

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

*Observations 2017*

*Regional file by country -*

Americas



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

### Observation 2017

*Article 3(1) and (2) of the Convention. Minimum age for admission to hazardous work and determination of these types of work.* The Committee previously noted the Government's indication that the unions and employers' federation were consulted regarding the activities and occupations which should be prohibited to persons below 18 years of age. It noted that although a recommendation was made, it was not submitted before the National Labour Board, as it was the Government's aim to revamp the occupational health and safety legislation. Thereafter, the Committee noted the Government's statement that the proposed amendments to the provisions of the Labour Code on occupational health and safety have been circulated to Cabinet, but have not yet been adopted. It further noted the Government's indication that technical assistance was sought in relation to new and separate occupational health and safety legislation.

The Committee notes the Government's indication in its report that the National Labour Board is currently reviewing the occupational health and safety legislation. The Government states that it has noted the Committee's comments and that it will act accordingly. The Committee notes with *regret* that the list of hazardous types of work prohibited for children under 18 years of age has still not been adopted. The Committee therefore once again reminds the Government that *Article 3(1)* of the Convention provides that the minimum age for admission to any type of employment or work which, by its nature or the circumstances in which it is carried out, is likely to jeopardize the health, safety, or morals of young persons, shall not be less than 18 years. It also reminds the Government that, under the terms of *Article 3(2)* of the Convention, the types of hazardous employment or work shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned. *Observing that the Convention was ratified by Antigua and Barbuda more than 30 years ago, the Committee urges the Government to take the necessary measures to ensure that a list of activities and occupations prohibited for persons below 18 years of age is adopted in the near future, in accordance with Article 3(1) and (2) of the Convention. It encourages the Government to pursue its efforts in this regard through amendments to the occupational health and safety legislation, and to provide information on progress made. Lastly, it requests that the Government provide a copy of the amendments to the occupational health and safety legislation once adopted.*

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

### Observation 2017

The Committee notes with *regret* that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2015.

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

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

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

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

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

The Committee notes the observations of the Confederation of Workers of Argentina (CTA Workers), received on 11 September 2017, those of the General Confederation of Labour of the Argentine Republic (CGT RA), received on 1 September 2017.

*Article 1 of the Convention. National policy. Application in practice and labour inspection.* In its previous comments, the Committee noted that, according to the CGT RA, the legislation on child labour is not applied in practice by employers, particularly in the agriculture and textile sectors, and that a vast campaign of awareness raising and inspection had been launched to target the offending employers and enterprises. The Committee also noted the National Plan for the Prevention and Elimination of Child Labour 2011–15, the objectives of which included the development of a national system for the compilation of statistical data on child labour and promoting the integration of this information into Government measures, as well as the promotion of technical cooperation between the National Committee for the Eradication of Child Labour (CONAETI) and the Provincial Commissions for the Prevention and Eradication of Child Labour (COPRETI) for the development and integration of objectives at the local level.

The Committee notes the observations of the CTA Workers indicating that child labour is far from being eliminated and reiterating the need to reinforce the inspection system, particularly within the country, to ensure effective compliance with the legislation. The CTA Workers raises the problem of the lack of Government statistics on the child labour situation in the country. The CTA Workers adds that the labour inspection services have not issued any penalties for the crime of child labour, despite the 231 criminal charges brought. The Committee also notes the observations of the CGT RA reporting the adoption by the Government of a National Plan for the Eradication of Child Labour and the Protection of Work by Young Persons (2017–21). However, the CGT RA indicates that the National Plan includes certain shortcomings, and particularly the uncoordinated operation of the COPRETI. The Committee also notes that, according to the CGT RA, there is a lack of coordination between the bodies responsible for detecting child labour and those in charge of dealing with the cases detected. The CGT RA suggests that the National Plan should include a training plan for officers of the justice system to improve their interventions following the detection of cases of child labour.

The Committee notes the Government's indication in its report that it is working with the security forces and other key actors to raise awareness and train them on matters relating to child labour. The Government adds that it is continuing to provide technical assistance to the COPRETI with a view to the development of protocols for the detection of child labour and the restoration of their rights. The Committee notes that, according to the Government, various preventive measures have been introduced, including: (i) centres for young persons; (ii) programmes for centres for the promotion of rights; (iii) technical and financial support for provinces, municipal authorities and non-governmental organizations; and (iv) other specific projects to prevent and eliminate child labour. The Government also reports many activities undertaken between 2014 and 2017, including the preparation of information manuals for employers to inform them concerning the law in force and to prevent child labour. In this respect, the Committee notes with *interest* that, according to the ILO–UNICEF publication on "Child labour in Argentina, public policies and the development of sectoral and local experiments," between 2004 and 2012, the percentage of children engaged in work between the ages of 5 and 13 years has fallen by 66 per cent, and that there was a fall of 38 per cent for young persons aged 14 and 15. The Committee also notes that, according to the Government, a National Survey of the Activities of Children and Young Persons (EANNA, 2017) is being conducted with a view to understanding the characteristics and extent of child labour in the country. Finally, the Government indicates that, between 2015 and 2017, the labour inspection services identified 102 cases of work by children aged between 10 and 15 years. The Committee notes that these data are disaggregated by age, gender and economic activity, but that the Government does not indicate the penalties imposed. **The Committee takes due note of the reduction of child labour in the country and requests the Government to continue its efforts for the progressive elimination of child labour. It requests the Government to provide detailed information on the National Plan 2017–21 and the results achieved. The Committee also requests the Government to provide updated statistical data compiled on the basis of the EANNA 2017, and particularly data on the nature, extent and trends of work by children and young persons under 16 years of age. Finally, the Committee requests the Government to indicate the nature and number of convictions, and the types of penalties imposed by the labour inspection services when cases of child labour are detected. To the extent possible, this information should be disaggregated by age and gender.**

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

*Article 4(1) of the Convention. Determination of the list of hazardous types of work.* The Committee notes with *satisfaction* the adoption of Decree No. 1117/2016 determining the list of hazardous types of work prohibited for persons under 18 years of age. The Committee notes that this list includes: work underground, under water, at dangerous heights or in confined spaces; work with certain dangerous or heavy machinery and tools; exposure to hazardous chemicals; work which exposes children or young persons to noise, vibration, extreme temperatures, radiation, high concentrations of humidity or hazardous components; work involving exposure to hazardous biological agents; night work and overtime work; work in construction or involving the handling of asphalt; work with electricity; work in the production or sale of alcohol; and modelling involving eroticized images of children and young persons. **The Committee requests the Government to provide information on the effect given in practice to Decree No. 1117/2016, including the violations reported and penalties imposed.**

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 the very succinct report provided by the Government stating that the matters dealt with in the previous comments will be raised and discussed with employers' and workers' organizations via the National Tripartite Council with a view to effecting the recommended changes to section 6 of the Employment Act 2001. In this regard, the Committee notes with *regret* that the other questions raised previously about the determination of rates of remuneration, objective job evaluation, collective agreements and the effectiveness of the enforcement mechanisms have not been addressed since 2004. *The Committee wishes to reiterate that without the necessary information, it is not in a position to assess the effective implementation of the Convention, including the progress achieved since its ratification in 2001. It hopes that the next report will contain full information on the points described below.*

*Article 1 of the Convention. Equal remuneration for work of equal value. Legislation. Noting with regret that the adoption of the Employment (Amendment) Act, 2012 did not amend section 6 of the Employment Act 2001 in a way that gives full legislative expression to the principle of equal remuneration for men and women for work of equal value, the Committee asks the Government to take steps to amend section 6 of the Employment Act 2001, in order to give full legislative expression to the principle of equal remuneration for men and women for work of equal value. In this regard, the Committee asks the Government to ensure that its legislation allows for the comparison not only of jobs in the same establishment and requiring substantially the same skill, effort and responsibility, and performed under similar working conditions, but also of work of an entirely different nature which is nevertheless of equal value, and provides for a broad definition of "remuneration" as set out in Article 1(a) of the Convention. The Committee encourages the Government to seek ILO technical assistance in this regard.*

*Article 2. Determining rates of remuneration. Noting that the requested information has not been received, the Committee trusts that the Government will be in a position to provide information in its next report on the manner in which remuneration is determined in the civil service and the public sector, including copies of wage scales and information on the method used to establish them.*

*Article 3. Objective evaluation of jobs. The Government's report being silent on this point, the Committee hopes that the Government's next report will include information on and examples of agreements and policies providing for objective job evaluation as well as information on any measures taken or envisaged to promote the development and use of objective job evaluation systems on the basis of the work performed in the public and the private sectors.*

*Article 4. Cooperation with workers' and employers' organizations. The Committee asks the Government to include information in its next report on the measures taken by employers' and workers' organizations to achieve equal remuneration for men and women for work of equal value and to indicate the measures envisaged to encourage the social partners to include provisions on equal remuneration between men and women for work of equal value in their agreements.*

*Enforcement. The Committee notes the Government's statement that, a search of rulings of the Industrial Tribunal, the Supreme Court of Bahamas and the Bahamas Court of Appeal did not reveal any decisions involving questions related to the application of the Convention. In this regard, the Committee must recall that the absence of complaints does not necessarily indicate an absence of violations. It may rather indicate a lack of understanding of the principle by the labour inspectorate, as well as by workers and employers, or a lack of accessible complaints procedures. The Committee hopes that the Government will take steps to improve the capacity of labour inspectors to detect and address unequal pay for work of equal value, and to ensure that workers are apprised of their right to equal pay for work of equal value and of the dispute resolution mechanisms available. The Committee asks the Government to provide information on any activities undertaken in this regard.*

*Practical application and statistics. Previously, the Committee had noted the statistics of 2005 on the "employed persons in the hotel industry by occupation, sex, average hours worked and average wage per week – All Bahamas", attached to the Government's report, indicating that pay differentials exist between men and women in almost all occupations and that women are more often than men concentrated in the lower paid occupations. The weekly wage gap between men and women is particularly striking in the higher category of senior officials and managers. While men and women are more or less equally distributed in this occupational category, the gender gap in weekly wages is about 31.3 per cent. In the absence of any further information provided in this regard, the Committee asks again the Government to take steps to determine the underlying reasons for these wage differentials between men and women, and to indicate the measures taken or envisaged to address these differentials in the various occupations, particularly in the higher-level occupational category of senior officials and managers. The Government is also asked to continue to provide statistical information on the earnings of men and women in the different economic sectors and occupations in the public and in the private sectors.*

Finally, the Committee notes that in its report to the United Nations Committee on the Elimination of Discrimination against Women, the Government indicated that in 2012 the Prime Minister appointed a Constitutional Committee to conduct a comprehensive review of the Constitution of the Bahamas and to recommend changes to it in advance of the country's 40th anniversary of Independence. In July 2013, the Constitutional Committee presented its report and called for the adoption of the proposed amendments (four Constitution (Amendment) Bills) via a national referendum, scheduled to be held on 7 June 2016 (CEDAW/C/BHS/6, 26 May 2017, paras 4–7). The Committee notes that, in June 2016, the first round of constitutional reform aiming at instituting full equality between men and women in matters of citizenship and more broadly to eliminate discrimination based on sex has been rejected by the Bahamian voters; the Fourth amendment would have updated article 26 of the Constitution, to make it unconstitutional for Parliament to pass any laws that discriminate based on sex. *The Committee asks the Government to indicate the impact of this vote on the implementation of the Convention, and to provide information on any developments regarding the constitutional reform process, in particular in relation to the provisions that may affect the effective application of the Convention. The Committee also urges the Government to provide detailed information on all the points mentioned in its previous comments.*

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

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

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

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

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

*Article 2(1). Scope of application and labour inspection. The Committee previously observed that the minimum age for admission to employment, established under section 50(1) of the Employment Act 2001 only applies to formal undertakings whereas the majority of children work in the informal economy. In this regard, it noted the Government's indication that it had initiated the process of hiring additional labour inspectors to conduct the requisite inspection of*

workplaces in which children may be engaged in labour. *Noting the absence of information in the Government's report on this point, the Committee requests that the Government provide information on the measures taken to adapt and strengthen the labour inspection services in order to ensure that the protection established by the Convention is secured for children working in all sectors, including children working on their own account or in the informal economy.*

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

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

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

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

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

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

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

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

### Observation 2017

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

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

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

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

The Committee notes the absence of information in the Government's report on this point. It notes from the document on the National Anti-Drug Strategy 2012–16 that for more than four decades, drug abuse and illicit trafficking has been of grave concern to the Bahamas and that the illicit trafficking of drugs into

and through the Bahamas is a constant and ongoing challenge for the country. *The Committee requests the Government to take the necessary measures without delay to ensure the prohibition of the use, procuring or offering of a child under the age of 18 years for illicit activities, including the production and trafficking of drugs and to adopt appropriate penalties. It requests the Government to provide information on any progress made in this regard.*

*Article 4(1). Determination of hazardous work. With regard to the adoption of the list of hazardous types of work prohibited to children under the age of 18 years, the Committee requests the Government to refer to its detailed comments under the Minimum Age Convention, 1973 (No. 138).*

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

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

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

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

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

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

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

**C097 - Migration for Employment Convention (Revised), 1949 (No. 97)****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 2013.

*Articles 7 and 9 of the Convention. Free services and assistance and transfer of remittances.* In its previous comments, the Committee considered that the requirement for migrant workers participating in the Canada–Caribbean Seasonal Agricultural Workers Programme “the Farm Labour Programme” – to remit 25 per cent of their earnings to the Government directly from Canada as mandatory savings, 5 per cent of which was retained to pay the administrative costs of the Programme, could be contrary to the spirit of *Article 9* of the Convention. The Committee had also taken note of the concerns expressed by the Congress of Trade Unions and Staff Associations of Barbados that this requirement, together with the immediate deduction of certain costs such as airfares, pension and medical contributions from the workers' pay, created hardship for the workers, and the Programme needed to be reviewed. The Committee also drew the Government's attention to the fact that charging workers for purely administrative costs of recruitment, introduction and placement is prohibited under the Convention (General Survey of 1999 on migrant workers, paragraph 170).

The Committee notes the Government's indication that arrangements are made for a percentage of the earnings of the workers on overseas programmes to be remitted back to the country for them to access upon return and that workers travelling on the overseas programmes are required to sign an “agreement” (contract of employment) which allows for the deduction of 20 per cent of their wages to cover administration costs and national insurance contributions. According to the Government, upon arrival in Canada the workers are met by the Barbados liaison officers and in Barbados the employment services to migrants are rendered free of charge by the National Employment Bureau, which oversees the preparation and departure of workers. The Committee notes that the “Agreement for the Employment in Canada of Commonwealth Caribbean Seasonal Agricultural Workers – 2013” provides that the worker agrees that the employer shall remit to the government agent 25 per cent of the worker's wages for each payroll period and that “a specified percentage of the 25 per cent remittance to the government agent shall be retained by the Government to defray administrative costs associated with the delivery of the programme” (section IV, paragraphs 1 and 3). The worker also agrees to pay to the employer part of the transportation costs and the employer, on behalf of the worker, will advance the work permit fees and be reimbursed by the government agent (section VII, paragraphs 3–4). *The Committee requests the Government to clarify why it is considered necessary to require migrant workers under the Farm Labour Programme to remit 25 per cent of their wages to the liaison service for mandatory savings, including for administrative costs, and to indicate whether the liaison service has a role in the recruitment, introduction and placement of migrant workers and whether any of the administrative costs retained by the liaison service relate to recruitment, introduction or placement. The Committee also requests the Government to take the necessary measures to ensure that migrants for employment are permitted to transfer their earnings or such part of their earnings and savings as they desire, and to provide information on any steps taken, in cooperation with the workers' and employers' organizations, to review the impact of the Farm Labour Programme on the situation of Barbadian migrant workers.*

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

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

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

The Committee notes with *regret* that the Government's report contains no reply to its previous comments. It is therefore bound to repeat its previous comments initially made in 2013.

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

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

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

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

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

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

*Articles 1 and 2 of the Convention. Equal remuneration for work of equal value. Legislation.* In previous comments, the Committee noted the absence of a legislative framework supporting the right to equal remuneration for men and women for work of equal value. Having noted also that the existing mechanisms for collective bargaining and wage councils for wage determination did not seem to promote and ensure effectively this right, the Committee requested the Government to take measures to give full legislative expression to the principle of equal remuneration for men and women for work of equal value. The Committee notes from the Government's report on Discrimination (Employment and Occupation) Convention, 1958 (No. 111) that the draft National Gender Policy, which includes a section on employment, is currently being reviewed by the relevant ministries but that the Employment (Prevention of Discrimination) Bill is yet to be adopted. The Committee once again recalls the particular importance of capturing in legislation the concept of “work of equal value” in order to address the segregation of men and women in certain sectors and occupations due to gender stereotypes. *In light of the ongoing legislative and policy developments on gender equality and non-discrimination, the Committee asks the Government to take the necessary measures to ensure that the*

*principle of equal remuneration for men and women for work of equal value will be fully reflected in the National Gender Policy and in the Employment (Prevention of Discrimination) Bill, and to provide a copy of the policy and the new legislation, once adopted.*

*Gender earnings gap and occupational segregation.* The Committee notes from the statistics published by the Barbados Statistical Service (Labour Force Survey) that of all women employed in 2015, 52.4 per cent earned less than 500 Barbadian dollars (BBD) per week compared to 41.8 per cent of all men employed in that same year. Among those earning between BBD500 and BBD999 per week, men represented almost 56 per cent and women only 44 per cent. Among those earning between BBD1000 to BBD1,300 women represented 46.6 per cent and men 53.1 per cent. Men also account for a little more than half of the workers (52.5 per cent) in the highest earnings group (over BBD1,300). The Committee further notes from the Labour Force Survey data for 2015 the persistent occupational gender segregation of the economy with women mostly employed as service workers and clerks while men are mostly employed as craft and related workers or plant and machine operators. When looking at economic sectors, women workers are highly represented in "Accommodation and Food Services", and their numbers sometimes more than doubles or triples the number of male workers in "Finance and Insurance", "Education" and "Human Health and Social Work". Women are also over-represented among household employees. In contrast, men largely predominate in the "Construction" and "Transportation and Storage" sectors. The Committee further refers to its comments on Convention No. 111. *The Committee asks the Government to take measures to reduce the earnings gap between men and women and to increase the employment of women in jobs with career opportunities and higher pay. Recalling that wage inequalities may arise due to the segregation of men and women into certain sectors and occupations, the Committee also asks the Government to provide information on the results achieved under the National Employment Policy and the National Gender Policy, once adopted, to address occupational gender segregation and to increase the employment of women and men in sectors and occupations in which they are under-represented.*

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

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

### Observation 2017

*Articles 1–3 of the Convention. Legislative protection against discrimination.* The Committee had previously noted that the Employment Rights Act 2012, while protecting workers against unfair dismissal on all the grounds enumerated in *Article 1(1)(a)* and certain additional grounds under *Article 1(1)(b)* of the Convention, did not ensure full legislative protection against both direct and indirect discrimination for all workers in all aspects of employment and occupation. The Committee previously asked the Government to address the protection gaps in the legislation. The Committee notes that the Government in its report merely restates the constitutional provisions on equality, and the protections afforded by the Employment Rights Act 2012. The Government also maintains that no distinctions, exclusions, or preferences based on the prohibited grounds set out in *Article 1(1)(a)* or on any additional grounds determined in accordance with *Article 1(1)(b)* exist in the country, and that no discrimination cases have been reported. Regarding the presumed absence of discrimination, the Committee considers that it is essential to acknowledge that no society is free from discrimination, and that continuous action is required to address discrimination in employment and occupation, which is both universal and constantly evolving (see General Survey on the fundamental Conventions, 2012, paragraphs 731 and 845). *Noting that the Employment (Prevention of Discrimination) Bill 2016 is still in draft form, the Committee urges the Government to take steps, without further delay, to address the protection gaps in the legislation, and to ensure that the anti-discrimination legislation expressly defines and prohibits direct and indirect discrimination in all aspects of employment and occupation, for all workers, and on all the grounds set out in the Convention. The Committee also repeats its request to the Government to provide information on the steps taken to ensure that all workers are being protected in practice against discrimination not only with respect to dismissal but with respect to all aspects of employment and occupation, on the grounds set out in the Convention. Such measures could include public awareness raising aimed at, or in cooperation with, workers and employers and their organizations, or the development of codes of practice or equal employment opportunities guidelines to generate broader understanding on the principles enshrined in the Convention. Noting with regret that for several years the Government has not provided any information on the action taken to promote and ensure equality of opportunity and treatment with respect to race, colour and national extraction, and to eliminate discrimination in employment and occupation on these grounds, the Committee urges the Government to provide such information without delay, including any studies or surveys on the labour market situation of the different groups protected under the Convention.*

*Article 1(1)(a). Discrimination on the grounds of sex. Sexual harassment.* The Committee previously noted the absence in the Employment Rights Act 2012 of provisions protecting workers against sexual harassment. The Committee notes the Government's indication that the proposed Sexual Harassment in the Workplace Bill will define and prohibit both quid pro quo and hostile environment sexual harassment and provide for a tribunal to hear complaints and determine matters related to sexual harassment. *The Committee urges the Government to take steps to ensure that the draft Sexual Harassment in the Workplace Bill is adopted speedily and that it will define and prohibit sexual harassment (both quid pro quo and hostile environment harassment) in all aspects of employment and occupation, and asks that the Government provide a copy of the latest version of the Bill, or as enacted, with its next report.*

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 would like to draw the Government's attention to its general observation of 2015 under this Convention, and in particular to the request for information contained in paragraph 30 thereof.*

*Articles 1, 3, 5–9 and 11–15 of the Convention. Legislation. Consultations. Activities covered and effective protection of workers.* The Committee notes with concern that, despite its reiterated comments, there has been no progress in the application of the Convention. The Government recognizes in its report that there are shortcomings in the Radiation Protection Act (Cap. 353A) of 1971, which only gives effect to *Article 10* of the Convention (notification of work involving exposure to ionizing radiations). In addition, the Committee notes the Government's indication that, with the exception of the systems put in place in the main public hospital, workers who are exposed to ionizing radiations are not protected. The Government expresses its intention to revise the Radiation Protection Act (Cap. 353A), in order to bring it into conformity with the Convention. In this regard, the Government indicates that a regulation on radiation protection could be established under the Safety and Health at Work Act (Cap. 356), proclaimed in January 2013.

In response to the previous observations of the Barbados Workers' Union (BWU) concerning the reactivation of the Advisory Committee on Radiation Protection, the Government indicates that a similar tripartite committee would be established to review and propose the necessary revision of the legislation in order to comply with the requirements of the Convention. In this respect, the Committee draws the attention of the Government to the guidance contained in its 2015 general observation. *While noting the intent of the Government to revise the Radiation Protection Act (Cap. 353A) of 1971, the Committee requests the Government to take the necessary steps, without delay and in consultation with representatives of employers and workers, to give full effect to the abovementioned provisions of the Convention, in light of its 2015 general observation, and to submit a detailed report in this regard.*



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

The Committee notes with *regret* that the Government's report has not been received. It is therefore bound to repeat its previous comments made in 2013. The Committee also notes that the Government had been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

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

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

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

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

The Committee notes with *regret* that the Government's report has not been received. It is therefore bound to repeat its previous comments made in 2013. The Committee also notes that the Government had been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

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

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

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

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

**C105 - Abolition of Forced Labour Convention, 1957 (No. 105)****Observation 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 2011.

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

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

The Government indicates in its report that one of the main tasks of the newly revived Labour Advisory Board is the revision of the national legislation, and

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

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

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

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

*Article 2 of the Convention. Insertion of labour clauses into public contracts.* In its previous comments, the Committee requested the Government to formulate standard binding documents incorporating labour clauses into all public contracts and to provide a copy of the Code of Practice for Project Management and Procurement, which was in preparation under the Good Governance Act 2011. The Committee notes the draft version of the Code of Practice for Project Management and Procurement transmitted by the Government with its report. It observes, however, that the draft Code of Practice does not refer to or contain any labour clauses ensuring that workers engaged under public contracts enjoy conditions of labour, including wages and hours of work, which are not less favourable than those established for work of the same character in the same district, as required under *Article 2(1)* of the Convention. The Committee once again recalls that the principal objective of the Convention is to promote good governance and socially responsible public procurement by requiring contractors to apply locally established prevailing rates of pay and terms and conditions of work as determined by law or collective agreement. The Convention calls for the establishment of a level playing field – in terms of labour standards – for all economic actors, so as to ensure fair competition. Requiring all bidders to respect, as a minimum, certain locally established standards prevents wages, working time and working conditions from being used as elements of competition. Consequently, no downward pressure on wages and working conditions may be exerted. ***The Committee expresses the firm hope that the Government will take steps without delay to formulate standard bidding documents incorporating labour clauses into all public contracts (whether for construction works, goods or services) that are fully aligned with the requirements of Article 2 of the Convention. It requests the Government to keep the Office informed of progress made in this regard and to transmit a copy of the Code of Practice for Project Management and Procurement once it is adopted.***

**C131 - Minimum Wage Fixing Convention, 1970 (No. 131)****Observation 2017**

The Committee notes the joint observations of the Confederation of Private Employers of Bolivia (CEPB) and the International Organisation of Employers (IOE).

*Articles 3 and 4(2) of the Convention. Elements for the determination of the level of minimum wages and full consultation with the social partners.* The Committee notes that, in reply to its previous comments, the Government indicates in its report that: (i) the national minimum wage was increased for 2017 by Supreme Decree No. 3161 of 1 May 2017; (ii) the socio-economic factors taken into consideration in determining the national minimum wage include inflation, productivity, gross domestic product (GDP), GDP per capita, the consumer price index, economic growth, unemployment rates, market fluctuations and the cost of living; (iii) in contrast with the Bolivarian Central of Workers, which explicitly asked to participate in decision-making in relation to the determination of the minimum wage, the CEPB did not officially ask to be part of the decision-making before raising the matter with the ILO; (iv) the Government held a meeting with representatives of the CEPB, during which they called for the immediate application of measures to address the effects of the increase in the minimum wage; and (v) round-table meetings were established to assess the appropriate follow-up action to those requests. On the other hand, the Committee notes the indication by the CEPB and the IOE in their observations that: (i) there are no quantitative methods for the determination of the national minimum wage and the Government does not consult employers' organizations for the development of a system of adjustment based on measurable and foreseeable criteria; (ii) the increase in the national minimum wage for 2017 was arbitrary, as it exceeded the annual inflation rate and disregarded variables such as economic development, productivity levels, the promotion of higher rates of decent employment of a better quality, the sustainability of enterprises and the need to attract investment; and (iii) once again in 2017, employers' organizations were not included in consultations on the determination of the minimum wage. **Recalling once again: (i) that the Convention requires the full consultation of the representative organizations of employers and workers concerned for the establishment, operation and modification of machinery for the fixing and adjustment from time to time of minimum wages (Article 4(2)); and (ii) the active participation of these organizations is essential to allow optimal consideration of all the relevant factors in the national context (see General Survey on minimum wage systems, 2014, paragraph 285), the Committee urges the Government to take measures without delay, in consultation with the social partners, to ensure their full and effective participation in the fixing and adjustment of the minimum wage. [The Government is asked to reply in full to the present comments in 2019.]**

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

The Committee takes note of the joint observations of the International Organisation of Employers (IOE) and the Confederation of Private Employers of Bolivia (CEPB) received on 1 September 2017.

*Article 2(1) of the Convention. Minimum age for admission to employment or work and labour inspection.* In its previous comments, the Committee noted the observation made by International Trade Union Confederation (ITUC) concerning the adoption by the Government of the new Code for Children and Young Persons of 17 July 2014, which amends section 129 of the previous Code by reducing the minimum age for admission to work for children from 14 to 10 years for own-account workers, and to 12 years for children engaged in an employment relationship, under exceptional circumstances. The ITUC observed that these exemptions from the minimum age of 14 years are incompatible with the exceptions set out in the Convention to the minimum age authorized for light work under the terms of *Article 7(4)*, which does not authorize work by children under 12 years of age. The Committee also noted the ITUC's statement that authorizing children to work from the age of 10 years would inevitably affect their compulsory schooling which, in the Plurinational State of Bolivia, consists of a fixed period of 12 years, that is at least up to the age of 16. The Committee noted the Government's indication that the new exemptions from the minimum age of 14 years, as set out in section 129 of the Code, can only be registered and authorized on condition that the work undertaken is not a threat to the child's right to education, health, dignity and general development.

At the 104th Session of the Conference Committee on the Application of Standards in June 2015, the Government representative indicated that the exceptions to the minimum age for admission to employment set out in the new Code were provisional, with the aim of resolving the problem by 2020. He indicated that the Government was not in violation of the Convention, but was seeking to improve the protection of children engaged in work, and that the Code was an exceptional measure to contribute to the application of the public policies intended to eradicate child labour. In this respect, he referred to the adoption of protection measures for child workers, such as the right to a wage equal to the national minimum wage and to social security, the promotion of the right to education and a working week of 30 hours for young persons between the ages of 12 and 14 years working for a third party, with two hours a day being dedicated to studying. Further, the Ministry of Labour, Employment and Social Welfare was giving effect to the Convention through integrated and inter-sectoral routine and complaint-based inspections conducted by the services for the protection of children and young persons, to highlight cases involving work by children under 14 years of age. The Committee notes that the Conference Committee, while duly noting the positive results of the economic and social policies implemented by the Government, urged it to repeal the provisions of the legislation setting the minimum age for admission to employment or work and to immediately prepare a new law, in consultation with the social partners, increasing the minimum age for admission to employment or work in accordance with the Convention. It also requested that the Government provide the labour inspectorate with greater human and technical resources and to provide training for labour inspectors with a view to adopting a more efficient and concrete approach to the application of the Convention.

The Committee notes the joint observations of the IOE and the CEPB according to which the new Code for Children and Young Persons is the consequence of an incorrect application of Convention No. 138. They specify that this modification was introduced without prior consultation with employers' and workers' organizations and that it runs counter to the minimum age for admission to work of 14 years, as specified by the Government when ratifying the Convention. The IOE and CEPB also indicate that the high level of the informal economy in the country (70 per cent) favours child labour, as it is not subject to labour inspection. They add that there is no child labour in the formal sector. Finally, they indicate that it is necessary for the Government to reinforce the labour inspection services in the formal and informal sectors.

The Committee **deeply deplains** the Government's indication in its report reiterating that the modifications made to section 129 of the Code for Children and Young Persons, which authorizes the competent authority to approve work by children and young persons between the ages of 10 and 14 years in own-account work, and work by children and young persons between the ages of 12 and 14 years for a third party, will remain in place as provisional measures. The Committee once again emphasizes that the objective of the Convention is to eliminate child labour and that it encourages the raising of the minimum age, but does not authorize its reduction once the minimum age has been set. The Committee recalls that the Plurinational State of Bolivia set a minimum age of 14 years when ratifying the Convention, and that the exception to the minimum age for admission to employment set out in section 129 of the Code for Children and Young Persons is not in conformity with this provision of the Convention. The Committee also notes with **deep concern** the distinction made between the minimum age for own account child workers, which is set at 10 years, and the minimum age for children engaged in an employment relationship, which is 12 years. The Committee noted in its 2012 General Survey on the fundamental Conventions (paragraphs 550 and 551) that it is of the firm view that self-employed children should benefit from at least the same legal protection, especially as many of them work in the informal economy and under hazardous conditions. The Committee finally observes the Government's indication that there are 90 labour inspectors (four more than in 2012). In this respect, the Committee recalls once

again that, according to the 2012 General Survey (paragraph 345), the limited number of labour inspectors makes it difficult for them to cover the whole of the informal economy and agriculture. *The Committee therefore strongly urges the Government to take immediate measures to ensure that section 129 of the Code for Children and Young Persons of 17 July 2014 establishing the minimum age for admission to employment or work, including own-account work, is amended in order to bring this age into conformity with the age specified when ratifying the Convention and with the requirements of the Convention, namely a minimum of 14 years. It also requests that the Government strengthen its efforts to reinforce the capacity of the labour inspection services so as ensure that the protection afforded by the Convention also covers children working in the informal economy.*

*Article 7(1) and (4). Light work.* The Committee previously noted that sections 132 and 133 of the Code for Children and Young Persons of 17 July 2014 allows children under the age of 14 years to work, subject to authorization by the competent authority, under conditions which limit their hours of work, do not endanger their life, health, safety or image, and do not interfere with their access to education. The Committee also noted the conclusions of the Conference Committee, according to which these amendments allow all children under 14 years of age to carry out light work without fixing a lower minimum age for admission to such work.

The Committee notes the Government's indication that sections 131, 132 and 133 of the Code for Children and Young Persons allows children between 10 and 18 years of age to work, subject to the authorization of the competent authority and of parents or guardians, under conditions which limit their hours of work, do not endanger their life, health, safety or image, and do not interfere with their access to education. Although the Government indicates that the Code for Children and Young Persons set a minimum age for the performance of light work, the Committee notes with deep *concern* that this age is set at 10 years. The Committee once again recalls that, under the terms of the flexibility clause contained in *Article 7(1) and (4)* of the Convention, national laws or regulations may permit the employment of persons between 12 and 14 years of age, and not 10 years, in light work which is not likely to be harmful to their health or development and is 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 once again urges the Government to take immediate measures to ensure that sections 132 and 133 of the Code for Children and Young Persons of 17 July 2014 are amended in order to establish a minimum age of 12 years for admission to light work, in accordance with the requirements of Article 7(1) and (4) of the Convention.*

*Article 9(3). Keeping of registers.* In its previous comments, the Committee noted that, under the terms of section 138 of the Code for Children and Young Persons, registers for child workers are required in order to obtain authorization for work. The Committee observed that these registers include the authorization for children between the ages of 10 and 14 years to work.

The Committee notes the Government's indication that Resolution No. 71/2016 created the Information System on Children and Young Persons (SINNA), which registers and contains information on the rights of the child, including information relating to children working on their own account or for a third party. The Committee notes with *regret* that Resolution No. 434/2016 provides for the inclusion in a register of minors under 14 years of age who are engaged in work. It once again draws the Government's attention to its comments concerning *Article 2(7)*, under the terms of which no authorization to work may be granted for children under 14 years of age. It also reminds the Government that, under the terms of *Article 9(3)* of the Convention, national laws shall prescribe the registers which shall be kept and made available by the employer containing the names and ages or dates of birth, duly certified, of persons whom he or she employs or who work for the employer and who are under 18 years of age. *The Committee once again requests that the Government take the necessary measures to bring this provision of the Code for Children and Young Persons into conformity with the Convention on these two points, and to provide recent statistics on child labour, disaggregated by age and gender, in particular with regard to children under 10 years of age, as well as children between the ages of 10 and 12 years, and the ages of 12 and 14 years.*

*The Committee reminds the Government that it may avail itself of ILO technical assistance in order to bring its law and practice into conformity with the Convention.*

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.]*

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

#### Observation 2017

The Committee notes the joint observations of the International Organisation of Employers (IOE) and the Confederation of Private Employers of Bolivia (CEPB) received on 1 September 2017.

*Articles 3(a) and 7(2)(a) and (b) of the Convention. Debt bondage and forced and compulsory labour in the sugar cane and Brazil nut harvesting industries, and effective and time-bound measures. Preventing children from being engaged in the worst forms of child labour and providing direct assistance for their removal from child labour and for their rehabilitation and social integration.* In its previous comments, the Committee noted the prevalence and conditions of exploitation of children working in hazardous conditions in sugar cane and nut harvesting plantations. The Committee also noted the Government's corporate incentives programme "*Triple Sello*", under which the provision of certain benefits is conditional on the enterprise demonstrating that it does not practice any form of child labour, including in work related to the harvesting of nuts. The Committee noted that, based on the Plan of Action 2013–17 with UNICEF, a programme had been established in 17 Bolivian nut and sugar cane producing municipalities to provide education assistance to children, and that 3,400 children had been reintegrated into basic education.

The Committee notes the Government's indication in its report that no cases of child labour have been identified in the sugar cane production sector. With regard to the nut production sector, the Government indicates that a tripartite agreement has been signed with the representatives of employers and their workers in the sector, including a clause prohibiting child labour. According to the Government, during the harvest period, labour inspectors undertake inspections to assess the conditions of work, and also keep a special record of cases of children working in the sector. The Government adds that these inspectors are empowered to impose penalties when they detect violations of labour rules. However, the Committee notes that the Government does not indicate the number of violations identified or the penalties imposed. It also notes with *regret* the absence of information on the effective and time-bound measures taken to prevent children becoming victims of debt bondage or forced labour. *The Committee once again urges the Government to take effective and time-bound measures to prevent children from becoming victims of debt bondage or forced labour in the sugar cane and Brazil nut harvesting industries, and to remove child victims from these worst forms of child labour and ensure their rehabilitation and social integration. The Committee once again requests the Government to explain the manner in which it ensures that persons using the labour of children under 18 years of age in the sugar cane and Brazil nut harvesting industries, under conditions of debt bondage or forced labour, are prosecuted and that effective and dissuasive sanctions are applied. The Committee requests the Government to indicate how the tripartite agreement signed in the nut production sector will concretely impact on child labour, and to provide a copy of the agreement.*

*Articles 3(d) and 7(2)(a) and (b). Hazardous types of work. Children working in mines. Effective and time-bound measures for prevention, assistance and removal.* The Committee noted previously that over 3,800 children work in the tin, zinc, silver and gold mines in the country. It also noted the awareness-raising and educational measures and the economic alternatives offered to the families of children working in mines. The Committee noted that, according to the Government's statistical data, only 8 per cent of the inspections carried out in mines found children under the age of 12 years working there. However, the Committee also noted that around 2,000 children were identified in 2013 in labour activities in traditional artisanal mines in the municipalities of Potosí and

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Oruro. The Committee further noted that 145 young persons below 18 years of age were found working in mines in Cerro Rico in June and July 2014. Finally, the Committee noted the Government's indication that it intended to formulate a national policy for the eradication of child labour within the next two years.

The Committee notes the joint observations of the IOE and the CEPB that it is necessary for the Government to adopt a national plan for the eradication of child labour after consulting the social partners.

The Committee notes that, according to the Government, the Ministry of Labour has taken action directed at employers in the mining sector to discourage them from using child labour. The Government also refers to the establishment by the Ministry of Labour of Integrated Mobile Offices (*Oficinas Móviles Integrales*) in remote areas where the presence of the worst forms of child labour is suspected, including in mining areas. However, the Committee notes with *regret* that the national policy for the eradication of child labour has not yet been adopted. ***The Committee therefore requests the Government to take the necessary measures for the adoption in the very near future of the national policy for the eradication of child labour and to provide information on this subject. It also requests the Government to indicate the effectiveness of the action undertaken by Integrated Mobile Offices in preventing children from being engaged in hazardous work in mines, their removal from such work and their rehabilitation.***

*Article 5. Monitoring mechanisms and application in practice.* The Committee previously noted the lack of resources of labour inspectors and the difficulties encountered in gaining access to plantations in the Chaco region. It also noted that the most recent information provided by the Government merely repeated the statistics provided previously indicating that only 5 per cent of the inspections carried out had identified children under 14 years of age engaged in work.

The Committee notes that, according to the Government, the labour inspectorate has six inspectors specialized in the progressive elimination of child labour. It adds that inspectors supervise labour standards relating to all fundamental rights. The Government adds that in remote areas where there are no Ministry of Labour offices, it has established Integrated Mobile Offices composed of labour inspectors with competence for the exhaustive supervision of the application of labour standards. The Committee notes that 265 inspections relating to child labour were carried out in 2015, all of which were undertaken by the Mobile Offices. The Committee also notes the Government's indication in its report on the application of the Minimum Age Convention, 1973 (No. 138), that studies and analysis have been carried out of the situation of children working in domestic service, mines, on their own account, in sugar cane fields and those engaged in hazardous types of work, but it notes that the Government has not provided the findings of these studies. The Government indicates that the analyses in the studies are helping in the formulation of a plan of action which will be coordinated by municipal authorities and government departments. ***The Committee requests the Government to continue providing updated statistics on the results of routine and unscheduled inspections, including inspections carried out by inspectors specialized in child labour. It also requests the Government to ensure that these statistics clearly indicate the nature, scope and trends of the worst forms of child labour, particularly in the sugar cane and Brazil nut harvest, and in the mining sector. Finally, the Committee requests the Government to provide information on the adoption of the plan of action referred to above.***

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*

*Adoption of Act No. 13.467.* The Committee notes the joint observations of the International Trade Union Confederation (ITUC) and the Single Confederation of Workers (CUT), received on 1 September 2017, and the observations of the National Confederation of Typical State Carriers (CONACATE), received on 28 August 2017. The Committee notes that the two communications refer to the adoption, on 13 July 2017, of Act No. 13.467 to reform the Consolidation of Labour Laws (CLT) and the impact of the new Act on compliance with the Convention. The Committee notes that, in their observations, the trade unions referred to above state that: (i) new section 611 A of the CLT, which introduces into Brazilian law the general possibility, by means of collective bargaining, of derogations which reduce the rights and protection afforded by the labour legislation for workers is in violation of the provisions and purposes of the present Convention and of the Collective Bargaining Convention, 1981 (No. 154); (ii) subsection 2 of new section 611-A, by providing that the absence of compensatory measures is not a reason for the clauses of collective agreements and accords to be found void, even where they derogate from the rights set out in the law, shows that the new system established by Act No. 13.467 is not based on negotiation, but on the abdication of rights; (iii) new section 444 of the CLT is also in violation of the ILO Conventions referred to above as it permits individual derogations from the provisions of the law and of collective agreements for workers with a higher education diploma and who receive a salary at least two times higher than the ceiling for benefits from the general social security scheme; and (iv) the creation by new section 444-B of the CLT of the status of exclusive autonomous worker, allowing the status of dependent worker to be excluded even when the autonomous worker is engaged exclusively and permanently for an enterprise, denies this new category of worker the rights of freedom of association and collective bargaining recognized by the labour legislation. Finally, the trade unions emphasize that the legislative amendments introduced are unprecedented in their gravity and are contrary to the comments made by the Committee in its 2016 observation.

The Committee also notes the joint observations of the International Organisation of Employers (IOE) and the National Confederation of Industry (CNI), received on 1 September 2017, which also refer to the adoption of Act No. 13.467, in relation to which they indicate that: (i) the Act was preceded by a broad process of discussion, and the principal social partners in the country had the opportunity to be heard by Parliament; (ii) the Act is intended to strengthen collective bargaining and the application of Conventions Nos 98 and 154 by promoting free and voluntary collective bargaining and establishing greater legal security, by limiting the interventions of labour courts in relation to the matters agreed by the social partners; and (iii) it is not correct to state that the new Act strengthens collective bargaining to the detriment of workers' protection, as new section 611-A of the CLT provides that the content of collective agreements and accords must respect the over 30 labour rights recognized in the Brazilian Constitution.

*Article 4 of the Convention. Promotion of collective bargaining. Relationship between collective bargaining and the law.* The Committee notes that Act No. 13.467, adopted on 13 July 2017, revises many aspects of the CLT. The Committee also notes Provisional Measure No. 808 of the President of the Republic, of 14 November 2017, which provisionally amends certain aspects of Act No. 13.467. The Committee notes that, as indicated in the observations of the various social partners, under the terms of the new Act: (i) collective agreements and accords prevail over the provisions of the law in respect, among others, of a list of 14 subjects (section 611-A of the CLT); and (ii) in contrast, collective agreements and accords cannot suspend or reduce rights in relation to a closed list of 30 points (section 611-B of the CLT). The Committee notes that this closed list of 30 points is based on the labour provisions contained in the Brazilian Constitution. It also notes that the list of subjects in respect of which collective bargaining prevails over the law includes many aspects of the employment relationship and that this list, in contrast with the list set out in section 611-B, is merely illustrative, inter alia, and that derogations by collective bargaining are therefore possible from all legal provisions, with the sole exception of the labour rights set out in the Constitution.

The Committee recalls that it emphasized in its previous comments, with reference to various bills that had been submitted to the Congress in 2015 and April 2016 that, although isolated legislative provisions concerning specific aspects of working conditions could, in limited circumstances and for specific reasons, provide that they may be set aside through collective bargaining, a provision establishing that provisions of the labour legislation in general may be replaced through collective bargaining would be contrary to the objective of promoting free and voluntary collective bargaining, as set out in the Convention. The Committee requested the Government to take fully into account the scope and content of *Article 4* of the Convention in this regard. The Committee notes with *concern* that new section 611-A of the CLT establishes as a general principle that collective agreements and accords prevail over the legislation, and it is therefore possible through collective bargaining not to give effect to the protective provisions of the legislation, with the sole limit of the constitutional rights referred to in section 611 B of the CLT. The Committee once again recalls in this regard that the general objective of Conventions Nos 98 and 154 and the Labour Relations (Public Service) Convention, 1978 (No. 151), is to promote collective bargaining with a view to agreeing on terms and conditions of employment that are more favourable than those already established by law (see the 2013 General Survey on collective bargaining in the public service, paragraph 298) and that the definition of collective bargaining as a process intended to improve the protection of workers provided for by law is recognized in the preparatory work for Convention No. 154, an instrument which has the objective, as set out in its preambular paragraphs, of contributing to the achievement of the objectives of Convention No. 98. *In light of the above, while asking the Government to provide its comments on the observations of the social partners in relation to sections 611-A and 611-B of the CLT, the Committee requests the Government to examine, following consultation with the social partners, the revision of these provisions in order to bring them into conformity with Article 4 of the Convention.*

*Relationship between collective bargaining and individual contracts of employment.* The Committee notes that, under the terms of new section 442 of the CLT, workers who have a higher education diploma and receive a wage that is at least two times higher than the ceiling for benefits from the general social security scheme (currently around 11,000 Brazilian reals (BRL), or approximately US\$3,390) will be able to derogate from the provisions of the legislation and collective agreements and accords in their individual contracts of employment. The Committee recalls that legislative provisions which allow individual contracts of employment to contain clauses contrary to those contained in the applicable collective agreements (although it is always possible for individual contracts of employment to contain clauses that are more favourable to the workers) are contrary to the obligation to promote collective bargaining, as set out in *Article 4* of the Convention. *While requesting the Government to provide its comments on the observations of the social partners in relation to section 442 of the CLT, the Committee requests the Government to examine, after consulting the social partners, the revision of this provision so as to bring it into compliance with Article 4 of the Convention.*

*Scope of application of the Convention.* The Committee notes the allegations made in the observations of the trade unions that the extension of the definition of autonomous worker, as a result of new section 444-B of the CLT, will have the effect of excluding workers covered by that definition from the trade union rights recognized in both the legislation and the Convention. *Recalling that the Convention applies to all workers, with the sole possible exception of the police and the armed forces (Article 5) and public servants engaged in the administration of the State (Article 6), the Committee requests the Government to provide its comments on the observations of the trade unions in relation to the impact of section 444-B of the CLT. The Committee also requests the Government to provide information on the other aspects of Act No. 13.467 relating to the rights enshrined in the Convention.*

*The Committee invites the Government to provide in its next report a detailed reply to the present comments, as well as to the other points contained in the 2016 observation in relation to the Convention.*

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

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

**Observation 2017**

The Committee notes the observations of the National Confederation of Industry (CNI) received on 31 August 2017, of the International Organisation of Employers received on 1 September 2015 and 31 August 2017, of the Union of Doctors in the State of Bahia (SINDIMED-Ba) received on 1 August 2014 as well as the Government's reply on this last observation received 5 January 2015.

*Articles 1–3 of the Convention. Legislative developments.* Noting that in 2011 there were 6.65 million domestic workers in Brazil, 92.6 per cent of whom were women, the Committee notes with *interest* the adoption of the Supplementary Act No. 150 of 2015 which provides specific measures for the implementation of the 2013 Amendment of the Constitution and expands the scope of protection of domestic workers' rights in line with the protection afforded to other workers. The Committee also welcomes the adoption by congress of the Draft Legislative Decree No. 627/2017, which approves the texts for internalization of the Domestic Workers Convention, 2011 (No. 189) and the Domestic Workers Recommendation, 2011 (No. 201). The Committee further notes Decree No. 8.136 of 5 November 2013, which regulates the National System for the Promotion of Racial Equality (SINAPIR), created by the Racial Equality Statute to oversee the implementation of services, programmes and policies in the country to effectively overcome racial inequality. The Committee also notes that the Decree foresees that entities which join the SINAPIR must provide resources to implement racial equality policies and, as reported by the Government in the framework of the UN Human Rights Council's Universal Periodic Review, by July 2016, 43 racial equality agencies from all regions had joined the SINAPIR (A/HRC/WG.6/27/BRA/1, 27 February 2017).

With regard to the Bill on Equality and the Elimination of Discrimination, the Committee notes the Government's statement that, in spite of the efforts of the Secretariat for Women's Policies and other bodies of the federal government to speed up the legislative process, disagreements concerning the content of the law continue to hinder its adoption. The Committee notes further the Government's indication that the Bill on Equal Opportunities and treatment for Women in Employment (PLS No. 136/2011) is currently being considered by the Senate commission for economic affairs. The draft law establishes mechanisms to prevent, address and punish discrimination against women, and sets out measures to promote equal opportunities for women in employment and career development. *The Committee asks the Government to provide information on any progress made in the adoption of the Bill on Equality and the Elimination of Discrimination, as well as the Bill on Equal Opportunities and Treatment for Women in Employment (PLS No. 136/2011). The Committee also asks the Government to provide information on the practical impact of Act No. 150 of 2015 on the elimination of discrimination against domestic workers and on the promotion of equality, and on the implementation and impact of SINAPIR.*

*Equality of opportunity and treatment irrespective of race, colour and ethnicity.* The Committee notes the observations of SINDIMED-Ba concerning an alleged dismissal on the grounds of race and colour. It also notes the Government's reply to SINDIMED-Ba's observations referring to the national legal framework prohibiting discrimination in employment and occupation on the abovementioned grounds and indicating the availability of judicial remedies. The Committee also takes note of the statistical information, disaggregated by race, colour and sex provided by the Government. The figures show that earnings by those who declare themselves as Black (*Preto*) had the highest increases in 2013 at 4.80 per cent, above those who declare themselves of mixed-race (*Pardo*) or White (*Branco*). The statistical information submitted further indicates that Black, indigenous and mixed-race workers continue to receive lower wages than White workers, with Black women being the most affected by the wage gap. *While noting these statistics and the information previously provided by the Government on measures and activities undertaken in the context of plans and programmes at both national and state levels to combat discrimination on the basis of race, colour or ethnicity, the Committee asks the Government to step up its efforts to combat discrimination on the basis of race, colour or ethnicity, and to actively promote equality in employment and occupation. In particular, the Committee asks the Government to provide information on the concrete impact of measures adopted in the context of the National Plan for Racial Equality, the Ethno Programme for the development of Quilombola communities, or otherwise, and the concrete results obtained in this regard. The Committee also asks the Government to continue to provide statistics, disaggregated by sex, race and colour, and the combined effects of sex and ethnicity on the distribution and participation of workers in the various occupations and economic sectors, including on their remuneration rates.*

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

**C139 - Occupational Cancer Convention, 1974 (No. 139)****Observation 2017**

*Articles 1 and 2. Periodic determination and replacement of carcinogenic substances and agents.* In its previous comment, the Committee requested the Government to take the necessary measures to periodically determine carcinogenic substances and agents, and to provide information on the measures adopted or envisaged for the replacement of asbestos and other carcinogenic substances and agents. The Committee notes with *interest* the publication of the national list of substances that are carcinogenic for humans (LINACH – Inter-ministerial Decree No. 9 of 2014). The Government indicates that the LINACH is updated every six months. Furthermore, Annexes 12 and 13 of Regulatory Standard No. 15 (Unhealthy activities and operations), respectively, establish tolerance limits for mineral dust, including asbestos, and requirements for activities involving carcinogenic chemicals, including the prohibition of exposure or contact in certain cases. Regarding asbestos, the Committee notes with *interest* that on 29 November 2017 the Supreme Federal Court of Brazil (STF) found the Law No. 9.005 of 1995, which regulates the extraction, use, marketing and transport of asbestos and products containing asbestos, as well as of natural and artificial fibres of any origin, used for the same purpose, to be unconstitutional. The decision of the STF bans the production, commercialization and use of asbestos in the country.

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

The Committee notes the observations of the Canadian Labour Congress (CLC) received on 31 August 2015, the observations of the Public Service Alliance of Canada (PSAC) received on 31 August 2015, the observations of the Confederation of National Trade Unions (CSN) received on 31 August 2015, and the observations of the Coalition of Residential Resources of Quebec (RESSAQ) received on 27 August 2015.

*Article 1(b) of the Convention. Work of equal value. Legislation.* For many years, the Committee has been noting that in a number of Canadian provinces and territories full legislative expression has not been given to the principle of equal remuneration for work of equal value, because the legislation limited comparisons to jobs involving the same work, similar work or substantially similar work. The Committee recalls that the legislation in *Alberta, British Columbia, Newfoundland and Labrador, Saskatchewan, the North-West Territories and Yukon* do not give full expression to the principle of equal remuneration for work of equal value; and that in the provinces with pay equity legislation applicable to the public sector, notably, *Manitoba, New Brunswick, Nova Scotia and Prince Edward Island*, there does not appear to be any progress in adopting similar legislation for the private sector. While noting that the Government of *Saskatchewan* continues to implement the 1997 Equal Pay for Work of Equal Value and Pay Equity Policy Framework in the public sector, the Committee notes with *concern* that the new *Saskatchewan* Employment Act adopted in 2014 does not revise the equal pay provision to include the concept of work of equal value. The Committee notes that the CLC repeats its concern over the inadequacy of the legislation as well as the wide disparity in pay equity protection among the provinces, which it believes contributes to the gender pay gap. ***The Committee once again urges the Government to take steps to ensure that the legislation in all of the provinces and territories gives full expression to the concept of work of equal value so that the principle of the Convention is applied in all of the provinces and territories in both the public and the private sectors. The Committee asks the Government to provide detailed information on the steps taken to bring the legislation into conformity with the Convention, including any consultations with worker and employer representatives and representatives of the provinces and territories.***

*Article 2. Legislative developments. Federal level.* The Committee recalls its previous comments concerning the Public Sector Equitable Compensation Act (PSECA) which had been adopted in 2009 but has not yet come into force. The Committee recalls that CLC has continuously expressed concerns about the PSECA because, among other things, it was not proactive and it unacceptably introduced market forces as a factor for consideration in the valuation of work. The Committee notes that in the view of PSAC, the PSECA restricts the rights to pay equity of federal sector workers. Both CLC and PSAC call for the repeal of the PSECA. In addition to the explanations provided by the Government in its report, the Committee notes that a Special Committee on Pay Equity was created by the Parliament on 17 February 2016, with a mandate to conduct hearings on the matter of pay equity and to propose a plan to adopt a proactive federal pay equity regime, both legislative and otherwise. On 9 June 2016, the Special Committee tabled its report titled "It's Time to Act" and the Government responded on 5 October 2016 reaffirming its commitment to develop a proactive pay equity reform, including new legislation. The Committee notes that the Special Committee recommends that the Government repeal the PSECA, and draft proactive pay equity legislation. The Committee also notes that the report recommends that the Government accept the overall direction and recommendations of the 2004 Federal Pay Equity Task Force report. ***Noting the concerns that have been raised over the persistence of the gender pay gap, the Committee welcomes the review of pay equity legislation at the federal level and asks the Government to provide information on the steps taken to implement the recommendations of the "Its Time to Act" report, including the adoption of new proactive legislation, its administration and enforcement structures, the repeal of the PSECA, and any other measures adopted to facilitate the transition to a new coherent national pay equity regime.***

*Provinces.* The Committee welcomes the process set in motion in *Ontario* in 2015 to develop a gender wage gap strategy to complement the pay equity legislation and that in November 2017 the Steering Committee has released its report and recommendations to be taken up by the Ministry of Labour of *Ontario* with a view to moving forward on the development of the strategy. The Committee notes that the recommendations are organized around balancing work and caregiving, valuing work, addressing workplace practices and challenging gender stereotypes. In *Quebec*, the Committee notes the concern of the CSN that the merger in 2014 of the Equity Pay Commission, with the Labour Standards Commission and the Occupational Health and Safety Commission will compromise the effective application of the Pay Equity Act. The Government indicates that the merger will improve the geographical reach of the commissions. ***The Committee asks the Government to report on the development and implementation of the wage gap strategy in Ontario. Noting the various important functions performed by the Pay Equity Commission, including technical advisory and education services along with promotion and monitoring of the enforcement of the Pay Equity Act, the Committee asks the Government to indicate the manner in which the merger of the Pay Equity Commission with the abovementioned institutions affects the implementation of the Pay Equity Act in Quebec and the other services it previously performed.***

*Equal pay for work of equal value of residential welfare workers in Quebec. Indirect discrimination.* The Committee notes the observations submitted by the RESSAQ on the discriminatory impact of the Act on the Representation Resources on their members, the majority of whom are women. Specifically RESSAQ contends that successive job and salary reclassifications have been based on budgetary cuts and not on objective job appraisals, and that female dominated occupations within the job classifications have been unfairly discriminated against. They state that this has had the impact of downgrading personnel and levels of pay and creating a sub-class of workers based on sex, and not on the important content and results of their work in accordance with pay equity legislation and this Convention. The Committee notes the important work undertaken by the welfare workers. However, the Committee also notes that RESSAQ does not provide sufficient information on the gender bias of the occupational classifications, the methodology used in the reclassification or in the disparity of results based on statistical data disaggregated by sex, for the Committee to draw any conclusions. ***Noting the observations of the RESSAQ, the Committee asks the Government to examine the concerns raised by the RESSAQ and to ensure that the job evaluations are objective and that gender bias has not directly or indirectly entered into or impacted the reclassifications or the salary readjustments, and to take any necessary corrective action to ensure the application of the Convention to these workers.***

*Article 4. Cooperation with employers' and workers' organizations.* The Committee notes the concerns raised by the PSAC over the manner in which its efforts to effectively negotiate and collectively bargain to promote the application of the Convention had been frustrated. Specifically it refers to its inability to help in the development of a new classification system for the federal public sector, an issue which the Committee raises in more detail in its direct request. ***The Committee stresses the importance it places on government cooperation with employer and worker representatives in order to ensure the application of the Convention and hopes that the Government will be in a position to report on the results of the consultation with the PSAC on classification systems, appraisal methodologies and compensation.***

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 Canadian Labour Congress (CLC) received on 31 August 2015, the observations of the Public Service Alliance of Canada (PSAC) received on 31 August 2015, the observations of the Confederation of National Trade Unions (CSN) received on 31 August 2015, and the observations of the Coalition of Residential Resources of Quebec (RESSAQ) received on 27 August 2015.

