant for face-to-face consultations, available once a week. The Committee notes the Government's statement that, in order to manage the radiation exposure dose of workers engaged in decontamination work, along the same framework as nuclear workers, the Radiation Effects Association has established the Radiation Exposure Dose Registration System for Workers Engaged in Decontamination Work, and it has requested business operators engaged in decontamination work to participate in this system. The Government indicates that it has taken a number of measures to ensure compliance with radiation protection measures among business operators engaged in decontamination work. With respect to the monitoring of working conditions of those engaged in decommissioning and decontamination work, the Committee refers to its comments under the Labour Inspection Convention, 1947 (No. 81). *The Committee urges the Government to pursue its efforts to ensure that the protection provided in the Convention is applied to workers engaged in decontamination and decommissioning work, and requests it to continue to provide information on the measures it is taking in this regard. In that respect, it requests the Government to provide information on the long-term health management measures it is taking with respect to this category of workers, and to indicate if participation in the Radiation Exposure Dose Registration System for Workers Engaged in Decontamination Work is obligatory for business operators engaged in decontamination work.*

Article 7. Exposure of workers under the age of 18. The Committee previously noted the observations of the JTUC–RENGO that violations of the law related to persons under the age of 18 years working in decontamination had been reported.

The Committee notes the information provided by the Government, in response to its previous request, that in July 2013 and February 2015, employers were arrested for violations of section 62 of the Labour Standards Act (which prohibits persons under 18 years of age from engaging in hazardous work) for making workers under 18 years of age engage in decontamination work. The Government further indicates that labour standards offices have disseminated leaflets to raise awareness among business operators that engaging persons under 18 years of age in such work is prohibited, and on the measures that must be taken with respect to age verification. *The Committee requests the Government to continue to provide information on the measures it is taking to ensure the enforcement of the national legislative provisions related to occupational exposure of workers under the age of 18, including the specific penalties applied in cases of violations of section 62 of the Labour Standards Act related to decontamination work, and on the related protection measures taken for those workers under 18 who have been unlawfully engaged in this work.*

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

Observation 2017

The Committee notes the observations of the Japanese Trade Union Confederation (JTUC–RENGO) and the Japan Business Federation (NIPPON KEIDANREN), communicated with the Government's report. It also notes the Government's reply to the 2014 observations of the Japan Postal Industry Workers' Union (YUSANRO), as well as the most recent observations presented by YUSANRO, received on 24 May 2016.

Articles 1 and 2 of the Convention. Employment trends and active labour market measures. In its previous comments, the Committee requested the Government to provide information on the employment measures adopted to promote full employment within a coordinated economic and social policy. The Committee notes the information provided by the Government in its report concerning the adoption of the Basic Guidelines for Employment Policies in 2014, which set out the direction to be followed by employment policies during the five year period following its adoption. The Guidelines provide for the strengthening of the labour market infrastructure and the creation of high-quality employment to promote growth in the context of structural changes in employment, including a reduction in the active population, as well as the impact of globalization. In addition, the Long-term Vision for Overcoming Population Decline and Vitalizing the Local Economy in Japan was adopted in 2014 to address issues such as the declining population and shrinking local economies. The Committee also notes that, according to the Labour Situation in Japan and its Analysis: General Overview 2015–16 of the Japan Institute for Labour Policy and Training, the 2015 Japan Revitalization Strategy signaled the start of the second phase of the integrated economic policy "Abenomics", which includes measures to overcome labour supply constraints as a result of the reduction in the active population due to a decreasing birth rate and the aging of the population. In terms of labour policy, the strategy aims to optimize the potential of individual employees by curbing overlong working hours to improve the quality of work performed; promoting increased participation by women, older workers, and other underrepresented groups; and reforming education and employment practices. Moreover, the Government refers to the adoption of several employment measures in disaster-affected prefectures, including the launch in 2016 of the employment support project in response to nuclear accidents, which seeks to ensure temporary employment for those affected by nuclear accidents in the Fukushima Prefecture. The implementation period and funding for the emergency employment support project in response to the East Japan Great Earthquake and the Business Recovery Employment Creation Project were extended in 2015 and 2016, respectively. In relation to employment trends, the Committee understands that, according to the Organisation for Economic Co-operation (OECD) Employment Outlook 2017 on Japan, the country performs particularly well in terms of quantity of employment, achieving the lowest unemployment rate among OECD countries and a relatively high employment rate. The low risk of unemployment is also reflected in a low level of labour market insecurity. In particular, the Government indicates that, as of 2016, the unemployment rate was 3 per cent, is the lowest rate for the past 18 years. In its observations, however, the YUNSARO emphasizes that disparity and poverty is increasing in Japan. In this regard, the OECD report states that Japan shows some weaknesses in job quality and labour market inclusiveness. A relatively high share of working-age persons experience job stress and work exclusively long hours. With respect to inclusiveness, both the high low-income rate and a big gender labour income gap indicate that some workers face barriers to accessing decent jobs. *The Committee requests the Government to provide detailed updated information on the impact of the employment measures adopted, including the measures implemented under the Japan Revitalization Strategy, the Long-term Vision for Overcoming Population Decline and Vitalizing the Local Economy in Japan and the Basic Guidelines for Employment Policies. It also requests the Government to provide updated information, including statistics on employment trends, disaggregated by age and sex, and on the procedures for deciding on and reviewing employment measures implemented within the framework of an overall economic and social policy.*

Article 3. Participation of the social partners. The Government indicates that the tripartite Labour Policy Council has deliberated on important matters concerning the enactment, amendment and enforcement of employment legislation, and its opinions were taken into account in the planning and designing of employment policies. *The Committee requests the Government to continue to provide information on the activities of the Labour Policy Council with respect to the development, implementation and review of employment policy measures and programmes and their links to other economic and social policies. It also requests the Government to provide information on the manner in which representatives of those affected by the measures concerned are consulted.*

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

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

Observation 2017

The Committee notes the observations of the Japanese Trade Union Confederation (JTUC–RENGO) which were annexed to the Government's report received on 28 October 2016. It further notes the observations of the Japanese Federation of Co-op Labour Unions (SEIKYO–RENGO) received on 24 May 2016.

Article 3 of the Convention. National policy. The Committee notes with ***interest*** the adoption of a new Act on Promotion of Women's Participation and Advancement in the Workplace (Act No. 64 of 2015) which came into force on 1 April 2016 and which aims to promote the advancement of women by providing an environment that makes it possible for men and women to balance their work and family life, and that calls for respect of women's choice with regard to work and family life balance. The Act calls on national and local government agencies and private sector employers with over 300 employees: to collect and analyse data on the ratio of women and men within the enterprise in relation to various matters including taking childcare leave and family leave; and, to formulate and announce enterprise level action plans containing quantitative targets and actions to achieve the targets within specified timeframes. The Committee notes that the Act is implemented through voluntary compliance, without requirements for labour–management dialogue, and that the setting of goals and targets is left to the discretion of each company. In this regard, the Committee notes from the summary of the White Paper on Gender Equality 2017 issued by the Cabinet Office of the Government in June 2017, that pursuant to this Law, a number of action plans in both the public and private sectors contain targets for male employees taking childcare leave.

The Committee also notes the legislative amendments made to the Childcare and Family Care Leave Act to provide clarification and extend entitlements to give further effect to the Convention in a number of areas, including the extension to cover custodial and foster parents and encouraging men to take childcare leave. The Committee also notes the implementation of the Charter for Work–Life Balance, the Action Policy for Promotion of Work Life Balance, the revised Japan Revitalization Strategy of 2015, the Dynamic Engagement of All Citizens plans of 2015 and 2016 and the Guidelines for initiatives to promote active participation of female national public officers and work–life balance of 2014. While welcoming the enhanced policy emphasis on promoting work and family balance for workers, the Committee notes the observations of SEIKYO–RORENN underlining that in practice the application of the policy is frustrated by the reality of the long working hours of workers, in particular of men. It also notes the comments of the JTUC–RENGO and SEIKYO–RORENN on the restricted access of non-regular workers to the childcare and family leave provisions and support measures. The Committee refers to these points in more detail below. *The Committee asks the Government to continue to provide information on the implementation of the Childcare and Family Care Leave Act and on the Act on Promotion of Women's Participation and Advancement in the Workplace, as well as the legislation concerning childcare and family care leave for national and local public employees. The Committee also asks the Government to continue to provide information on the contents of the various policy measures taken and the manner in which they are promoted, implemented and reviewed in relation to their objectives.*

Articles 1 and 2. Application to all branches of economic activity and all categories of workers. The Committee refers to its previous comments concerning the restricted application of the Convention to non-regular workers. It recalls that sections 5 and 11 of the Childcare and Family Care Leave Act enable fixed-term workers to take childcare leave and family care leave only if they meet certain requirements, and that the guidelines concerning measures to be taken by employers to facilitate the balance between work and family life of workers who care for children or other family members (Guidelines No. 509 of 2009) provide guidance as to who could fulfil these requirements. The Committee notes that following revision of the Childcare and Family Care Leave Act limiting requirements remain. It further notes that under the laws concerning childcare and family leave for national and local public service employment, childcare and other support measures are available to part-time workers, but limited to younger children when compared to entitlements of full-time employees. The Committee notes the observations of JTUC–RENGO that the Childcare and Family Care Leave Act continues to place conditions on fixed-term workers that essentially limit their ability to take such leave, citing a recent study which showed that the percentage of part-time and dispatched workers who take childcare leave and continue their employment is 4 per cent, as compared to 43.1 per cent for regular workers. It also notes the views of SEIKYO–RORENN concerning the lack of equal and balanced treatment of part-time workers as compared to regular employees and the negative impact this has particularly on women, who bear the largest burden of family responsibilities. The Government indicates in its report that guidance on leave of fixed-term employees was required to be provided in two cases in which corrections were made. It also indicates that information on the childcare system has been promoted particularly among fixed-term workers to facilitate their understanding and use of it. The Committee considers that fixed-term workers continue to be placed in a vulnerable position in claiming entitlements that facilitate the reconciliation between work and family responsibilities. *The Committee asks the Government to strengthen its efforts to ensure the effective application of the Convention to non-regular employees including those in fixed-term and part-time positions in both the private and public sectors. It also asks the Government to continue to provide information on any reviews undertaken on the use by fixed-term and part-time employees of childcare and family care leave, any obstacles encountered and any follow-up measures taken to facilitate an improved application of the Childcare and Family Care Leave Law. The Government is also asked to provide statistical information disaggregated by sex on the number of fixed-term workers requesting and receiving childcare and family care leave in the private and public sectors.*

Article 4. Organization of work and leave entitlements. The Committee notes the praise by JTUC–RENGO of the 2016 revision of the Childcare and Family Care Leave Act for providing for segmented-family care leave, new exemptions from extra working hours, the relaxing of conditions for fixed-term contract workers taking childcare and other types of leave, and the implementation of regulations preventing workers from creating a toxic working environment when others take maternity, childbirth, child raising and other types of leave. The Committee notes from the 2014 Basic Survey of Gender Equality in Employment Management that the percentage of employees who took childcare leave was 2.3 per cent of male employees and 86.6 per cent of female employees, and that the percentage of employees who took time off for sick or injured children was 5.2 per cent of male employees and 25.3 per cent of female employees. Further, according to the 2012 Basic Survey of Employment Structure the number of employees who used the family care leave system was 3.5 per cent of men and 2.9 per cent of women. While noting the revision of the Child Care and Family Care Leave Act the Committee notes the low use of leave of care for sick and injured children by men. *Noting the low usage of the family leave by both men and women and the low use of childcare leave by men, the Committee asks the Government to take measures to ensure that both men and women are able in practice to take the leave provided in the legislation, and are encouraged to better balance the leave take-up between men and women. The Committee also asks the Government to continue to provide statistics on the types of leave taken, disaggregated by sex.*

Long working hours. The Committee has previously noted the importance of the overall reduction of working hours in order to enable men and women with family responsibilities to enter and remain in the labour market, and recalls that Paragraph 18 of the Workers with Family Responsibilities Recommendation, 1981 (No. 165), emphasizes the importance of the progressive reduction of daily hours of work and the reduction of overtime. In their observation, SEIKYO–RORENN indicates the difficulty of reconciling work and family given the reality of long working hours, pointing out that men only have on average 67 minutes to perform family responsibilities including 39 minutes for childcare. In their view the law should be revised to shorten the hours of work, and there should be an increase in premium pay for overtime work. The Committee notes the observations by the National Confederation of Trade Unions (ZENRORENN) submitted under the Equal Remuneration Convention, 1951 (No. 100), advocating for a reduction in hours of work, because in reality the long hours of regular employment make it hard for women to take up such employment and take care of family responsibilities.

The Committee notes that pursuant to Rule 10-11 of the National Personnel Authority several measures have been taken and are under development for national public employees in regular service to exempt or limit overwork of employees who are taking care of a child or other family members. It further notes that several ordinances have been drafted to permit requests for exemptions from certain hours of work for caregivers. The Committee notes from the statistics provided by the Government that while overall average hours of work have been reducing since 2008, that is mostly accounted for by a decrease in the hours of part-time workers, and that as of 2015 the hours of regular workers remained around 2,000 hours, the same amount as indicated in the Government's previous

report. The Committee also notes the high number of violations related to working time (27,581) under section 32 of the Labour Standards Act.

The Committee asks the Government to step up its efforts to reduce annual working hours and to provide information on any measures under discussion to reduce hours of work or limit overtime in the private sector. The Committee also asks the Government to provide information on the practical implementation of the Labour Standards Act with respect to working hours and the Act on Special Measures for Improving Working Time Arrangements and Guidelines No. 108 of 2008 with respect to reconciling work and family responsibilities. The Government is also asked to continue to provide statistics on inspections and violations, and trends in the average number of hours worked by men and women disaggregated by contractual status and full- and part-time employment.

Article 8. Termination of employment. The Committee recalls its previous comments and the conclusions of the Conference Committee on the Application of Standards concerning the adequacy of the measures to prevent and protect against discrimination on the ground of family responsibilities. The Committee notes that based on a Supreme Court judgment made in 2014, there was a notice of partial revision of the enforcement of the revised Equal Employment Opportunity Act and the Child Care and Family Care Act issued in 2015 (Notice No. 1 of 23 January 2015) to clarify that it is up to the Ministry of Health, Labour and Welfare to determine cases and provide guidance if disadvantageous treatment is found to occur within one year of the relevant event (childbirth, among other things). The Government indicates that it has informed workers and employers about the contents of this Notice. The Committee notes that in 2014 the number of consultations from workers regarding disadvantageous treatment by reason of pregnancy, childbirth, childcare leave, and so forth, submitted to the Prefectural Labour Bureau was 3,591, and that this number has been increasing year by year. *The Committee asks the Government to provide information on the practical application of the relevant sections of the Childcare and Family Care Leave Act prohibiting dismissal or otherwise disadvantageous treatment, including information on administrative consultations and judicial decisions relating to these provisions and their outcome. The Committee also asks the Government to indicate any other measures taken to ensure that Article 8 of the Convention is fully applied in law and in practice.*

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

C159 - Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159)

Observation 2017

The Committee notes the observations of the National Union of Welfare and Childcare Workers (NUWCW) received on 23 August 2016. It also notes the observations of the Japanese Trade Union Confederation (JTUC–RENGO), which were transmitted together with the Government's report. *The Committee requests the Government to provide its comments in this regard.*

Articles 1, 2 and 3 of the Convention. Employment promotion for persons with disabilities. The Committee notes with ***interest*** that the Act on the Elimination of Discrimination against Persons with Disabilities entered into force on 1 April 2016. In reply to the Committee's previous comments, the Committee notes the Government's indication that 474,374 persons with disabilities were employed in the private sector as of June 2016, representing a 4.7 per cent (21,240 persons) increase over previous years. The Government adds that the employment rate of persons with disabilities has been increasing over the past 13 years, reaching 1.92 per cent in 2016, compared to 1.88 per cent in 2015. The NUWCW indicates, however, that the increased employment rate of persons with disabilities has been accompanied by declining wages, an increase in non-regular employment and deteriorating working conditions. With regard to measures adopted to achieve the statutory employment quota of 2 per cent employment of persons with disabilities in all companies, the Government indicates that guidance is provided to companies that have not achieved the minimum quota, including support in the elaboration of employment plans and recommendations to assist companies in appropriately implementing those plans. If the measures taken do not lead to improvements, the names of the companies are disclosed in accordance with the Act for the Promotion of Employment for Persons with Disabilities (Act No. 123 of 1960). Companies that have not complied with the statutory employment quota are also required to pay a special levy that is used to finance subsidies and awards for companies exceeding the statutory employment quota. The Government indicates that the application of the levy system was extended in April 2015 from companies with more than 200 employees to those with more than 100 employees. The NUWCW is of the view that the levy system is not effective, since it is less costly to pay the fine (¥50,000 per month) than to employ a person with disability. The JTUC–RENGO points out that less than half (48.8 per cent) of companies have met the statutory employment quota. Moreover, of the companies that have not complied with the statutory quota, 58.9 per cent of these have not employed any persons with disabilities. The Committee notes the observations of JTUC–RENGO, indicating that as of April 2018, persons with mental disabilities will be included in the calculation basis for the statutory employment quota, and that quota will be increased to 2.3 per cent for private companies over a five-year period (2018–23). Referring to the Government's report, the NUWCW states that the statistics provided do not reflect the actual employment situation of persons with disabilities. In this regard, the NUWCW points out that the Government conducts a survey on employment of persons with disabilities every five years, whereas it carries out a Monthly Labour Force Survey on the employment of workers in general. *The Committee requests the Government to continue to provide information on the nature and impact of measures taken to achieve the statutory employment quota for persons with disabilities in all companies subject to the quota requirement, including the number and amount of sanctions imposed for non-compliance. It also requests the Government to continue to communicate information on the impact of the measures implemented in terms of increasing the employment opportunities for persons with disabilities in the open labour market, including on the implementation of the 2016 Act on the Promotion of the Elimination of Discrimination against Persons with Disabilities. The Government is further requested to supply updated statistics, disaggregated as much as possible by sex, age and nature of the disability, as well as extracts from reports, studies and inquiries concerning the matters covered by the Convention.*

Article 5. Consultations with the social partners. In response to the Committee's previous comments, the Government reiterates that the Labour Policy Council's Subcommittee on the Employment of Persons with Disabilities establishes the objectives fixed in employment policies for persons with disabilities, implements the policies and evaluates the outcomes. As an example, the Government refers to the formulation of two sets of guidelines for employers on the prohibition of discrimination against persons with disabilities and on the provision of reasonable accommodation, in which the views of the Subcommittee on the Employment of Persons with Disabilities, as well as organizations of and for persons with disabilities were taken into account. The NUWCW is of the view that the structure of the Labour Policy Council should be modified to guarantee that the opinions of the social partners are effectively taken into account. Referring to the revision of the Comprehensive Support Act for Persons with Disabilities in 2016, the NUWCW notes that organizations of persons with disabilities were excluded from its formulation and evaluation, reiterating that neither the Japan Council on Disability nor its own affiliates were able to participate in discussions in the Labour Policy Council. *The Committee requests the Government to continue to provide examples of the manner in which the views and concerns of the social partners and representatives of organizations of and for persons with disabilities are systematically taken into account in the formulation, implementation and evaluation of the policy on vocational rehabilitation and guidance and the employment of persons with disabilities.*

Follow-up to the recommendations of the tripartite committee (representation made under article 24 of the Constitution of the ILO)

Articles 1(3) and 3. National policy aimed at ensuring appropriate vocational rehabilitation for all categories of persons with disabilities . (a) *Criteria used to determine whether a person with disabilities is considered to be able to "work under an employment relationship" (paragraph 73 of the tripartite committee report, document GB.304/14/6).* The Committee recalls the recommendations of the tripartite committee established by the Governing Body to examine a representation alleging non-observance by Japan of the Convention (304th Session, March 2009). The Committee also recalls that it has been entrusted with following up on implementation of the recommendations of the tripartite committee. In this context, the Government has provided updated information in its

report on the implementation and results of measures taken to promote employment for persons with disabilities. The Government reports that 31,000 persons with disabilities participate in employment-related activities under the Employment Transfer Support Programme (ETSP). It adds that the number of persons with disabilities transferred to regular employment under the ETSP increased from 2,500 persons in 2006 to 12,000 persons in 2015. In addition, the Government indicates that there are 230,000 persons with disabilities participating in Type-B programmes (designed for those requiring support for continuous employment) under the Support Programme for Continuation of Work (SPCW). In 2016, 2,646 persons participating in the Type-B programmes were transferred to regular employment. With regard to measures taken by public employment service offices, the Government refers to the continued implementation of the "team support" model, which provides support to persons with disabilities from employment through to workplace adaptation. The Government adds that 3,120 Employment Transfer Support Offices and 330 Employment and Vocational Life Support Centres for Persons with Disabilities were established as of March 2017 (the latter representing an increase from 325 Centres in April 2015). Moreover, 810 employment support seminars were held and 957 trainings at workplaces were conducted in 2015 with the aim of promoting the transition of persons with disabilities from welfare into regular employment. *The Committee requests the Government to continue to provide detailed updated information on the measures taken or envisaged to increase employment and income-generating opportunities for persons with severe disabilities that have difficulties in entering into an employment relationship and accessing the open labour market. The Committee would also welcome receiving updated information on the number of persons transferring from Type-B programmes under the SPCW to Type-A programmes and into regular employment, as well as on the impact of measures implemented by the Public Employment Security Office to assist persons with disabilities in transitioning from welfare to employment on the open labour market.*

(b) *Bringing work performed by persons with disabilities in sheltered workshops within the scope of the labour legislation (paragraph 75 of the report).* In reply to the Committee's previous comments, the Government indicates that support measures for jobseeking and workplace adaptation have been provided to persons with disabilities under the Type-B programmes. In its observations, the NUWCW indicates that persons with disabilities participating in the Type-B programmes are not provided with the same legal protections at the workplace as other workers. It adds that employment support services are not provided taking into account the vocational needs of persons with disabilities. *The Committee requests the Government to continue to provide information on the nature and impact of the measures taken to ensure that the treatment of persons with disabilities in sheltered workshops is in line with the principles of the Convention, particularly the manner in which the principle of equality of opportunity and treatment is ensured (Article 4).*

(c) *Low pay for persons with disabilities carrying out activities under the Type-B programmes under the SPCW (paragraph 76 of the report).* The Government indicates that, following the implementation of measures adopted in the framework of the Wage Improvement Plans in each prefecture, the pay of workers in the Type-B programmes increased by 23 per cent from 2015 to 2016. In addition, the Government indicates that, under Act No. 50 of 2012 concerning the Promotion of Public Procurement of Goods from Disabled Employment Facilities, ¥15.7 billion of such goods were procured in 2016. In contrast, the NUWCW refers to a study on the actual situation of persons with disabilities, which shows that the ratio of persons with disabilities living on an annual income of less than ¥1,000,000 increased in 2016. The NUWCW indicates that, according to the Basic Survey on Wage Structure, the difference between the average pay of persons with disabilities under the Type-B programmes and the average wage of workers generally was ¥288,500 in 2007 and ¥284,762 in 2014. The JTUC–RENGO reiterates that continued efforts are required to improve the level of wages in the Type-B programmes. *The Committee requests the Government to continue to provide information on the measures taken or envisaged to ensure equality of terms and conditions of employment, including in terms of wages for persons with disabilities participating in Type-B programmes.*

(d) *Service fees for participants in Type-B programmes under the SPCW (paragraphs 77 and 79 of the report).* The Government once again indicates that persons with disabilities in low-income households are exempted from payment of disability social service fees. It adds that 93.3 per cent of the users of disability social services, including participants in Type-B programmes, were using these services free of charge as of November 2016. In its observations, the NUWCW states that disability social services are covered by both welfare and labour policies. Services based on labour policies are free of charge, while those based on welfare policies are provided against a fixed payment. *The Committee encourages the Government to continue to take positive measures in this regard and to provide information on the impact of the measures taken to ensure that persons with disabilities are encouraged to become involved in such programmes and eventually gain access to the labour market.*

Articles 3, 4 and 7. Equality of opportunity between persons with disabilities and workers generally. Quota system for the employment of persons with disabilities (paragraphs 81 and 82 of the report). The Committee notes the Government's indication that the number of persons with severe disabilities in employment has continued to increase from 106,362 in June 2015 to 109,765 in June 2016. The Government reiterates that the system of double counting persons with severe disabilities (counting one person as two persons) is therefore effective and necessary to promote the employment of persons with severe disabilities. The NUWCW requests that the double-counting system be reconsidered. *The Committee requests the Government to continue to provide information on persons with disabilities and persons with severe disabilities employed under the quota system, including on any modifications made or envisaged to the double-counting system.*

Reasonable accommodation (paragraph 84 of the report). The Government indicates that the 2016 Act on the Promotion of the Employment of Persons with Disabilities provides for the obligation to provide reasonable accommodation. The Government provides information on the implementation of the practical manuals and guidelines on the prohibition of discrimination against persons with disabilities and on the provision of reasonable accommodation. In this regard, the Government indicates that persons with disabilities provide information on the modifications or adjustments needed to private companies at the time of recruitment, and then both parties discuss the request to reach a decision regarding the possible provision of the workplace accommodation. The Government adds that the obligation to provide reasonable accommodation excludes cases where an "excessive burden" is imposed on the private company. The JTUC–RENGO is of the view that certain aspects of the cited Act remain problematic, including the fact that it only requires private companies to make an effort to reasonably accommodate persons with disabilities and that it does not establish a conflict resolution mechanism. Therefore, the JTUC–RENGO indicates that measures to enhance the efficacy of the Act should be adopted before its re-evaluation, which will take place at the end of the third year after its entry into force. The NUWCW indicates that it will be necessary to monitor the system's operations in collaboration with the stakeholders. Referring to the information provided by the Government in its previous report with regard to the right to file a complaint and to engage in conflict resolution concerning reasonable accommodation, the NUWCW points out that there is one conflict resolution mechanism established for all workers, and that the mechanism is not binding. It considers that it is necessary to establish a mechanism enabling workers with disabilities to negotiate with their employers to obtain reasonable accommodation. *The Committee requests the Government to continue to provide information on the implementation and results of measures taken concerning the provision of reasonable accommodation in the workplace, including information concerning any evaluation carried out regarding the Act on the Employment Promotion of Persons with Disabilities.*

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 2016.

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

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

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 the observations from the Federation of Korean Trade Unions (FKTU), annexed to the report, and the Government's reply thereto.