*Article 1(1)(a) of the Convention. Discrimination on the grounds of political opinion and social origin.* The Committee recalls that it has repeatedly urged the Government to amend the Canadian Human Rights Act (CHRA) and to take the necessary steps to amend the legislation applicable to specific provinces and territories to include the grounds of social origin (or "social condition") and political opinion as prohibited grounds of discrimination in employment and occupation. The Committee notes with *regret* the Government's indication that it has not proposed such amendments to the CHRA or taken any steps to ensure that the legislation of the provinces and territories be amended. It notes the view of the Canadian Human Rights Commission that the addition of such prohibited grounds of discrimination would also better reflect and address the realities of discrimination. The Committee notes the CLC's observations that social inequalities are a growing problem and "social origin" and "political opinion" should be included as prohibited grounds of discrimination in the CHRA. Recalling that "social condition" is used in Canadian legislation and jurisprudence in a manner consistent with the term "social origin" in the Convention, the Committee notes that the grounds of social origin or social condition are only covered in the legislation of *Quebec, Northwest Territories, New Brunswick, and Newfoundland and Labrador*; that the ground of "social disadvantage" is prohibited in *Manitoba* and that the grounds of "political opinion or belief" are prohibited grounds of discrimination in employment in *Yukon, Newfoundland, British Columbia, Manitoba, Quebec, Nova Scotia, Prince Edward Island, New Brunswick, and the Northwest Territories*. **The Committee once again urges the Government to take concrete steps to amend the CHRA to include social origin (or social condition) and political opinion as prohibited grounds of discrimination in employment and occupation and to indicate progress made in this regard. It further asks the Government to identify the steps taken to include these grounds in the legislation of these provinces and territories that have not yet included them as prohibited grounds and report on the progress made. The Committee also asks the Government to provide information on the manner in which workers are protected in practice against discrimination on grounds of social origin and political opinion.**

*Article 2. National equality policy.* The Committee notes that the CLC has repeatedly stressed the need for the development of a more structured national policy on equality in employment and occupation that encompasses unifying principles for all jurisdictions and expresses the goals to be achieved. The Government repeats its indication that all Canadian governments are pursuing and coordinating active policies designed to implement the Convention, and that the federal Government is not in a position to develop and implement laws, regulations, policies and programmes at the federal level with respect to matters such as employment discrimination, where the provinces and territories exercise jurisdiction. **The Committee encourages the Government to discuss this matter with representatives of workers' and employers' organizations with a view to developing, at the federal level, a coherent national policy on equality in employment and occupation, and to provide information on the steps taken in this regard and the results achieved.**

*Articles 2 and 3. Occupational gender segregation.* The Committee recalls its previous comments addressing issues of persisting inequalities between men and women. The Committee notes the information on the various measures and programmes undertaken at the federal and provincial levels to advance women's representation in skilled trades and technical professions, including in the apprenticeship programme. It also notes the new requirement, which came into effect on 31 December 2014, for companies listed on the Toronto Stock Exchange to report publicly on steps they are taking to increase the number of women on boards. Despite these measures, the Committee notes the concern of the PSAC that women's participation in the labour force has remained stagnant and that women remain concentrated in areas that are underpaid and subject to staffing cuts. They point out that the situation is more serious for Afro-Canadian and indigenous women and for women with disabilities. They also point to the existence of discriminatory practices against persons with family responsibilities and the lack of childcare services which has a negative impact, in particular on women's employment opportunities. The Committee notes the indication by the CLC that the Government is undertaking a gender-based analysis of the apprenticeship programmes to help address the under representation of women in non-traditional work and that the CLC makes a number of recommendations for the Government to consider. The Committee further notes the observations of the CSN underlining the difficulty young women face in entering the labour market and the negative impact of gender-based occupational segregation. The Committee also notes that in his letter of mandate, the Prime Minister has called on the Minister of the Status of Women, along with the Minister of Innovation, Science and Economic Development, to review the current collection of gender statistics and their use by departments to develop, monitor and evaluate policies and programmes, with the goal of increasing the participation of women in fields where they are under-represented. **The Committee asks the Government to continue to provide information on the steps taken both at the federal and the provincial levels to address the structural barriers resulting in gender-based occupational segregation (both horizontal and vertical) and to promote women's access to training and employment in areas traditionally dominated by men, including through the apprenticeship programmes. The Committee asks that the Government will take into account the recommendations of the CLC in this regard. Please also provide information on the results of the review called for by the Prime Minister and the follow-up action taken, specifically in relation to Afro-Canadian and indigenous women and women with disabilities who face challenges entering the labour market.**

*Article 3. Gender equality in employment and occupation of postal contractors. Indirect discrimination.* The Committee recalls the concerns raised by the CLC relating to indirect discrimination against postal contractors and addresses this issue in its direct request.

*Gender equality in employment and occupation of residential welfare workers in Quebec. Indirect discrimination.* The Committee notes the concerns raised by the RESSAQ on the discriminatory impact of the Law on Representation Resources (LRR) on their members, the majority of whom are women, and addresses this issue in its observation under the Equal Remuneration Convention, 1951 (No. 100).

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

## C162 - Asbestos Convention, 1986 (No. 162)

### Observation 2017

The Committee notes the observations by the Confederation of National Trade Unions (CSN) and the Canadian Labour Congress (CLC) received in 2015.

*Articles 3, 4, 10 and 11 of the Convention. Measures to be taken for the prevention and control of health hazards due to occupational exposure to asbestos. Periodic review in the light of technical progress and scientific knowledge. Consultation with the most representative organizations of employers and workers. Replacement of asbestos and the total or partial prohibition of the use of asbestos.* The Committee previously noted that Canada was one of the main producers of asbestos and along with the Conference Committee on the Application of Standards in 2011, requested the Government to ensure the adoption of the strictest standards limits for the protection of workers' health as regards exposure to asbestos. It also noted that since 2011 there had been no asbestos production in the country.

The Committee notes the statement by CLC calling for the ban of asbestos, citing scientific and technical information that points to the need for a total ban of the product. It also notes that the CSN considers that compliance with the Convention requires the prohibition of all types of asbestos and that it calls on the Government to undertake a revision of the national legislation regarding exposure to asbestos in this respect, along with a programme to assist workers in this industry with such a transition, including retraining.

In this respect, the Committee notes with *interest* that in December 2016, the Government published a Notice of intent to develop regulations respecting asbestos that would prohibit all future activities respecting asbestos and products containing asbestos. The Notice of intent received comments from three industry associations, eight labour organizations and non-governmental organizations, and six regional stakeholders. It notes that, subsequently, a consultation document describing the proposed regulatory approach was published in April 2017, and that the responses received to the document will be considered in the development of the proposed regulations. The consultation document indicates that the Government is proposing to develop regulations under the Canadian Environmental Protection Act to prohibit the import, use, sale and offer for sale of asbestos, as well as the manufacture, use, sale, offer for sale and import of

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products containing asbestos. The consultation document indicates that following public consultations, it is hoped that regulations will be published in the autumn of 2018. *The Committee welcomes the Government's initiative and requests it to pursue its efforts for the prevention and control of, and protection of workers against, health hazards due to occupational exposure to asbestos. It requests the Government to provide a copy of the regulations developed in this respect under the Canadian Environmental Protection Act, once adopted.*

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

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

The Committee notes the observations of the Single Central Organization of Workers of Chile (CUT-Chile), received on 3 November 2017.

*Articles 1 and 3 of the Convention. National policy, hazardous types of work and application of the Convention in practice.* In its previous comment, the Committee noted the survey carried out in 2012 on work by boys, girls and young persons (EANNA), undertaken by the Ministry of Social Development, the Ministry of Labour and Social Welfare and ILO/IPEC. It noted that, according to the EANNA, 6.6 per cent of children aged between 5 and 17 years were engaged in child labour, of whom 90 per cent were engaged in hazardous types of work. Finally, the Committee noted the Intersectoral Protocol on the detection and comprehensive protection for children engaged in hazardous work in agriculture, which recognizes the scope of child labour in the sector and sets out a four-stage plan to combat this practice.

The Committee notes the CUT-Chile's observation that, since the EANNA was conducted in 2012, no surveys have been undertaken to assess the extent and nature of child labour in the country and that updated statistical data are required.

The Committee notes the reference by the Government in its report to the National Strategy for the Elimination of Child Labour and the Protection of Young Persons (2015–25), *Crecer Felices* ("Growing Up Happy"), the principal objective of which is the lasting elimination of child labour. The Government adds that, in 2015, the Programme to Combat Child Labour and the Social Observatory against Child Labour commenced two qualitative evaluation processes, one on child labour in the agricultural sector in the regions of Maule, Biobio and La Araucanía, and the other on child labour in commerce in the regions of Antofagasta, Valparaíso and Metropolitana. The Government indicates that these studies, carried out in 2016, show that young persons enter the world of work early and that, in more rural areas, teachers play an important role in keeping children at school. The Committee also notes with *interest* that, according to the Government, within the framework of the Intersectoral Protocol on the detection and comprehensive protection for children engaged in hazardous work, Decree No. 2 of 13 January 2017 amended and updated Decree No. 50 of 11 September 2007, which determines the list of activities considered to be hazardous for the development and health of persons under 18 years of age.

Finally, the Committee takes due note of the information provided by the Government concerning the complaints received by the Labour Department of violations relating to child labour in 2015 and 2016, and the number and nature of the penalties imposed. *The Committee requests the Government to continue its efforts, particularly within the context of the Strategy and Protocol referred to above, to ensure the progressive elimination of child labour, including in hazardous types of work. The Committee also requests the Government to provide updated statistical information on the nature, extent and trends of child labour and work by young persons who have not reached the minimum age specified by the Government when ratifying the Convention, and to continue providing information on the number and nature of the violations recorded and the penalties imposed.*

*Article 2(1). Scope of application.* The Committee previously noted that the Labour Code does not apply to employment relationships that are not based on a formal contract, such as children working on their own account. However, it noted that children engaged in this type of work are covered by the "Puente Programme". This Programme provides support to families on condition that children under 18 years of age have not left school to work and are no longer engaged in hazardous types of work or in the worst forms of child labour.

The Committee takes due note of Act No. 20.595 of 2013 which establishes the Security and Opportunities Subsystem and the Ethical Family Income Programme (IEF). The Government indicates that, as the IEF provides support for families in situations of extreme poverty, without applying the conditions of the Puente Programme, it has brought an end to the latter Programme. However, it indicates that the Puente Programme benefited a total of 347,135 families. *The Committee requests the Government to pursue its efforts, in the context of the Ethical Family Income Programme, to ensure that no children under 15 years of age are engaged in child labour, including in the informal economy. It requests the Government to provide information on this subject.*

*Article 8. Artistic performances.* In its previous comment, the Committee noted that section 16 of the Labour Code provides that authorization for young persons under 15 years of age to participate in artistic performances may be granted by a legal representative *or* by the family court. It observed that, even though the family court may be mandated as the competent authority to grant authorization for participation in an artistic performance, the authorization of the legal representative of the young person, such as the parents, grandparents or guardians, was not sufficient to fulfil the requirements of the Convention.

The Committee notes with *satisfaction* that Act No. 20.821 of 18 April 2015 amends section 16 of the Labour Code by making the possibility for young persons under 15 years of age to participate in artistic performances subject to the dual condition of being explicitly authorized by their legal representative *and* by the family court.

**C161 - Occupational Health Services Convention, 1985 (No. 161)****Observation 2017**

In order to provide a comprehensive view of the issues relating to the application of ratified Conventions on occupational safety and health (OSH), the Committee considers it appropriate to examine Conventions Nos 161 (occupational health services) and 187 (promotional framework for OSH) together.

**Occupational Health Services Convention, 1985 (No. 161)**

*Articles 2 and 4 of the Convention. National policy and consultation.* In its previous comments, the Committee requested the Government to provide information on the formulation and implementation of a coherent national policy on occupational health services and the consultations held in this regard. The Committee notes with *interest* the Government's indication that the national OSH policy (Supreme Decree No. 47 of 4 August 2016) has a component on occupational health services which establishes the fundamental principles for the operation of the administrative bodies responsible for providing social security for employment accidents and occupational diseases. The OSH policy was developed in three stages, during which consultations were held at the national and regional levels, with the participation of representatives of employers' and workers' organizations.

*Article 5(b) and (f). Surveillance of workers' health and the factors in the working environment and working practices which may affect workers' health. Silica.* The Committee recalls that for several years it has been requesting the Government to take measures to ensure the surveillance of workers' health and factors in the working environment where workers are exposed to silica. The Committee notes with *interest* the approval of the Protocol on the surveillance of the working environment and the health of workers exposed to silica (Resolution No. 268 of 2015) and Circulars Nos 2706, 2893, 2971 and 3064 of 2010, 2012, 2013 and 2014 of the Social Security Supervisory Authority which instruct the employers' insurance funds and the Occupational Safety Institute to develop programmes for the surveillance of the working environment and the health of workers exposed to silica. The purpose of the Protocol is to reduce the incidence and prevalence of silicosis, through guidelines for the development, application and supervision of programmes for the epidemiological surveillance of the health of workers exposed to silica and the environments in which they work. The guiding principles and strategic objectives of the National Silicosis Eradication Plan (PLANESI) must be taken into account, with the aim of increasing the number of persons monitored and improving the efficiency and timeliness of control measures in workplaces, to prevent the deterioration of workers' health, and develop procedures for the early detection of silicosis in workers.

**Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)****Follow-up to the decision of the Governing Body (representation made under article 24 of the ILO Constitution)**

The Committee recalls that the Governing Body approved, in March 2016, the report of the committee set up to examine the representation alleging

non-observance by Chile of Convention No. 187, made under article 24 of the ILO Constitution by the College of Teachers of Chile AG (GB.326/INS/15/6). The Committee notes that the College of Teachers of Chile AG made a second representation under article 24 of the ILO Constitution, in which it alleges non-observance by Chile of the recommendations relating to several issues raised in the previous representation. In this regard, the Committee notes that in March 2017 the Governing Body, on the recommendation of its Officers, found that the second representation was receivable and invited the Committee to examine the allegations contained in the latest communication from the College of Teachers of Chile AG, in the context of the follow-up given to the recommendations relating to the previous representation at its session in November–December 2017. In this regard, the Committee also notes that the Governing Body postponed the decision to appoint a tripartite committee to examine the new representation (document dec GB.329/INS/21/3).

*Article 4(1) and (2) of the Convention. National OSH system.* The Committee notes that, in its latest representation, the College of Teachers of Chile AG alleges that: (a) the Government has not implemented the recommendations of the tripartite committee relating to the previous representation, as it has not determined the time to be allocated for teacher appraisals in consultation with the College of Teachers of Chile AG, and Act No. 20.903 (Teaching Careers Act) does not indicate the number of non-teaching hours to be allocated to teachers for appraisals, or where they are to be undertaken; and (b) the hours spent on appraisals constitute additional, unpaid and mandatory work, which is therefore damaging to the occupational health of teachers. With regard to this issue, in its previous comment, the Committee requested the Government to provide information on the review of the legislation on the teacher appraisal process and where it is to be undertaken.

The Committee notes the Government's indication that: (1) with respect to the alleged lack of consultations, the College of Teachers of Chile AG participated directly in the formulation of the teacher appraisal process established by the Teaching Careers Act; (2) with respect to the time required to carry out appraisals, while the aforementioned Act does not refer explicitly to the time at which such activities are to be carried out, the Office of the Comptroller General of the Republic has determined in repeated opinions that this type of appraisal is a non-teaching activity, and must be carried out within working hours. The Government also indicates that work performed outside of working hours shall be considered as overtime, and be paid as such (Opinions of the Comptroller No. 42.299 of 2008 and No. 91.155 of 2014); and (3) as appraisals are a mandatory process for teaching professionals in educational establishments that are dependent on municipal authorities, the parties are required to agree on, in the employment contracts as non-teaching curricula, the hours to be spent on this appraisal process (Labour Directorate, Ordinance No. 5414/100 of 2010). Moreover, the municipal authorities are responsible for adopting measures to ensure that such evaluation activities are carried out (Opinion of the Comptroller No. 62.598 of 2012).

Furthermore, in its previous comments, the Committee observed that the Government was taking measures to adjust the relevant legislation to address the occupational safety and health issues of teachers, mainly with regard to the excessive workload, and to revise section 69 of the Teachers' Statute and its Regulations (Act No. 19.070 of 1996, as amended) with regard to the proportion of time assigned to non-teaching activities. The Government indicates that it is in the process of developing regulations to determine more specifically the work and activities that may be included in the definition of non-teaching curricular hours, in accordance with section 6 of the Teachers' Statute, as amended by the Teaching Careers Act. With respect to the proportion of hours spent on non-teaching activities, since 2017, teaching hours have been reduced and non-teaching hours have been increased (70 per cent teaching hours). Non-teaching hours will increase again in 2019 (65 per cent teaching hours). *The Committee requests the Government to provide detailed information on the consultations held on the development of the teaching appraisal process established by the Teaching Careers Act, and on the progress made in the formulation of regulations to determine non-teaching curricular hours, in consultation with the most representative employers' and workers' organizations.*

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

## C187 - Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)

### Observation 2017

In order to provide a comprehensive view of the issues relating to the application of ratified Conventions on occupational safety and health (OSH), the Committee considers it appropriate to examine Conventions Nos 161 (occupational health services) and 187 (promotional framework for OSH) together.

#### Occupational Health Services Convention, 1985 (No. 161)

*Articles 2 and 4 of the Convention. National policy and consultation.* In its previous comments, the Committee requested the Government to provide information on the formulation and implementation of a coherent national policy on occupational health services and the consultations held in this regard. The Committee notes with *interest* the Government's indication that the national OSH policy (Supreme Decree No. 47 of 4 August 2016) has a component on occupational health services which establishes the fundamental principles for the operation of the administrative bodies responsible for providing social security for employment accidents and occupational diseases. The OSH policy was developed in three stages, during which consultations were held at the national and regional levels, with the participation of representatives of employers' and workers' organizations.

*Article 5(b) and (f). Surveillance of workers' health and the factors in the working environment and working practices which may affect workers' health. Silica.* The Committee recalls that for several years it has been requesting the Government to take measures to ensure the surveillance of workers' health and factors in the working environment where workers are exposed to silica. The Committee notes with *interest* the approval of the Protocol on the surveillance of the working environment and the health of workers exposed to silica (Resolution No. 268 of 2015) and Circulars Nos 2706, 2893, 2971 and 3064 of 2010, 2012, 2013 and 2014 of the Social Security Supervisory Authority which instruct the employers' insurance funds and the Occupational Safety Institute to develop programmes for the surveillance of the working environment and the health of workers exposed to silica. The purpose of the Protocol is to reduce the incidence and prevalence of silicosis, through guidelines for the development, application and supervision of programmes for the epidemiological surveillance of the health of workers exposed to silica and the environments in which they work. The guiding principles and strategic objectives of the National Silicosis Eradication Plan (PLANESI) must be taken into account, with the aim of increasing the number of persons monitored and improving the efficiency and timeliness of control measures in workplaces, to prevent the deterioration of workers' health, and develop procedures for the early detection of silicosis in workers.

#### Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)

##### Follow-up to the decision of the Governing Body (representation made under article 24 of the ILO Constitution)

The Committee recalls that the Governing Body approved, in March 2016, the report of the committee set up to examine the representation alleging non-observance by Chile of Convention No. 187, made under article 24 of the ILO Constitution by the College of Teachers of Chile AG (GB.326/INS/15/6). The Committee notes that the College of Teachers of Chile AG made a second representation under article 24 of the ILO Constitution, in which it alleges non-observance by Chile of the recommendations relating to several issues raised in the previous representation. In this regard, the Committee notes that in March 2017 the Governing Body, on the recommendation of its Officers, found that the second representation was receivable and invited the Committee to examine the allegations contained in the latest communication from the College of Teachers of Chile AG, in the context of the follow-up given to the recommendations relating to the previous representation at its session in November–December 2017. In this regard, the Committee also notes that the Governing Body postponed the decision to appoint a tripartite committee to examine the new representation (document dec GB.329/INS/21/3).

*Article 4(1) and (2) of the Convention. National OSH system.* The Committee notes that, in its latest representation, the College of Teachers of Chile AG alleges that: (a) the Government has not implemented the recommendations of the tripartite committee relating to the previous representation, as it has not determined the time to be allocated for teacher appraisals in consultation with the College of Teachers of Chile AG, and Act No. 20.903 (Teaching Careers Act)

does not indicate the number of non-teaching hours to be allocated to teachers for appraisals, or where they are to be undertaken; and (b) the hours spent on appraisals constitute additional, unpaid and mandatory work, which is therefore damaging to the occupational health of teachers. With regard to this issue, in its previous comment, the Committee requested the Government to provide information on the review of the legislation on the teacher appraisal process and where it is to be undertaken.

The Committee notes the Government's indication that: (1) with respect to the alleged lack of consultations, the College of Teachers of Chile AG participated directly in the formulation of the teacher appraisal process established by the Teaching Careers Act; (2) with respect to the time required to carry out appraisals, while the aforementioned Act does not refer explicitly to the time at which such activities are to be carried out, the Office of the Comptroller General of the Republic has determined in repeated opinions that this type of appraisal is a non-teaching activity, and must be carried out within working hours. The Government also indicates that work performed outside of working hours shall be considered as overtime, and be paid as such (Opinions of the Comptroller No. 42.299 of 2008 and No. 91.155 of 2014); and (3) as appraisals are a mandatory process for teaching professionals in educational establishments that are dependent on municipal authorities, the parties are required to agree on, in the employment contracts as non-teaching curricula, the hours to be spent on this appraisal process (Labour Directorate, Ordinance No. 5414/100 of 2010). Moreover, the municipal authorities are responsible for adopting measures to ensure that such evaluation activities are carried out (Opinion of the Comptroller No. 62.598 of 2012).

Furthermore, in its previous comments, the Committee observed that the Government was taking measures to adjust the relevant legislation to address the occupational safety and health issues of teachers, mainly with regard to the excessive workload, and to revise section 69 of the Teachers' Statute and its Regulations (Act No. 19.070 of 1996, as amended) with regard to the proportion of time assigned to non-teaching activities. The Government indicates that it is in the process of developing regulations to determine more specifically the work and activities that may be included in the definition of non-teaching curricular hours, in accordance with section 6 of the Teachers' Statute, as amended by the Teaching Careers Act. With respect to the proportion of hours spent on non-teaching activities, since 2017, teaching hours have been reduced and non-teaching hours have been increased (70 per cent teaching hours). Non-teaching hours will increase again in 2019 (65 per cent teaching hours). ***The Committee requests the Government to provide detailed information on the consultations held on the development of the teaching appraisal process established by the Teaching Careers Act, and on the progress made in the formulation of regulations to determine non-teaching curricular hours, in consultation with the most representative employers' and workers' organizations.***

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

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

The Committee notes the observations of the International Organisation of Employers (IOE) and the National Employers Association of Colombia (ANDI), received on 30 August 2017, those of the General Confederation of Labour (CGT), received on 31 August 2017, and those of the Confederation of Workers of Colombia (CTC) and the Single Confederation of Workers of Colombia (CUT), received on 1 September 2017.

*Article 1 of the Convention. National policy and application of the Convention in practice.* In view of the expiry of the National Strategy to Prevent and Eradicate the Worst Forms of Child Labour and Protect Young Workers (ENETI) 2008–15, the Government indicated previously that the National Planning Department (DNP) had undertaken an evaluation of the implementation of the Strategy, which would need to be taken into account in the redesign of the public policy paper for the prevention and eradication of child labour and the protection of young workers (2016–26).

The Committee notes the observations made by the CUT and the CTC in which they indicate that 869,000 children between the ages of 5 and 17 years work, and that rural areas are those most affected by child labour. They add that 4.2 per cent of children between the ages of 5 and 14 years are engaged in work, compared with 19.8 per cent of those between 15 and 17 years of age. The Committee notes the observations of the IOE and the ANDI, indicating that child labour has decreased, falling from 9.1 per cent in 2015 to 7.8 per cent in 2016. The CGT explains that most children participate in family economic activities and that the Government should therefore provide assistance to families, for example through subsidies, to prevent children being faced with the need to work.

The Committee notes the Government's indication in its report that 20 working days have been organized with the participation of the Colombian Family Welfare Institute (ICBF), the DNP and the ILO with a view to preparing the new public policy paper for the prevention and eradication of child labour and the protection of young workers (2016–26). During the preparation of this public policy, 13 seminars were also held to gather the views of children and young persons.

The Committee notes the Government's indication that child labour fell by 2.4 per cent between 2015 and 2016. The Government adds that, in 2016, 2,746 authorizations to work were granted to young persons under 18 years of age and that 202 applications for authorizations were refused, 129 authorizations were revoked and 1,870 inspections were carried out. ***The Committee takes due note of the reduction of child labour in the country and requests the Government to continue its efforts for the progressive elimination of child labour, especially in rural areas. It also requests the Government to indicate whether the public policy for the prevention and eradication of child labour and the protection of young workers (2016–26) has been finalized and adopted, and to provide detailed information on its content and implementation. The Committee further requests the Government to continue providing updated statistical data on the employment of children and young persons, and to provide copies of any labour inspection reports.***

*Article 2(3). Compulsory education.* The Government indicated previously that, in cooperation with the National Agency to Combat Extreme Poverty, measures had been taken to carry out a census of the whole population and to ensure the integration of all children in the education system, including through collaboration with families to identify children marginalized by the education system.

The Committee noted the measures taken by the Government to increase the school attendance rate in the context of the ENETI 2008–15. However, it noted that the primary school enrolment rate was 90 per cent for girls and boys, and that at the secondary level it was 78.7 per cent for girls and 73.3 per cent for boys.

The Committee notes the observations of the CTC and the CUT, according to which 29.8 per cent of children between the ages of 5 and 17 years do not go to school because they are working. The Committee also notes the CGT's indication that the measures adopted by the Government to promote education have not been effective, as primary school attendance by children in 2016 fell by 85,005 pupils in relation to 2015.

The Committee notes the Government's indication that the Ministry of National Education has collaborated with strategic partners, including the Administrative Department for Social Prosperity, to ensure that the provision of education reaches the poorest and most vulnerable children and young persons. In this context, the Ministry of Education prepared a protocol at the beginning of 2016 for the organization of active outreach days in the cities of Medellín, Cali and Cartagena, where action has been carried out to reach out to children and young persons not attending school and to help them to enrol. The Government has also established various strategies to reduce school drop-outs through: (1) the implementation of flexible education models (MEF); (2) the school meals programme (PAE); (3) assistance for school transport; (4) the investment of public funds in educational assistance; and (5) a monitoring system to prevent and analyse the causes of school drop-outs. The Committee also takes due note of the adoption of Act No. 1753 of 2015 issuing the National Development Plan 2014–18 (PND 2014–18), of which one of the three pillars is education. It notes that, within the context of the PND 2014–18, the National Educational Infrastructure Plan (PNIE) has resulted in the creation of 3,243 new classrooms, which has benefitted 129,720 children and young persons, and that 2,533 additional classrooms intended to benefit 101,320 children and young persons are under construction. ***The Committee encourages the Government to continue its efforts to ensure that all children attend compulsory school at least up to the age of 15 years, and particularly the poorest children and young persons. It requests it to provide statistical data on school attendance rates in the country. To the extent possible, this information should be disaggregated by age and gender.***

*Article 9(1). Penalties.* The Committee noted previously that, although the Government indicates that any non-compliance with the legislation respecting minors is punishable with a fine of between one and 100 times the minimum wage, it did not provide details on the legislation.

The Government refers to Act No. 1610 of 2013 regulating certain aspects of labour inspection and indicates that sections 1 and 2 of the Act empower labour inspectors to monitor individual and collective issues in the private and public sectors relating to labour law and the ILO standards ratified by Colombia. The Committee notes that section 7 of the Act provides that labour inspectors shall have the authority to penalize offences with penalties from one to 5,000 times the monthly minimum wage depending on the gravity of the offence. Sections 8 to 11 provide for the possibility for inspectors to issue other penalties, such as the closure of workplaces, evidence gathering, the imposition of a trial period or the suspension of work. The Government adds that in 2015 violations of the legislation concerning minors resulted in 11 penalties (of a total value of 50,891,350 Colombian pesos (COP)) and that nine penalties were imposed by labour inspectors in 2016 (to a value of COP40,677,836). ***The Committee requests the Government to continue providing information on the practical implementation of Act No. 1610 of 2013, in particular the number and nature of the violations and the penalties imposed.***

**C162 - Asbestos Convention, 1986 (No. 162)****Observation 2017**

In order to provide a comprehensive view of the issues relating to the application of the ratified occupational safety and health Conventions, the Committee considers it appropriate to examine Conventions Nos 162 (asbestos), 170 (chemicals) and 174 (major industrial accidents) together.

The Committee notes the observations of the Confederation of Workers of Colombia (CTC), the Single Confederation of Workers of Colombia (CUT) and the General Confederation of Labour (CGT), and the observations of the International Organisation of Employers (IOE) and the National Employers Association of Colombia (ANDI), on the application of Convention No. 162, which were received in 2016. The Committee also notes the observations of the CTC and the CUT on the application of Convention No. 174, received in 2015, and the Government's reply in this regard.

**Convention No. 162: Asbestos**

*Articles 3(2) and 14 of the Convention. Periodic review of national laws and regulations. Labelling.* In its previous comments, the Committee indicated that, for

the purposes of the Convention, products which contain less than 1 per cent of asbestos are not considered as products "free of asbestos". Accordingly, with a view to ensuring that the labelling of products is in conformity with the Convention, the Committee urged the Government to provide information on the measures adopted to re-examine the concept of "free of asbestos", as set out in the Regulations on health and safety in relation to chrysotile and other fibres of similar use (Decision No. 007 of 4 November 2011 of the Ministry of Health and Social Security). The Committee notes the Government's indication in its report that the matter is being assessed and it is hoped to reach agreement with the social partners on the referral for consideration to the National Occupational Safety Commission on Chrysotile Asbestos and Other Fibres of the re-examination of the standard as indicated by the Committee and accordingly to consider, determine and update the concept of "free of asbestos". In this respect, the ANDI and the IOE indicate that they would support the development of a technical document to supplement the Decision and clarify the prevention and protection measures that are necessary under the Convention. ***The Committee requests the Government to provide information on the outcome of the consultations and the decision that is adopted in relation to the re-examination of the regulatory definition of "free of asbestos" and to ensure that all products containing asbestos are labelled in accordance with Article 14 of the Convention. It also requests the Government to provide information on the measures taken to monitor the application of Article 14 of the Convention in practice.***

**Article 17. Demolition work.** In its previous comments, the Committee requested the Government to establish a system under which only employers or contractors who are qualified can carry out the types of work referred to by this Article of the Convention and which would give effect to the requirement for the employer or contractor to draw up a workplan, as provided in *Article 17(2)*. The Government indicates that, in view of the geothermic situation of the country, asbestos and friable insulation materials containing asbestos have never been used in construction. The Government also indicates that regulation No. 4.5 of the Regulations on health and safety in relation to chrysotile and other fibres of similar use contains provisions on construction, modification, demolition and removal work, in accordance with *Article 17(2)* of the Convention. However, the Government adds that the current regulations do not provide for a system under which only employers or contractors recognized by the competent authority as qualified may carry out the types of work referred to in this Article of the Convention. The ANDI and the IOE also indicate that they would support the development of a technical document to supplement the Regulations and ensure compliance with the requirements of *Article 17* of the Convention. ***Noting the Government's explanations and the position of the ANDI and the IOE in this regard, the Committee once again requests the Government to take the necessary measures to ensure that only employers or contractors recognized by the competent authority as qualified may carry out the types of work referred to in Article 17 of the Convention.***

### **Convention No. 170: Chemicals**

**Article 9 of the Convention. Responsibilities of suppliers.** With reference to its previous comments on the responsibilities of suppliers, the Committee notes the Government's reference to Decisions Nos 331 of 1993 and 399 of 1997 of the Andean Community. However, these decisions only apply to the international road transport of goods and to international multimodal transport, and do not cover the provisions of the Convention. ***The Committee once again requests the Government to provide information on the measures adopted or envisaged in respect of the responsibilities of suppliers, whether they are manufacturers, importers or distributors of chemicals, in accordance with Article 9 of the Convention.***

**Articles 10 and 11. Responsibilities of employers for the identification and transfer of chemicals.** With reference to its previous comments, the Committee notes the Government's indication that a draft Decree for the transposition to the national level of the Globally Harmonized System of Classification and Labelling of Chemicals is in the process of being adopted. ***The Committee requests the Government to ensure that the Decree in the process of being adopted provides for the responsibilities of employers with respect to the identification and transfer of chemicals, in accordance with Articles 10 and 11 of the Convention.***

**Article 18. Rights of workers to remove themselves from danger and to obtain information.** With reference to its previous comments, the Committee notes that, in accordance with section 3 of Decision No. 2400 of 1979 (certain provisions concerning accommodation, and health and safety at the workplace), workers are required to notify immediately their superiors of the existence of defects or faults in plant, machinery, work processes and operations and the hazard control system. The Committee nevertheless observes that the provision referred to by the Government does not specifically establish the right of workers to remove themselves from danger and to obtain the information set out in *Article 18(3)* and *(4)* of the Convention. ***The Committee once again requests the Government to provide information on the measures adopted or envisaged to establish the right of workers: (a) to remove themselves from danger resulting from the use of chemicals when they have reasonable justification to believe there is an imminent and serious risk to their safety or health, and to be protected against undue consequences of such action; and (b) to obtain information in accordance with Article 18(3) and (4) of the Convention.***

### **Convention No. 174: Prevention of major industrial accidents**

**Article 4 of the Convention. National policy and consultation of the social partners.** In its previous comments, the Committee requested the Government to provide information on: (a) the content of the national policy, specifically in relation to the risk of major accidents with respect to protection of workers, the public and the environment; and (b) the consultations held with the social partners in this regard. The Committee notes that, within the framework of Act No. 1523 of 2012 (national policy and national system for the management of the risk of disasters), Decree No. 308 of 2016 (National Plan for the Management of the Risk of Disasters, (PNGR 2015–25)) was adopted and envisages the implementation of various information management projects relating to the risk of disasters of technological origin. The Committee also notes the preliminary draft of the Decree on the adoption of the Programme for the Prevention of Major Accidents transmitted by the Government. The Government indicates that the draft Decree has received comments from the various actors in the National System for the Management of the Risk of Disasters in the context of the Technical Advisory Commission on Industrial and Technological Risks (CNARIT), established as part of the national policy under Decision No. 1770 of 2013. The Government adds that the draft Decree was opened to public consultation on 31 October 2017 for a period of 14 days, during which comments were received from the public. Nevertheless, the Committee notes the observations of the CUT on the lack of participation by workers' representatives in the CNARIT and in other inter-institutional dialogue bodies envisaged by the national system for the management of the risk of disasters. The Committee also notes that the draft Decree does not apply to the exploration and extraction of mineral and energy resources or to sanitary landfills and security landfills or cells. In this respect, the Committee recalls that, in accordance with *Article 1(4)* of the Convention, the Government may, after consulting the representative organizations of employers and workers concerned, exclude from the application of the Convention installations or branches of economic activity for which equivalent protection is provided. ***The Committee requests the Government to provide information on the measures adopted or envisaged for the consultation of the most representative organizations of employers and workers in relation to the formulation, implementation and periodic review of a coherent national policy concerning the protection of workers, the public and the environment against the risk of major accidents. The Committee requests the Government to provide detailed information on the manner in which the exploration and extraction of mineral and energy resources and sanitary and security landfills are covered by protection equivalent to that set out in the Convention.***

**Article 5. System for the identification of major hazard installations.** In its previous comments, the Committee requested the Government to adopt measures for the identification of major hazard installations in consultation with the social partners. The Committee notes the observations of the CUT concerning the absence of a system of identification. The Committee also notes that the third follow-up and evaluation report of the PNGR (August 2017) emphasizes the progress made in relation to the classification and enumeration of hazardous installations due to chemical risks. In this regard, sections 7 and 8 of the draft Decree on the Programme for the Prevention of Major Accidents establishes a mechanism to compile information on installations exposed to the risk of major accidents, which shall be determined by the Ministry of Labour during the 12 months following the publication of the Decree. ***The Committee requests the Government to provide information on the progress achieved, in consultation with the most representative organizations of employers and workers and other interested parties who may be affected, in the establishment of a system for the identification of major hazard installations, in accordance***

with Article 5 of the Convention.

The Committee is raising other matters relating to the application of the occupational safety and health Conventions (protection against specific risks) in a request addressed directly to the Government.

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

## C170 - Chemicals Convention, 1990 (No. 170)

### Observation 2017

In order to provide a comprehensive view of the issues relating to the application of the ratified occupational safety and health Conventions, the Committee considers it appropriate to examine Conventions Nos 162 (asbestos), 170 (chemicals) and 174 (major industrial accidents) together.

The Committee notes the observations of the Confederation of Workers of Colombia (CTC), the Single Confederation of Workers of Colombia (CUT) and the General Confederation of Labour (CGT), and the observations of the International Organisation of Employers (IOE) and the National Employers Association of Colombia (ANDI), on the application of Convention No. 162, which were received in 2016. The Committee also notes the observations of the CTC and the CUT on the application of Convention No. 174, received in 2015, and the Government's reply in this regard.

#### Convention No. 162: Asbestos

*Articles 3(2) and 14 of the Convention. Periodic review of national laws and regulations. Labelling.* In its previous comments, the Committee indicated that, for the purposes of the Convention, products which contain less than 1 per cent of asbestos are not considered as products "free of asbestos". Accordingly, with a view to ensuring that the labelling of products is in conformity with the Convention, the Committee urged the Government to provide information on the measures adopted to re-examine the concept of "free of asbestos", as set out in the Regulations on health and safety in relation to chrysotile and other fibres of similar use (Decision No. 007 of 4 November 2011 of the Ministry of Health and Social Security). The Committee notes the Government's indication in its report that the matter is being assessed and it is hoped to reach agreement with the social partners on the referral for consideration to the National Occupational Safety Commission on Chrysotile Asbestos and Other Fibres of the re-examination of the standard as indicated by the Committee and accordingly to consider, determine and update the concept of "free of asbestos". In this respect, the ANDI and the IOE indicate that they would support the development of a technical document to supplement the Decision and clarify the prevention and protection measures that are necessary under the Convention. **The Committee requests the Government to provide information on the outcome of the consultations and the decision that is adopted in relation to the re-examination of the regulatory definition of "free of asbestos" and to ensure that all products containing asbestos are labelled in accordance with Article 14 of the Convention. It also requests the Government to provide information on the measures taken to monitor the application of Article 14 of the Convention in practice.**

*Article 17. Demolition work.* In its previous comments, the Committee requested the Government to establish a system under which only employers or contractors who are qualified can carry out the types of work referred to by this Article of the Convention and which would give effect to the requirement for the employer or contractor to draw up a workplan, as provided in *Article 17(2)*. The Government indicates that, in view of the geothermic situation of the country, asbestos and friable insulation materials containing asbestos have never been used in construction. The Government also indicates that regulation No. 4.5 of the Regulations on health and safety in relation to chrysotile and other fibres of similar use contains provisions on construction, modification, demolition and removal work, in accordance with *Article 17(2)* of the Convention. However, the Government adds that the current regulations do not provide for a system under which only employers or contractors recognized by the competent authority as qualified may carry out the types of work referred to in this Article of the Convention. The ANDI and the IOE also indicate that they would support the development of a technical document to supplement the Regulations and ensure compliance with the requirements of *Article 17* of the Convention. **Noting the Government's explanations and the position of the ANDI and the IOE in this regard, the Committee once again requests the Government to take the necessary measures to ensure that only employers or contractors recognized by the competent authority as qualified may carry out the types of work referred to in Article 17 of the Convention.**

#### Convention No. 170: Chemicals

*Article 9 of the Convention. Responsibilities of suppliers.* With reference to its previous comments on the responsibilities of suppliers, the Committee notes the Government's reference to Decisions Nos 331 of 1993 and 399 of 1997 of the Andean Community. However, these decisions only apply to the international road transport of goods and to international multimodal transport, and do not cover the provisions of the Convention. **The Committee once again requests the Government to provide information on the measures adopted or envisaged in respect of the responsibilities of suppliers, whether they are manufacturers, importers or distributors of chemicals, in accordance with Article 9 of the Convention.**

*Articles 10 and 11. Responsibilities of employers for the identification and transfer of chemicals.* With reference to its previous comments, the Committee notes the Government's indication that a draft Decree for the transposition to the national level of the Globally Harmonized System of Classification and Labelling of Chemicals is in the process of being adopted. **The Committee requests the Government to ensure that the Decree in the process of being adopted provides for the responsibilities of employers with respect to the identification and transfer of chemicals, in accordance with Articles 10 and 11 of the Convention.**

*Article 18. Rights of workers to remove themselves from danger and to obtain information.* With reference to its previous comments, the Committee notes that, in accordance with section 3 of Decision No. 2400 of 1979 (certain provisions concerning accommodation, and health and safety at the workplace), workers are required to notify immediately their superiors of the existence of defects or faults in plant, machinery, work processes and operations and the hazard control system. The Committee nevertheless observes that the provision referred to by the Government does not specifically establish the right of workers to remove themselves from danger and to obtain the information set out in *Article 18(3) and (4)* of the Convention. **The Committee once again requests the Government to provide information on the measures adopted or envisaged to establish the right of workers: (a) to remove themselves from danger resulting from the use of chemicals when they have reasonable justification to believe there is an imminent and serious risk to their safety or health, and to be protected against undue consequences of such action; and (b) to obtain information in accordance with Article 18(3) and (4) of the Convention.**

#### Convention No. 174: Prevention of major industrial accidents

*Article 4 of the Convention. National policy and consultation of the social partners.* In its previous comments, the Committee requested the Government to provide information on: (a) the content of the national policy, specifically in relation to the risk of major accidents with respect to protection of workers, the public and the environment; and (b) the consultations held with the social partners in this regard. The Committee notes that, within the framework of Act No. 1523 of 2012 (national policy and national system for the management of the risk of disasters), Decree No. 308 of 2016 (National Plan for the Management of the Risk of Disasters, (PNGR 2015–25)) was adopted and envisages the implementation of various information management projects relating to the risk of disasters of technological origin. The Committee also notes the preliminary draft of the Decree on the adoption of the Programme for the Prevention of Major Accidents transmitted by the Government. The Government indicates that the draft Decree has received comments from the various actors in the National System for the Management of the Risk of Disasters in the context of the Technical Advisory Commission on Industrial and Technological Risks (CNARIT), established as part of the national policy under Decision No. 1770 of 2013. The Government adds that the draft Decree was opened to public consultation on 31 October 2017 for a period of 14 days, during which comments were received from the public. Nevertheless, the Committee notes the observations of the CUT on the lack of participation by workers' representatives in the CNARIT and in other inter-institutional dialogue bodies envisaged by the national system for the management of

the risk of disasters. The Committee also notes that the draft Decree does not apply to the exploration and extraction of mineral and energy resources or to sanitary landfills and security landfills or cells. In this respect, the Committee recalls that, in accordance with *Article 1(4)* of the Convention, the Government may, after consulting the representative organizations of employers and workers concerned, exclude from the application of the Convention installations or branches of economic activity for which equivalent protection is provided. *The Committee requests the Government to provide information on the measures adopted or envisaged for the consultation of the most representative organizations of employers and workers in relation to the formulation, implementation and periodic review of a coherent national policy concerning the protection of workers, the public and the environment against the risk of major accidents. The Committee requests the Government to provide detailed information on the manner in which the exploration and extraction of mineral and energy resources and sanitary and security landfills are covered by protection equivalent to that set out in the Convention.*

*Article 5. System for the identification of major hazard installations.* In its previous comments, the Committee requested the Government to adopt measures for the identification of major hazard installations in consultation with the social partners. The Committee notes the observations of the CUT concerning the absence of a system of identification. The Committee also notes that the third follow-up and evaluation report of the PNGR (August 2017) emphasizes the progress made in relation to the classification and enumeration of hazardous installations due to chemical risks. In this regard, sections 7 and 8 of the draft Decree on the Programme for the Prevention of Major Accidents establishes a mechanism to compile information on installations exposed to the risk of major accidents, which shall be determined by the Ministry of Labour during the 12 months following the publication of the Decree. *The Committee requests the Government to provide information on the progress achieved, in consultation with the most representative organizations of employers and workers and other interested parties who may be affected, in the establishment of a system for the identification of major hazard installations, in accordance with Article 5 of the Convention.*

The Committee is raising other matters relating to the application of the occupational safety and health Conventions (protection against specific risks) in a request addressed directly to the Government.

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

## C174 - Prevention of Major Industrial Accidents Convention, 1993 (No. 174)

### Observation 2017

In order to provide a comprehensive view of the issues relating to the application of the ratified occupational safety and health Conventions, the Committee considers it appropriate to examine Conventions Nos 162 (asbestos), 170 (chemicals) and 174 (major industrial accidents) together.

The Committee notes the observations of the Confederation of Workers of Colombia (CTC), the Single Confederation of Workers of Colombia (CUT) and the General Confederation of Labour (CGT), and the observations of the International Organisation of Employers (IOE) and the National Employers Association of Colombia (ANDI), on the application of Convention No. 162, which were received in 2016. The Committee also notes the observations of the CTC and the CUT on the application of Convention No. 174, received in 2015, and the Government's reply in this regard.

### Convention No. 162: Asbestos

*Articles 3(2) and 14 of the Convention. Periodic review of national laws and regulations. Labelling.* In its previous comments, the Committee indicated that, for the purposes of the Convention, products which contain less than 1 per cent of asbestos are not considered as products "free of asbestos". Accordingly, with a view to ensuring that the labelling of products is in conformity with the Convention, the Committee urged the Government to provide information on the measures adopted to re-examine the concept of "free of asbestos", as set out in the Regulations on health and safety in relation to chrysotile and other fibres of similar use (Decision No. 007 of 4 November 2011 of the Ministry of Health and Social Security). The Committee notes the Government's indication in its report that the matter is being assessed and it is hoped to reach agreement with the social partners on the referral for consideration to the National Occupational Safety Commission on Chrysotile Asbestos and Other Fibres of the re-examination of the standard as indicated by the Committee and accordingly to consider, determine and update the concept of "free of asbestos". In this respect, the ANDI and the IOE indicate that they would support the development of a technical document to supplement the Decision and clarify the prevention and protection measures that are necessary under the Convention. *The Committee requests the Government to provide information on the outcome of the consultations and the decision that is adopted in relation to the re-examination of the regulatory definition of "free of asbestos" and to ensure that all products containing asbestos are labelled in accordance with Article 14 of the Convention. It also requests the Government to provide information on the measures taken to monitor the application of Article 14 of the Convention in practice.*

*Article 17. Demolition work.* In its previous comments, the Committee requested the Government to establish a system under which only employers or contractors who are qualified can carry out the types of work referred to by this Article of the Convention and which would give effect to the requirement for the employer or contractor to draw up a workplan, as provided in *Article 17(2)*. The Government indicates that, in view of the geothermic situation of the country, asbestos and friable insulation materials containing asbestos have never been used in construction. The Government also indicates that regulation No. 4.5 of the Regulations on health and safety in relation to chrysotile and other fibres of similar use contains provisions on construction, modification, demolition and removal work, in accordance with *Article 17(2)* of the Convention. However, the Government adds that the current regulations do not provide for a system under which only employers or contractors recognized by the competent authority as qualified may carry out the types of work referred to in this Article of the Convention. The ANDI and the IOE also indicate that they would support the development of a technical document to supplement the Regulations and ensure compliance with the requirements of *Article 17* of the Convention. *Noting the Government's explanations and the position of the ANDI and the IOE in this regard, the Committee once again requests the Government to take the necessary measures to ensure that only employers or contractors recognized by the competent authority as qualified may carry out the types of work referred to in Article 17 of the Convention.*

### Convention No. 170: Chemicals

*Article 9 of the Convention. Responsibilities of suppliers.* With reference to its previous comments on the responsibilities of suppliers, the Committee notes the Government's reference to Decisions Nos 331 of 1993 and 399 of 1997 of the Andean Community. However, these decisions only apply to the international road transport of goods and to international multimodal transport, and do not cover the provisions of the Convention. *The Committee once again requests the Government to provide information on the measures adopted or envisaged in respect of the responsibilities of suppliers, whether they are manufacturers, importers or distributors of chemicals, in accordance with Article 9 of the Convention.*

*Articles 10 and 11. Responsibilities of employers for the identification and transfer of chemicals.* With reference to its previous comments, the Committee notes the Government's indication that a draft Decree for the transposition to the national level of the Globally Harmonized System of Classification and Labelling of Chemicals is in the process of being adopted. *The Committee requests the Government to ensure that the Decree in the process of being adopted provides for the responsibilities of employers with respect to the identification and transfer of chemicals, in accordance with Articles 10 and 11 of the Convention.*

*Article 18. Rights of workers to remove themselves from danger and to obtain information.* With reference to its previous comments, the Committee notes that, in accordance with section 3 of Decision No. 2400 of 1979 (certain provisions concerning accommodation, and health and safety at the workplace), workers are required to notify immediately their superiors of the existence of defects or faults in plant, machinery, work processes and operations and the hazard control

system. The Committee nevertheless observes that the provision referred to by the Government does not specifically establish the right of workers to remove themselves from danger and to obtain the information set out in *Article 18(3) and (4)* of the Convention. ***The Committee once again requests the Government to provide information on the measures adopted or envisaged to establish the right of workers: (a) to remove themselves from danger resulting from the use of chemicals when they have reasonable justification to believe there is an imminent and serious risk to their safety or health, and to be protected against undue consequences of such action; and (b) to obtain information in accordance with Article 18(3) and (4) of the Convention.***

#### **Convention No. 174: Prevention of major industrial accidents**

*Article 4 of the Convention. National policy and consultation of the social partners.* In its previous comments, the Committee requested the Government to provide information on: (a) the content of the national policy, specifically in relation to the risk of major accidents with respect to protection of workers, the public and the environment; and (b) the consultations held with the social partners in this regard. The Committee notes that, within the framework of Act No. 1523 of 2012 (national policy and national system for the management of the risk of disasters), Decree No. 308 of 2016 (National Plan for the Management of the Risk of Disasters, (PNGR 2015–25)) was adopted and envisages the implementation of various information management projects relating to the risk of disasters of technological origin. The Committee also notes the preliminary draft of the Decree on the adoption of the Programme for the Prevention of Major Accidents transmitted by the Government. The Government indicates that the draft Decree has received comments from the various actors in the National System for the Management of the Risk of Disasters in the context of the Technical Advisory Commission on Industrial and Technological Risks (CNARIT), established as part of the national policy under Decision No. 1770 of 2013. The Government adds that the draft Decree was opened to public consultation on 31 October 2017 for a period of 14 days, during which comments were received from the public. Nevertheless, the Committee notes the observations of the CUT on the lack of participation by workers' representatives in the CNARIT and in other inter-institutional dialogue bodies envisaged by the national system for the management of the risk of disasters. The Committee also notes that the draft Decree does not apply to the exploration and extraction of mineral and energy resources or to sanitary landfills and security landfills or cells. In this respect, the Committee recalls that, in accordance with *Article 1(4)* of the Convention, the Government may, after consulting the representative organizations of employers and workers concerned, exclude from the application of the Convention installations or branches of economic activity for which equivalent protection is provided. ***The Committee requests the Government to provide information on the measures adopted or envisaged for the consultation of the most representative organizations of employers and workers in relation to the formulation, implementation and periodic review of a coherent national policy concerning the protection of workers, the public and the environment against the risk of major accidents. The Committee requests the Government to provide detailed information on the manner in which the exploration and extraction of mineral and energy resources and sanitary and security landfills are covered by protection equivalent to that set out in the Convention.***

*Article 5. System for the identification of major hazard installations.* In its previous comments, the Committee requested the Government to adopt measures for the identification of major hazard installations in consultation with the social partners. The Committee notes the observations of the CUT concerning the absence of a system of identification. The Committee also notes that the third follow-up and evaluation report of the PNGR (August 2017) emphasizes the progress made in relation to the classification and enumeration of hazardous installations due to chemical risks. In this regard, sections 7 and 8 of the draft Decree on the Programme for the Prevention of Major Accidents establishes a mechanism to compile information on installations exposed to the risk of major accidents, which shall be determined by the Ministry of Labour during the 12 months following the publication of the Decree. ***The Committee requests the Government to provide information on the progress achieved, in consultation with the most representative organizations of employers and workers and other interested parties who may be affected, in the establishment of a system for the identification of major hazard installations, in accordance with Article 5 of the Convention.***

The Committee is raising other matters relating to the application of the occupational safety and health Conventions (protection against specific risks) in a request addressed directly to the Government.

*[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 the observations of the International Organisation of Employers (IOE) and the National Employers Association of Colombia (ANDI), received on 30 August 2017, those of the Confederation of Workers of Colombia (CTC) and the Single Confederation of Workers of Colombia (CUT), received on 1 September 2017, as well as those of the General Confederation of Labour (CGT), received on 31 August 2017.

*Article 3(a) and (b) of the Convention. Sale and trafficking of children for commercial sexual exploitation and use, procuring or offering of a child for prostitution.* In its previous comments, the Committee noted the measures adopted by the country to combat the trafficking of children, but expressed concern at the increase in the already high number of children who are victims of sexual exploitation and trafficking and at the unequal enforcement of the law. It noted the observations of the CUT, CTC and CGT according to which the trafficking of children, including for the purposes of commercial sexual exploitation and sex tourism, remained very predominant in the country. The Committee noted the various measures taken by the Inter-Institutional Committee to Combat Human Trafficking in the fields of prevention, assistance and protection, international cooperation, investigation and penalties. The Government described the initiatives taken by the Ministry of Labour, the Ministry of Education, the Ministry of National Defence and the Ministry of International Relations to combat this practice. However, it noted that most of the national efforts described in the Government's report were related to trafficking in persons in general, and did not seem to include specific measures for the protection and removal of children of such situations. The Committee also noted that Colombia was, in South America, the country of origin of the largest number of victims of trafficking, and particularly children.

The Committee notes the indications of the CTC and the CUT that 7.1 per cent of persons working as prostitutes started to exercise this activity before the age of 15 years, and that 17.4 per cent of them started between the ages of 15 and 17 years. The Committee also notes the indication of the CGT that the measures taken and the laws adopted by the Government have not been effective, as a significant number of children continue to be the victims of sexual exploitation.

The Committee notes the Government's indication in its report that the Colombian Family Protection Institute (ICBF) has adopted numerous measures to restore the rights of children and young persons who are victims of commercial sexual exploitation. Among the measures taken, the ICBF has collaborated with the Ministry of Labour, the tourist police and other state bodies for the implementation of the National Strategy to Prevent the Sexual Exploitation of Children and Young Persons in the context of tourism, the objective of which is to raise awareness of the various actors in the tourism sector to prevent the crime of commercial sexual exploitation of children and young persons. The ICBF has also prepared and published a document entitled "Analysis for the development of a public policy to combat the commercial sexual exploitation of children and young persons in Colombia – 2015", with the aim of undertaking an analysis of the situation which is as close as possible to reality. The Government indicates that this analysis will help to identify the causes of the commercial sexual exploitation of children and to develop measures for its prevention. The Government adds that the ICBF has developed a strategy for cases to be followed up by the Anti-Trafficking Operational Centre (COAT) and that a matrix has been developed to ensure traceability and follow up to each case of trafficking, including cases of the sexual exploitation of children. The Committee further notes the establishment of a hotline for the prevention and surveillance of sexual violence. The Government reports that, through this hotline, 175 reports were received of cases of commercial sexual exploitation and 23 reports of trafficking for sexual

exploitation in 2015. The Committee also notes that ten working sessions were held in 2016 with, among other participants, the ILO and UNICEF, to develop a public policy for the prevention and eradication of commercial sexual exploitation of children and young persons. The Committee further notes the adoption of Decree No. 87 of 2017 regulating the operation of the Fund to Combat the Sexual Exploitation of Children and Young Persons under the responsibility of the ICBF. Finally, the Government indicates that the process of development of a public policy to prevent and eradicate the commercial sexual exploitation of children and young persons (ESCNNA) advanced significantly at the end of 2016 and the beginning of 2017. ***The Committee notes the efforts made by the Government and requests it to continue taking measures to protect young persons under 18 years of age against commercial sexual exploitation and trafficking for this purpose. It also requests the Government to provide information on the results achieved further to the programme "Analysis for the development of public policy to combat the commercial sexual exploitation of children and young persons in Colombia – 2015". The Committee further requests the Government to indicate the progress achieved in the development of the ESCNNA and to provide detailed information on its content once the public policy has been adopted.***

*Articles 3(a) and 7(1). Forced recruitment of children for use in armed conflict. Penal sanctions.* In its previous comments, the Committee expressed deep concern that, despite the prohibition by the national legislation of the forced or compulsory recruitment of children for use in armed conflict and the measures taken by the Government to combat this practice, children were still being forced to join illegal armed groups. It noted the observations of the CTC and the CUT concerning the lack of dissuasive penalties that could be imposed on the perpetrators of such crimes and the lack of training of those responsible for law enforcement. It noted the many cases of recruitment of children by the Revolutionary Armed Forces of Colombia – People's Army (FARC–EP) and the National Liberation Army (ELN). The Committee also noted the creation of the Inter-Sectoral Commission for the Prevention of the Recruitment and Use of Children by Armed Groups (Inter-Sectoral Commission) to prevent armed groups from recruiting and using children and committing acts of sexual violence against them. The International Organisation of Employers (IOE) and the National Association of Employers of Colombia (ANDI) also indicated that the ICBF had provided assistance for 5,000 child victims who had escaped from armed groups.

The Committee also previously noted the Government's information that 2,641 investigations concerning illegal recruitment of children had been carried out in 2013, of which 1,849 remained in course. The Government indicated that between 2013 and 2014, the Office of the Attorney General received 189 reports concerning cases of recruitment and use of children in armed conflict and sexual violence. With regard to the measures taken to improve investigations and convictions of those responsible for these crimes, the Government indicated that the "technical secretary" of the Inter-Sectoral Commission had made the sentencing of cases of illegal recruitment of children automatic, at the national level. In May 2014, the "technical secretary" imposed penalties in 54 cases of illegal recruitment of children, including five cases involving 511 victims.

The Committee notes with *interest* the final agreement to bring an end to the conflict in Colombia and to build a stable and lasting peace (Final Peace Agreement) concluded on 24 November 2016 between the Government and the FARC–EP, and approved by the Senate and the Chamber of Representatives on 29 and 30 November 2016. However, it notes that the Government's report does not contain information on the investigations conducted and the penalties imposed against persons who have recruited or used children under 18 years of age in armed conflict. ***While welcoming the Final Peace Agreement concluded by the Government and the FARC–EP, the Committee requests the Government to provide information on the investigations conducted and the penal sanctions imposed against the perpetrators of such crimes, as well as the imposition of sufficiently effective and dissuasive penalties against any person found guilty of recruiting or using children under 18 years of age for armed conflict.***

*Article 7(2). Effective and time-bound measures. Clause (b). Assistance for the removal of children from the worst forms of child labour. Child soldiers.* The Committee recalls its previous comments concerning the measures taken by the ICBF for the protection of children and young persons demobilized from illegal armed groups, which comprise four distinct phases: identification and diagnosis; treatment; consolidation; and monitoring and follow up. The Committee also noted the integrated model of psycho-social assistance developed by the ICBF in response to the needs of children, according to their age, gender, ethnic origin and the nature of the crime committed against them, in which 800 professionals are participating. The Committee also noted that the number of children demobilized from armed groups increased from 195 in 2012 to 332 in 2014.

The Committee notes the indications of the CUT and the CTC that the ICBF is playing an important role, but is not receiving the necessary resources from the Ministry of Labour to carry out its mission. The Committee notes the CGT's indication that the use of children by armed forces continues to be a problem in Colombia, despite the peace agreement. The CGT adds that, even though the figures provided by the Government show that the number of children used in armed conflict has fallen (72 children used in 2017, compared with 203 in 2016), these statistics are too general and should include the number of children who have been demobilized and be disaggregated by gender and age. The Committee notes the Government's indication that Decree No. 891 of 28 May 2017 adds a transitional paragraph to section 190 of Act No. 1448 of 2011 on the process, for which the ICBF is responsible, of restoring the rights of children and young persons who have been demobilized following the Final Peace Agreement. It notes with *interest* that the transitional paragraph adds the possibility for children and young persons to remain in the transitional shelters envisaged for this purpose, until their age is verified by the ICBF. Section 190 of Act No. 1448 of 2011 provides that all child victims of forced or compulsory recruitment can claim compensation for the damages suffered and that the ICBF is responsible for ensuring the restitution of their rights. The Government adds that the ICBF and the enterprise Akubadabra Jurist Community have concluded the association agreement No. 1557 of 2016 for the implementation of a programme of harmonious recovery to ensure the proper return and guarantee the rights of demilitarized children and young persons. In the framework of this association agreement, the Government focused its action on the villages of Awá, Nasa, Wounnan and Emberá for the organization of consultation meetings, community workshops and intercultural meetings with a view to the reintegration of child victims of forced recruitment. Moreover, the National Council for Reintegration (CNR), established by Decree No. 2027 of 2016, plays the role, among others, of adopting special measures to care for and protect demobilized children and young persons and to follow up the programme of reintegration into civilian life. Finally, the Government indicates that point 1.3.3.5 of the Final Peace Agreement provides for the organization of awareness-raising campaigns for the eradication of child labour and the adoption of immediate measures to combat the worst forms of child labour. ***The Committee requests the Government to continue adopting and implementing effective and time-bound measures for the removal and rehabilitation of child victims of unlawful recruitment. Noting the absence of information on this subject, the Committee once again requests the Government to provide information on the number of children under 18 years of age who have been rehabilitated and integrated into their communities as a result of these measures.***

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

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

*Articles 2 and 5 of the Convention. Inclusion of labour clauses in public contracts. Supervisory measures and sanctions.* In its previous comments, the Committee requested the Government to provide information on the results of its review of the national legislation on public procurement to assess the need for measures to ensure the effective inclusion of labour clauses in all public contracts. The Committee notes with *interest* the steps taken by the Government to give effect to these provisions of the Convention. The "Guide to Social Criteria in Procurement Processes in Costa Rica" prepared by the Ministry of Labour and Social Security (MTSS) and the Ministry of Finance was published in 2014 as part of the Capacity-Building for Sustainable Public Procurement Programme promoted by the United Nations Environment Programme. This guide establishes the obligation to include labour clauses in all public contracts, including subcontracts, ensuring to the workers' wages, hours of work and other conditions of labour which are not less favourable than those established for work of the same character in the trade or industry concerned. It also establishes sanctions for non-observance of labour clauses by the contractor or his or her staff, which range from fines to termination of the contract. Moreover, the Government refers in its report to the assistance provided by the ILO Office for Central America, Haiti, Panama and the Dominican Republic in relation to the harmonization of the national legislation with the provisions of the Convention. In this context, the national policy on sustainable public procurement was approved and the National Steering Committee on Sustainable Procurement was established to oversee its coordination and implementation, by virtue of Executive Decree No. 39310-MH-MINAE-MEIC-MTSS of 21 July 2015. Section 4 of the national policy establishes the criteria that the public sector must take into consideration when procuring goods, services and work, which include observance of the labour and social security legislation and guarantees that protect the workers involved in every stage of the development of the products purchased or services contracted by the administration. Section 5(6) provides that this national policy will be based on the promotion of procurement processes for goods, work and services that foster a culture of compliance with labour legislation so as to ensure adequate conditions and workers' labour rights. *The Committee requests the Government to provide examples of public contracts containing the labour clauses prescribed in the "Guide to Social Criteria in Procurement Processes in Costa Rica". The Committee also requests the Government to provide updated information on the application in practice of the Convention, including summaries of inspection reports, as well as information on the number and nature of infringements reported.*

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

The Committee notes the observations of the Confederation of Workers Rerum Novarum (CTRN), which were received on 5 September 2016, and the Government's reply, which was received on 6 January 2017.

*Article 1 of the Convention. Representative organizations.* The Committee notes the observations of the CTRN, in which the confederation maintains that the most representative workers' organizations, namely the trade union confederations (third-level umbrella organizations representing blue-collar and white-collar workers from various sectors) are not represented in the Higher Labour Council. *The Committee requests the Government to provide information on the measure taken, particularly in relation to the selection criteria, to ensure that the consultations required by the Convention are held with the "most representative organizations of employers and workers", indicating the criteria used for determining representativeness.*

*Article 5(1). Effective tripartite consultations.* In reply to the Committee's previous comments, the Government indicates in its report that whenever it has received documents from the ILO it has fulfilled the requirements of *Article 5(1)* of the Convention. Accordingly, the Government refers, inter alia, to the sending of draft and final reports on the application of ratified Conventions and on unratified Conventions, and also of various ILO questionnaires, to the CTRN and other representative organizations between August 2013 and May 2016. The CTRN, for its part, reiterates its concern at the fact that the Government continues to send reports on the application of ratified Conventions very late and only after it has sent them to the Office, or giving very short notice (on some occasions, only ten days) for the social partners to make any observations that they consider appropriate. The Committee recalls that, in order to be "effective", consultations must take place before final decisions are taken, irrespective of the nature or form of the procedures adopted. The important factor here is that the persons consulted should be able to put forward their opinions before the government takes its final decision. The effectiveness of consultations thus presupposes in practice that employers' and workers' representatives have all the necessary information far enough in advance to formulate their own opinions. Moreover, the Committee recalls that the consultations have to be held during the process of preparing the reports. Where written consultations are held, the government should transmit to the representative organizations a draft report in order to gather their opinions in advance, before preparing its definitive report (see General Survey of 2000 on tripartite consultation, paragraphs 31 and 93). As regards the invitation made by the Committee in its observations of 2012 and 2013, the Government indicates that the Ministry of Labour and Social Security held consultations with the social partners in order to consider the possibility of establishing a schedule for the preparation of reports. *In view of the observations of the CTRN, the Committee requests the Government to provide its comments in this respect. The Committee also requests the Government to continue sending information on consultations held on each of the matters related to international labour standards covered by Article 5(1) of the Convention. The Committee further requests the Government to send information on consultations held with the social partners on how implementation of the procedures required by the Convention might be improved, including establishing a schedule for the preparation of reports (Article 5(1)(d)). Moreover, regarding the procedures required by the Convention, the Committee hopes that the Government will take steps to establish an adequate time period to give employers' and workers' organizations enough notice to formulate their views and make any comments that they consider appropriate on the draft texts shared by the Government in accordance with Article 5(1).*

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

The Committee notes the observations of the Costa Rican Confederation of Democratic Workers (CCTD), communicated with the Government's report.

*Article 3(a) and (b) of the Convention. Sale and trafficking of children for commercial sexual exploitation, use, procuring or offering of a child for prostitution, and court decisions.* The Committee previously noted that the trafficking of children for sexual exploitation and the smuggling of migrants, including children, particularly in the tourism sector, continued to be serious problems in the country, and that the practice of purchasing sexual services from children was still regarded as socially acceptable. The Committee noted that, according to the observations of the Confederation of Workers Rerum Novarum (CTRN), Act No. 9095 of 2013 to combat human trafficking, which establishes the National Coalition to Combat the Smuggling of Migrants and Human Trafficking (CONATT), was not implemented and that child victims of trafficking therefore continued to be in danger. The Government referred to the 2010–20 Roadmap for the prevention and eradication of child labour and its worst forms, developed in collaboration with ILO–IPEC, the objective of which is to combat the trafficking of children for commercial sexual exploitation as one of the worst forms of child labour, under the responsibility of the National Foundation for Children (PANI) and the National Directorate of Migration and Foreign Nationals (DNME). The Committee took due note of Act No. 9095, section 2(g) of which explicitly provides that priority shall be given to young victims of trafficking, and section 37(1) provides that child victims of trafficking shall have the right, in addition to the rights

established for all victims of crimes, to be reintegrated into their families or their community, whichever is in their best interests. The Committee also noted that section 42 of the Act contains specific provisions respecting young persons, and particularly subsections (g) and (h), which envisage specific investigative and judicial proceedings, and that sections 74 and 75 revise the Penal Code to increase penalties for the trafficking of young persons.

The Committee notes that, according to the CCTD, despite the progress made in the protection of children and young persons, the efforts undertaken by the Government are inadequate, in view of the low number of convictions in cases of trafficking of children for commercial sexual exploitation, particularly with regard to the migrant population.

The Committee notes the indication by the Government in its report that the judicial authorities received 95 complaints concerning trafficking in 2016, ten of which resulted in a criminal conviction under section 172 of the Penal Code, which prohibits trafficking of persons, although no information is provided on the number of cases relating to victims under 18 years of age. The Government adds that many of the cases detected give rise to other types of related convictions, such as aggravated procurement or paid sexual relations with a minor. However, the Committee notes that, in its concluding observations in July 2017, the Committee on the Elimination of Discrimination against Women notes with concern the heightened risk of sex trafficking, particularly for children and migrant girls in Pacific coastal zones (CEDAW/C/CRI/CO/7, paragraph 20). ***The Committee requests the Government to continue intensifying its efforts to ensure the thorough investigation and robust prosecution of persons who commit such criminal acts, and to ensure that assistance is provided to children in all cases. Noting the absence of information on this subject, the Committee also requests the Government to indicate the specific measures taken for the implementation of the provisions of Act No. 9095 related to child victims of trafficking, the number of investigations, prosecutions and convictions, and the penalties imposed in this regard.***

*Articles 7(2). Effective and time-bound measures. Clauses (a) and (c). Preventing children from becoming engaged in the worst forms of child labour and ensuring access to free basic education for all children removed from the worst forms of child labour.* The Committee recalls its previous comment in which it noted that the *Avancemos* ("Let's Move Forward") programme consists of conditional cash transfers which are, in part, linked to access to education and the universalization of secondary education, and that in 2013 the programme benefited 133,212 young persons between the ages of 12 and 17 years and resulted in the removal of 95 young persons between the ages of 12 and 14 years from the worst forms of child labour. However, it noted the observations of the CTRN which, emphasizing the low school attendance rate in secondary education which is more pronounced in rural areas, alleged that neither the *Avancemos* programme nor the National Scholarship Fund (FONABE) had resulted in an effective increase in school attendance. Finally, the Committee noted that the Roadmap includes the objectives of: (i) reducing the number of children between the ages of 5 and 17 years engaged in work from 113,523 in 2002, to 27,811 in 2015, and then to zero in 2020; and (ii) increasing the secondary school attendance rate from 85 per cent in 2008 to 95 per cent in 2015, and then to 100 per cent in 2020. The Government emphasized that the number of children engaged in child labour had decreased (from 49,229 in 2002 to 16,160 in 2011).

The Committee notes that, according to the CCTD's observations, school drop out from compulsory basic education continues to be a problem in rural areas. The CCTD adds that the *Avancemos* programme and the FONABE do not establish strategies for the definitive resolution of the problem of child labour.

The Committee notes the Government's indication that, as a result of an inter institutional cooperation agreement between the Ministry of Labour and Social Security (MTSS) and the Joint Social Assistance Institute (IMAS), cash transfers are provided to young persons under 18 years of age in a situation of poverty or extreme poverty on condition that they remain in the education system. The Committee also notes, from the Government's report on the application of the Minimum Age Convention, 1973 (No. 138), that the *Yo me apunto* ("I'm enrolling") programme has been launched by the Ministry of Public Education (MEP) to combat school drop-out and is the basis for promoting the maintenance of children in the school system, their reintegration and success at school. The objective of the programme is to provide a tool for the implementation of the Roadmap to ensure that Costa Rica is a country free of child labour. ***The Committee requests the Government to continue intensifying its efforts to improve the operation of the education system through the Avancemos and the Yo me apunto programmes and to increase the school attendance and completion rates. It also requests the Government to continue indicating the results achieved through the Avancemos, Yo me apunto and FONABE programmes, including the number of children who have been removed from the worst forms of child labour and reintegrated into the education system as a result of these programmes, disaggregated by age and gender.***

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

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

### 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 2011.

The Committee notes the Government's indication that a special Tripartite Committee has been appointed to advise the Government on all matters relating to legislation and institutional changes necessary for the ratification of the Maritime Labour Convention, 2006 (MLC, 2006). It also notes that a National Action Plan has been prepared in order to formulate recommendations to the Government on matters of maritime laws and administration.

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

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

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

### Observation 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 2011. The Committee also notes that the Government has been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

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

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

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

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

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

### Observation 2017

The Committee notes with *deep concern* that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2007. The Committee also notes that the Government has been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

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

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

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

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

### Observation 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 2011. The Committee also notes that the Government has been requested to provide information to the Committee on the Application of Standards at the

106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

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

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

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

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

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

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

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

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

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

### *Observation 2017*

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2012.

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

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

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

### Observation 2017

*Articles 1 and 2 of the Convention. Formulation and implementation of an active employment policy.* The Committee notes with *interest* the adoption in 2014 of the National Employment Plan (PNE), whose objectives include the creation of 400,000 jobs in four years, the promotion of decent jobs, the formalization of employment, equality of opportunities, equity and access to security. The Committee also observes that, according to the statistics contained in the PNE, men account for 60.64 per cent of the active population, the unemployment rate has fallen in recent years (to between 5.7 and 6 per cent), and young persons who are neither working nor studying (NEET) account for 7.71 per cent of the working-age population. Furthermore, as regards informality in the labour market, the PNE indicates that the reduction in the unemployment rate is based on an increase in informal employment and that 56.16 per cent of the active population was working in the informal economy in 2012. In this respect, the Government indicates in its report that the current definition of "informality" is being revised with ILO technical assistance and that the statistics will better reflect that definition in the future. The Committee also notes that the Government has prepared a guide concerning the formalization of micro-enterprises. *The Committee requests the Government to continue providing information on the implementation and impact of the PNE and to supply statistical data on labour market trends, including employment, unemployment and underemployment rates, disaggregated by age and sex. It also requests the Government to provide up-to-date information on the open unemployment rate and the rate of informality in the labour market, including information on the impact of the measures taken to facilitate the transition of workers from the informal to the formal economy. In this regard, the Government may consider it useful to take account of the guidance provided by the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204).*

*Coordination of training and employment policies.* The Government refers to training programmes established under the PNE, such as labour training provided by the Directorate of Employment for 10,037 young persons in vulnerable unemployment conditions between 2013 and 2016, and training by the National Institute of Vocational and Technical Training for 1,820 young entrepreneurs, 60 per cent of whom were women. In the course of the abovementioned training, access to micro-financing for their businesses was provided for 3 per cent of participants. The Committee also notes that, in order to facilitate access to employment services, in 2016 the virtual platform of the National Employment Service (SENAE) was modernized, enabling the registration in the "Electronic employment exchange" of 55,966 requests for employment and 912 enterprises. The same year saw the establishment of the "Integrated labour registration system" (SIRLA), facilitating the registration of new employees on company payrolls and the exchange of information with the Treasury Department of the National Social Security System, thereby enabling the incorporation of 171,078 workers into the system. Lastly, the Committee notes the Government's indication in its report that the technical committee at the Ministry of Labour responsible for follow-up to the implementation of the PNE is undertaking a qualitative evaluation of the Plan. *The Committee requests the Government to provide relevant data, including statistics disaggregated by age and sex, on the impact of training programmes on securing sustainable employment. The Committee also requests the Government to send a copy of the qualitative evaluation of the PNE once it is available.*

*Specific groups vulnerable to decent work deficits.* The Government indicates that the Ministry of Labour has established a series of programmes and projects for specific groups of disadvantaged workers, such as young people, persons with disabilities and women. In this regard, the Government indicates that: (i) from 2013 to 2015, the Ministry of Labour implemented the "Training programme for young persons in different occupations", whereby training was provided for 602 unemployed young persons between 16 and 26 years of age, of whom 25 per cent were living with some form of disability; (ii) from 2015, the "Special projects workshop" was set up, with the aim of helping to secure employment for individuals with moderate hearing and learning disabilities; (iii) the "Ministry of Labour reaching out to communities" initiative, which provides the most vulnerable sectors in the country with information on employment, was implemented in 11 communities and was attended by 4,197 unemployed persons; (iv) 430 young persons took part in the "Entrepreneurship unit" training programme for unemployed persons between 20 and 35 years of age belonging to a disadvantaged category (persons with disabilities, women who are single parents, and young people who are neither working nor studying) and seeking to develop opportunities for self-employment; and (v) the "Youth entrepreneurship" training programme set up regional groups to provide local support and follow-up for the projects of young entrepreneurs and published a guide to the formalization of business and a national entrepreneurship policy. As regards persons with disabilities, the Committee notes the adoption of Act No. 5-13 of 15 January 2013 concerning disability in the Dominican Republic, which provides for minimum quotas, tax deductions and tax exemptions for companies hiring persons with disabilities. *The Committee requests the Government to provide information on the impact of programmes for the promotion of youth employment, including statistics disaggregated by age and sex. It also requests the Government to supply information on any measures taken or contemplated to promote women's access to formal and lasting employment, particularly for women who are single parents. Moreover, referring to its previous comments on the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159), the Committee requests the Government to provide detailed information on the impact of Act No. 5-13 and its implementing regulations regarding the access of persons with disabilities to the open labour market.*

*Article 1(2)(c). Migrant workers and workers of Haitian origin.* With regard to migrant workers, the Government indicates that the Ministry of Labour, in order to prevent abuses at the time of hiring and to observe the respective proportions of national and foreign workers laid down in the Dominican Labour Code (80 and 20 per cent, respectively), drew up a proposal for the regularization of the hiring of foreign workers. The Government also states that the Directorate of Employment drew up an inventory of occupations whose nature is such as to make it difficult to recruit national workers in sufficient numbers; this will give the Directorate greater powers of discretion when granting recruitment permits, particularly in the construction sector and agriculture. In this regard, the Committee refers to its previous comments on the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), relating to discrimination in employment against persons of Haitian origin (Dominican citizens of Haitian extraction and Haitian nationals), and hopes that the PNE will include measures to prevent abuses in the hiring of foreign workers in the country. *The Committee requests the Government once again to indicate the measures taken or contemplated to prevent abuses in the hiring of foreign workers in the country. The Committee also requests the Government to provide information on the outcome of the Ministry of Labour's proposal relating to the regularization of the hiring of foreign workers.*

*Small and medium-sized enterprises (SMEs).* The Committee notes that the objectives of the PNE relating to micro-, small and medium-sized enterprises envisage the creation of 5,000 new enterprises and 90,000 new jobs in four years, a 10 per cent increase in the rate of formality and the creation of 200 new agricultural and commercial cooperatives. In this regard, the Government refers in its report to a series of measures taken to facilitate the creation of SMEs, such as the creation of a guarantee fund (provided for in Act No. 488-08), the setting up of a single window at the National Tax Directorate to expedite formalization procedures, and the promotion of new export markets. The Committee also notes that, in agreement with the Inter-American Development Bank, the Government has implemented policies regarding the award of public contracts to SMEs, enterprises owned by women, ecological enterprises and innovative entrepreneurs. The Government has also taken steps to evaluate the impact of such policies. *The Committee requests the Government to provide detailed information on the measures taken or contemplated to facilitate the creation of micro-, small and medium-sized enterprises and of cooperatives in the country, particularly in regions which are adversely affected and have the highest unemployment rates. The Committee also requests the Government to supply statistical data on the number and type of enterprises created and the number of jobs created by such enterprises. Lastly, the Committee further requests the Government to provide information on the evaluation of policies for the award of public contracts to SMEs and the impact thereof.*

*Article 3. Consultations.* *The Committee requests the Government to provide information on the consultations held with the social partners, at both national and regional level, regarding the formulation and implementation of labour policy measures and employment and training programmes. The*

## Dominican Republic

*Committee also requests the Government to indicate the manner in which consultations are ensured with persons affected by the measures taken or contemplated, in particular representatives of workers in rural areas and in the informal economy, in order to take account of their experience and views in the formulation and implementation of programmes and measures to promote full and productive employment.*

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

#### Observation 2017

*Article 2(3) of the Convention. Age of completion of compulsory schooling.* In its previous comments, the Committee noted the National Plan of Action 2012–16, which included among its priorities the improvement of the quality and access to basic education, and the reduction of the drop-out rate from secondary school. It also noted that during the period 2006–16 the net school attendance rate at primary school increased from 88 per cent for girls and 84 per cent for boys, to 91 per cent and 93.3 per cent respectively, and that the net school attendance rate at secondary school rose from 39 per cent for girls and 27 per cent for boys, to 66.5 per cent and 57.7 per cent respectively.

The Committee notes the Government's indication in its report that 4 per cent of GDP is allocated to education. The Government adds that Decree No. 546-12 aims to eliminate illiteracy among 938,000 people within two years. The Committee also notes the Government's indication that 25,000 new classrooms and 3,776 educational centres will be created over the next two years, for the benefit of over 1,008,417 students. The Government also refers to the Ten-year Education Plan 2008–18, the objective of which is to improve the supply of education and increase school attendance. Policy No. 7 of the Plan aims to promote education for all, by providing assistance to students from underprivileged environments, including through the provision of school meals, uniforms, backpacks and other school supplies. While noting the substantial increase of net school attendance at the secondary level, as well as of the Ten-year Education Plan 2008–18, the Committee observes the major disparities that persist in secondary school attendance in relation to the rate for primary school. ***It therefore requests the Government to reinforce the efforts made for the effective implementation of the Ten-year Education Plan 2008–18 so that all children complete compulsory education, including secondary education, that is, until at least the age of 14 years.***

*Article 3(3). Authorization to employ children in work considered to be hazardous from the age of 16 years.* The Committee previously noted that section 251 of the Labour Code, which prohibits minors under 16 years of age from carrying out hazardous or unhealthy types of work, is too vague, as it establishes neither the conditions under which minors over 16 years of age may be engaged in work considered to be hazardous, nor the rules for their protection and training, as required by *Article 3(3)* of the Convention.

The Government refers to Resolution No. 52/2004 on hazardous and unhealthy types of work prohibited for persons under 18 years of age. Paragraph 1 of the Resolution establishes the principle of the general prohibition of hazardous types of work for all young persons under 18 years of age, and paragraph 2 draws up a detailed list of the prohibited types of work and tasks. The Committee notes with *interest* that paragraph 3 of the Resolution authorizes young persons aged 16 and 17 years to engage in certain types of work prohibited in paragraph 2, on condition that: (i) the work is indispensable for learning in the context of a vocational training course; and (ii) the safety and health of the young person are guaranteed and the work is carried out under the supervision and control of a competent person working for the training centre. ***The Committee requests the Government to provide information on the implementation in practice to Resolution No. 52/2004 on hazardous and unhealthy types of work prohibited for persons under 18 years of age, including statistical data on the number and nature of the violations reported and the penalties imposed.***

*Application of the Convention in practice.* The Committee previously noted that the sectors of economic activity most affected by child labour are services in urban areas and agriculture in rural areas and that there appear to be difficulties in the implementation of the legislation on child labour, with the result that child labour continues to be a problem in practice in the country. It noted that, within the framework of the ILO–IPEC Time-bound Programme (TBP) on the worst forms of child labour, the Government had implemented several programmes of action for the elimination of child labour in the agricultural sector and in services in urban areas, and had adopted a National Strategic Plan (PEN) for the elimination of the worst forms of child labour (2006–16), with the objective of ensuring the protection of the fundamental rights of children and young persons by 2016 and eliminating child labour by 2020. The Plan included the objective of the integration of 200,000 new low-income families into the “Progress with Solidarity” programme, for which the requirement for access for families is that children do not work. The Government also reported the Roadmap to make the Dominican Republic a country free of child labour, and particularly the worst forms of child labour, as an initiative to reinforce the objectives of the National Strategic Plan to eradicate child labour by 2020.

The Committee however noted that nearly 304,000 children between the ages of 5 and 17 years were engaged in work (12 per cent of this age group) and that, of these, 212,000 (or 8 per cent of the same age group) were engaged in work considered to be hazardous.

The Committee notes the Government's indication that it has developed alliances with churches, municipal authorities, local governments and non governmental organizations to more effectively combat child labour in all its forms. The Government adds that labour inspections take into account the prohibition of employing young persons under 18 years of age in hazardous types of work. The Committee notes that the Government refers once again to the PEN and to the Roadmap, but does not provide detailed information on their implementation or the results achieved. It also notes that the National Household Survey (ENHOGAR) 2009–10 has not updated the statistical information available on the situation with regard to work by children and young persons in the country. The Committee also notes that the Committee on the Rights of the Child, in its concluding observations in March 2015, expressed concern at the high prevalence of child labour in the country and at the insufficient measures taken to address child domestic labour (CRC/C/DOM/CO/3-5, paragraph 65). ***The Committee requests the Government to intensify its efforts to ensure the effective implementation of the PEN and of the Roadmap and requests it to provide detailed information on the results achieved in the elimination of child labour by 2020. The Committee once again requests the Government to provide information on the manner in which the Convention is applied in practice, including statistical data on the employment of children and young persons compiled through the ENHOGAR, relevant extracts from the reports of the inspection services and, finally, data on the number and nature of the violations detected involving children and young persons.***

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

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

#### Observation 2017

*Article 5 of the Convention. Effective tripartite consultations.* In its previous comments, the Committee asked the Government to send its comments on the observations of the National Confederation of Trade Union Unity (CNUS), the Autonomous Confederation of Workers' Unions (CASC) and the National Confederation of Dominican Workers (CNTD). In its reply, the Government indicates that both the workers' and employers' sectors had received the electronic drafts of the reports sent in 2016 so that they could make their observations. The Committee notes that the activities of the tripartite round table on issues relating to international labour standards have begun, with regulations on its functioning drawn up on a tripartite basis and subsequently revised by the employers pending receipt of the workers' observations. The Government indicates that tripartite consultations were held on the abrogation and withdrawal of six international labour Conventions. The Committee also notes the Government's statement that two tripartite meetings were held regarding the revision of the Employment (Transition from War to Peace) Recommendation, 1944 (No. 71), and that during the meeting of the Labour Advisory Council on 16 May 2017

discussions were held on topics such as labour migration, possible amendments to the Labour Code and the Social Security Act, social security coverage for mobile and casual workers, and reclassification of enterprises. Lastly, the Government indicates that observations from the workers and employers are pending with regard to the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), and the Social Protection Floors Recommendation, 2012 (No. 202). The Committee recalls that the effectiveness of consultations presupposes in practice that employers' and workers' representatives have all the necessary information far enough in advance to formulate their own opinions (see General Survey of 2000 on tripartite consultation, paragraph 31). *The Committee requests the Government to provide a copy of the regulations on the functioning of the tripartite round table on issues relating to international labour standards, once they have been adopted. The Committee also requests the Government to supply detailed information on the activities of the abovementioned tripartite round table, particularly the content and outcome of the discussions held in relation to the matters referred to in Article 5(1).*

## 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 for commercial sexual exploitation, and penalties.* The Committee previously noted that the Dominican Republic is a source, transit and destination country for men, women and children who are trafficked for the purposes of commercial sexual exploitation and forced labour. It further noted that, despite the severe penalties set out in the national legislation, the problem remained widespread. The Committee noted the implementation of the National System of Monitoring and Information on Forced Labour (INFOSITI), a project that has received assistance from ILO-IPEC through a project funded by Spain. The Government also indicated that it was developing a system of data collection on child labour through the labour inspectorate, as well as protocols for the management of information and inter-institutional responses. Despite these measures, the Committee noted the high numbers of Haitian children who are victims of trafficking in the Dominican Republic.

The Committee notes the Government's indication in its report that a criminal investigation unit has been established to investigate cases of trafficking under the responsibility of the Office of the Public Prosecutor, which is composed of 41 members trained by the Federal Bureau of Investigation (FBI). The Committee also notes the Government's indication once again that a review of the Penal Code has been initiated with a view to strengthening the penalties established for the sale and trafficking of children and their commercial sexual exploitation. The Government adds that it is currently undertaking a study to gather information on cases of trafficking of Dominican women abroad between 2009 and 2015. The Committee also notes that, according to the 2016 report of the Ministry of Foreign Affairs, the Dominican Republic has registered 17 cases of sexual exploitation, six cases of commercial sexual exploitation and two cases of child pornography. However, the Committee notes that the Committee on the Rights of the Child (CRC), in its concluding observations of March 2015, continued to express concern at the fact that sexual exploitation is still perceived as a private matter, which contributes to the high level of impunity in this field (CRC/C/DOM/CO/3-5, paragraphs 33 and 35). *The Committee is therefore once again bound to urge the Government to intensify its efforts to strengthen the capacities of the law enforcement agencies so that all those engaged in acts involving the trafficking of children for sexual or labour exploitation be subjected to robust prosecution and dissuasive penalties. It requests the Government to provide information on the results achieved, in particular with regard to the training of the Criminal Investigation Unit. It also once again requests the Government to provide information on the implementation of the INFOSITI and to provide the statistics gathered in this context, particularly on the number of violations reported, investigations, prosecutions, convictions and penal sanctions applied in cases of violations of the legal provisions prohibiting the sale and trafficking of children. Finally, it requests the Government to provide information on the progress achieved in the amendment of the Penal Code.*

*Article 6. Programmes of action. Commercial sexual exploitation.* In its previous comments, the Committee noted the ILO-IPEC project entitled "Developing a Roadmap to make Central America, Panama and the Dominican Republic a Child Labour Free Zone", which was to receive assistance from the National Council for Children and Young Persons (CONANI), targeting child victims of commercial sexual exploitation. The Committee also noted that the prevention and eradication of child labour was included in the United Nations Development Assistance Framework (UNDAF) 2012-16.

The Government refers to the launching of the campaign "No hay excusas" ("No excuses"), with the technical and financial support of UNICEF, intended to prevent the sexual exploitation of children and young persons. Well-known personalities from artistic circles in the country have participated in the campaign, which has been broadly disseminated in the media. However, the Committee notes that the CRC, in its concluding observations, remained concerned at the lack of appropriate care and rehabilitation programmes for children victims of sexual exploitation (CRC/C/DOM/CO/3-5, paragraph 33). The CRC also expressed particular concern at the inadequate supervision of institutions by CONANI (paragraph 41). *While noting the measures taken by the Government, the Committee requests it to strengthen its efforts to combat the commercial sexual exploitation of children. Noting the absence of information on this subject, it requests the Government to provide information on the impact of the Roadmap and of the "No hay excusas" campaign in this field, including in terms of the number of children that were reached. To the extent possible, the information should be disaggregated by age and gender.*

*Article 7(2). Effective and time-bound measures. Clause (a). Preventing children from becoming engaged in the worst forms of child labour. Commercial sexual exploitation in the tourism industry.* In its previous comments, the Committee noted that the ILO-IPEC regional project against the commercial sexual exploitation of children envisaged the strengthening of national institutional capacities. It noted that greater institutional coordination had been promoted through specialized technical assistance granted to the Inter-institutional Commission against the Abuse and Commercial Sexual Exploitation of Children.

The Committee notes the Government's indication that the Ministry of Labour, through the National Steering Committee to Combat Child Labour, and with the assistance of local authorities, has developed a pilot plan and has accordingly opened 18 vigilance units, mainly in touristic areas such as Boca Chica, Juan Dolio y Guayacanes. The Government adds that a process of awareness raising for actors in the tourism economy, including the Specialized Tourist Safety Unit (CESTUR) already exists. However, the Committee notes that the Government has not provided any information on the resources allocated in the context of the awareness-raising process for the effective prevention of the commercial sexual exploitation of children. Finally, the Committee notes that the CRC expressed concern at the high prevalence of sexual exploitation by foreign tourists, particularly affecting children of Haitian descent (CRC/C/DOM/CO/3-5, paragraph 33). *The Committee therefore requests the Government to intensify its efforts and to provide information on the measures taken or envisaged to raise the awareness of the actors in the tourism industry. It also requests it to provide further information on the work and functions of the vigilance units and the activities of the CESTUR. The Committee once again requests the Government to provide information on the implementation of the Regional Project against Commercial Sexual Exploitation in relation to the prevention of the commercial sexual exploitation of children.*

*Clause (b). Direct and necessary assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. Commercial sexual exploitation.* Further to its previous comments, the Committee notes the Government's indication that the *Caso a caso* project, financed by the International Organization for Migration (IOM), establishes a forum to provide guidance to children and young persons who are victims of commercial sexual exploitation. It also notes the Government's indication that one of its greatest successes has been the establishment of the first shelter for victims of trafficking and sexual exploitation. However, the Committee notes the absence of detailed information on the number of children received in the shelter and the measures taken for their rehabilitation and social integration. *The Committee therefore requests the Government to provide further information on the shelter established in the framework of the Caso a caso project and to specify the number of children received by the shelter. It also requests the Government to indicate whether specific social and medical follow-up programmes are envisaged and implemented for children victims of commercial sexual exploitation.*

## Dominican Republic

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 joint observations of the National Federation of Education Workers (UNE) and Public Services International in Ecuador (PSI-Ecuador), received on 1 September 2017, which refer to matters examined by the Committee and also to allegations of violations of the Convention in practice, relating in particular to the refusal to register a number of trade union organizations. *The Committee requests the Government to send its comments on the aforementioned allegations.*

The Committee also notes the observations of the International Organisation of Employers (IOE), received on 1 September 2017, which refer to matters examined by the Committee in the present comment.

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

The Committee notes the discussion held in the Conference Committee on the Application of Standards (the Conference Committee) in June 2017 on the application of the Convention by Ecuador. The Committee notes in particular that the Conference Committee asked the Government to: (i) ensure full respect for the right of public servants to establish organizations of their own choosing for the collective defence of their interests, including the protection regarding administrative dissolution or suspension; (ii) revoke the decision to dissolve the UNE and to allow the free functioning of the trade union; (iii) amend legislation to ensure that the consequences of any delay in convening trade union elections are set out in the by-laws of the organizations themselves; and (iv) initiate a process of consultation with the most representative employers' and workers' organizations to identify how the current legislative framework needs to be amended in order to bring all the relevant legislation into compliance with the text of Convention No. 87.

The Committee invited the Government to consider availing itself of ILO technical assistance in relation to the legal reform process. In this respect, the Committee welcomes that the Government has agreed with the Office on the provision of technical assistance in the context of the legislative reforms under way.

**Application of the Convention in the public sector**

*Article 2 of the Convention. Right of workers to establish organizations of their own choosing without previous authorization. Impossibility of establishing more than one trade union in state bodies.* In its previous comments, referring to article 326(9) of the Constitution, which provides that for all purposes relating to industrial relations in state institutions, workers shall be represented by a single organization, and to a proposed reform of the Basic Act to implement that provision of the Constitution, the Committee asked the Government to take the necessary measures immediately to ensure that both the Constitution and the legislation preserve the possibility of trade union pluralism in state institutions. In this regard, the Committee notes that the Government refers to the adoption on 19 May 2017 of the Basic Act reforming the legislation governing the public sector (Basic Reform Act). The Committee notes the Government's specific indications that: (i) the Basic Reform Act guarantees without restriction public servants' right to organize and the possibility of establishing more than one trade union in public sector institutions; (ii) the Basic Reform Act establishes the concept of the "committee of public servants" (CSP); and (iii) the purpose of introducing this concept is to guarantee certain prerogatives to the most representative organization of public servants in every public institution, without in any way restricting the possible co-existence of several trade unions in the public sector. The Committee also notes the joint observations of the PSI-Ecuador and the UNE maintaining that creating or establishing the CSP, which must comprise at least "50 per cent plus one" of public servants in a given institution, violates the provisions of the Convention.

With regard to the concept of the CSP, the Committee notes that section 11 of the Basic Reform Act adopted in May 2017 follows the guidelines of the Bill examined by the Committee in its last comment. In this respect, the Committee observes that: (i) the CSP displays all the characteristics of a workers' organization, with its membership, constitution and executive committee; (ii) the CSP has all the powers to promote and defend the collective interests of public servants recognized by law (especially the right to monitor the observance of labour law, the right to social dialogue and the right to strike); (iii) even though the Basic Reform Act recognizes in general terms and without restrictions the right of public servants to establish trade unions, the Act does not explicitly envisage or regulate alternative forms of organization to the CSP whereby public servants could defend their collective interests and exercise the aforementioned collective rights; and (iv) in being obliged to comprise at least "50 per cent plus one" of public servants, there can only be one CSP for each public institution. The Committee observes that it can be concluded from the above that even though section 11 of the Basic Reform Act does not prohibit the possibility of establishing several trade unions at the same public institution, it does envisage and regulate the exercise of various collective rights of public servants only by the CSP, since there can only be one such body in a public institution in view of its obligation to comprise "50 per cent plus one" of the staff.

The Committee recalls that under the terms of *Article 2* of the Convention, trade union pluralism must be possible in all cases. In this regard, the Committee reminds the Government that workers' freedom of choice would be jeopardized if the distinction between most representative and minority unions results, in law or in practice, in the prohibition of other trade unions which workers would like to join, or in the granting of privileges such as to influence unduly the choice of organization by workers. This distinction should not therefore have the effect of depriving those trade unions that are not recognized as being amongst the most representative of the essential means of defending the occupational interests of their members (for instance, making representations on their behalf, including representing them in case of individual grievances), of organizing their administration and activities, and formulating their programmes, as provided for in the Convention (see the 2012 General Survey on the fundamental Conventions, paragraph 97). *The Committee therefore requests the Government to provide additional information on the manner in which organizations of public servants other than CSP are able to represent and defend the interests of their members vis-à-vis the authorities.*

*Articles 2, 3 and 4. Registration of associations of public servants and their officers. Prohibition of the administrative dissolution of such associations. Regulations on the operation of the unified information system for social and citizens' organizations (Executive Decree No. 16 of 20 June 2013, as amended by Decree No. 739 of 12 August 2015).* In its previous comments, the Committee observed that Executive Decrees Nos 16 and 739 envisaged broad grounds for the administrative dissolution of social organizations and that the aforementioned Decrees applied to associations of public servants not registered at the Ministry of Labour but at their respective ministries. The Committee urged the Government to adopt the necessary reforms so that occupational associations of public servants are not subject to grounds for dissolution which prevent them from exercising in full their mandate of defending their members' interests, and are not subject to administrative dissolution or suspension.

The Committee welcomes the Government's indication that Executive Decrees Nos 16 and 739 have been repealed by Decree No. 193 of 24 October 2017. The Committee observes that even though the purpose of the new Decree is to reduce to a minimum any superfluous administrative requirements for social organizations and to reduce the grounds for dissolution, the Committee notes that the new Decree retains engagement in party-political activities as grounds for dissolution and that the new Decree continues to provide for administrative dissolution. *Recalling once again that the defence of the interests of their members requires associations of public servants to be able to express their views on the Government's economic and social policy, and that Article 4 of the Convention prohibits the administrative suspension or dissolution thereof, the Committee requests the Government to take the necessary steps to ensure that the rules referred to in Decree No. 193 do not apply to associations of public servants whose purpose is to defend the economic and social interests of their members.*

*Administrative dissolution of the UNE.* In its previous comments, the Committee expressed its deep concern at the administrative dissolution of the UNE and urged the Government to take all necessary steps as a matter of urgency to revoke that decision so that the UNE can immediately resume its activities. The Committee notes the Government's indication that, as part of the commitment to dialogue which is a hallmark of the new Government, contacts have been

established between the Ministry of Labour and the UNE lawyer to explore alternatives to the dissolution and liquidation of the UNE. As a result of these contacts, the Government has concluded that: (i) the UNE is not a trade union since it was never registered with the Ministry of Labour; (ii) the competent authority for revoking the administrative act of dissolution and liquidation is the Ministry of Education; (iii) the UNE challenged the legality of the aforementioned administrative act in the Administrative Court of the city of Quito; consequently, in view of the separation of powers, the corresponding judicial ruling must be awaited; and (iv) the Ministry of Labour invited the UNE to initiate the administrative procedure for trade union registration with the Ministry of Labour. The Committee emphasizes once again that, beyond their formal title, associations of workers, including public or private teachers, which have the purpose of defending the occupational interests of their members are covered by the provisions of the Convention, and also that the obligation to comply with the Convention is not limited to the Ministry of Labour but extends to all authorities and institutions in the country. The Committee also recalls once again that the administrative dissolution of organizations of workers, including teachers, constitutes a serious violation of the Convention. **Encouraged by the initiation of dialogue between the Government and the UNE and by the repeal of Decree No. 16, which constituted one of the legal bases for the dissolution of the UNE and for the revocation of the dissolution of several social organizations, the Committee expects that the Government will soon be in a position to report the revocation of the dissolution of the UNE so that this organization can immediately resume its activities to defend the occupational interests of its members.**

#### **Application of the Convention in the private sector**

*Article 2. Excessive number of workers (30) required for the establishment of workers' associations, enterprise committees or assemblies for the organization of enterprise committees.* The Committee recalls that since the legislative reform of 1985, which increased the minimum number of members required from 15 to 30, it has been asking the Government to reduce the minimum number of workers required by law to establish workers' associations or enterprise committees. The Committee also observes that the Committee on Freedom of Association (CFA) referred the follow-up of the legislative aspects of Case No. 3148 to it (see 381st Report, March 2017, paragraph 442). In this case, regarding the impossibility for a sectoral trade union in the banana sector to secure its registration for having members working at several enterprises, the CFA noted the Government's indication that the establishment of a trade union comprising workers from several enterprises conflicted with section 449 of the Labour Code, which provides that the officers of workers' associations of any kind must be workers of the enterprise concerned. On the basis of the above, the CFA asked the Government to take the necessary steps not only to reduce the minimum number of members required to establish an enterprise union but also to make it possible to establish primary-level unions comprising workers from several enterprises. The Committee notes the Government's indication that the purpose of setting a minimum number of members is to establish the representative status of trade unions and that the possibility of considering the recommendation of the Committee of Experts will be examined in the context of the current legal reform process. The Committee recalls once again that the requirement of a reasonable level of representativeness for concluding collective agreements must not be confused with the conditions required for the establishment of trade union organizations. The Committee also recalls that, under the terms of *Articles 2 and 3* of the Convention, workers must have the possibility, if they so wish, to establish primary-level organizations at a level higher than the enterprise. **The Committee expects that the legal reform process under way will contribute towards the amendment of sections 443, 449, 452 and 459 of the Labour Code in such a way as to reduce the minimum number of members required to establish workers' associations and enterprise committees and also to enable the establishment of primary-level unions comprising workers from several enterprises.**

*Article 3. Compulsory time limits for convening trade union elections.* In its previous comments, taking account of observations from various trade union organizations alleging a violation of trade union autonomy, the Committee asked the Government to provide information on the application in practice of section 10(c) of Ministerial Decision No. 0130 of 2013, regulating labour organizations, which provides that trade union executive committees shall lose their powers and competencies if they do not convene elections within 90 days of the expiry of their mandate, as set out in their respective union constitutions. The Committee notes the Government's indication that: (i) the purpose of Ministerial Decision No. 0130 is to give effect to article 326.8 of the Constitution; (ii) the trade unions are requesting that the standards of civil or company law be used which provide that officers shall remain in office until they are legally replaced; and (iii) the Ministry of Labour, in conjunction with the National Assembly, is instigating the preparation of a new Basic Code of Labour and Employment Promotion which will include a legislative proposal relating to this matter. **The Committee expects that the new legislation to be adopted will provide that, subject to the observance of democratic rules, the consequences of any delay in holding elections shall be determined by the union constitutions themselves.**

*Election as officers of enterprise committees of workers who are not trade union members.* In its previous comment, the Committee considered that the imposition by law that workers who are not union members may stand for election as officers of the enterprise committee is contrary to the trade union autonomy recognized by *Article 3* of the Convention, and it asked the Government to take the necessary measures to amend section 459(3) of the Labour Code. The Committee notes the Government's indication that the purpose of the legislation in force is to ensure the democratic election of the officers of the enterprise committee but that the point raised by the Committee will be examined in the context of the current legal reform process. **Observing that the new Basic Reform Act provides that only members of the "committee of public servants" may become its officers, the Committee expects that the Government will take the necessary steps to amend section 459(3) of the Labour Code in such a way that workers who are not enterprise committee members may only stand for office if the enterprise committee's own constitution envisages that possibility.**

*Article 3. Right of workers' organizations and associations of public servants to organize their activities and to formulate their programmes. Prison sentences for the stoppage or obstruction of public services.* In its previous comments, the Committee urged the Government to take the necessary measures to amend section 346 of the Basic Comprehensive Penal Code (COIP), which provides for imprisonment of one to three years for any person who obstructs or stops the normal provision of a public service, so as to prevent the imposition of criminal penalties on workers engaged in a peaceful strike. In this regard, the Committee notes the Government's indication that: (i) the criminal law definition established by section 346 of the COIP is indeed not limited to acts of violence but covers all acts that have the effect of obstructing or stopping the normal provision of a public service, thereby protecting the general interest; (ii) however, it is not the purpose of the aforementioned provision of the COIP to penalize the legitimate exercise of the right to strike; and (iii) the national legislation establishes requirements for calling a strike in the public sector, with a prohibition on the deprivation of fundamental services, including health care, education and energy.

The Committee reiterates that, even though certain restrictions on the right to strike are acceptable to protect the basic interests of the community, criminal penalties should be envisaged only where, during a strike, violence against persons or property, or other serious infringements of criminal law have been committed (for example, in the case of failure to assist a person in danger, deliberate injury or damage deliberately caused to property) (see the 2012 General Survey on the fundamental Conventions, paragraph 158). In this regard, the Committee also emphasizes that a broad criminal law definition imposing imprisonment for any obstruction of the normal provision of a public service, combined with uncertainty over the legality of a strike, may have an excessively deterrent effect on the legitimate exercise of collective rights. **In the light of the above, the Committee urges the Government once again to take the necessary steps to amend section 346 of the COIP as indicated, and to provide information on all progress made in this respect.**

**Recalling that the Government has agreed with the Office on the provision of technical assistance, the Committee expects that the Government will very soon be in a position to report the adoption of legislative provisions that take account of the comments that the Committee has been making for a number of years regarding both the public and private sectors.**

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

**Observation 2017**

The Committee notes the joint observations of the National Federation of Education Workers (UNE) and of Public Services International in Ecuador (PSI-Ecuador), received on 1 September 2017, which refer, among other things, to the adoption on 19 May 2017 of the Basic Act reforming public sector legislation (Basic Reform Act) and also to allegations of anti-union discrimination. *The Committee requests the Government to send its comments on the aforementioned allegations of anti-union discrimination and also on those contained in the 2016 observations of the UNE and PSI-Ecuador. The Committee also urges the Government to send its comments on the specific allegations of anti-union dismissals at an enterprise in the banana industry contained in the 2014 observations of the International Trade Union Confederation (ITUC).*

The Committee welcomes that the Government has agreed with the Office on the provision of technical assistance in the context of the legislative reforms under way.

**Application of the Convention in the public sector**

*Articles 1, 2 and 6 of the Convention. Protection of public sector workers who are not engaged in the administration of the State against acts of anti-union discrimination and interference.* In its previous comments, the Committee urged the Government to take the necessary measures to ensure that the legislation applicable to the public sector contains provisions, at least for workers not covered by the exception in *Article 6* of the Convention, prohibiting and establishing dissuasive penalties for any acts of anti-union discrimination and interference, as set out in *Articles 1 and 2* of the Convention, and also urged the Government to take the necessary measures to ensure that the use of the “compulsory purchase of redundancy” procedure does not give rise to acts of anti-union discrimination. In this respect, the Committee notes with *interest* that the Basic Reform Act contains provisions which: (i) protect public servants against any act of discrimination related to the exercise of their right to organize (section 11); (ii) protect the independence of organizations of public servants and prohibit interference by the public authorities in the establishment of such organizations (section 11); and (iii) provide that any termination of employment or “compulsory purchase of redundancy” with compensation for public servants who are members of the board of the Civil Service Committee shall be null and void (general provisions). *Recalling the importance of having effective and dissuasive penalties in this respect, the Committee requests the Government to provide information on the penalties and compensation applicable to acts of discrimination and anti-union interference committed in the public sector, indicating the legislative or regulatory provisions that establish them. The Committee also requests the Government to indicate whether, in addition to the Civil Service Committee members, the leaders of organizations of public servants also have extra protection against the termination of employment or benefit from other similar measures.*

*Articles 4 and 6. Collective bargaining for public sector workers who are not engaged in the administration of the State.* In its previous comments, the Committee observed with deep concern that, in violation of *Articles 4 and 6* of the Convention, and despite its reiterated comments and those of other ILO supervisory bodies, the constitutional amendments adopted in December 2015 exclude the public sector as a whole from the scope of collective bargaining. The Committee urged the Government to reopen in the near future an in-depth debate with the trade unions concerned with a view to re-establishing collective bargaining for all categories of workers in the public sector covered by the Convention. The Committee also urged the Government to respect fully the right of workers in the public sector recruited prior to the entry into force of the constitutional amendments to continue negotiating their terms and conditions of employment.

The Committee notes the Government’s indication that: (i) in Ecuador the concept of public servants not engaged in the administration of the State does not exist; (ii) collective bargaining has not disappeared from the public sector since public sector workers hired before the entry into force of the constitutional amendments of 2015 continue to enjoy this right; and (iii) the possibility of taking account of the Committee’s observations in the legislative reforms under way will be examined. The Committee also notes that PSI-Ecuador and the UNE maintain that the Basic Reform Act adopted on 19 May 2017 has missed the opportunity to reintroduce the right to collective bargaining in the public sector since it only recognizes the possibility for dialogue between the Civil Service Committee and the public institutions with respect to a limited number of matters which do not include remuneration.

The Committee observes that, on the basis of the final part of section 326.16 of the Constitution as amended in December 2015, which provides that collective bargaining will only apply to the private sector since the State and the public administration are obliged to take care of the public interest, the Basic Reform Act does not recognize the right to collective bargaining of public servants but establishes, through section 11, a mechanism for social dialogue between the Civil Service Committee and the public institutions. The Committee also observes that section 11 provides that: (i) it is for the Civil Service Committee to take the initiative with regard to the social dialogue process; (ii) social dialogue may cover the following subjects: training and technical instruction; improvements to conditions of work and the working environment; occupational safety and health and the integration of vulnerable groups into the labour market; (iii) the results of the social dialogue will be recorded in a report to be sent to the Ministry of Labour; and (iv) any disputes arising from failure to implement the results of the social dialogue will be submitted to compulsory mediation and, if no solution is reached by this means, the disputes will be referred to the conciliation and arbitration tribunal.