Articles 1 and 2 of the Convention. Gender pay gap. Legislation. The Committee notes the statistics provided by the Government, according to which in 2015, women earned 63.8 per cent of men's hourly wages, establishing the gender wage gap at 36.2 per cent in comparison to 35.4 per cent in 2014. With regard to wages of workers in non regular employment (workers in short-term and/or part-time employment), the Government further indicates that, in 2015, non-regular workers earned 65.5 per cent of regular workers' hourly wages. In this regard, FKTU adds that, as of August 2015, female non-regular workers only earned 36.3 per cent of male regular workers' wages. The Committee continues to consider that the overall gender wage gap, especially when comparing regular and non-regular workers, who are primarily women, remains significant. With respect to legislation, the Committee had noted previously that section 8(1) of the Act on Equal Employment and Support for Work–Family Reconciliation only provided for equal wages for work of equal value "in the same business" and that the Equal Treatment Regulation (No. 422), limited the possibility of comparing work performed by men and women to "work of a similar nature" further to its amendment in June 2013. With reference to its previous comments, the Committee recalls that the concept of "work of equal value" is fundamental to tackling occupational gender segregation in the labour market (according to which women and men are concentrated in different occupations and sectors of the economy) as it permits a broad scope of comparison between different jobs, including, but going beyond, equal remuneration for "equal", "the same" or "similar" work, and also encompasses work that is of an entirely different nature, but which is nevertheless of equal value in its totality. Comparing the relative value of different jobs which may involve different types of skills, responsibilities or working conditions but which are nevertheless of equal value in its totality is essential in order to eliminate pay discrimination. This requires some method of measuring and comparing the relative value of different jobs. For instance, the principle has been applied to compare the remuneration received by men and women engaged in different occupations, such as wardens in sheltered accommodation for the elderly (predominantly women) and security guards in office premises (predominantly men); or school meal supervisors (predominantly women) and garden and park supervisors (predominantly men). The Committee further recalls that the application of the Convention's principle is not limited to comparisons between men and women in the same establishment or enterprise. It allows for a much broader comparison to be made between jobs performed by men and women in different places or enterprises, or between different employers (see General Survey on the fundamental Conventions, 2012, paragraphs 672–679 and 695–699). *In light of the persistent and high gender pay gap, the Committee once again urges the Government to take the necessary steps to bring the Act on Equal Employment and Support for Work–Family Reconciliation and the Equal Treatment Regulation into full conformity with the Convention so as to ensure that men and women receive equal remuneration not only for "work of a similar nature" but also for work that is of an entirely different nature but nevertheless of equal value in its totality, and that the scope of comparison between men and women extends beyond the same establishment or enterprise. The Committee also asks the Government to continue to analyse and provide statistical information on the gender wage gap, including data calculated on the basis of hourly and monthly wages, and data disaggregated by industry and occupation, regular and non-regular employment, in the public and private sectors.*

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

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

Observation 2017

The Committee notes the observations of the Korea Employers' Federation (KEF) and the Federation of Korean Trade Unions (FKTU) communicated with the Government's report, as well as the Government's response thereto.

Articles 1 and 2 of the Convention. Overall labour market trends. In its previous comments, the Committee requested the Government to provide an analysis of labour market trends, taking into account the concerns expressed by the social partners regarding the employment policy measures implemented. The Committee notes the information provided by the Government indicating that the overall employment rate increased from 64.2 to 65.7 per cent between 2012 and 2015, while the unemployment rate increased from 3.3 to 3.7 per cent during the same period. In its observations, the FKTU maintains that the number of quality jobs is decreasing, referring to the results of the 2015 Employment Type Disclosure System (ETDS), which shows that larger enterprises are hiring more non-regular workers, while conglomerates *(chaebol)* are hiring more indirect (dispatched) workers. The FKTU also refers to the short (5.6 years) average period of service of Korean workers in 2015, compared to an average 9.5 years of service in the Organisation for Economic Co-operation (OECD) member countries. It observes that 19 per cent of workers work in excess of the statutory working hours and permissible overtime, and annual working hours have increased to 2,285 hours per year in 2015. The FKTU also expresses concern that the Government has taken measures that make it easier to dismiss workers, indicating that the Government is creating non-regular jobs by splitting quality jobs into low-paid part-time jobs to achieve its goal of attaining a 70 per cent overall employment rate by 2017. The FKTU adds that there is a lack of training opportunities for persons belonging to disadvantaged social groups, such as workers in small and micro-sized enterprises (SMEs) and those in non-regular employment. In its reply to the FKTU's observations, the Government indicates that the number of decent jobs is not decreasing, referring to an increase in the proportion of regular workers among wage workers from 2012 to 2015 and a decrease in the proportion of non-wage workers (self employed and unpaid family workers) (from 28.2 per cent in 2012 to 25.9 per cent in 2015). *The Committee requests the Government to provide comprehensive updated information on the overall labour market trends, including statistical data disaggregated by sex and age, indicating the situation, level and trends of employment, unemployment and underemployment. It also invites the Government to continue to provide detailed updated information regarding the impact of active labour market measures implemented. The Committee further requests the Government to provide information on the manner in which the principal employment policy measures are decided upon and kept under periodical review within the framework of a coordinated economic and social policy, as required under Article 2 of the Convention.*

Job creation measures. The Government reports that it is actively promoting policies designed to safeguard working conditions for disadvantaged workers, referring to the Roadmap to a 70 per cent Employment Rate, launched in June 2013. The Roadmap is a national strategy that establishes policies for job creation aimed at addressing dualism in the labour market and strengthening social responsibility. The Government adds that its policies have resulted in an increase of regular workers (from 43.9 per cent to 48.5 per cent), while non regular workers (34.2 per cent to 32.5 per cent) and low-wage workers (23.8 per cent to 23.5 per cent) have decreased over the past five years, demonstrating that the policies have been effective in at least partly addressing labour market dualism. The FKTU observes that, notwithstanding these measures, as of 2015, the number of non-regular workers had reached a high of 8.68 million, with 96.5 per cent of these workers wholly or partly in temporary employment, and there was an increase in indirect employment in large enterprises and the public sector. In addition, the proportion of part-time jobs had increased to 11.6 per cent. The FKTU adds that indirect employment has increased both in large enterprises and in the public sector. In this context, the FKTU recommends corrective measures including: converting non-regular positions to permanent positions, eliminating illegal in-house subcontracting and intensifying the inspection and monitoring of employers. In its response, the Government maintains that, according to the method of calculation agreed upon by the tripartite partners, there were 6.27 million non-regular workers in 2015, showing that the proportion of non-regular workers in the country has decreased. It indicates further that the proportion of temporary workers among non-regular workers decreased from 65.7 per cent in 2011 to 65.2 per cent in 2015, while the proportion of external workers classified as indirectly employed workers has also decreased, from 20.1 per cent in 2014 to 19.7 per cent in 2016. In its observations, the KEF expresses the view that the EDTS system has not been effective in increasing regular employment, noting

that regular workers in subcontracting enterprises are erroneously identified as non-regular workers. The KEF adds that, while the proportion of non-regular workers is decreasing, they still encounter exploitation in enterprises. In its reply to the observations of the social partners, the Government indicates that the EDTS should be maintained to improve the employment situation of workers, noting that it has implemented "employment improvement measures for public-sector non-regular workers" and converted non-regular workers engaged in permanent and continuous work in the public sector to regular status. The Government also seeks to amend the Act on the Protection of Dispatched Workers. In addition, the Government is continuing its efforts to address discrimination against non-regular workers and to strengthen labour inspection against deceptive or illegal worker dispatching and subcontracting. Concerning trade unions' right to request relief on behalf of its members for discrimination, the Government indicates that this is an individual right which belongs only to the party whose rights were infringed. It is taking measures to promote employment of regular workers through the revision of guidelines on fixed-term and in-house subcontracted workers to, inter alia, prohibit the signing of repeated short-term contracts and provide opportunities for skills development for the former, and guarantee reasonable wages and access to welfare facilities for the latter. *The Committee requests the Government to communicate updated detailed information, including statistics disaggregated by sex and employment type, on the impact of the measures taken under the 2013 National Employment Strategy. It also requests the Government to provide information on the role of the social partners during the development and implementation of these measures. In addition, the Committee requests the Government to provide detailed information on the nature and extent of the planned amendments to the Act on the Protection of Dispatched Workers.*

Employment generation and deregulation. The Government indicates that a tripartite agreement was reached on 15 September 2015 to address dualism in the labour market. In this context, it encourages enterprises to allocate additional funds to improve the working conditions of non-regular workers and subcontracted workers. The Government indicates that an increasing number of non-regular workers engaged in permanent and continuous work are being converted to regular status, with 74,000 non-regular workers converted to regular status from 2013 to 2015 and 15,000 more to be converted to regular status from 2016 to 2017. The Government also indicates that the wage gap (65.5 per cent in 2015) between regular and non-regular workers has declined 3 percentage points from 2014. The Government is also improving legislation and systems, providing financial and consulting support and reinforcing labour inspection. It has strengthened sanctions against discrimination on grounds of employment type through revising the non-regular worker law and providing subsidies to convert non-regular workers into regular workers. The FKTU indicates that, despite the tripartite agreement reached on 15 September 2015, the Government submitted five bills without the approval of the social partners. It adds that the guidelines promoted by the Government make it easier to lay off workers and constitute an unfavourable change in the employment rules. The FKTU therefore asked the Government to respect the agreement and repeal the bills. Following its refusal, the workers' representatives withdrew from the agreement and announced a protest on 19 January 2016. In its reply, the Government indicates that it proposed the bills with the ruling party on 16 September 2015, taking into account the results of the discussions held at that point. On 17 November 2015, it submitted a report including the opinions of the tripartite partners and public interest members to the National Assembly. It adds that the maximum contract period for fixed-term workers may be extended by two years at the request of the workers. It adds that the maximum number of overtime hours will be reduced from 28 hours to 12 hours, as provided for in the tripartite agreement. It also indicates that the public sector has adopted a wage peak system which has enabled the hiring of 8,000 new employees over the next two years. *The Committee requests the Government to provide information on the measures taken to reduce labour market dualism and to re-initiate consultations with the social partners in this process. It also requests the Government to continue to transmit detailed updated information on the outcome of these measures, particularly on the extent to which they have led to the creation of full, productive and lasting employment opportunities for regular and non-regular workers.*

Youth employment. The FKTU indicates that 1.11 million young people are unemployed and that the rate of non-regular workers among newly employed young workers stood at 64 per cent as of August 2015. It adds that there is strong pressure on young people to take low quality jobs, increasing the rate of poor working youth from 44.3 per cent to 47.4 per cent. The FKTU indicates that, despite this fact, the Government and large companies have not taken effective measures to promote youth employment. In this context, 25.6 per cent of public institutions violate the mandatory employment quota of young people; large companies prefer non-regular workers and persuade young people to take unstable and low wage part-time jobs. In its reply, the Government indicates that the FKTU did not use the official statistics published by Statistics Korea. It adds that the youth employment rate increased from 39.7 per cent in 2013 to 43.1 per cent in June 2016 and the youth labour force participation increased from 43.2 per cent in 2013 to 48 per cent in June 2016. The Government indicates that the high tertiary education enrolment rate (70.9 per cent in 2014) has led to a high unemployment rate for highly educated youth. To create more decent jobs that these young persons want, the Government has been working to narrow gaps between workers in large companies and SMEs, and between regular and non-regular workers. The Government indicates that it offers customized training and employment support for young people having difficulty finding work, through the Employment Success Package, Employment Academy, and other programmes. Although the Government recognizes that some public institutions do not comply with their obligation to hire young people, it indicates that the youth employment rate in public institutions and local public enterprises was 4.8 per cent in 2015, above the mandatory youth employment quota of 3 per cent. The number of newly hired young employees in public institutions and local public enterprises rose from 3.5 per cent in 2013 to 4.8 per cent in 2015. *The Committee requests the Government to continue to provide information on the various measures implemented to promote the long-term integration of young persons in the labour market, particularly with regard to educated young persons, as well as other categories of young people who encounter difficulties in finding employment. The Committee also reiterates its request to the Government to provide information on the measures taken or envisaged to promote the inclusion of young persons who are not in employment, education or training.*

Employment of women. The Government indicates that it took measures in 2014 and 2016, focusing on "work–family balance" in order to promote female employment. Measures have focused on activating the maternity protection system, expanding the use of flexible work arrangements, including quality part time work and the reinforcement of the childcare system, and re-employment support for women whose careers have been interrupted. The Government considers that, as a result of these measures, women's economic activity rate went from 49.9 per cent in 2012 to 52.9 per cent in June 2016 and the female employment rate rose from 53.5 per cent in 2012 to 56.6 per cent in 2016. *Recalling its previous comments regarding the Workers with Family Responsibilities Convention, 1981 (No. 156), the Committee requests the Government to provide information on measures taken or envisaged to assist both female and male workers to reconcile their work and family responsibilities. The Committee requests the Government to provide updated comprehensive information on the nature and impact of measures taken to increase women's participation in the labour market, particularly in full, productive and sustainable employment.*

Employment of older workers. The Government indicates that it encourages the employment of older workers by promoting the adoption of the wage peak system, expanding subsidies to institutions which support it, as well as the re employment of older workers through customized training. The FKTU indicates that, despite the retirement age of 53 in Korea, retired employees continue to work in non-regular and part-time positions until their late sixties due to an inadequate social safety net. In its reply, the Government indicates that the retirement age stipulated by law is 60. It notes that after retiring, older workers are being re-employed in low quality jobs, and it is therefore strengthening its outplacement and re-employment services to help older workers with lifetime planning and vocational skills. *The Committee reiterates its request to the Government to communicate detailed information, including statistical data allowing it to assess the effectiveness of the various measures implemented to promote productive employment opportunities for older workers. It also requests the Government to indicate the impact of the wage peak system on older workers' employment as well as the number of persons placed in employment as a result of the customized training.*

Migrant workers. Recalling its previous comments under the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Committee requests the Government to provide information on the situation of migrant workers in the labour market.

Article 3. Participation of the social partners. The Government indicates that, in August 2013, a "tripartite joint implementation monitoring group" was formed at the Economic and Social Development Commission to monitor the implementation of the Tripartite Jobs Pact for a year. It adds that, in October 2013, it designated 14 regional human resources development councils (HRD councils) in major cities and provinces. In addition, it selected 29 joint (professional) education and training institutions providing education and training to generate human resources tailored to regional needs, starting in March 2014. The training was provided to 54,000 people in 2015 and was expected to reach 55,000 people in 2016. The FKTU indicates that only representatives from local governments or large businesses are entitled to chair these committees. It adds that a majority of committee members are employers' representatives, whereas only a few are drawn from labour. In its reply, the Government indicates that people from labour circles can also represent regional HRD councils. It adds that, the Gyeonggi Regional HRD Council is currently being co-chaired by a person drawn from labour, and that every regional HRD council has at least one member from labour. *The Committee requests the Government to continue to provide information on the implementation of the Tripartite Jobs Pact. It also requests the Government to communicate information regarding consultations with the social partners on the matters covered by the Convention, as well as on consultations with representatives of the persons affected by employment policy measures, and representatives of workers in non-standard forms of employment.*

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

Observation 2017

Article 3(1) and (2) of the Convention. Minimum age for admission to, and determination of, hazardous work. The Committee notes that, pursuant to Article 102 of the Labour Law Amendment Act of 2013, the list of hazardous work prohibited to children under 18 years of age is specified separately. The Committee also notes with *satisfaction* that the Ministerial Decree on the List of Hazardous Work for Young Persons was adopted in 2016. Section 3 contains a comprehensive list of types of hazardous work prohibited to young persons under 18 years of age, such as work handling with chemical and poisonous substances, work which carries the risk of infection with communicable diseases, work with sharp tools, work in the tobacco industry, and so on. The Committee also notes that, according to section 6, individuals or legal entities who violate this decree shall be responsible in both civil and criminal procedures depending on the severity of the violation. *The Committee requests the Government to provide information on the implementation of the Ministerial Decree on the list of types of hazardous work for young persons, including the number and nature of violations regarding young persons engaged in hazardous work, as well as the penalties imposed.*

Article 7. Light work. The Committee previously noted that according to section 101 of the Labour Law Amendment Act of 2013, children between the ages of 12 and 14 years may be employed in light work, defined as work that will not negatively impact the child's physical or mental health and does not obstruct their attendance at school or vocational training, and a list of types of light work shall be defined in a separate regulation.

The Committee notes with *satisfaction* that the Ministerial Decree on the List of Light Work for Young Persons has been adopted in 2016. Pursuant to sections 1 and 2, children aged 12–14 years are permitted to perform light work which will not jeopardize their physical, moral or mental development and education. Section 3 contains a comprehensive list of types of light work permitted in services, industry and handicraft, as well as in agriculture. Section 4 further provides that a child is not allowed to work more than two hours per day on school days or six hours per day during vacations. Moreover, a child shall not perform overtime work, work between 6 p.m. and 6 a.m., and other types of work as specified in section 5.

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 concerning legislative matters and allegations of anti-union discrimination, including anti-union dismissals and non-recognition of unions. *The Committee requests the Government to provide its comments in this respect, as well as to the allegations of specific violations of the Convention in practice made by the ITUC in 2016.*

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

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

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

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

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

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

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

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

Duration of proceedings for the recognition of a trade union. In its previous report the Government had indicated that the average duration of the recognition process was: (i) just over three months in proceedings resolved by voluntary recognition; and (ii) four-and-a-half months for claims resolved by the Industrial Relations Department which do not involve judicial review. The Committee had considered that the duration of proceedings could still be excessively long. In its information provided to the Conference Committee the Government noted that the length of the process varies, depends on the cooperation of the parties and may be subject to judicial review. *Not having received any indication from the Government as to measures carried out or planned in this regard, the Committee again requests the Government to, in consultation with the social partners and in the context of the abovementioned review exercise, take any necessary measures to further reduce the length of proceedings for the recognition of trade unions.*

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

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

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

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

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

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

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

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

Malaysia

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

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 with *concern* that the Government's detailed report has not been received in spite of an express request to this effect and the discussion on the application of the Convention in Peninsular Malaysia and Sarawak by the Committee on the Application of Standards (CAS) of the International Labour Conference (ILC) in June 2017. The Committee recalls that the CAS discussion was based on the long-standing comments made by the Committee of Experts urging the Government to take the necessary measures with a view to re establishing, both in law and in practice, the principle of equal treatment between foreign and national workers in case of employment injury. In these successive comments, the Committee has continuously recalled that, since 1 April 1993, the national legislation provided for foreign workers, employed in Malaysia for up to five years, to be transferred from the Employees' Social Security Scheme (ESS), which provided for periodical payments to victims of industrial accidents, to the Workmen's Compensation Scheme (WCS), which guaranteed only a lump-sum payment of a significantly lower amount. The Committee also recalls that, in June 2011, the CAS had already urged the Government to take immediate steps in order to bring national law and practice into conformity with *Article 1 of the Convention,* to respect the system of automatic reciprocity instituted by the Convention between the ratifying countries, and to avail itself of the technical assistance of the ILO to resolve administrative difficulties by concluding special arrangements with labour-supplying countries in accordance with *Articles 1(2)* and *4* of the Convention. In reply, the Government had indicated that a technical committee within the Ministry of Human Resources, including all stakeholders, was considering the various options with a view to bringing the national legislation in line with the requirements of the Convention.

The Committee notes that, at the 2017 session of the ILC, the CAS once again called upon the Government to take immediate, pragmatic and effective steps to ensure that the Convention's requirement for equal treatment of migrant workers and national workers was met and to expedite its efforts to this effect, as the need for real progress is becoming increasingly urgent. Specifically, the CAS called upon the Government to, without delay: (i) take steps to develop and communicate its policy for governing the recruitment and treatment of migrant workers; (ii) take immediate steps to conclude its work on the means of reinstating the equality of treatment of migrant workers, in particular by extending the coverage of the ESS to migrant workers in a form that is effective; (iii) work with employers' and workers' organizations to develop laws and regulations that ensure the removal of discriminatory practices between migrant and national workers, in particular in relation to workplace injury; (iv) adopt special arrangements with other ratifying member States to overcome the administrative difficulties of monitoring the payment of compensation abroad; (v) take necessary legal and practical measures to ensure that migrant workers have access to medical care in the case of workplace injury without fear of arrest and retaliation; and (vi) avail itself of the technical assistance of the ILO with a view to implementing these recommendations and to develop mechanisms for overcoming the practical issues affecting implementation of the domestic social security scheme to migrant workers.

In view of the urgency of the persistent situation where foreign workers employed in Malaysia for up to five years, who become victims of industrial injuries, are denied their fundamental right to equality of treatment with national workers and thus deprived of, inter alia, lifelong pensions in case of permanent disability, the Committee fully endorses the CAS conclusions and urges the Government to conform with its international obligations by taking the required measures in an effective and expeditious manner.

C097 - Migration for Employment Convention (Revised), 1949 (No. 97)

Observation 2017

Article 6 of the Convention. Equal treatment. Minimum wages and the foreign worker levy. The Committee recalls its previous comments in which it noted that the National Wages Consultative Council Act 2011 (Act 732) and the Minimum Wages Order 2012 provided for a regional monthly minimum wage for Sabah covering national and foreign workers, but exclude domestic workers from their application. It also recalls that an annual foreign worker levy in the plantation sector, agricultural and fishing sector, manufacturing sector, construction sector, and in the services sector, and for domestic workers, is to be paid to the Immigration Department. The Government also indicated that, as of 1 January 2014, all employers employing foreign workers should pay the minimum wage and would be allowed to deduct the foreign worker levy and the cost of accommodation from migrant workers' wages, but not from the minimum wage. As the Government had indicated in the past that the levy was paid by the employer and could not be deducted from the wages of the foreign worker, the Committee considered that ambiguity existed regarding the foreign worker levy and permissible deductions from minimum wages of foreign workers, since the establishment of the regional minimum wage for Sabah.

The Committee notes that the Government's report has not been received. It notes however that the Government provided information in 2016 confirming the Malaysian government policy requiring the levy to be borne by the foreign worker. The Government however indicates that pursuant to section 113(4) of the Sabah Labour Ordinance (Cap 67), no deductions of levy and accommodation costs are allowed, except at the request in writing of the employee and with prior permission by the competent authority. The Government adds that when approving such requests, the wish of the foreign worker to pay the levy in instalments or by way of a lump sum, is being taken into account; not allowing the deduction of the levy from wages of foreign employees, despite their written request, would only burden these employees. While noting these explanations, the Committee remains concerned that, in practice, employers may still deduct the amount of the levy from the minimum wage of the foreign worker, which would result in less favourable treatment of these workers with nationals, contrary to *Article 6(1)(a)* of the Convention. Noting further that the Government had previously reported that the levy was meant to help defray the costs of maintenance of the facilities and infrastructure used by foreign workers during their stay in the country, the Committee considers that, especially when levy rates are high, imposing the burden of the levy on the foreign worker would not be equitable and could have a negative impact on the wages and general working conditions and rights of migrant workers. Regarding deductions for costs of accommodation, the Committee notes the Government's explanations that such deductions will not be allowed if it is agreed that the employer has the obligation to provide free accommodation to the employees. *The Committee asks the Government to clarify the reasons for laying the burden of maintenance costs of facilities and infrastructure, through payment of an annual levy, with the foreign worker, and to indicate whether any consideration is being given to shift the burden of the foreign worker levy onto the employer, or to examine alternative ways to compensate for the so-called costs for facilities and infrastructure generated by foreign workers during their stay. The Committee also asks the Government to specify the applicable legal provisions or policy prohibiting levy deductions from the minimum wage, and to indicate the measures taken to ensure that, in practice, employers do not deduct the levy amount from the minimum wages paid to foreign workers. Recalling that the Government had previously indicated that it was willing to examine the impact of the levy system on the working conditions and equal treatment of migrant workers, including wages, the Committee requests the Government to undertake such an assessment and provide information on its results and any follow-up given to it.*

Article 6(1)(b) of the Convention. Equality of treatment with respect to social security. Employment injury benefits. The Committee notes that the Government's report was not received despite the Committee's longstanding comments regarding differences in treatment between nationals and temporary foreign workers with respect to payment of social security benefits in the case of industrial injuries. The differences relate to the Workmen's Compensation Scheme (WCS), which guarantees to foreign workers employed in the country for up to five years only a lump-sum payment of a significantly lower amount than the periodical payments to victims of industrial injuries provided under the Employees' Social Security Scheme (ESS), while Malaysian nationals and foreign workers permanently residing in Malaysia (Sabah) continue to be covered by the ESS. The Government had previously indicated that it was looking into various options, with the participation of all stakeholders with a view to bringing the national legislation in line with the requirements of the Convention. The Committee recalls that it has been raising this same issue since 1993 in the context of its comments under the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19), with respect to Peninsular Malaysia and Sarawak. The Committee refers the Government to its observation on Convention No. 19 which notes the discussion on the application of that Convention in Peninsular Malaysia and Sarawak by the Conference Committee on the Application of Standards (CAS) in June 2017. The Committee notes that the CAS once again called upon the Government to take immediate, pragmatic and effective steps to ensure that the Convention's requirement of equal treatment of migrant workers and national workers was met and to expedite its efforts to this effect, as the need for progress was becoming increasingly urgent. *The Committee urges the Government to take into account its comments on the application in Peninsular Malaysia and Sarawak of Convention No. 19 when addressing the issue of equal treatment between migrant workers and nationals with respect to industrial injuries in Sabah.*

Other social security benefits. With respect to other social security benefits, including medical care, old-age, invalidity and survivor's pensions, as well as sickness and maternity benefits, the Committee notes that the Government has not provided any further information in this respect. *Taking into account the large number of foreign workers concerned, the Committee urges the Government to provide information on the steps taken, including the conclusion of bilateral or multilateral agreements, to ensure that migrant workers do not receive treatment which is less favourable than that applied to nationals or foreign workers permanently residing in the country with respect to all social security benefits.*

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

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

Observation 2017

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

The Committee notes with *concern* that the Government's detailed report has not been received in spite of an express request to this effect and the discussion on the application of the Convention in Peninsular Malaysia and Sarawak by the Committee on the Application of Standards (CAS) of the International Labour Conference (ILC) in June 2017. The Committee recalls that the CAS discussion was based on the long-standing comments made by the Committee of Experts urging the Government to take the necessary measures with a view to re establishing, both in law and in practice, the principle of equal treatment between foreign and national workers in case of employment injury. In these successive comments, the Committee has continuously recalled that, since 1 April 1993, the national legislation provided for foreign workers, employed in Malaysia for up to five years, to be transferred from the Employees' Social Security Scheme (ESS), which provided for periodical payments to victims of industrial accidents, to the Workmen's Compensation Scheme (WCS), which guaranteed only a lump-sum payment of a significantly lower amount. The Committee also recalls that, in June 2011, the CAS had already urged the Government to take immediate steps in order to bring national law and practice into conformity with *Article 1 of the Convention,* to respect the system of automatic reciprocity instituted by the Convention between the ratifying countries, and to avail itself of the technical assistance of the ILO to resolve administrative difficulties by concluding special arrangements with labour-supplying countries in accordance with *Articles 1(2)* and *4* of the Convention. In reply, the Government had indicated that a technical committee within the Ministry of Human Resources, including all stakeholders, was considering the various options with a view to bringing the national legislation in line with the requirements of the Convention.