The Committee notes that even though the social dialogue mechanism established by the Basic Reform Act lays down dispute settlement procedures, it does not provide for the conclusion of agreements whereby public sector employees can endorse their conditions of employment. The Committee also notes that the subjects for dialogue are limited and do not include, in particular, questions of remuneration. In this regard, the Committee recalls that, under the terms of *Articles 4 and 6* of the Convention, all workers in the public sector who are not engaged in the administration of the State (such as employees in public enterprises, municipal employees and those in decentralized institutions, teachers in the public sector and personnel in the transport sector) are covered by the Convention (see the 2012 General Survey on fundamental Conventions, paragraph 172) and therefore, must be able to engage in collective bargaining concerning their conditions of employment, including pay conditions, and that mere consultation of the unions concerned is not sufficient to meet the requirements of the Convention in this respect (see General Survey, op. cit., paragraph 219). *Recalling that the particular characteristics of the public administration may make a degree of flexibility necessary and that the Convention may therefore be compatible with systems that require parliamentary approval of certain conditions of work or financial clauses of collective agreements in the public sector, and observing that in many countries mechanisms are in operation which allow the harmonious coexistence of the public sector’s mission of general interest with the responsible exercise of collective bargaining, the Committee urges the Government once again to reopen an in depth debate with the trade unions concerned with a view to establishing an adequate collective bargaining mechanism for all categories of workers in the public sector covered by the Convention. The Committee reminds the Government that it may seek support from the Office in the context of the current technical assistance provided. The Committee also requests the Government to provide information on collective agreements signed with public sector workers recruited prior to the entry into force of the constitutional amendments of 2015.*

**Application of the Convention in the private sector**

*Article 1. Adequate protection against acts of anti-union discrimination.* In its previous comments, the Committee requested the Government to take the necessary measures to ensure that the legislation includes a specific provision guaranteeing protection against acts of anti-union discrimination in access to employment. The Committee notes that the Government concurs once again that the current legislation does not contain specific provisions prohibiting anti-union discrimination in recruitment and there is a need to engage in reflection so as to be able to combat effectively any discrimination in employment. *In the light of the above and encouraged by the legislative reform process under way with technical assistance from the Office, the Committee trusts that the Government will very soon be in a position to report that a specific provision has been introduced into the legislation guaranteeing protection against acts of anti union discrimination in access to employment.*

*Article 4. Promotion of collective bargaining.* In its previous comments, the Committee pointed out the need to amend section 221 of the Labour Code with

respect to the submission of the draft collective agreement so that, where there is no organization with over 50 per cent of the workers as members, minority trade unions may, either alone or jointly, negotiate on behalf of their members. The Committee notes the Government's indication that it will forward these observations to the authorities responsible for implementing the legislative reforms in progress but that it should also be recalled that the purpose of the existing legislation is to ensure the representativeness of trade unions vis-à-vis employers with a view to concluding majority agreements. The Committee recalls that, while it is acceptable that the union which represents the majority or a high percentage of workers in a bargaining unit should enjoy preferential or exclusive bargaining rights, the Committee considers that in cases where no union meets these conditions, or does not enjoy such exclusive rights, minority trade unions should at least be able to conclude a collective or direct agreement on behalf of their own members (see General Survey, op. cit., paragraph 226). *In light of the above, the Committee once again requests the Government, in consultation with the social partners, to take the necessary steps to amend section 221 of the Labour Code so that, where there is no organization with over 50 per cent of the workers as members, minority trade unions may, either alone or jointly negotiate on behalf of their members. The Committee also requests the Government once again to provide information on the number of collective agreements concluded in recent years and the number of sectors and workers covered.*

*Noting that the Government has agreed with the Office on the provision of technical assistance, the Committee trusts that the Government will very soon be in a position to report the adoption of legislative provisions that take account of the comments that the Committee has been making for a number of years regarding both the public and private sectors.*

*[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 Government's comments in response to the observations of the International Trade Union Confederation (ITUC) received in 2014 and 2016. In relation to the allegations of anti-union discrimination against staff of the municipal authorities, the Committee notes the Government's statement that no investigations are conducted by the Ministry of Labour and Social Security, since the Labour Code does not apply to this category of public servants. The Government also states that the national jurisprudence has established that the Ministry of Labour should refrain from carrying out inspections into violations of labour rights among the municipal authorities as they do not have the competence in this regard. Lastly, the Government indicates that it has planned to meet with the municipal authorities to inform them of the complaints before the ILO and to initiate a dialogue process with a view to protecting the rights of affiliated workers. While noting the actions envisaged by the Government, the Committee highlights that the fact that the staff of the municipal authorities is not covered by the Labour Code does not free the Government of its responsibility to guarantee this category of workers adequate protection against anti-union discrimination. *Recalling its previous comments in the framework of the application of this Convention and the Labour Relations (Public Service) Convention, 1978 (No. 151) on the need to reform the Civil Service Act to ensure that all public employees covered by these Conventions enjoy adequate protection against anti-union discrimination, the Committee requests the Government to take, in the near future, all necessary measures to ensure that, first, investigations are conducted by the competent authorities into the allegations of anti-union discrimination reported by the ITUC and, where necessary, effective penalties are imposed and, second, the legal framework is revised as indicated. The Committee requests the Government to provide information in this regard. It requests the Government to send its comments on the allegations of anti-union discrimination in the aviation civil service and in an enterprise of the bakery sector.*

*Article 1 of the Convention. Adequate protection against anti-union discrimination.* The Committee notes the Government's indication that the bill on the new system of fines has not been adopted. *Recalling the importance of the fines imposed in the event of anti-union discrimination being of a dissuasive nature, the Committee requests the Government to take effective measures to establish a dissuasive penalty system and expects that it will soon be able to adopt the reforms envisaged in this regard.*

*Articles 2, 4 and 6. Legislative issues pending for several years.* The Committee recalls that for several years it has been making comments on certain provisions of domestic law with the aim of bringing those into conformity with *Articles 2, 4 and 6* of the Convention:

--*acts of interference:* section 205 of the Labour Code and section 247 of the Penal Code so that the legislation explicitly prohibits all acts of interference under the terms prescribed by *Article 2* of the Convention;

--*requirements to be able to negotiate a collective agreement:* sections 270 and 271 of the Labour Code and sections 106 and 123 of the Civil Service Act so that, when no union covers more than 50 per cent of the workers, the right to collective bargaining is explicitly granted to all unions, at least on behalf of their own members;

--*revision of collective agreements:* section 276(3) of the Labour Code to ensure that the renegotiation of collective agreements while they are still in force is only possible at the request of both parties concerned;

--*judicial remedies in the event of the denial of the registration of a collective agreement:* section 279 of the Labour Code to specify that judicial remedies are applicable against decisions of the Director-General not to register a collective agreement;

--*approval of collective agreements concluded with a public institution:* section 287 of the Labour Code and section 119 of the Civil Service Act, which regulate collective agreements concluded with a public institution, to replace the requirement for prior ministerial approval by a provision envisaging the participation of the financial authorities during the process of collective bargaining, and not when the collective agreement has already been concluded;

--*exclusion of certain public employees:* section 4(1) of the Civil Service Act so that all public officials who are not engaged in the administration of the State enjoy the guarantees provided for in the Convention.

The Committee notes firstly that the Government refers to the adoption of legislative Decree No. 10 of 2009 which sets forth that all those employees who entered the public administration before 31 January 2009 will receive permanent contracts. *The Committee requests the Government to provide further details on the effects of the adoption of the above legislative Decree on the application of the Convention.* The Committee notes secondly the Government's indication that, following an analysis of the labour reforms prepared within the framework of the strategic plan of the Ministry of Labour and Social Security 2014–19, a ministerial commission has been established for the presentation of the reforms to the Legislative Assembly. *The Committee hopes that the Government, following consultation with the most representative workers' and employers' organizations, will present to the Legislative Assembly, in the near future, the bills on the reforms of the legislative provisions contained in the Labour Code, the Penal Code and the Civil Service Act which have been the subject of its comments for several years. The Committee requests the Government to provide information on any progress in this regard and emphasizes that it could consider the possibility of including these issues in the framework of the technical assistance it had requested as a follow-up to the direct contacts mission regarding the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).*

*Application of the Convention in practice.* The Committee notes the Government's information that no collective labour agreements have been concluded with teachers in the public sector and that between 2009 and March 2016, the Ministry of Labour and Social Security registered 43 collective labour agreements, 39 of which are from the private sector and four from the public sector. The Committee notes with *concern* that the number of collective agreements referred to is very low, particularly when taking into account that, in practice, collective bargaining is carried out in the country at enterprise level. *The Committee requests the Government to take measures to promote collective bargaining in all sectors covered by the Convention, including in public education, and to provide information in this respect indicating any proposed collective bargaining agreement in the public education not concluded and the reasons for such results. The Committee also requests the Government to continue providing information on the number of collective agreements signed, the sectors concerned and the numbers of workers covered by those.*

**C144 - Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)****Observation 2017****Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 106th Session, June 2017)**

The Committee notes the discussion that took place in the Conference Committee on the Application of Standards in June 2017 concerning the application of the Convention. In this regard, the Conference Committee urged the Government to: (i) reactivate, without delay, the Higher Labour Council (CST); (ii) ensure concrete positive developments with regard to the freedom and autonomy of employers' and workers' organizations to appoint their representatives in compliance with the Convention, without intimidation; (iii) ensure adequate protection for the premises of the representative workers' and employers' organizations from violence and destruction; and (iv) report in detail on the application of the Convention in law and practice to the next session of the

Committee of Experts.

The Committee also notes the direct contacts mission undertaken in El Salvador from 3 to 7 July 2017, in which consultations were held with the tripartite constituents and recommendations were made, according to which: (i) the Government is encouraged to ensure that additional measures are adopted through social dialogue to ensure the reactivation and full operation of the CST; (ii) the competent authorities are encouraged to ensure that the necessary measures are taken, in consultation with the employers' and workers' organizations concerned, to ensure full respect for the autonomy of employers' and workers' organizations to appoint their representatives; (iii) the Government is invited to consider, in consultation with the employers' and workers' organizations, uniform procedures for the accreditation of such organizations; (iv) the public authorities are encouraged to take all relevant measures to ensure the protection of the premises of the National Business Association (ANEP) and the safety of representatives of the employers' and workers' organizations; (v) with regard to the murder of the trade unionist Mr Abel Vega, the Committee hopes to observe tangible progress with regard to clarification of the facts, identification of the perpetrators and imposition of adequate penalties; (vi) the willingness of the government authorities to engage in social dialogue to address the issues raised by the mission is welcomed and it is recommended that measures are taken to promote a culture of social dialogue, in particular by strengthening the capacities of the social partners to participate constructively in tripartite discussions and ensuring compliance with the ground rules needed to conduct a mature dialogue; and (vii) it is suggested that technical assistance be sought from the ILO in order to follow up these recommendations.

The Committee also notes the observations of the ANEP and the International Organisation of Employers (IOE), received on 30 and 31 August 2017, respectively, alleging non-observance of the Convention by the Government.

*Articles 2 and 3(1) of the Convention. Adequate procedures. Election of representatives of the social partners to the CST.* In reply to the Committee's previous comments, the Government indicates that in its decision of 17 March 2017 the Constitutional Chamber of the Supreme Court of Justice ruled that the Government's request for a definitive list of representatives does not impose an arbitrary requirement or condition that violates the right to freedom of association of the organizations concerned. However, the Court concluded that this does not release the Ministry of Labour and Social Welfare (Ministry of Labour) from its obligation to implement and support processes of social dialogue and tripartite participation. The Court observed that dialogue forums should be promoted between the trade unions so that they can agree on and apply clear and permanent procedures for the election of their representatives, in order to ensure the appointment of representatives of the workers to the CST and their participation therein.

Furthermore, as regards the functioning of the CST, the Government indicates that as follow-up to the Conference Committee's conclusions, a request was made on 1 May 2017 to the legally registered trade union federations and confederations to present their proposals for representatives to the CST. The Committee notes that between 12 and 17 May 2017 three nomination proposals were received from the workers, which made it possible to compose the list of representatives and their respective substitute members in the CST. In this regard, the Government indicates that the unions which submitted their proposals all feature in the register of the National Department of Labour Organizations at the Ministry of Labour, accounting for 56 per cent of active unions, 51 per cent of trade union members, and 82 per cent of registered collective agreements. The Government also indicates that the employers' established in the relevant regulations submitted their list of representatives between 6 June and 4 July, and that by Executive Decision No. 288 of 29 May 2017, the Government members were nominated. The Government adds that on 29 June 2017 the representatives of the three sectors were invited to attend the inaugural meeting of the CST. However, the employers did not attend either the preparatory meeting or the inaugural meeting of the CST, as a result of which it was agreed to convene a new inaugural meeting, which coincided with the meeting with the direct contacts mission. The employers once again declined to participate in the meeting of the CST, alleging non-conformity of the workers' representation mechanism. The Government reiterates in its observations its willingness to implement the procedures indicated and agreed upon in the context of the direct contacts mission to continue promoting social dialogue and agreements between the sectors, thereby contributing to the activation of the CST. The Government emphasizes that the process for the nomination of workers' and employers' representatives was undertaken publicly, with the participation of the previous workers' and employers' representatives, the Secretariat for Civic Participation, Transparency and Anti-Corruption, the Government Ethics Tribunal and the media. However, the Government indicates that the employers represented by the ANEP, despite having been democratically elected, refused to participate in the ordinary and extraordinary meetings held between December 2016 and July 2017. Lastly, the Government indicates that, in addition to the CST, the State has five tripartite entities and 17 tripartite autonomous institutions, which are fully operational and include, among others, the Salvadorian Social Security Institute, the Housing Social Fund, the Salvadorian Vocational Training Institute and the National Minimum Wage Council.

The Committee also notes the observations made by the ANEP to the effect that the Ministry of Labour distanced herself from the Committee's recommendations regarding the reactivation of the CST. In this respect, the ANEP indicates that, in abolishing the function of the electoral body, the Ministry assumed the power to issue instructions for the election of workers' representatives and appropriated the competence for determining criteria for the nomination of workers' representatives to the CST, thereby committing acts of interference. The Committee also notes that the observations made by various worker groups in the context of the direct contacts mission, according to which two groups of workers' organizations attributed the standstill in the CST to interference by the Government, since the latter reportedly called for a single list adopted by consensus. Moreover, the Committee notes that one of the two abovementioned groups of workers decided not to accept the composition of the CST, while the other group, despite expressing criticism and reservations regarding the nomination process, opted to participate in the CST. The Committee notes that a group bloc of workers' organizations emphasized that one group of workers has been unlawfully monopolizing worker representation in the tripartite institutions for years and criticized the stance of the employers in not attending the inauguration of the CST. Lastly, the Committee notes that in the context of the direct contacts mission all groups of workers' organizations indicated that they did not accept the representativeness criteria applied by the Government.

The Committee notes that, in reply to its previous comments, the Government expresses its willingness to take the necessary steps to promote social dialogue and reactivate the Higher Labour Council (CST). ***The Committee expresses the firm hope that the Government will take the necessary steps to promote and strengthen tripartism and social dialogue in such a way as to ensure the functioning of the CST. The Committee urges the Government to establish without delay, in consultation with the social partners, clear and transparent rules for the nomination of workers' representatives to the CST that comply with representativeness criteria. With regard to the allegations of interference, the Committee hopes that the Government will take the necessary steps to investigate and resolve them. The Committee requests the Government to keep it informed of any developments in this respect.***

*Article 5(1). Effective tripartite consultations.* The Government indicates that it has still not held tripartite consultations in relation to the documents adopted during the International Labour Conference between 1976 and 2015. The Committee notes the Government's reply indicating that the results of the consultations will be brought to the Committee's attention as soon as the consultations have been held, and that at present, since no defined basis exists for assessing the implications of the submission of labour Conventions and there are conflicting opinions on the repercussions of failure to meet international commitments, the Government is holding consultations and validating procedures with the heads of government authorities and their respective legal departments. The Committee also notes the indication in the observations of the ANEP that, despite the fact that it completed the relevant procedures with the Directorate for International Relations at the Ministry of Labour, it has been unable to obtain copies of the reports to be sent to the ILO. ***The Committee requests the Government to provide information on the results of the tripartite consultations held on the proposals to be submitted to the Legislative Assembly with regard to the submission of the 58 instruments adopted by the International Labour Conference between 1976 and 2015.***

*Technical assistance.* The Committee notes that in October 2017 the Government requested technical assistance from the Office. ***The Committee hopes that the requested technical assistance will be provided soon and requests the Government to provide information on any activity undertaken in this context.***

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

*Observation 2017*

The Committee notes that the Government's report has not been received. It hopes that the next report will contain full information on the matters raised in its previous comments initially made in 2015.

*Articles 3(a) and 7(1) of Convention. Worst forms of child labour and penalties. Sale and trafficking of children for sexual exploitation.* The Committee previously noted that the trafficking of persons for sexual exploitation, particularly in forced prostitution rings involving children, is a serious problem in the country, with child victims being brought from Mexico, Guatemala and other countries in the region for prostitution. It also noted the concern expressed by the Committee on the Rights of the Child (CRC) with respect to the low level of prosecutions and convictions for trafficking-related crimes vis-à-vis the reported cases.

The Committee notes the Government's information concerning the investigations conducted and the convictions obtained in relation to the sale and trafficking of persons. However, as noted in its previous comment, this information does not provide statistics disaggregated according to whether the victims are adults or under 18 years of age; instead, the Government has provided a sample case of a criminal conviction for the trafficking of 11 victims between the ages of 11 and 16 years. Furthermore, the Committee notes that, without specifying any age, the Government indicates that public authorities identified 32 child victims of human trafficking in 2013. Finally, the Committee understands that the Committee on Family, Children, Adolescents, Elderly Persons and Persons with Disabilities has conducted a study and drafted a Special Law against Human Trafficking which will, among others, impose higher penalties for crimes committed against children.

The Committee also notes the adoption of a National Policy to Combat Trafficking in Persons in 2012. However, it further notes the 2014 concluding observations of the Committee on the Protection of the Rights of All Migrant Workers and their Families (CMW/C/SLV/CO/2, paragraph 44), which expresses concern regarding the few sentences that have been passed for the offence of human trafficking. ***The Committee accordingly requests the Government to take the necessary measures to ensure that thorough investigations and robust prosecutions of persons engaged in the sale and trafficking of children under 18 years of age for sexual exploitation are carried out. It also requests the Government to ensure that the draft Special Law against Human Trafficking is adopted. It further requests the Government to provide statistical information concerning the investigations and convictions obtained in relation to the sale and trafficking of children under the age of 18 years.***

*Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour and removing them from such labour. Commercial sexual exploitation and trafficking of children for that purpose.* Further to its previous comments, the Committee notes the Government's reference to its national policy to combat human trafficking established under Decree No. 450 in 2012, which defines the term "human trafficking" to include trafficking for the purpose of sexual exploitation and sex tourism. The national plan provides for the protection, reintegration and restitution of victims of trafficking, and provides for programmes to be developed to protect victims and repatriate them as necessary. The Committee further notes the establishment of a National Council against Human Trafficking, which is mandated to further formulate, coordinate and evaluate the national policy as well as, among others, establish a national action plan implementing the principles set out in the national policy. The national policy and national action plan will be evaluated every three years to determine appropriate follow-up action, and public reports will be distributed to provide information concerning their accomplishments and application.

The Committee also notes the Government's information concerning measures taken to provide assistance to children and adolescents, including awareness raising in school centres for 919 boys and 854 girls on preventing trafficking for commercial sexual exploitation and the training of 290 officials on the rights of children in themes such as migration, trafficking and sexual exploitation. The Government also indicates that the Ministry of Justice and Public Security has implemented a plan to eradicate commercial sexual exploitation, human trafficking, child labour and the worst forms of child labour as part of the Institutional Strategy Plan (PNC).

The Committee takes due note of the Government's programmatic measures to combat human trafficking. However, it also notes that while the national plan and the mandate of the National Council target human trafficking generally, they do not contain specific provisions for child victims under the age of 18. It also notes that, according to the Government's statistical information, there were 14 cases of commercial sexual exploitation in January 2014, which the Committee notes is approximate to the 15 cases of such exploitation reported in January 2013, and may indicate that the Government's efforts to decrease the incidence of trafficking of children needs to be further strengthened. ***Recalling that children below the age of 18 years are particularly vulnerable to trafficking for commercial sexual exploitation, the Committee strongly encourages the Government to take immediate and effective time-bound measures for the prevention, removal and rehabilitation of child victims, specifically, within the context of the national plan.***

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

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

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

In order to provide a comprehensive view of the issues relating to the application of the ratified labour inspection Conventions, the Committee considers it appropriate to examine Conventions Nos 81 and 129 together.

The Committee notes the observations of the Autonomous Popular Trade Union Movement and Global Unions of Guatemala, received on 30 August 2017, on the legislative reform examined below and on the resources, functions and training of labour inspectors.

The Committee notes the Government's indication in its report that the Labour Code (Decree No. 1441) has been amended by Decree No. 7-2017 promulgated by the Congress of the Republic, and published on 6 April 2017.

*Article 12(1)(a) of Convention No. 81 and Article 16(1)(a) of Convention No. 129. Authorization for labour inspectors to enter at any hour of the day or night any workplace liable to inspection.* The Committee notes that section 281(a) of the Labour Code, as amended by Decree No. 7-2017, limits the entry of inspectors into any workplace liable to inspection to the workday, in accordance with internal workplace rules or the authorization issued by the Ministry of Labour and Social Welfare. The Committee also notes that the previous wording of section 281 empowered inspectors to visit workplaces at different hours of the day and night, if work was carried out at that time. In this regard, the Committee notes the observations of the Autonomous Popular Trade Union Movement and Global Unions of Guatemala, according to which the legislative reform enables employers to restrict the entry of inspectors to the hours of the working day, which are established by internal workplace rules, even though many complaints concerning violations of labour law are related to overtime work or work performed outside the usual hours, often at night. **Recalling that pursuant to Article 12(1)(a) of Convention No. 81 and Article 16(1)(a) of Convention No. 129, labour inspectors provided with proper credentials shall be empowered to enter freely and without previous notice any workplace liable to inspection at any hour of the day or night, the Committee requests the Government to adopt the necessary measures to ensure full compliance with these provisions.**

*Article 12(2) of Convention No. 81 and Article 16(3) of Convention No. 129. Notification of the presence of inspectors unless such notification may be prejudicial to the performance of inspection duties.* The Committee notes that section 281 of the Labour Code, as amended by Decree No. 7-2017, provides that labour inspectors shall provide credentials indicating their identity, their appointment and the objective of the inspection, in order to benefit from the obligations and powers set out in the Labour Code. However, the Committee notes that the legislation does not provide for an exception to the requirement of the notification of the presence of inspectors through the provision of credentials indicating their identity and appointment, while *Article 12(2)* of Convention No. 81 and *Article 16(3)* of Convention No. 129 provide that inspectors shall notify the employer or her/his representative of their presence, unless they consider that such a notification may be prejudicial to the performance of their duties. **The Committee requests the Government to take the necessary measures to ensure that inspectors have the power to omit to notify their presence to the employer or her/his representative if they consider that such notification may be prejudicial to the performance of their duties, in accordance with paragraph 2 of Article 12 of Convention No. 81 and paragraph 3 of Article 16 of Convention No. 129.**

*Article 17 of Convention No. 81 and Article 22 of Convention No. 129. Legal or administrative proceedings in the case of violations of, or failure to observe, legal provisions enforceable by labour inspectors.* With reference to its previous comment on the process of imposing penalties for violations of labour legislation, the Committee notes with **interest** that Decree No. 7-2017 amends sections 271, 272 and 281 of the Labour Code and provides that labour inspectors shall be empowered to adopt the measures listed in paragraph (f) of section 281, including the power to initiate the process of imposing administrative penalties through compliance orders for violations of labour provisions or the obstruction of labour inspectors, and the power to order the cessation of work in cases of serious or imminent risk to workers' safety and health. Decree No. 7-2017, through the amendment of section 415 of the Labour Code and the introduction of sections 417 and 418, recognizes the capacity of the Ministry of Labour and Social Welfare, through the General Labour Inspectorate, to take direct action to promote and remedy violations of the labour and social welfare legislation through administrative action or, failing that, the initiation of administrative proceedings. **Taking due note of the legislative reform of 2017, the Committee requests the Government to provide information on the application in practice of the new provisions respecting the powers of labour inspectors to take measures listed in paragraph (f) of section 281 of the Labour Code, as amended by Decree 7 2017, including to impose penalties or prohibitory orders. In this regard, the Committee requests the Government to provide detailed information on the compliance orders on violations of labour provisions issued by labour inspectors, and the action proposed through proceedings, if administrative measures have failed to produce results.**

*Article 18 of Convention No. 81 and Article 24 of Convention No. 129. Obstruction of labour inspectors in the performance of their duties. Adequate and effectively enforced penalties.* With reference to its previous comment on the obstruction of labour inspectors in the performance of their duties, the Committee notes with **interest** that sections 269 and 271(3) of the Labour Code, as amended by Decree No. 7-2017, provide that: (a) in the event that the employer or her/his representatives or workers or trade unions and their representatives, refuse to collaborate with the inspection services to verify compliance with labour provisions for which violations may be penalized with fines, the procedure for penalizing the person responsible shall be commenced and the process of inspection continued; (b) the obstruction of the process of inspection by the employer or her or his representatives, or by workers or trade unions or their representatives, within the meaning of section 281 of the Labour Code, shall constitute an offence subject to penalties. Moreover, with reference to the need for sufficiently dissuasive penalties that are effectively enforced, the Committee notes that section 272 of the Labour Code, as amended by Decree No. 7-2017, sets out the criteria and the procedure for the imposition of penalties by departmental delegates of the General Labour Inspectorate. However, the Committee notes the observations of the Autonomous Popular Trade Union Movement and Global Unions of Guatemala, alleging that inspectors do not in practice apply the penalties set out in the law because the Ministry of Labour and Social Welfare has not adopted the necessary administrative measures for this purpose. **Taking due note of the legislative reform of 2017, the Committee requests the Government to provide its comments on the observations of the Autonomous Popular Trade Union Movement and Global Unions of Guatemala, and to provide detailed information on the number of penalties imposed, including the amounts of fines.**

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

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

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 1 and 4 September 2017, and the joint observations of the Autonomous Popular Trade Union Movement and the Global Unions of Guatemala, received on 30 August 2017. **The Committee notes that these observations refer to issues examined in the present comment and to complaints of violations in practice regarding which the Committee requests the Government to send its comments.**

The Committee also notes the observations of the International Organisation of Employers (IOE) and the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF), both received on 1 September 2017, which refer to matters examined by the Committee in the present comment.

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

The Committee notes in particular that the Governing Body, at its 331st Session (October–November 2017), welcomed the agreement reached by the Guatemalan tripartite constituents on 2 November 2017 in order to achieve the full implementation of the roadmap adopted in October 2013 and thereby resolve the matters raised in the complaint submitted under article 26 of the ILO Constitution by various Worker delegates to the 101st Session of the International Labour Conference (May–June 2012) concerning non-observance of the Convention by Guatemala. The Committee notes that, on the basis of the foregoing, the Governing Body: (i) urged the Government, together with the Guatemalan social partners and with the technical assistance of the Office and of its representative in Guatemala, to devote all the efforts and resources needed to implement the national tripartite agreement aimed at settling the unresolved matters in the roadmap; and (ii) deferred until its 332nd Session (March 2018) the decision on the appointment of a Commission of Inquiry.

The Committee notes with *interest* that the tripartite agreement provides for: (i) the establishment of a Tripartite National Committee on Labour Relations and Freedom of Association responsible, inter alia, for guiding the actions necessary for implementation of the roadmap; and (ii) by March 2018, the presentation to the National Congress, using a tripartite approach, of the legislative proposals referred to in point 5 of the roadmap, the objective of which is to bring the national legislation into line with the Convention.

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

The Committee notes the discussion held in the Conference Committee on the Application of Standards (hereinafter the Conference Committee) in June 2017 on the application of the Convention by Guatemala. The Committee notes in particular that the Conference Committee requested the Government to: (i) continue to investigate, with the involvement of the Public Prosecutor's Office, all acts of violence against trade union leaders and members, with a view to identifying and understanding the root causes of violence, understanding whether trade union activities was a motive, determining responsibilities and punishing the perpetrators; (ii) continue to strengthen the operation of the Conflict Resolution Committee, including in relation to the complementarity between the Conflict Resolution Committee and the judicial mechanisms for the protection of freedom of association; (iii) eliminate the various legislative obstacles to the free establishment of trade union organizations and, in consultation with the social partners and with the support of the Special Representative of the Director General, review the handling of registration applications; (iv) continue to provide rapid and effective protection to all trade union leaders and members who are under threat so as to ensure that protected individuals do not personally have to bear any costs arising from those schemes; (v) ensure the effective operation of the Special Investigation Unit for Crimes against Trade Unionists of the Public Prosecutor's Office by allocating the necessary resources; (vi) increase the visibility of the awareness-raising campaign on freedom of association in the mass media and ensure that there is no stigmatization whatsoever against collective agreements existing in the public sector; (vii) continue taking the necessary steps to fully implement the roadmap adopted on 17 October 2013 in consultation with the social partners; and (viii) continue to engage with the Special Representative of the Director-General in Guatemala in pursuing the implementation of the Memorandum of Understanding and the roadmap.

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

The Committee notes with *regret* that for a number of years, in the same way as the Committee on Freedom of Association, it has been examining allegations of serious acts of violence against trade union leaders and members, including numerous murders, and the related situation of impunity. The Committee notes the information provided by the Government, both in its report on the application of the present Convention and in its report of October 2017 to the Governing Body as part of the follow-up to the complaint submitted under article 26 of the ILO Constitution. The Committee takes special note of the Government's indication that: (i) with regard to the 89 recorded murders of trade union leaders and members, 21 verdicts have been issued to date (16 convictions, four acquittals and one judgment imposing security measures); (ii) of these 21 verdicts, five were issued in 2017; (iii) three convictions recently secured by the Public Prosecutor's Office were handed down by courts for high-risk proceedings, including those involving offences against trade unionists' life, further to a decision of the Criminal Chamber; (iv) in addition to the rulings handed down, significant progress has been made in investigations or proceedings relating to another five murders and one attempted murder, including the killing of Mr Tomás Francisco Ochoa Salazar, Disputes Secretary of the SITRABREMEN trade union organization, which occurred on 1 September 2017; (v) through the coordinated action of the Special Unit at the Public Prosecutor's Office for the Investigation of Crimes against Trade Unionists (Special Investigation Unit) and the Office of the Deputy Minister for Security at the Ministry of the Interior; three arrest warrants were issued and a fourth person was summoned to make an initial statement; (vi) collaboration is ongoing with the International Commission against Impunity in Guatemala (CICIG) in relation to the investigation of a list of 12 murders compiled by the trade union movement; (vii) the Trade Union Committee at the Public Prosecutor's Office continues to function; (viii) Directive No. 1-2015 of the Public Prosecutor's Office has been applied in every case of anti-union violence resolved since 2015 and all the investigation files record steps taken to establish any trade union involvement of the victims; and (ix) the abovementioned Special Investigation Unit has been restructured and now comprises 19 persons and three inspection departments (one dealing with investigations into violent deaths and two dealing with non-compliance with judicial orders for reinstatement).

The Committee also notes the information provided by the Government concerning protection measures for members of the trade union movement at risk. The Government indicates that: (i) all requests for protection measures for members of the trade union movement received by the Ministry of the Interior give rise to a risk assessment; (ii) on the basis of such studies, 28 security measures covering specific locations and two personal security measures were granted between January and July 2017; and (iii) the Protocol for the implementation of immediate and preventive security measures for trade union members, union leaders and labour rights advocates was adopted and published, the content having been agreed upon by the trade unions.

The Committee also notes that the Autonomous Popular Trade Union Movement and the Global Unions of Guatemala, and also the ITUC, in their observations on the application of the present Convention and in their report of October 2017 to the Governing Body as part of the follow-up to the complaint submitted under article 26 of the ILO Constitution, report: (i) the persistence of numerous attacks and threats against members of the trade union movement; (ii) a lack of tangible progress with regard to the investigation of the 89 murders of trade unionists and the securing of convictions for the perpetrators; (iii) serious methodological defects in the investigation conducted by the Public Prosecutor's Office and, in particular, failure to take account of the trade union activities of the victims when investigating the motives for the murders; (iv) minimal attention given to identifying the instigators of the offences; (v) a persistent lack of human and financial resources for the Special Investigation Unit; and (vi) apart from the murder cases, a lack of investigation, let alone any imposition of penalties, regarding other anti-union criminal acts.

The Committee also notes with *deep concern* that the abovementioned trade union organizations specifically report: (i) the murder on 9 November 2016 of Mr Eliseo Villatoro Cardona, leader of the Union of Organized Municipal Employees of Tiquisate (SEMOT), an organization affiliated to the Guatemalan Union, Indigenous and Peasant Movement (MSICG), after SEMOT had received numerous threats from the municipal authorities; (ii) the killing on 23 June 2017, by a security guard at a ranch in Coatepeque, of Mr Eugenio López, aged 72, during a peaceful demonstration of current and former ranch workers to demand the payment of their employment benefits; and (iii) the murder on 1 September 2017 of Mr Tomás Francisco Ochoa Salazar, Disputes Secretary of the SITRABREMEN union, in a climate of bullying and harassment of the members of that union. Lastly, the Committee notes the 2016 annual report of the Human Rights Procurator's Office of Guatemala, indicating that 30 attacks on trade unionists were recorded between January and November 2016.

The Committee *deplors* that there persist numerous allegations of acts of anti-union violence and further murders of trade union leaders and members. While taking due note of the five judgments handed down in 2017 in relation to murders of members of the trade union movement, the Committee notes with *regret* the continuing impunity in the vast majority of cases of recorded murders of trade unionists. In the same way as the Committee on Freedom of Association in the context of Case No. 2609 (382nd Report, paragraphs 315–353), the Committee once again expresses its particular *concern* at the lack of progress in the investigations of murders in which evidence has already been found of a possible anti-union motive. *In light of the above, the Committee firmly urges the Government to intensify its efforts to: (i) investigate all acts of violence against trade union leaders and members with a view to*

*determining responsibilities and punishing the perpetrators and instigators of such acts, taking the trade union activities of the victims fully into consideration in the investigations; and (ii) provide prompt and effective protection for all trade union leaders and members who are at risk. In particular, the Committee urges the Government, as part of the implementation of the tripartite agreement of November 2017, to intensify its efforts to: (i) allocate additional financial and human resources to the Special Unit at the Public Prosecutor's Office for the Investigation of Crimes against Trade Unionists; (ii) increase the collaboration initiated between the Public Prosecutor's Office and the CICIG; (iii) invest additional effort and resources in investigations into murder cases where possible anti-union motives have already been identified; (iv) examine in the courts for high-risk proceedings a greater number of murders of trade unionists; and (v) increase the budget allocated to protection schemes for trade unionists. The Committee requests the Government to continue providing information on all the measures adopted and the results achieved in this respect. As regards the alleged absence of investigations and penalties regarding anti-union offences that do not involve physical violence, the Committee requests the Government to conduct an assessment with the competent authorities into the adequacy of existing criminal legislation.*

## Legislative issues

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

- section 215(c) of the Labour Code, which requires a membership of "50 per cent plus one" of the workers in the sector to establish a sector trade union;
- sections 220 and 223 of the Labour Code, which establish the requirement to be of Guatemalan origin and to work in the relevant enterprise or economic activity to be able to be elected as a trade union leader;
- section 241 of the Labour Code, under the terms of which, in order to be lawful, strikes have to be called by a majority of the workers and not by a majority of those casting votes;
- section 4(d), (e) and (g) of Decree No. 71-86, as amended by Legislative Decree No. 35-96 of 27 March 1996, which provides for the possibility of imposing compulsory arbitration in non essential services and establishes other obstacles to the right to strike;
- and sections 390(2) and 430 of the Penal Code and Decree No. 71-86, which establish labour, civil and criminal penalties in the event of a strike by public officials or workers in certain enterprises.

In addition, the Committee has been asking the Government for many years to take measures to ensure that various categories of public sector workers (engaged under item 029 and other items of the budget) enjoy the guarantees afforded by the Convention.

In its previous observation, the Committee noted with interest various aspects of Bill No. 5199 and observed that certain comments of the Committee were not being taken into consideration in the aforementioned Bill. The Committee notes that, with support from the Representative of the Director-General in Guatemala, bipartite discussions have been held throughout 2017 between the employers and workers, resulting in: (i) a consensus on the reform of the provisions of the Penal Code relating to strikes, on which the Committee has been commenting for many years; and (ii) on a bipartite request for Bill No. 5199 to be withdrawn from the National Congress to enable the social partners to reach further agreements on the content of the text.

The Committee further observes that the tripartite agreement signed in November 2017 provides for the presentation to the National Congress by March 2018, using a tripartite approach, of the legislative proposals referred to in point 5 of the roadmap, the objective of which is to bring the national legislation into line with the Convention. The Committee notes with *interest* that the agreement refers specifically to the following matters on which tripartite consensus will be sought to amend the legislation: (i) the application of the labour legislation to temporary contracts and special regimes in the public sector; (ii) the mechanisms and requirements applicable to sectoral collective bargaining covering, inter alia, the thresholds for the establishment of sectoral trade union organizations, the right to engage in collective bargaining, and the identification of the most representative organization; (iii) the rules applicable to strike votes; and (iv) the determination of the list of essential services.

*Recalling that the Government and the social partners may seek technical assistance from the Office to support them in amending the legislation, the Committee expects that the Government will soon be in a position to report the adoption of legislation which fully complies with the obligations contained in the Convention.*

## Application of the Convention in practice

*Registration of trade unions.* In its previous comment, the Committee asked the Government to pursue, with the technical assistance of the Office, more in depth dialogue with the trade unions on the reform of the registration procedure and to continue providing information on the number of registrations requested and those recorded. According to the information supplied by the Government in its report, and in the other reports to the Governing Body, from 1 January to 31 October 2017, a total of 61 trade unions were recorded in the public trade union register, while three applications were rejected for failure to observe the statutory time limits. While noting the indication that the Ministry of Labour is making adjustments to the electronic version of the trade union register, the Committee observes that the Government has not provided any new information on the reform of the registration procedure to indicate that account is being taken of the criticism which the trade unions have been expressing for many years and which has given rise to the presentation of a number of complaints examined by the Committee on Freedom of Association. The Committee emphasizes that the trade unions object, inter alia, to excessive delays in the registration process, which facilitate the dismissal of union founder members. *The Committee expects that the implementation of the tripartite agreement of November 2017 will help to give fresh impetus to the dialogue between the Government and the trade unions to revise and accelerate the trade union registration process. The Committee requests the Government to provide information on all progress made in this respect.*

## Settlement of disputes relating to freedom of association and collective bargaining

In its previous comment, the Committee asked the Government to evaluate the terms of reference and operation of the Committee for the Settlement of Disputes (Conflict Resolution Committee) relating to freedom of association and collective bargaining (hereinafter Dispute Settlement Committee) with a view to reinforcing the effectiveness and impact of that body. In this regard, the Committee refers to its observation on the application of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

## Awareness-raising campaign on freedom of association and collective bargaining

In its previous comments, the Committee underlined the need for wide dissemination in the national mass media of the awareness-raising campaign on freedom of association and collective bargaining prepared in collaboration with the Office as part of the implementation of the roadmap. The Committee notes the Government's indications that: (i) the campaign on freedom of association and collective bargaining continues to be disseminated through the social media networks of government institutions; (ii) interviews were conducted with the labour and social welfare authorities via various government communication media; (iii) an awareness-raising workshop for journalists and opinion-formers and a similar seminar for the communication directors of the three state authorities were held; and (iv) on 31 August and 1 September 2017, campaign posters were inserted in two high-circulation newspapers. The Committee also notes that the CACIF refers to the organization, with support from the Representative of the ILO Director-General in Guatemala, of two awareness-raising activities on sustainable enterprises and fundamental rights at work, one for agriculture and the other for the maquila (export processing) sector. Lastly, the Committee notes that the trade unions in Guatemala, in their report of October 2017 to the Governing Body as part of the follow-up to the article 26 complaint, express regret once again that the awareness-raising campaign is limited to the official media, which have little impact on the general public, and that at the same time there is an aggressive campaign in leading media outlets against trade union activity and collective bargaining, especially in the public sector. *Observing that the signing of the tripartite agreement in November 2017 and the establishment of the Tripartite National Committee on Labour Relations and Freedom of*

*Association provide a major opportunity in this respect, the Committee urges the Government once again to take the necessary steps, in collaboration with the social partners, to ensure that the awareness-raising campaign on freedom of association and collective bargaining is given real visibility in the national mass media, beyond the official media. The Committee requests the Government to provide information on all progress made in this respect.*

*The maquila sector.* The Committee refers to its observation on the application of Convention No. 98.

*The Committee hopes that the implementation of the tripartite agreement of November 2017 will create the required impetus for the Government, with the participation of the social partners and technical assistance from the Office, to take the necessary steps to remedy the grave violations of the Convention which have been observed by the Committee for many years.*

*[The Committee requests the Government 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, respectively, the observations of the International Trade Union Confederation (ITUC), received in 2015 and on 1 September 2017, the joint observations of the Autonomous Popular Trade Union Movement and Global Unions of Guatemala, received on 30 August 2017, and the observations of the Trade Union's Unity of Guatemala (CUSG), received in 2016. The Committee notes that the various trade union observations refer to matters examined in the present observation, as well as numerous allegations of acts of anti-union discrimination and obstacles to collective bargaining at the municipal level and in various multinational enterprises. *The Committee requests the Government to provide its comments in this regard.*

The Committee also notes the joint observations of the International Organisation of Employers (IOE) and of the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF), received in 2016 and on 1 September 2017, as well as the observations of the CACIF received in 2015, which refer to matters examined by the Committee in the present observation.

The Committee notes that, within the context of the examination by the Governing Body of the complaint made under article 26 of the ILO Constitution for non-compliance by Guatemala with the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the tripartite constituents in the country signed an agreement on 2 November 2017 intended to resolve the matters covered by the complaint that were still to be settled. The Committee notes with *interest* that various aspects of the agreement which provides, among others, for the establishment of a Tripartite Committee on Industrial Relations and Freedom of Association, are relevant for the full application of the Convention.

*Article 1 of the Convention. Adequate protection against anti-union discrimination. Activities of the labour inspection services.* In its previous comments, the Committee requested the Government to take the necessary measures to ensure that the current legislative reform process in relation to labour inspection results in greater effectiveness and speed in the imposition of dissuasive penalties for acts of anti-union discrimination. The Committee also requested the Government to indicate specifically the number of penalties imposed for anti-union acts and the amount of the fines.

The Committee notes the adoption of Legislative Decree No. 7/2017 (the Legislative Decree) published on 6 April 2017. The Committee notes with *satisfaction* that the Legislative Decree restores the power of the labour inspection services to impose penalties and welcomes the fact that the adoption of the Legislative Decree was preceded by dialogue between employers' organizations and workers' organizations which enabled them to achieve consensus on the content of the reform, which was largely taken up in the Legislative Decree adopted by Congress. *While noting that the content of Legislative Decree is examined in the context of the supervision of the application of the Labour Inspection Convention, 1947 (No. 81), the Committee requests the Government to provide detailed information on the impact of the new Legislative Decree in relation to protection against acts of anti-union discrimination, as required by Article 1 of this Convention. In this regard, the Committee requests the Government to provide specific information on trends in the number of violations detected and penalties imposed by the labour inspection services for violations of trade union rights and the right to collective bargaining. Noting that the new Legislative Decree envisages a series of administrative and judicial remedies before administrative courts and complaint mechanisms which can be used in the event of the imposition of a penalty by the labour inspectorate, the Committee requests the Government to provide information on the duration of procedures before the penalties imposed by the labour inspection services in relation to collective rights become final and the compliance rate with these penalties.*

*Effective judicial proceedings.* In previous comments, the Committee expressed deep concern at the persistent slowness of judicial procedures in relation to anti-union discrimination and the high level of non-compliance with reinstatement orders and it called for the adoption of the necessary measures, including legislative measures, to remedy this situation. The Committee also observes that the absence of adequate judicial protection in cases of anti-union discrimination is one of the elements of the complaint made under article 26 of the ILO Constitution in relation to Convention No. 87 and that, in the context of the Roadmap adopted in 2013 by the tripartite constituents of the country to resolve the matters raised in the complaint, the Government undertook to address this problem. The Committee notes, first, the statistical data provided by the Government. The Government indicates in particular that, between 1 January and 8 September 2017, a total of 1,721 applications were made for reinstatement in relation to collective disputes (1,589 cases in the public sector and 132 cases in the private sector). During this period, the courts upheld 1,250 cases of reinstatement of which: (i) 92 were given effect; (ii) 83 are pending execution as certain elements have not been resolved; and (iii) 1,075 are still pending decisions on appeal. With reference to cases of non-compliance with final reinstatement orders for members of the trade union movement, the Government provides the statistics supplied by the Special Inspection Unit for Crimes against Trade Unionists for the period between January and August 2017, which indicate that, of the 253 cases notified: (i) 61 cases gave rise to charges by the Inspection Unit; and (ii) three cases gave rise to convictions in court cases, and one to the complaint being set aside. The Committee also notes the information provided by the Government concerning a series of institutional initiatives taken since March 2017 with the support of the representative of the ILO Director-General in Guatemala to improve the efficiency of the labour justice system, including: (i) following a preparatory process, the approval in July 2017 by the Supreme Court of Justice of the internal rules for labour and social welfare tribunals; and (ii) progress in the preparation by the Protection (*Amparo*) and Pre-trial Chamber of the rules on the execution of sentences in relation to labour and social welfare, a draft text which addresses, among other subjects, supervision of compliance with reinstatement orders.

The Committee also notes that, in its report in November 2017, the Committee on Freedom of Association, in view of the multiplication of cases on the lack of judicial protection in cases of anti-union discrimination, requested the Government to take the necessary measures to carry out a revision of the procedural rules of the relevant labour regulations (see Case No. 3062, 383rd Report, paragraph 371). In this regard, the Committee notes the indication by the Government that: (i) the Labour Code has been in force for over 70 years and its procedural part has never been revised, for which reason judicial labour proceedings are antiquated and must be updated to guarantee their expedition and implementation; and (ii) as a consequence, the Protection (*Amparo*) and Pre-trial Chamber of the Supreme Court of Justice has established a working commission to prepare a bill on judicial labour proceedings.

In light of the above, the Committee expresses its *concern* at the persistence of a high number of complaints alleging the excessive slowness of judicial procedures in cases of anti-union discrimination and the high percentage of non-compliance with reinstatement orders. *While welcoming the initiative to adopt a reform of the judicial labour proceedings provided for in the Labour Code, the Committee emphasizes the need for this initiative to include as one of its priorities the adoption of effective judicial procedural rules to ensure that all cases of anti-union discrimination are examined by the courts in a very expeditious manner and that the respective court rulings are implemented rapidly. The Committee urges the Government to take the*

*necessary measures, in prior consultation with the social partners, to reform the procedural rules applicable to all cases of anti-union discrimination as indicated above. The Committee recalls that the Government may request the technical assistance of the Office on this matter and requests it to provide information on any progress in this regard.*

*Article 4. Promotion of collective bargaining.* In its previous comments, the Committee expressed concern at the very low number of collective agreements (80 agreements concluded in the country between 2011 and 2014) and at the absence of collective bargaining in the *maquila* (export processing) sector since 2013. The Committee requested the Government to make active use of the campaign to promote freedom of association envisaged in the Roadmap to promote mechanisms for collective bargaining, with special attention to the *maquila* sector. The Committee notes the information provided by the Government on the awareness-raising campaign carried out in relation to freedom of association and collective bargaining, which is examined in the context of Convention No. 87. The Committee also notes the data provided by the Government in October 2017 in the context of the follow-up to the complaint made under article 26 of the ILO Constitution, according to which: between January and September 2017, the Ministry of Labour and Social Welfare approved 13 collective agreements, while another nine agreements are in the process of being approved and another three have to take into account the comments (*"previos"*) of the Ministry.

While recalling that the prior approval of collective agreements are compatible with the Convention when they are confined to stipulating that approval may be refused if the agreement has a procedural flaw or does not conform to the minimum standards laid down by general labour legislation (see the 2012 General Survey on the fundamental Conventions, paragraph. 201). The Committee notes with growing *concern* that the number of collective agreements concluded and approved is extremely low (taking specifically into account the fact that, up to now, collective bargaining has been undertaken in the country in a decentralized form at the enterprise level and in public institutions), and that this number is continuing to fall in relation to previous years. ***The Committee requests the Government to refer to the new Tripartite Committee on Industrial Relations and Freedom of Association to examine with the social partners the obstacles, both legislative and in practice, to the effective promotion of collective bargaining so that it is able to take measures to promote collective bargaining at all levels.*** In this regard, the Committee notes with *interest* that the tripartite agreement identifies, among the objectives of the legislative reform that is to be submitted to the Congress of the Republic, the mechanisms and requirements applicable to sectoral collective bargaining addressing, among other matters, the thresholds applicable to the establishment of sectoral trade unions, the right to collective bargaining and the identification of the most representative organization. ***Recalling that the Government may request the technical assistance of the Office in this regard, the Committee requests the Government to provide information on any developments in this regard.***

*Articles 4 and 6. Promotion of collective bargaining in the public sector.* The Committee notes the various trade union observations received in 2015, 2016 and 2017 alleging a series of violations of the right to collective bargaining in the public sector, and specifically that: (i) as from July 2015, there has been an aggressive campaign from the national mass media, supported by employers, against collective agreements in the public sector, described as the cause of the poor quality of public services and the deficit in public finances; (ii) the investigations initiated by the Office of the Prosecutor General (PGN) in February 2016 against 14 collective agreements in the public sector, and the judicial action launched by the PGN in February 2017 with a view to having various clauses of the Collective Agreement on Public Health set aside on the grounds, allegedly, that there was no prior opinion of the Ministry of Finance for the agreement and that it takes over functions that are of the exclusive competence of the State; (iii) the adoption of two circulars in 2015 and 2016 by the President of the Republic prohibiting an increase, by means of collective bargaining, of financial benefits financed through taxation, which would prevent any negotiation of the financial terms in the public administration; and (iv) the obstacles placed in the way of recently concluded collective agreements in the public sector by the Ministry of Labour and Social Welfare, by denying them approval for reasons not set out in the legislation.

The Committee also notes in this respect the joint observations of the IOE and the CACIF of 2016, indicating that: (i) in October 2015, the CACIF requested the PGN to revise the clauses of the collective agreement on public health contrary to the law and those of an excessive nature; (ii) this request comes as a result of the dissemination by the communication media, as from the end of 2014, of the excesses referred to; and (iii) employers recognize that collective agreements are legal instruments and, with the exception referred to above, have never called for the revision or setting aside of collective agreements concluded by the State.

The Committee notes that the Government's report does not contain specific information on the issues arising in relation to collective bargaining in the public sector, despite the fact that these issues were raised in several observations by trade unions in previous years. The Committee wishes to recall firstly in general terms that the Convention recognizes the right to collective bargaining of workers in public enterprises and public servants not engaged in the administration of the State. The Committee also recalls that Guatemala has ratified the Collective Bargaining Convention, 1981 (No. 154), an instrument which extends the right to collective bargaining to the public administration as a whole, while recognizing that the exercise of this right may give rise to special modalities of application in that sector.

With regard to the allegations of obstacles to the approval of collective agreements in the public sector by the Ministry of Labour and Social Welfare, the Committee recalls once again that it considers in general that, to safeguard the principle of free and voluntary collective bargaining, procedures for the approval of collective agreements by the public authorities are only compatible with the Convention when they are confined to stipulating that approval may only be refused if the agreement has a procedural flaw or does not conform to the minimum standards laid down by general labour legislation. With reference to the public sector, the Committee recalls that it also considers that the specific characteristics of the public administration require a certain level of flexibility, and that in this respect the Convention could be compatible with systems requiring parliamentary approval for certain labour conditions or financial clauses of collective agreements in the public sector, and that in any case the requirement of a financial opinion by the competent authorities prior to the conclusion of an agreement is acceptable. The Committee understands that the requirement for such an opinion exists in Guatemalan legislation. ***The Committee therefore requests the Government to take the necessary measures to facilitate the process of the approval of collective agreements legally conducted in the public sector by the Ministry of Labour and Social Welfare and to ensure that any refusal to approve a collective agreement is confined to situations in which it has a procedural flaw or does not conform to the minimum standards laid down by the general labour legislation, or the prior financial opinions required by the legislation have not been issued. The Committee also requests the Government to provide information on the consequences of the absence of approval and on the remedies that exist to appeal against such a decision, and to provide its responses to the various specific cases of absence of approval referred to by the trade unions in their observations.***

With reference to the allegation by the trade unions of the prohibition of wage bargaining in the public sector through Presidential circulars, the Committee recalls that, while it is fully aware of the serious financial and budgetary difficulties faced by governments, it considers that the authorities should give preference as far as possible to collective bargaining in determining the terms and conditions of employment of public servants. The Committee also considers that limitations on the content of future collective agreements, particularly in relation to wages, imposed by the authorities by virtue of economic stabilization or structural adjustment policies that have become necessary, are admissible on condition that they have been subject to prior consultations with workers' and employers' organizations and meet the following conditions: (i) they are applied as an exceptional measure; (ii) they are limited to the extent necessary; (iii) they do not exceed a reasonable period; and (iv) they are accompanied by safeguards to protect effectively the standard of living of the workers concerned, in particular those who are likely to be the most affected (see the 2012 General Survey, op. cit., paragraph 220). ***The Committee requests the Government to provide its comments on the respective trade union observations and to ensure compliance with the criteria set out above with a view to taking into account both the duty of the State to ensure the balance of public budgets and the right, recognized by Conventions Nos 98 and 154, of workers in the public section to collectively negotiate their remuneration.***

With regard to the allegation by the trade unions concerning the judicial action initiated by the PGN against the various public sector collective agreements, the Committee recalls that it considers that a practice whereby the authorities almost systematically challenge the benefits awarded to public sector workers on

the basis of considerations related to “rationality” or “proportionality” with a view to their cancellation (by reason, for example, of their cost deemed to be excessive), would seriously jeopardize the very institution of collective bargaining and weaken its role in the settlement of collective disputes. However, if the collective agreement contains provisions that are contrary to fundamental rights (such as non-discrimination), the judicial authority could nullify these provisions so as to ensure respect of higher standards (see the 2012 General Survey, op. cit., paragraph 207). *The Committee requests the Government to provide its comments on the respective trade union observations and to make every effort to promote the negotiated and consensual settlement of any disputes which may arise in relation to the allegedly excessive nature of certain clauses of collective agreements in the public sector.*

*Noting finally that in various cases relating to collective bargaining in the public sector brought before the Committee on Freedom of Association, a significant portion of causes of disputes is due to the absence of regulations, the Committee requests the Government to take, in consultation with the trade unions concerned the necessary measures to place collective bargaining procedures in the public sector in a clear normative framework which ensure that the requirements of financial sustainability and the principles of bargaining in good faith are both taken into account. The Committee reminds the Government that it may request the technical assistance of the Office in this respect and requests it to provide information on any developments in this regard.*

*Application of the Convention in practice. Dispute Resolution Commission.* In its previous comment on the present Convention, the Committee welcomed the establishment of the Commission for the Resolution of Disputes relating to Freedom of Association and Collective Bargaining (hereinafter, the Dispute Resolution Commission). The Committee also recalls that in its observation in 2016 on Convention No. 87, it requested the Government to undertake an evaluation of the terms of reference and operation of Dispute Resolution Commission and to include in the evaluation an examination of the complementarity between the Dispute Resolution Commission and the judicial mechanisms in the country for the protection of freedom of association. The Committee notes: (i) the information provided by the Government on the evaluation of the Dispute Resolution Commission carried out by an independent consultant with the support of the representative of the ILO Director-General in Guatemala; (ii) the indication by the trade unions that the outcomes of the Dispute Resolution Commission have been very poor and that it is necessary to review its terms of reference; and (iii) the indication by the CACIF that most of the sessions of the Dispute Resolution Commission have not been held for lack of quorum. The Committee notes with *interest* that the tripartite agreement signed on 2 November 2017 provides that the new Tripartite Committee on Industrial Relations and Freedom of Association will integrate the functions of the Dispute Resolution Commission. *Noting that the number of allegations of anti-union discrimination and obstacles to collective bargaining made to the ILO continues to be very high, the Committee expects that the creation of the new Tripartite Commission will allow for the establishment of flexible and effective mechanisms to contribute, along with the action of the labour inspectorate and the labour courts, to the resolution of such disputes. The Committee reminds the Government that it may continue to benefit from the technical assistance of the Office and requests it to provide information on the contribution made by the new Tripartite Commission to the resolution of disputes in relation to trade union rights.*

*The maquila sector.* In its previous comments on the present Convention and on Convention No. 87, the Committee requested the Government to take specific measures to promote and guarantee full compliance with trade union rights in the *maquila* sector and to indicate the number of active trade unions and worker members of those unions in the sector, as well as the number of collective agreements in force. The Committee notes that the Government: (i) reports the holding of a meeting and three bipartite training activities on labour rights in general; and (ii) refers to the implementation in future of a training programme that will include, among other subjects, freedom of association and collective bargaining in the textile and *maquila* sectors. The Committee notes the observations of the CACIF indicating that, following the registration of two trade unions in November 2016 and January 2017, there are now three unions in the *maquila* sector with a total of 260 members. The Committee also notes that the 13 collective agreements approved at the national level in 2017 include one relating to a *maquila* enterprise.