The Committee notes that, at the 2017 session of the ILC, the CAS once again called upon the Government to take immediate, pragmatic and effective steps to ensure that the Convention's requirement for equal treatment of migrant workers and national workers was met and to expedite its efforts to this effect, as the need for real progress is becoming increasingly urgent. Specifically, the CAS called upon the Government to, without delay: (i) take steps to develop and communicate its policy for governing the recruitment and treatment of migrant workers; (ii) take immediate steps to conclude its work on the means of reinstating the equality of treatment of migrant workers, in particular by extending the coverage of the ESS to migrant workers in a form that is effective; (iii) work with employers' and workers' organizations to develop laws and regulations that ensure the removal of discriminatory practices between migrant and national workers, in particular in relation to workplace injury; (iv) adopt special arrangements with other ratifying member States to overcome the administrative difficulties of monitoring the payment of compensation abroad; (v) take necessary legal and practical measures to ensure that migrant workers have access to medical care in the case of workplace injury without fear of arrest and retaliation; and (vi) avail itself of the technical assistance of the ILO with a view to implementing these recommendations and to develop mechanisms for overcoming the practical issues affecting implementation of the domestic social security scheme to migrant workers.

In view of the urgency of the persistent situation where foreign workers employed in Malaysia for up to five years who become victims of industrial injuries, are denied their fundamental right to equality of treatment with national workers and thus deprived of, inter alia, lifelong pensions in case of permanent disability, the Committee fully endorses the CAS conclusions and urges the Government to conform with its international obligations by taking the required measures in an effective and expeditious manner.

Mongolia

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

Observation 2017

Articles 1 and 2 of the Convention. Work of equal value. Legislation. The Committee refers to its previous comments in which it noted the lack of reference to the principle of the Convention both in the Labour Law and in the Law on the Promotion of Gender Equality (LPGE), and stressed the importance of seizing the opportunity provided by Labour Law reform to incorporate the concept of "work of equal value" into the national legislation and adopt a broad definition of "remuneration", in accordance with the Convention. The Committee notes the Government's indication that the new draft Labour Law reflects the principle of equal remuneration for men and women for work of equal value, and that this principle applied not only to the basic salary but also to any additional emoluments arising out of the worker's employment. The Committee further notes from the Progress Report (October 2017) on the ILO–European Commission Project "Sustaining GSP-Plus beneficiary countries to effectively implement ILO standards and comply with reporting obligations" that the Government proposed to submit the draft revised Labour Law in late 2017 for Parliamentary consideration, and that key amendments, endorsed by tripartite working groups, provide for the inclusion of the principle of equal remuneration for work of equal value. *The Committee welcomes the revisions introduced in the draft Labour Law and asks the Government to provide a copy of the new Labour Law once it is adopted.*

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

Article 1 of the Convention. Legislative developments. The Committee refers to its previous comments on the elaboration of the new Labour Law and notes the Government's indication that the new draft Labour Law will, when adopted, contribute significantly towards bringing the national legal framework into line with the Convention, including as regards prohibited grounds of discrimination, the exclusion of women from certain occupations, sexual harassment, restrictions relating to the inherent requirements of the job, and the protection of workers with family responsibilities. *The Committee welcomes these changes and hopes that the new Labour Law will soon be adopted and will be in full conformity with the Convention.*

Exclusion of women from certain occupations. The Committee recalls its previous comments concerning the exclusion of women from a wide range of occupations under section 101.1 of the Labour Law of 1999 and Order No. 1/204 of 1999 which was annulled in 2008. It notes the Government's indication that this change was not well publicized, with the result that many employers still consider these restrictions to be in force. The Government also indicates that under the new draft Labour Law it will not be competent to adopt a list of prohibited jobs for women. *The Committee asks the Government to take proactive steps to raise public awareness about the absence of restrictions on the recruitment of women in certain occupations and asks the Government to ensure that the new Labour Law will strictly limit the exclusion of women from certain occupations to measures aimed at protecting maternity.*

Article 1(2). Inherent requirements. The Committee refers to its previous comments concerning section 6.5.6 of the Law on Promotion of Gender Equality of 2011 (LPGE) which allows for sex-specific job recruitment "based on a specific nature of some workplaces such as in pre-school education institutions". The Committee also noted that the scope of other provisions of the LPGE are overly broad in permitting sex-based distinctions (sections 6.5.1 and 6.5.2). The Committee notes from the Government's report that such limitations are not contemplated in the new draft Labour Law which conforms to the concept of inherent requirements of a particular job enshrined in *Article 1(2)* of the Convention. *The Committee urges the Government to review sections 6.5.1, 6.5.2 and 6.5.6 of the LPGE in order to ensure that they do not in practice deny men and women equality of opportunity and treatment in respect of their employment, and hopes that the provisions related to inherent requirements of the job in the new Labour Law will be in conformity with the Convention, and will be adopted soon.*

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

C006 - Night Work of Young Persons (Industry) Convention, 1919 (No. 6)

Observation 2017

Article 2(1) of the Convention. Prohibition on employing children under 18 years of age at night in industrial undertakings. The Committee previously noted that under the terms of section 79(1)(a) of the Factories Act 1951 (No. LXV), no child (person under the age of 15 years, by virtue of section 2(a)) shall be employed or permitted to work in any factory between the hours of 6 p.m. and 6 a.m. However, the Committee noted the Government's information that a young person between 15 and 18 years of age (adolescents, by virtue of section 2(b)) who is certified as being fit for work as an adult in factories may be employed at night. It further noted the Government's information that the process of amending section 79(1) of the Factories Act to bring it into conformity with this Convention was being carried out.

The Committee notes the Government's information in its report that the provisions of the Factories Act relating to children under 18 years of age were amended. While the amended provisions prohibit night work for young persons up until the age of 16, the Committee notes with *concern* that, young persons between the ages of 16 and 18 may be declared by a registered medical doctor to be fit for employment and allowed to work between the hours of 6 p.m. and 6 a.m. (section 79(3) of the amended Factories Act). The Committee recalls that *Article 2(1)* of the Convention prohibits the employment of all young persons *under the age of 18* during the night in any public or private industrial undertaking, or in any branch thereof, other than an undertaking in which only members of the same family are employed. Under *Article 3(1)* of the Convention, the term "night" signifies a period of 11 consecutive hours, including the interval between 10 p.m. and 5 a.m. *The Committee therefore requests the Government to take measures to ensure that section 79 of the amended Factories Act is once again modified to prohibit the night work of all young persons under the age of 18 for a period of eleven consecutive hours, including from 10 p.m. to 5 a.m. It requests the Government to provide information on the progress made in this regard.*

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

Observation 2017

The Committee notes the observations made by the International Trade Union Confederation (ITUC) in a communication received on 1 September 2017, concerning the application of the Convention, as well as that of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (not ratified by Myanmar). In particular, the Committee notes that the ITUC raises concerns about the numerous obstacles to the development of a robust trade union movement and provides a number of examples. The Committee further notes the Government's detailed reply in relation to the cases raised.

Civil liberties. In its previous comments, the Committee requested the Government to provide information on developments in the legislative review relating to peaceful assemblies. The Committee notes the Government's indication that a new Law on the Right to Peaceful Assembly and Peaceful Procession was adopted on 4 October 2016 and is in full conformity with citizens' rights and democratic standards, requiring only 24-hour advance notification and repealing sanction provisions. The Committee observes, however, that the Chapter on Rules and the corresponding Chapter on Offences and Penalties might still give rise to serious restrictions of the right of organizations to carry out their activities without interference. *The Committee requests the Government to provide information on the manner in which this law is applied and any sanctions issued.*

Labour law reform process. The Committee recalls that in its previous comments it had requested the Government to provide information on the progress made in labour law reform. The Committee notes the information provided in the Government's latest report that a draft law to amend the Settlement of Labour Disputes Law was discussed with the tripartite partners at the Labour Law Reform Technical Working Group held on 22 July 2017. The Government adds that the penalties in the law are being reviewed and amendments drafted. Capacity-building activities have also been held. The Committee notes, however, the ITUC's observations which, while acknowledging the initial steps taken by the Government to embark upon labour law reform on the basis of tripartite consultation, express concerns about this process, citing the Government's refusal to fully share proposed texts and resistance to addressing major flaws. The ITUC further fears the possibility that amendments proposed by the Government may actually worsen the current legislative framework, referring in particular to views expressed by the Government that informal workers should not have the right to organize, while in fact tens of thousands of workers have already formed unions under the 2011 Labour Organization Law (LOL). *Given that the Government has not provided any further details on which provisions of the LOL or the Settlement of Labour Disputes Law it is intending to amend nor has it provided any draft texts, the Committee expects that the Government will take into account the Committee's previous comments as recalled below in the reform process, and requests the Government to provide detailed information on the progress made in this regard in its next report.*

Article 2 of the Convention. Right of workers to establish organizations. In its previous comments, the Committee had observed that while a minimum number of workers was necessary to form a trade union, it was additionally necessary to show affiliation of 10 per cent of the workers in the trade or activity in order to establish a basic labour organization. *The Committee once again requests the Government to take steps to review the 10 per cent membership requirement with the social partners concerned, with a view to amending section 4 of the LOL so that workers may form and join organizations of their own choosing without hindrance. It further requests the Government once again to indicate the outcome of any review of the impact of the pyramidal structure set out in this section and any measures taken to ensure that the right of workers to form and join organizations of their own choosing is not hindered in practice.*

Article 3. Right of workers' organizations to elect their officers freely. The Committee recalls its previous comments concerning certain restrictions for eligibility to trade union office set out in the Rules to the LOL, including the obligation to have been working in the same trade or activity for at least six months and the obligation for foreign workers to have met a residency requirement of five years. *The Committee trusts that these requirements will be reviewed within the framework of the legislative reform process in consultation with the social partners so as to ensure the right of workers to elect their officers freely, and requests the Government to indicate the measures taken or envisaged to amend Rule 5.*

Special economic zones (SEZs). The Committee notes the Government's reply to the ITUC's observations concerning the SEZ Law of 2014. The Committee recalls that the ITUC had indicated that the procedures for dispute settlement in the zones were more cumbersome than outside and that labour inspector powers were delegated to SEZ management bodies. The Committee notes the Government's indication that the labour inspectorate can coordinate and cooperate with the concerned SEZ management committees to have jurisdiction in accordance with labour laws and that the LOL and the Settlement of Labour Disputes Law can be enforced in the SEZs. *The Committee once again requests the Government to take any necessary measures to guarantee fully the rights under the Convention to workers in SEZs, including by ensuring that the SEZ Law does not contradict the application of the LOL and the Settlement of Labour Disputes Law in the SEZs. It further requests the Government to provide detailed practical information on the manner in which disputes in the SEZs are settled, and to provide relevant statistics concerning labour inspection in the SEZs, including the number of SEZ inspections carried out by labour inspectors, any violations detected, and the nature and number of sanctions.*

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 that the Government's report has not been received.

The Committee takes note of the observations provided by the International Trade Union Confederation (ITUC) in a communication received on 1 September 2017 as well as the Government's reply thereon. With respect to the ITUC's allegations of a brutal attack by police to health workers during a demonstration outside the Parsa District Public Health Office in Birgunj, the Committee notes that the Government states that police intervention was necessary in order to ensure the supply of essential medicines. In this respect the Committee recalls that police intervention should be limited to cases where there is a genuine threat to public order and that governments should take measures to ensure that the competent authorities receive adequate instructions so as to avoid the danger of excessive violence in trying to control demonstrations that might undermine public order. The Committee also recalls that it had previously requested the Government to conduct an investigation in relation to issues highlighted by the ITUC in previous years concerning anti-union dismissals, threats against trade union members and the weakness of collective bargaining given that collective agreements only cover a very small percentage of workers in the formal economy. *The Committee requests the Government to communicate the findings of such investigation as well as information on the eventual remedies adopted. It also requests the Government to provide its comments with respect to the observations made by Education International in 2014.*

Legislative reforms. The Committee notes that a new Constitution was adopted in 2015 and that a new Labour Act (Labour Act 2074), adopted on 4 September 2017, has repealed the Labour Act 1992. The Committee notes with ***interest*** that sections 17(2)(d) and 34(3) of the new Constitution provide that the rights to form a trade union, to participate in it, and to organize collective bargaining are fundamental rights. It also observes that section 8 of the new Labour Act recognizes the right to form a trade union, to participate in its activities and to acquire its membership or get affiliated with or involved in other union activities.

Article 1 of the Convention. Adequate protection against anti-union discrimination. In its previous comments, the Committee had requested the Government to take measures to introduce in the legislation provisions that would explicitly prohibit all acts of anti-union discrimination covered by the Convention. The Committee notes with ***regret*** that while section 24 of the new Constitution as well as section 6 of the new Labour Act prohibit discrimination, none of them contains an explicit prohibition of discrimination against workers by reason of their trade union membership or participation in trade union activities. The Committee recalls, as it has done previously, that *Article 1* of the Convention guarantees workers' adequate protection against all acts of anti-union discrimination and that the existence of legal provisions prohibiting acts of discrimination is not enough if they are not accompanied by effective and rapid procedures to ensure their application in practice (see the 2012 General Survey on the fundamental Conventions, paragraph 190). *The Committee is therefore compelled to repeat its request to the Government to take the necessary measures to introduce in the legislation: (i) an explicit prohibition of all prejudicial acts committed against workers by reason of their trade union membership or participation in trade union activities at the time of recruitment, during employment or at the time of dismissal (e.g. transfers, demotions, refusal of training, dismissals, etc.); and (ii) effective and sufficiently dissuasive sanctions in cases of violation of this prohibition. Reminding the persistence of allegations of acts of anti-union discrimination, the Committee requests the Government to provide information on any progress made thereon in its next report.*

Article 2. Adequate protection against acts of interference. The Committee had previously requested the Government to indicate the measures taken or contemplated to introduce in the legislation a prohibition of acts of interference as well as rapid appeal procedures and dissuasive sanctions against such acts. The Committee notes that section 92(1) of the new Labour Act provides that employers and trade unions shall not perform or cause to perform any unfair labour practice and welcomes that section 92(2)(e) provides that, any act by the employer regarding intervention or cause to intervene in the activities relating to the formation, operation and administrative functions of trade unions, shall be deemed to be unfair labour practice. The Committee also notes that section 162 of the said Act, provides that where any person, employer, worker or officer acts in violation of the Act, the person affected by such act or the concerned trade union, with written consent of the affected person, may file a complaint to the competent authority having the power to decide within six months from the date of such act. *Emphasizing the importance of ensuring effective protection against acts of interference and sufficiently dissuasive sanctions against such acts, the Committee requests the Government to provide further information on the sanctions applied in cases of acts of interference as well as on statistics on the number of complaints examined, the duration of the procedures and the type of penalties and compensation ordered.*

Article 4. Promotion of collective bargaining. The Committee notes that section 116.1 of the new Labour Act provides that any enterprise employing ten or more workers shall have a collective bargaining committee that may submit collective claims or demands in writing to the employer on issues relating to the interest of workers. It notes that such a committee is comprised of: (a) a team of representatives appointed for negotiation on behalf of the elected authorized trade union of the enterprise; (b) where an election for the authorized trade union could not be held or the term of the elected authorized trade union has expired, a team of representatives nominated through a mutual agreement of all the unions in the enterprise; or (c) where an authorized trade union or a team of representatives could not be formed, a team of representatives supported with the signatures of more than 60 per cent of the workers working in the enterprise. The Committee recalls that direct bargaining between the enterprise and its employees with a view to avoiding sufficiently representative organizations, where they exist, may undermine the principle of the promotion of collective bargaining set out in the Convention. In addition, it has noted in practice that where there exists a representative trade union and it is active within the enterprise or branch of activity concerned, the authorization for other worker representatives to bargain collectively not only weakens the position of the trade union, but also undermines ILO rights and principles on collective bargaining. *In order to fully evaluate the conformity of section 116.1 of the new Labour Act with the Convention, the Committee requests the Government to specify the conditions under which trade unions are authorized to bargain collectively and to provide information on the number of direct agreements concluded with non-unionized workers in comparison with the number of collective agreements signed with trade unions.*

The Committee notes that the new Labour Act contains special provisions with respect to collective bargaining for trade union associations which are active in the tea estate, carpet sector, construction business, labour provider, transportation sector or any other group of manufacturers or service providers with similar or related activities. Section 123 of the Act stipulates that those trade union associations may, by forming a collective bargaining committee, submit collective bargaining claims or demands to the employers' association of concerned group of industries. Section 123(3) provides that in those enterprises it is prohibited to submit collective claims or demands and entering into agreement pursuant to the abovementioned sections of the Chapter on Settlement of Collective Disputes of the Labour Act. The Committee also notes that, as stipulated in section 123(4), in cases concerning such enterprises, the Ministry may issue an order to submit collective claims or demands and negotiate within a specified time. The Committee recalls that under the terms of *Article 4* of the Convention, collective bargaining must be free and voluntary and respect the principle of the autonomy of the parties. The Committee also recalls the need to ensure that collective bargaining is possible at all levels and that legislation that unilaterally imposes a level of bargaining or makes it compulsory for bargaining to take place at a specific level raises problems of compatibility with the Convention (see General Survey, op. cit., paragraphs 200 and 222). *Highlighting that when collective bargaining takes place at different levels, coordination mechanisms can be put in place, the Committee requests the Government to take the necessary measures to amend section 123 of the new Labour Act so that the principle of the autonomy of the parties is respected and that collective bargaining is possible at any level whatsoever, including that of the establishment, the undertaking, the branch of activity, the industry or the regional or national levels.*

Compulsory arbitration. The Committee recalls that its previous comments concerned provisions from the draft National Labour Commission Act, a draft that has not been adopted, as well as section 30 of the Trade Union Act, which gives special powers to the Government to restrict trade union activities considered

against the economic development of the country. With respect to the latter, the Committee had requested the Government to indicate the measures taken so as to ensure that compulsory arbitration is not imposed at the initiative of the authorities where they consider that the country's economic development so requires. The Committee observes that the new Labour Act contains provisions relating to compulsory arbitration. As provided for in section 117, the Collective Bargaining Committee shall hold consultations on the claims submitted and that, if an agreement is reached, it shall be binding for both parties. For its part, sections 118 and 119(1) provide that, if no agreement is reached and where the dispute is not resolved through mediation, it shall be settled through arbitration as follows: (i) if the parties agree to settle the dispute through arbitration; (ii) if it concerns an enterprise providing essential services; (iii) if it concerns an enterprise located inside the special economic zone; or (iv) if it concerns a situation where strike is prohibited because there is a state of emergency declared as per the Constitution. For its part, section 119(2) also provides that, where the Ministry has a ground to believe that a financial crisis may take place in the country as a result of ongoing or possible strike or lockout or believes that the dispute needs to be settled by arbitration, the Ministry, irrespective of the state of the collective dispute, may issue an order for the settlement of the dispute through arbitration. In this regard, the Committee recalls that, pursuant to the promotion of free and voluntary negotiation established by *Article 4* of the Convention, compulsory arbitration to end a collective labour dispute is acceptable only if it is at the request of both parties involved in a dispute or in the case of disputes in the public service involving public servants engaged in the administration of the State (*Article 6* of the Convention), in essential services in the strict sense of the term, namely those services whose interruption would endanger the life, personal safety or health of the whole or part of the population or in case of acute national crisis. The Committee *regrets* that the newly adopted Labour Act is not in line with this principle. *It therefore once again requests the Government to take the necessary measures to ensure that, in accordance with the Convention, compulsory arbitration can only take place in the situations mentioned above.*

Composition of arbitration bodies. The Committee notes that section 119(3) of the new Labour Act provides that, for all cases in which arbitration takes place, the Ministry of Labour and Employment may form an arbitration panel ensuring representations from workers, employers and the Government. The Committee also notes that section 120 provides that, for the purpose of settling collective disputes though mediation and arbitration, the Government may form an independent labour arbitration tribunal and that provisions in relation to such tribunal shall be prescribed. *Recalling that arbitration bodies shall be fully independent, the Committee requests the Government to provide detailed information with respect to the composition of the said arbitration panel and tribunal and specifically to indicate the procedure undertaken to select the worker and employer representatives. It also requests the Government to clarify the difference between the arbitration panel (section 119(3)) and the arbitration tribunal (section 120).*

Measures to promote collective bargaining. The Committee requests the Government to provide, in its next report, detailed information on the measures taken or contemplated to promote collective bargaining as well as on the impact of the recently adopted Labour Act on collective bargaining and agreements reached. In this respect, the Committee requests the Government to provide data on the number of collective agreements concluded, their scope and sectors concerned and the number of workers covered.

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 12 meetings of the Advisory Labour Commission (CCT) were held between March 2015 and June 2016. The Government also reports effective consultations in the Social Dialogue Council (CDS) under section Lp. 381-3 of the Labour Code of New Caledonia, and in the Special Commission in Congress to develop and monitor economic and social agreements for the period 2016–17. *The Committee requests the Government to continue providing information on tripartite consultations intended to promote the implementation of international labour standards, and particularly on the content and outcome of the consultations held on the matters concerning international labour standards set out in Article 5(1)(a) and (d) of the Convention.*

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

Observation 2017

The Committee notes the observations by the New Zealand Council of Trade Unions (NZCTU) and Business New Zealand (Business NZ), submitted by the Government with its report.

Article 1(b) of the Convention. Work of equal value. The Committee refers to its previous comments in which it has been drawing the Government's attention to the fact that the Employment Relations Act (ERA) 2000, the Human Rights Act (HRA) 1993, and the Equal Pay Act (EPA) 1972, do not fully reflect the principle of the Convention, since they limit the requirement for equal remuneration for men and women to the same and substantially similar work. In its previous observation, the Committee noted that the New Zealand Court of Appeal, in *Terranova Homes & Care Ltd* v. *Service and Food Workers' Union Nga Ringa Tota Inc.* (CA631/2013[2014]NZCA516 of 28 October 2014), reached the conclusion that the EPA was not limited to providing for equal pay for the same or similar work. The Court held that, for comparing work exclusively or predominantly performed by women, it may be relevant to consider evidence of wages paid by other employers and in other sectors, and take into account any evidence of systemic undervaluation of the work concerned. Following the judgment by the Court of Appeal, the Employment Court was then expected to state general principles to be observed for implementing equal pay with a view to providing guidance for parties in negotiations, as provided for in section 9 of the EPA.

The Committee notes the Government's indication that all pay equity claims under the EPA are currently on hold as a result of the agreement reached in October 2015 between the Government and the social partners on the establishment of a Joint Working Group (JWG) to "develop principles for dealing with claims of equal pay for work of equal value" under the EPA. The Committee notes that the JWG has formulated a set of recommendations, which are under consideration by the Government. According to NZCTU's observations, these recommendations would eventually lead to amendments of the EPA and the ERA. The Committee notes that indeed an Employment (Pay Equity and Equal Pay) Bill was introduced to Parliament on 26 July 2017, with the purpose of eliminating and preventing discrimination on the basis of gender in remuneration and other terms and conditions of employment. The Bill distinguishes between equal pay claims or unlawful discrimination (non-remuneration) claims (section 11). It notes that pay equity claims relate to work predominantly performed by women when there are reasonable grounds to believe that the work has been historically undervalued and continues to be subject to systemic sex-based undervaluation (section 14(1) and (2)). The Committee notes that the Bill continues to restrict "equal pay claims" to "the same, or substantially similar, work" (sections 8(1)(a) and 9(1)(a) and 9(2)), and that "pay equity claims" relate to elements of sex-based differentiation in the rates of remuneration if the rate is less than that which would be paid to men employees "with the same, or substantially similar skills, responsibilities, and experience; and performing work under the same, or substantially similar, conditions; and performing work that involves the same, or substantially similar, degrees of effort" (sections 8(1)(b) and 8(3) and sections 9(1)(c) and 9(3)).

The Committee wishes to highlight once again that the concept of "work of equal value" that lies at the heart of the Convention 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. It follows that the jobs to be compared on the basis of objective factors (such as skills, efforts, responsibilities, conditions of work, etc.) may involve different types of skills, responsibilities or conditions of work, that can nevertheless be of equal value in its totality. As such, the principle of the Convention is not equivalent to the concept of "pay equity" as enshrined in the Bill, nor is it reflected fully in the provision relating to "equal pay for the same, or substantially similar work". *The Committee asks the Government to provide information on any developments related to the endorsement of the recommendations elaborated by the JWG and any follow-up actions, including possible amendments of the current legislation with a view to giving full expression to the principle of equal remuneration between men and women for work of equal value. In this context, the Committee asks the Government to take steps to ensure that the revised legislation, including the EPA, will fully reflect the principle of the Convention. The Committee also reiterates its request to the Government to provide information on how it is ensured that when applying the ERA 2000, and the HRA 1993, the broader concept of work of equal value enshrined in the Convention is taken into account. The Government is also asked to continue to provide information on any other judicial or administrative decisions relating to the principle of the Convention.*

Occupational segregation and gender pay gap. In its previous observation, the Committee noted the need for measures to address the undervaluation of work performed by women in the care sector, as well as in other sectors which predominantly employ women, including special education support and social work. The Committee notes from the observations submitted by the NZCTU that, building on the judgment of the Court of Appeal mentioned above, unions representing care and support workers in the health and disability sector have submitted more than 2,500 individual equal pay claims to the Employment Court under the EPA. The Committee notes that, in 2015, the Government authorized the Ministry of Health to start negotiations with the concerned actors to address the equal pay claims pending in the Employment Court and, in 2017, an agreement was reached between the parties. The Committee notes, in particular, that the Care and Support Workers (Pay Equity) Settlement Act 2017 specifies minimum hourly wage rates payable by employers to care and support workers, and requires employers to provide assistance to care and support workers to attain qualifications. The Committee also notes the Government's indication that, in 2014, the Ministry of Health entered into negotiations with the home and community support sector, the district health boards and the unions in order to address claims concerning travel issues and, in particular, travel between clients, which affect pay levels. The negotiations have resulted in a settlement allowing all care and support workers in the home and community support sector to be paid for travel time and mileage, and in the adoption of the Home and Community Support (Payment for Travel between Clients) Settlement Act 2016. The Committee notes, in particular, that the settlement requires also looking into the transition of the workforce into a regularized workforce with guaranteed hours and appropriate training for qualifications, among other things. The Committee notes that NZCTU further refers to equal pay claims lodged by the union representing education support workers employed by the Ministry of Education, and by the public sector union – the Public Service Association (PSA) – on behalf of social workers working in Child Youth and Family Services. The NZCTU also indicates that negotiations have been ongoing for some time with union representatives of the clerical workers in the public health sector in the South Island District Health Board, but they have failed to make any progress. The Committee notes the observations submitted by the Business NZ, which recalls that care work was part of the job re-evaluation exercise carried out when the EPA was introduced in 1972 and highlights that the low pay level in this sector "is not so much a matter of undervaluation as of funding availability", as there is a need to take into account users' ability to meet the costs of the services concerned. With regard to measures to address occupational gender segregation and its impact on the gender pay gap, the Committee also refers to its comments under the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). The Committee 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). *While welcoming the settlements reached, the Committee, with a view to ensuring that wage settlements agreements address the issue of undervaluation of work performed by women in line with the principle of the Convention, asks the Government to provide information on the job evaluation methods used in the context of these settlements, and on the outcome of the pending equal pay cases submitted on behalf of the education support workers, social workers and clerical workers. The Committee also asks the Government to indicate any other measures taken to address the undervaluation of work performed by women in sectors in which they are predominantly employed.*

Article 3. Job evaluation in the private sector. Referring to its previous observation, the Committee notes the Government's indication that no assessment has so far been undertaken on the use made by the private and public sectors of the pay and employment equity tools and resources available. In this regard, the Committee notes the information provided by Business NZ that many private sector employers make use of the various tools available, including the factor-based Hay assessment system. Business NZ indicates that these evaluations focus on the enterprise since evaluations across organizations risk

undermining competition. The Committee also notes the NZCTU's view that stronger support from the Government is needed, including relevant training, in order to promote the use of the available pay and employment equity tools, as has been recommended by the JWG. The Committee recalls that where women are more heavily concentrated in certain sectors or occupations, there is a risk that the possibilities of comparison at the enterprise level or establishment level will be insufficient. Furthermore, the Committee also stresses the importance of ensuring that whatever methods are used for objective job evaluation, they are free from gender bias, and that the selection of factors for comparison, the weighing of such factors and the actual comparison carried out are not discriminatory, either directly or indirectly (General Survey, 2012, paragraphs 698, 700–701). *The Committee asks the Government to indicate any measures taken or envisaged with a view to promoting the use of objective job evaluation methods that are free from gender bias, including targeted training on the use of existing pay and employment equity tools and resources for workers and employers and their organizations in the private sector, and awareness-raising initiatives on the concept of "work of equal value".*

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 by the New Zealand Council of Trade Unions (NZCTU) and Business New Zealand (Business NZ), submitted by the Government with its report.

Article 2 of the Convention. Access to employment and vocational training – Maori and Pacific Island people. The Committee notes the extensive information provided by the Government on the various initiatives undertaken with a view to improving the educational and skill levels of men and women belonging to Maori and Pacific Island people, as well as their employment opportunities, including the Ethnic People in Commerce New Zealand (EPIC NZ) initiative, the Maori and Pasifika Trades Training Initiative, and the Youth Guarantee Scheme. The Committee notes, in particular, that during 2015, there were 135,941 funded trainees participating in industry training, of which 17.2 per cent were Maori, 8.4 per cent were Pacific Island people, and 33.4 per cent were women. It also notes that the number of funded New Zealand apprentices participating in industry training increased from 14,886 in 2012, to 25,238 in 2015, and the percentage of participants from Maori and Pacific Island people changed from 15.4 per cent and 2.7 per cent, to 14.6 per cent and 4.9 per cent, respectively. The Committee notes that women's participation declined from 11.7 per cent to 7.6 per cent. In this regard, the Committee notes the NZCTU's observation that training funding is targeted to male-dominated trades, such as plumbing, construction and electrician training.

The Committee notes from the Government's report that although the qualification achievement rates for Maori and Pacific Island people are improving, including in post-secondary school qualifications, they remain below those for other ethnic groups. The Government indicates that the new Tertiary Education Strategy (TES) 2014–19 sets out to enhance the achievement of Maori and Pacific Island people by recognizing their diverse needs. The Committee also notes that under the Te Puni Kōkiri Cadetships Initiative which aims to increase Maori achievement in higher-level qualifications, partnerships are established with employers in targeted industries, including energy, infrastructure telecommunications, transport/logistics, food processing, and knowledge-intensive manufacturing or primary industries (excluding the forestry sector). Further, the number of cadets remaining in employment has increased since 2009 from 71 per cent, to 100 per cent in 2013–14. The Committee, however, notes from the NZCTU's observations that, according to the Human Rights Commission Tracking Equality at Work tool, Maori and Pacific Island people are falling behind all other ethnicities, with young Maori and Pacific Island women being particularly marginalized. *The Committee asks the Government to continue its efforts to improve the educational and skill levels and employment opportunities of men and women belonging to Maori and Pacific Island people, and to provide information regarding their impact on addressing existing inequalities faced by Maori and Pacific Island people in practice. The Committee also asks the Government to provide information on the implementation of the He kai kei aku ringa partnership between the Crown and the Maori aimed at promoting Maori economic development, including information on any measures adopted or envisaged to ensure their right to engage, without discrimination, in their traditional occupations and livelihoods. The Committee also asks the Government to continue to provide statistics disaggregated by sex on the participation and completion rates of Maori and Pacific Island people in vocational training and education and their participation in employment in the public and private sectors.*

Access to employment and vocational training – Women. The Committee notes the Government's indication that in the aftermath of the earthquakes in Canterbury, the Ministry for Women's Affairs (MWA) established partnerships with a number of industries and community leaders and local training providers with a view to improving women's employment, helping meet skill shortages in Canterbury and promoting the involvement of women in trades. The Committee notes that in 2014 the Women in Trades Scholarship initiative was also introduced at the Christchurch Polytechnic Institute of Technology (CPIT), covering tuition fees for women studying towards a Level 1–4 Trades programme at CPIT. The Government indicates that female enrolments in trades training at CPIT increased from 50 in 2011, to 414 in 2014. The Government also states that in the December 2015 quarter there were 1,700 more women employed in the construction industry in Canterbury than in the same quarter in the previous year, accounting for 16.7 per cent of construction workers in Canterbury. The Committee notes the NZCTU's observation that, while the MWA's campaign to encourage women's access into sectors traditionally dominated by men has had some success in Canterbury, overall the number of women in apprenticeships remains low, with women representing approximately 10 per cent of all apprentices. The NZCTU indicates that the number of female industry trainees is relatively static with 40,474 in 2012 and 40,733 in 2014, whereas women represent more than 80 per cent of the trainees in the traditionally female dominated industry areas of community support, services and hairdressing. The Committee notes the NZCTU's recommendation that additional measures would be required to increase the participation of women in the apprenticeship training schemes. The NZCTU further points out that women graduates predominate in health/medicine, education, law, management and commerce, while their numbers continue to be relatively low in engineering, information and related technologies. *The Committee asks the Government to continue taking steps to improve further the participation of women in industry training and the New Zealand Apprenticeships scheme, and to promote their access to areas of study where the numbers have traditionally been low, such as engineering, science and technology, and to provide information, including statistics disaggregated by sex, on any progress made in this regard.*

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

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

Observation 2017

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

Articles 1 and 2 of the Convention. Active labour market measures. In its previous comments, the Committee invited the Government to provide information on the impact of measures implemented under the Business Growth Agenda (BGA) as well as of other active labour market measures. The Committee notes the detailed information provided in this regard. The Government, committed to growing the economy and establishing jobs for all New Zealanders, refers to the results of several initiatives and policy reforms taken within the framework of the BGA. The Committee also notes the results related to the Skilled and Safe Workplaces work stream of the BGA, including getting people off benefits and into employment, delivering skills to meet industry demands and supporting the

development of a skilled workforce through the Maori and Pasifika Trades Training (MPTT). The Government further indicates that it is making continuous efforts in ensuring tertiary education, reviewing migration settings, maximizing the employment of New Zealanders and developing an effective and efficient occupational health and safety system that is supported by industry and workplaces. With respect to maximizing the employment of New Zealanders, the Government indicates that it is working with employers to co-develop sector owned initiatives to address skills and employment issues via the Sector Workforce Engagement Programme (SWEP). The NZCTU indicates that the Government has failed to involve the NZCTU or other representatives of workers' organizations in the development and roll-out of the SWEP. Furthermore, the Government indicates that it aims to attract further investment through the Regional Growth Programme. To this end, it has adopted the Pacific Economic Strategy 2015–21 which helps Pacific people contribute to and share in New Zealand's economic success by stimulating their economic participation. The NZCTU adds that, while some of these initiatives are useful, the implementation of active labour market policies remains scant and patchy. It also observes a decrease in the percentage of people who access any form of benefit after losing their jobs. This is primarily because they are disqualified on the basis of spousal income which makes them less likely to receive active labour market policy support. In its response, the Government indicates that, through its employment schemes, job search and work placement services are provided to all New Zealanders to the level they need. The Government explains that the logic behind making high-spousal income an exclusionary factor for financial assistance is to ensure that people look to their own resources before seeking assistance from the State. *The Committee requests the Government to continue to provide information on the effectiveness and impact of the active labour market measures adopted, as well as on the consultations held with the social partners with respect to the formulation, implementation and monitoring of such measures. The Committee also requests the Government to provide information on the consultations held with representatives of persons affected by the measures taken.*

Employment trends. The Committee notes that, according to the Statistics New Zealand Household Labour Force Survey, the labour force participation rate rose from 68.7 per cent in 2015 to 69.8 per cent in 2016, with labour force participation for men and women reaching 75.3 per cent and 64.5 per cent, respectively. With regard to employment measures enacted to meet the labour market needs of women, the Government reiterates its commitment to help women fully participate in society and the economy through the Ministry of Women's work programme and other initiatives. *The Committee requests the Government to continue to provide statistics concerning the size and distribution of the labour force, disaggregated by age and sex, as well as information on the employment situation and trends in employment, unemployment and underemployment.*

Persons with disabilities. The Committee notes the information provided on several initiatives aimed at promoting employment for persons with disabilities, including vocational guidance and training services. It notes that a Disability Action Plan 2014–18 was developed using a collaborative approach that involved government agencies working closely with representative organizations of persons with disabilities. Business New Zealand expresses concern about the government funding available, which has proved inadequate to cover the costs involved in finding jobs for persons with disabilities. The Government indicates that it has been working to improve both the universal and specialist services available to assist persons with disabilities to achieve sustainable employment. *The Committee requests the Government to provide updated, detailed information on the impact of employment measures targeting persons with disabilities, including reasonable accommodation measures, to assist them in obtaining sustainable employment on the open labour market. It also requests the Government to provide information on improvements made to the services available to persons with disabilities to assist them in finding employment.*

Youth employment. The Committee notes the various initiatives targeting youth, including training and employment measures. The Government indicates that, through the Building Skilled and Safe Workplaces (SSW) programme of the BGA, it has raised the bar on the educational achievement of young New Zealanders and has supported them into education, training or employment. This has included increasing the participation of young Maori and Pasifika in the workforce to the same level as the rest of the population. Furthermore, the Pacific Employment Support Services (PESS) was developed to assist Pacific youth who were not in education, employment, or training to achieve real economic independence through learning skills and preparing them for sustainable employment. Outcomes for young people are positive, and the percentage of 15–24 year olds not in employment, education or training had declined to 10.9 per cent in the December 2015 quarter, the lowest since September 2008. Business New Zealand observes that, while the Government is making real efforts to ensure young people have the skills to enter into gainful employment, there have been expressions of employer concern that many training efforts, apprenticeship training included, are not adequate to meet workplace needs. *The Committee requests the Government to continue to provide comprehensive information on the effectiveness and impact of employment measures targeting youth, including young Maori and Pasifika.*

Education and training policies. The Committee notes the information provided on the results achieved by education and training programmes implemented under, inter alia, the Tertiary Education Strategy 2014–19, the Secondary-Tertiary Programmes, industry-training-related initiatives and the MPTT. The Government also refers to the Reboot Scheme, which has increased the apprenticeship enrolments and the creation of three ICT Graduate Schools. Business New Zealand is of the view that, in order for the initiatives to be sufficiently effective, they would need to achieve greater connectedness, integration and cooperation. *The Committee requests the Government to continue to provide information, including statistics disaggregated by age and sex, on the impact of education and training measures, including apprenticeship programmes, in terms of obtaining lasting employment for young persons and other persons vulnerable to decent work deficits. The Committee also requests the Government to provide further information on the coordination of education and training policies with prospective employment opportunities, and on the consultations held with the social partners in this regard.*

Workplace productivity and entrepreneurship. The Committee notes that the Productivity Commission is continuing its work in looking at issues related to productivity in the services sector. The BGA encompasses actions and initiatives that support areas needed by businesses to succeed, grow and create jobs. The NZCTU indicates that New Zealand has a very poor productivity record relative to other OECD countries and believes that the Government has been largely unsuccessful in addressing New Zealand's low productivity growth. The Government provides information on several measures taken to create employment through the promotion of small and medium-sized enterprises (SMEs). The first such measure is the Health and Safety at Work Act 2015, which aims to address the potential for disproportionately higher costs in managing the risk to health and safety of workers, which the Government identifies as a potential constraint for SMEs to achieve decent employment. The Government believes that ensuring health and safety of workers and workplaces is important for productivity. Furthermore, the Government indicates that the Employment Relations Act, that came into effect in March 2015, and other initiatives were adopted aiming to boost employment through supporting SMEs. *The Committee requests the Government to continue to provide information on the results obtained in increasing workplace productivity in terms of employment generation. The Government is also requested to provide updated information on the measures taken or envisaged to create employment through the promotion of small and medium-sized enterprises.*

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

Observation 2017

The Committee notes the observations of the All Pakistan Federation of Trade Unions (APFTU) received on 9 December 2016.

Articles 1(1), 2(1) and 25 of the Convention. I. Debt bondage. 1. *Legislative framework.* The Committee previously noted the information in the mission report of the tripartite inter-provincial workshop carried out in May 2013, within the framework of the Special Programme Account (SPA) project, that the adoption of provincial bonded labour abolition legislation, by the end of 2013, was included in the provincial time-bound action plans. The Committee urged the Government to take the necessary measures to ensure the adoption of legislation aimed at eliminating bonded labour.

The Committee notes the Government's statement in its report that, the Federal Bonded Labour System (Abolition) Act 1992 remains applicable in the Islamabad Capital Territory (ICT) and Balochistan Province. The Committee notes with *satisfaction* that, Khyber Pakhtunkhwa (KPK) Province has enacted the KPK Bonded Labour System Abolition Act 2015, and Sindh Province has enacted the Sindh Bonded Labour System (Abolition) Act 2015, both of which contain provisions prohibiting bonded labour, extinguishing remaining debts, and providing for criminal penalties in case of violations. The Committee further notes that the Punjab Prohibition of Child Labour at Brick Kilns Act 2016 also regulates the employment of adults by requiring written contracts (section 3), which shall specify the amount of wages, the amount of advance and the payback schedule for the advance given. Brick kiln owners or occupiers are also required to send a copy of the contract to the inspector in the area. Moreover, such contracts may be terminated by either party given a 30-day prior notice in writing. However, the Committee notes the information of the APFTU that, despite the prohibition of bonded labour by law, this practice persists in brick kilns due to the absence of effective enforcement. *The Committee therefore urges the Government to take the immediate measures to ensure the effective application of the newly enacted provincial legislation related to the abolition of bonded labour in practice, and to provide information in this regard.*

2. *Programmes of action.* The Committee previously noted that the Provinces of Sindh and Punjab had both adopted a Provincial Plan of Action to Combat Bonded Labour. Moreover, the Government indicated that the "Elimination of bonded labour in brick kilns" project was being implemented in Punjab. In addition, an ILO project entitled "Strengthening Law Enforcement Responses and Action against Internal Trafficking and Bonded Labour" began in 2010 in the Provinces of Sindh and Punjab, aimed at engaging brick kiln owners to institute practices towards the eradication of bonded labour, as well as efforts to link brick kiln workers with social safety nets.

The Committee notes the Government's information that provincial governments are implementing various development projects to eradicate bonded labour. In Punjab, under a programme targeting brick kilns for the period of 2012–18 in four districts, 196 non-formal education centres are now operational in which 6,131 persons (3,143 males and 2,988 females) have been enrolled. Moreover, 1,423 brick kiln workers have obtained computerized national identity cards and the birth of 2,590 children have been registered in respective Union Councils. Punjab Province has also initiated an integrated project of elimination of child and bonded labour, which targets the rehabilitation of children working at brick kilns and the economic empowerment of their families. Moreover, the KPK Province has adopted a development scheme providing for the establishment of a child and bonded labour unit. *The Committee takes due note of the measures undertaken by the Government and encourages it to pursue its efforts to combat and eliminate bonded labour, as well as to continue adopting measures aimed at supporting freed bonded labourers. It requests the Government to continue to provide detailed information on the specific measures implemented in the Punjab and other provinces in this regard, as well as information on the concrete results of these initiatives, including the number of bonded labourers and former bonded labourers, benefiting from these measures.*

3. *District vigilance committees.* The Committee previously noted the allegations from several national and international workers' federations that the Bonded Labour System (Abolition) Act (BLSA) had not been properly applied and that the district vigilance committees (DVCs), set up under the BLSA, had not performed their functions of identifying and releasing bonded labourers. However, the Committee noted the Government's statement that the DVCs were in place. Particularly, the DVCs in Punjab were reactivated following the direction of the Supreme Court of Pakistan. The Committee also noted the information contained in the mission report of the tripartite inter-provincial workshop indicating that the action plans developed by the Provinces of Balochistan, KPK and Punjab include reconstituting the DVCs by mid-2014. Moreover, the Committee noted that the time-bound action plans which included several provincial initiatives to strengthen monitoring, including undertaking raids related to bonded labour, the establishment of a bonded labour cell within the labour department, and the establishment of an anti-bonded labour force. The Committee further noted the Government's indication that 370 cases have been registered by the local police related to bonded labour.

The Committee notes the Government's information that DVCs are operational throughout Punjab and 93 meetings of these committees (in 36 districts) were held during the last six months in 2016 under the supervision of the respective District Coordination Officers. The Committee also notes that, the KPK and Sindh Provinces have enacted new laws on bonded labour, under which the DVCs will be re-established in accordance with the rules framed. Balochistan Province also indicates that the DVCs will be functionalized soon, and the Bonded Labour System (Abolition) Act 1992 is currently being implemented by the District Administration. The Committee further notes the Government's indication that it is impossible to monitor bonded labour through the normal inspection procedure. Therefore DVCs are being established under the provincial bonded labour laws. *The Committee therefore requests the Government to take the necessary measures to ensure that the DVCs will soon be re-established in KPK and Sindh Provinces under the new laws and functionalized in Balochistan, and to provide information on any progress made in this regard. It also requests the Government to provide information on the operation of the DVCs, including copies of monitoring or evaluation reports. The Committee once again requests the Government to indicate if any legal action has been taken against persons employing bonded labourers, and to provide information on the number of prosecutions, convictions, and specific penalties applied, as well as copies of relevant court decisions.*

4. *Data-gathering measures to ascertain the current nature and scope of bonded labour.* The Committee previously expressed the firm hope that the Government would carry out a statistical survey on bonded labour in the country. In this regard, the Committee noted the Government's indication that provincial surveys of bonded labour have been included in the Provincial Plan of Action to Combat Bonded Labour of both Sindh and Punjab, and that these Provinces were working in consultation with employers' and workers' organizations to undertake this survey, using a valid methodology.

The Committee notes the Government's information that, the provincial governments have indicated that the issue would be discussed in the upcoming provincial tripartite consultative committee meetings. The Ministry of Overseas Pakistanis and Human Resource Development (Ministry of OP&HRD) also plans to discuss this issue in the upcoming Federal Tripartite Consultative Committee meeting. The Committee also notes that, the international labour standards unit in the Ministry of OP&HRD has worked on questions gauging instances of forced and bonded labour by recommending the inclusion of certain questions on the issue in the Labour Force Survey, including contracts of employment, wages, hours of work, working conditions and the right to leave employment. The Ministry has submitted this request to the Bureau of Statistics. Moreover, the KPK Province has indicated that it plans to carry out a study on bonded labour in brick kilns in the Peshawar and Nowshera districts. *The Committee therefore strongly urges the Government to pursue its efforts to ensure that a survey of bonded labour will be undertaken in each province of the country in the near future, in cooperation with employers' and workers' organizations and other relevant partners. It requests the Government to continue providing information on the progress achieved in this regard, as well as copies of the surveys, once completed.*

II. Trafficking in persons. The Committee previously noted the information from the Ministry of the Interior that under the Prevention and Control of Human Trafficking Ordinance 2002 (PCHTO), there were 12 convictions and 14 acquittals in 2012, and eight convictions and four acquittals in the first half of 2013. In 2012, there were 440 cases pending, and 475 such cases as of June 2013. The Committee also noted the information from the United Nations Office for Drugs and Crimes (UNODC) that Pakistan is a source, transit, and destination country for men and women trafficked for the purposes of forced labour and sexual

exploitation, with trafficking for forced labour being more widespread.

The Committee notes the Government's information in its report that the Government plans to tackle issues of internal trafficking through criminal law amendment. The Committee also notes that, the Criminal Law (Amendment) Act 2015 inserted a new section 369A to the Pakistan Penal Code 1860, penalizing human trafficking with a penalty of imprisonment from five to seven years, or a fine from 500,000 Pakistan rupees (PKR) to PKR700,000. Moreover, the Federal Investigation Agency maintains 27 anti-trafficking law enforcement units at the federal, provincial and local levels that investigate human trafficking and smuggling cases. The Committee further notes that, in 2015, Punjab Province reported 947 investigations, 928 prosecutions, and 22 convictions for trafficking for sexual exploitation, as well as 5,113 investigations, 1,956 prosecutions, and 60 convictions for sexual exploitation. KPK Province reported 27 investigations, 27 prosecutions, and zero convictions for trafficking for sexual exploitation and separately reported 156 investigations, 83 prosecutions, and zero convictions for abduction of women for sexual exploitation. However, Sindh Province reported zero investigations, prosecutions, and convictions for trafficking for sexual exploitation. Concerning trafficking for labour exploitation, Punjab, KPK, Azad Jammu and Kashmir, and Gilgit-Baltistan reported a total of 21 investigations, 15 prosecutions, and one conviction. Sindh Province reported zero investigations, prosecutions and convictions for trafficking for labour exploitation. The Government also reported that investigations were carried out against 158 alleged traffickers, of which 59 were prosecuted and 13 were convicted under the PCHTO in 2015, compared with 70 investigations, 50 prosecutions, and 17 convictions in 2014. The Committee further notes the information provided by the Government as follow-up to the concluding observations of the Committee on the Elimination of Discrimination against Women (CEDAW) of 26 November 2015 that, the review of the draft Act to Prevent and Combat Trafficking in Persons, Especially Women and Children, 2013 is under consideration at the federal level (CEDAW/C/PAK/CO/4/Add.1, paragraph 27). The Committee notes with *concern* the significantly low number of convictions as compared to the overall number of investigations and prosecutions. *The Committee accordingly urges the Government to strengthen its efforts to ensure that, in practice, persons who commit trafficking offences are subject to sufficiently adequate and dissuasive penalties. In this regard, it requests the Government to continue to provide statistics on the number of trafficking cases registered, as well as the number of prosecutions, convictions and the specific penalties imposed pursuant to related legislation. The Committee further requests the Government to provide information on any progress made regarding the adoption of the draft Act to Prevent and Combat Trafficking in Persons, Especially Women and Children.*

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

Observation 2017

The Committee notes the observations of the Pakistan Workers' Federation (PWF), received in 2016, reiterating in detail its previous concerns that there is no effective labour inspection system in the country.

Articles 4 and 5(b) of the Convention. Supervision by a central labour inspection authority and determination of inspection priorities in collaboration with the social partners. The Committee previously noted the Government's indication that the lack of coordination between the labour departments in the provinces remained a significant challenge. In this respect, it noted the envisaged institutionalization of tripartite committees in the provinces to oversee labour inspection activities.

The Committee welcomes the Government's indication, in reply to its previous request, that the provincial labour departments are now working as central authorities and that coordination is currently undertaken through bimonthly meetings of the Federal Tripartite Consultative Committee (FTCC), and that priorities for labour inspection are determined in the quarterly meetings of the Provincial Tripartite Consultative Committees (PTCC). The Committee also welcomes the Government's information that the provincial governments have been provided with material on the subject of labour inspection and explanations on the information to be provided under the Convention. In this context, the Committee notes that one of the recommendations in the 2016 national OSH profile published by the Ministry of Overseas Pakistanis and Human Resources Development and attached to the Government's report concerns the creation of independent labour inspection authorities (separate from the labour departments) at the provincial levels with sufficient human and financial resources. *Noting the detailed minutes of the tripartite meetings of the FTCC and the PTCCs already transmitted with the Government's report under the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), the Committee requests the Government to continue to provide information on the labour inspection issues discussed in the FTCC and the PTCCs, and the impact of these meetings on improved coordination and cooperation in the undertaking of labour inspection, under the supervision and control of a central authority. The Committee also requests the Government to provide information on whether any follow-up has been given to the recommendation in the OSH profile to provide for the creation of independent labour inspection authorities at the provincial levels.*

Articles 10 and 16. Coverage of workplaces by labour inspections. Private auditing firms. Human resources of the labour inspection services. The Committee previously noted that during the discussion in the Conference Committee on the Application of Standards (CAS) in 2014, some speakers expressed concern with regard to the carrying out of third-party inspections by private auditing firms and the inadequate number of labour inspectors in the context of the 2012 factory fire in the Sindh province that resulted in the death of 300 workers. In this respect, the Committee noted in its previous comment the Government's statement that the outsourcing of responsibilities towards those firms had to change and that there were plans to regulate them. The Committee notes the Government's indication in its report that the Pakistan National Accreditation Council (PNAC) is responsible for accrediting private auditing firms, that it has accredited seven firms so far (primarily firms specializing in compliance with OSH, but also other labour issues), and that compliance assessments may for example be carried out through gap analyses against labour standards, as well as by engaging in consultations with NGOs and trade unions, on the situation in certain workplaces.

While the Committee had noted in 2016 an increase in the number of labour inspectors in three provinces, it notes with *concern* from the 2016 OSH profile submitted by the Government, that there continues to be a serious shortage of labour inspectors in relation to the number of workplaces liable to inspection. According to the OSH profile, the number of inspectors (labour inspectors and mine inspectors) appears to be lower in each province than indicated in the Government's 2014 report. In this context, the Committee also notes the observations made by the PWF that the number of labour inspectors and the number of labour inspections are insufficient to achieve sufficient coverage of workplaces by labour inspection. The Committee would like to emphasize that while private auditing may contribute to addressing compliance gaps, such initiatives may only be complementary to, but not replace, public labour inspection. *The Committee urges the Government to pursue its efforts to increase the number of labour inspectors, to provide information on the concrete measures taken in this respect, and to continue to provide information on the number of labour inspectors in each province. The Committee requests the Government to provide information on whether enterprises that have been subject to compliance assessments by private auditing firms continue to be liable to labour inspection in law and practice. It further requests the Government to indicate how the PNAC supervises private auditing firms, how independent compliance assessments by these firms are guaranteed, and where applicable, how the Government promotes cooperation between the labour inspection services and the private auditing firms.*

Article 12(1). Free access of labour inspectors to workplaces. The Committee previously noted with concern the Government's indication that since 2001, under administrative order, a letter is issued by the Chief Inspector of Factories (Director of Labour) to a factory prior to an inspection in the province of Sindh, which contains the date and time of the visit. The Committee notes that the Government indicates that the system of prior notices was introduced to respond to the concern of employers to curb the multiplicity of inspections. The Government further indicates that the PTCC in Sindh has established a subcommittee to make recommendations on bringing the inspection regime in line with the provisions of the Convention and, at the same time, allay the concerns of employers.