The Committee notes with *concern* that the unionization rate in the sector is extremely low and that the approval of only one collective agreement covering a *maquila* enterprise is known in recent years. *The Committee requests the Government, within the framework of the new Tripartite Committee on Industrial Relations and Freedom of Association to examine with the social partners the obstacles to the exercise of trade union rights and collective bargaining in the maquila sector and to intensify initiatives for the effective promotion of these rights in the sector. The Committee requests the Government to provide information on any developments in this regard.*

*Application of the Convention in municipal authorities.* In its previous comment, the Committee noted with concern the large number of complaints of violations of the Convention at the municipal level and requested the Government to take the necessary measures to ensure the application of the Convention in municipal authorities. The Committee notes the Government’s indication that the Ministry of Labour and Social Welfare has undertaken an awareness-raising process on labour disputes for municipal authorities, starting with a first workshop organized by the Deputy Minister of Labour Administration at the headquarters of the National Association of Municipal Authorities in September 2016. The Committee also notes with *concern* that the observations of trade unions received in 2017 complain of the persistent violation of *Articles 1 and 4* of the Convention in a series of municipal authorities and that various cases that are before the Committee on Freedom of Association refer to violations of trade union rights in municipalities. *Emphasizing that the awareness-raising activities of the Ministry of Labour and Social Welfare may support, but cannot replace the intervention of the public authorities, which are responsible for ensuring that municipal authorities comply with the rule of law, the Committee urges the Government to take all the necessary measures to ensure compliance with the Convention in municipalities. The Committee requests the Government to provide information on any developments in this regard.*

*The Committee expects that the implementation of the tripartite agreement of November 2017 will provide the necessary stimulus for the adoption of the measures it has been requesting for many years, and invites the Government to provide information on any progress achieved. [The Government is asked to reply in full to the present comments in 2019.]*

## C129 - Labour Inspection (Agriculture) Convention, 1969 (No. 129)

### Observation 2017

In order to provide a comprehensive view of the issues relating to the application of the ratified labour inspection Conventions, the Committee considers it appropriate to examine Conventions Nos 81 and 129 together.

The Committee notes the observations of the Autonomous Popular Trade Union Movement and Global Unions of Guatemala, received on 30 August 2017, on the legislative reform examined below and on the resources, functions and training of labour inspectors.

The Committee notes the Government’s indication in its report that the Labour Code (Decree No. 1441) has been amended by Decree No. 7-2017 promulgated by the Congress of the Republic, and published on 6 April 2017.

*Article 12(1)(a) of Convention No. 81 and Article 16(1)(a) of Convention No. 129. Authorization for labour inspectors to enter at any hour of the day or night any workplace liable to inspection.* The Committee notes that section 281(a) of the Labour Code, as amended by Decree No. 7-2017, limits the entry of inspectors into any workplace liable to inspection to the workday, in accordance with internal workplace rules or the authorization issued by the Ministry of Labour and Social Welfare. The Committee also notes that the previous wording of section 281 empowered inspectors to visit workplaces at different hours of the day and night, if work was carried out at that time. In this regard, the Committee notes the observations of the Autonomous Popular Trade Union Movement and Global Unions of Guatemala, according to which the legislative reform enables employers to restrict the entry of inspectors to the hours of the working day,

which are established by internal workplace rules, even though many complaints concerning violations of labour law are related to overtime work or work performed outside the usual hours, often at night. **Recalling that pursuant to Article 12(1)(a) of Convention No. 81 and Article 16(1)(a) of Convention No. 129, labour inspectors provided with proper credentials shall be empowered to enter freely and without previous notice any workplace liable to inspection at any hour of the day or night, the Committee requests the Government to adopt the necessary measures to ensure full compliance with these provisions.**

**Article 12(2) of Convention No. 81 and Article 16(3) of Convention No. 129. Notification of the presence of inspectors unless such notification may be prejudicial to the performance of inspection duties.** The Committee notes that section 281 of the Labour Code, as amended by Decree No. 7-2017, provides that labour inspectors shall provide credentials indicating their identity, their appointment and the objective of the inspection, in order to benefit from the obligations and powers set out in the Labour Code. However, the Committee notes that the legislation does not provide for an exception to the requirement of the notification of the presence of inspectors through the provision of credentials indicating their identity and appointment, while **Article 12(2) of Convention No. 81 and Article 16(3) of Convention No. 129** provide that inspectors shall notify the employer or her/his representative of their presence, unless they consider that such a notification may be prejudicial to the performance of their duties. **The Committee requests the Government to take the necessary measures to ensure that inspectors have the power to omit to notify their presence to the employer or her/his representative if they consider that such notification may be prejudicial to the performance of their duties, in accordance with paragraph 2 of Article 12 of Convention No. 81 and paragraph 3 of Article 16 of Convention No. 129.**

**Article 17 of Convention No. 81 and Article 22 of Convention No. 129. Legal or administrative proceedings in the case of violations of, or failure to observe, legal provisions enforceable by labour inspectors.** With reference to its previous comment on the process of imposing penalties for violations of labour legislation, the Committee notes with **interest** that Decree No. 7-2017 amends sections 271, 272 and 281 of the Labour Code and provides that labour inspectors shall be empowered to adopt the measures listed in paragraph (f) of section 281, including the power to initiate the process of imposing administrative penalties through compliance orders for violations of labour provisions or the obstruction of labour inspectors, and the power to order the cessation of work in cases of serious or imminent risk to workers' safety and health. Decree No. 7-2017, through the amendment of section 415 of the Labour Code and the introduction of sections 417 and 418, recognizes the capacity of the Ministry of Labour and Social Welfare, through the General Labour Inspectorate, to take direct action to promote and remedy violations of the labour and social welfare legislation through administrative action or, failing that, the initiation of administrative proceedings. **Taking due note of the legislative reform of 2017, the Committee requests the Government to provide information on the application in practice of the new provisions respecting the powers of labour inspectors to take measures listed in paragraph (f) of section 281 of the Labour Code, as amended by Decree 7 2017, including to impose penalties or prohibitory orders. In this regard, the Committee requests the Government to provide detailed information on the compliance orders on violations of labour provisions issued by labour inspectors, and the action proposed through proceedings, if administrative measures have failed to produce results.**

**Article 18 of Convention No. 81 and Article 24 of Convention No. 129. Obstruction of labour inspectors in the performance of their duties. Adequate and effectively enforced penalties.** With reference to its previous comment on the obstruction of labour inspectors in the performance of their duties, the Committee notes with **interest** that sections 269 and 271(3) of the Labour Code, as amended by Decree No. 7-2017, provide that: (a) in the event that the employer or her/his representatives or workers or trade unions and their representatives, refuse to collaborate with the inspection services to verify compliance with labour provisions for which violations may be penalized with fines, the procedure for penalizing the person responsible shall be commenced and the process of inspection continued; (b) the obstruction of the process of inspection by the employer or her or his representatives, or by workers or trade unions or their representatives, within the meaning of section 281 of the Labour Code, shall constitute an offence subject to penalties. Moreover, with reference to the need for sufficiently dissuasive penalties that are effectively enforced, the Committee notes that section 272 of the Labour Code, as amended by Decree No. 7-2017, sets out the criteria and the procedure for the imposition of penalties by departmental delegates of the General Labour Inspectorate. However, the Committee notes the observations of the Autonomous Popular Trade Union Movement and Global Unions of Guatemala, alleging that inspectors do not in practice apply the penalties set out in the law because the Ministry of Labour and Social Welfare has not adopted the necessary administrative measures for this purpose. **Taking due note of the legislative reform of 2017, the Committee requests the Government to provide its comments on the observations of the Autonomous Popular Trade Union Movement and Global Unions of Guatemala, and to provide detailed information on the number of penalties imposed, including the amounts of fines.**

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

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

The Committee notes with *deep concern* that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2007. 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(1), 2(1) and 25 of the Convention. Trafficking in persons.* The Committee has noted the adoption of the Combating of Trafficking in Persons Act, 2005, as well as the Government's indication that 300 volunteers have been trained to identify cases of trafficking. *The Committee would appreciate it if the Government would provide information on the following matters:*

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

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

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

The Committee notes with *deep concern* that the Government's report has not been received. It is therefore bound to repeat its previous comments made in 2009. 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.

In its previous observation, the Committee referred to the recognition of only those unions claiming 40 per cent support of the workers, as set out in the Trade Union Recognition Act. The Committee takes note of the Government's statement that, at the request of the Trades Union Congress, the Trade Union Recognition Act provided for the recognition of unions that were recognized prior to the Act without having to prove that they had majority support (section 32). All unions benefited from this provision which the Government says is no longer applicable as all certificates applicable under this section have been issued. Given that the representativeness of unions might change, the Committee recalls once again that, if no union covers more than 40 per cent of the workers in the bargaining unit, collective bargaining rights should be granted to all the unions in the unit, at least on behalf of their members (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 241). *The Committee hopes that significant progress respecting this issue will be made in the near future and requests the Government to provide information on the results of the consultative process.*

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

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

*Article 1 of the Convention. National policy for the elimination of child labour. National action plan.* The Committee previously noted that the Government reiterated its commitment to adopting a national policy designed to ensure the effective abolition of child labour in the country since 2001. The Committee also noted that, although the Government undertook a number of policy measures aimed at tackling child labour through education programmes, in particular under the ILO-IPEC project entitled "Tackle child labour through education" (TACKLE project), it continued to indicate that a National Plan of Action for Children (NPAC) was under development. The Committee notes that the Government's report does not contain any new information in this regard. *The Committee therefore once again urges the Government to strengthen its efforts to finalize the NPAC and to provide a copy of it in the very near future. Furthermore, noting the Government's previous indication that the National Steering Committee on Child Labour – which had initiated and drafted a national action plan to eliminate and prevent child labour – is no longer functioning, the Committee requests the Government to provide updated information on the measures taken or envisaged to finalize this process.*

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

The Committee noted that the Government's previous report did not contain any new information and merely stated that no ministerial regulations had been issued and that the OSHA provisions ensure that young persons between 16 and 18 years who are employed in hazardous work receive adequate specific vocational training. However, the Committee noted the inadequate measures for monitoring and enforcing the OSHA provisions and that, notwithstanding the significant number of children involved in hazardous work, only three such cases had been reported to the Government's reporting mechanism.

The Committee notes with *deep concern* that the Government's report provides no new information concerning the process of amending Act No. 9 of 1999, despite its repeated commitment over the years to do so. It once again draws the Government's attention to paragraph 381 of the 2012 General Survey on the fundamental Conventions, which stresses that compliance with *Article 3(3)* of the Convention requires that any hazardous work for persons from the ages of 16–18 years be authorized only upon the conditions that the health, safety and morals of the young persons concerned are fully protected and that they, in practice, receive adequate specific vocational training. *The Committee accordingly once again urges the Government to take measures to amend Act No. 9 of 1999 in the near future so as to ensure conformity with Article 3(3) of the Convention by providing adequate protection to young persons between the ages of 16 and 18, and to supply a copy of the amendments once they have been finalized. Moreover, recalling the Government's indication that efforts are under way with the tripartite partners to include additional areas of work on the hazardous work list, the Committee requests the Government to supply a copy of this amended list once it becomes available.*

*Article 9(3). Keeping of registers.* Following its previous comments, the Committee notes the Government's indication that section 86(a) of the OSHA, Chapter 99:10, provides for the obligation of employers of industrial establishments to record, and keep in a register, the prescribed particulars of all employees

under the age of 18 years. *The Committee requests that the Government indicate which provisions establish the same obligation for the employment of young persons under 18 years of age in non-industrial undertakings.*

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

In response, the Government simply indicated that its labour inspectors routinely conduct workplace inspections and that there had been no evidence of child labour. Nevertheless, the Committee noted a three-year programme which aimed to, among others, strengthen the capacity of national and local authorities in the formulation, implementation and enforcement of the legal framework on child labour and which would include a focus on child labour in the informal economy. *Noting the absence of information provided in this respect, the Committee once again requests that the Government strengthen its efforts to combat child labour, including in the informal economy, and to provide information on the results achieved in this regard. Furthermore, recalling that the Government is establishing a baseline survey on child labour, the Committee again requests the Government to provide information concerning the results of the survey.*

**C001 - Hours of Work (Industry) Convention, 1919 (No. 1)****Observation 2017**

The Committee notes the observations of the Confederation of Public and Private Sector Workers (CTSP), received on 30 August 2017, regarding the application of the ratified Conventions on working time. It notes that these observations reiterate the points already raised by the CTSP in 2015 and 2016, particularly regarding the non-observance in practice of the provisions of the Labour Code respecting hours of work and weekly rest and the absence of resources of the labour inspection services to take effective action to combat violations, including in the informal sector.

The Committee also notes the adoption of the Act organizing and regulating work over a 24-hour period divided into three segments of eight hours (the Act on working time) which was published in the official journal *Le Moniteur* on 21 September 2017. As this new Act has an effect on the application of all the Conventions ratified by Haiti on working time, namely Conventions Nos 1 and 30 (hours of work) and 14 and 106 (weekly rest), the Committee considers it appropriate to examine them in a single comment.

The Committee notes that the new Act repeals most of the provisions of the Labour Code which were giving effect to the ratified Conventions on working time, and particularly:

- section 96 which, while establishing the principle of eight hours of work a day and 48 per week, authorized the variable distribution of hours of work over a week, within the limit of nine hours a day in industrial establishments and ten hours a day in commercial establishments and offices; these limits were in conformity with those provided for in *Article 2(b)* of Convention No. 1 (industry) and *Article 4* of Convention No. 30 (commerce and offices);
- sections 97, 98 and 101–104 which provided for possible exceptions to normal hours of work (regulation and limits for overtime); these exceptions were generally in conformity with *Articles 3–6* of Convention No. 1 and *Articles 5–7* of Convention No. 30; and
- section 107, which established a minimum weekly rest period of 24 consecutive hours to be granted preferably on Sunday and simultaneously to the whole staff of an establishment, in conformity with *Article 2* of Convention No. 14 (industry) and *Article 6* of Convention No. 106 (commerce and offices).

The Committee notes that, with the adoption of the Act on working time, the new national legislative framework on hours of work and weekly rest is reduced to the brief content of the following sections of the Act:

- section 2 which, while providing that the normal duration of work remains eight hours a day and 48 hours a week, provides that "the employer and the employee may decide and agree, depending on the needs and on agreement between the parties in conformity with national and international labour standards, to exceed the normal limit of eight hours of work a day, without exceeding 48 hours of work a week";
- section 3, which provides for a paid break from work of at least half an hour;
- section 4 respecting the remuneration of overtime hours and their recording for monitoring and inspection purposes; and
- section 5, which establishes that workers shall freely negotiate the work schedule which suits them.

In this respect, the Committee notes with *concern* that the new Act does not give effect to a number of important matters covered by the ratified Conventions on working time, in particular:

- the maximum number of hours of work per day is no longer defined in the new Act, while *Article 2(b)* of Convention No. 1 and *Article 4* of Convention No. 30 provide for a limit of nine hours a day in industrial establishments and ten hours a day in commercial establishments and offices;
- the possible exceptions from normal hours of work are no longer regulated, while *Articles 3–6* of Convention No. 1 and *Articles 5–7* of Convention No. 30 provide for specific regulation and limits for overtime; and
- the principle of weekly rest is no longer explicitly recognized, while *Article 2* of Convention No. 14 and *Article 6* of Convention No. 106 provide for a minimum of 24 consecutive hours in every period of seven days.

Moreover, given the formulation of section 5 of the new Law, the Committee considers it necessary to recall the importance of national legislation and practice restricting recourse to exceptions to the double cumulative limit established in the Conventions, namely eight hours in the day and 48 hours in the week, to cases of clear, well-defined and limited circumstances such as accident, real or threatened, force majeure or urgent work to be done to plant or machinery (see General Survey of 2018 on working time instruments, paragraph 119).

Furthermore, the Committee notes with *regret* that the new Act has been adopted while, at the same time, the comprehensive reform of the Labour Code which has been under discussion for several years and for which ILO technical assistance has been received, has not been finalized.

The Committee notes with *deep concern* that the Government's reports have not been received.

*The Committee urges the Government to take immediate measures to ensure that workers benefit from the protection afforded by the ratified Conventions on working time. It further urges the Government to take measures to carry out inspections to ensure that this protection is effective in practice. It expects that the Government will renew its efforts to complete the reform of the Labour Code and that it will be in full conformity with the Conventions ratified by the country, particularly on working time. Lastly, the Committee expects that the next reports will contain full particulars on the subject.*

*[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.]*

**C014 - Weekly Rest (Industry) Convention, 1921 (No. 14)****Observation 2017**

The Committee notes the observations of the Confederation of Public and Private Sector Workers (CTSP), received on 30 August 2017, regarding the application of the ratified Conventions on working time. It notes that these observations reiterate the points already raised by the CTSP in 2015 and 2016, particularly regarding the non-observance in practice of the provisions of the Labour Code respecting hours of work and weekly rest and the absence of resources of the labour inspection services to take effective action to combat violations, including in the informal sector.

The Committee also notes the adoption of the Act organizing and regulating work over a 24-hour period divided into three segments of eight hours (the Act on working time) which was published in the official journal *Le Moniteur* on 21 September 2017. As this new Act has an effect on the application of all the Conventions ratified by Haiti on working time, namely Conventions Nos 1 and 30 (hours of work) and 14 and 106 (weekly rest), the Committee considers it appropriate to examine them in a single comment.

The Committee notes that the new Act repeals most of the provisions of the Labour Code which were giving effect to the ratified Conventions on working time, and particularly:

- section 96 which, while establishing the principle of eight hours of work a day and 48 per week, authorized the variable distribution of hours of work over a

week, within the limit of nine hours a day in industrial establishments and ten hours a day in commercial establishments and offices; these limits were in conformity with those provided for in *Article 2(b)* of Convention No. 1 (industry) and *Article 4* of Convention No. 30 (commerce and offices);

--sections 97, 98 and 101–104 which provided for possible exceptions to normal hours of work (regulation and limits for overtime); these exceptions were generally in conformity with *Articles 3–6* of Convention No. 1 and *Articles 5–7* of Convention No. 30; and

--section 107, which established a minimum weekly rest period of 24 consecutive hours to be granted preferably on Sunday and simultaneously to the whole staff of an establishment, in conformity with *Article 2* of Convention No. 14 (industry) and *Article 6* of Convention No. 106 (commerce and offices).

The Committee notes that, with the adoption of the Act on working time, the new national legislative framework on hours of work and weekly rest is reduced to the brief content of the following sections of the Act:

--section 2 which, while providing that the normal duration of work remains eight hours a day and 48 hours a week, provides that “the employer and the employee may decide and agree, depending on the needs and on agreement between the parties in conformity with national and international labour standards, to exceed the normal limit of eight hours of work a day, without exceeding 48 hours of work a week”;

--section 3, which provides for a paid break from work of at least half an hour;

--section 4 respecting the remuneration of overtime hours and their recording for monitoring and inspection purposes; and

--section 5, which establishes that workers shall freely negotiate the work schedule which suits them.

In this respect, the Committee notes with *concern* that the new Act does not give effect to a number of important matters covered by the ratified Conventions on working time, in particular:

--the maximum number of hours of work per day is no longer defined in the new Act, while *Article 2(b)* of Convention No. 1 and *Article 4* of Convention No. 30 provide for a limit of nine hours a day in industrial establishments and ten hours a day in commercial establishments and offices;

--the possible exceptions from normal hours of work are no longer regulated, while *Articles 3–6* of Convention No. 1 and *Articles 5–7* of Convention No. 30 provide for specific regulation and limits for overtime; and

--the principle of weekly rest is no longer explicitly recognized, while *Article 2* of Convention No. 14 and *Article 6* of Convention No. 106 provide for a minimum of 24 consecutive hours in every period of seven days.

Moreover, given the formulation of section 5 of the new Law, the Committee considers it necessary to recall the importance of national legislation and practice restricting recourse to exceptions to the double cumulative limit established in the Conventions, namely eight hours in the day and 48 hours in the week, to cases of clear, well-defined and limited circumstances such as accident, real or threatened, force majeure or urgent work to be done to plant or machinery (see General Survey of 2018 on working time instruments, paragraph 119).

Furthermore, the Committee notes with *regret* that the new Act has been adopted while, at the same time, the comprehensive reform of the Labour Code which has been under discussion for several years and for which ILO technical assistance has been received, has not been finalized.

The Committee notes with *deep concern* that the Government's reports have not been received.

*The Committee urges the Government to take immediate measures to ensure that workers benefit from the protection afforded by the ratified Conventions on working time. It further urges the Government to take measures to carry out inspections to ensure that this protection is effective in practice. It expects that the Government will renew its efforts to complete the reform of the Labour Code and that it will be in full conformity with the Conventions ratified by the country, particularly on working time. Lastly, the Committee expects that the next reports will contain full particulars on the subject.*

*[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.]*

## C030 - Hours of Work (Commerce and Offices) Convention, 1930 (No. 30)

### Observation 2017

The Committee notes the observations of the Confederation of Public and Private Sector Workers (CTSP), received on 30 August 2017, regarding the application of the ratified Conventions on working time. It notes that these observations reiterate the points already raised by the CTSP in 2015 and 2016, particularly regarding the non-observance in practice of the provisions of the Labour Code respecting hours of work and weekly rest and the absence of resources of the labour inspection services to take effective action to combat violations, including in the informal sector.

The Committee also notes the adoption of the Act organizing and regulating work over a 24-hour period divided into three segments of eight hours (the Act on working time) which was published in the official journal *Le Moniteur* on 21 September 2017. As this new Act has an effect on the application of all the Conventions ratified by Haiti on working time, namely Conventions Nos 1 and 30 (hours of work) and 14 and 106 (weekly rest), the Committee considers it appropriate to examine them in a single comment.

The Committee notes that the new Act repeals most of the provisions of the Labour Code which were giving effect to the ratified Conventions on working time, and particularly:

--section 96 which, while establishing the principle of eight hours of work a day and 48 per week, authorized the variable distribution of hours of work over a week, within the limit of nine hours a day in industrial establishments and ten hours a day in commercial establishments and offices; these limits were in conformity with those provided for in *Article 2(b)* of Convention No. 1 (industry) and *Article 4* of Convention No. 30 (commerce and offices);

--sections 97, 98 and 101–104 which provided for possible exceptions to normal hours of work (regulation and limits for overtime); these exceptions were generally in conformity with *Articles 3–6* of Convention No. 1 and *Articles 5–7* of Convention No. 30; and

--section 107, which established a minimum weekly rest period of 24 consecutive hours to be granted preferably on Sunday and simultaneously to the whole staff of an establishment, in conformity with *Article 2* of Convention No. 14 (industry) and *Article 6* of Convention No. 106 (commerce and offices).

The Committee notes that, with the adoption of the Act on working time, the new national legislative framework on hours of work and weekly rest is reduced to the brief content of the following sections of the Act:

--section 2 which, while providing that the normal duration of work remains eight hours a day and 48 hours a week, provides that “the employer and the employee may decide and agree, depending on the needs and on agreement between the parties in conformity with national and international labour standards, to exceed the normal limit of eight hours of work a day, without exceeding 48 hours of work a week”;

--section 3, which provides for a paid break from work of at least half an hour;

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- section 4 respecting the remuneration of overtime hours and their recording for monitoring and inspection purposes; and
- section 5, which establishes that workers shall freely negotiate the work schedule which suits them.

In this respect, the Committee notes with **concern** that the new Act does not give effect to a number of important matters covered by the ratified Conventions on working time, in particular:

- the maximum number of hours of work per day is no longer defined in the new Act, while *Article 2(b)* of Convention No. 1 and *Article 4* of Convention No. 30 provide for a limit of nine hours a day in industrial establishments and ten hours a day in commercial establishments and offices;
- the possible exceptions from normal hours of work are no longer regulated, while *Articles 3–6* of Convention No. 1 and *Articles 5–7* of Convention No. 30 provide for specific regulation and limits for overtime; and
- the principle of weekly rest is no longer explicitly recognized, while *Article 2* of Convention No. 14 and *Article 6* of Convention No. 106 provide for a minimum of 24 consecutive hours in every period of seven days.

Moreover, given the formulation of section 5 of the new Law, the Committee considers it necessary to recall the importance of national legislation and practice restricting recourse to exceptions to the double cumulative limit established in the Conventions, namely eight hours in the day and 48 hours in the week, to cases of clear, well-defined and limited circumstances such as accident, real or threatened, force majeure or urgent work to be done to plant or machinery (see General Survey of 2018 on working time instruments, paragraph 119).

Furthermore, the Committee notes with **regret** that the new Act has been adopted while, at the same time, the comprehensive reform of the Labour Code which has been under discussion for several years and for which ILO technical assistance has been received, has not been finalized.

The Committee notes with **deep concern** that the Government's reports have not been received.

***The Committee urges the Government to take immediate measures to ensure that workers benefit from the protection afforded by the ratified Conventions on working time. It further urges the Government to take measures to carry out inspections to ensure that this protection is effective in practice. It expects that the Government will renew its efforts to complete the reform of the Labour Code and that it will be in full conformity with the Conventions ratified by the country, particularly on working time. Lastly, the Committee expects that the next reports will contain full particulars on the subject.***

*[The Government is asked to supply full particulars to the Conference at its 107th Session and to reply in full to the present comments in 2018.]*

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

### Observation 2017

The Committee notes with **deep concern** that the Government's report has not been received. In this regard, it also notes that the Government was requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference in view of the failure to provide reports and information on the application of ratified Conventions.

The Committee notes the observations of the Confederation of Public and Private Sector Workers (CTSP) and the International Trade Union Confederation (ITUC), received on 30 August and 1 September 2017, respectively, which relate to the application of the principles of freedom of association in practice. ***The Committee requests the Government to provide its comments in this respect.***

The Committee recalls that for many years it has been requesting the Government to amend the national legislation, and particularly the Labour Code, to bring it into conformity with the provisions of the Convention. The Committee recalls that its comments principally concerned:

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

- the need to amend sections 229 and 233 of the Labour Code in order to ensure that minors who have reached the statutory minimum age for admission to employment are allowed to exercise their trade union rights without parental authorization;
- the need to amend section 239 of the Labour Code so as to allow foreign workers to serve as trade union officials, at least after a reasonable period of residence in the country;
- the need to guarantee for domestic workers the rights laid down in the Convention (section 257 of the Labour Code provides that domestic work is not governed by the Labour Code, and the Act adopted by Parliament in 2009 to amend this provision – the Act has not yet been adopted, but the Government referred to it in its previous reports – also does not recognize the trade union rights of domestic workers).

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

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

***The Committee expects that with the technical assistance that it is receiving, particularly in view of the resumption of tripartite dialogue for the reform of the Labour Code, the Government will be in a position in its next report to indicate that progress has been achieved in the revision of the national legislation to bring it into full conformity with the Convention.***

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 measures in the near future.***

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

### Observation 2017

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

The Committee notes the observations of the Confederation of Public and Private Sector Workers (CTSP), received on 30 August 2017, concerning allegations of grave violations of freedom of association in both the public and the private sectors, and particularly in several enterprises in textile export processing zones, where some 200 unionized workers and trade union leaders have been dismissed following a strike called in May 2017 in support of an increase in the minimum wage. The Committee notes in this respect the campaign launched in July 2017 by the International Trade Union Confederation (ITUC) and the Trade Union Confederation of the Americas (TUCA) denouncing violations of freedom of association. The Committee expresses *deep concern* at this information. It notes that these issues are being followed-up by the Better Work programme, a partnership between the ILO and the International Finance Corporation (IFC), a member of the World Bank Group, which has been present in Haiti since 2009. *Recalling that acts of harassment and intimidation carried out against workers or their dismissal by reason of trade union membership or legitimate trade union activities is a serious violation of the principles of freedom of association enshrined in the Convention, the Committee expects that the Government will take the necessary measures to ensure respect for these principles and requests it to provide information on any investigations ordered by the Ministry of Social Affairs and Labour (MAST), and any judicial procedures in this regard.*

*Article 1 of the Convention. Adequate protection against acts of anti-union discrimination.* The Committee recalls that its previous comments concerned the need to adopt a specific provision establishing protection against anti-union discrimination in recruitment practices, and the need to adopt provisions generally affording adequate protection to workers against acts of anti-union discrimination (on the basis of trade union membership or activities) during employment, accompanied by effective and rapid procedures and sufficiently dissuasive sanctions. In this regard, the Committee recalls that, in accordance with section 251 of the Labour Code, "any employer who, in order to prevent an employee from joining a trade union, organizing a trade union or exercising his or her rights as a trade union member, dismisses, suspends or demotes the employee or reduces his or her wages, shall be liable to a fine of 1,000 to 3,000 Haitian gourdes (approximately US\$15–45) to be imposed by the labour tribunal, without prejudice to any compensation to which the employee concerned shall be entitled". *The Committee requests the Government to ensure that, in the context of the renewal of tripartite dialogue for the reform of the Labour Code, the penalties provided for in the event of anti-union discrimination during employment are increased substantially in order to ensure that they are sufficiently dissuasive. It also requests the Government to ensure the adoption of a specific provision establishing protection against anti-union discrimination at the time of recruitment.*

*Article 4. Promotion of collective bargaining.* The Committee once again recalls the need to amend section 34 of the Decree of 4 November 1983, particularly in relation to its provisions empowering the Labour Organizations Branch of the Labour Directorate of the MAST "to intervene in the drafting of collective agreements and in collective labour disputes with regard to all matters relating to freedom of association". *The Committee expects that the Government will draw on the technical assistance provided by the Office to amend section 34 of the Decree of 4 November 1983 in order to ensure that the Labour Organizations Branch can only intervene in collective bargaining at the request of the parties.*

*Right to collective bargaining of public servants not engaged in the administration of the State and public employees.* *The Committee requests the Government to provide information on the legislative provisions relating to this subject.*

*Right to collective bargaining in practice.* In its previous comments, the Committee noted that, following the tripartite training course organized by the Office in 2012 in Port-au-Prince for the interested parties in the textile sector, the participants emphasized the need to establish a permanent forum for bipartite dialogue in order to strengthen dialogue between the actors in the sector. *The Committee requests the Government to provide information on this subject, including in light of the most recent events in the textile sector in May 2017.* The Committee notes with *concern* that, according to the CTSP, there are only four collective agreements in force in the country and some of them are not signed by the lawful representatives of workers. *The Committee requests the Government to provide its comments on this subject and to supply information on the measures adopted or envisaged to promote collective bargaining in the country.*

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

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

## C106 - Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106)

### Observation 2017

The Committee notes the observations of the Confederation of Public and Private Sector Workers (CTSP), received on 30 August 2017, regarding the application of the ratified Conventions on working time. It notes that these observations reiterate the points already raised by the CTSP in 2015 and 2016, particularly regarding the non-observance in practice of the provisions of the Labour Code respecting hours of work and weekly rest and the absence of resources of the labour inspection services to take effective action to combat violations, including in the informal sector.

The Committee also notes the adoption of the Act organizing and regulating work over a 24-hour period divided into three segments of eight hours (the Act on working time) which was published in the official journal *Le Moniteur* on 21 September 2017. As this new Act has an effect on the application of all the Conventions ratified by Haiti on working time, namely Conventions Nos 1 and 30 (hours of work) and 14 and 106 (weekly rest), the Committee considers it appropriate to examine them in a single comment.

The Committee notes that the new Act repeals most of the provisions of the Labour Code which were giving effect to the ratified Conventions on working time, and particularly:

- section 96 which, while establishing the principle of eight hours of work a day and 48 per week, authorized the variable distribution of hours of work over a week, within the limit of nine hours a day in industrial establishments and ten hours a day in commercial establishments and offices; these limits were in conformity with those provided for in *Article 2(b)* of Convention No. 1 (industry) and *Article 4* of Convention No. 30 (commerce and offices);
- sections 97, 98 and 101–104 which provided for possible exceptions to normal hours of work (regulation and limits for overtime); these exceptions were generally in conformity with *Articles 3–6* of Convention No. 1 and *Articles 5–7* of Convention No. 30; and
- section 107, which established a minimum weekly rest period of 24 consecutive hours to be granted preferably on Sunday and simultaneously to the whole staff of an establishment, in conformity with *Article 2* of Convention No. 14 (industry) and *Article 6* of Convention No. 106 (commerce and offices).

The Committee notes that, with the adoption of the Act on working time, the new national legislative framework on hours of work and weekly rest is reduced to the brief content of the following sections of the Act:

- section 2 which, while providing that the normal duration of work remains eight hours a day and 48 hours a week, provides that "the employer and the employee may decide and agree, depending on the needs and on agreement between the parties in conformity with national and international labour standards, to exceed the normal limit of eight hours of work a day, without exceeding 48 hours of work a week";
- section 3, which provides for a paid break from work of at least half an hour;
- section 4 respecting the remuneration of overtime hours and their recording for monitoring and inspection purposes; and
- section 5, which establishes that workers shall freely negotiate the work schedule which suits them.

In this respect, the Committee notes with *concern* that the new Act does not give effect to a number of important matters covered by the ratified Conventions on working time, in particular:

- the maximum number of hours of work per day is no longer defined in the new Act, while *Article 2(b)* of Convention No. 1 and *Article 4* of Convention No. 30 provide for a limit of nine hours a day in industrial establishments and ten hours a day in commercial establishments and offices;
- the possible exceptions from normal hours of work are no longer regulated, while *Articles 3–6* of Convention No. 1 and *Articles 5–7* of Convention No. 30 provide for specific regulation and limits for overtime; and
- the principle of weekly rest is no longer explicitly recognized, while *Article 2* of Convention No. 14 and *Article 6* of Convention No. 106 provide for a minimum of 24 consecutive hours in every period of seven days.

Moreover, given the formulation of section 5 of the new Law, the Committee considers it necessary to recall the importance of national legislation and practice restricting recourse to exceptions to the double cumulative limit established in the Conventions, namely eight hours in the day and 48 hours in the week, to cases of clear, well-defined and limited circumstances such as accident, real or threatened, force majeure or urgent work to be done to plant or machinery (see General Survey of 2018 on working time instruments, paragraph 119).

Furthermore, the Committee notes with *regret* that the new Act has been adopted while, at the same time, the comprehensive reform of the Labour Code which has been under discussion for several years and for which ILO technical assistance has been received, has not been finalized.

The Committee notes with *deep concern* that the Government's reports have not been received.

***The Committee urges the Government to take immediate measures to ensure that workers benefit from the protection afforded by the ratified Conventions on working time. It further urges the Government to take measures to carry out inspections to ensure that this protection is effective in practice. It expects that the Government will renew its efforts to complete the reform of the Labour Code and that it will be in full conformity with the Conventions ratified by the country, particularly on working time. Lastly, the Committee expects that the next reports will contain full particulars on the subject.***

*[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.]*

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

### Observation 2017

The Committee notes the observations of the Confederation of Public and Private Sector Workers (CTSP) received on 30 August 2017 and requests the Government to provide its comments in this respect.

The Committee notes with *concern* that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2015.

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

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

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

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

The Committee noted previously that the Special Rapporteur, in her report, expressed deep concern at the vagueness of the concept of assistance and solidarity and considered that the provisions of the Act of 2003 allow the practice of *restavèk* to be perpetuated. According to the report of the Special Rapporteur, the number of children working as *restavèk* is between 150,000 and 500,000 (paragraph 17), which represents about one in ten children in Haiti (paragraph 23). Following interviews with *restavèk* children, the Special Rapporteur ascertained that all of them were given heavy workloads by their host

families, which were often incompatible with their full physical and mental development (paragraph 25). Moreover, the Special Rapporteur was told that these children are often ill-treated and subjected to physical, psychological and sexual abuse (paragraph 35). Representatives of the Government and of civil society pointed out that cases of children being beaten and burnt were routinely reported (paragraph 37). The Committee noted that, in view of these findings, the Special Rapporteur described the *restavèk* system as a contemporary form of slavery.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*Observation 2017*

The Committee notes the observations of the General Confederation of Workers (CGT) and the Confederation of Workers of Honduras (CTH), transmitted with the Government's report, which deal with issues examined by the Committee in this observation. It also notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2017, which relate to issues examined by the Committee in this observation and contain, in particular, new allegations of anti-union murders and violence, as well as the Government's comments thereon. The Committee also notes the observations of the Honduran National Business Council (COHEP), received on 22 August 2017, on issues examined by the Committee in this observation, as well as the Government's reply thereon.

*Trade union rights and civil liberties.* In its previous comments, the Committee expressed deep concern at the large number of anti-union crimes, including murders and death threats, committed between 2010 and 2014. It asked the Government to provide information on the status of the relevant investigations and criminal proceedings. In this respect, the Committee notes the Government's indication that: (i) the murders of Ms Sonia Landaverde Miranda and Messrs Alfredo Misael Ávila Castellanos and Evelio Posadas Velásquez are under investigation; (ii) the criminal proceedings regarding the murder of Juana Suyapa Bustillo are in the evidence-gathering phase; and (iii) the public prosecutor requested the competent authorities on 6 May 2014 to issue an arrest warrant for the person suspected of murdering Ms Alma Yaneth Díaz Ortega and Ms Uva Erlinda Castellanos Vigil. **The Committee urges the Government to provide information on the outcome of the investigations in the abovementioned cases of murder, as well as on any judgment handed down in the case of murder of Alma Yaneth Díaz Ortega and Uva Erlinda Castellanos Vigil.**

The Committee notes with *concern* that the Government has not provided any information on either the investigations carried out or the judgments handed down in relation to the murders of trade unionists Messrs Maribel Sánchez, Fredis Omar Rodríguez and Claudia Larissa Brizuela, all of which occurred between 2010 and 2014. **The Committee urges the Government to provide this information as soon as possible.**

With regard to the death of four teachers reported by Education International (EI) in 2014, the Committee notes the Government's indication that: (i) in the case of Mr Roger Abraham Vallejo, the investigation is ongoing; (ii) there is no new information regarding the case of Martín Florencio and Félix Murillo López; and (iii) in the case of Ilse Ivania Velásquez Rodríguez (examined by the Committee on Freedom of Association in the context of Case No. 3032), her death was accidental and a person has been convicted of manslaughter. With respect to the threats reported by Mr Víctor Crespo, the Government reports that it has not been able to verify the alleged crime. In relation to the death of Mr Manuel Crespo, father of Mr Víctor Crespo, the Government indicates that it is a case of manslaughter and that it has been established that there is no link to the alleged threats. The Committee also notes the Government's indication that the Public Prosecutor's Office has not received any complaints or opened any cases relating to the death threats against the leaders of the Trade Union Association of Dockworkers (SGTM), referred to in the 2014 observations of the ITUC. The Committee notes the information provided by the Government and is forwarding the information relating to the death of Ilse Ivania Velásquez Rodríguez to the Committee on Freedom of Association. **It urges the Government to provide information on the outcome of the investigations in the cases of murder of Roger Abraham Vallejo, Martín Florencio and Félix Murillo López.**

The Committee notes with *regret* the new allegations made by the ITUC, indicating that Messrs José Ángel Flores and Silmer Dionisios George, the President and a member, respectively, of the Unified Campesino Movement (MUCA), affiliated with the CUTH, were murdered on 18 October 2016. The Committee notes that the ITUC adds that both persons were under police protection and that the Inter American Commission on Human Rights (IACHR) had granted protection measures to José Ángel Flores in May 2014. The Committee notes that the ITUC also reports: (i) the kidnapping, on 15 April 2017, of Mr Moisés Sánchez, a leader of the Union of Agro-Food and Allied Industry Workers; (ii) death threats, made in 2016, against Mr Miguel López, a trade union leader in the public electricity enterprise; and (iii) in 2016 and early 2017, death threats against Mr Nelson Núñez and Ms Patricia Riera, trade union leaders in a multinational enterprise in the agro industrial sector. The Committee notes the Government's reply indicating that two persons have been charged with the murders of Messrs José Ángel Flores and Silmer Dionisios George and that the complaint concerning Mr Moisés Sánchez and his brother, Mr Hermes Misael Sánchez, has been forwarded to the body responsible for police investigations. The Committee *deeply deplores* the allegations of new murders, kidnappings and death threats against members of the trade union movement. **The Committee requests the Government to provide, without delay, detailed information on the cases of Messrs Miguel López, Nelson Núñez and Ms Patricia Riera. The Committee also requests the Government to continue providing information on any new developments in relation to the cases of Messrs José Ángel Flores, Silmer Dionisios George, Moisés Sánchez and Hermes Misael Sánchez.** The Committee notes that the United Nations Human Rights Committee, in its concluding observations on Honduras adopted on 24 July 2017 (see CCPR/C/SR.3378 and 3379), expressed its extreme concern at the acts of violence committed against, inter alia, the country's trade unionists in a context of impunity. The Committee expresses its *deep concern* at these crimes and is bound once again to draw the Government's attention to the principle that the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure and threats, in which human rights are fully respected, and that it is the responsibility of the Government to ensure that these principles are respected. **Recalling that the absence of convictions against those guilty of crimes against trade union officers and members creates, in practice, a situation of impunity, which reinforces the climate of violence and insecurity, and which is extremely damaging to the exercise of trade union rights, the Committee firmly urges the Government to take without delay all the necessary measures to ensure that the investigations into the murders are carried out promptly in order to determine the persons responsible and to punish those guilty of these crimes. Moreover, the Committee firmly urges the Government to take the necessary measures to provide prompt and effective protection to all trade union leaders and members who are at risk and therefore to increase all the necessary material and human resources to ensure that the lives and physical integrity of persons are effectively guaranteed and to prevent further cases of trade union murders and violence. The Committee requests the Government to provide information on all the measures taken in this respect.**

*Articles 2 et seq. of the Convention relating to the establishment, autonomy and activities of trade unions.* The Committee recalls that it has been emphasizing for many years the need to amend certain sections of the Labour Code to bring them into conformity with the Convention, namely:

- (a) the exclusion from the rights and guarantees of the Convention of workers in agricultural and stock-raising enterprises which do not permanently employ more than ten workers (section 2(1));
- (b) the prohibition of more than one trade union in a single enterprise (section 472);
- (c) the requirement of more than 30 workers to establish a trade union (section 475);
- (d) the requirement that the officers of a trade union must be of Honduran nationality (sections 510(a) and 541(a)), be engaged in the corresponding activity (sections 510(c) and 541(c)) and be able to read and write (sections 510(d) and 541(d));
- (e) the prohibition on strikes called by federations and confederations (section 537);
- (f) the requirement of a two-thirds majority of the votes of the total membership of the trade union organization in order to call a strike (sections 495 and 563);
- (g) the authority of the competent ministry to end disputes in oil industry services (section 555(2));
- (h) government authorization or a six-month period of notice for any suspension of work in public services that do not depend directly or indirectly on the State (section 558); and
- (i) the referral to compulsory arbitration, without the possibility of calling a strike for as long as the arbitration award is in force (two years), of collective disputes in public services that are not essential in the strict sense of the term (sections 554(2) and (7), 820 and 826).

In its previous comments, the Committee welcomed: (i) the preparation by the technical commission of the Ministry of Labour and Social Security of a draft reform of 13 sections of the Labour Code, prepared with ILO support, to bring the Labour Code into conformity with the Convention; and (ii) the submission of this draft to the Economic and Social Council (CES) for discussion and approval. It also noted the roadmap prepared by the Council in 2014, which envisaged the submission and adoption, in September of that year, of the draft reform by the National Congress. Lastly, the Committee expressed the hope that the Government would promptly submit the draft reform to the National Congress so as to bring the national legislation fully into conformity with the Convention.

The Committee notes that COHEP indicates that employers and workers have not been invited to a tripartite discussion in the CES or in any other forum. The Committee also notes the Government's reply to the observations of COHEP indicating that, while it recognizes that further progress has not been made since the draft reform was submitted to the CES in May 2014, in a communication dated April 2014, the CGT, CUTH and CTH expressed their reservations about the legislature examining possible reforms to the Labour Code, based on previous experiences and out of fear that such reforms would significantly prejudice labour rights in favour of big business. The Committee notes with *regret* that the progress made in 2014 has not been given effect in practice in relation to the discussion and adoption of a draft reform to bring the Labour Code into conformity with the Convention. ***The Committee therefore once again requests the Government to take all the necessary measures, after consulting the representative employers' and workers' organizations, to submit as soon as possible to the National Congress a bill that takes into account the various comments made by the Committee for many years. The Committee firmly hopes that it will be able to observe tangible progress in the very near future.***

*Application of the Convention in practice.* The Committee takes due note of the Government's indication that legal personalities of 23 trade unions were recognized between 2014 and 2016. ***The Committee requests the Government to continue providing information on new registrations of trade unions. [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.]***

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

### Observation 2017

The Committee notes the observations of the General Confederation of Workers (CGT), and the Confederation of Workers of Honduras (CTH) transmitted with the Government's report, which deal with issues examined by the Committee in this observation. The Committee also notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2017, which also relate to issues examined by the Committee in this observation, as well as the Government's comments thereon. The Committee further notes the observations of the Honduran National Business Council (COHEP), received on 22 August 2017, on issues examined by the Committee in this observation, as well as the respective comments made by the Government.

The Committee notes the Government's comments on the observations of the CGT and CTH relating to problems in the collective industrial relations in the education sector, issues that are being examined by the Committee on Freedom of Association in the framework of Case No. 3032.

*Article 1 of the Convention. Adequate protection against acts of anti-union discrimination.* In its previous comments, the Committee referred to the lack of adequate protection against acts of anti-union discrimination, as the fines established in section 469 of the Labour Code are merely symbolic. The Committee notes that the Government reports the adoption of a new Inspection Act, published on 15 March 2017 (Legislative Decree No. 178-2016). The Committee notes with *interest* that section 90 of the Act imposes fines of 300,000 Honduran lempiras (HNL) (equivalent to US\$12,884.84) for any type of acts that prejudices freedom of association and that, according to COHEP, the entry into force of the Act resulted in the repeal of section 469 of the Labour Code. Moreover, the Committee notes that the Act establishes a fine of HNL250,000 for any hindrance of labour inspection. ***The Committee requests the Government to provide information on the application and impact in practice of the fines for anti-union acts established in the new Inspection Act.***

The Committee also notes the approval of Agreement No. STSS-196-2015 establishing a mandatory nationwide administrative procedure to protect workers intending to establish a trade union and that the protection provided by this procedure begins as soon as the establishment of the trade union is notified and ends when the notice of legal personality is received. Furthermore, the Committee notes that the Decision establishes guidelines to improve guidance services and inspections in relation to freedom of association and collective bargaining. The Committee also notes that the Decision provides that the General Labour Directorate shall notify the labour inspectorate whenever it is informed of the conclusion of a collective accord on conditions of employment so as to ensure that the inspectorate carries out an investigation to identify possible violations of freedom of association. ***While noting these initiatives with interest, the Committee requests the Government to provide information on their application in practice and to examine, with the social partners, the possibility of incorporating into the Labour Code the content of Agreement No. STSS 196 2015.***

*Article 2. Adequate protection against acts of interference.* The Committee recalls that, for many years, it has been indicating the need for the legislation to explicitly prohibit all the acts of interference covered by *Article 2* of the Convention and to also establish remedies and sufficiently dissuasive penalties for such acts, as the general provisions contained in section 511 of the Labour Code are insufficient. While noting the Government's indication that the new Inspection Act implicitly gives effect to the Convention, the Committee notes that the Act itself does not contain explicit provisions against acts of interference. ***The Committee is therefore bound to once again request the Government, after consultation with the social partners, to take the necessary measures to incorporate into the legislation explicit provisions that ensure effective protection against acts of interference by the employer, in accordance with Article 2 of the Convention. The Committee requests the Government to take due note of this issue in the process of reforming the Labour Code referred to in the Committee's observation on the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and to report any progress in this regard.***

*Articles 4 and 6. Promotion of collective bargaining. Right of collective bargaining of public servants not engaged in the administration of the State.* In its previous comments, the Committee, having noted that sections 534 and 536 of the Labour Code provide that unions of public employees may not submit lists of claims or sign collective agreements, recalled that, although *Article 6* of the Convention excludes public servants engaged in the administration of the State (such as public servants in ministries and other comparable government bodies and their auxiliaries) from the scope of application of the Convention, other categories of public servants and public employees (for example, employees of public enterprises, municipal services and decentralized entities, public sector teachers and personnel in the transport sector) should enjoy the guarantees laid down in the Convention and therefore be able to bargain collectively their terms and conditions of employment, and in particular their wages.

The Committee notes the Government's indication that collective bargaining by trade unions in the public sector, specifically those in the government sector, is limited, and that the same applies to the army and police forces. The Committee nevertheless notes the Government's indication that, various decentralized and centralized institutions (the Ministry of Health, Finance, the National Children's Institution, the Energy Enterprise of Honduras, the Secretariat of State for Infrastructure and Public Services, Hondutel and the National Autonomous Water and Sewerage Service) are permitted to submit claims and engage in collective bargaining. The Committee also notes that on 23 June 2016, a memorandum of understanding was signed setting the ordinary wage in the civil service at HNL1,800. ***While noting the information provided, the Committee requests the Government to specify the texts that recognize the right to workers to collective bargaining in these institutions, and how they are related to sections 534 and 536 of the Labour Code. While welcoming the signing of the memorandum of understanding referred to by the Government, the Committee also requests the Government to provide comprehensive information on the agreements concluded in the public sector.***

*Application of the Convention in practice. Export processing zones.* The Committee notes that the Government, in response to its previous request, indicates

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that ten inspections have been carried out in export processing zones. *The Committee requests the Government to provide information on the findings of the inspections in relation to freedom of association and to provide full information on the number of complaints of violations of trade union rights in export processing zones.*

*Anti-union discrimination.* The Committee notes that the 2017 observations of the ITUC contain numerous reports of acts of anti-union discrimination in various sectors of the economy, including dismissals of trade union leaders and the creation of black lists. *While taking note of the Government's comments with regard to the actions taken by the competent authorities, the Committee expresses the hope that the entry into force of the new Inspection Act will ensure effective protection against such acts and will prevent their repetition.*

*Allegations of acts of corruption in the labour inspectorate in relation to trade union rights.* In its previous comments, the Committee asked the Government to provide information on alleged cases of corruption in the labour inspectorate in relation to the exercise of trade union rights. The Committee notes the Government's indication that there has been a significant decrease in the number of cases of corruption in which labour inspectors have provided information to third parties on the establishment of trade unions, and that various inspectors have been subjected to disciplinary measures, including dismissal. The Government adds that section 12 of the new Inspection Act establishes a series of principles and obligations governing the action of labour inspectors, and that a technical audit on inspection has been established and has been given the means to ensure technical independence, objectivity and impartiality in the verification of the work of inspectors and for receiving complaints. The Committee takes due note of this information and hopes that the action of the technical audit on labour inspection will make it possible to ensure the complete integrity of inspections. *The Committee requests the Government to report the results of the work by the technical audit in its next report on the application of the Labour Inspection Convention, 1947 (No. 81).*

*Collective bargaining in practice.* The Committee notes that the Government provides information on the registration of three collective labour accords in export processing zones between 2016 and 2017. *The Committee requests the Government to provide information on the measures taken, in conformity with Article 4 of the Convention, to promote collective bargaining, and to continue providing information on the number of collective agreements concluded and in force in the country, indicating the sectors concerned and the number of workers covered.*

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

**Observation 2017**

The Committee notes with *regret* that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2015.

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

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

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

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

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

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

**Observation 2017**

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

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

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

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

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

**Observation 2017**

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2015.

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 1 September 2015, which refer to matters already examined by the Committee and also denounce fixed and unreasonable procedural requirements for, and limitations on, collective bargaining. *The Committee requests the Government to provide its comments in this regard.*

*Article 4 of the Convention. Right to collective bargaining.* The Committee had previously referred to the following matters:

- the denial of the right to negotiate collectively in cases where a trade union fails to prove that at least 40 per cent of the workers in the unit are its members or, when having met the former condition, a single union that is engaged in the procedure of obtaining recognition does not obtain 50 per cent of the votes of the workers in a ballot that the Minister has caused to be taken (section 5(5) of Act No. 14 of 1975 and section 3(1)(d) of its regulations); and
- the need to take measures to amend the legislation so that a ballot is made possible when one or more trade unions are already established as bargaining agents and another trade union claims that it has more affiliated members in the bargaining unit than the other trade unions, and therefore invokes its most representative status in the unit in order to be considered as a bargaining agent.

The Committee notes that in its report the Government indicates that there is no new development in relation to lowering the mentioned percentage of workers. The Committee further notes that the Government does not provide any new information on legislative amendments allowing a ballot in cases of

disputes concerning representativeness. *Regretting the lack of progress, the Committee firmly hopes that the Government will take the necessary measures in the very near future to amend its legislation in order to: (i) lower the percentage mentioned or, if no union obtains the required 50 per cent of the votes of the total number of workers to be declared the exclusive bargaining agent, to grant collective bargaining rights to all the unions, at least on behalf of their own members; and (ii) allow a ballot in cases of disputes concerning representativeness, so as to bring it into full conformity with the Convention. The Committee requests the Government to provide information on any developments in this regard.*

*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***

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*Article 1(b) of the Convention. Equal remuneration for work of equal value. Legislation.* The Committee has been pointing out since 1997 that the Employment (Equal Pay for Equal Work) Act of 1975 does not include the concept of “work of equal value” as required by the Convention. The protection under the current law is narrower than the protection contained in the Convention in that it is limited to requiring the payment of equal remuneration for equal work, which is defined as work performed by men and women alike in which the duties, conditions of work and qualifications are similar or substantially similar, and the differences are not of practical importance and do not occur frequently. The Committee has also emphasized that the application of the concept of “work of equal value” is fundamental to the promotion and achievement of equal pay between men and women in employment and to reducing the gender pay gap. The Committee recalls its previous requests to the Government to review the Act of 1975 in light of the requirements of the Convention and to consider asking for technical assistance from the ILO. It notes from the Government’s reply that these requests have not been taken up by the Government. In this regard, the Committee must recall that in previous years the Government had indicated that it intended to review the Act of 1975. ***The Committee urges the Government to undertake a review and to update the Employment (Equal Pay for Equal Work) Act of 1975 to bring its provisions and into full conformity with the Convention by welcoming the principle of equal pay for men and women for work of equal value. It hopes that the Government will consider asking the ILO for technical assistance in this regard. The Committee also asks the Government to report on the steps taken to this end, as well as on any other specific measures taken to examine and address the gender pay gap in the public and private sectors.***

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 Confederation of the Industrial Chambers of the United States of Mexico (CONCAMIN) and the Confederation of Employers of the Mexican Republic (COPARMEX) transmitted with the Government's report.

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2017. *The Committee requests the Government to provide its comments in this respect.*

The Committee notes the Government's information relating to the observations from previous years of the ITUC and IndustriALL Global Union (IndustriALL), indicating that it will send further information on some pending issues and specifying that, for certain other issues, in particular the alleged restrictions to the right to strike by the Federal Conciliation and Arbitration Board, the observations do not provide sufficient details to enable the Government to investigate them. Lastly, the Committee notes that, as indicated by the Government, some of the allegations raised in these observations are the subject of cases before the Committee on Freedom of Association, particularly Case No. 2694, the recommendations of which the Committee refers to.