In this context, the Committee also notes the observations made by the PWF that labour inspections have practically been discontinued in the province of Sindh and that 2.3 million workers in that province suffer from occupational accidents every year. Having previously noted the Government's indication that labour inspectors do not generally face hindrances while carrying out inspections in the province of Punjab, the Committee also notes from the OSH profile transmitted by the Government, that restrictions in the form of prior notice appear to continue to be a problem in some areas in Punjab. *The Committee once again requests the Government to take the necessary measures, in accordance with Article 12(1)(a) and (b), to remove the restriction in the province of Sindh in the form of the requirement of prior notice concerning inspection visits. It requests the Government to provide information on the concrete measures taken to discontinue this practice. Noting the information in the OSH profile that there appear to continue to exist issues with regard to restrictions of labour inspectors in Punjab, the Committee also requests the Government to take the necessary measures to ensure that labour inspectors in the province of Punjab are empowered to enter any workplace liable to inspection freely and without previous notice at any hour of the day or night. The Committee requests the Government to provide information on the number of inspections conducted without prior notice in each of these two provinces, including any violations detected, sanctions assessed, and corrective measures taken as a result of said inspections.*

Articles 17 and 18. Effective enforcement and sufficiently dissuasive penalties. The Committee notes that the Government refers, in reply to the Committee's request to provide for adequate penalties for labour law violations in the Provinces of Sindh and Balochistan, to the increased amount of penalties in some labour laws in Sindh, including in the Sindh Factories Act, 2015 (in which fines have been increased to a maximum of 75,000 Pakistani rupees (PKR), that is, approximately US$706 and which also provides for penalties of imprisonment with regard to certain violations). The Government also indicates that draft legislation currently before the provincial parliament in Balochistan provides for an increased level of penalties.

The Committee notes that the Government has not provided the requested statistical information on the number of violations detected, the number of violations which resulted in prosecution and the subsequent number and level of fines imposed. In this context, the Committee also notes the observations made by the PWF, according to which statistics published by the Ministry of Overseas Pakistanis and Human Resources Development show that in Sindh, only 12 penalties were imposed in 2014, although there are 8,572 factories registered in that province. The Committee also notes the observations made by the PWF that the enforcement activities of the labour inspectorate are trivial, in that no significant actions are taken concerning attempts to bribe labour inspectors, and the refusal to comply with the legal obligations to pay for medical treatment or provide financial compensation to workers who have suffered occupational accidents. *The Committee requests the Government to provide information on the progress made with the increase of fines and other penalties in the legislation of the Province of Balochistan, and to provide information on the penalties for labour law violations provided for in the Mines Acts of the provinces. The Committee further requests the Government to provide its comments in relation to the observations made by the PWF including information on measures taken or envisaged to promote transparency in law enforcement, and once again requests the Government to provide information in relation to each of the provinces on the number of violations detected, the corresponding number of violations which resulted in prosecution, and the number and level of fines imposed.*

Article 18. Penalties for obstructing labour inspectors in the performance of their duties. The Committee previously noted that during the CAS discussion in 2014, several speakers indicated that penalties for the obstruction of labour inspectors in their duties were insufficient. In this respect, it noted the Government's indication that two provinces (Punjab and Khyber Pakhtunkhwa) had revised their respective Factories Acts to establish a fine of PKR20,000 (approximately US$195) for obstructing the work of an inspector, and that draft Factories Acts had been prepared in this respect in the provinces of Sindh and Balochistan. The Committee also noted that under the Mines Act, 1923, a person who obstructs an inspection in a mine may be liable for imprisonment for up to three months and a fine of up to PKR1,000 (approximately US$10).

The Committee takes due note of the Government's indication that the penalties for obstruction of labour inspectors in their duties in the Factories Act of Sindh have been raised (to up to PKR10,000 (approximately US$95)). The Government adds that it is proposed to also increase the penalties for obstruction in the Factories Act of Balochistan (to penalties amounting up to PKR60,000 (approximately US$570)) or imprisonment of up to one month. The Committee notes that the Government has not provided the requested information on the application of the legislative provisions relating to the obstruction of labour inspectors in practice and the measures taken in this respect. In this context, the Committee also notes the observations made by the PWF that no significant actions are taken concerning the exerting of influence to restrict or ban inspections. *Noting the legislative measures already taken, the Committee urges the Government to continue to take measures to ensure that legislation is adopted that provides for sufficiently dissuasive sanctions for the obstruction of labour inspectors in their duties with respect to premises covered by the Factories Act in Balochistan. The Committee requests the Government to provide information on the applicable penalties provided for in the Mines Acts in the provinces. The Committee also once again requests the Government to provide information on cases relating to the obstruction of labour inspectors in their duties in practice, disaggregated by province, including not only the number of prosecutions undertaken, but also their outcome and the specific penalties applied (including the amount of fines imposed).*

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.]

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

Observation 2017

The Committee notes the observations from the International Trade Union Confederation (ITUC) received on 1 September 2017, which refer to issues relating to the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and alleged anti-union dismissals, harassment and acts of interference, as well as the observations from the Pakistan Workers Federation (PWF) received on 25 October 2017 referring mainly to legislative issues under examination by the Committee and alleged acts of employer interference through systematic undue promotions. Furthermore, the Committee *regrets* that the Government has failed to provide its comments on the 2015 ITUC allegations concerning acts of anti-union discrimination and to fully respond to the 2012 ITUC allegations of anti-union dismissals and acts of interference in trade union internal affairs by employers (intimidation and blacklisting of trade unions and their members). *Noting with concern the persistence and seriousness of the numerous allegations of acts of anti-union discrimination and interference, the Committee urges the Government to provide its comments on the abovementioned observations and to ensure that investigations are conducted by the public authorities into the relevant 2012, 2015 and 2017 ITUC and PWF allegations.*

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.

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

ratified Conventions lie with the federal Government.

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

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

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

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

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

The Committee had previously noted that: (i) shop stewards are either nominated (by a collective bargaining agent) or elected (in the absence of a collective bargaining agent) in every undertaking employing over 50 workers (25 workers in the case of the IRA) to act as a link between the workers and the employer, to assist in the improvement of arrangements for the physical working conditions and to help workers in the settlement of their problems (sections 23 and 24 of the IRA, 33 of the BIRA, 29 of the KPIRA and 28 of the PIRA); (ii) works councils (bipartite bodies), which are established in every undertaking employing over 50 workers, have multiple functions (sections 25 and 26 of the IRA, 39 and 40 of the BIRA, 35 and 36 of the KPIRA, and 29 of the PIRA), and its members are either nominated by a collective bargaining agent or, in the absence of a collective bargaining agent, elected (PIRA) or "chosen in the prescribed manner from amongst the workmen engaged in the establishment" (IRA, BIRA and KPIRA); (iii) management shall not take any decision relating to working conditions without the advice of workers' representatives who can be nominated (by a collective bargaining agent) or be elected (in the absence of a collective bargaining agent) (section 27 of the IRA, 34 of the BIRA, 30 of the KPIRA and 29 of the PIRA); and (iv) joint management boards shall look after the fixation of job and piece-rate, planned regrouping or transfer of workers, laying down the principles of remuneration and introduction of remuneration methods, etc. (these functions are granted to works councils under the PIRA) (sections 28 of the IRA, 35 of the BIRA, and 31 of the KPIRA). The Committee had requested the Government to

ensure that it, as well as the Governments of the provinces, take the necessary measures to amend the legislation so as to ensure that the position of trade unions is not undermined by the existence of other workers' representatives, particularly when there is no collective bargaining agent. The Committee notes that sections 28, 29 and 30 of the SIRA contain the same provisions as the PIRA. It also notes the Government's indication that: (i) the position of a single union having less than 33 per cent of the workforce as its membership is not jeopardized through the institutions of shop steward, workers representatives and joint management boards; (ii) workers in these institutions are elected through secret ballot and a union can campaign or canvass the workers to vote for its members for having the highest representation in these institutions; and (iii) moreover, these institutions work even in the presence of a collective bargaining agent. The Committee considers that, where there is no collective bargaining agent, the fact that the trade union can seek to persuade the workers during the elections to vote for its members to be represented in the above entities does not eliminate the risk of the union being undermined by workers' representatives; moreover, in the case of the works council, its representatives are not elected but "chosen in the prescribed manner from amongst the workmen engaged in the establishment", which aggravates the risk of the union being undermined by workers' representatives. *The Committee requests the Government to ensure that it, as well as the Governments of the provinces, take appropriate measures to guarantee that, in the absence of a collective bargaining agent, workers' representatives in the above entities are not arbitrarily appointed, and that the existence of elected workers' representatives is not used to undermine the position of the trade unions concerned or their representatives.*

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

Concerning section 6 of the IRA, the Committee refers to its comments made under Convention No. 87 in its 2016 direct request.

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

The Committee hopes that the Government will make every effort to take the necessary action in the near future.
[The Government is asked to reply in full to the present comments in 2018.]

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

Observation 2017

The Committee notes the observations of the Pakistan Workers' Federation (PWF) received on 19 October 2017, referring to the need to revisit existing labour laws, and to ensure follow-up at the national and provisional levels. *The Committee observes that the PWF refers to points previously raised by the Committee and requests the Government to provide its comments in this respect.*

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 2015.

The Committee notes the observations by the Pakistan Workers Confederation (PWC), received on 11 November 2013.

Legislative developments. The Committee notes the 18th Constitutional Amendment, which devolved the power to enact laws related to labour from the Federal Parliament to the provincial governments. It further notes that existing federal laws remain in force until provincial laws are enacted and that a tripartite consultation committee has been established at the federal level to facilitate the implementation of the Convention by provincial governments. *The Committee requests the Government to provide information on any development in this respect, in particular on the measures adopted by the tripartite consultation committee with regard to the adoption by the provinces of legislation for the implementation of the Convention.*

Articles 1 and 2(2)(a) of the Convention. Legislation. Definition of remuneration. The Committee notes the Khyber Pakhtunkhwa Government's Payment of Wages Act (2013), section 2(xiv), which defines wages as including all basic pay and statutory and non-statutory allowances, but excludes any contribution paid by the employer to any pension fund or provident fund, any travelling allowance or the value of travelling concession, any sum paid to defray special expenses, any annual bonus or any sums payable on discharge. The Committee recalls that *Article 1(a)* of the Convention provides a broad definition of remuneration which includes not only the ordinary, basic or minimum wage or salary, but also "any additional emoluments whatsoever payable directly or indirectly by the employer to the worker and arising out of the worker's employment". The definition also captures payments or benefits whether received regularly or only occasionally. It covers among others cost-of-living allowances, dependency allowances, travel allowances, housing and residential allowances, vacation allowances as well as allowances paid under social security schemes financed by the undertaking or industry concerned (see General Survey on the fundamental Conventions, 2012, paragraphs 686, 687 and 690). *In order to fully apply the principle of equal remuneration for men and women for work of equal value, the Committee requests the Government to ensure that the Government of Khyber Pakhtunkhwa takes into account all the elements included in the definition of "wage" in section 2(xiv) of the Payment of Wages Act, as well as any other additional emoluments whatsoever.*

Equal remuneration for work of equal value. The Committee notes that section 26 of the Khyber Pakhtunkhwa Government's Payment of Wages Act (2013) provides that "there shall be no discrimination on the basis of gender, religion, sect, colour, caste, creed, ethnic background in the wages and other benefits for work of equal value." *The Committee requests the Government to provide information on the implementation of the Khyber Pakhtunkhwa Government's Payment of Wages Act (2013) and its impact on the elimination of the gender wage gap. The Committee further requests the Government to provide information on measures taken to ensure that any new labour laws enacted by the other provinces give full expression to the principle of equal remuneration for men and women for work of equal value, allowing comparisons of jobs which are of an entirely different nature, but which are nevertheless of equal value, and that this principle applies both in the public and the private sectors, as well as to all aspects of remuneration, as broadly defined in Article 1(a) of the Convention.*

Article 2(2)(b). Minimum wages. The Committee recalls that in its previous observation it had requested the Government to ensure that the setting of minimum wages was free from gender bias. The Committee notes in this respect that section 10 of the Minimum Wages Notification (2012) issued by the Khyber Pakhtunkhwa Government's Minimum Wages Board stipulates that "An adult female worker shall get the same minimum wages as a male worker receives for

work of equal value." The Committee notes that section 18 of the Khyber Pakhtunkhwa Government's Minimum Wages Act (2013), which enumerates the prohibited grounds of discrimination for the purposes of the Act, does not include sex. The Committee recalls that there is a tendency to set lower wage rates for sectors predominantly employing women and, due to such occupational segregation, particular attention is needed in setting sectorial minimum wages to ensure that the rates fixed are free from gender bias. *The Committee requests the Government to indicate how these two provisions are articulated in order to ensure that minimum wage setting in the province of Khyber Pakhtunkwa is free from gender bias. The Committee further requests the Government to provide information on measures taken to ensure that the setting of minimum wages by other provinces is free from gender bias.*

Articles 2 and 3. Objective job evaluation. The Committee notes that according to the PWC, most employers do not utilize objective job appraisal schemes. The Committee notes that in its report, the Government refers to the work of the Provincial Women Development Departments, which includes awareness campaigns as well as workshops leading to the preparation of gender responsive policies. It notes that the Provincial Women Development Departments have also established task forces to monitor organizations to ensure the payment of equal remuneration. *The Committee encourages the Government to take measures to ensure that objective job appraisals on the basis of work performed are integrated into the new provincial labour legislations and to provide information on any developments in this regard, including measures taken by the Provincial Women Development Departments in developing and implementing objective job appraisal mechanisms for use in both the public and private sectors.*

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. Penalties involving compulsory labour as a punishment for expressing political views. Political parties. For many years, the Committee has been referring to the Political Parties Act, 1962 (sections 2 and 7), which gave the authorities wide discretionary powers to order the dissolution of associations, subject to penalties of imprisonment which may involve compulsory labour. The Committee also noted that the proposal to amend certain laws, including the Political Parties Act 1962, were under consideration. However, the Committee noted the absence of information in the Government's report in this regard. The Committee notes with *satisfaction* that the Political Parties Act has been replaced by the Political Parties Order 2002, which does not contain any provisions regarding sanctions on individuals.

Article 1(a), (c), (d) and (e). Penalties involving compulsory labour as a punishment for expressing political views, as a means of labour discipline, as a punishment for having participated in strikes, or as a means of religious discrimination. The Committee previously referred to sections 10–13 of the Security of Pakistan Act 1952, sections 5, 26, 28 and 30 of the Press, Newspaper, News Agencies and Books Registration Ordinance 2002, section 32(2) and (3) of the Electronic Media Regulatory Authority Ordinance 2002 and sections 8 and 9 of the Anti-Terrorism Act 1997, which provide for restrictions on the expression of political views and penalties of imprisonment involving compulsory labour. The Committee also referred to sections 298B(1) and (2) and 298C of the Penal Code, inserted by the Anti-Islamic Activities of Quadiani Group, Lahori Group and Ahmadis (Prohibition and Punishment) Ordinance, No. XX of 1984, under which any person of these groups who uses Islamic epithets, nomenclature and titles is punishable with penalties of imprisonment (which may involve compulsory labour) for a term of up to three years. The Committee further noted that certain provisions of the Pakistan Essential Services (Maintenance) Act, 1952, and corresponding provincial Acts, under which employees are prohibited from leaving their employment without the consent of the employer, as well as from striking, subject to penalties of imprisonment that involves compulsory labour.

The Committee notes with *interest* the Government's statement in its report that, the Ministry of Overseas Pakistanis and Human Resources Development (Ministry of OP&HRD) has submitted a proposal to the Ministry of Law and Justice to consider the following options to bring the above referred laws in compliance with the Convention at different levels:

·-at the level of civil and social rights and liberties when, in particular, political activities and the expression of political views, the manifestation of ideological opposition, breaches of labour discipline and the participation in strikes are beyond the purview of criminal punishment;

·-at the level of the penalties that may be imposed, when these are limited to fines or other sanctions that do not involve an obligation to work;

·-at the level of the prison system, when the law confers a special status on prisoners convicted of certain political offences, under which they are free from prison labour imposed on common offenders, although they may work at their own request.

The Committee therefore requests the Government to continue its efforts to bring the abovementioned laws into conformity with the Convention in the near future, and requests the Government to provide information on any progress made in this regard.

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

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

Observation 2017

The Committee notes the observations of the Pakistan Workers' Federation (PWF) received on 19 October 2017, referring to the acts of discrimination based on political opinion against dissidents of the ruling party and cases of discrimination in education, employment and occupation. *The Committee observes that the PWF refers to points previously raised by the Committee and requests the Government to provide its comments in this respect.*

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 2015.

The Committee notes the observations by the Pakistan Workers Confederation (PWC), received on 10 November, 2013, concerning discrimination against women, who concentrate mainly in the informal sector and the lack of enforcement of labour legislation.

Article 1 of the Convention. Legislation. Prohibition of discrimination. The Committee notes the 18th constitutional amendment, which devolved the power to enact laws related to labour from the federal Parliament to the provincial governments. It further notes that existing federal laws remain in force until provincial laws are enacted and that a tripartite consultation committee has been established at the federal level to facilitate the implementation of the Convention by provincial governments and that the drafting of the Employment and Service Conditions Act has been concluded at the federal level and sent for consideration to the provincial governments. The Committee notes the series of legislation adopted by the Khyber Pakhtunkhwa Provincial Government in 2013 that prohibit discrimination on the basis of different grounds. In this regard, the Committee notes with interest that the ground of caste has been included in the list of prohibited grounds of discrimination by this province. The Committee notes, however, that political opinion and national extraction are not included as prohibited grounds of discrimination. It is not clear either if the legislation applies to all aspects of employment, namely vocational training, access to employment and to particular occupations, and terms and conditions of employment as provided for in *Article 1(3)* of the Convention. The Committee highlights that clear and comprehensive definitions of what constitutes discrimination in employment and occupation are instrumental in identifying and addressing the many

manifestations in which it may occur (see General Survey on the fundamental Conventions, 2012, paragraph 743). *The Committee requests the Government to take the necessary measures to ensure, including through the tripartite consultation committee established at the federal level, that all new labour laws adopted by the provinces include provisions expressly defining and prohibiting direct and indirect discrimination, in all aspects of employment and occupation, for all workers, on all the grounds set out in Article 1(1)(a) of the Convention including political opinion and national extraction. The Committee also requests information on any development in this regard.*

Sexual harassment. The Committee notes the Government's indication that in the framework of the implementation of the Harassment at the Workplace Act (2010), ombudspersons have been appointed at both federal and provincial levels and that Women Development Departments are responsible for awareness-raising programmes. The Committee further notes the enactment by the Government of Punjab of the Punjab Protection Against Harassment of Women at the Workplace Act, 2012. *The Committee requests the Government to provide information on the implementation of the Protection Against Harassment of Women at the Workplace Act (2010) and the Punjab Protection Against Harassment of Women at the Workplace Act, 2012 and any other relevant legislation adopted by the other provinces so as to protect men and women equally against sexual harassment. Finally, the Committee requests information on the number and nature of complaints lodged and the remedies provided and sanctions imposed, and asks the Government to provide more information regarding the content of public awareness campaigns on sexual harassment conducted by provincial Women Development Departments.*

Article 2. Equality of opportunity and treatment between men and women. The Committee notes that according to the Labour Force Survey 2012–13, female participation in the Pakistan labour market remains low at 21.5 per cent of the total workforce, and that only 28.3 per cent of these women work in the formal sector. The Committee further notes that in its concluding observations, the Committee on the Elimination of Discrimination against Women highlights the low participation of women in the formal sector, depriving women of access to social security and benefits (CEDAW/C/PAK/CO/4, of 1 March 2013, paragraph 29). In this regard, the Committee notes that the Provincial Government of Punjab has adopted the Punjab Fair Representation of Women Act of 2014, which includes measures such as quotas, to give fair and proportionate representation to women in workers' bodies and public entities. The Punjab Women Empowerment Package of 2012 provides for measures such as a 10 per cent quota for public service employment, education in science and technology, and establishment of day care centres and transport facilities for female employees. Besides, the National Vocational and Technical Training Commission provides training to both men and women. The Committee also notes that the Government indicates that the Domestic Workers (Employment and Rights) Bill (2013) is under consideration by Parliament, and that the Sindh Industrial Relations Act (2012) has included agriculture and fisheries sectors into the formal economy in that province. *The Committee requests the Government to provide more information, including statistics, on the impact of these measures in the participation of women in the labour market and their transfer from the informal to the formal economy. The Committee further requests the Government to continue to take specific measures to enhance the participation of women in the labour market. It also requests the Government to provide information on any development in the adoption of the Domestic Workers (Employment and Rights) Bill (2013).*

Equality of opportunity and treatment in employment and occupation of minorities. The Committee recalls its previous requests to provide information on the progress made in implementing the quota for employment of minorities under Office Memorandum No. 4/15/94-R-2, dated 26 May 2009. The Committee notes the Government's indication that the Punjab Province has implemented a 5 per cent quota for minority members in the public sector. The Government further indicates that similar provisions are being implemented in other provinces. *The Committee requests the Government to provide information on the concrete impact of the quotas established at federal and provincial level on the employment of non-Muslim minorities. It requests that this information include statistical information on the number of minority workers employed, disaggregated by sex, sector and minority group. The Committee further requests the Government to provide information on measures taken by the federal tripartite committee to facilitate this process. Finally, the Committee requests the Government to provide information detailing who is considered to belong to the Scheduled Castes, including whether they are non-Muslim.*

Discrimination based on social origin. The Committee recalls its previous comments regarding the persistent de facto segregation and discrimination against Dalits, and the need to take effective measures toward the elimination of such discrimination in employment and occupation. In this regard, the Committee noted previously that some legal provisions adopted by the Khyber Pakhtunkhwa Provincial Government in 2013 prohibit discrimination based on caste. *The Committee requests the Government to provide information on the impact of the prohibition of discrimination, including statistics disaggregated by caste and sex on the employment of Dalits in the Khyber Pakhtunkhwa Province. The Committee also requests the Government to provide information on other measures adopted by the federal Government and the provinces to prohibit discrimination against Dalits and promote their inclusion in the labour market, including through the federal tripartite committee.*

Discrimination based on religion. The Committee recalls its comments expressing concern regarding section 298C of the Penal Code ("blasphemy laws") that singles out members of the Ahmadi minority, as well as the practice of requiring Muslims applying for a Pakistani passport to sign a declaration to the effect that the founder of the Ahmadi movement is an impostor, which has the effect of denying the Ahmadi minority from obtaining passports identifying them as Muslims. The Committee notes in the Government's report the general statement that laws in Pakistan do not discriminate against religious beliefs. *The Committee urges the Government to take immediate steps to amend its discriminatory legal provisions and administrative measures, and to actively promote respect and tolerance for religious minorities, including the Ahmadi, and to provide information on any progress made in this regard. The Committee once again requests the Government to provide information on the access to employment situation of religious minorities, including those defined in section 260(3)(b) of the Constitution.*

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

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

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

Observation 2017

The Committee notes the observations of the Pakistan Workers Federation (PWF) received on 19 October 2017. *The Committee requests the Government to reply to these comments.*

Article 2(1) of the Convention. Minimum age for admission to employment or work. The Committee previously noted the Government's statement that, following the 18th Constitutional Amendment, the power to legislate on labour matters has been transferred to the provinces. The Committee also noted that the four provinces had, in coordination with the Federal Government, drafted a Prohibition of Employment of Children Act, which prohibits the employment of children below the age of 14 years, and that these drafts would soon be introduced to the provincial legislative assemblies. The Committee urged the Government to ensure that the Prohibition of Employment of Children Act is adopted in the four provinces.

The Committee notes with *interest* the Government's information in its report that, the Khyber Pakhtunkhwa (KPK) Prohibition of Employment of Children Act was adopted in 2015 (KPK Act 2015), specifying the minimum age for admission to work as 14 years, while the Punjab Restriction on Employment of Children Ordinance was adopted in 2016 (Punjab Ordinance 2016), specifying the minimum age as 15 years. The Committee further notes that the Islamabad Capital Territory (ICT), as well as Balochistan and Sindh provinces have also drafted legislation containing similar provisions. *Recalling that, at the time of ratification in 2006, Pakistan specified 14 years as the applicable minimum age, the Committee requests that the Government take the necessary measures to*

ensure that the draft Prohibition of Employment of Children Acts are adopted in the Islamabad Capital Territory, as well as Balochistan and Sindh provinces in the near future. It also requests that the Government provide a copy of the relevant legislation, once adopted.

Article 3(1) and (2). Determination of types of hazardous work. The Committee previously noted that, under the Employment of Children Act 1991, there was no specific age for admission to hazardous work. The Committee also noted the information from ILO–IPEC of October 2012 that, as part of the Combating Abusive Child Labour II Project, preparation of new provincial lists of hazardous child labour would begin. In this regard, the Committee noted the information from the mission report of the tripartite interprovincial workshop, carried out in May 2013 within the ILO technical assistance programme (the Special Programme Account (SPA) project) that the action plans of some of the provinces included undertaking, in 2013, tripartite consultations with a view to revising the hazardous work list.

The Committee notes with *satisfaction* that, the KPK Act 2015 and the Punjab Ordinance 2016 provide for two lists of types of hazardous work prohibited to young persons under 18 years of age, including occupations related to transport by railway, work inside underground mines and aboveground quarries, work with power driven cutting machines, work exposed to dust or poisonous materials, work at oil and gas fields, and so on. These lists were determined in consultation with the representative workers' and employers' organizations and discussed at the level of Provincial Tripartite Consultative Committee. The Committee further notes that, the draft laws from ICT, Balochistan and Sindh also prohibit hazardous work for children below 18 years of age. *The Committee therefore requests that the Government take the necessary measures to ensure that the draft laws prohibiting the employment of persons under 18 years of age in hazardous types of work in ICT, Balochistan and Sindh provinces are adopted in the near future. It also requests that the Government take the necessary measures, after consultation with the organizations of employers and workers concerned, to determine the types of hazardous employment or work prohibited to young persons under 18 years of age in ICT, Balochistan and Sindh, in conformity with Article 3(2) of the Convention.*

Article 9(1). Penalties and labour inspectorate. The Committee previously noted the International Trade Union Confederation's (ITUC) indication that persons found guilty of violating child labour legislation were rarely prosecuted and that when prosecution did occur, the fines imposed were usually insignificant. The Committee also noted that the enforcement of child labour legislation was weak due to the lack of inspectors assigned to child labour, lack of training and resources, and corruption, and that the penalties imposed were often too minor to act as a deterrent. The Committee further noted that the provincial labour departments each have training centres for inspectors, and provide training on child labour. Moreover, according to the SPA mission report, the tripartite participants of the workshop indicated that they experienced difficulties in enforcing the legislative provisions relating to child labour, due to, among others, a lack of capacity among labour inspectors, and that there was a need for the more effective application of penalties for child labour related violations.