*Civil liberties and trade union rights.* With respect to the allegations of the ITUC and IndustriALL of 2015 and 2016 relating to acts of violence against trade unionists, the Committee requested these organizations to provide the most detailed information possible on the allegations of the deaths of four members of the National Union of Mining, Metallurgy, Steel and Allied Workers; the detention of 14 agricultural workers in March 2015; and several deaths and many persons injured, and the arrest of trade unionists, in the context of a collective dispute in the education sector in Oaxaca; as well as other allegations of acts of violence against trade unionists. The Committee notes the Government's indication that it is still waiting for these organizations to provide further details. The Committee notes that, in its 2017 observations, the ITUC has sent greater details on the allegations in the context of the trade union dispute in the education sector in Oaxaca in June 2016, including information on the development of the events and the identities of the persons who died. *The Committee requests the Government to send its comments in this respect. In addition, as regards the other allegations of attacks on civil liberties and trade union rights, observing that the Government indicates that it has insufficient information from the ITUC and IndustriALL, the Committee requests the Government, on the basis of the information available and any additional details provided by these organizations, to also send its comments in this respect.*

*Article 2 of the Convention. Conciliation and arbitration boards. Constitutional reform of the labour justice system.* With respect to its previous comments regarding observations of workers' organizations alleging that the operation of conciliation and arbitration boards impedes the exercise of freedom of association, the Committee notes with *satisfaction* the adoption and entry into force in February 2017 of the reform of the Political Constitution of Mexico, as a part of the process to reform the labour justice system that the Committee examined in its previous comments, introducing, as the main changes: that labour justice is vested with federal or local bodies of the judicial authority (to which the functions of the boards in this respect would be transferred); that conciliation procedures (a stage that in general precedes referral to the labour courts) are more flexible and effective (with the establishment of specialized and impartial conciliation centres in each federative entity); and that the federal conciliation body is a decentralized agency with responsibility for the registration of all collective labour agreements and trade unions. The Government indicates that it is coordinating a transition process which will entail harmonization of the legislation, and that the necessary development of the regulatory framework is under way – including a new unified procedural law in the area (a national code of labour procedures is under preparation) and a new Act on the decentralized body responsible for conciliation in relation to the national register of trade unions and collective labour contracts. The Government also states that, while the operations of the labour courts, the conciliation centres and the decentralized body are being initiated and institutionalized, the conciliation and arbitration boards, and other labour authorities, will continue to address disagreements and disputes that arise, including on the registration of trade unions and collective labour contracts. *The Committee encourages the Government to refer the envisaged legislative developments for the implementation of the constitutional reform for tripartite consultation, and requests it to provide information on any developments in that respect, while reiterating that technical assistance of the office remains available.*

*Representativity of trade unions and protection contracts.* In its previous observation, the Committee requested the Government, in consultation with the social partners, to continue adopting the necessary legislative and practical measures to find solutions to the problems arising out of the issue of protection trade unions and protection contracts, including in relation to the registration of unions. The Committee notes that the Government reiterates that: (i) the reform of the political Constitution as it applies to labour justice will combat all acts of deception or extortion, through the establishment of a decentralized body responsible for the registration of all trade unions in the country and collective contracts; (ii) the federal and local conciliation and arbitration boards, within the framework of the National Conference of Conciliation and Arbitration Boards, have undertaken to launch an internal dialogue process to decide whether to adopt the criteria of the plenary of the federal board for the harmonization of legal criteria; and (iii) the 2012 reforms to the Federal Labour Act (LFT) introduced mechanisms to promote free, direct and secret voting for the elections of trade union officers, as well as accountability of those leaders and provisions making public the information on the registration of trade unions, collective agreements and internal labour regulations. The Committee also notes that the Government has not provided further information on the proposed amendments to the LFT, which the Committee noted with interest, as the Government indicated in its previous report, that these had been presented, along with the proposals for constitutional reform, for the revision of the procedures for the signing, deposit and registration of collective contracts in the interests of securing full respect for trade union independence and the right to organize. The Committee therefore notes with *concern* the observations of the ITUC alleging that protection contracts will continue to be a regular practice and that the action taken by democratic trade unions to combat them through recount procedures has met with opposition and procedural irregularities. *Recalling that the Committee has expressed concern on this matter for a number of years, and that it was highlighted in the conclusions of the Committee on the Application of Standards in June 2015, the Committee once again requests the Government, in consultation with the social partners, to take the necessary practical and legislative measures to find solutions to the problems arising out of the issue of protection unions and protection contracts, including in relation to the registration of trade unions. Reiterating that ILO technical assistance remains available and expecting that the implementation of the constitutional reform will provide an opportunity to address these problems, the Committee requests the Government to provide information on any developments in this respect, as well as in relation to the proposed reform of the LFT.*

*Publication of the registration of trade unions.* The Committee notes the Government's indication of a compliance rate of 85 per cent with regard to the legal requirement for conciliation and arbitration boards to publish the registration and statutes of trade unions. The Government specifies that this amounts to 24 federative entities, comprising 49 of the 57 local boards of the states having published 23,628 trade union registrations, involving 1,431,100 union members. The Government adds that the constitutional reform will place the responsibility for the registration of all collective labour contracts and trade unions, as well as all relevant administrative processes, with the decentralized conciliation body. *While duly noting the progress referred to, the Committee requests the Government to continue providing information on compliance with the legal requirement to publish the registration and statutes of trade unions, and on any impact that the new constitutional reform and, in particular, the establishment of the decentralized body may have on the procedure for the registration of trade unions, including the publication of the registration of trade unions and their statutes.*

*Articles 2 and 3. Possibility of trade union pluralism in state bodies and the possibility to re-elect trade union leaders.* The Committee recalls that for years it has been commenting on the following provisions: (i) the prohibition of the coexistence of two or more unions in the same state body (sections 68, 71, 72 and 73 of the Federal Act on State Employees (LFTSE)); (ii) the prohibition on trade unionists from leaving the union of which they have become members (section 69 of the LFTSE); (iii) the prohibition on unions of public servants from joining trade union organizations of workers or rural workers (section 79 of the LFTSE); (iv) the reference to the Federation of Unions of Workers in the Service of the State (FSTSE) as the single central trade union federation recognized by the State (section 84 of the LFTSE); (v) the legislative declaration establishing the trade union monopoly of the National Federation of Banking Unions (FENASIB) (section

23 of the Act issued under Article 123B(XIIIbis) of the Constitution); and (vi) the prohibition of officer re-election in trade unions (section 75 of the LFTSE). In its previous comment, the Committee noted the Government's indication that, in accordance with the case law of the Supreme Court of Justice, and with practice and custom, these legislative restrictions on the freedom of association of public servants are not applied, that the provisions in question are not operative and that the legislative authorities were making efforts to update the LFTSE through legislative initiatives to amend several of the provisions concerned. The Committee notes the Government's indication in its latest report that a legislative initiative to reform the LFTSE was presented in 2013 to amend certain of these provisions (including sections 69 and 72 of the LFTSE) and that this initiative is pending decision in the relevant legislative committees. The Government reiterates that the terms of the Convention are fully respected and indicates that five federations grouping state employees have been registered and that 148 acknowledgements of trade unions have been made. **Recalling the need to ensure conformity of the legislative provisions with the Convention, even if they are in abeyance or are not applied in practice, the Committee once again requests the Government to take the necessary measures to amend the restrictive provisions referred to above in order to bring them into conformity with national case law and the Convention, and to provide information on any developments in this regard.**

**Article 3. Right to elect trade union representatives in full freedom. Prohibition on foreign nationals becoming members of trade union executive bodies (section 372(II) of the LFT).** In its previous comment, the Committee noted the Government's indications that: (i) section 372(II) of the LFT, which prohibits foreign nationals from becoming members of trade union executive bodies, was tacitly repealed by the amendment to section 2 of the Act, which prohibits all discrimination based on ethnic or national origin; (ii) the registration authorities do not require trade union leaders to have Mexican nationality, and this prohibition is not applied in practice; and (iii) as indicated in relation with the process of considering further legislative amendments to the 2012 labour reform, since October 2015 the Government has been awaiting the opinions of the social partners, in the context of which this matter can be assessed. The Committee notes that in its last report the Government reiterates that the legislative restriction does not apply. The Government adds that no specific case nor any complaint in this respect has been assessed and that some trade union statutes expressly recognize that foreign nationals may participate in trade union executive bodies. **Recalling once again the need to ensure the conformity of the legislative provisions with the Convention, even if they are in abeyance or are not applied in practice, the Committee requests the Government to take the necessary measures to amend section 372(II) of the LFT with a view to making explicit the tacit repeal of this restriction. It further requests the Government to provide any available information on the number and position of foreign nationals who are participating in the various trade union executive bodies.**

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

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

### Observation 2017

The Committee notes the observations of the National Union of Workers of the Federal Roads and Bridges Access and Related Services (SNTCPF), received in 2016, and the observations of the Confederation of Employers of the Mexican Republic (COPARMEX) and of the Confederation of Industrial Chambers of the United States of Mexico (CONCAMIN), attached to the Government's report.

**Article 7 of the Convention. Review of particular areas with a view to identifying major problems, evolving effective methods for dealing with them and priorities of action, and evaluating results. Mining sector. State of Coahuila de Zaragoza.** In its previous comments, the Committee asked the Government to provide information on the major problems identified in the mining sector in the state of Coahuila de Zaragoza (Coahuila), effective methods for dealing with them and priorities of action, and an evaluation of the results. In order to identify the problems, the Committee asked the Government to provide information on the situation in the mining sector in Coahuila. The Committee notes the observations of the SNTCPF regarding the lack of effective registration of workers in mines and the lack of adequate protection for occupational safety and health (OSH) in certain types of coalmines.

The Government provides information in its report on: (a) the number and types of mines, and the estimated proportion on non-registered miners in Coahuila; and (b) occupational accidents in mines both at the national level and in Coahuila registered by the Mexican Social Security Institute (IMSS). As regards the measures taken in relation to the alleged lack of adequate OSH protection in certain types of coalmines, the Government indicates that: (a) through the labour reform of 2012, the Federal Labour Act of 1970 was expanded to include Chapter XIIIbis on mineworkers, the provisions of which are applicable in all coalmines, whether underground mines, slope mines, opencast mines, sloping and vertical shafts, and also to any form or type of small-scale extraction activity; and (b) the federal Government maintains a permanent team in coalmines to conduct inspections, whose functioning is described below in connection with the application of **Article 9** of the Convention. The Government also indicates that: (a) unregistered, illegal workplaces, where workers are exposed to major risks, are the main problem in the mining sector in Coahuila; (b) the measures proposed to resolve the issue are the handling of complaints and the conducting of censuses in the region to identify unofficial workplaces; (c) the order of propriety for adopted measures is: identification of the problem, issuing of an inspection order and the execution thereof, and adoption of the necessary measures to solve the specific problem which has been investigated; and (d) as regards the evaluation of the results, the IMSS statistics for 2010–16 on the mining and use of coal, graphite and non-metallic minerals in underground mines in Coahuila indicate that there was a 50 per cent reduction in occupational accidents, from which 54 deaths were registered, with 80 per cent of these fatal occupational accidents occurring between 2010 and 2012. **While duly noting the information provided on the measures taken and the significant decrease in the number of accidents in the mining sector in Coahuila, the Committee requests the Government to continue providing information on available statistics relating to the number of accidents in the mining sector.**

**Article 9. Adequate and appropriate system of inspection. Adequate penalties.** In its previous comments, the Committee asked the Government to provide information on: (a) the labour inspection system and the adequacy of its resources, and also its functioning in unregistered, illegal mines; and (b) adequate penalties for violations of laws and regulations, including in the event of the employer's refusal to authorize access for the labour authority. The Committee notes the observations of the SNTCPF regarding: (a) the ineffectiveness of the inspection system owing to lack of resources; and (b) the failure to effectively enforce penalties, which include the closure of unregistered mines, and the resumption of operations in mines that were previously closed. The Committee also notes the observations of the COPARMEX and the CONCAMIN concerning the measures taken by the labour inspectorate to ensure observance of the regulations. The Committee notes the Government's indication that inspection activities ensure enforcement of the labour standards, including preventive OSH measures in unregistered and unofficial mines. Although there have been cuts in the Government's budget owing to the austerity measures implemented at national level, the Government indicates that more effective actions have been organized through inspection programmes focusing on high-risk activities, and there were no cuts to the budget of the Federal Labour Office in Coahuila in the 2016–17 financial year. As regards adequate and effective penalties, the Committee notes the data supplied by the Government, including fines and restrictive measures, such as the suspension of mining work and projects. The Government also indicates, with regard to any refusal by the employer to receive the labour inspectorate, that since the reform of 2012 section 1004-A of the Federal Labour Act has provided that, to counteract employers' refusal to allow labour inspections to proceed, a fine of 250 to 5,000 minimum wage equivalence shall be imposed on any employers who deny access to the labour authorities to conduct inspection and monitoring activities in their workplaces. **Noting the significant number of fatal occupational accidents, the Committee requests the Government to continue providing available statistics on the number of inspections conducted in the sector, the number and nature of reported violations, and the number, nature and causes of accidents in the mining sector.**

**Article 13. Protection of workers who remove themselves from work situations presenting an imminent and serious danger to their life or health.** In its previous comments, the Committee asked the Government to take the necessary steps to bring the legislation into conformity with **Article 13** of the Convention.

## Mexico

The Committee notes the Government's indication in its report that, under section 343 D of the Federal Labour Act, as amended in 2012, workers can refuse to provide their services in view of the fact that the Joint Safety and Health Committee, experts in the matter, has confirmed the existence of situations that present an imminent danger to the life, physical integrity or health of workers. The Government also highlights paragraph 2 of the abovementioned section, which establishes the duty of workers to remove themselves from work situations presenting an imminent and serious danger, and to notify the employer, any member of the Joint Safety and Health Committee, or the labour inspectorate of these circumstances. However, the Committee recalls that the right of workers to remove themselves from situations when there is a reasonable justification to believe that there is a serious and imminent danger remains an essential foundation for the prevention of occupational accidents and diseases and must not be undermined by any action by the employer. This right is linked to the duty of workers to inform their employer about such situations, although this obligation should not be seen as a prerequisite for the exercise of the right of removal (2017 General Survey on certain occupational safety and health instruments, paragraph 298). ***The Committee requests the Government once again to take the necessary steps to abolish any requirement of prior notification of, or authorization from, the Joint Safety and Health Committee for workers to be able to exercise their right to remove themselves from danger, in accordance with the terms of Article 13 of the Convention.***

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

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

### Observation 2017

*Article 3 of the Convention. Right of workers' organizations to organize their activities in full freedom and to formulate their programmes.* The Committee recalls that for several years it has been referring to the need to take steps to amend sections 389 and 390 of the Labour Code, which provide that collective disputes shall be referred to compulsory arbitration when 30 days have elapsed since the calling of the strike. In this regard, the Committee notes the Government's indication that: (i) negotiation boards are set up as a matter of urgency whenever socio-economic demands arise in a workplace; and (ii) there have been no changes in national law and practice to enable amendments to sections 389 and 390 of the Labour Code. The Committee is bound to note with *regret* once again the lack of progress regarding the amendment of the abovementioned provisions of the Labour Code. The Committee recalls that the imposition of compulsory arbitration to end a strike in cases other than those where strike action may be limited or even prohibited is contrary to the right of workers' organizations to freely organize their activities and formulate their programmes. *The Committee therefore once again requests the Government to take the necessary steps to amend sections 389 and 390 of the Labour Code so as to ensure that compulsory arbitration can only occur in cases where strike action may be limited or even prohibited, namely in disputes within the public service concerning public servants exercising authority in the name of the State, in essential services in the strict sense of the term, or in situations of acute national crisis.*

*Article 11. Protection of the right to organize.* The Committee welcomes the information provided by the Government on various initiatives aimed at promoting the right to organize and which include, inter alia, the distribution of handbooks for establishing and updating trade unions, the protection of the right to organize of own-account workers, and the promotion of gender equality policies within the trade union movement. The Committee also notes the Government's indication that, as a result of the policies to promote and foster unionization, a total of 62 new trade union organizations with 2,469 members were established in 2016, and 1,031 trade unions with 71,847 workers were updated. *The Committee duly notes this information and requests the Government to provide information concerning the implementation of the abovementioned policies.*

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

### Observation 2017

*Article 4 of the Convention. Promotion of collective bargaining.* In its previous comments, the Committee asked the Government to provide information about the promotion of collective bargaining in all areas at national level, including export processing zones (EPZs). In this regard, the Committee notes the Government's indication that: (i) in 2016, the gender dimension was promoted in collective bargaining, particularly through the signature of 57 collective agreements that included clauses specifically for the benefit of 47,609 women workers; (ii) in 2016, a total of 73 collective agreements were registered at national level, which have an impact on the standard of living of 640,536 persons; (iii) as regards the special regulations concerning EPZs, the Ministry of Labour has reduced its participation in negotiations for collective agreements, leaving direct dialogue between the parties to take place in bipartite committees; only where no bipartite agreements are reached are tripartite committees formed; and (iv) the readjustment of the minimum wage for workers in this sector has been carried out with the participation of the Tripartite National Committee on Export Processing Zones.

*The Committee notes with interest the abovementioned initiatives to promote collective bargaining and requests the Government to continue taking steps to expand collective bargaining in all spheres, including EPZs. The Committee requests the Government to send information on any developments in this regard, including the number of collective agreements signed and in force in EPZs, and also the number of workers covered by them. The Committee requests the Government to provide additional information on the nature of the clauses of collective agreements that provide for specific benefits for women and to indicate the number of women workers covered by these agreements.*

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

### Observation 2017

*Article 2(3) of the Convention. Age of completion of compulsory schooling.* The Committee previously noted the measures taken to improve the functioning of the education system, in particular access to free primary and secondary education and the adoption of a National Education Strategy (2010–15). In view of the fact that the 2006 Education Act provides that schooling is compulsory only up to the age of 12, the Committee strongly encouraged the Government to take the necessary steps to ensure that the age of completion of compulsory schooling coincided with the minimum age for admission to employment or work, namely 14 years.

The Committee notes with *regret* that the Government's report does not contain any information on the steps taken to make the age of completion of compulsory schooling coincide with the minimum age for admission to employment or work, namely 14 years. The Committee notes that, even though article 121 of the Constitution of Nicaragua provides that primary education shall be free of charge and compulsory, section 19 of the 2006 Education Act states that schooling is only compulsory up to the sixth year of primary school (namely, up to about the age of 12). In this regard, the Committee is bound to remind the Government once again that if compulsory schooling comes to an end before children are legally entitled to work, a vacuum may arise which regrettably opens the door for the economic exploitation of children (see General Survey of 2012 on the fundamental Conventions, paragraph 371). *Considering that compulsory education is one of the most effective means of combating child labour, the Committee once again requests the Government to take the necessary steps to guarantee compulsory schooling up to the minimum age of admission to employment or work, namely 14 years. It also requests the Government to pursue its efforts to raise the school attendance rate and reduce the school dropout rate in order to prevent the labour of children under 14 years of age. It requests the Government to provide information on progress made in this regard.*

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

## 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, use, procuring or offering of a child for prostitution, the production of pornography or pornographic performances, and penalties.* In its previous comments, the Committee noted the provisions of the Penal Code which prohibit and penalize the sale and trafficking of children, the sexual exploitation of children and the use of children in the production of pornography or pornographic performances. The Government indicated that the Public Prosecutor's Office had initiated criminal proceedings with regard to 19 offences relating to the sexual liberty of children, 12 offences relating to trafficking for sexual exploitation and six offences relating to pornography and paid sexual acts with minors. The Committee also noted the capacity-building measures for law enforcement bodies adopted by the Government, with such measures having reached a total of

## Nicaragua

1,500 public officials. The Committee further noted that the Public Prosecutor's Office, the police and the Nicaraguan Institute of Tourism (INTUR) had carried out joint investigations in bars, canteens, night clubs and hotels in border and tourist areas to prevent and detect cases of sexual exploitation of children in order to initiate criminal proceedings and direct child victims to specialized shelters. In addition, INTUR had launched an awareness-raising campaign among travel agents and enterprises to prevent child sex tourism.

The Committee notes with *interest* the adoption in 2015 of the Act against Trafficking in Persons. Section 1 of the Act defines its purpose as being the prevention of trafficking in persons and the prosecution and punishment of perpetrators, and also defines specific and effective mechanisms for saving victims, particularly children and young persons. Section 3 provides that the Act shall apply to the perpetrators of trafficking both inside and outside the country. The Committee also notes that section 7 provides for the setting up of a National Coalition against Trafficking in Persons, which shall be responsible for formulating, implementing, evaluating and monitoring public policies for the prevention, prosecution and punishment of trafficking and also for the protection of victims. The Committee notes the Government's indication in its report that in 2015–16 prosecutions were initiated in 17 cases, resulting in 14 convictions for sexual exploitation, pornography and paid sexual acts with young persons. The Government also indicates that prosecutions were launched in 11 cases, yielding nine convictions for the offence of trafficking in persons, without specifying the number of cases in which the victims were under 18 years of age. ***The Committee requests the Government to provide information on the implementation of the Act against Trafficking in Persons and also on the activities of the National Coalition against Trafficking in Persons, aimed at combating the trafficking of children and providing protection for victims. It requests the Government to continue providing information on the number of reported violations, investigations, prosecutions, convictions and penalties applied under the Penal Code.***

*Article 3. Clause (d). 1. Hazardous work in agriculture.* In its previous comments, the Committee noted that 70.5 per cent of children between the ages of 7 and 14 years worked in agriculture. It also noted the adoption of Ministerial Decision JCHG-08-06-10 of 19 August 2010, which prohibits hazardous work for children and young persons under 18 years of age and contains a detailed list of hazardous types of work. The Committee also noted the steps taken by the Government relating to special inspection services to give effect to Ministerial Decision JCHG-08-06-10, with particular emphasis on the protection of children working in limestone quarries. The Committee noted the Government's indication that inspections were conducted in 1,272 workplaces covering all sectors of the economy, where 236 children were identified as working in hazardous conditions, and that in the wake of these inspections 1,758 young persons benefited from protection measures relating to their rights as workers. The Government also indicated that it had implemented specific inspection plans relating to child labour in the departments of Jinotega and Matagalpa, which are characterized by their high levels of coffee production.

The Committee notes the Government's indication that a total of 194 violations were reported in the agricultural and stockbreeding sectors. It also notes that a total of 2,831 certificates were issued to young persons between 14 and 18 years of age, in accordance with Ministerial Decision JCHG-08-06-10 concerning the prohibition of hazardous work for children and young persons. However the Committee notes once again that the Government's report does not contain any information on the number of violations reported or the penalties imposed. ***The Committee requests the Government to continue intensifying its efforts to ensure that children under 18 years of age employed in agriculture do not perform hazardous work. In this regard, the Committee requests the Government to continue providing information on the application of Ministerial Decision JCHG-08-06-10 of 19 August 2010 in practice, including the number of inspections carried out, violations reported and penalties imposed.***

*2. Hazardous child domestic labour.* In its previous comments, the Committee noted the information supplied by the Government on the application of the Domestic Work Act (No. 666) of 4 September 2008, which protects young persons in domestic service by laying down recruitment and working conditions and prescribing penalties for abuse or humiliation of workers or violence against them. It also noted the Government's indication that 1,999 labour inspections had been carried out in households where 17 young persons were found engaged in domestic work. As regards follow-up to the registration of children and young persons engaged in domestic work, the Government stated that five seminars organized in the departments of Estelí, Nueva Segovia, Madriz Masaya and Managua to provide information on rights at work and educational scholarships had been attended by 149 young persons.

The Committee notes the Government's indication that special inspections have been carried out as part of the implementation of Ministerial Decision JCHG-08-06-10. Accordingly, 39 cases of young persons working in domestic service have been reported. The Government states that employers have been instructed by means of an administrative decision to put a stop to these violations. ***The Committee requests the Government to pursue its efforts to ensure the protection guaranteed by Act No. 666 of 4 September 2008 to children and young persons in domestic work and to continue providing information on the number of inspections carried out. Noting the violations reported, the Committee requests the Government to indicate whether penalties have been imposed on the perpetrators.***

*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.* In its previous comments, the Committee noted that the Ministry of Education had enrolled 1,635,000 children and young persons in pre-primary, primary and secondary schools. It also noted that despite the Government's efforts, the percentage of children in secondary education remained low despite some improvement (43 per cent for boys and 49 per cent for girls). The Committee notes the UNICEF country programme document for 2013–17, which indicates that the Government will place special emphasis on the educational system of the autonomous regions to provide intercultural and bilingual education so that indigenous children and children of African descent have access to quality education. According to the document, the Government will also continue to improve school infrastructure in terms of access to water and sanitation in schools (E/ICEF/2012/P/L.31, paragraphs 36 and 38). ***The Committee requests the Government to continue to take the necessary steps to improve the functioning of the education system and to improve the school attendance and completion rates, while placing particular emphasis on tackling gender inequalities in access to education and regional disparities. It also requests the Government to provide data on the results achieved, disaggregated by age and gender.***

*Clause (b). Direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. Child labour in agriculture.* In its previous comments, the Committee noted that as part of the "Coffee harvesting without child labour" programme, a number of tripartite cooperation agreements had been signed between the Ministries of Labour, Education and Health, coffee producers and key actors in the agricultural sector. The Committee also noted that as part of the "From work to school" programme, a number of children had been withdrawn from working in mines and breaking stones in the municipalities of Chinandega, El Rama and El Bluff. The programme provided these children with services in the areas of education, health care and recreation.

The Government indicates that as a result of implementing various programmes aimed at protecting the rights of children and young persons in agriculture, the participation of employers, producers and the general public has increased and the model of dialogue and consensus between employers, workers and the Government has improved. ***While duly noting the general progress indicated by the Government, the Committee encourages the Government to pursue its efforts and requests it to provide information on the results achieved under the various programmes aimed at withdrawing children and young persons from hazardous work in agriculture and on the measures taken to ensure their rehabilitation and social integration.***

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

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

*Article 2 of the Convention. Insertion of labour clauses in public contracts.* In its previous comments, the Committee noted that it has been drawing the Government's attention for a number of years to the need to take appropriate action to bring effect to the core requirement of the Convention concerning the insertion of the labour clauses in public contracts called for by *Article 2* of the Convention. Acknowledging that its national procurement legislation is not in conformity with the Convention, the Government indicated its intention to rectify the situation. The Committee expressed the hope that the Government would therefore take all appropriate measures very shortly to bring its national legislation into conformity with the Convention. The Committee notes, however, that while the Government once again acknowledges that its public procurement legislation is not in conformity with the provisions of the Convention, the situation remains unchanged. It further notes the Government's indication that, through the Ministry of Work and Labour Development (MITRADEL), it has held two meetings with the Directorate-General of Public Procurement (DGCP) to discuss the measures to be taken to ensure the effective implementation of the Convention. The Committee notes that the DGCP, in a communication of 28 June 2017 to MITRADEL (DGCP-SG-031-2017) submitted together with the Government's report, points out that a pending Bill to reform the national public procurement legislation (Bill No. 305) does not include any provisions implementing the labour clauses of the Convention. The DGCP indicates that it is nevertheless working on a draft Standardization of Public Procurement Documents, and proposes to collaborate with MITRADEL to draft provisions that could be added to the model contract forms used by all public entities, which would be aligned with the requirements of *Article 2*. The DGCP refers to its prior communication of 28 January 2013 (DGCP-DG-DJ018-2013), in which it requested MITRADEL to provide it with guidelines regarding the labour-related elements that it should include in the bidding documents. The Committee further notes that the Government requested the technical assistance of the Office by letter dated 2 August 2017. ***The Committee hopes that the Office will soon be able to provide the technical assistance requested. It urges the Government to take all appropriate measures without further delay in order to bring its legislation into full conformity with the requirements of the Convention and requests that it provide updated information on progress achieved in this respect.***

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

**Observation 2017**

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

*Article 4(1) and (2) of Conventions Nos 77 and 78. Medical re-examination for fitness for employment until the age of 21 years.* In its previous comments, the Committee requested the Government to take the necessary measures to bring the national legislation into conformity with *Article 4* of the Conventions.

In its report, the Government provides a considerable amount of information on the measures taken to reinforce the protection of children who work, namely through the Comprehensive National Health Plan for Children (2016–21) and the adoption of Resolution C.A. No. 099-022/16, approving the regulations making the employer responsible for obtaining a medical certificate. While noting this information, the Committee notes with *regret* that the Government still has not provided information on any measures taken to bring the legislation into conformity with the Convention. It is therefore bound to recall once again that section 121(b) of the Labour Code makes the employment of minors under *18 years of age* subject to a number of conditions, including the obligation to present an annual physical and mental fitness certificate, issued by the competent authority. However, according to *Article 4* of the Conventions, in occupations which involve high health risks, a medical examination and re-examinations for fitness for employment shall be required until at least the age of *21 years*. It also recalls the need to determine the occupations or categories of occupations for which this examination shall be required. ***The Committee urges the Government to take the necessary measures to supplement its legislation in order to establish, for occupations involving high health risks, the compulsory nature of the examination for fitness for employment and of re-examinations until at least the age of 21 years. It also requests the Government to determine the occupations or categories of occupations for which such an examination is required.***

*Article 6(1) of Convention Nos 77 and 78. Measures for vocational guidance and physical and vocational rehabilitation of children and young persons found to be unsuited to work.* The Committee takes due note of Act No. 5155/13 establishing the new Ministry of Labour, Employment and Social Security (MTESS). The Committee notes the Government's indication that section 4(12) of the Act provides that the MTESS is the competent authority to develop and implement the special scheme applicable to workers with disabilities. The Committee also notes that, according to the Government, the National Vocational Promotion Service (SNPP) and the National Vocational Training and Further Training System (SINAFOCAL) provides free courses on access to employment for persons with disabilities. Furthermore, the Committee notes the many legal instruments which provide for the inclusion of persons with disabilities in the labour market, and particularly Act No. 3585/08 which establishes the requirement to integrate persons with disabilities into public institutions. Lastly, the Committee notes with *interest* the institutional cooperation agreement concluded in 2014 between the MTESS, the SNPP, the SINAFOCAL and the General Directorate for Employment, with the aim of achieving the effective inclusion of persons with disabilities in the labour market through training and integration.

*Application of the Conventions in practice.* The Committee notes the Government's indication that the National Secretariat for the Rights of Persons with Disabilities has carried out numerous activities, including the collection of statistical data. However, the Committee notes that the Government has not provided any details on the statistics to which it refers. ***As, under section 55 of the Code of Children and Young Persons, the Municipal Council for the Rights of Children and Young Persons (CODENI) is required to produce a specific register of young workers, the Committee requests the Government to provide statistical data on the number of children and young persons working in the industrial sector, the number of those who have undergone the medical examinations provided for under the Conventions, information on the infringements reported by the labour inspectorate in this area and the penalties imposed, as well as any other information concerning the application of the Conventions in practice.***

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

**Observation 2017**

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

*Article 4(1) and (2) of Conventions Nos 77 and 78. Medical re-examination for fitness for employment until the age of 21 years.* In its previous comments, the Committee requested the Government to take the necessary measures to bring the national legislation into conformity with *Article 4* of the Conventions.

In its report, the Government provides a considerable amount of information on the measures taken to reinforce the protection of children who work, namely through the Comprehensive National Health Plan for Children (2016–21) and the adoption of Resolution C.A. No. 099-022/16, approving the regulations making the employer responsible for obtaining a medical certificate. While noting this information, the Committee notes with *regret* that the Government still has not provided information on any measures taken to bring the legislation into conformity with the Convention. It is therefore bound to recall once again that section 121(b) of the Labour Code makes the employment of minors under *18 years of age* subject to a number of conditions, including the obligation to present an annual physical and mental fitness certificate, issued by the competent authority. However, according to *Article 4* of the Conventions, in occupations which involve high health risks, a medical examination and re-examinations for fitness for employment shall be required until at least the age of *21 years*. It also recalls the need to determine the occupations or categories of occupations for which this examination shall be required. ***The Committee urges the Government to take the necessary measures to supplement its legislation in order to establish, for occupations involving high health risks, the compulsory nature of the examination for fitness for employment and of re-examinations until at least the age of 21 years. It also requests the Government to determine the occupations or categories of occupations for which such an examination is required.***

*Article 6(1) of Convention Nos 77 and 78. Measures for vocational guidance and physical and vocational rehabilitation of children and young persons found to be unsuited to work.* The Committee takes due note of Act No. 5155/13 establishing the new Ministry of Labour, Employment and Social Security (MTESS). The Committee notes the Government's indication that section 4(12) of the Act provides that the MTESS is the competent authority to develop and implement the special scheme applicable to workers with disabilities. The Committee also notes that, according to the Government, the National Vocational Promotion Service (SNPP) and the National Vocational Training and Further Training System (SINAFOCAL) provides free courses on access to employment for persons with disabilities. Furthermore, the Committee notes the many legal instruments which provide for the inclusion of persons with disabilities in the labour market, and particularly Act No. 3585/08 which establishes the requirement to integrate persons with disabilities into public institutions. Lastly, the Committee notes with *interest* the institutional cooperation agreement concluded in 2014 between the MTESS, the SNPP, the SINAFOCAL and the General Directorate for Employment, with the aim of achieving the effective inclusion of persons with disabilities in the labour market through training and integration.

*Application of the Conventions in practice.* The Committee notes the Government's indication that the National Secretariat for the Rights of Persons with Disabilities has carried out numerous activities, including the collection of statistical data. However, the Committee notes that the Government has not provided any details on the statistics to which it refers. ***As, under section 55 of the Code of Children and Young Persons, the Municipal Council for the Rights of Children and Young Persons (CODENI) is required to produce a specific register of young workers, the Committee requests the Government to provide statistical data on the number of children and young persons working in the industrial sector, the number of those who have undergone the medical examinations provided for under the Conventions, information on the infringements reported by the labour inspectorate in this area and the penalties imposed, as well as any other information concerning the application of the Conventions in practice.***

**C079 - Night Work of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 79)****Observation 2017**

In order to provide an overview of the issues relating to the application of the ratified Conventions on the night work of young persons, the Committee considers it appropriate to examine Conventions Nos 79 and 90 in a single comment.

*Article 3 of Convention No. 79 and Article 2 of Convention No. 90. Period during which it is forbidden to work at night.* In its previous comments, the Committee requested the Government to amend section 58 of the Children's and Young Persons' Code, which prohibits night work for young persons aged 14 to 18 years for a period of *ten hours* including the interval between 8 p.m. and 6 a.m, in order to bring it into conformity with the Conventions and with section 2 of Decree No. 4951 of 22 March 2005 which considers night work carried out between 7 p.m. and 7 a.m, a period of *12 hours*, as hazardous work prohibited for young persons under 18 years of age. The Government indicated that the National Secretariat for Children and Young Persons had submitted a formal request to the Ministry of Labour, Employment and Social Security (MTESS) to begin the adoption procedure of the amendments to section 58 of the Children's and Young Persons' Code. The secretariat indicated its willingness to carry out the necessary actions together with the MTESS to this end. The Committee also noted that a tripartite Memorandum of Understanding had been signed between the tripartite constituents and the Office under the terms of which the tripartite advisory council of the MTESS would cooperate with the ILO to examine and, if necessary, submit to Congress the necessary legislative amendments to bring the legislation into conformity with the ratified ILO Conventions.

The Committee notes with *interest* that, according to the Government's report, preliminary draft legislation amending section 58 of the Children's and Young Persons' Code has been formulated and was presented to the executive authorities in 2016. The Government indicates that the preliminary draft legislation is currently before the Committee on Constitutional Affairs, Legislation and Codification, for review. *The Committee requests the Government to take the necessary measures to adopt, as soon as possible, the draft legislation amending section 58 of the Code of Children and Young Persons, so as to prohibit night work for children for a period of 12 consecutive hours.*

**C090 - Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90)****Observation 2017**

In order to provide an overview of the issues relating to the application of the ratified Conventions on the night work of young persons, the Committee considers it appropriate to examine Conventions Nos 79 and 90 in a single comment.

*Article 3 of Convention No. 79 and Article 2 of Convention No. 90. Period during which it is forbidden to work at night.* In its previous comments, the Committee requested the Government to amend section 58 of the Children's and Young Persons' Code, which prohibits night work for young persons aged 14 to 18 years for a period of *ten hours* including the interval between 8 p.m. and 6 a.m, in order to bring it into conformity with the Conventions and with section 2 of Decree No. 4951 of 22 March 2005 which considers night work carried out between 7 p.m. and 7 a.m, a period of *12 hours*, as hazardous work prohibited for young persons under 18 years of age. The Government indicated that the National Secretariat for Children and Young Persons had submitted a formal request to the Ministry of Labour, Employment and Social Security (MTESS) to begin the adoption procedure of the amendments to section 58 of the Children's and Young Persons' Code. The secretariat indicated its willingness to carry out the necessary actions together with the MTESS to this end. The Committee also noted that a tripartite Memorandum of Understanding had been signed between the tripartite constituents and the Office under the terms of which the tripartite advisory council of the MTESS would cooperate with the ILO to examine and, if necessary, submit to Congress the necessary legislative amendments to bring the legislation into conformity with the ratified ILO Conventions.

The Committee notes with *interest* that, according to the Government's report, preliminary draft legislation amending section 58 of the Children's and Young Persons' Code has been formulated and was presented to the executive authorities in 2016. The Government indicates that the preliminary draft legislation is currently before the Committee on Constitutional Affairs, Legislation and Codification, for review. *The Committee requests the Government to take the necessary measures to adopt, as soon as possible, the draft legislation amending section 58 of the Code of Children and Young Persons, so as to prohibit night work for children for a period of 12 consecutive hours.*

**C169 - Indigenous and Tribal Peoples Convention, 1989 (No. 169)****Observation 2017**

*Articles 2, 6 and 33 of the Convention. 1. Prior consultation.* In its previous comments, the Committee noted Decision No. 2039/2010 establishing the requirement to seek the intervention of the Paraguayan Indigenous Institute (INDI) in all consultation processes with indigenous communities, with the guidelines for each consultation process to be established on a case-by-case basis. The Committee noted the concern expressed by the International Organisation of Employers (IOE) at the negative consequences for business that may arise from the failure to comply with the obligation of consultation. The Committee also observed that the representatives of the indigenous peoples highlighted irregularities that violated the right to consultation and to free, informed and prior consent recognized by the Convention, and that in August 2014 they formally communicated to the National Congress their disagreement with the Bill on indigenous peoples' right to prior consultation which the Ombudsman's Office had submitted to the legislature. They considered that the indigenous organizations had not been consulted in this respect and so they called for the Bill to be shelved.

The Committee notes that the Government indicates in its report that the Bill submitted to the legislature in 2013 had been rejected by the Commission on Indigenous Affairs of the Chamber of Deputies. The Government's report includes information from the INDI to the effect that a draft decree establishing a protocol governing a process of consultation and consent vis-à-vis the indigenous peoples of Paraguay is at the approval stage before the executive authority. The draft decree is the result of a joint initiative conducted with over 30 indigenous organizations and was discussed and approved at two workshops on consultation and free, informed and prior consent, organized with the indigenous organizations by the INDI and the Federation for the Self-determination of Indigenous Peoples. The Government indicates that once the decree is adopted, the INDI will continue to advise the public authorities and the legislature on the establishment of specific consultation procedures for certain national projects, such as the Hydrocarbons Bill or the Sanitation and Drinking Water Programme for Chaco and medium-sized towns in the Eastern Region of Paraguay.

The Committee observes in this regard that the United Nations Special Rapporteur on the rights of indigenous peoples, in her 2015 report, stated that there was widespread failure by the Government in Paraguay to fulfil its duty of consultation prior to the adoption of legislative, political and administrative measures which directly affect indigenous peoples and their lands, territories and natural resources (A/HRC/34/48/Add.2).

*The Committee trusts that all necessary steps will be taken as soon as possible to ensure the adoption of the decree establishing the protocol governing a process of consultation and consent vis-à-vis indigenous peoples so as to ensure that the peoples concerned are consulted through appropriate procedures whenever legislative or administrative measures are planned which may affect them directly. In the meantime, the Committee requests the Government to provide information on the specific consultation processes undertaken regarding draft legislation or administrative*

*measures likely to affect indigenous peoples, indicating those in which the INDI has supplied advice.*

2. *Coordinated and systematic action.* The Committee noted the functions assigned to the INDI, which is responsible for coordinating action on indigenous rights and ensuring their observance. The INDI acts as the interface between the indigenous peoples and the other public institutions responsible for administering programmes for them. The Committee observes that, according to information on the website of the Technical Secretariat for Economic and Social Development Planning, an international forum was organized in August 2017 for the exchange of experiences with regard to the formulation of a national plan for indigenous peoples. The aim is to set up a dialogue forum for participation in the formulation of the plan as a distinctive public policy agreed upon by the indigenous peoples. At the forum, the indigenous organizations indicated that they would continue to monitor this process in the regions where indigenous communities are located, while the public institutions undertook to manage the funds needed to organize forums of this kind. ***The Committee trusts that the national plan for indigenous peoples will be adopted in the near future and requests the Government to indicate the manner in which its implementation will contribute to coordinated and systematic action designed to protect the rights of indigenous peoples. The Committee also requests the Government to provide information on the dissemination and consultation process carried out in this respect. Furthermore, observing that, according to the website of the Ministry of Public Finance, the budget for the INDI was reduced in 2015 and 2016, the Committee hopes that the Government will assign all the necessary financial and human resources to enable the INDI to duly discharge its functions, in accordance with Article 33(1) of the Convention.***

*Part II. Article 14. Lands.* With regard to the previous comments on progress made regarding the regularization of lands traditionally occupied by indigenous peoples, the INDI indicates that its main function continues to be to secure the legal status of indigenous territories. Hence, between 2010 and 2014, title was granted with respect to 283,996 hectares of land. Titles of ownership were granted in the departments of San Pedro, Caaguazú and Alto Paraguay, for a total of 59,465 hectares in 2013. Ownership titles were granted in respect of 73,360 hectares in various departments in 2014. According to the INDI, out of 493 indigenous communities, 357 (72.4 per cent) have land that is secured and 343 of these (96.1 per cent) hold a title of communal ownership. Moreover, as regards the implementation of the rulings of the Inter-American Court of Human Rights referred to by the Committee in its previous comments, the Committee welcomes the adoption of Act No. 5194 of 12 June 2014 expropriating two ranches in the department of Chaco (14,403 hectares) in the public interest and entrusting them to the INDI for subsequent assignment to the Sawhoyamaxa indigenous community of the Enxet people. In addition, as regards the Yakye Axa indigenous community, the deed relating to the purchase of their alternative lands is undergoing registration in the public records. However, in the case of the Xákmok Kásek indigenous community, the State is still in discussions with the private owners of the ranches being reclaimed.

***The Committee encourages the Government to continue making every effort to guarantee the protection of the rights of ownership and possession of indigenous peoples, and trusts that the Government will provide information in its next report indicating visible progress regarding the regularization of lands that indigenous peoples have traditionally occupied and the grant of title to them. The Committee also requests the Government to provide information on the expropriation measures being examined by the legislature and on the judicial proceedings connected with land possession in which the INDI has acted as an intermediary.***

*Article 15. Natural resources. Forestry undertakings.* In its previous comments, the Committee noted the concern expressed by the Authentic Single Confederation of Workers (CUT-A) regarding environmental and forestry management in relation to lands assigned to indigenous communities and regarding the occupation of indigenous community lands by landless rural people (*campesinos sin tierra*). In this regard, the Government indicates that the INDI, aware of the environmental problems affecting indigenous peoples, established the Department for Socio-Environmental Matters in 2015, whose mandate is to oversee projects affecting indigenous communities and reduce their environmental impact. Accordingly, complaints have been lodged with various prosecution services regarding cases of deforestation, indiscriminate logging and changes in land use, and these have resulted in important precedents being set. The Government indicates that a legal and administrative framework is also being established to promote indigenous communities' access to payment for environmental services, adapting existing requirements to the communities' legal and cultural reality and making them more flexible. The Specialized Environmental Prosecution Unit (UFEDA) has been established to deal with offences against the environment and look after diverse community interests, including matters that affect the interests of indigenous peoples. The Committee notes these measures, the purpose of which is to strengthen indigenous peoples' capacity to defend their rights and interests and file complaints in the event of violations. In this regard, the Committee recalls that the Convention provides that the indigenous peoples concerned shall be consulted before any programmes for the exploration or exploitation of the resources pertaining to their lands are undertaken or permitted. ***While noting the measures adopted, the Committee requests the Government to provide detailed information on specific examples of the manner in which the rights of indigenous peoples to participate in the use, management and conservation of the natural resources pertaining to their lands has been safeguarded. The Committee also requests the Government to send information on the assessments of the social and environmental impact that may result from the exploitation of natural resources on the territories of indigenous peoples.***

*Part III. Article 20. Recruitment and conditions of employment.* In its previous comments, the Committee encouraged the Government to continue taking steps to eliminate situations of forced labour and discrimination affecting the members of certain indigenous peoples, especially in the Chaco region, and asked it to provide information on activities undertaken in this field by the public authorities established in the region, such as the Regional Labour Directorate in Chaco. In this regard, the Government indicates that in 2015 the Ministry of Labour recruited 30 new labour inspectors. The Directorate for Inspections conducted inspections in the Chaco region in the second half of 2015 as part of an investigation into possible situations of forced labour, though no specific cases of forced labour were identified. The Committee welcomes the adoption in November 2016 of the National Strategy for the Prevention of Forced Labour 2016–20 (Decree No. 6285/16). It observes that a series of consultation workshops were held with social actors, representatives of public institutions and indigenous communities in order to gather inputs to formulate a strategy. The Committee observes that the Ministry of Labour website indicates that a combined inspection and police unit operating in Chaco, headed by the Anti-Trafficking Unit at the Public Prosecutor's Office, found indigenous workers from the Ache community in a situation of forced labour in a workplace in the department of Boquerón. It also observes that the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, in her statement of 24 July 2017 at the end of her mission to Paraguay, indicated that she had received many reports of forced and bonded labour in the Chaco region. She stated in her report that she did not believe that "forced or bonded labour takes place across all or even the majority of employers. ... However, information received suggests that there are instances of, and vulnerability to, forced and bonded labour within some labour sites and a lack of regulation amongst smaller employers."

***The Committee encourages the Government to continue making every possible effort to ensure that the National Strategy for the Prevention of Forced Labour is actually implemented in practice, particularly in the regions where evidence of forced labour involving indigenous communities has been found. The Committee requests the Government to indicate the measures taken to continue strengthening the presence of the State in these regions (the labour inspectorate's technical unit for the prevention and elimination of forced labour, the subcommittee of the Committee on Fundamental Rights at Work and the Prevention of Forced Labour in the Chaco region, and the office of the Directorate of Labour in Teniente Irala Fernández) with a view to raising the awareness of vulnerable communities regarding the risk of forced labour, identifying and protecting the victims and the persons at risk. The Committee also refers to its comments on the application of the Forced Labour Convention, 1930 (No. 29).***

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

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

*Observation 2017*

The Committee notes the observations sent by the Autonomous Workers' Confederation of Peru (CATP) on 1 September 2016.

*Articles 1(1) and 2(1) of the Convention. Efforts to combat forced labour.* For a number of years, the Committee has been examining the steps taken by the Government to combat the various forms of forced labour that exist in Peru (debt bondage inflicted on indigenous peoples in the logging sector, situations of forced labour in the small-scale mining sector, trafficking in persons and the exploitation of women in domestic service). The Committee previously asked the Government to take steps to reinforce the capacities of the National Committee on Combating Forced Labour (CNLCTF); to implement the various components of the Second National Plan to Combat Forced Labour (PNLCTF-II); and to expand the national legislation by adopting provisions in criminal law that specifically criminalize forced labour and define its constituent elements so as to cover all forced labour practices that exist in the country. The Committee notes the adoption on 5 February 2017 of Legislative Decree No. 1323, which strengthens action against femicide, family violence and gender-related violence. The Committee notes with *satisfaction* that the Decree incorporates a number of provisions into the Penal Code which criminalize forced labour practices: sections 153-B and 153-C, which define what constitutes "sexual exploitation" and "slavery and other forms of exploitation" and establish penalties of imprisonment of ten to 15 years; and section 168-B, which criminalizes "forced labour", defining it as subjecting or obliging a person, by whatever means or against his/her will, to perform work or service, whether paid or not, and providing for imprisonment of six to 12 years.

(a) *National Plan to Combat Forced Labour (PNLCTF).* The Committee noted that the goal of the PNLCTF-II was the eradication of forced labour by 2017, through the fulfilment of three strategic objectives: training and awareness raising with regard to forced labour; the establishment of an integrated system to identify, protect and reintegrate victims; and the identification and reduction of vulnerability factors inherent in forced labour. The Committee asked the Government to provide information on evaluations undertaken as part of the monitoring and appraisal of the implementation of the PNLCTF-II and on the provision of the resources needed to achieve the set objectives.

The Government indicates in its report that it is unable to provide information on fulfilment of the objectives of the plan, since the various entities constituting the CNLCTF have not used the established format when providing information. The Government explains that the entities concerned will receive training in this respect. It adds that one of the priorities of the CNLCTF is to set up regional committees, particularly in areas at risk, and to draw up regional plans for combating forced labour. In this regard, the Committee notes the CATP's concern at the fact that the lack of funding prevents the implementation of actions planned under the PNLCTF-II or the strengthening of CNLCTF capacities at both national and regional levels. The CATP also notes with regret the lack of regional committees for combating forced labour, particularly in the regions containing the areas most at risk.

*The Committee trusts that the Government will be able in its next report to send full information on the implementation of the three strategic objectives of the PNLCTF-II and on any evaluation of the measures adopted in this context. It strongly encourages the Government once again to strengthen the capacities of the CNLCTF at both the national and regional levels. Recalling that it is essential to strengthen the State's presence in regions with a marked prevalence of forced labour, the Committee hopes that it will be possible to draw up regional plans for combating forced labour that take account of the specific features of forced labour situations that may exist in the various regions of the country.*

(b) *Diagnosis.* The Committee previously encouraged the Government to take all the necessary steps to ensure the production of a qualitative and quantitative survey to supplement the information already available on various forced labour practices, as provided for by the PNLCTF-II. In this regard, it observes that in March 2017 the Ministry of Employment and Employment Promotion (MTPE), the National Institute of Statistics and Information Technology (INEI) and the ILO signed a cooperation agreement aimed at collecting statistical information to discover the true extent of the problem of forced labour in the most "vulnerable" areas of the country. *The Committee hopes that the Government will take all possible steps to ensure that such data can be collected quickly for analysis and for communication to the competent authorities so that these authorities can better target their action, make appropriate use of human and financial resources, and ensure that victims are identified.*

(c) *Labour inspection.* The Committee previously underlined the need to take appropriate measures to ensure the proper functioning of the new Special Labour Inspection Unit for Combating Forced and Child Labour (GEIT). The Government indicates in this respect that the 15 labour inspectors who constitute this group are based in the Lima area and have the same financial and material resources as the other labour inspectors in this area. The Government provides statistics on inspections and advisory visits conducted between 2014 and 2016 in relation to forced and child labour. These data show that the GEIT inspections mainly focus on monitoring child labour. No information has been sent on the findings of these inspections, the regions targeted, or the nature of violations recorded or penalties imposed. The Government also indicates that, taking account of the results achieved, the National Labour Inspection Supervisory Authority (SUNAFIL) has begun a restructuring of the GEIT. Moreover, in April 2016, the protocol for action on forced labour drafted by SUNAFIL was adopted. This contains basic guidance to ensure coordinated and effective action by the labour inspection system in relation to the prevention and elimination of forced labour (guidelines for the preparation of interventions, indicators for identifying situations of forced labour, standard questions, etc.). Lastly, SUNAFIL is conducting different types of awareness-raising, prevention and training activities for combating forced labour at both the national and regional levels.

The Committee observes that the CATP states in its observations that SUNAFIL is faced with a lack of funding, even though the regions where forced labour is suspected are remote and dangerous and data collection and inspections are expensive. The CATP considers that the Government should therefore request the necessary budgets for inspections to be performed.