The Committee notes the Government's information that, according to new laws in KPK and Punjab provinces on the prohibition of employment of children, the maximum fines have been increased from Pakistani rupee (PKR) 20,000 to PKR50,000 (approximately US$190 to $475). Moreover, fines provided in the Punjab Prohibition of Child Labour at Brick Kilns Act 2016 range from PKR50,000 to PKR500,000 (approximately $475 to $4,750). The Committee further notes the Government's information that the Federal Ministry of Overseas Pakistanis and Human Resource Development (OP&HRD) has worked on a framework document for the revitalization and restructuring of the labour inspection system. Reforms recommended under this framework document are being followed under the Programme of Strengthening Labour Inspection System for Promoting Labour Standards and Ensuring Workplace Compliance in Pakistan, supported by the ILO country office. The Committee also notes that, in Punjab province, provisions related to the labour inspection in the Punjab Ordinance 2016 replaced those in the Employment of Children Act 1991. The Committee further notes the Government's information regarding Punjab province that, in 2014, 133,973 inspections were conducted, 790 children were detected in child labour, and 536 convictions were handed out, out of 790 prosecutions, involving PKR218,550 fines (approximately $2,076); while in 2015, 153,418 inspections were conducted, 1,446 children were detected in child labour, and 448 convictions were handed out, out of 1,446 prosecutions, involving PKR505,600 fines (approximately $4,805). Moreover, the Committee notes that, in its concluding observations of 11 July 2016, the Committee on the Rights of the Child (CRC) remains concerned about the inadequate number of sufficiently trained inspectors, their vulnerability to corruption and a lack of resources to inspect workplaces (CRC/C/PAK/05, paragraph 71). The Committee notes that the fines assessed do not appear to be sufficiently effective and dissuasive. *The Committee therefore requests that the Government continue its efforts to strengthen the capacity of the labour inspectorate, and to continue providing information on the number and nature of violations relating to the employment of children detected by the labour inspectorate. The Committee also requests that the Government continue to strengthen its measures to ensure that persons who violate the abovementioned laws are prosecuted and that sufficiently effective and dissuasive penalties are imposed. The Committee requests the Government to provide information on the implementation of these laws in practice, including the number and nature of violations detected and the penalties imposed in this regard.*

Application of the Convention in practice. The Committee previously noted that, the second National Child Labour Survey was planned under the Combating Abusive Child Labour II project, in consultation with the Federal Bureau of Statistics. However, the Committee noted the information, from ILO–IPEC of September 2012, that the survey was subsequently cancelled.

The Committee notes the Government's indication that, with the assistance of UNICEF, child labour surveys are being organized in the provinces. The Punjab Government has started its provincial level survey in collaboration with the Board of Statistics, which will be completed by May 2017. Sindh and KPK provinces also included relevant schemes in their respective annual development programs for conducting child labour surveys during the current fiscal year (2016–17). Balochistan is planning to hold a child labour survey in the coming years. Moreover, the International Labour Standards Unit in the Ministry of OP&HRD created the first detailed national profile on child labour and children in employment using the ILO Global Estimation Methodology on Child Labour, and published the report "Understanding Children's Work in Pakistan: An Insight into Child Labour Data (2010–15) and Legal Framework" with the support of the ILO. According to the report, the number of children of 10–17 years of age engaged in child labour has decreased from 4.04 million in 2010–11 to 3.70 million in 2014–15, of which 2.067 million (55 per cent) are in the 10–14 years range. While taking due note of the decrease in the number of children engaged in child labour, the Committee must express its *concern* at the high number of children still working under the minimum age. *The Committee therefore urges the Government to strengthen its efforts to prevent and eliminate child labour, including through continued cooperation with the ILO, and to provide information on the results achieved. The Committee also requests the Government to provide the results of the child labour surveys at the provincial levels once available.*

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

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

Observation 2017

The Committee notes the observations of the Pakistan Workers Federation (PWF) received on 19 October 2017. *The Committee requests the Government to provide its reply to these observations.*

Article 3(a) of the Convention. Worst forms of child labour. Compulsory recruitment of children for use in armed conflict. The Committee previously noted that terrorist activity had been minimized following military operations in the affected regions of the country, and that the recruitment of children for terrorist activities had been reduced. The Government also indicated that an awareness-raising campaign was carried out by law enforcement agencies in cooperation with religious leaders on the offence of recruiting children for armed conflicts, with positive results. The Committee also noted from the information contained in the

report of the UN Secretary-General on children and armed conflict that, in 2011, 11 incidents were reported of children being used by armed groups to carry out suicide attacks, involving ten boys, some as young as 13, and one 9-year-old girl. This report also indicated that a rehabilitation and reintegration programme in Malakland for children taken into custody by the Pakistan security forces due to alleged association with armed groups, received 29 new cases in 2011.

The Committee notes the Government's information that in its report it is making utmost efforts to prevent the use of children by terrorist and extremist groups. Punitive action is being taken against those who use children for terrorist activities. The Government also indicates, in its written replies to the Committee on the Rights of the Child (CRC) of 11 April 2016, that Pakistan's armed forces do not deploy persons under the age of 18, and that terrorists cannot legally recruit any person including children because formation of private military organisations is prohibited under article 256 of the Constitution and the Private Military Organisations (Abolition and Prohibition) Act of 1973 (CRC/C/PAK/Q/5/Add.1, paragraph 65). However, the Committee notes that the CRC expressed its grave concern in its concluding observations of 11 July 2016 that children continue to be targeted for recruitment and training by armed groups for military activities, which include suicide bombing and detonating landmines, and are transferred to the front lines of conflict areas. The CRC states that insufficient measures have been taken by the Government to prevent such recruitment (CRC/C/PAK/CO/5, paragraph 69). The Committee must express its *deep concern* at the situation of children affected by the armed groups in Pakistan. *The Committee therefore urges the Government to intensify its efforts to put an end, in practice, to the forced or compulsory recruitment of children for use by armed groups, and proceed with the full and immediate demobilization of all these children. It urges the Government to take the necessary measures to ensure that thorough investigations and robust prosecutions of offenders are carried out and that sufficiently effective and dissuasive penalties are imposed.*

Articles 3(a) and 7(2)(b). Sale and trafficking of children and direct assistance to victims. The Committee previously noted that pursuant to the Prevention and Control of Human Trafficking Ordinance of 2002 (PCHTO), human trafficking for the purpose of sexual exploitation, slavery or forced labour is prohibited. The Committee noted the Government's statement that the Federal Investigating Agency (FIA) in Pakistan is responsible for the implementation of the PCHTO. The Committee also took note of the Anti-Human Trafficking report provided with the Government's report, which indicated that until 31 October 2009, 235 child victims of trafficking had been identified (95 boys and 140 girls). This report indicated that 21,735 cases against traffickers were registered, which resulted in 3,371 convictions, as well as 147 disciplinary cases against law enforcement officers for complicity.

The Committee notes the Government's information that the Criminal Law (Second Amendment) Act 2016 has been adopted, which adds section 369A to the Penal Code providing for imprisonment of five to seven years, or a fine from 500,000 Pakistani Rupee (PKR) to PKR700,000, or both, for the trafficking of human beings. The Committee notes, from the Government's written replies to the list of issues in relation to the fifth periodic report to the CRC of 11 April 2016, that during the reporting period (from 2009 onwards), 1,679 persons allegedly involved in human trafficking cases were arrested by the FIA (CRC/C/PAK/Q/5/Add.1, paragraph 62). However, the Committee notes that the CRC expressed its concern, in its concluding observations on the fifth periodic report of 11 July 2016, that Pakistan remains a significant source, destination and transit country for children trafficked for purposes of commercial sexual exploitation and forced or bonded labour (CRC/C/PAK/CO/5, paragraph 75). The Committee also notes from the Global Report on Trafficking in Persons 2016 of UNODC that, from January to September 2015, 287 child victims of internal trafficking were identified; while in 2013 and 2014, 402 and 571 child victims were identified respectively. However, no child victims were identified in cross-border trafficking offences from January 2012 to September 2015. *The Committee therefore urges the Government to strengthen its efforts to combat and eliminate trafficking in children, and to provide information on the measures taken in this regard, particularly the number of persons convicted and sentenced for cases involving victims under the age of 18. The Committee also urges the Government to take the necessary measures to strengthen the procedures for identifying child victims of trafficking and to ensure that these children are referred to the appropriate services for the purposes of rehabilitation and social integration. It further requests the Government to provide information on the concrete measures taken in this regard and the results achieved, including the number of children reached through the measures taken.*

Articles 3(d) and 4(1). Hazardous work. With regard to the adoption of the list of hazardous work, the Committee refers to its detailed comments under the Minimum Age Convention, 1973 (No. 138).

Article 7(2)(a) and (e). Effective and time-bound measures. Preventing the engagement of children in the worst forms of child labour. Access to free basic education and special situation of girls. The Committee previously noted that, under the Education Sector Reform Programme, the provinces were taking measures, including to increase the availability of schools in rural areas, to provide free text books, recruit teachers and focus on female education. However, the Committee also noted the information in the report prepared by the Office of the High Commissioner for Human Rights for the Universal Periodic Review of 13 August 2012, that as many as 7.3 million primary school-age children (57 per cent of which were girls) were out of school (A/HRC/WG.6/14/PAK/2, paragraph 57). It also noted the information contained in United Nations Educational, Scientific and Cultural Organization (UNESCO) 2012 "Global Monitoring Report – Education for All" that, while Pakistan had the second largest number of out-of-school children in the world, it continued to reduce education spending.

The Committee notes the absence of information on this topic in the Government's report. However, the Committee notes that the CRC, in its concluding observations of 11 July 2016 (CRC/C/PAK/CO/5, paragraph 61), expressed its concern at the absence of a compulsory education law in Khyber Pakhtunkhwa (KPK) province and the Gilgit-Baltistan autonomous administrative territory, and the poor enforcement of education laws in provinces where they do exist. Moreover, a large number of children (47.3 per cent of all children aged 5 to 16 years) were not enrolled in formal education, of which the majority have never attended school. In addition, the dropout rate for girls is reportedly as high as 50 per cent in Balochistan and KPK and 77 per cent in the Federal Administered Tribal Areas. The Committee must express its *deep concern* at the low enrolment rates in formal education and the high drop-out rates among girls. *Considering that free basic education is one of the most effective means of preventing the engagement of children in the worst forms of child labour, the Committee urges the Government to redouble its efforts to improve access to free basic education for all children, taking into account the special situation of girls. The Committee requests the Government to provide information on the concrete measures taken in this regard, and to provide statistical information on the results achieved, particularly with regard to increasing school enrolment rates and reducing school drop-out rates and the number of out-of-school children. To the extent possible, this information should be disaggregated by age and gender.*

Application of the Convention in practice. Following its previous comments, the Committee notes the Government's statement that ILO–IPEC undertook consultations with the Federal Bureau of Statistics with a view to carrying out a National Survey on Child Labour. However, the Committee notes the information from ILO–IPEC of September 2012 according to which agreement on a methodology for the survey was not possible, and that the survey was therefore cancelled.

The Committee notes the Government's indication that, with the assistance of UNICEF, child labour surveys are being organized in provinces. The Committee also notes that, the International Labour Standards Unit in the Ministry of Overseas Pakistanis and Human Resources Development and created the first detailed national profile on child labour and children in employment, based on the available information from the Labour Force Survey, published from 2010 onwards, using the ILO Global Estimation Methodology on Child Labour. According to this national profile, 3.7 million children are engaged in child labour, of which 2.067 million (55 per cent) are in the 10–14 year age group, while the remaining 1.641 million (45 per cent) are in the 15–17 year age group and engaged in hazardous work. Among the children aged 15–17 years engaged in hazardous work, 89 per cent (1.47 million) are boys. The Committee expresses its *deep concern* at the high number of children engaged in hazardous work in Pakistan. *The Committee therefore urges the Government to intensify its efforts to eliminate the worst forms of child labour, particularly hazardous types of work, and requests it to continue providing information on any progress made in this respect and on the results achieved. The Committee also requests the Government to continue to provide information regarding the child labour surveys organized in the provinces, as well as any additional available information on the nature, extent and trends of the worst forms of child labour, and the number of children protected by measures giving effect to the Convention. To the extent possible, all information provided*

should be disaggregated by age and gender, and nature of the work performed.

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

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

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.

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

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

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

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

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

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

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

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

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

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

The Committee once again notes the Government's information that this issue will be addressed within the review of the Employment Act. *The Committee*

expresses the firm hope that the Government will take the necessary measures, without delay, to ensure that employers are obliged to keep register of all persons below the age of 18 years who work for them and to provide information with regard to the progress made in ensuring that the Employment Act and the Minimum Age (Sea) Act are in conformity with Article 9(3) of the Convention.

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

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

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

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

Observation 2017

Article 1 of the Convention. For a number of years, the Committee has requested information concerning the ongoing revision of the Industrial Relations Bill which, according to the Government's 2013 report, includes provisions on termination of employment with the objective of giving effect to the Convention. In its reply to the Committee's previous comments, the Government indicates that the draft Industrial Relations Bill is still pending with the Department of Labour and Industrial Relations and is undergoing final technical consultations. The Government adds that the Department of Labour and Industrial Relations Technical Working Committee has carried out various consultations with national stakeholders, such as the Department Attorney General's Office, the Office of the Solicitor General, the Constitution Law Reform Commission, the Department of Personnel Management, the Department of Treasury and the Department of Planning, Trade Commerce and Industry, as well as with external technical partners, including the ILO. *Referring to its previous comments, the Committee once again expresses the hope that the Government will take the necessary measures to ensure that the new legislation gives full effect to the provisions of the Convention. It also reiterates its request that the Government provide a detailed report to the ILO and a copy of the legislation as soon as it is enacted, so as to enable the Committee to examine its compliance with the Convention.*
[The Government is asked to reply in full to the present comments in 2018.]

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

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.

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

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

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

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

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

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

The Committee notes that the Government has not provided any additional information on this issue. The Committee expresses its *concern* at the situation of "adopted" children under 18 years of age who are compelled to work under conditions similar to bonded labour or under hazardous conditions. *It once again*

requests the Government to take immediate and effective measures to ensure, in law and in practice, that "adopted" children under 18 years of age may not be exploited under conditions equivalent to bonded labour or under hazardous conditions, taking account of the special situation of girls. The Committee also requests the Government to provide information on the number of "adopted" children engaged in exploitative and hazardous work who have benefited from special needs agreements.

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

The Committee 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. Insertion of labour clauses in public contracts. Application of the Convention in practice. In its previous comments, the Committee, noting the Government's reference to Department Order No. 18-A of 14 November 2011 of the Department of Labor and Employment (DOLE), observed that the fact that general labour legislation is applicable to workers engaged in the execution of public contracts does not in any way exempt the Government from providing for the inclusion in public contracts of the labour clauses required by the Convention. The Committee requested the Government to formulate either legislative provisions or administrative instructions and circulars which would fully incorporate the provisions of the Convention into the domestic public procurement regulatory framework. The Committee notes with ***interest*** that, on 20 March 2015, the Government Procurement Policy Board (GPPB) undertook to incorporate relevant provisions of the Convention into the Philippine Bidding Documents (PBDs) for the Procurement of Goods, Infrastructure Projects and Consulting Services. Subsequently, pursuant to section 75 of Republic Act No. 9184/2003, the Government promulgated Revised Implementing Rules and Regulations of the Republic Act (IRR), otherwise known as the "Government Procurement Reform Act", for the stated purpose of prescribing the necessary rules and regulations for the modernization, standardization and regulation of the Government's procurement activities. The revised IRR came into force on 28 October 2016. The Government adds that, pursuant to section 37.2.3(b) of the IRR, bidding documents shall form part of the contract. At the same time, through Resolution No. 24 of 27 October 2016, the Government approved the incorporation of provisions relevant to the Convention in the three volumes of the Fifth Edition of the PBDs for the Procurement of Goods, Infrastructure Projects and Consulting Services, respectively. The Government indicates that section 6.2(j) of the PBD for the Procurement of Goods and the PBD for the Procurement of Infrastructure Projects, and section 4.2(j) of the PBD for the Procurement of Consulting Services establish the responsibilities of the bidder or consultant, respectively. In this context, the Committee notes that section 6.2(j)(i)–(iii) of the PBDs for Procurement of Goods and Infrastructure Projects and 4.2(j)(i)–(iii) of the PBD for Procurement of Consulting Services, respectively, call for the bidder or consultant to ensure the entitlement of workers to wages, hours of work, safety and health and other prevailing conditions of work as established by national laws, rules and regulations, or by collective bargaining agreement or arbitration award, if and when applicable. In addition, in the event of underpayment or non-payment of workers' wages and wage-related benefits, the bidder agrees that the performance security or portion of the contract amount shall be withheld in favour of the complaining workers without prejudice to the institution of appropriate actions under the Labour Code, as amended, and other social legislation. The parties also agree to comply with occupational safety and health standards and to correct deficiencies, if any, and to inform the workers of their conditions of work and labour clauses under the contract specifying wages, hours of work and other benefits, through posting this information in two conspicuous places in the establishment's premises. The Committee notes that these provisions in the PBDs refer to "other prevailing conditions of work", rather than to "conditions not less favourable" as envisaged under *Article 2* of the Convention. In its 2008 General Survey on labour clauses in public contracts, paragraphs 103 and 104, the Committee indicates that "it may appear from the language of Article 2 of the Convention that conditions to be ensured by labour clauses in public contracts need not be the most favourable conditions among those fixed by collective agreements, arbitration awards, or national law. This is not the case in practice." Given the requirement in the Convention that workers enjoy conditions "not less favourable" than those established by collective agreement, arbitration awards or national legislation, the automatic result would be to require the best conditions out of these three possibilities under *Article 2(1)(a)–(c)* of the Convention. *The Committee therefore requests the Government to take all necessary measures to ensure that the workers concerned enjoy wages (including allowances), hours of work and other conditions of labour that are not less favourable than those established for work of the same character in the trade or industry in the district where the work is carried out. It also requests the Government to indicate the manner in which it is ensured that the Convention is applied to work carried out by subcontractors or assignees, as required under Article 1(3) of the Convention. In addition, the Committee requests that the Government provide updated information on the application in practice of the 2016 Revised Implementing Rules and Regulations, including sample copies of public contracts, statistics on the number and type of contracts awarded by a government authority, as well as inspection results showing the number of contraventions observed and sanctions imposed.*

Article 5. Adequate sanctions. The Committee notes that section 6.2(j)(ii) of the PBDs for the Procurement of Goods and Infrastructure Projects and section 4.2(j)(ii) of the PBD for the Procurement of Consulting Services, respectively, provide that in the event of underpayment or non-payment of workers' wages and wage-related benefits, the bidder agrees that the performance security or portion of the contract amount shall be withheld in favour of the complaining workers without prejudice to the institution of appropriate actions under the Labour Code, as amended, and other social legislation. While the PBDs provide for the recovery of unpaid wages owed to the workers concerned, as required under *Article 5(2)* of the Convention, it does not specify sanctions, such as the withholding of contracts, for failure to observe and apply labour clauses, as called for under *Article 5(1). The Committee requests the Government to indicate the manner in which effect is given in practice to Article 5(1) of the Convention.*

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

Observation 2017

Article 2(3) of the Convention. Age of completion of compulsory education. In its previous comments, the Committee noted that section 20 of the Education Act 2009 prohibits arranging for a compulsory school-aged child to engage in street trading or to carry out other work of any kind during school hours. However, the Committee noted that pursuant to section 2 of the Education Act 2009, a compulsory school-aged child is defined as a person between 5 years and 14 years of age, who has not completed the eighth year of school. The Committee noted the Government's statement that the provisions to raise the age of completion of compulsory schooling to 15 years will be incorporated in the Education Act after consultations with the Attorney General's Office.

The Committee notes the Government's information in its report that the Ministry of Education, Sports and Culture has started consulting with the Office of the Attorney General on the drafting of the revised Education Amendment Bill 2016 in order to incorporate a change in the age of completion of compulsory schooling. *The Committee expresses the firm hope that the Education Amendment Bill, raising the age of completion of compulsory schooling in line with the minimum age for admission to work of 15 years, will be finalized and adopted soon. It requests that the Government provide information on any progress made in this regard.*

Article 3(2). Determination of types of hazardous work. In its previous comments, the Committee noted that according to section 83(2)(b) of the Labour and Employment Relations Act 2013 (LER Act of 2013), regulations may be made to determine unhealthy, dangerous or onerous work, as well as the minimum ages of entry into employment in such work.

The Committee notes the Government's statement that there is a draft list determining the types of hazardous work prohibited to children, which will be submitted to the Samoa National Tripartite Forum for endorsement. *The Committee expresses the firm hope that the list of types of hazardous work prohibited for children under 18 years of age will be finalized and adopted in the near future. It requests that the Government provide information on any progress made in this regard.*

Article 7(1) and (3). Minimum age for admission to light work and determination of types of light work activities. In its previous comments, the Committee noted that section 32(1) of the Labour and Employment Act 1972 permits children under the age of 15 to engage in safe and light work suited to his or her capacity. It also noted that the Education Act 2009 appears to allow children of compulsory school age to be engaged in some types of work which do not occur during school hours and which do not prevent or interfere with the child's attendance at school, active participation in school activities or the child's educational development. The Committee observed, however, that there appeared to be no lower minimum age for engagement in such light work activities. The Committee noted the Government's indication that the Ministry of Labour would take the necessary measures to address this issue as well, as to determine the types of light work activities permitted to children between the ages of 13 and 15 years.

The Committee notes the Government's information that under section 51(1) of the new LER Act of 2013, "a person must not employ a child under the age of 15 years in a place of employment except in safe and light work suited to his or her capacity and subject to such conditions as may be determined by the Chief Executive Officer of the Ministry of Labour". The Committee, however, notes once again that this provision does not set a lower minimum age for engagement in such light work activities. It also notes the Government's statement that a list of light work is currently being reviewed for children under the age of 15 in accordance with section 51 of the LER Act of 2013 and will be submitted to the Samoa National Tripartite Forum for endorsement. *The Committee urges the Government to take the necessary measures to bring the national laws and regulations in line with the Convention by permitting employment in light work only by young people who have reached the age of 13 years, pursuant to Article 7(1) of the Convention. It requests that the Government provide information on any progress made in this regard. It also expresses the firm hope that the Government will take the necessary measures to regulate light work activities in compliance with Article 7(3) of the Convention.*

Article 9(3). Keeping of registers. In its previous comments, the Committee noted that section 83(2)(a) of the LER Act of 2013 provides that regulations may be made requiring employers to keep records of persons employed in their undertakings, and prescribing the form and contents of such records. Moreover, the Committee noted that section 16 of the LER Act of 2013 states that the Chief Executive Officer of the Ministry of Labour shall have the power to require an employer to keep and produce books, registers or other documents relating to the employment of his/her employees.

The Committee notes the Government's indication that the Ministry of Commerce, Industry and Labour sent a letter of intent to remind the employers of their obligations and to obtain information on the employment of children under the age of 18 years. The Committee, however, reminds the Government that, in accordance with *Article 9(3)* of the Convention, national laws or regulations of the competent authority shall prescribe the registers or other documents which shall be kept and made available by the employer of persons whom they employ and who are less than 18 years of age. *The Committee therefore urges the Government to take effective measures pursuant to section 83(2)(a) of the LER Act of 2013, to adopt regulations requiring employers to keep registers of all persons employed under the age of 18 years, in conformity with Article 9(3) of the Convention, and to provide the information obtained by the employers further to the letter of intent and the regulations further adopted.*

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

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, pornography or pornographic performances. The Committee previously observed that neither the Crimes Ordinance 1961 nor the Indecent Publications Ordinance 1960 appeared to specifically address the issue of production of indecent materials, or the use, procuring or offering of children under the age of 18 years for the production of such materials. The Committee noted that according to section 82 of the Crimes Act 2013, any person who sells, delivers, exhibits, prints, publishes, creates, produces or distributes any indecent material that depicts a child engaged in sexually explicit conduct shall be punished. The Committee noted, however, that for the purposes of this section a child is defined as a person under the age of 16 years. The Committee reminded the Government that by virtue of *Article 3(b)* of the Convention, the use, procuring or offering of children under *18 years* of age for pornography or pornographic performances shall be prohibited.

The Committee notes the Government's information in its report that the Ministry of Police stated that national legislation should be reviewed so that the national definition of a child complies with the Convention. *The Committee, therefore, once again urges the Government to take the necessary measures to ensure that the use, procuring or offering of children between the ages of 16 and 18 for the production of indecent materials is also effectively prohibited.*

Article 4(1). Determination of hazardous types of work. With regard to the adoption of a list determining the types of hazardous work prohibited for persons under 18 years of age, the Committee refers the Government to its detailed comments under the Minimum Age Convention, 1973 (No. 138).

Article 7(2). Effective and time-bound measures. Clause (d). Reaching out to children at special risk. Children working as street vendors. The Committee noted that section 20 of the Education Act 2009 specifically prohibits the engagement of compulsory school-aged children in street trading during school hours, and that it provides for the appointment of school attendance officers, responsible for identifying children who are out of school during school hours, and returning them to school. However, the Committee noted the statement in the National Policy for Children, that despite measures to increase school attendance, child vendors continue to be seen operating day and night around central Apia. The Committee noted the Government's information that children working as

street vendors are those sent by their parents after school to sell goods for their own livelihoods. The Government further indicated that the school attendance officer identifies children of compulsory school age who are not in school during school hours, while the police is the authority in charge of identifying and removing child vendors from the street after school hours.

The Committee notes the Government's information that the issue of children working as street vendors is dealt with in the Community Sector Plan 2016–21 (CSP). According to the Government, the CSP includes the promotion of a positive parenting programme as a "prevention approach". In this regard, a Child Protection Officer was recruited within the Ministry of Women, Community and Social Development (MWCSD) to spearhead the implementation of the Convention on the Rights of the Child through effective planning, monitoring and evaluation. The Government also indicates that the MWCSD conducted a needs assessment with ten families with a child working as a street vendor. It reports that the CSP provides a platform for the development of an intervention plan which will respond to the needs of vulnerable children and their families. It is intended that this pilot group will be extended to the national level and become a component of the wider CSP. The Government further reports that the existing social protection programmes of the MWCSD can be expanded and tailored to children at risk, including child vendors, to offer basic survival skills and conduct awareness-raising programmes.

The Committee also notes from the Government's report under Convention No. 138 that the majority of cases regarding child vendors in the streets are mainly dealt with by the Community Engagement Unit in collaboration with the Ministry of Education, Sports and Culture (MESC) and the MWCSD. The Government further indicates that the MESC conducts the process and then sends the approval to the police to go ahead with the investigation of the parents involved. Upon completion of the investigation, the parents may be charged. The Government also states that the police patrols the streets once a week to monitor the presence of children. The Committee notes that, according to the 2017 ILO "Report of the Rapid Assessment of Children working on the streets in Apia, Samoa: A pilot study", the majority of the 106 children interviewed started working on the streets due to the fact that the family needed income (page 36). Children, as young as 7 years of age, sell food, homemade juice and razor blades. They are involved in hazardous work, working in dangerous environments, working long hours (over five to 12 hours a day), and under harsh weather conditions, to sell their products. The majority of the children work for their own family and are not aware of the social support services available to them. The Committee must express its *concern* that children continue to work as street vendors, often in hazardous conditions. *Considering that children working on the streets are particularly vulnerable to the worst forms of child labour, the Committee requests the Government to take the necessary measures to identify and protect children engaged in street vending from the worst forms of child labour. It also requests the Government to provide information on the number of child street vendors who have been removed from the worst forms of child labour and provided with asssistance and socially integrated.*

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), 2(1) and 25 of the Convention. Trafficking in persons. 1. *Penalties and law enforcement.* The Committee previously noted the statement of the National Trade Union Federation (NTUF) that, while the Sri Lanka Bureau of Foreign Employment (SLBFE) is pursuing action to eradicate trafficking in persons, the penalties imposed on traffickers were not severe enough to serve as a deterrent. The Committee also noted the Government's statement that, since 2009, the Criminal Investigations Department had commenced 61 investigations related to suspected cases of trafficking, which were still ongoing. The Women and Children's Bureau of the Sri Lankan Police also carried out 38 investigations between March 2012 and April 2013. Moreover, the Attorney General's Department had received 191 files of suspected cases of human trafficking since 2009, following which 65 indictments had been filed in court.