The Committee notes this information and recalls the key role of labour inspection in combating forced labour. *It requests the Government to continue its efforts and take all possible steps to ensure that the GEIT has adequate human and material resources to be able to cover the whole of the national territory quickly and effectively. Bearing in mind that as a result of inspections undertaken by the GEIT, it is possible to identify and release workers in situations of forced labour and to provide the courts with documents which will serve to launch civil and criminal proceedings against the perpetrators of these practices, the Committee requests the Government to provide detailed information on the number of inspections conducted, violations reported and administrative penalties imposed.*

*Article 25. Application of effective penalties.* The Committee previously underlined the need to supplement the criminal legislation in order to criminalize forced labour specifically and define the scope thereof so that the competent authorities have a greater capacity for conducting adequate investigations, instituting court proceedings and imposing penalties on perpetrators of the various forms of forced labour. It also emphasized the fact that, in order to reduce forced labour, it is essential that deterrent penalties are imposed on the perpetrators of such practices, in accordance with *Article 25* of the Convention. The Committee welcomes the provisions, including penalties, that have been incorporated into the Penal Code. *It hopes that the adoption of these provisions will be accompanied by appropriate measures to strengthen the capacity of the law enforcement authorities with a view to ensuring the detection of forced labour, the identification of victims and the provision of necessary protection. The Committee also requests the Government to provide detailed information on the measures adopted to this end and also on inquiries conducted, judicial proceedings initiated and penalties imposed on the basis of the new provisions of sections 168-B, 153-B and 153-C of the Penal Code.*

*The Committee trusts that the Government will continue taking all possible steps to prevent and effectively combat all forms of forced labour existing in the country. It hopes that the technical assistance of the Office – which the Government continues to receive, particularly through the Bridge Project in Peru, which aims to help strengthen national public policies for combating forced labour – will help the Government to achieve tangible progress in this respect and also to provide detailed information on the measures taken.*

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

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

The Committee notes the observations of the Autonomous Workers' Confederation of Peru (CATP), which were received on 14 September 2017. *The Committee requests the Government to provide its comments in this regard.*

*Article 2 of the Convention. Appropriate procedures.* The Government indicates in its report that the National Labour and Employment Promotion Council (CNTPE) was no longer meeting because the trade union confederations had suspended their participation. In this regard, the Committee notes the CATP's statement in its observations that since January 2017 the three trade union confederations (the CATP, the Single Confederation of Workers of Peru (CUT Perú) and the General Confederation of Workers of Peru (CGTP)) had decided to participate in the activities of the CNTPE covering 19 draft labour reforms proposed by the Government in relation to collective stoppages, labour inspection and voluntary arbitration, even though they considered that the proposed reforms reduced the rights of workers in the areas concerned. In March 2017, the confederations considered that the reforms were violating labour rights and that there was no consensus on the draft legislation, and so they withdrew from the CNTPE. Nevertheless, the CATP indicates that standards were approved relating to collective stoppages and labour inspection, the bills relating to those areas and to voluntary arbitration were submitted to the executive authority, prior to a tripartite meeting convened on 29 May 2017 by the Ministry of Labour with a view to renewing tripartite dialogue on the pending matters. The CATP adds that the bills did not take account of the confederations' input from January to March 2017. The CATP also indicates that, as a result, on 31 May 2017, the confederations informed the Ministry of Labour and Employment Promotion, by official letter No. 004-2017-CENT/SIND, of their decision to suspend their participation in the CNTPE and also in the National Occupational Safety and Health Council, and indicated that they were considering whether or not to withdraw from these bodies on a permanent basis. *The Committee hopes that the circumstances which are obstructing the functioning of the CNTPE will be resolved as soon as possible. The Committee requests the Government to provide information on the steps taken to ensure that the tripartite consultations held are effective, so that the CNTPE can resume its activities without delay.*

*Article 5. Effective tripartite consultations.* The Committee notes the Government's indication in its report that on 4 May 2017 it proposed to examine, within the CNTPE, the possibility of ratifying the Protocol of 2014 to the Forced Labour Convention, 1930. Accordingly, meetings between the social partners, chaired by the Directorate of Fundamental Rights at Work and Occupational Safety and Health, were held with the aim of examining the Protocol. The Government also indicates that draft reports are sent to the most representative organizations of employers and workers before they are sent to the ILO so that these organizations can send their observations in this regard. The Government adds that the observations made by the social partners are included in its reports. The CATP, for its part, maintains that the Government sends the reports to the workers' organizations with very little time for the latter to make their observations. The Committee recalls that, in order to be "effective", consultations must take place before final decisions are taken, irrespective of the nature or form of the procedures adopted. The important factor here is that the persons consulted should be able to put forward their opinions before the government takes its final decision. The effectiveness of consultations thus presupposes in practice that employers' and workers' representatives have all the necessary information far enough in advance to formulate their own opinions and make any comments that they consider appropriate (see General Survey of 2000 on tripartite consultation, paragraphs 31 and 93). *The Committee requests the Government to continue providing information on the consultations held on each of the matters relating to international labour standards referred to in Article 5(1) of the Convention. The Committee also expresses the hope, with regard to the procedures required by the Convention, that the Government will take steps to establish an adequate time frame to give employers' and workers' organizations sufficient notice to form their opinions and make any comments they consider appropriate with regard to the draft legislation communicated by the Government, in conformity with Article 5(1).*

**C159 - Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159)****Observation 2017**

The Committee notes the observations of the Autonomous Workers' Confederation of Peru (CATP), received on 14 September 2017. *The Committee requests the Government to send its comments in this regard.*

*Articles 2 and 3 of the Convention. Implementation of vocational rehabilitation and employment policies for persons with disabilities.* In reply to the Committee's previous comments, the Government refers once again in its report to the inclusion of the minimum 5 per cent quota of workers with disabilities in the public sector and 3 per cent in private sector companies employing more than 50 workers, and also the 15 per cent weighting included in the final score of selection processes for public competitions to promote the access of persons with disabilities to the labour market. The Committee notes the information supplied by the Government on the impact of the abovementioned measures. In particular, the Government indicates that, according to statistical information sent by the National Civil Service Authority (SERVIR), as of April 2017 there were 1,367 public servants with disabilities registered in the electronic payroll of the Ministry of Labour, which represents 0.1 per cent of all public sector workers. The Government adds that only 34 executive units in the public sector meet the 5 per cent recruitment quota for persons with disabilities, and most of these are municipalities with small numbers of workers. The Government indicates that in view of the difficulties encountered by public entities in fulfilling the abovementioned employment quota, the National Council for the Integration of Persons with Disabilities (CONADIS), in coordination with SERVIR, has been drawing up a proposal to amend the regulations implementing the General Act on persons with disabilities (No. 29973), with the aim of establishing clearly and precisely the procedure to be followed by state institutions to fulfil the abovementioned quota. Accordingly, the draft provides for the establishment of mechanisms for the dissemination of recruitment notices, the running of an employment exchange and the development of a database for persons with disabilities, detailing their academic training, knowledge and experience. However, the Committee notes that the CATP highlights in its observations the lack of adequate resources and inspections to ensure that the compulsory quotas established by Act No. 29973 are fulfilled. In this regard, the CATP indicates that the transfer of public sector inspection duties from the labour inspectorate to SERVIR has reduced inspection capacities, since SERVIR does not have the precise, centralized and up-to-date information to allow ongoing monitoring of compliance with the employment quota for persons with disabilities in the public sector. Moreover, the CATP indicates that most persons with disabilities in Peru have few educational qualifications and a high level of economic inactivity, and the majority work in the informal economy. It observes that the unemployment rate for persons with disabilities (12.1 per cent) is nearly four times higher than that of the population as a whole (3.7 per cent), and that eight out of ten enterprises do not hire persons with disabilities. The CATP affirms that such factors stem from the inadequate and patchy evaluation of the policies adopted to promote the access of persons with disabilities to the labour market. As regards the vocational retraining and rehabilitation services for persons with disabilities established under Act No. 29973, the CATP indicates that, according to information from CONADIS, only 61 per cent of persons with disabilities have access to such services. *The Committee requests the Government to provide up-to-date information on progress made regarding the adoption of the proposed amendments to Act No. 29973 aimed at facilitating compliance with the employment quota for persons with disabilities in the public sector. The Committee also requests the Government to continue sending up-to-date information on the impact of the measures adopted to promote job opportunities for persons with disabilities, including of a mental or intellectual nature, in the open labour market, in both the public and private sectors. The Committee also requests the Government once again to send summaries of studies or evaluations relating to rehabilitation and employment policies*

*and programmes for persons with disabilities, and information on other up-to-date indicators of the results achieved by the legislative measures and policies adopted in favour of persons with disabilities.*

*Article 5. Consultations with representative employers' and workers' organizations.* The CATP indicates in its observations that the consultation mechanisms established in Act No. 29973 do not guarantee adequate consultations with the organizations of persons with disabilities, since the consultations only occur through CONADIS. The CATP affirms that CONADIS only represents a small number of persons with disabilities. It also considers inadequate the pre-publication in accessible formats on the website of each entity of the regulatory proposals regarding job quotas and reasonable accommodation for persons with disabilities in the private sector, and also the holding of workshops with the objective that the persons concerned can make their contributions and observations. The CATP states that these procedures do not enable the needs of persons with disabilities to be known. *The Committee requests the Government to provide detailed information on the manner in which the representative organizations of employers and workers and also the representative organizations of persons with disabilities are consulted on the application and periodic revision of national policy for the occupational rehabilitation of persons with disabilities.*

*Article 8. Services in rural areas and remote communities.* For several years, the Committee has been asking the Government to provide information on the measures planned for the establishment and development of vocational rehabilitation and employment services for persons with disabilities in rural areas and remote communities. The Committee observes that the Government has still not replied to this request. *The Committee urges the Government to provide information in this regard.*

*Article 9. Training of qualified staff.* For several years, the Committee has been asking the Government to provide information on the training of suitably qualified staff for the vocational guidance, vocational training, placement and employment of persons with disabilities. The Committee observes that the Government has still not replied to this request. *The Committee urges the Government to provide information in this regard.*  
[The Government is requested to send a detailed report in 2018.]

## C169 - Indigenous and Tribal Peoples Convention, 1989 (No. 169)

### Observation 2017

The Committee notes the communication received in March 2017, through which the General Confederation of Workers of Peru (CGTP) communicated a comparative regional report of the Coordination of Indigenous Organizations of the Amazon Basin (COICAI). It also notes the observations of the Autonomous Workers' Confederation of Peru (CATP), received in November 2015, and the Government's comments in that respect of February 2017. It further notes that on 4 September 2015 the CGTP communicated the Alternative Report 2015 on compliance with the Convention prepared by seven national indigenous organizations with the support of the Indigenous Peoples Working Group of the National Coordinating Committee for Human Rights.

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

The Committee notes the report of the tripartite committee set up to examine the representation made under article 24 of the Constitution of the ILO by the International Trade Union Confederation (ITUC), the Trade Union Confederation of the Americas (TUCA) and the Autonomous Workers' Confederation of Peru (CATP) alleging non-observance by the Government of Peru of the Convention, which was approved by the Governing Body in June 2016.

*Article 3 of the Convention. Human rights and fundamental freedoms.* In its previous comments, with reference to the events that occurred in 2009 in the city of Bagua, the Committee emphasized the need to take measures to ensure that no force or coercion is used in violation of the human rights and fundamental freedoms of indigenous peoples. The Committee notes that in the representation examined in June 2016, the tripartite committee examined the information provided by the complainant organizations concerning the high levels of conflictuality and the criminalization of social protest, as well as the information provided by the Government on the various incidents. The tripartite committee deplored the murders and acts of violence reported in the representation and, while noting that investigations had been initiated, requested the Government to provide to the Committee of Experts detailed information on the specific progress made in each of the investigations into the deaths and incidents referred to by the complainant organizations in relation to the indigenous social protest between 2011 and 2014. The tripartite committee also deeply regretted the murder of four leaders of the Alto Tamaya – Saweto indigenous community on 1 September 2014 and observed that such acts require severe measures by the authorities. The Committee also notes that the Alternative Report 2015 criticizes campaigns which endeavour to tie claims and protests to subversive movements and expresses concern at the abuse of force.

In the same way as the tripartite committee, the Committee of Experts *deplores* the deaths and acts of violence referred to in the representation. The Committee recalls that respect for the collective rights of indigenous peoples recognized in the various parts of the Convention is an essential element in creating a climate of trust between the authorities and indigenous peoples and in guaranteeing cohesion and social peace through inclusion and dialogue. *The Committee urges the Government to continue taking the necessary measures to determine responsibilities and punish those guilty of the murders of the four leaders of the Alto Tamaya – Saweto indigenous community. It requests the Government to provide detailed information on the specific progress made in the investigations into the murders and other cases of violence referred to in the representation with a view to determining responsibilities and punishing those found guilty. The Committee also requests the Government to take the necessary measures to ensure that indigenous peoples are able to exercise fully in freedom and security the rights set out in the Convention and to ensure that no form of force or coercion is used in violation of the human rights and fundamental freedoms of indigenous peoples.*

*Article 6. Consultation.* In its previous comments, the Committee considered that the adoption of Act No. 29785 on the right to prior consultation of indigenous and native peoples constituted progress in the establishment of effective consultation mechanisms that take into account the visions of governments and indigenous and tribal peoples concerning the procedures to be followed to give effect to the Convention. In accordance with the Act, the Vice-Ministry for Intercultural Affairs includes in its functions organizing dialogue and articulating and coordinating state policy on the implementation of the right to prior consultation. In accordance with section 9, state bodies are required to identify proposed legislative or administrative measures that are directly related to the collective rights of indigenous and native peoples with a view to holding consultations when it is concluded that there may be a direct effect on their collective rights. Section 3 of the Regulations of the Act provides that the public body responsible for adopting legislative or administrative measures that will be the subject of consultation shall be the initiating institution. The Committee invites the Government to provide information on the consultations held by initiating institutions, and particularly on the consultations held on proposals for legislative or administrative measures which may affect directly the collective rights of indigenous peoples.

The Committee takes due note of the information provided by the Government on the training workshops held on the exercise of the right to consultation and the legal tools to guarantee these rights which were designed and developed with representatives of indigenous organizations. For example, in 2014, a total of 61 training workshops were held in which over 3,634 persons participated (67 per cent of whom were indigenous leaders) in the departments of Loreto, Ucayali and Junín. The Government also indicates that the Vice-Ministry for Intercultural Affairs provided technical assistance in this context to public institutions in relation to the procedures for prior consultation. With reference to the consultation processes held, the Government provides detailed information on the 22 consultation processes organized since the entry into force of Act No. 29785, which were related, among other subjects, to exploration and exploitation contracts (such as the renewal of the oil concession in lot 192), the Regulations of the Act on forestry and forest fauna, the Intercultural Sectoral Health Policy and the National Plan for Bilingual Intercultural Education. Representatives of the seven national indigenous organizations participated in these processes, and agreements were reached in 20 of them between the State and the indigenous peoples involved.

The Committee notes the difficulties referred to in the Alternative Report 2015 respecting effective compliance with the right of consultation related to the lack of knowledge of indigenous matters by the officials responsible for the process, and the limitations of indigenous organizations (inadequacy of financial and logistical resources, lack of technical knowledge in the various areas). The view is expressed in the Alternative Report that the imbalance in the relations between the State and indigenous peoples is resulting in consultation processes becoming merely procedural.

*The Committee encourages the Government to continue making every effort to hold meaningful and substantive consultations with indigenous peoples on each occasion that legislative or administrative measures are planned that may affect them directly, and requests the Government to provide updated information on this subject. It also requests the Government to continue taking measures to improve the training provided to indigenous peoples, and to the officials responsible and other actors on the objectives, stages and importance of consultation processes, and to report on any measures intended to establish appropriate mechanisms through which indigenous peoples can participate fully in the consultation processes.*

*Articles 6, 7 and 15. 1. Consultations prior to undertaking or authorizing mining concessions.* The Committee previously requested the Government to provide examples of projects submitted to the Ministry of Energy and Mining which required prior consultation and the participation of the peoples concerned in the benefits deriving from such activities. The Committee notes that, in the context of the representation examined by the tripartite committee in 2016, the complainant organizations considered that mining concessions were granted without holding consultation processes with the peoples concerned and without evaluation of the territory for which the concession was granted. In this connection, the Government indicates that a mining concession is a title which grants the exclusive right of exploration and exploitation of mineral resources in a specific area, but does not authorize the commencement of exploration or exploitation activities. Nor does it produce direct effects on the collective rights of indigenous peoples and therefore does not require the organization of a prior consultation process before the concession is granted. The Government adds that the situations in which it is necessary to hold prior consultations are the granting of beneficiary concessions, the authorization of the commencement of exploration in mining concessions and the authorization of the commencement of exploitation in metal and non-metal mining concessions. In this regard, the Committee notes the Government's indications in its report that 95 applications were made to the General Directorate of Mining between 2014 and 2015 for authorization to commence exploration activities, seven applications for beneficial concessions and 26 applications for authorization to commence exploitation. The administrative authority noted that the rural communities encountered did not meet the criteria for identification as indigenous peoples, for which reason prior consultations were not held. The Committee considers that it is important to identify the indigenous communities on whose lands mining concessions are sought and to involve them as early as possible in decision-making processes relating to the granting of mining concessions. *The Committee requests the Government to indicate how the established procedures allow proper identification of indigenous peoples whose interests might be affected by the mining concessions. The Committee also requests the Government to provide information on the consultations held with the representatives of the indigenous peoples concerned prior to undertaking or authorizing any programmes of prospection or exploitation of mining resources, with a view to determining whether and to what extent the interests of these peoples would be prejudiced. Furthermore, the Committee requests the Government to continue providing information on the number of applications made to the General Directorate of Mining for authorization to commence exploration and/or exploitation, the number of instances in which consultations were held with representatives of indigenous peoples, as well as information on any disputes arising from these processes.*

*2. Regulation of mining and hydroelectricity.* In its previous comments, the Committee noted that the Environmental Evaluation and Inspection Agency (OEFA) is responsible for imposing corrective and preventive measures to alleviate and reduce the environmental hazards of operations and facilities established in the context of investment projects. It requested the Government to indicate the manner in which this new environmental inspection system has contributed to protecting and preserving the environment of the territories inhabited by the peoples concerned.

In its report, the Government refers to the measures adopted to reinforce participation by citizens in environmental monitoring under the responsibility of the OEFA, and the supervisory and inspection functions of the OEFA. The Committee notes that the Government has not provided specific information on the activities undertaken by the OEFA. Nor has it provided information on cases of environmental contamination and of lack of prior consultation respecting exploitation and exploration activities for natural resources on indigenous lands referred to in the Alternative Report 2013, on which the Committee requested information. The Committee notes in this regard that both the Alternative Report 2015 and the 2017 observations of the CGTP indicate that the adoption of "Environmental Packages" consisting of a series of legislative provisions introducing greater flexibility into environmental standards that protect the rights of indigenous peoples and the environment. The communications indicate that a series of decrees and laws have been adopted to facilitate the access to lands of public and private investment projects which would affect the rights of indigenous peoples. *The Committee requests the Government to provide its comments on this subject and to specify the manner in which the cooperation of the peoples concerned is secured in the preparation of environmental impact studies (Articles 7 and 15).*

*3. Legislation respecting consultation, participation and cooperation.* The Committee noted previously that taxation and budgetary rules are not subject to consultation (section 5(k) of the Regulations of the Act on the Right to prior consultation). It also noted that the Regulations do not require consultation on any exceptional or temporary decisions by the State to address emergency situations arising out of natural or technological disasters (section 5(l) of the Regulations) or administrative measures considered to be supplementary (12th supplementary, transitional and final provision of the Regulations). The current legislation has also left pending the adoption of implementing legislation respecting machinery for participation and for participation in benefits (fifth and tenth supplementary, transitional and final provisions of the Regulations), which are required by the Convention. In this regard, the Committee notes the request made in the Alternative Report 2015 for the derogation of the exceptions envisaged in the Regulations.

*The Committee requests the Government, in consultation with indigenous peoples and other stakeholders concerned, to adopt the necessary legislative measures and to make the necessary revisions to the legislation in force, taking into account that they do not give full effect to the provisions respecting the participation and cooperation of indigenous peoples set out in Article 6(1)(b) and (c), Article 7 and Part II (Lands) of the Convention.*

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

## C008 - Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8)

### Observation 2017

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

*Article 1(1) of the Convention. Definition of the term "seafarer".* The Committee notes that section 2 of the Shipping Act 1994 (Cap.13.27), as last amended in 2001, excludes masters from the definition of the term "seaman". In this connection, the Committee recalls that this Article of the Convention defines the term "seamen" to include "all persons employed on any vessel engaged in maritime navigation". It is therefore of the view that this provision of the Shipping Act is not in conformity with the Convention, and that the indemnity provided for under the national legislation should be made available to all crew members employed on board vessels regardless of their position or grade, thus including masters. *The Committee requests the Government to take the necessary action without further delay in order to bring the Shipping Act in line with the Convention in this respect.*

*Article 1(2). Definition of the term "vessel".* The Committee notes that section 3(1) of the Shipping Act excludes from its scope of application government ships operated for non-commercial purposes. In this connection, it recalls that this Article of the Convention defines the term "vessel" to include all ships and boats, of any nature whatsoever, engaged in maritime navigation, whether publicly or privately owned, and permits only the exception of warships. *The Committee therefore requests the Government to take appropriate steps in order to align its legislation with the requirements of the Convention as regards the scope of application of the unemployment indemnity in case of shipwreck.*

*Article 2. Payment of unemployment indemnity.* Further to its previous comments, the Committee observes that section 154(1) of the Shipping Act provides that, in the event of wreck, or loss of the ship, proof that the seafarer has not exerted himself or herself to the utmost to save the ship, cargo and stores shall bar his or her claim for wages. *As such a condition is not authorized or contemplated by the Convention, the Committee is bound to once more ask the Government to take measures in the very near future in order to amend this provision of the Shipping Act.*

*The Committee notes that a number of provisions of the Shipping Act 1994 (Cap. 13.27) have been amended by the Shipping (Amendment) Act, No. 14 of 2016. It notes, however, that no amendments have been made to the abovementioned provisions and that, therefore, an opportunity has been missed to bring the Act in conformity with the Convention as repeatedly requested by the Committee.*

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

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

### Observation 2017

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

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

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

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

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

### Observation 2017

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

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

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

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

### Observation 2017

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 2014. The Committee also notes that the Government had been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

*Article 1(a) of the Convention. Definition of remuneration.* The Committee recalls that the Equality of Opportunity and Treatment in Employment and

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

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

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

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

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

### *Observation 2017*

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.

*Article 1 of the Convention. Work of equal value.* The Committee notes with regret the Government's indication that there has been no progress regarding the matter of amending section 3(1) of the Equal Pay Act of 1994, which provides for "equal pay for equal work" and is therefore not in conformity with the principle of equal remuneration for men and women for work of equal value. ***The Committee requests the Government once again to take steps to amend section 3(1) of the Equal Pay Act without further delay in order to ensure that the legislation provides for equal remuneration for men and women for work of equal value, as specified in the Convention; and to provide information on any progress achieved in this regard.***

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

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

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

### *Observation 2017*

The Committee notes with *regret* that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2013. 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 3(d) and 4(1). Hazardous work.* The Committee previously noted that the Employment of Women, Young Persons and Children Act (EWYPC Act), did not contain a general prohibition on the employment of children below 18 years of age in hazardous work, other than the prohibition on night work in any industrial undertaking (section 3(2)) nor a determination of hazardous types of work prohibited to children under 18 years of age.

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

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

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

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

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

### Observation 2017

*Article 2 of Convention No. 42. List of occupational diseases.* For many years, the Committee has been requesting the Government to include the "loading and unloading or transport of merchandise" among the activities likely to cause anthrax infection in the list of occupational diseases established by section 25 of the Industrial Accidents Act (IAA), in accordance with Convention No. 42. Since 2006, the Government has been indicating that the IAA and other national Occupational Safety and Health (OSH)-related laws are under revision. The Committee notes that, in its report, the Government indicates that a new commission has been put in place to examine the said revision, including the inclusion of anthrax infections due to loading and unloading of transport and merchandise. The commission was expected to produce a first draft of the new legislation by March 2017. *The Committee requests the Government to indicate whether the said changes to the list of occupational diseases have been included in the draft provisions produced by this commission and to provide a copy of the draft. It also requests the Government to report on any new steps taken in the review process. Noting the Government's indication that it is willing to avail itself of ILO technical assistance during the review process, the Committee firmly hopes that, with the assistance of the Office, the Government will be able to report progress made in giving effect to the Convention.*

*Article 7 of Convention No. 17. Additional compensation for the constant help of another person.* For many years, the Committee has been pointing to the fact that no measures have been taken to include provisions on additional compensation, in cases where an accident incapacitates a worker in a way that he or she needs the constant help of another person, in line with *Article 7* of Convention No. 17. The Committee notes the Government's indication that still no concrete actions have been taken in this regard, but that the issue is being considered as part of the abovementioned ongoing review process of the OSH-related legislation. *The Committee requests the Government to indicate whether provisions on additional compensation for the constant help of another person have been included in the draft prepared by the new commission so as to ensure conformity with the provisions of the Convention and to provide information on any new developments in this regard.*

*Conclusions and recommendations of the Standards Review Mechanism.* The Committee notes that, at its 328th session in October 2016, the Governing Body of the ILO adopted the conclusions and recommendations formulated by the Standards Review Mechanism Tripartite Working Group (SRM TWG), recalling that Conventions Nos 17 and 42 to which Suriname is party are outdated and charging the Office with follow-up work aimed at encouraging States party only to these Conventions to ratify the Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121), and/or the Social Security (Minimum Standards) Convention, 1952 (No. 102), and accept the obligations in its Part VI, as these represent the most up-to-date instruments in this subject area. The Committee also reminds the Government of the availability of ILO technical assistance in this regard.

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

### Observation 2017

*Article 2 of Convention No. 42. List of occupational diseases.* For many years, the Committee has been requesting the Government to include the "loading and unloading or transport of merchandise" among the activities likely to cause anthrax infection in the list of occupational diseases established by section 25 of the Industrial Accidents Act (IAA), in accordance with Convention No. 42. Since 2006, the Government has been indicating that the IAA and other national Occupational Safety and Health (OSH)-related laws are under revision. The Committee notes that, in its report, the Government indicates that a new commission has been put in place to examine the said revision, including the inclusion of anthrax infections due to loading and unloading of transport and merchandise. The commission was expected to produce a first draft of the new legislation by March 2017. *The Committee requests the Government to indicate whether the said changes to the list of occupational diseases have been included in the draft provisions produced by this commission and to provide a copy of the draft. It also requests the Government to report on any new steps taken in the review process. Noting the Government's indication that it is willing to avail itself of ILO technical assistance during the review process, the Committee firmly hopes that, with the assistance of the Office, the Government will be able to report progress made in giving effect to the Convention.*

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

### Observation 2017

*Article 2 of the Convention. Insertion of labour clauses in public contracts.* Further to its previous comments regarding the absence of legislation implementing the Convention, the Committee notes the Government's reference to the standards for the procurement of works (AWS, 1996) and the standards for the administrative execution of works (UWS, 1996). The Government reports that, in July 2017, referring to the Committee's comments, the Minister of Labour recommended to the Vice-President of Suriname and the Minister of Public Works, Transport and Communication that an article be included in the UWS and/or the AWS stating that the national labour legislation will be applicable to all public contracts and calling for a clause to be included in all public contracts regarding the applicability of the national labour legislation in the execution of such contracts. Moreover, the Committee notes the Government's statement with regard to the Public Capital Expenditure Management Programme financed by the Inter-American Development Bank that no legislative proposal has yet been submitted to the National Assembly to unify and consolidate in law the principles and key regulations developed in the framework of the Programme. The Committee wishes to draw the Government's attention once again to the main purpose of the Convention, which is to ensure the insertion in public contracts of labour clauses of a very specific content. In its 2008 General Survey on labour clauses in public contracts, paragraph 45, the Committee noted that "... the essential purpose of the Convention is to ensure that workers employed under public contracts shall enjoy the same conditions as other workers whose conditions of employment are fixed not only by national legislation but also by collective agreements or arbitration awards, and that in many cases the provisions

in the national legislation respecting wages, hours of work and other conditions of employment provide merely for minimum standards which may be exceeded by collective agreements. The Committee therefore feels that the mere fact of the national legislation being applicable to all workers does not release the States which have ratified the Convention from the obligation to take the necessary steps to ensure that public contracts contain the labour clauses specified in Article 2 of the Convention." Through the insertion of appropriate labour clauses in public contracts, workers employed on such contracts enjoy wages and other working conditions that are at least as satisfactory as those normally established for the type of work concerned, whether they are established by collective agreement or otherwise, in the locality where the work is being done (2008 General Survey, paragraph 40). The idea behind the Convention is that public authorities contracting for the execution of public works or the supply of goods and services should concern themselves with the working conditions under which these operations are carried out, due to the fact that government contracts are typically awarded to the lowest bidder and contractors may be tempted, in light of the competition involved, to economize on labour costs (2008 General Survey, paragraph 2). In paragraph 308 of its 2008 General Survey, the Committee notes that that in the light of the greater impact of globalization on an increasing number of member States and the related heightening of competitive pressures, the objectives of the Convention are even more valid today than they were 60 years ago and strengthen the ILO's call for fair globalization. ***The Committee therefore urges the Government to take steps without delay to bring its law and regulations into full conformity with the Convention. The Committee also requests the Government to provide information on the progress achieved in this regard.***

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

### ***Observation 2017***

*Articles 4, 5 and 7 of the Convention. Equality of treatment of workers living abroad.* Referring to its long-standing comments regarding the need to amend section 6(8) of the Industrial Accidents Act (IAA), which, contrary to the Convention, restricts payment of employment injury pensions to beneficiaries residing abroad, the Committee notes the Government's indication that a Committee charged with reforming the legislation on occupational safety and health (OSH) will also attempt amending the IAA in order to bring it into conformity with the Convention. As regards in particular the payment of certain benefits in case of residence abroad guaranteed by *Article 5* of the Convention, the Government indicates that it is currently reviewing the practical implementation of this provision as making the benefits payable abroad is rendered difficult by the high cost of monthly bank transfers.

The Committee wishes to point out in this respect that *Articles 4 and 5* of the Convention guarantee the payment of, inter alia, employment injury benefits to nationals and foreign workers from countries which also accepted the obligations of the Convention as regards employment injury benefits who reside abroad. The Committee further observes that, for the purpose of giving effect to the obligations derived from the Convention, *Article 7(1)* thereof requires the Members' party to the Convention to endeavour to participate in schemes for the maintenance of the acquired rights and rights in course of acquisition. Such agreements may also stipulate the financial arrangements for the payment of benefits to beneficiaries residing on the territory of each of the contracting parties. ***The Committee therefore requests the Government to indicate whether provisions on the payment of employment injury benefits to workers protected under the Convention and living abroad have been included in the draft prepared by the new OSH commission. The Committee firmly hopes that the ongoing review process will, in the near future, lead to a change of the national legislation and practice concerning the payment of benefits to workers living abroad including by way of concluding agreements with countries in its region, who equally ratified the Convention and accepted its Part (g), such as Brazil, Ecuador, Mexico, Uruguay or the Bolivarian Republic of Venezuela, to facilitate the payment of benefits to these countries, including through the conclusion of bilateral agreements as the case may be.***

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

### ***Observation 2017***

*Article 5 of the Convention. Effective tripartite consultations.* In its previous comments, the Committee requested the Government to provide information on progress made towards the establishment of the ILO Commission of the Labour Advisory Board (AAC) and on the content and outcome of the tripartite consultations held on the matters concerning international labour standards covered by the Convention. The Government reports that the ILO Commission, a tripartite consultative body within the AAC, was established in 2015 and is currently operating. The Government indicates that the submission documents concerning the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), were submitted to the ILO Commission for advice, its input was taken into account, and the amended documents were to be submitted to the Council of Ministers. The Committee further notes the Government's indication that the reports submitted to the ILO under article 22 of the ILO Constitution in 2016 and 2017 were also submitted for comments to the ILO Commission. The Government indicates that the AAC did not convene special meetings to evaluate unratified Conventions or to discuss questions arising out of reports to be submitted under article 22 of the ILO Constitution. In addition, the questionnaire on the abrogation and withdrawal of Conventions Nos 4, 15, 28, 41, 60 and 67 was not submitted to the AAC for review by the ILO Commission; however, the Government indicates that it consulted the social partners prior to submitting its response to the questionnaire. It adds that, during the reporting period, the AAC focused on reviewing labour legislation, including: amendments to the Act regulating the Labour Advisory Board and to the Labour Inspection Act; a modernized Collective Bargaining Act and new Freedom of Association Act; a modernized Labour Exchange Act; and a new Act on Private Employment Agencies, all of which have been adopted by the National Assembly. The Government states that the National Assembly has placed another series of seven laws on the agenda of the AAC for review. The Committee also takes note of the 2014 report of the Ministry of Labour, Technological Development and Environment on Tripartism in Suriname, which emphasizes the importance of tripartite consultation and social dialogue in the country and describes the various tripartite bodies and their functions. ***The Committee requests the Government to provide comprehensive up-to-date information on the content and outcome of tripartite consultations held within the AAC and the ILO Commission on all matters concerning international labour standards covered by Article 5(1)(a)-(e) of the Convention.***

**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.

*Articles 1 and 2 of the Convention. Assessing and addressing the gender pay gap.* The Committee notes from the statistics provided by the Government on the average monthly income by sex and occupational group that in 2012 the gender pay gap between men and women ranged from 10 per cent (for technician and associate professionals) to 41.8 per cent (for service and shop sales workers). The statistics concerning the average monthly income by sex and industry also show a gender pay gap in favour of men (except in construction), ranging from 1.7 per cent in the transport, storage and communication industry to 50 per cent in the sugar industry in 2010. The Committee welcomes the increase of the national minimum wage as of January 2011, and recalls that women generally predominate in low-wage employment, and that a uniform national minimum wage system helps to raise the earnings of the lowest paid, which has an influence on the relationship between men and women's wages and on reducing the gender pay gap (see General Survey on the fundamental Conventions, 2012, paragraphs 682–685). *Noting that in its report, the Government commits to addressing the gender pay gap and occupational gender segregation, the Committee requests the Government to provide information on the concrete steps taken and the progress made in this regard. Please continue to provide detailed statistical data on the earnings of men and women according to occupational group and industry, as well as information on the minimum wage.*

*Equal remuneration for work of equal value. Legislation.* The Committee recalls that the Equal Opportunity Act, 2000, contains no specific provisions regarding equal remuneration for men and women for work of equal value. The Government indicates that, in giving effect to the Act, the courts would treat unequal remuneration for men and women for work of equal value as sex-based discrimination. It further indicates that the Equal Opportunity Commission (EOC) acknowledges that the concept of "work of equal value" lies at the heart of the fundamental right to equal remuneration for men and women for work of equal value and the promotion of equality. While noting the Government's indications, the Committee would like to recall that only prohibiting sex-based wage discrimination is normally not sufficient to implement effectively the principle of the Convention as it does not capture the concept of "work of equal value". *The Committee once again urges the Government to take steps to give full legislative expression to the principle of equal remuneration for men and women for work of equal value and to provide information on any progress in this regard.*

*Collective agreements.* Since 2000, the Committee has been asking the Government to provide information on the progress made in removing sex discriminatory clauses from collective agreements. The Committee notes that the report once again contains no information in this respect. The Committee notes with *regret*, however, that in the new collective agreement on wages and conditions of service for hourly, daily and weekly rates employees employed in the Port-of-Spain Corporation for 2011–13, sex-specific terminology remains in use to describe a category of workers in the schedule of wage rates which are not gender-neutral (for example, greaseman, batteryman, watchman, handyman, charwoman, female scavenger, labourer (female), labourer (male), etc.). The Committee wishes to recall that, in specifying different occupations and jobs for the purpose of fixing wage rates, gender-neutral terminology should be used to avoid stereotypes as to whether certain jobs should be carried out by a man or a woman (see General Survey, 2012, paragraph 683). *The Committee asks the Government to indicate how it is ensured that, in determining wage rates in collective agreements, the principle of equal remuneration for men and women for work of equal value is effectively taken into account by the social partners and applied, and the work performed by women is not being undervalued in comparison to that of men who are performing different work and using different skills but that is overall of equal value. The Committee also asks the Government to provide information on the progress made in removing sex discriminatory clauses from collective agreements, and to take steps, in collaboration with the employers' and workers' organizations, to promote the use of gender-neutral terminology in referring to the various jobs and occupations in the collective agreements.*

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.

*Article 1(1)(a) of the Convention. Discrimination based on sex.* For nearly 20 years, the Committee has been expressing concern about the discriminatory nature of several provisions providing that married female officers may have their employment terminated if family obligations affect the efficient performance of their duties. In this regard, the Committee welcomes the Government's indication that Regulation 57 of the Public Service Commission Regulations was revoked in 1998 and Regulation 58 of the Statutory Authorities Service Commission Regulations was revoked in 2006. The Government also indicates that Regulation 52 of the Police Commission Regulations, which provides that the appointment of a married female police officer may be terminated on the ground that her family obligations are affecting the efficient performance of her duties, will be put before the Police Service Commission for consideration. The Committee further recalls the potentially discriminatory impact of section 14(2) of the Civil Service Regulations, which requires a female officer who marries to report the fact of her marriage to the Public Service Commission. *The Committee requests the Government to take the necessary steps to revoke Regulation 52 of the Police Commission Regulations to eliminate this long-standing discriminatory provision, and to provide information on any progress made in this regard. The Committee also requests the Government to provide information on the measures taken to amend section 14(2) of the Civil Service Regulations to eliminate any potentially discriminatory impact, for example by requiring notification of name changes for both men and women.*

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.*

**C125 - Fishermen's Competency Certificates Convention, 1966 (No. 125)****Observation 2017**

*Implementing legislation on fishers' competency certificates.* The Committee had noted in its previous comment the absence of laws and regulations giving effect to the requirements of the Convention and had requested the Government to provide a copy of the Safety of Fishing Vessel Regulations which was under preparation. The Committee *regrets* to note the Government's indication in its report that the regulations governing all aspects of fishing vessel operations, including fishers' certificates of competency, are still being developed by the Ministry of Works and Transport. *The Committee therefore urges the Government to adopt the relevant laws and regulations without delay to give full effect to the requirements of the Convention, in particular those regarding fishers' minimum age to obtain certificates of competency, professional experience and examinations.*  
[The Government is asked to reply in full to the present comments in 2019.]

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

*Article 2(3) of the Convention. Age of completion of compulsory schooling.* The Committee previously noted that, pursuant to section 76(1) of the Education Act of 1966, compulsory schooling took place between the ages of 6 and 12 years. The Committee emphasized the desirability of linking the age of completion of compulsory schooling to the age of admission to employment (16 years). The Committee noted the Government's statement that the draft of the Children's Bill included amendments to the Education Act. In this regard, the Committee noted that the draft Children's Bill sought to amend section 76(1) of the Education Act to define the period of compulsory schooling as between the ages of 5 and 16 years. The Committee also noted the Government's indication that the Children's Act, 2012, including this amendment, would only become effective once proclaimed on the date fixed by the President, in accordance with section 1(2) of the Act.

The Committee notes with *satisfaction* that Schedule 3 of the Children's Act, 2012, which was proclaimed on 15 May 2015, has amended section 76(1) of the Education Act so as to raise the age of completion of compulsory education to 16, in line with the age of admission to employment or work. *The Committee requests that the Government provide information on the application in practice of section 76(1) of the Education Act, including updated statistics on school enrolment rates and drop-out rates of children below the age of 16 years.*

*Article 3(1) and (2). Minimum age for admission to, and determination of, hazardous work.* *With regard to the list of hazardous types of work prohibited to children under 18 years of age, the Committee refers to its detailed comments under the Worst Forms of Child Labour Convention, 1999 (No. 182).*

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 3 of the Convention. Worst forms of child labour. Clauses (b) and (c). Use, procuring or offering a child for the production of pornography or for pornographic performances and for illicit activities.* The Committee previously urged the Government to take the necessary measures to ensure that the Children's Act, 2012, was proclaimed in order to prohibit the use, procuring or offering of children under 18 years of age for the production of pornography or for pornographic performances and for the production and trafficking of drugs.

The Committee notes with *satisfaction* that the Children's Act, 2012, was proclaimed on 15 May 2015. Section 40 thereof provides that a person who makes, or permits any child pornography to be made, or publishes, distributes, possesses, purchases or exchanges child pornography, commits an offence and is liable upon conviction to a fine of 30,000 Trinidad and Tobago dollars (TTD) (approximately US\$4,400) and to imprisonment for ten years. Section 37 of the same Act provides that a person who uses a child or causes a child to be used as a courier, in order to sell, buy or deliver a dangerous drug or substance commits an offence and is liable, on summary conviction, to a fine of TTD50,000 (approximately US\$7,400) and imprisonment for ten years, or on conviction on indictment, to a fine of TTD100,000 (approximately US\$14,800) and to imprisonment for 20 years. *The Committee requests the Government to provide information on the application in practice of sections 37 and 40 of the Children's Act, 2012, including the number of investigations conducted, prosecutions, convictions and penal sanctions applied.*

*Article 4(1). Determination of hazardous work.* The Committee previously noted the Government's statement that work had begun to create a list of hazardous occupations. The Committee noted the Government's statement that a governmental delegation attended the ILO Sub regional Workshop on the Elimination of Hazardous Child Labour for Select Caribbean Countries in October 2011. It noted that the report of this delegation would contain recommendations to assist in the development of a list of occupations deemed hazardous.

The Committee notes the Government's indication in its report that it recognizes that the list of hazardous occupations as outlined in Convention No. 182 requires consultation with its stakeholders, including social partners, in particular in light of the recent proclamation of the Children's Act, 2012. In this regard, it will continue its work on the development of the list of hazardous occupations. *Recalling that, pursuant to Article 1 of the Convention, each member that ratifies the Convention shall take immediate measures to ensure the prohibition of the worst forms of child labour as a matter of urgency, and noting that work on the list of occupations deemed hazardous to children has been ongoing since 2004, the Committee once again urges the Government to take the necessary measures to ensure the adoption of this list in the very near future, following consultation with the social partners. It once again requests the Government to provide a copy of this list once it has been adopted.*

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*

The Committee notes the observations of the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO), received with the Government's report.

*Article 1(d) of the Convention. Sanctions involving compulsory labour for participation in strikes.* In its previous comments, the Committee noted that, pursuant to article 12, section 95–98.1, of the North Carolina General Statutes, strikes by public employees are declared illegal and against the public policy of the State. Under section 95–99, any violation of the provisions of article 12 is declared to be a class 1 misdemeanour. Under section 15A-1340.23, read together with section 15A-1340.11 of Chapter 15A (Criminal Procedure Act), a person convicted of a class 1 misdemeanour may be sentenced to “community punishment” and, upon a second conviction, to “active punishment”, that is, imprisonment. In this regard, the Committee noted the information in the Compendium of Community Corrections Programs in North Carolina (published by the North Carolina Sentencing and Policy Advisory Commission) indicating that the imposition of community punishment may include assignment to the State's Community Service Work Program, which requires the offender to work for free for public or non-profit agencies in an area that will benefit the greater community. The Committee also noted that article 3 (Labor of Prisoners), section 148-26, of Chapter 148 (State Prison System) states that it is the public policy of the State of North Carolina that all able-bodied prison inmates shall be required to perform diligently all work assignments provided for them. In response, the Government indicated that the Committee's observations had been forwarded to the authorities in North Carolina and that it had requested these authorities to provide information on any steps taken by the state government relating to these comments.

The Committee once again notes the Government's indication in its report that state court records do not reveal a single instance in which an individual has been convicted for engaging in an illegal public sector strike. The Government reiterates that, in the unlikely event that an individual were to be convicted, North Carolina law would not require the judge to order the illegal striker to perform work in violation of the Convention. Rather, the judge would have the discretion whether to order the convicted individual to perform work and can choose to impose only a fine.

The Committee further notes the comments of the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO) according to which states are obliged under the Convention to abolish all penalties involving any form of compulsory labour which may be imposed as a punishment for having participated in strikes, and this obligation extends to both legislation and practice. As sections 95–98.1 and 95–99 might have a chilling effect on public sector workers who might otherwise decide to engage in strikes, these provisions should be repealed or amended.

Observing that it has been raising this issue for more than a decade, the Committee must once again recall that *Article 1(d)* of the Convention prohibits the use of any form of forced or compulsory labour as a punishment for having participated in strikes. Referring to the explanations contained in paragraph 315 of its 2012 General Survey on the fundamental Conventions, the Committee recalls that, regardless of the legality of the strike action, any sanctions imposed should not be disproportionate to the seriousness of the violations committed, and that in both legislation and practice, no sanctions involving compulsory labour should be imposed for the mere fact of organizing or peacefully participating in strikes. ***The Committee therefore once again requests the Government to take the necessary measures to bring the North Carolina General Statutes into conformity with both the Convention and the indicated practice, in ensuring the repeal or amendment of sections 95–98.1 and 95–99, so as to ensure that penalties of compulsory labour (through the Community Service Work Program or during imprisonment) cannot be imposed for participation in a strike. The Committee hopes that in its next report the Government will be in a position to provide information on the progress achieved in this regard.***

*Article 1(e) of the Convention. Racial discrimination in the exaction of compulsory prison labour.* In its previous comments, the Committee noted the information from the US Department of Justice showing the significant over representation of African Americans and Latinos/Hispanics within US prison populations. It also noted that a prison sentence in the United States normally involves an obligation to perform labour. The Committee recalled that, even where the offence giving rise to the punishment is a common offence which does not otherwise come under the protection of *Article 1(a), (c) or (d)* of the Convention, but the punishment involving compulsory labour is meted out more severely to certain groups defined in racial, social, national or religious terms, this situation is in violation of the Convention. In this regard, the Committee noted the Government's statement that it was committed to working to root out any unwarranted and unintended disparities that may exist in the criminal justice process. It noted the Government's statement that no legislative action was taken on either the Justice Integrity Act of 2011 which sought to address any unwarranted racial and ethnic disparities in the criminal process, or the Byrne/JAG Programme Accountability Act, which would require states and local governments receiving certain federal law enforcement grants to implement policies and practices to identify and reduce racial and ethnic disparities in the criminal justice system, but that other bills, which relate to the issues raised by the Committee, were pending before Congress. It further noted initiatives undertaken by several states.

The Committee notes the Government's statement in its report that it remains committed to ensuring that the criminal laws, and criminal law enforcement, do not discriminate on the basis of race. The Committee also notes the Government's statement that both the Justice Integrity Act of 2011 and the Byrne/JAG Programme Accountability Act were reintroduced in the House of Representatives in January 2014, but neither bill was referred out of subcommittee. The Government indicates that other bills, which relate to the issues raised by the Committee are pending before Congress. The Government also indicates that it continues to implement the Juvenile Justice and Delinquency Prevention Act of 2002, which requires states participating in the US Department of Justice's Formula Grants Program to undertake efforts designed to reduce the disproportionate number of juvenile members of minority groups who come into contact with the juvenile justice system. This programme involves determining whether there is disproportionality in a specific jurisdiction, assessing the mechanisms that contribute to this disparity, implementing delinquency prevention and systemic improvement measures, and monitoring this disparity. As of 2014, 34 states participated in the Program.

With regard to practical measures and policy initiatives, the Committee notes the Government's indication that in August 2013, the US Department of Justice (DOJ) issued a report entitled “Smart on Crime: Reforming the Criminal Justice System for the 21st Century”, which included measures to reform sentencing to eliminate unfair disparities and reduce overburdened prisons. DOJ also announced a change in its charging policies so that certain persons who have committed low-level, nonviolent drug offenses and who have no significant ties to large-scale organizations, gangs, or cartels will no longer be charged with offenses that impose high mandatory minimum sentences. The Committee also notes the information in the Government's report that in April 2014, DOJ's Deputy Attorney General announced a Clemency Initiative to encourage low-level, nonviolent federal inmates who would not pose a threat to public safety if released, to apply to the President for commutation of sentence. The Initiative is intended to identify appropriate candidates for clemency by reference to certain specified criteria and enable DOJ to review the requests efficiently and make timely and effective recommendations for action to the President. Also in 2014, DOJ encouraged the formation of Clemency Project 2014, a consortium of criminal justice organizations that recruits, trains, and advises attorneys willing to provide pro bono assistance to inmates petitioning for commutation under the Clemency Initiative. Additionally, when systemic problems of discriminatory policing emerge in a police department or sheriff's office, or officers abuse their power, DOJ uses its statutory authority to investigate and bring civil actions to change discriminatory policing policies. In recent years, DOJ has undertaken several investigations of discriminatory policing and pursued effective remedies in several jurisdictions. Lastly, the Committee notes the Government's information on various initiatives being taken by several States to reduce racial bias within the criminal justice system. For instance, in April 2016, the MacArthur Foundation announced that it is awarding to 11 jurisdictions grants of between \$1.5 million and \$3.5 million over two years to fund state and local government projects, programs and reforms aimed at reducing their jail populations and addressing racial and ethnic disparities in their justice systems. The 11 jurisdictions include Charleston County, South Carolina; Harris County, Texas; Lucas County, Ohio; Milwaukee County, Wisconsin; New Orleans, Louisiana; New York City, New York; Philadelphia, Pennsylvania; Pima County, Arizona; Spokane County, Washington; the

## United States

State of Connecticut; and St. Louis County, Missouri. Each of the 11 jurisdictions will implement plans tailored to their local context comprised of a variety of local solutions, such as alternatives to arrest and incarceration, implicit bias training for law enforcement and other system actors, and community-based treatment programs.

The Committee takes due note of the initiatives taken at the federal and state levels. However, the Committee notes that the Committee on the Elimination of Racial Discrimination (CERD), in its concluding observations of 25 September 2014, expressed concern that members of racial and ethnic minorities, particularly African Americans, continue to be disproportionately arrested, incarcerated and subjected to harsher sentences and that the over-representation of racial and ethnic minorities in the criminal justice system is exacerbated by the use of prosecutorial discretion, the application of mandatory minimum drug-offence sentencing policies, and the implementation of repeat offender laws (CERD/C/USA/CO/7-9, paragraph 20).

*While welcoming the various initiatives taken by the Government to address racial disparities in the criminal justice system, such as the launch of the “Smart on Crime” initiative in August 2013 and the Clemency Initiative and Project in 2014, the Committee strongly encourages the Government to strengthen its efforts to ensure that racial discrimination at the sentencing and other stages of the criminal justice process do not result in the imposition of racially disproportionate prison sentences involving compulsory labour. In this regard, the Committee urges the Government to pursue its efforts to ensure the adoption of federal legislation to address this issue. It also encourages the Government to pursue and strengthen its efforts at the state level to implement policies and practices to identify and reduce racial and ethnic disparities in the criminal justice system to ensure that the punishment involving compulsory labour is not meted out more severely to certain racial and ethnic groups. It requests the Government to continue to provide information on measures taken in this regard, and on the results achieved.*

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

### Observation 2017

The Committee notes the joint observations of the National Union of Workers of Venezuela (UNETE), the Confederation of Workers of Venezuela (CTV), the General Confederation of Labour (CGT) and the Confederation of Autonomous Trade Unions (CODESA), received on 18 September 2017.

*Articles 2 and 12 of the Convention. Prohibition of night work by young persons in industrial undertakings and legislation.* The Committee previously noted that section 257 of the Basic Labour Act of 1997 provided that the working day for young persons under 18 years of age must fall between 6 a.m. and 7 p.m. Section 257 also provided for exceptions on special grounds to the prohibition of night work by young persons, when deemed appropriate by the bodies responsible for the supervision of minors, in cooperation with the labour inspectorate. The Committee subsequently noted the adoption of the Basic Labour Act No. 6076 of 2012, section 32 of which establishes a general prohibition of child labour for children under 14 years of age, except for artistic and cultural performances after authorization by the authority responsible for the protection of minors. Section 32 also provides that the work of minors is governed by the Basic Act on the protection of children and young persons of 1998. However, the Committee noted with concern that the new Basic Labour Act of 2012 no longer contains a provision prohibiting night work by young persons, unlike the previous Act. Moreover, the Committee observed that the Basic Act on the protection of children and young persons of 1998 no longer contains any provisions on the night work of young persons. The Committee therefore requested the Government to take the necessary measures to bring the legislation into compliance with the Convention.

The Committee notes the joint observations of the UNETE, CTV, CGT and CODESA that the Government has not taken any measures to bring its legislation into compliance with the Convention, despite the fact that many children work in the streets at all hours of the day and night.

The Committee notes the Government's indication that it does not consider it necessary to amend the legislation as, under article 23 of the Constitution, international treaties have the force of law in the internal legal system of the country. The Committee once again recalls that *Article 2(1)* of the Convention prohibits the employment during the night of young persons under 18 years of age in any industrial undertaking other than an undertaking in which only members of the same family are employed, except in the cases provided for in *Article 2(2)*. Therefore, the Committee notes with **deep concern** that the Government has not taken any measures to prohibit night work by young persons in industrial undertakings. In addition, it recalls that, under *Article 12* of the Convention, each Member that ratifies the Convention agrees to take such action as may be necessary to make its provisions effective. **The Committee therefore urges the Government to take the necessary measures to bring the national legislation into compliance with the Convention without delay by reintroducing a provision prohibiting the night work of young persons under 18 years of age, in order to ensure the effective implementation of the provisions of the Convention. If such a provision were to include special grounds on which exceptions to the prohibition of night work by young persons may be granted, as previously provided for by section 257 of the Basic Labour Act of 1997, the Committee requests the Government to supply information on these special grounds and the conditions under which such permission may be given, indicating in particular the age of the young persons and the types of work they are authorized to perform.**

## C026 - Minimum Wage-Fixing Machinery Convention, 1928 (No. 26)

### Observation 2017

#### Follow-up to the decisions of the Government Body (complaints made under article 26 of the Constitution of the ILO)

The Committee notes that a complaint under article 26 of the ILO Constitution alleging non-observance of Conventions Nos 87, 95 and 111 by the Bolivarian Republic of Venezuela, made by several Workers' delegates to the International Labour Conference in 2016, was found receivable by the Governing Body in November 2016. In March 2017, the Governing Body decided, in relation to Convention No. 95 that, as all aspects of the complaint relating to the Convention had not been examined recently by the Committee of Experts, the corresponding allegations would be transmitted to the Committee of Experts for their full examination.

The Committee also notes that the complaint under article 26 of the Constitution alleging non-compliance with Conventions Nos 26, 87 and 144 by the Bolivarian Republic of Venezuela, made by several Employers' delegates to the International Labour Conference in 2015, of which the Committee took note in its previous comment on Convention No. 26, is still pending before the Governing Body, which last examined it in November 2017.

The Committee also notes the joint observations made by the Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS) and the International Organisation of Employers (IOE) in relation to the application of Convention No. 26, received on 31 August 2017, and the Government's reply. Finally, the Committee notes the observations of the Independent Trade Union Alliance Confederation of Workers (CTASI), received on 31 August 2017, and the joint observations of the National Union of Workers of Venezuela (UNETE), the Confederation of Workers of Venezuela (CTV), the General Confederation of Labour (CGT) and the Confederation of Autonomous Trade Unions (CODESA), on the application of Conventions Nos 26 and 95, received on 18 September 2017, and the Government's reply. The Committee notes that the observations made by employers' and workers' organizations relate to matters raised in the complaints referred to above.

In view of the links between the subjects addressed within the framework of these procedures in relation to the application of Conventions Nos 26 and 95, the Committee considers it appropriate to examine them in the same comment.

#### Minimum wage

*Article 3 of Convention No. 26. Participation of the social partners in minimum wage fixing.* In its previous comment, the Committee once again requested the Government to ensure that full effect is given to *Article 3* of the Convention in relation to the consultation and participation on an equal footing of the most representative organizations of workers and employers in the establishment and operation of the minimum wage system. In this regard, the Committee notes with **concern** that both FEDECAMARAS and the IOE and UNETE, CTV, CGT and CODESA, as well as the CTASI, indicate that the most recent increases in the minimum wage were decided upon unilaterally by the Government. The Committee notes the Government's indication in its report and its replies to these observations that: (i) during the period 2015–17, due to the problems faced by the Venezuelan economy, including the high inflation rate, it was required to take urgent measures to protect workers, adjusting the minimum wage on the basis of the loss of purchasing power; (ii) for the determination of the minimum wage, account is taken of the increase in the cost of the basic basket, which is a technical criterion and is not suited to negotiation; (iii) consultations and social dialogue are carried out in the National Council for Productive Economy, in which the participants include chambers affiliated to FEDECAMARAS and other important employers' organizations in the country, as well as workers' confederations; and (iv) in February 2017, the Government organized a consultation on the issue of the minimum wage through written communications. The Committee notes that, when examining these matters in the context of the 2015 complaint, the Governing Body in November 2017 expressed serious concern at the lack of progress with respect to the decisions taken at its previous sessions and deeply regretted this situation. The Governing Body: (a) urged the Government to engage in good faith in a concrete, transparent and productive dialogue based on respect for employers' and workers' organizations with a view to promoting solid and stable industrial relations; (b) urged, for the last time, the Government to institutionalize before the end of 2017 a tripartite round table to foster social dialogue for the resolution of all pending issues, and to invite to that effect an ILO high-level mission led by the Officers of the Governing Body to meet with government authorities, FEDECAMARAS and their member organizations and affiliated companies, as well as trade unions and leaders from all social sectors; (c) requested the Director-General of the ILO to make available all necessary support in that regard and the Officers of the Governing Body to report back on the ILO high-level mission at its 332nd Session (March 2018) on the

determination on whether concrete progress had been achieved by means of the social dialogue fostered by the round table; and (d) suspended the approval of a decision on the appointment of a Commission of Inquiry pending the report of the high-level mission at its 332nd Session (March 2018). *In this context, the Committee urges the Government to take the necessary measures to ensure that the current process will allow the achievement of positive results and lead to full compliance with the Convention in future. The Committee requests the Government to provide information in this regard.*

The Committee observes that both the Government and all the organizations which provided observations also referred in their communications to the system of the "Socialist Cestaticket". The Committee considers that issues relating to this system do not lie within the scope of Convention No. 26 and that it is appropriate to address this subject within the framework of Convention No. 95.

## Protection of wages

*Article 1 of Convention No. 95. Components of remuneration.* The Committee notes that in the 2016 complaint a phenomenon of "desalarization" in the country is denounced, particularly in relation to the "Socialist Cestaticket". The Committee notes the Government's confirmation in its reply that the national legislation provides for this system as a food benefit to protect the purchasing power of workers in relation to food, to strengthen their health, prevent occupational diseases and promote greater labour productivity (section 1 of the Legislative Decree on the Socialist Cestaticket for men and women workers, Decree No. 2066 of 23 October 2015). The Committee also notes that Decree No. 2066 provides that this benefit shall be provided to workers by the employer (section 2). The Committee further notes that the Decree provides, in accordance with section 105(2) of the Basic Labour Act (LOTTT), that the benefit shall not be considered as wages, unless it is so recognized in collective agreements or individual contracts of employment. The Committee recalls that the subject of "desalarization" in relation to food benefits in the country has already been examined in the past (General Survey on the protection of wages, 2003, paragraph 47). In this context, the Committee recalled that, in accordance with *Article 1* of the Convention, all the components of workers' remuneration, irrespective of how they are denominated or calculated, are protected by the Convention. In light of the characteristics of the "Socialist Cestaticket" (sections 1 and 2 of Decree No. 2066), the Committee considers that, for the purposes of the Convention, this benefit is a component of the remuneration of workers. Accordingly, even though the national legislation provides that the "Socialist Cestaticket" is not in the nature of a wage, this benefit has to be examined in light of the provisions of the Convention.