The Committee notes the Government's information in its report that in October 2016, the police department established the "Anti-Human Trafficking Unit" with 13 police officers to investigate cases on human trafficking. A special unit has also been established under the SLBFE to investigate trafficking-related complaints reported to it. The Committee also notes that the Attorney General's Department has forwarded a total number of 35 indictments to high courts in 2016, of which ten have been submitted to competent high courts for trafficking in persons under section 360C(1) of the Penal Code. Three of those were related to forced labour and seven were related to sexual exploitation. Additionally, the Attorney General has filed 25 indictments for procuration under section 360A of the Penal Code. The Government also indicates that 41 cases already filed are at different stages of trial in high courts across the country, of which at least 15 will be concluded by the end of 2017, as envisaged by the Attorney General's Department. Approximately 61 suspects are being prosecuted during the reporting period. In 2016–17, the high courts have handed down six convictions of human trafficking, and the perpetrators have received penalties of imprisonment from six months to five years, along with fines of from 100,000 to 500,000 Sri Lankan rupees (LKR). The Government states that the main challenge to the suppress trafficking in persons is to obtain evidence from victims and to investigate cases where the credibility of the victim is in question. *The Committee requests the Government to continue its efforts to ensure that persons who traffic in persons are subject to robust prosecutions and thorough investigations and that the penalties imposed on perpetrators are sufficiently effective and dissuasive. It also requests the Government to continue providing information on the application in practice of the relevant provisions of the Penal Code, including the number of investigations, prosecutions and convictions, as well as the specific penalties applied.*

2. *Victim protection.* The Committee previously noted that legal, medical and psychological assistance for trafficking victims was provided by the Government in collaboration with NGOs. The Ministry of Child Development and Women's Affairs, under the direction of the task force functioning under the Ministry of Justice, had established a government-run shelter for victims of trafficking.

The Committee notes the Government's information that it continues to provide legal, medical and psychological assistance for trafficking victims in the shelter maintained by the Ministry of Women and Child Affairs. Regarding the victims of trafficking for sexual exploitation, the Government indicates that the Attorney General's Department has in several instances concluded that the vulnerability of women engaged in the sex industry had been exploited by the recruiter or facilitator to lure them into prostitution, which is one of the "means" defined by section 360C(1) of the Penal Code and used as the basis to identify the person concerned as a victim rather than a criminal. The Committee also notes from the Government's report to the UN Committee on the Elimination of Discrimination against Women (CEDAW) of 2015 that the number of female victims of trafficking as reported by all police divisions was 29 out of 44 victims in total in 2011, two out of six in 2012, none in 2013 and four out of 12 in 2014 (CEDAW/C/LKA/8, paragraph 43). *The Committee encourages the Government to continue taking measures to ensure that victims of trafficking are provided with appropriate protection and services, and to provide information on the number of persons benefiting from these services.*

3. *Programme of action.* The Committee notes that the Government's written replies to the list of issues of the CEDAW of 2017 that the National Strategy Plan to Monitor and Combat Human Trafficking 2015-2019 has been adopted in February 2016. A high-level committee chaired by the Prime Minister and the National Anti-Trafficking Task Force monitor the implementation of the Strategic Plan (CEDAW/C/LKA/Q/8/Add.1, paragraphs 116–118). *The Committee therefore requests the Government to provide information on the implementation of the Strategic Plan 2015-2019, including the activities carried out and the results achieved.*

Articles 1(1) and 2(1). Vulnerable situation of migrant workers with regard to the exaction of forced labour. The Committee previously noted that the Sri Lanka Bureau of Foreign Employment managed a transit shelter which provided medical assistance and accommodation to migrant workers referred upon their return by the Bureau's airport desk. It also noted that the UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW), in its concluding observations, noted the measures taken by the Government to safeguard the rights of migrant workers, including memoranda of understanding (MoU) and bilateral agreements with major labour-receiving countries, the compulsory registration scheme requiring registration prior to departure for foreign employment, the development of standard-approved contracts and minimum average salaries for migrant domestic workers, and the appointment of labour welfare officers abroad. However, the CMW also expressed concern at reports of abuse and ill-treatment of Sri Lankan migrant workers in host countries.

The Committee notes the Government's information that various measures have been taken to raise the awareness of migrant workers on their rights and obligations, such as the implementation of Safe Migration awareness programmes and the Comprehensive Information and Orientation Programmes. The Government indicates that the Ministry of Foreign Employment has signed 22 MoUs with major labour host countries on the protection of rights of migrant workers, which are reviewed annually by the Joint Technical Committees consisting of high-level representatives of both parties. The Government has also actively participated in regional consultation processes, such as the Colombo process and the Abu Dhabi Dialogue. The Committee also notes that consular assistance is provided through diplomatic missions in 16 major destination countries and 11 temporary shelters for female migrant workers as victims of abuse or exploitation. However, the Committee notes that, in its concluding observations of 2016, the CMW is concerned that Sri Lankan migrant workers continue to suffer numerous violations of their rights in host countries, including being deprived of the right to leave their place of work, non-payment of salaries, having their passports confiscated, harassment, violence, threats, inadequate living conditions, difficult access to health care and in some cases even torture (CMW/C/LKA/CO/2, paragraph 50). *The Committee therefore requests the Government to continue its efforts to ensure that migrant workers are fully protected from abusive practices and conditions that amount to the exaction of forced labour. It also requests the Government to continue providing information on measures taken in this regard, including information on international cooperation efforts undertaken to support migrant workers in destination countries, and measures specifically tailored to the difficult circumstances faced by such workers to prevent and respond to cases of abuse.*

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(2) of the Convention. Raising the minimum age for admission to employment or work. The Committee previously noted the Government's information that the Ministry of Labour Relations and Foreign Employment was considering the possibility of raising the age for admission to employment to 16 years and that legislative amendments in this regard had been submitted to the Attorney General for approval, which would thereupon be submitted to Parliament for adoption.

The Committee notes the Government's indication in its report that the Ministry of Labour and Trade Union Relations (MoLTUR) is currently in the process of amending relevant labour laws such as the Employment of Women, Young Persons and Children Act No. 47 of 1956, the Shop and Office Employees Act No. 15 of 1954, the Factory Ordinance No. 45 of 1942, and the Employees' Provident Fund Act No. 15 of 1958, in order to raise the minimum age for admission to work or employment to 16 years. The Government states that the process of amending the Employment of Women, Young Persons and Children Act has already started. *The Committee trusts that the amendments with regard to raising the minimum age for admission to employment to 16 years will be adopted in the near future. In this regard, the Committee would like to draw the Government's attention to the provisions of Article 2(2) of the Convention, which provides that any Member having ratified this Convention may subsequently notify the Director-General of the International Labour Office, by a new declaration, that it has raised the minimum age that it had previously specified. The Committee would be grateful if the Government would consider the possibility of sending a declaration of this nature to the Office in case any amendments to the national legislation raising the minimum age for admission to employment or work to 16 years have been made.*

Article 2(3). Compulsory education. The Committee previously noted the Government's information that the Cabinet of Ministers had approved the memorandum submitted by the Ministry of Education on raising the upper age limit of compulsory education from 14 years to 16 years, and that the amendments in this regard had been submitted to the Attorney General for approval.

The Committee notes with *interest* the Government's indication that the Compulsory Attendance of Children at School Regulations No. 1 of 2015 was adopted and provides for compulsory education from 5 to 16 years of age. However, the Committee points out that if the minimum age for admission to work or employment is lower than the school-leaving age, children may be encouraged to leave school as children required to attend school may also be legally authorized to work (see General Survey on the fundamental Conventions, 2012, paragraph 370). *The Committee therefore urges the Government to continue its efforts to raise the general minimum age in order to link it with the age of completion of compulsory schooling, in conformity with the Convention.*

Application of the Convention in practice and labour inspectorate. The Committee previously noted the Government's statement that the Department of Labour was making every effort to enforce the law against child labour and that no incidence of child labour had been observed in the formal economy. The Committee further noted the Government's indication that it envisaged that one of its districts, Ratnapura, would become a child labour free zone by 2015, and that the Government was trying to expand this concept into other districts as well. According to the Government's report, the main aspect of this concept is that it has the support of all government programmes related to education, vocational training, poverty alleviation and other social welfare schemes, as well as support of the private sector and non-governmental organizations, in eliminating child labour. The Committee noted, however, the comments made by the National Trade Union Federation (NTUF) that the number of children engaged in employment was much higher than indicated by the Government as most of the children are employed as domestic workers where outsiders have no access.

The Committee notes that according to the 2015–16 Child Activity Survey, the total child population aged between 5 and 17 years involved in child labour has decreased from 2.5 per cent in 2009 to 2.3 per cent, of which 0.9 per cent are engaged in hazardous work (down from 1.5 per cent in 2009). The Committee notes that 66.7 per cent of working children are boys, 33.3 per cent are girls and 73 per cent are in the age group 15–17 years. Around 59.3 per cent are engaged in unpaid family work (compared with 80.8 per cent in 2009); 36.2 per cent are employees and 4.6 per cent are self-employed.

The Committee further notes the Government's statement that the implementation of the child labour free zone in the district of Ratnapura was successful and that it is now being replicated in other districts. One of the most important outcomes of the programme is that it establishes a system whereby immediate action is taken once child labour incidents are reported. The Government indicates that the detection of child labour is included in the general inspections of the labour inspectorate. Accordingly, 147 cases were received, out of which 54 cases were dismissed and 93 cases are being investigated further. There have been three cases filed with the Magistrate Court and one case has been concluded with penalties imposed. The Government also indicates that a National Policy on the Elimination of Child Labour has been prepared and is awaiting adoption by the Cabinet of Ministers. Finally, the Country Level Engagement and Assistance to Reduce Child Labour (CLEAR) is currently being implemented with ILO support. *Taking due note of the decrease in child labour in the country, the Committee encourages the Government to pursue its efforts to ensure the progressive abolition of child labour and to provide information on the results achieved through the implementation of the child labour free zone in all its districts, the National Policy on the Elimination of Child Labour and the CLEAR engagement. Noting that child labour in the country mostly occurs in the informal sector, the Committee requests that the Government take effective measures to strengthen the capacity and expand the reach of the labour inspectorate to better monitor children working in the informal sector, including domestic workers. The Committee also requests that the Government continue providing information on the manner in which the Convention is applied in practice, including information from the labour inspectorate on the number and nature of in infringements reported, violations detected and penalties applied.*

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 noted that sections 360A, 360B and 288A of the Penal Code, as amended, prohibited a wide range of activities associated with prostitution, including the use, procuring or offering of minors under 18 years of age for prostitution. The Committee also noted the high incidence of exploitation of approximately 40,000 children in prostitution, that no comprehensive data was available on child sexual exploitation, and that no central body was established to monitor the investigation and prosecution of child sexual exploitation cases. In an effort to address these issues, the Government mentioned that several initiatives and measures had been taken against the sexual exploitation of children and that it had established a women and children police desk at the district level consisting of police officers specially trained to deal with the incidence of sexual exploitation of children.

The Committee notes from the Government's statement, in its report, that in 2015, there were nine reported cases of commercial sexual exploitation of children and seven convictions, and in 2016, there were four reported cases and one conviction. The Committee notes with *concern* the low number of convictions in light of the high incidence of children in prostitution. *The Committee therefore urges the Government to strengthen its efforts to ensure that perpetrators are brought to justice and that thorough investigations and robust prosecutions of perpetrators are carried out, and that sufficiently effective and dissuasive penalties are imposed in practice. It requests the Government to continue providing information with regard to the number of prosecutions, convictions and penalties imposed on offenders in cases related to the commercial sexual exploitation of children.*

Clause (d) and Article 4(1). Hazardous work. The Government previously stated that around 65,000 labour inspections were carried out annually and that no incidents of hazardous work by children had been detected in the formal economy. The Committee noted, however, from a Child Activity Survey, that out of the total child population of 107,259 reported to be in child labour, 63,916 children (1.5 per cent) between the ages of 5 to 17 years were engaged in hazardous work.

The Committee notes the Government's indication that to protect children from hazardous forms of child labour, advocacy activities have been directed towards parents and employers. It also notes that according to the 2015–16 Child Activity Survey, 2.3 per cent of children aged 5–17 years are engaged in child labour, of which 0.9 per cent in hazardous work (down from 1.5 per cent in 2008). However, the Government indicates that labour inspections have been planned and undertaken in work places where hazardous jobs are carried out (388 inspections in 2016), and that there were no findings of child labour in the

formal economy resulting from these inspections. The Government further indicates that a committee has been appointed by the Commissioner General of Labour to revise the list of hazardous work according to international standards. It also notes the ILO Decent Work Country Programme with Sri Lanka (DWCP 2013–17) which includes among other priorities, the reduction of the worst forms of child labour (outcome 3.2). In the framework of the DWCP 2013–17, the Ministry of Women and Child Affairs collaborated with the ILO Decent Work Country Team to deliver five awareness-raising programmes on hazardous forms of child labour, targeting school children, principals, teachers and parents. *The Committee requests the Government to pursue its efforts to ensure the protection of children from hazardous work, including in the informal economy, and to provide information on the measures taken in this regard and on the results achieved. It also requests the Government to provide information on the adoption of the new list of hazardous work and to provide a copy once it has been adopted.*

Article 6. Programmes of action to eliminate the worst forms of child labour. Commercial sexual exploitation of children. The Committee previously noted that Sri Lanka remained a common destination for child-sex tourism, with a high number of boys being sexually exploited by tourists. The Committee noted that, according to the document entitled "Sri Lanka's Roadmap 2016 on the worst forms of child labour: From commitment to action", one of the strategies of the 2016 Roadmap was to promote child-safe tourism. The document also indicated that Sri Lanka's Ten-Year Horizon Development Framework 2006–16 *(Mahinda Chintana*), which is vigorously tackling many of the root causes of child labour, aims to strengthen security against tourism-related crimes, including combating child-sex tourism through strict police vigilance and awareness-raising programmes. However, the Committee noted from the same document that the "beach boy" phenomenon along with the issue of paedophilia has been known for a long time along the south-western coastal belt of Sri Lanka. The Committee further noted the comments made by the National Trade Union Federation that the commercial sexual exploitation of children takes place mainly in seaside tourist resorts and the hidden nature of these offences curtails complaints or facts from coming to light.

The Committee notes the Government's statement that awareness-raising programmes are delivered to the public and tourists in tourist areas to promote child-safe tourism. In this regard, 360 hotel staff members have received child protection awareness training. *The Committee encourages the Government to strengthen its efforts to combat child-sex tourism. Noting the lack of information provided in this regard, the Committee once again requests the Government to provide information on the implementation of the strategies of the 2016 Roadmap in promoting child-safe tourism as well as the measures taken within the framework of the Mahinda Chintana in combating child-sex tourism.*

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

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

Observation 2017

The Committee takes note of the observations of the International Trade Union Confederation (ITUC), received on 1 September 2017.

Follow-up to the recommendations of the tripartite committee (representation made under article 24 of the ILO Constitution)

Articles 1(1), 2(1) and 25 of the Convention. I. *Vulnerability of migrant workers in the fishing sector to practices of forced labour and trafficking.* The Committee notes that, at its 329th Session (March 2017), the Governing Body approved the report of the tripartite committee that was set up to examine the representation made by the ITUC and the International Transport Workers' Federation (ITF) alleging non-observance of the Convention by Thailand.

The Committee notes that the representation raised two major sets of allegations with regard to compliance with the Convention. The first concerns the situation of workers on board Thai fishing vessels, particularly migrant workers, who are allegedly exposed to forced labour and trafficking. The second concerns the responsibility of the State to ensure that the prohibition of forced labour is strictly enforced by effective and adequate penal sanctions. The Committee also notes that the tripartite committee examined allegations raised by the ITUC and the Government's explanations on the measures taken to combat forced labour and trafficking in the fishing sector, particularly with regard to: (a) recruitment practices; and (b) employment practices.

(a) Recruitment practices

The Committee notes that the tripartite committee examined several issues related to: (i) brokers and recruitment fees; (ii) the issue of contract substitution; and (iii) the issue of corruption and trafficking in persons.

(i) Brokers and recruitment fees. The Committee observes that the tripartite committee found that while the Recruitment and Job-Seekers Protection Act (1985) is the main piece of legislation that regulates the recruitment practices of private employment agencies, the 1985 Act does not contain specific provisions related to the protection of migrant workers during the recruitment process, and does not stipulate procedures for regulating brokers, subcontracting agencies or manning agencies supplying migrant workers; nor does it regulate the payment of recruitment fees by workers. The tripartite committee took note of the Government's indication that a new Royal Ordinance concerning Migrant Workers Recruitment is to be adopted to ensure better prevention of the illegal recruitment of migrant workers.

The Committee notes with *interest* the adoption of the Royal Ordinance on the Management of Foreign Workers Employment B.E. 2560 (23 July 2017) (Royal Ordinance B.E. 2560). According to the Government, this Ordinance has three main objectives: harsher penalties for offenders; clearer responsibilities of employers and licensed recruitment agencies; and the possibility for NGOs to use the Foreign Worker's Management Fund for assisting and protecting workers from being exploited. Moreover, under the 2015 Royal Ordinance on the Application for Work Permit B.E. 2559, recruiting migrant workers without a work permit is an offence punishable by a prison term of up to three years or a fine of 200,000 to 600,000 Thai baht (THB) (US$6,000 to US$18,000).

The Committee further notes that the ITUC asserts in its observations that in January 2016, Greenpeace had reported that some migrant and Thai workers in certain fishing vessels had paid recruitment fees of up to $742 to brokers. In addition, they had reported not receiving any information regarding working conditions, payment of wages or the length of time at sea prior to getting on board the vessels. The payment system consists of salary advances sent home in undocumented transfers via brokers and lump sums promised to workers after completing their work at sea.

The Committee notes the Government's indication in its report that it has prohibited the imposition of recruitment fees on migrant workers, except for certain costs such as the cost of preparing documents and transportation expenses (section 42 of the Notification of the Department of Employment on the Identification of List of Foreign Workers and the Rate of Service Fee and Cost Fee and Cost Form in bringing in Foreign Workers to work with Employers in the Kingdom, dated 14 November 2016). In case of violations, the employer is liable to six to 12 months' imprisonment.

The Committee also notes the Government's indication that it has been working closely with countries of origin (Myanmar, Cambodia, and Lao People's Democratic Republic) via regular consultations and bilateral meetings to develop memoranda of understanding (MOUs) for fair recruitment practices. For example, it has agreed with the Cambodian Government to recruit Cambodian workers in the fishing sector through the Government to Government (G to G) Pilot project, according to which the Thai Government has agreed to guarantee a minimum salary of THB12,000 per month, payment of wages by bank transfer, appropriate accommodation and food, as well as health insurance and accident coverage. The International Organization for Migration (IOM) is also collaborating in the G to G Pilot project. Moreover, there is a mutual agreement to establish a Cambodian migration centre by the end of 2017. The centre will be responsible for pre-departure training, facilitating required legal documentation for migrant workers, as well as assisting the victims of forced labour or trafficking. *The Committee requests the Government to continue to strengthen its efforts to ensure that migrant workers in the fishing sector are not exposed to practices that would increase their vulnerability to forced labour, in particular in matters related to the payment of recruitment fees and the recruitment by illegal brokers. It also requests the Government to provide further information on the application in practice of the Royal Ordinance on the Management of Foreign Workers Employment B.E. 2560 (2017), indicating the number and nature of violations detected and the penalties imposed for cases of violations.*

(ii) Contract substitution. The Committee notes that the tripartite committee observed that migrant workers were still confronted with the practice of contract substitution. The Committee notes the Government's indication that it is compulsory to sign a formal contract between the employer and the worker (sections 14/1 and 17 of the Labour Protection Act B.E. 2541 (1998) and section 6 of the Ministerial Regulation Concerning Labour Protection in Sea Fishery Work B.E. 2557 (2014)) and that the employment contract has to be signed in two copies so that the worker keeps a copy. Under the agreed MOUs with source countries, there is a standard type of contract which is approved by the Department of Labour Protection and Welfare (DLPW). Such contracts must be in both the Thai language and the language of the migrant worker (now available in Khmer, Burmese, Laotian and English). The signed contract should stipulate the amount of the monthly payment of wages via bank transfer and the transfer fee that is borne by the employer. This contract should be vetted by one labour inspector from the Ministry of Labour (MOL).

Moreover, under the Fishery Law B.E. 2560 of 2017 an identification document (known as a Seabook) has to be issued for any migrant worker in the fisheries sector when the owner of a fishing vessel has signed the DLPW's standard contract with a worker. As of June 2017, the Department of Fishery had issued 50,033 Seabooks to migrant workers, among them 30,661 from Myanmar, 18,050 from Cambodia, 1,201 from Lao People's Democratic Republic, 31 from Viet Nam, and 90 for stateless persons. The employment of a worker on a fishing vessel without an identification document, or without a licence shall be subject to a fine (THB400,000 ($12,000)). *The Committee requests the Government to continue to strengthen its efforts to ensure that, in practice, labour contract substitution is effectively prohibited. In this regard, it encourages the Government to ensure that the competent authorities register and verify that the signed contract corresponds to the original offer of employment consented to by the worker. Lastly, the Committee requests the Government to continue providing statistical information on the number of migrant fisher workers who have been issued with Seabooks documents as well as the number of infringements registered in this respect.*

(iii) Corruption and trafficking in persons. The Committee notes that the tripartite committee considered that corruption of government officials can create an environment of impunity that exacerbates the situation of vulnerability of migrant fishers and constitutes a major obstacle in the identification of victims of forced labour and trafficked victims.

The Committee also notes that in its observations the ITUC asserts that, in 2016, the Criminal Court Division for Human Trafficking in Bangkok found 62 persons guilty of trafficking in persons, including several high-ranking officials who were sentenced to life imprisonment. The ITUC adds that, often, police officers or high-ranking government officials threaten witnesses, interpreters or other police officers.

The Committee takes note of the statistics provided by the Government according to which, from 2014 to 2017, there were 12 cases and 53 government

officials who had been investigated of being involved in trafficking of migrant workers in the fishing sector. In 2017, ten police officers were under investigation by the Public Sector Anti-Corruption Commission. In 2016, the Anti-Money Laundering Office (AMLO) reported nine cases of trafficking in persons (forced labour and trafficking for sexual exploitation cases) for which assets were seized from the perpetrators.

It is reported by the Government that one of the major challenges faced by the multidisciplinary inspection teams on fishing vessels during the process of victims' identification is the provision of shelters for victims or witnesses. Providing shelters for victims of trafficking is the responsibility of the Ministry of Social Development and Human Security (MSDHS). The Royal Thai Police also has the responsibility for providing accommodation and protection for persons whose trial is under way. In addition to the development of the Vessel Monitoring System (VMS), the Command Centre for Combating Illegal Fishing (CCCIF) has established the Electronics Monitoring Messaging and Electronics Reporting System (EM and ERS) which would enhance the capability to control illegal transshipment at seas, and help in detecting cases of trafficking in persons. *The Committee requests the Government to continue to take proactive measures to ensure that government officials complicit with human traffickers are prosecuted and that sufficiently effective and dissuasive penalties are imposed in practice for violation of the legislation. The Committee encourages the Government to continue to provide appropriate training to law enforcement bodies in order to improve their capacity to identify cases of trafficking in persons.*

(b) Employment practices

(i) Confiscation of seafarers' identity documents (SIDs). The Committee notes that the tripartite committee highlighted that the confiscation of SIDs is a serious problem in the Thai fishing industry and that there was no specific prohibition in the legislation for such an offence.

The Committee further notes that the ITUC asserts in its observations that national courts and public authorities, such as the National Human Rights Commission of Thailand fail to recognize that the confiscation of SIDs could expose workers to exploitation and believe that confiscation of identity documents (IDs) does not necessarily imply coercion to work. Instead, judicial authorities believe that the confiscation of IDs is justified because it makes the inspection of documents easier.

The Committee notes that under section 131 of the Royal Ordinance B.E. 2560 of 2017, the confiscation of IDs is now punishable with imprisonment of up to six months or a fine. Section 68 also stipulates that the work permit should always be kept with the migrant worker during his/her work. According to the Government, the establishment of 32 Port in-Port Out (PIPO) Controlling Centres at the 22 coastal provinces has increased efficiency and effectiveness of law enforcement. During the period 1–31 August 2017, 412 fishing vessels and 4,995 fishers (1,490 Thai, 1,836 Burmese, 1,633 Cambodians and 36 Laotians) were inspected. There was no confiscation of SIDs or Seabooks, no complaint regarding non-payment of wages, and no forced labour or trafficking cases. The Committee recalls that the practice of confiscation of SIDs is a serious problem that may increase migrant fisher workers' vulnerability to abuse, by leaving them undocumented, reducing their freedom of movement and preventing them from leaving an employment relationship. *In this regard, the Committee requests the Government to strengthen its efforts to ensure that the Royal Ordinance B.E. 2560 of 2017 is effectively implemented, and that sufficiently dissuasive penalties for confiscation of SIDs are imposed on employers who are in breach of the legislation.*

(ii) Withholding of wages. The Committee observes that the tripartite committee encouraged the Government to continue to strengthen its efforts to address the non-payment of wages, and ensure the effective application of the 2014 Ministerial Regulation concerning Labour Protection in Sea Fishery Work B.E. 2557 (2014). The Committee notes the ITUC's assertions in its observations that withholding of wages continues to be a common practice in Thailand, and that weak labour law enforcement and access to justice lead to the lack of guarantee of the payment of wages.

The Committee notes that the Government refers to section 8 of the 2014 Ministerial Regulation B.E. 2557 in which the employer has the obligation to prepare a salary statement including paid leave in the Thai language. Section 11 clearly prohibits the employer from withholding wages. If an employer intentionally refrains from the payment of the salary seven days beyond the agreed initial date of payment, he/she is required to pay an additional amount of 15 per cent of the amount withheld. In May 2015, the DLPW in cooperation with the multidisciplinary inspection teams on fishing vessels and officials from the Myanmar Embassy assisted 13 workers of a fishing vessel from Myanmar to recover their back wages. Moreover, in 2017, the DLPW helped a worker from Myanmar, aged 17, to receive 20 days of unpaid salary; the owner of the vessel was charged for employing a minor and trafficking in persons. *The Committee requests the Government to ensure that the 2014 Ministerial Regulation B.E. 2557 is effectively implemented, so that all wages are paid on time and in full, and that deterrent penalties for non-payment of wages are imposed.*

(iii) Physical abuse. The Committee notes that the tripartite committee emphasized the vulnerable situation of fisher workers who may face physical violence that could in certain cases amount to murder. The Committee notes that in its observations, the ITUC provides several examples of fisher workers having been physically abused. For instance, in January 2016, six Cambodian and Thai fishers, crew members of two Thai vessels died and 32 others suffered from health complications. Survivors reported that they were deprived of food for several days, and had to work for up to three days without a break.

The Committee notes the Government's explanation that the amendment of the Anti-Trafficking Act No. 2 B.E. 2558 of 2015 increased the penalty to 20 years' imprisonment if the offence causes the victim(s) serious injuries, and life imprisonment or death penalty if the offence causes the victim(s) death. The amendment of the Anti-Trafficking Act No. 3 B.E. 2560 of 2017 provides for more explicit provisions, including: (i) the revision of the definition of "exploitation" to cover slavery; and (ii) the revision of the definition of "forced labour or forced service" to cover confiscation of IDs and debt bondage.

While noting the legislative measures taken by the Government, the Committee expresses its *deep concern* about cases of fisher workers who have been victims of physical abuses or injuries and, in some cases, who have also been victims of death. Recalling the particular nature of the work of fisher workers, due in part to their isolated situation at sea, the Committee underlines the importance of taking effective measures to ensure that this category of workers is not placed in a situation of increased vulnerability, especially when they are subjected to physical violence. *Accordingly, the Committee urges the Government to take the necessary measures to ensure that the Anti-Trafficking Act, as amended, is effectively implemented, and regularly monitored by the law enforcement bodies, to investigate cases of physical abuse. It also requests the Government to take the necessary measures to ensure that the appropriate sanctions are imposed on employers who are in breach of the legislation.*

II. Law enforcement and access to justice. The Committee notes that the tripartite committee pointed out that the prohibition of forced labour requires that the penalties imposed by law are adequate, commensurate with the offence and strictly enforced. To this end, the tripartite committee highlighted the importance of: (a) strengthening the labour inspectorate body; and (b) providing access to justice and protection to the victims.

(a) Labour inspection and the application of penal sanctions

The Committee notes that the tripartite committee found that the Government had established multidisciplinary inspection teams on fishing vessels that have the mandate to interview workers with a view to preventing them from becoming victims of debt bondage and human trafficking in the fisheries sector.

The Committee notes the Government's statement that there are currently 1,506 labour inspectors. This number has increased by 29.71 per cent since the last report was submitted on the application of the Convention. The Committee takes due note of the statistics provided by the Government on a series of training courses that were provided to labour inspectors, including: (i) 28 government officials were trained in May 2017 by the Ship to Shore Rights Project on forced labour indicators, interview techniques, issues of debt bondage, confiscation of ID documents, and the Anti-Trafficking Act; (ii) 80 officials at management level were trained in June 2017 by the Department of Employment (DOE) on investigation techniques and prosecution of traffickers in persons; (iii) in September 2017, senior officials from the MOL, MSDHS, DOE; Marine Police and the Royal Thai Navy were given training on how to interview workers in the fishing sector.

The Committee also notes that a certain number of language coordinators have been employed to facilitate the communication between migrant workers and government officials (Announcement of Office of the Prime Minister of November 2016). Some 70 language coordinators were appointed to work at 22 DLPW provincial offices and in 32 PIPO Controlling Centres, and ten language coordinators were working in the Migrant Workers Assistance Centre in ten provinces.

The Committee takes note of the number of inspections carried on board at sea between 2015 and 2017. It notes that, in 2016, 1,859 migrant workers,

including 1,675 from Myanmar, 81 from Lao People's Democratic Republic, and 103 from Cambodia received their entitlements. The Committee also notes that Order No. 22/2017 on the implementation to combat Illegal, Unreported and Unregulated fishing (IUU) (4th supplement) came into force in April 2017. Under the Order, any authorized official who detects unlawful practices under fishery laws, shall have the right to detain the vessel and report it to the Marine Department within 24 hours. Between April and June 2017, 135 fishing vessels were detained as a result of the implementation of Order No.22/2017.

According to the Government, there were 319 cases of trafficking in persons that were detected and investigated in 2016 in the fishing sector, including 244 cases of sexual exploitation, 32 cases of employment-related issues, and 43 cases of trafficked workers in the fishing sector. In 2016, 600 offenders were arrested and charged under the Anti-Trafficking Act, and 268 were convicted and sentenced to a range of two to ten years' imprisonment. As of September 2017, there were 85 cases under consideration by the Public Prosecutor, and 13 cases were under consideration by the courts. *The Committee encourages the Government to continue to take measures to strengthen the capacity of the labour inspectors in detecting forced labour practices and trafficking of persons, and to continue to provide statistical information on the number of cases of forced labour or trafficking concerning migrant fisher workers that have been recently registered by the labour inspectors, as well as the number and nature of the penalties imposed.*

(b) Access to justice and assistance to victims

The Committee notes that the tripartite committee observed that, while the legislation provides for the establishment of different complaints mechanisms, there exist some obstacles to their effective use by workers, such as the duration of the complaints procedure, language barriers and the lack of information on preventive measures with regard to re-trafficking.

The Committee notes the Government's statement that there are special centres to assist migrant workers (Cabinet resolution of July 2016). With regard to migrant fishing workers, the Committee notes that, a number of centres, have been established, such as the Fishing Worker Coordinator Centres and the Fisherman's Life Enhancement Centre (FLEC). In 2016, these centres provided assistance to 15 Cambodian working in the fishing sector. They are tasked with, among other things: (i) promoting employment in the fishing sector in line with the legislation; (ii) providing protection and legal assistance to migrant fishing workers; and (iii) raising awareness of the owners of fishing businesses and other relevant stakeholders to improve collaboration in combating trafficking in persons in the fishery sector. The Committee further takes due note of the statistics communicated by the Government regarding the types of assistance provided to migrant fisher workers. It observes that 15,370 migrant workers have been transferred to other employers; 241 have received their unpaid wages; and 372 have been transferred to related organizations for assistance.

In addition, the Government refers to the establishment of 24-hour assistance channels that are accessible to migrant workers in their own languages, as well as the Complaint System for Foreign Workers which operates through the Internet.

The Committee also takes note of the statistics communicated by the Government on the number of victims of trafficking in persons who had benefited from such assistance. For instance, between January and July 2017, the MSDHS provided assistance to 224 victims of trafficking in persons, including 78 workers who were victims of forced labour in the fishing vessels. The Committee further takes note of the Government's indication that a certain number of MOUs have been signed to tackle trafficking in persons with source countries, such as Lao People's Democratic Republic, Myanmar and Viet Nam. In June 2017, the Thai Government and the Myanmar Government signed an agreement on the implementation procedure of repatriation and reintegration of victims under the concept of safe repatriation, safe receiving and no re-trafficking: the implementation procedure contains the standard process of repatriation and reintegration, including better data collection systems and clear guidelines. In 2016, the Government conducted safe repatriation for 243 victims in close coordination with source countries. *The Committee encourages the Government to continue to take measures to ensure improved protection and assistance to migrant fisher workers, so that they do not fall into situations of forced labour or trafficking in persons. The Committee also requests the Government to provide statistical information on the number of migrant fisher workers who had recourse to legal assistance from the abovementioned assistance centres. Finally, the Committee requests the Government to provide information on the number of migrant fisher workers who have lodged a complaint via the Complaint System for Foreign Workers operating through the Internet.*

The Committee is raising other matters in a request directly addressed 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. Over a number of years, the Committee has been drawing the Government's attention to section 112 of the Criminal Code under which whoever defames, insults or threatens the king, the queen, the heir apparent or the regent, shall be punished with imprisonment of three to 15 years, as well as sections 14 and 15 of the Computer Crimes Act of 2007 that prohibit the use of a computer to commit an offence under the provisions of the Criminal Code concerning national security (including section 112 of the Criminal Code), with a possible sanction of five years' imprisonment. The Committee noted that under the Penitentiary Act B.E. 2479 (1936), penalties of imprisonment involve an obligation to perform prison labour. It also observed that, according to the report of the United Nations (UN) Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, there had been a recent increase in lèse-majesté cases pursued by the police and the courts.

The Committee notes the Government's indication in its report that, as for the recent increase in lèse-majesté cases according to the UN Special Rapporteur on the promotion and protection of the rights to freedom of opinion and expression, proceedings on lèse-majesté cases are conducted with due legal process. The enforcement of section 112 does not contravene international laws on human rights. The existence of lèse-majesté is appropriate for protecting the Thai monarchy as a force for unity and the stability of the nation. Those convicted for lèse-majesté are entitled to the same rights as those convicted for other criminal offences.

The Committee observes, in this regard, that in its 2017 Concluding observations the UN Human Rights Committee (HRC) was concerned that criticism and dissension regarding the royal family is punishable with a sentence of three to 15 years' imprisonment, about reports of a sharp increase in the number of people detained and prosecuted for the crime of lèse-majesté since the military coup and about extreme sentencing practices, which result in dozens of years of imprisonment in some cases (CCPR/C/THA/CO/2, paragraph 37).

In addition, the Committee notes the Government's indication that sections 14 and 15 of the Computer Crimes Act of 2007 are drafted and implemented to curtail illegal activities and dissemination of false information, and to address the risk of exploiting an instantaneous connection for harassment and defaming other individuals. Moreover, there is no part in the legislation that allow compulsory labour as a specific form of punishment for convicted prisoners charged under section 112 of the Criminal Code and sections 14 and 15 of the Computer Crimes Act. The Committee, however, observes that, in its concluding observations, the HRC expressed its concern about reports of the severe and arbitrary restrictions imposed on the right to freedom of opinion and expression in the state party's legislation, including in the Criminal Code and the Computer Crimes Act. The HRC was also concerned about criminal proceedings, especially criminal defamation charges, brought against human rights defenders, activists, journalists and other individuals under the abovementioned legislation, and about reports of the suppression of debate and campaigning, and criminal charges against individuals during the run-up to the constitutional referendum in 2016. The Committee finally notes that the HRC recommended that the Government consider decriminalizing defamation and, in any case, countenance the application of criminal law only in the most serious of cases, bearing in mind that imprisonment is never an appropriate penalty for defamation (paragraphs 35 and 36).

The Committee further notes with *deep concern* that the penalties of imprisonment involving compulsory prison labour, contained in the Penitentiary Act of 1936, are retained under the 2017 amendments to the same Act.

In this regard, the Committee is bound to recall that *Article 1(a)* of the Convention prohibits all recourse to penal 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 (see General Survey of 2012 on the fundamental Conventions, paragraph 302). *In light of the above considerations, the Committee urges the Government to take all necessary measures, in both law and practice, to ensure that no penalties involving compulsory labour may be imposed for the peaceful expression of political views or views opposed to the established system, for example, by clearly restricting the scope of these provisions to situations connected with the use of violence or incitement to violence, or by repealing sanctions involving compulsory labour. The Committee requests the Government to provide information on any 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, labour inspection and application of the Convention in practice. The Committee previously noted that child labour was a problem in the country in practice and that, in rural areas, children worked in sugar cane, cassava and corn plantations, as well as in rice paddies. Children were also employed in fisheries, shrimp farms and seafood processing under conditions which are often hazardous. In urban areas, children worked in sectors such as restaurants, markets, street vending, construction and entertainment. The Committee noted the Government's statement that it had continued to implement preventive measures to address child labour, including the establishment of a child labour network, as well as of the National Committee on the Elimination of the Worst Forms of Child Labour chaired by the Prime Minister, aimed at eliminating child labour through efficient policies and measures. However, the Committee noted that the labour inspectorate often failed to detect cases of children involved in hazardous work, despite indications that such cases exist.

The Committee notes that, in its report submitted under the Worst Forms of Child Labour Convention, 1999 (No. 182), the Government indicates that the Ministry of Labour, through the Department of Labour Protection and Welfare (DLPW) conducted a number of training sessions to enhance the capacity of labour inspectors. The Government also states that each year a regular plan for labour inspection is established with a focus on child labour in industries such as shrimp processing, sugar cane, and garments as well as small enterprises or clandestine establishments in villages or communities located "faraway". In addition, the Committee notes that, according to Thailand's Country Report on Anti-Human Trafficking Response (1 January–31 December 2016), submitted to the United Nations Action for Cooperation against Trafficking in Persons (Thailand's Anti-Trafficking Country Report), a National Policy and Plan to Eliminate the Worst Forms of Child Labour for 2015–2020 (NPP-WFCL II) outlines ways to effectively and successfully eradicate the worst forms of child labour. In this framework, the Ministry of Labour has begun its collaboration with the ILO and Thailand's National Statistics Office (NSO) on a 21-month project to conduct Thailand's National Working Children Survey for 2017. The same report reveals that, according to Ministry of Labour estimates collected in cooperation with the NSO, in December 2015, there was an estimated total of 10.88 million children aged 5–17 years, of which 6.4 per cent were working (692,819) and 2.9 per cent were considered in child labour (approximately 315,520).

However, the Committee notes that Thailand's Anti-Trafficking Country Report also indicates that during the year 2016, the DPLW identified only 51 cases of child labour, of which 23 cases involved children under 15 years of age and 28 cases involved children between 15 and 18 years of age. Thirteen cases have been prosecuted with fines totalling 582,000 Thai baht (US$16,629). The Committee observes with *concern* that the number of cases of child labour found by the DPLW is extremely low compared to the number of children considered to be in child labour. *Therefore, while taking due note of the steps taken, the Committee requests that the Government pursue and strengthen its efforts to identify and combat child labour, including through the NPP-WFCL II. It once again requests the Government to continue providing information on the steps taken to strengthen the capacity and expand the reach of the labour inspectorate and of the relevant law enforcement agencies, as well as of the child labour monitoring system in this regard. The Committee also requests the Government to provide information on the number and nature of violations detected and penalties applied in child labour cases, focused on detection in agricultural plantations, fisheries, restaurants, markets, construction sites, and other occupational sectors where large numbers of children are employed. Lastly, the Committee asks that the Government provide the results of the 2017 National Working Children Survey.*

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

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 2015.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. Legislative developments. Definition of remuneration and work of equal value. The Committee notes that the new Labour Code (Law No. 10/2012/QH13 of 18 June 2012) includes the principle of equal payment of wages without discrimination based on gender for employees performing work of equal value (section 90(3)) and provides for a definition of wages that includes "remuneration" based on the work or position, "wage allowances" and "other additional payments" (section 90(1)), but is silent about payment in kind. The Committee points out that *Article 1(a)* of the Convention sets out a very broad definition of "remuneration" which includes not only "the ordinary, basic or minimum wage or salary" but also "additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the workers' employment". *The Committee requests the Government to indicate whether payment in kind would be covered by section 9(3) of the new Labour Code and to provide information on its implementation and enforcement. The Committee further requests the Government to provide information on any measures taken or envisaged to raise awareness of these provisions among workers, employers, their respective organizations and enforcement public officials, as well as any administrative or judicial cases in this respect.*

Assessing and addressing the gender wage gap. The Committee notes the results of the labour force survey (second quarter of 2014) published by the General Statistics Office of Vietnam, according to which the overall gender wage gap in average monthly earnings of workers is 9.3 per cent. The Committee notes the detailed information provided by the Government with respect to measures taken to implement the National Strategy on Gender Equality (2011–20), through the strengthening of capacity building; the drafting, implementation and monitoring of gender equality legislation, awareness-raising activities; and the development of a gender database and advisory and support services. *While noting these important developments with respect to the promotion and implementation of gender equality, the Committee requests the Government to indicate how these measures have an impact on reducing the persistent gender wage gap and to provide specific information on any measures taken or envisaged to address underlying causes. The Committee once again requests the Government to collect and provide more specific statistical data, disaggregated by sex, on the distribution of men and women in different sectors of economic activity, occupational categories and positions and their corresponding earnings both in the private and public sectors.*

Enforcement. The Committee notes from the Government's report that the Ministry has conducted many training courses on labour laws, including on equal remuneration for work of equal value, for labour inspectors and others officials. It further notes that there has not been any administrative and judicial case concerning equal remuneration for men and women. Regarding the latter point, the Committee recalls that where no cases or complaints, or very few, are being lodged, this is likely to indicate a lack of an appropriate legal framework, a lack of awareness of rights, lack of confidence in, or absence of, practical access to procedures, or fear of reprisals (see General Survey on the fundamental Conventions, 2012, paragraph 870). *The Committee asks the Government to continue to provide information on the training offered to judges, inspectors and other labour officials, as well as awareness-raising measures provided to social partners. It further requests the Government to provide information on any violations of the principle of the Convention detected by, or brought to the attention of, the labour inspectorate services, the sanctions imposed and the remedies provided.*

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

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

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 2015. 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.

Legislative developments. The Committee notes that section 8(1) of the newly amended Labour Code (Law No. 10/2012/QH13 of 18 June 2012) extends the number of prohibited grounds of discrimination. Specifically, regarding the grounds enumerated in *Article 1(1)(a) of the Convention,* the new Labour Code adds "colour" to the previously prohibited grounds of gender, race, social class, belief or religion.

Regarding the grounds enumerated in *Article 1(1)(b)* of the Convention, the Committee welcomes the addition in the new Labour Code of "marital status," "HIV status," "disabilities", and "establishing, joining a trade union or participating in trade union activities". *The Committee requests the Government to provide information on the implementation and enforcement of the expanded grounds of discrimination set out in section 8(1) of the amended Labour Code, including any measures taken or envisaged to raise awareness of these provisions among workers, employers and their respective organizations, as well as public enforcement officials, and any administrative or judicial complaints submitted to the relevant authorities in this respect., disaggregated by the type of alleged discrimination.*

Article 1 of the Convention. Discrimination based on colour and national extraction. The Committee recalls its previous request to the Government to take practical measures to ensure the application of the Convention with respect to equality of opportunity and treatment irrespective of political opinion, national extraction and colour. In this respect, the Committee notes that, although section 8(1) of the Labour Code of 2012 now includes colour as a prohibited ground of discrimination, it continues to omit "political opinion" and "national extraction". In this regard, while the Committee notes the Government's indication that Decree No. 95/2013/ND-CP of 22 August 2013 establishes penalties for administrative violations on the grounds of discrimination, as defined in section 8(1) of the Labour Code, it emphasises that this Decree does not apply to the grounds of political opinion and national extraction. *The Committee requests the Government to provide information on the application of Decree No. 95/2013/ND-CP of 2013 with regard to acts of discrimination on the basis of colour, as well as any other measures taken to ensure equality of opportunity and treatment irrespective of colour. The Committee also once again requests the Government to provide information on any practical measures taken to ensure the full application of the Convention in relation to equality of opportunity and treatment irrespective of political opinion and national extraction.*

Discrimination based on religion. The Committee recalls its previous request to the Government to provide details of legislative measures that prohibit discrimination in employment and occupation on religious grounds. The Committee notes the Government's indication that article 24 of the Constitution and section 8(1) of the Labour Code of 2012 include religion as a prohibited ground of discrimination. The Government adds that Decree No. 95/2013/ND-CP of 22 August 2013 imposes fines for acts of discrimination on grounds of religion, and that Decree No. 92/2012/ND-CP of 8 November 2012 provides details regarding the implementation of Ordinance No. 21/2004/PL-UBTVQH11 of 29 June 2004, which prohibits discrimination on religious grounds. However, the Committee notes that section 6(1)(a) of Decree No. 92/2012/ND-CP provides that, in order to obtain registration, the activities of a religious organization must not be in violation of sections 8(2) and 15 of Ordinance No. 21/2004/PL-UBTVQH11. Section 8(2) of the Ordinance prohibits the abuse of the right to belief and religious freedom in contravention of national laws and policies while section 15 provides that religious activities shall be ceased if they adversely affect the unity of the

people or national cultural traditions. In this regard, the Committee recalls Directive No. 01/2005/CT TTg concerning protestantism, adopted by the Prime Minister on 4 February 2005, prohibits attempts to force people to follow or to abandon a religion. The Committee notes that taken together the three laws allow for scenarios in which a worker, with a religious belief not recognized by the Government, may face discrimination by the employer in employment and occupation. In this regard, the Committee recalls that the Convention protects the expression and manifestation of religion, and that appropriate measures need to be adopted to eliminate all forms of intolerance (see General Survey on the fundamental Conventions, 2012, paragraph 798). *The Committee requests the Government to provide information on the application in practice of Ordinance No. 21/2004/PL-UBTVQH11, Directive No. 01/2005/CT-TTg and Decree No. 2/2012/ND-CP, including information on the measures taken or envisaged to ensure that workers or employers with unrecognized religious views are not subject to discrimination in employment or occupation.*

Discrimination based on social origin. The Committee notes that the Labour Code includes "social class" as a ground of discrimination that may have a narrower meaning than the ground of "social origin" contained in *Article 1(1)(a)* of the Convention. In this regard, the Committee recalls that discrimination and lack of equal opportunities based on "social origin" refer to situations in which an individual's membership of a class, socio-occupational category or caste determines his or her occupational future, either because he or she is denied access to certain jobs or activities, or is assigned only certain jobs (see General Survey on the fundamental Conventions, 2012, paragraph 802). *The Committee requests the Government to clarify how it interprets the term "social class", and whether in its view this term is consistent with the term "social origin" as provided for in the Convention.*

Sexual harassment. The Committee notes that section 8(2) of the Labour Code of 2012 prohibits sexual harassment at the workplace. Section 37 of the Labour Code provides for the right of an employee to unilaterally terminate a contract on the grounds of sexual harassment, and sections 182 and 183 specifically prohibit sexual harassment against domestic workers. However, the Committee also notes that the amended Labour Code still does not provide a definition of sexual harassment. In this regard, the Committee notes that a Code of Conduct on Sexual Harassment in the Workplace was developed in May 2015 by the tripartite Industrial Relations Committee with the support of the ILO, which defines both quid pro quo and hostile environment sexual harassment, as well as the term "workplace". The Committee also notes that the Code of Conduct applies to all companies in both the public and private sectors, regardless of size, and aims to help employers and workers develop their own sexual harassment policies or regulations. The Committee notes the Government's indication that Decree No. 04/2005/ND-CP of 11 January 2005 provides guidance on the enforcement provisions for sexual harassment contained in the previous Labour Code and defines the rights and obligations of the complainant and the person being complained against, the jurisdiction, procedures and enforcement of appeal decisions. It notes, however, that an equivalent Decree providing equivalent interpretation for the revised Labour Code has not been submitted by the Government. *The Committee requests the Government to provide information on the implementation and enforcement of sections 8(2), 37, 182 and 183 of the Labour Code of 2012, including any measures taken or envisaged to raise awareness of these provisions among workers, employers and their respective organizations, as well as public enforcement officials, along with any administrative or judicial complaints submitted to the relevant authorities in this respect. It also requests the Government to provide specific information on the measures taken or envisaged to facilitate the application of the Code of Conduct on Sexual Harassment in the Workplace by workers and employers in both the public and private sectors, as well as information on any progress made in this regard.*

Restrictions on women's employment. The Committee recalls its request to the Government to take steps to ensure that protective measures restricting women's employment are limited to maternity protection. The Committee notes the provisions cited by the Government regarding maternity protection, but also notes section 160 of the Labour Code of 2012, which prohibits the employment of female workers on work that is harmful to parenting functions, as specified in the list of types work issued by the Ministry of Labour, Invalids and Social Affairs (MLISA), that is work that requires regular immersion in water and regular underground work in mines. It notes the Government's indication that the MLISA issued Circular No. 26/2013/TT BLDTBXH on 18 October 2013 which lists 77 job categories in which women are prohibited from working. In this regard, the Committee reiterates that protective measures for women should not go beyond maternity protection, as those aimed at protecting women generally because of their sex or gender are often based on stereotypical perceptions of their suitability, capabilities and appropriate role in society and are contrary to the Convention, and thus constitute obstacles to the recruitment and employment of women. The Committee wishes to point out once again that provisions relating to the protection of persons working in harmful or dangerous jobs should be aimed at protecting the health and safety of both women and men at work. *The Committee requests the Government to provide information on the application of section 160 of the Labour Code of 2012, including a list of occupations prohibited under section 160(2) and (3), in addition to the occupations designated in Circular No. 26/2013/TT BLDTBXH of 2013. The Committee once again requests the Government to take measures to ensure that future revisions of the above Circular limit its restrictions to women who are pregnant or breastfeeding.*

Articles 3 and 5. Prohibition of discriminatory recruitment practices based on sex, and special measures. The Committee recalls its request to the Government on the measures taken to curb discriminatory practices affecting women in recruitment, such as giving preference to male job applicants and discouraging female applicants by establishing requirements prohibiting marriage and pregnancy during a certain period following recruitment. In this regard, the Committee notes sections 8(1), 153 and 154 of the Labour Code of 2012, which prohibit discrimination based on gender and require the Government and employers to create employment opportunities for woman employees and to promote gender equality in recruitment. It also notes Decree No. 85/2015/ND-CP of 1 October 2015, which contains detailed provisions for the implementation of these sections, as well as specific provisions to improve the working conditions and health-care services available to women employees. The Committee especially welcomes the specific measures outlined in section 5(1)(b) of the Decree, which provides that the State shall ensure equal rights for men and women employees in recruitment through preferential treatment and tax reduction schemes. Section 5(2)(a) provides that the State shall encourage employers to "prioritize females in recruitment and assignment if the job is suitable for both males and females and the applicant is qualified". The Committee also notes the Government's indication that section 25(2) of Decree No. 95/2013/ND-CP of 22 August 2013 establishes a fine of between 5,000,000 and 10,000,000 Vietnamese Dong (VND) for acts of discrimination against, inter alia, gender and marital status, and that section 18 of the Decree specifies sanctions for the violation of provisions regarding women workers. *The Committee requests the Government to provide information on the implementation and enforcement of sections 8(1), 153 and 154 of the Labour Code of 2012, as supplemented by Decree No. 85/2015/ND-CP of 2015, including any measures taken or envisaged to raise awareness of these provisions among workers, employers and their respective organizations, as well as public enforcement officials. The Committee also requests the Government to provide detailed statistical information on the application of sections 18 and 25(2) of Decree No. 95/2013/ND-CP of 2013, and any administrative or judicial complaints submitted to the relevant authorities in this respect.*

Article 4. Measures affecting individuals who are justifiably suspected of, or engaged in, activities prejudicial to the security of the state. The Committee recalls its previous comments in which it noted that persons upon whom a ban under section 36 of the Penal Code has been imposed have the right to appeal the decision within 15 days of the date of conviction, and that the courts had issued various rulings banning persons from holding certain posts, practising certain occupations or doing certain jobs. The Committee recalls the Government's previous indication that in practice bans can be imposed when a court judges that the continuation of the work by the convicted person may cause a danger for society, and that this could be the case in about 100 acts criminalized by the Penal Code, such as acts infringing the life, health or dignity of a person, acts infringing the freedom of citizens, drug-related crimes, acts infringing public order and security or acts interfering with justice. The Committee notes the Government's brief reply referring the Committee to aggregated statistics on the numbers of court cases dealing with different types of labour disputes. The Committee notes, however, that this information does not reply to its previous request. *The Committee therefore repeats its earlier request to the Government to provide information related to the rulings banning persons from holding certain posts, practising certain occupations or doing certain jobs; the offences in connection with which such bans have been imposed; and the number and nature of the appeals lodged and their outcomes.*

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.