*Article 4. Payment in kind.* The Committee notes that, in accordance with Decree No. 2066: (i) the employer may choose between various modalities for the provision of the "Socialist Cestaticket", including the provision of food at the workplace or the provision of food tickets or electronic cards (section 4); (ii) in certain exceptional cases, the benefit may be paid in cash (sections 5 and 6); and (iii) when so required for reasons of social interest, the national executive may order modifications in the modalities, terms and amounts applicable for the provision of the benefit (section 7). In this regard, the Committee notes that, in a series of decrees adopted within the context of the state of emergency and economic urgency since 2016, the amount of the "Socialist Cestaticket" has been increased regularly. The Committee notes that both FEDECAMARAS and the IOE, and the UNETE, CTV, CGT and CODESA, as well as the CTASI, indicate in their observations that since 2016 the value of the "Socialist Cestaticket" has been higher than the minimum wage and that the overall remuneration of workers (the minimum wage and the "Socialist Cestaticket") does not cover the basic basket. The Committee recalls that *Article 4* of the Convention provides that the partial payment of wages may be authorized in the form of allowances in kind and that in cases in which such payment is authorized, appropriate measures shall be taken to ensure that: (a) allowances in kind are appropriate for the personal use and benefit of the worker and her or his family; and (b) the value attributed to such allowances is fair and reasonable. The Committee also recalls that it has considered that governments, before authorizing the payment in kind of a high proportion of workers' wages, should carefully assess whether such a measure is reasonable based on its possible repercussions for the workers concerned, having regard to national circumstance and the interests of the working people (General Survey on the protection of wages, 2003, paragraph 118). The Committee considers that these considerations are particularly significant in the case of workers who receive the minimum wage. The Committee notes the Government's indications that the increase in the amount of the "Socialist Cestaticket" has been necessary to maintain the purchasing power of workers in the context of the problems faced by the Venezuelan economy, and particularly the high rates of inflation, and that this benefit would be paid in cash since May 2017, in accordance with the temporary modalities adopted in the context of the state of emergency and economic urgency. *Nevertheless, the Committee requests the Government to take the necessary measures to engage in dialogue without delay at the national level involving all the employers' and workers' organizations concerned so as to examine possible solutions that are sustainable over time, including any necessary adjustment to the "Socialist Cestaticket" system, with a view to ensuring full conformity with Article 4 of the Convention. The Committee invites the Government to consider the possibility of having recourse to ILO technical assistance.*

Finally, the Committee notes the indication by the UNETE, CTV, CGT and CODESA, and the CTASI, in their observations that the non-wage nature of the "Socialist Cestaticket" has an impact on other social benefits which are calculated in relation to the level of workers' wages. In this regard, the Committee observes that, although this subject could be addressed appropriately in the context of the supervision of other ratified Conventions respecting social protection, it is not regulated by Convention No. 95.

The Committee is raising other matters concerning the application of Convention No. 95 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) and the Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS), received on 31 August 2017, relating to matters examined by the Committee in this observation. The Committee notes the Government's reply, received on 24 November 2017.

In its previous comments, the Committee requested the Government to provide its comments on the observations of the Independent Trade Union Alliance (ASI), received in 2016, in relation to the process of its registration in the trade union register. *The Committee requests once again the Government to provide its comments in this respect.*

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

In its previous comments, the Committee noted that a complaint under article 26 of the ILO Constitution alleging non-compliance with this and other Conventions by the Bolivarian Republic of Venezuela, made by a group of Employer delegates at the International Labour Conference in 2015, was being examined by the Governing Body. The Committee notes that the Governing Body, at its 331st Session (October–November 2017), seriously concerned with and deeply regretting the lack of progress with respect to the decisions taken at its previous sessions: (i) urged the Government of the Bolivarian Republic of Venezuela to engage in good faith in a concrete, transparent and productive dialogue based on respect for employers' and workers' organizations with a view to promoting solid and stable industrial relations; (ii) urged, for the last time, the Government to institutionalize before the end of 2017 a tripartite round table to foster social dialogue for the resolution of all pending issues, and to invite to that effect an ILO high-level mission led by the Officers of the Governing Body, to meet with government authorities, FEDECAMARAS and their member organizations and affiliated companies, as well as trade unions and leaders from all social sectors; and (iii) suspended the approval of a decision on the appointment of a Commission of Inquiry pending the report of the high-level mission at its 332nd Session (March 2018).

The Committee also notes that, at its 329th Session (March 2017), the Governing Body decided to close the procedure relating to the complaint made in June 2016 by a group of Employer delegates under article 26 of the ILO Constitution alleging non-compliance with this and other Conventions by the Bolivarian

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Republic of Venezuela and to refer all the allegations of the complaint relating to Convention No. 87 to the Committee on Freedom of Association for their examination (Case No. 3277).

The Committee notes the conclusions and recommendations of the Committee on Freedom of Association in relation to Cases Nos 2254 and 3178, in which the complainant organizations are the IOE and FEDECAMARAS. The Committee also notes the conclusions and recommendations in Case No. 3172, a complaint submitted by a trade union.

*Civil liberties and trade union rights. Acts of violence and intimidation against employers' and workers' leaders and organizations.* In its previous comment, the Committee noted once again with concern the seriousness of the issues raised relating to acts of violence, verbal attacks by the highest State bodies and various forms of intimidation and stigmatization targeting employers' and workers' organizations and their leaders and members. The Committee also indicated to the Government that it hoped that criminal responsibility for the murder of the trade union leader, Tomas Rangel, would soon be established and that information would be provided on the outcome of the judicial proceedings. In addition, the Committee reiterated its invitation to employers' and workers' organizations to provide the additional information in their possession on the allegations that they had made, both recent and older, with special reference to the latest denunciations of workers injured during the exercise of their trade union activities in 2016. The Committee requested the Government to provide detailed information, where such information is available on the various allegations concerning acts of violence, detention, intimidation and interference referred to in that comment and in previous comments.

The Committee notes FEDECAMARAS's affirmation that the same serious acts referred to in its previous observations are continuing and that it complains of new and equally serious incidents, alleging that Government spokespersons are continuing to attack it, its affiliates and leaders, with the reinforcement of the continuous and systematic media campaign of stigmatization against it. FEDECAMARAS also alleges that the Government is continuing to blame it for the severe crisis experienced by the country and to link it with the political opposition, that there have been new seizures of assets owned by FEDECAMARAS leaders and that employees and managers of enterprises continue to be detained in relation to the arbitrary implementation of inspections by the State, as well as acts of vandalism against businesses. The Committee notes that FEDECAMARAS also denounces the following recent acts by the Government: (i) the attack by paramilitary groups (known as "collectives") linked to the Government against the headquarters of one of its affiliated organizations, the Stock-rearing Association of the State of Táchira (ASOGATA) on 18 May 2017, and that it is presumed that the attack occurred because ASOGATA organized the free distribution of milk and cheese to the population during the protests in May 2017. FEDECAMARAS adds that the Governor of the State of Táchira threatened the participating livestock breeders with expropriation and labelled them "terrorists and members of criminal and paramilitary groups"; (ii) the seizure of productive lands (the Gólgota ranch), owned by the President of the Federation of Livestock Breeders of Venezuela (FEDEMAGA), Carlos Odoardo Albornoz, contrary to the recommendations of the 2014 tripartite mission; (iii) the mandatory sale of goods below their price in the footwear and apparel sector; (iv) the seizure of 4 million toys for distribution through committees set up by the Government, accompanied by the detention of the managers and employees of the enterprise concerned; (v) the detention and trial by military courts of six managers and an executive of a credit company, due to a massive failure at the point of sale; (vi) the arbitrary occupation of bakeries and the imposition of permanent supervision by activists of the governing party together with official bodies; and (vii) fiscal and administrative penalties for calling for a civic stoppage. In addition, the Committee notes the allegation by FEDECAMARAS that it has been subject to intimidation by the President of the Republic for declining the invitation to participate in the discussions of the National Constituent Assembly, which FEDECAMARAS considers to be unconstitutional.

The Committee notes the Government's reply in which it indicates that FEDECAMARAS' assertions are characterized by political motives intended to undermine the institutional order and the legitimacy of the public authorities, based on arguments that are out of context, unfounded, manipulative and tendentious. The Government also affirms that on one hand, FEDECAMARAS is an organization with a history of supporting coups and that, on the other hand, although it groups together a significant number of chambers of commerce, it is not the only employers' organization. The Government adds that there is no policy in Venezuela of aggression, exclusion or intimidation against FEDECAMARAS, its affiliates or leaders, who have not been persecuted, imprisoned, threatened or the victims of any acts of violence based on their status or the exercise of representative activities. With regard to the allegations of attacks by paramilitary groups against the headquarters of ASOGATA, the Government indicates that it has requested information from the Office of the Public Prosecutor, which it will forward in due time, although it considers it irresponsible to link it with those responsible for these acts. With regard to the Gólgota ranch, the Government indicates that it is a remedial measure envisaged in the Lands Act, and the term "expropriation" is being misused for purposes of stigmatization. Finally, the Government emphasizes that the other allegations were discussed at the 329th Session of the Governing Body and the 106th Session of the International Labour Conference. The Committee expresses *deep concern* at the new allegations made by FEDECAMARAS which refer to the persistence of serious acts, including attacks, intimidation, arbitrary measures, the seizure of productive land, the occupation of businesses, administrative inspections by activists of the governing party and acts of violence and vandalism against FEDECAMARAS, its affiliates and members. ***The Committee strongly urges the Government to take the necessary measures to ensure that employers' and workers' organizations can exercise their activities in defence of the interests of their members in a climate free from violence, intimidation and threats that target persons or organizations engaged in the lawful defence of the interests of employers or workers within the framework of the Convention. The Committee also urges the Government, in light of the indications already provided and those which may be added by the employers' and workers' organizations concerned, as well as the investigations conducted by the competent bodies and the respective prosecutions, to provide detailed information on the various allegations of acts of violence, detention, intimidation and interference referred to in this and previous comments.***

*Observations of employers' and workers' organizations on social dialogue.* The Committee notes the indication by FEDECAMARAS that it continues to be excluded from tripartite social dialogue and that the Government is continuing to take unilateral measures which affect enterprise performance, without consulting it, and in this connection refers to various recent measures: (i) the requirement to allocate 50 per cent of agro-industrial production for acquisition by the Government with a view to its distribution through Local Supply and Production Committees (CLAP); (ii) the approval of Decree No. 2535 establishing Workers' Production Boards (WPBs), with the objective of supervising and approving production, noting that government authorities have indicated that they must be supported by the trade unions and that the WPBs are organizations that are established and operate under the discipline of the military civic union; (iii) the establishment by the President of the Republic of the chiefs of staff of the working class; (iv) the creation of feminist labour brigades; and (v) the institutional exclusion of FEDECAMARAS from the National Council for the Productive Economy (CNEP). The Committee also notes that FEDECAMARAS refers to the holding of three meetings in January 2017, and emphasizes that the first meeting did not amount to genuine tripartite social dialogue as it was held in an atmosphere of accusations and intimidation. FEDECAMARAS indicates that, despite the context, it attended all of the meetings. With regard to the content of the meetings, FEDECAMARAS notes that subjects related to wages were mentioned without detailed information being provided, that it called on the Government to bring an end to the intimidatory attacks so that dialogue could be credible and that it expressed deep concern at the excessive attacks and arbitrary measures taken against the private sector. FEDECAMARAS adds that it emphasized during the meetings the importance of the inclusion of independent trade unions in social dialogue, and received the reply from the Government that social dialogue was only envisaged with the Bolivarian Socialist Workers' Confederation of Venezuela (CBST). The Committee notes that FEDECAMARAS also refers to: (i) the failure to comply with the plan of action for social dialogue which the Government had made a commitment to implement to the ILO Governing Body in March 2016; (ii) the failure to give effect to the commitment made by the Government to the ILO Director-General in November 2016 to include FEDECAMERAS as in the socio economic round tables, that were to be held under the auspices of the Holy See; and (iii) the failure of the Government to take into consideration the agenda for dialogue proposed by FEDECAMARAS on general labour issues, subjects related to the complaint made under article 26 of the ILO Constitution and macro-economic and enterprise issues. The Committee notes the indication by FEDECAMARAS that, despite all this, it accepted the Government's invitation to hold a meeting on 13 June 2017, but that during an earlier

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meeting, held on the occasion of the Committee on the Application of Standards of the International Labour Conference, in the presence of the Director General of the ILO, it had been the subject of serious and unfounded accusations and had been misled as to the presence of independent organizations of workers, for which reason it refused to participate in the meeting held on 13 June. Finally, the Committee notes the general assessment by FEDECAMARAS that there has not been a process of effective dialogue in the terms defined by the ILO, that the organization, its leaders and affiliates have continued to be the subject of intimidatory attacks and that effect has not been given to the recommendations of the ILO supervisory bodies.

The Committee notes the indication by the Government that the President of the Republic has full powers to convene a Constituent National Assembly and that the allegations made by FEDECAMARAS in this respect are very surprising. The Committee notes the Government's reply to the position of FEDECAMARAS in refusing to participate in the meeting of 13 June 2017, indicating that the meeting occurred in the context of a situation of destabilization intended to promote an environment conducive to a coup against the institutional framework and to undermine the authorities and self-determination. The Committee notes the Government's view that: (i) several meetings were held in September and October 2017 between the Ministry of the People's Power for External Trade and International Investment, the Ministry of the People's Power for the Social Process of Labour and FEDECAMARAS; and (ii) during the meeting in October, it was agreed to set out a consensual agenda for dialogue through round tables to discuss subjects of common interest, including wage policy, stability, training and safety and health. Finally, the Committee notes the Government's affirmation that a positive approach will be adopted to dialogue and understanding with the establishment of the tripartite round table and the visit of the ILO high-level mission in accordance with the decision taken by the Governing Body at its 331st Session. The Committee expresses *deep concern* at the persistent absence of social dialogue with FEDECAMARAS and the workers' organizations that are critical of Government policy, which takes the form of the lack of consultation with these organizations before the adoption of important norms and public decisions which affect the economic and social interests of their members. The Committee *deeply regrets* the absence of progress in this respect, despite the repeated comments of the Committee of Experts, the Governing Body and other ILO supervisory bodies and the commitments made by the Government to these bodies in recent years. ***The Committee expects that, as affirmed by the Government, the tripartite round table referred to in the decision of the Governing Body at its 331st Session will be immediately established and will, along with the visit of the high-level tripartite mission decided by the Governing Body, contribute to the establishment of a sound basis for respectful, substantive and lasting dialogue with all the representative employers' and workers' organizations in the country. The Committee requests the Government to provide information on any developments in this respect.***

*Articles 2 and 3 of the Convention. Right of workers to establish the organizations of their own choosing and of such organizations to formulate their programmes. Imposition by the Government of newly created bodies with the participation of representatives of the public authorities.* The Committee notes that, in the context of Case No. 2254, the Committee on Freedom of Association referred to the Committee of Experts the legislative aspects of the case relating to the establishment of WPBs and other similar structures in enterprises, which are prejudicial to freedom of association (see the 383rd Report of the Committee on Freedom of Association, October 2017, paragraph 709). The Committee notes that the system of WPBs was created by Decree No. 2535 of 8 November 2016, which provides that: (i) the authorities shall have the obligation to organize the working class within labour units; (ii) the objective of WPBs is to promote the participation of the working class as protagonists in the management of production within public and private labour units; and (iii) the WPBs shall have a pre-established composition of three workers from the enterprise and four other members, including representatives of the armed forces and Bolivarian militia. The Committee also notes that, in the context of Case No. 2254, the Government indicated that: (i) WPBs are an institution established under the Basic Labour Act (LOTTT) to promote the participation of the working class as protagonists in the management of production; and (ii) the establishment of WPBs in no event replaces or is in opposition to trade unions, but they are intended as a form of active participation by workers in the real and effective monitoring of production processes in work units.

While noting the Government's indications that the purposes of WPBs would differ from those of trade unions, the Committee considers that both the composition of these new bodies that includes the participation of representatives of the public authorities and the wide definition of their purposes may undermine the right of workers to establish organizations of their own choosing (*Article 2* of the Convention), and may significantly interfere with the right of these organizations to organize their activities and to formulate their programmes in full freedom and may ultimately lead to independent trade unions being replaced by these new bodies. Similarly, the Committee considers that the creation of WPBs is bound to affect the development of collective industrial relations between employers' and workers' organizations in accordance with the various ILO Conventions on freedom of association and collective bargaining ratified by the Bolivarian Republic of Venezuela. ***The Committee therefore expects the Government to take all the necessary measures, as a matter of urgency, to eliminate, in both law and practice, the imposition of structures for the organization of workers that include a participation of representatives of the public authorities such as WPBs. The Committee requests the Government to provide information on any progress made in this respect.***

*Articles 2 and 3. Legislative provisions contrary to the exercise of trade union rights, the autonomy of organizations and their right to organize their activities in full freedom.* The Committee recalls that for several years it has been requesting the Government, in consultation with the most representative organizations of workers and employers, to take the necessary measures to revise the following aspects of the national legislation with a view to bringing them into conformity with the Convention:

- section 388 of the LOTTT, to remove the requirement for unions to provide the list of their members to the National Registry of Trade Unions;
- sections 367 and 368 of the LOTTT, to remove, in the definition of the objectives to be pursued by trade unions, all those that relate to the specific responsibilities of the public authorities;
- section 402 of the LOTTT and other provisions that are in force so that: (i) they do not permit a non-judicial authority (such as the National Electoral Council (CNE)) to decide on appeals respecting trade union elections; (ii) the principle is eliminated in practice and in law that "electoral abeyance" disqualifies trade unions from engaging in collective bargaining; (iii) the requirement is removed to notify the CNE of the electoral schedule; and (iv) the requirement is removed to publish the results of trade union elections in the Electoral Gazette as a condition for their recognition;
- section 387 of the LOTTT, so that the eligibility of leaders is not conditional on having convened trade union elections within the prescribed time frame when they were leaders of other trade unions;
- section 395 of the LOTTT, to remove the provision in the Act establishing that failure of members to pay their trade union dues invalidates their right to vote;
- section 403 of the LOTTT, to eliminate the imposition of specific voting systems on trade unions;
- section 410 of the LOTTT, to eliminate the system of holding recall referendums to remove trade union officers;
- section 484 of the LOTTT, to ensure that either a judicial or an independent authority determines the areas or activities which may not be subject to stoppages during a strike on the grounds that they prejudice the production of essential goods or services which would cause damage to the population; and
- section 494 of the LOTTT, to ensure that the system for the appointment of the members of the arbitration board in the event of a strike in essential services guarantees the confidence of the parties in the system.

***The Committee requests the Government to provide information on any developments in this regard, and full information on the alleged obstacles and excessive delays in the registration of trade unions denounced by the Confederation of Workers of Venezuela (CTV), the National Union of Workers of Venezuela (UNETE), the General Confederation of Labour (CGT) and the Confederation of Autonomous Trade Unions (CODESA) in their observations in 2016.***

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

### Observation 2017

The Committee notes the observations of the International Organisation of Employers (IOE) and the Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS), received on 31 August 2016 and 31 August 2017. The Committee also notes the observations of the National Union of Workers of Venezuela (UNETE), the Confederation of Workers of Venezuela (CTV), the General Confederation of Labour (CGT) and the Confederation of Autonomous Trade Unions (CODESA), received on 12 October 2016 and 18 September 2017. It also notes the Government's replies to the social partners' observations of 2016, received on 11 November 2016.

*Article 1 of the Convention. Contribution of the employment service to the promotion of employment. Application of the Convention in practice.* The Committee notes that the Government refers in its report to the creation of the Social Welfare Divisions (DPS), which coordinate with the Meeting Centres for Education and Work (CEET) to provide services in the fields of labour, education and social security. The DPS are entities attached to the People's Ministry of Labour which provide comprehensive labour information and guidance services for persons with disabilities, migrant workers, non-dependent workers and applicants for the "involuntary loss of employment" benefit. The Government also supplies information on the activities carried out by the CEET between 2014 and 2016 in cooperation with various state bodies. In this respect, the Government indicates that between January and November 2014 the CEET provided assistance for 72,269 workers, of which 35,938 were registered; 30,811 were included in the training sphere and 1,874 were included in the spheres of labour and social production; and 3,646 applied for jobs. In 2015, the competencies and functions of the CEET were modified with the aim of developing "ongoing and comprehensive group self-training" for workers, and assistance was provided for 108,079 workers. In 2016, a total of 92,326 workers were registered who received guidance and training from the CEET, and 3,120 workers were organized into 266 teams of "promoters of ongoing and comprehensive group self-training". In addition, a "pilot comprehensive support plan" for young persons and students was drawn up with the aim of promoting the active participation of young persons in the social process of labour. The Government adds that in 2015 and 2016, a total of 205,079 workers facing termination of employment were registered and given guidance for their integration into the social process of labour. The Committee notes that the IOE and FEDECAMARAS maintain in their observations that the CEET continue to be non-operational. The workers' confederations (UNETE, CTV, CGT and CODESA) indicate that the Government has not implemented the system for the registration of employment requirements and vacancies established under the Act concerning the Major Knowledge and Labour Mission, so that in practice no register exists to enable forecasting and identification of the numbers and characteristics of unemployed workers. *The Committee requests the Government to send detailed information, including statistics disaggregated by sex and age, on the number of applications for employment received, the number of vacancies notified and the number of persons placed in employment by the CEET and the DPS. The Committee also requests the Government to provide up-to-date information on the impact of measures adopted to meet the needs of young persons regarding employment and vocational guidance, including those adopted as part of the pilot comprehensive support plan.*

*Articles 4 and 5. Cooperation of the social partners.* The Government refers in its report to the system of organization of labour entities in the production chain. However, the Committee observes that the information supplied by the Government does not contain a reply to its previous comments. The Committee recalls that *Article 5* of the Convention provides that the general policy of the employment service must be developed after consultation of representatives of employers and workers. The Committee notes that FEDECAMARAS and the IOE indicate that the Government is still failing to comply with the abovementioned Article of the Convention and maintain that FEDECAMARAS has not been consulted with regard to the formulation and implementation of the general employment service policy. *The Committee requests the Government to send its comments in this regard. The Committee also requests the Government once again to provide specific examples of previous consultations held with the employers' and workers' organizations with a view to securing their cooperation in the organization and functioning of the public employment service.*

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

### Observation 2017

#### Follow-up to the decisions of the Government Body (complaints made under article 26 of the Constitution of the ILO)

The Committee notes that a complaint under article 26 of the ILO Constitution alleging non-observance of Conventions Nos 87, 95 and 111 by the Bolivarian Republic of Venezuela, made by several Workers' delegates to the International Labour Conference in 2016, was found receivable by the Governing Body in November 2016. In March 2017, the Governing Body decided, in relation to Convention No. 95 that, as all aspects of the complaint relating to the Convention had not been examined recently by the Committee of Experts, the corresponding allegations would be transmitted to the Committee of Experts for their full examination.

The Committee also notes that the complaint under article 26 of the Constitution alleging non-compliance with Conventions Nos 26, 87 and 144 by the Bolivarian Republic of Venezuela, made by several Employers' delegates to the International Labour Conference in 2015, of which the Committee took note in its previous comment on Convention No. 26, is still pending before the Governing Body, which last examined it in November 2017.

The Committee also notes the joint observations made by the Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS) and the International Organisation of Employers (IOE) in relation to the application of Convention No. 26, received on 31 August 2017, and the Government's reply. Finally, the Committee notes the observations of the Independent Trade Union Alliance Confederation of Workers (CTASI), received on 31 August 2017, and the joint observations of the National Union of Workers of Venezuela (UNETE), the Confederation of Workers of Venezuela (CTV), the General Confederation of Labour (CGT) and the Confederation of Autonomous Trade Unions (CODESA), on the application of Conventions Nos 26 and 95, received on 18 September 2017, and the Government's reply. The Committee notes that the observations made by employers' and workers' organizations relate to matters raised in the complaints referred to above.

In view of the links between the subjects addressed within the framework of these procedures in relation to the application of Conventions Nos 26 and 95, the Committee considers it appropriate to examine them in the same comment.

#### Minimum wage

*Article 3 of Convention No. 26. Participation of the social partners in minimum wage fixing.* In its previous comment, the Committee once again requested the Government to ensure that full effect is given to *Article 3* of the Convention in relation to the consultation and participation on an equal footing of the most representative organizations of workers and employers in the establishment and operation of the minimum wage system. In this regard, the Committee notes with *concern* that both FEDECAMARAS and the IOE and UNETE, CTV, CGT and CODESA, as well as the CTASI, indicate that the most recent increases in the minimum wage were decided upon unilaterally by the Government. The Committee notes the Government's indication in its report and its replies to these observations that: (i) during the period 2015–17, due to the problems faced by the Venezuelan economy, including the high inflation rate, it was required to take urgent measures to protect workers, adjusting the minimum wage on the basis of the loss of purchasing power; (ii) for the determination of the minimum wage, account is taken of the increase in the cost of the basic basket, which is a technical criterion and is not suited to negotiation; (iii) consultations and social dialogue are carried out in the National Council for Productive Economy, in which the participants include chambers affiliated to FEDECAMARAS and other important employers' organizations in the country, as well as workers' confederations; and (iv) in February 2017, the Government organized a consultation on the issue of the minimum wage through written communications. The Committee notes that, when examining these matters in the context of the 2015 complaint,

the Governing Body in November 2017 expressed serious concern at the lack of progress with respect to the decisions taken at its previous sessions and deeply regretted this situation. The Governing Body: (a) urged the Government to engage in good faith in a concrete, transparent and productive dialogue based on respect for employers' and workers' organizations with a view to promoting solid and stable industrial relations; (b) urged, for the last time, the Government to institutionalize before the end of 2017 a tripartite round table to foster social dialogue for the resolution of all pending issues, and to invite to that effect an ILO high-level mission led by the Officers of the Governing Body to meet with government authorities, FEDECAMARAS and their member organizations and affiliated companies, as well as trade unions and leaders from all social sectors; (c) requested the Director-General of the ILO to make available all necessary support in that regard and the Officers of the Governing Body to report back on the ILO high-level mission at its 332nd Session (March 2018) on the determination on whether concrete progress had been achieved by means of the social dialogue fostered by the round table; and (d) suspended the approval of a decision on the appointment of a Commission of Inquiry pending the report of the high-level mission at its 332nd Session (March 2018). ***In this context, the Committee urges the Government to take the necessary measures to ensure that the current process will allow the achievement of positive results and lead to full compliance with the Convention in future. The Committee requests the Government to provide information in this regard.***

The Committee observes that both the Government and all the organizations which provided observations also referred in their communications to the system of the "Socialist Cestaticket". The Committee considers that issues relating to this system do not lie within the scope of Convention No. 26 and that it is appropriate to address this subject within the framework of Convention No. 95.

## Protection of wages

*Article 1 of Convention No. 95. Components of remuneration.* The Committee notes that in the 2016 complaint a phenomenon of "desalarization" in the country is denounced, particularly in relation to the "Socialist Cestaticket". The Committee notes the Government's confirmation in its reply that the national legislation provides for this system as a food benefit to protect the purchasing power of workers in relation to food, to strengthen their health, prevent occupational diseases and promote greater labour productivity (section 1 of the Legislative Decree on the Socialist Cestaticket for men and women workers, Decree No. 2066 of 23 October 2015). The Committee also notes that Decree No. 2066 provides that this benefit shall be provided to workers by the employer (section 2). The Committee further notes that the Decree provides, in accordance with section 105(2) of the Basic Labour Act (LOTTT), that the benefit shall not be considered as wages, unless it is so recognized in collective agreements or individual contracts of employment. The Committee recalls that the subject of "desalarization" in relation to food benefits in the country has already been examined in the past (General Survey on the protection of wages, 2003, paragraph 47). In this context, the Committee recalled that, in accordance with *Article 1* of the Convention, all the components of workers' remuneration, irrespective of how they are denominated or calculated, are protected by the Convention. In light of the characteristics of the "Socialist Cestaticket" (sections 1 and 2 of Decree No. 2066), the Committee considers that, for the purposes of the Convention, this benefit is a component of the remuneration of workers. Accordingly, even though the national legislation provides that the "Socialist Cestaticket" is not in the nature of a wage, this benefit has to be examined in light of the provisions of the Convention.

*Article 4. Payment in kind.* The Committee notes that, in accordance with Decree No. 2066: (i) the employer may choose between various modalities for the provision of the "Socialist Cestaticket", including the provision of food at the workplace or the provision of food tickets or electronic cards (section 4); (ii) in certain exceptional cases, the benefit may be paid in cash (sections 5 and 6); and (iii) when so required for reasons of social interest, the national executive may order modifications in the modalities, terms and amounts applicable for the provision of the benefit (section 7). In this regard, the Committee notes that, in a series of decrees adopted within the context of the state of emergency and economic urgency since 2016, the amount of the "Socialist Cestaticket" has been increased regularly. The Committee notes that both FEDECAMARAS and the IOE, and the UNETE, CTV, CGT and CODESA, as well as the CTASI, indicate in their observations that since 2016 the value of the "Socialist Cestaticket" has been higher than the minimum wage and that the overall remuneration of workers (the minimum wage and the "Socialist Cestaticket") does not cover the basic basket. The Committee recalls that *Article 4* of the Convention provides that the partial payment of wages may be authorized in the form of allowances in kind and that in cases in which such payment is authorized, appropriate measures shall be taken to ensure that: (a) allowances in kind are appropriate for the personal use and benefit of the worker and her or his family; and (b) the value attributed to such allowances is fair and reasonable. The Committee also recalls that it has considered that governments, before authorizing the payment in kind of a high proportion of workers' wages, should carefully assess whether such a measure is reasonable based on its possible repercussions for the workers concerned, having regard to national circumstance and the interests of the working people (General Survey on the protection of wages, 2003, paragraph 118). The Committee considers that these considerations are particularly significant in the case of workers who receive the minimum wage. The Committee notes the Government's indications that the increase in the amount of the "Socialist Cestaticket" has been necessary to maintain the purchasing power of workers in the context of the problems faced by the Venezuelan economy, and particularly the high rates of inflation, and that this benefit would be paid in cash since May 2017, in accordance with the temporary modalities adopted in the context of the state of emergency and economic urgency. ***Nevertheless, the Committee requests the Government to take the necessary measures to engage in dialogue without delay at the national level involving all the employers' and workers' organizations concerned so as to examine possible solutions that are sustainable over time, including any necessary adjustment to the "Socialist Cestaticket" system, with a view to ensuring full conformity with Article 4 of the Convention. The Committee invites the Government to consider the possibility of having recourse to ILO technical assistance.***

Finally, the Committee notes the indication by the UNETE, CTV, CGT and CODESA, and the CTASI, in their observations that the non-wage nature of the "Socialist Cestaticket" has an impact on other social benefits which are calculated in relation to the level of workers' wages. In this regard, the Committee observes that, although this subject could be addressed appropriately in the context of the supervision of other ratified Conventions respecting social protection, it is not regulated by Convention No. 95.

The Committee is raising other matters concerning the application of Convention No. 95 in a request addressed directly to the Government.

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

### Observation 2017

*Article 1(a) of the Convention. Definition of remuneration.* In its previous comment, the Committee noted the provisions of sections 104 and 105 of the Basic Act concerning labour and men and women workers (LOTTT), of 30 April 2012, respecting wages and social benefits not considered to be remuneration. Food benefits for men and women workers are included among the social benefits not considered to be remuneration. On that occasion, the Committee recalled that the Convention sets out a very broad definition of the term "remuneration" designed to encompass all elements that a worker may receive for his or her work, in addition to the basic wage. In its 2012 General Survey on the fundamental Conventions, paragraph 687, the Committee indicated that if only the basic wage were being compared, much of what can be given a monetary value arising out of the job would not be captured, and such additional components are often considerable, making up increasingly more of the overall earnings package.

The Committee notes the information provided by the Government in its report in relation to the constitutional and legal provisions in force respecting wages and the food benefit commonly known as the *Cestaticket*. The Government also refers in its report to the increase in the minimum wage between 1992 and 2017, and in the overall average wage (including the food benefit) between 1999 and 2017. With regard to the food benefit system the Committee refers to its comments on the Protection of Wages Convention, 1949 (No. 95). ***Recalling that the application of the Convention requires the examination of equality both in relation to the job and the remuneration received, the Committee once again asks the Government to adopt the necessary measures to***

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*ensure that all the additional benefits received by workers and arising out of their employment, such as those set out in section 105 of the LOTT, including the food benefit and the benefits paid under the social security system, are considered to be remuneration so that the principle of the Convention is fully implemented, and requests the Government to provide information on any progress made in this respect.*

*Article 1(b). Equal remuneration for work of equal value. Legislation.* In its previous comment, the Committee noted that, for several years it has been referring to the need to incorporate the principle of the Convention in legislation. It had noted with regret that the Government had not taken the opportunity afforded by the adoption of the LOTT to include the principle of equal remuneration for men and women for work of equal value. *In the absence of information indicating any developments in this respect and, as the concept of "work of equal value" is central to the fundamental right of equal remuneration for men and women for work of equal value and the promotion of equality, the Committee once again requests the Government to take the necessary measures to amend section 109 of the LOTT in order to give full legislative expression to the principle of the Convention.*

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 made by the Confederation of Workers of Venezuela (CTV), the National Union of Workers of Venezuela (UNETE), the General Confederation of Labour (CGT) and the Confederation of Autonomous Trade Unions (CODESA), received in 2015, 2016 and 2017, which, as on previous occasions, refer to allegations of discrimination on the basis of political opinion. The Committee also notes the observations of the Independent Trade Union Alliance Confederation of Workers (CTASI), received on 31 August 2017. The Committee notes the Government's replies to these observations.

#### Follow-up to the decisions of the Governing Body (complaint made under article 26 of the Constitution of the ILO)

The Committee recalls that in its previous comments it noted that the complaint made under article 26 of the ILO Constitution by a group of Worker delegates at the International Labour Conference in 2016 alleging non-observance of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Protection of Wages Convention, 1949 (No. 95), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), by the Bolivarian Republic of Venezuela was declared receivable by the Governing Body at its 328th Session (October–November 2016). With reference to Convention No. 111, the allegations relate to acts of discrimination for political reasons, such as the establishment of lists of opponents, including the so-called "Tascón List", containing the names of persons who signed a declaration of support for the 2004 referendum on whether the President should be removed from office, and more recently those who supported the declaration of support for a similar referendum in 2016 concerning the current President. They also relate to party-political and ideological bias in employment and in the working environment in the public service. In various communications, the Government opposed the receivability of the complaint and, in relation to Convention No. 111, the Government indicated that the principle of non-discrimination in all its forms is promoted in the country, as envisaged in the national legislation, and that no worker can be dismissed without a valid reason on political grounds. It also emphatically rebutted the accusation of the alleged party-political and ideological bias in employment and in the working environment in the public service. At its 329th Session (March 2017), the Governing Body decided: (a) to transmit all allegations of the complaint concerning Convention No. 87 to the Committee on Freedom of Association for examination; (b) given that all aspects of the complaint relating to Conventions Nos 95 and 111 have not been examined recently by the Committee of Experts on the Application of Conventions and Recommendations (CEACR), to transmit these allegations to the CEACR for their full examination; and (c) that the complaint not be referred to a Commission of Inquiry and that, as a result, the procedure under article 26 of the ILO Constitution be closed.

*Article 1(1)(a) of the Convention. Discrimination on the basis of political opinion.* For many years (since 2007), the Committee has been noting alleged acts of discrimination for political reasons against employees of the central and decentralized public administration and State enterprises, and members of the armed forces, including threats, harassment, transfers, deterioration of conditions of work and mass dismissals. The Committee noted allegations of mass dismissals of those who are not members of the governing party, do not participate in demonstrations in favour of the Government or who express views against the Government, as well as persistent discrimination against workers on the "Tascón List". The allegations refer, among other matters, to the dismissal of 124 workers from the Bicentenary Bank, 40 workers from the Niño Simón National Foundation and four workers from the Integrated National Service for the Administration of Customs and Excise (SENIAT) for supporting the popular consultation for the activation of a referendum to recall the President of the Republic. The Committee notes that, in their recent comments, the CTV, UNETE, CGT, CTASI and CODESA allege that discrimination for political reasons, far from diminishing, has grown worse. They complain of intimidation and penalties against workers who participated in or supported the popular consultation on whether to hold a referendum to determine whether the President should be removed from office in 2016. The Committee notes that these allegations, and particularly those relating to threats by high-level Government officials and leaders of the official party against persons who voted for opposition candidates in the parliamentary elections in December 2015 and in support of the recall referendum for the President of the Republic in 2016, were also contained in the complaint made under article 26 of the ILO Constitution by Worker delegates to the International Labour Conference. The Committee further notes that, in its 2017 observations, the CTASI alleges that since the events of 2002 any expression of political opposition has been stigmatized. The Committee also notes the allegations by the CTV, CGT, UNETE and CODESA that public employees and workers are subject to compulsory mobilization for demonstrations and marches in support of the Government.

The Committee notes that, in its reply to the observations made by the UNETE, CTV, CGT and CODESA, the Government indicates that employment security is recognized by the Basic Act concerning labour and men and women workers (LOTTT) and the national Constitution, although there are exceptions to the rule, specifically for executive positions. The Government adds that absolute employment security, as set out in Decree No. 2.158 of 28 December 2015, which has the force of law, has been extended for three years and recalls that workers covered by the Decree cannot be dismissed, demoted or transferred, without a valid reason and the prior approval of the competent labour inspector, in accordance with section 422 of the LOTT. Finally, the Committee notes the Government's reiterated indication in its 2017 report that discrimination against men and women workers for political reasons is contrary to the principles set out in the national legislation and that in 2005 the then President of the Republic ordered the "Tascón List" to be set aside. The Government refers to its previous responses and rebuts the allegations concerning the "Tascón List", as well as the issues raised concerning the 2015 parliamentary elections. It adds that: (1) with regard to the allegations concerning the "serious situation" in the country "due to massive dismissals for political reasons", that the allegations made are too general and do not specify whether complaints were lodged with the various official bodies which offer institutional remedies for victims of violations of individual or collective rights or crimes, or with the administrative bodies of the Ministry of the People's Power for the Social Process of Labour in the case of the dismissal of a worker protected by employment security; (2) with reference to the allegations of the dismissal of persons who voted for the opposition, that the participation of citizens in political activities is not conditional on their status as public officials or workers in public or private enterprises, and that the people participate as protagonists, and that anyone who so wishes may therefore participate or not in the political activities that are organized; and (3) in relation to the alleged threats of penalties and dismissals for supporting the recall referendum for the President of the Republic, more details are required as the Government is not aware of complaints submitted on these matters to administrative or judicial bodies.

The Committee notes with *concern* the new allegations of discrimination in employment for political reasons. While noting the constitutional and legal provisions which, according to the Government, afford protection against discrimination in employment, the Committee recalls that legislative measures to give effect to the principles of the Convention are important, but not sufficient to achieve its objective. Moreover, the existence of legal provisions does not imply the absence of discrimination in practice. The Committee reiterates that protection against discrimination on the basis of political opinion implies protection in

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respect of the activities of expressing or demonstrating opposition to established political principles and opinions. The general obligation to conform to an established ideology is therefore discriminatory (see General Survey on the fundamental Conventions, 2012, paragraphs 805, 850 and 856). *In these circumstances, the Committee once again asks the Government to take the necessary steps without delay to ensure full respect and compliance with the Convention and to ensure that public and private sector workers are not subject to discrimination on the basis of political opinion. Taking into account the high number of allegations and that, according to the Government, the allegations are too general, the Committee also urges the Government to take all the necessary steps without delay to establish a working group including all the trade union organizations concerned to examine and to deal with all the complaints, which will also consider the development of a system to prevent discrimination and the establishment of mechanisms and institutions to address in an independent manner complaints of discrimination in employment and occupation on the basis of all the grounds of the Convention, and in particular, political opinion, in addition to providing effective remedies. The Committee reminds the Government of the availability of ILO technical assistance.*

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 Independent Trade Union Alliance Confederation of Workers (CTASI), and the observations of the International Organisation of Employers (IOE) and the Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS), received on 31 August 2017. The Committee also notes the observations of the National Union of Workers of Venezuela (UNETE), the Confederation of Workers of Venezuela (CTV), the General Confederation of Labour (CGT) and the Confederation of Autonomous Trade Unions (CODESA), received on 18 September 2017. *The Committee requests the Government to provide its comments in this respect.*

### 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 on the application of the Convention that took place in the Conference Committee on the Application of Standards in June 2017. The Committee also notes that, in its conclusions, the Conference Committee noted with deep concern that the Government had not yet addressed its 2016 conclusions. The Conference Committee also noted the lack of social dialogue in relation to an active employment policy designed to promote full, productive and freely chosen employment. Taking into account the discussion, the Conference Committee urged the Government, with ILO technical assistance, and without delay to: develop, in consultation with the most representative workers' and employers' organizations, an employment policy designed to promote full, productive and freely chosen employment, in a climate of dialogue free from any form of intimidation; implement concrete measures to put in practice an employment policy to stimulate economic growth and development, raise standards of living, and overcome unemployment and underemployment; and institutionalize a tripartite round table, with the presence of the ILO, to build a climate of trust based on respect for employers' and workers' organizations, with a view to fostering social dialogue and promoting solid and stable industrial relations. The Conference Committee also urged the Government to report in detail to the Committee of Experts on the application of the Convention in practice and to respond to the conclusions of the Conference Committee. The Committee notes that the Government has confirmed its acceptance of the recommendation of the Conference Committee in 2016 that it receive a high-level ILO tripartite mission. *The Committee hopes that the high-level ILO tripartite mission will be able to assess the progress achieved towards compliance with the conclusions of the Conference Committee.*

*Articles 1 and 2 of the Convention. Implementation of the employment policy within the framework of a coordinated economic and social policy. Measures to respond to the economic crisis.* The Committee notes that, in the context of the discussions on the case of the Bolivarian Republic of Venezuela by the Conference Committee on the Application of Standards in June 2017, a Government representative referred to the report provided in 2016, indicating that it had provided indicators demonstrating the existence of a sustained employment policy. In this regard, the Government referred to the implementation of the Second Socialist Plan for the economic and social development of the nation and the Bolivarian Economic Agenda. The Committee also notes the emphasis placed by the Government in its report on the reinforcement in October 2016 of the Missions and Major Missions in the context of the adoption of the Socialist Territorial Plan 2016–19. In particular, the Government refers to the Major Mission on Knowledge and Labour, created to assist unemployed persons without any type of income, and the Bases Mission, which seeks to eradicate extreme poverty. Decrees have continued to be issued on employment security and the annual increase in the minimum wage was adopted taking as a reference the cost of the basic basket. The Government indicates that, within the framework of the Bolivarian Economic Agenda, social agents participated in round table meetings with a view to developing measures to generate stability and employment. The Committee notes the indication by the CTASI in its observations that the Government has still not adopted an employment policy. The IOE and FEDECAMARAS once again emphasize that there is no coordinated policy in national macroeconomic planning for the joint implementation of employment plans. The employers' organizations also refer to the statistics of the International Monetary Fund (IMF), which forecast a 10 per cent contraction of GDP and a cumulated inflation rate of 1,660 per cent in 2017, which would mean the longest period of recession in the country for the past 20 years, and the highest inflation rate in the world for the third consecutive year. They add that, according to the Living Conditions Survey (ENCOVI), 93 per cent of households in 2016 did not have sufficient income to cover the basic basket and 82 per cent of the population was living in poverty. They add that they are unaware of the specific strategic measures of the Bolivarian Economic Agenda adopted by the Government with a view to reinforcing employment protection. The workers' confederations UNETE, CTV, CGT and CODESA indicate that they are also unaware of the measures adopted within the framework of the Economic and Social Development Plan 2007–13, and the social missions for the generation of productive employment. *The Committee requests the Government to continue providing detailed information on the specific measures adopted for the formulation and adoption of an active employment policy to promote full, productive and freely chosen employment, in full compliance with the Convention, and on the consultations held with the social partners for this purpose.*

*Labour market trends.* The Committee notes that, according to the Household Sample Survey of the National Institute of Statistics (INE), the activity rate fell from 64.8 per cent in April 2015 to 62.7 per cent in April 2016. The activity rate of men increased by 0.4 percentage points, while that of women fell by 3.7 percentage points. Over the same period, the inactivity rate increased from 35.2 per cent to 37.3 per cent, with a significant increase in the inactivity rate of women (3.7 percentage points), compared with that of men (0.4 percentage points). The employed population fell from 93 per cent to 92.7 per cent, and the number of unemployed rose from 7 per cent to 7.3 per cent (8.3 per cent for women and 6.7 per cent for men). In its observations, the CTASI reiterates that the employment statistics used in the Bolivarian Republic of Venezuela do not address underemployment or precarious employment, and emphasizes that the total of open unemployment and employed persons with 15 hours of work a week or less shows a deficit in the national labour market of 11 per cent. The workers' confederations UNETE, CTV, CGT and CODESA indicate that the Government does not provide detailed and disaggregated data on the situation, level and trends of employment which would provide a basis for assessing the impact of the measures adopted within the framework of the employment policy. *The Committee requests the Government to provide detailed information, including updated statistics, disaggregated by gender and age, on the situation and trends of the labour market in the country. The Committee also requests the Government to provide information on the impact of the measures adopted to give effect to the Convention.*

*Transitional labour regime.* In its previous comments, the Committee noted the adoption of Resolution No. 9855 of 22 July 2016 establishing a transitional labour regime that is compulsory and strategic for the revival of the agro-food sector, which provides for workers in public and private enterprises to be placed in

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other enterprises (requesting enterprises) in that sector, which are different from the enterprises in which the employment relationship originated. The Committee also noted the observations of the IOE and FEDECAMARAS indicating that “requesting enterprises” (owned by the State) were the ones, and not the worker, who seek the transfer of the worker to another enterprise, which is contrary to the principles of the Convention. The Committee notes that in June 2017 a Government representative in the Conference Committee stated that Resolution No. 9855 had been repealed. The Government also indicates in its report that the transitional labour regime is no longer in force, as the Resolution provided for a period of application of 180 days. However, the Committee notes that the employers’ organizations IOE and FEDECAMARAS indicate that they are unaware of the official repeal of Resolution No. 9855, and that the Government has merely ceased applying it on a temporary basis. They therefore submit that the Government continues to be in violation of the principle of the Convention that requires member States to develop, in coordination with the social partners, an active policy to promote full, productive and freely chosen employment. ***In light of the divergence of views, the Committee requests the Government to indicate the current situation with regard to the application of Resolution No. 9855.***

***Youth employment.*** The Government refers in its report to the adoption of various measures to reduce youth unemployment and to promote the integration of young persons into the labour market. In this respect, the Government indicates that, in accordance with the Employment Act for productive youth, support and resources are provided to young persons to implement projects as a basis for the construction of the new model of economic development in the country. In 2017 the Youth Chamba Plan was adopted for young persons between 19 and 35 years of age with the objective of their labour market integration in the sectors prioritized in the Bolivarian Economic Agenda. The Plan is intended principally for young persons in a situation of vulnerability; unemployed young university students, young persons not attending school, single mothers, young persons with family responsibilities and young persons in the streets. The first phase of the Plan aims at the integration of 200,000 young persons into the labour market and will be implemented by 172 training centres. The Government adds that the Major Mission on Knowledge and Labour includes among its principal objectives the implementation of a special productive employment plan for young persons. The Government adds that in 2016 a total of 24,085 women and 17,737 men were active apprentices in the National Training Programme (PNA). The employment rate of participants in the PNA rose from 1.88 per cent in 2015 to 2.10 per cent in 2016. The Government adds that, through cooperation between various State bodies and private labour entities, over 40,000 young apprentices a year are provided with training and integrated into the labour market. In their observations, the IOE and FEDECAMARAS maintain that the youth employment figures of the official survey of April 2016 do not reflect the gravity of the situation. They indicate that there has been a significant decrease in the economically active population and an increase in unemployment among young persons between the ages of 15 and 24 years. The workers’ confederations UNETE, CTV, CGT and CODESA regret that the Government is concealing information on youth employment trends. They also consider that measures have not been adopted to minimize the impact of unemployment on young persons and to promote their sustainable labour market integration, particularly for the most underprivileged categories of youth. ***The Committee once again requests the Government, with the participation of the social partners, to provide an evaluation of the active employment policy measures implemented to reduce youth unemployment and promote their sustainable integration into the labour market, particularly for the most underprivileged categories of young persons. The Committee also requests the Government to continue providing detailed statistical data, disaggregated by age and gender, on youth employment trends.***

***Development of small and medium-sized enterprises (SMEs).*** In reply to its previous comments, the Government indicates that an assessment has been made of the needs of small and medium-sized enterprises with a view to improving their productive efficiency. They have been provided with technical assistance and financial support, and new incentives and mechanisms have been established to promote the development of the small and medium-sized industry sector. The Government also refers in its report to the adoption of measures to promote entrepreneurship by women through the *Soy Mujer* programme, which provides technical, logistical and financial support for its projects. However, the Committee notes the indication by the IOE and FEDECAMARAS in their observations that private enterprises are closing down ever more rapidly, and particularly small and medium-sized enterprises, which represent 80 per cent of the total. ***The Committee requests the Government to provide information on the impact of the measures adopted to promote the creation and productivity of small and medium-sized enterprises, and to develop a conducive climate for the generation of employment in such enterprises.***

***Article 3. Participation of the social partners.*** The Committee notes that in June 2017, within the framework of the International Labour Conference, a tripartite meeting was held between the Government and the social partners. However, the Employer members of the Conference Committee refused to participate in the meeting due to the lack of balanced representation, as not all of the workers’ organizations of the Bolivarian Republic of Venezuela present in the Conference had been invited to participate. The Committee also notes the Government’s indication in its report that meetings have been held with FEDECAMARAS and workers’ organizations in 2017. The IOE and FEDECAMARAS indicate that the Government is continuing to fail to comply with its obligation to consult the representatives of employers and workers for the development of the employment policy, emphasizing that FEDECAMARAS, despite its representativity, has not been consulted by the Government for 17 years on the establishment and coordination of the employment policy. FEDECAMARAS adds that it has not been invited to attend the National Council for the Productive Economy (CNEP), in which consultations are held on strategic national economic issues. FEDECAMARAS requests the Government to provide the records of the meetings of the CNEP, in which agreement was reached on the employment policy, wage rises and any other structural measures relating to employment. The workers’ confederations UNETE, CTV, CGT and CODESA affirm that workers’ organizations are still not consulted on policy formulation and that the Government is still failing to take into consideration the views of employers’ and workers’ organizations for the development and implementation of employment policies and programmes. ***The Committee once again requests the Government to provide information, including specific examples of the manner in which employers’ and workers’ organizations have been consulted and their views taken into account in the development and implementation of employment policies and programmes. The Committee also once again requests the Government to provide detailed information on the activities of the National Council for the Productive Economy in relation to the subjects covered by the Convention.***

### C143 - Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)

#### Observation 2017

***Articles 10 and 12(d) of the Convention. Equality of opportunity and treatment.*** In response to the requests the Committee has been making for several years to reform or repeal the legal provisions which limit access to employment for foreign workers, the Government indicates in its report that the provisions contained in the National Constitution and the Organic Act concerning labour and men and women workers (LOTTT) guarantee equality of opportunity and prohibit discrimination relating to access and conditions of work based on nationality. The Committee recalls that, while having legislation in place to combat discrimination is important, it is not sufficient to guarantee equality of opportunity and treatment in practice. It is necessary to take proactive measures to guarantee the application and observance of the principle of non-discrimination. Furthermore, the Committee recalls that *Article 12(d)* stipulates that any statutory provisions should be repealed and any administrative instructions or practices modified which are inconsistent with the national policy. Sections 27 (percentage of Venezuelan staff), 28 (temporary exceptions), 29 (hiring of foreign workers) and 231 (limit on foreign agricultural workers) of the LOTTT restrict the hiring of foreign workers by providing that national workers must represent 90 per cent of the total staff, apart from the specific exceptions listed, and that foreign workers cannot receive more than 20 per cent of the total payments made to all staff. The Committee notes with *regret* that, despite the amount of time that has passed and the many requests made, the Government has not amended the provisions in question. ***The Committee once again urges the Government to take the necessary steps to amend or repeal sections 27, 28, 29 and 231 of the Organic Act concerning labour and men and women***

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*workers to bring the legislation into full conformity with the principle of equality of opportunity and treatment regarding employment of migrant workers in relation to national workers.*

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

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

#### Observation 2017

The Committee notes that, at its 329th Session (March 2017), the Governing Body declared admissible a complaint alleging the non-observance by the Bolivarian Republic of Venezuela of Conventions Nos 26, 87 and 144, presented by a group of Employers' delegates to the 104th Session of the International Labour Conference (2015), pursuant to article 26 of the ILO Constitution. At the abovementioned session, the Governing Body noted the information provided by the Government regarding efforts made to strengthen social dialogue with the Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS); however, it regretted the lack of progress in the establishment of a social dialogue round table and action plan referred to in the past by the Governing Body, and recalled that the recommendations made by the high-level tripartite mission that visited the country in 2014 had still not been implemented. Therefore, the Governing Body urged the Government to take measures to ensure that there were no acts of interference, aggression and stigmatization against FEDECAMARAS, its affiliated organizations and their leaders, and to institutionalize without delay a tripartite round table, with the presence of the ILO, to foster social dialogue for the resolution of all pending issues. Subsequently, at the 331st Session of the Governing Body (October–November 2017) the Government reiterated its commitment to social dialogue, and informed of two meetings, held on 19 and 25 October 2017, between the Government and the new board of FEDECAMARAS. The Committee welcomes the Government's acceptance, through its communication of 24 November 2017 and its annexes, following the 331st Session of the Governing Body, of an ILO high-level tripartite mission to the country, and the establishment of a tripartite round table, with the presence of the ILO. ***The Committee firmly expects that the Government will adopt without delay the necessary measures to enable the high-level tripartite mission to take place, as well as for the establishment of a tripartite round table with the presence of the ILO, and expresses the hope that these measures will lead in the near future to the resolution of all pending issues.***

With respect to its previous comments in 2015, the Committee notes the observations formulated jointly by FEDECAMARAS and the International Organisation of Employers (IOE), received on 18 May 2016, 31 August 2016 and 31 August 2017. The Committee further notes the observations presented by the confederations of workers, the National Union of Workers of Venezuela (UNETE), the Confederation of Workers of Venezuela (CTV), the General Confederation of labour (CGT) and the Confederation of Autonomous Trade Unions (CODESA), received on 8 September 2016 and 18 September 2017. It also takes note of the observations made by the Independent Trade Union Alliance Confederation of Workers (CTASI), received on 23 and 26 August 2016 and 18 September 2017. The Committee notes the responses of the Government to the observations of the social partners, which were received on 11 November 2016 and 24 November 2017.

***Articles 2, 5 and 6 of the Convention. Effective tripartite consultations.*** The Committee notes the information provided in the Government's report concerning the establishment of the National Council of Economic Productivity on 19 January 2016, whose participants include representatives of the Government, workers' organizations and enterprises and chambers affiliated to FEDECAMARAS. The Committee notes, however, that employers' organizations maintain in their observations that FEDECAMARAS, despite its representativeness, as is the case of the independent trade unions, has not been invited to participate in the abovementioned Council. On the other hand, the Government indicates that meetings took place between representatives of the Government and of FEDECAMARAS on 8 and 14 October 2015, 11 and 31 January 2017, and on 19 and 25 October 2017. Moreover, the Government indicates that its representatives and those of FEDECAMARAS have exchanged written communications in which both parties have manifested their willingness to continue the dialogue process. In their observations, the IOE and FEDECAMARAS reiterate that the meetings and communications mentioned by the Government do not constitute a consultation or executive dialogue mechanism. They also maintain that there are no institutionalized social dialogue structures in the country, nor has a tripartite dialogue round table been established, as recommended in the report of the high-level mission of 2014. In this respect, the employers' organizations highlight that the Government has adopted important measures in the area of labour without prior consultation with the social partners, such as Executive Decree No. 2158 of 28 December 2015, increases in the minimum wage and the socialist food benefit for men and women workers, as well as the approval of a State of Economic Emergency on 14 January 2016. FEDECAMARAS reiterates that it is not requesting exclusive dialogue, but simply that it be included in the consultations that the Government maintains that it is holding with the social partners. In response, the Government indicates that FEDECAMARAS is referring to a lack of consultation in areas that fall outside the scope of application of the Convention. Moreover, it indicates that the highlighted measures were adopted following discussions in the National Economic Productivity Council. On the other hand, UNETE, CTV, CGT and CODESA maintain that the Government does not transmit copies of its reports on ratified Conventions to the workers' confederations or, alternatively, it transmits such copies only after they have been communicated to the ILO, thereby preventing the workers' confederations from making inputs into the reports. ***The Committee requests the Government to provide information on the consultations held with respect to each of the matters relating to the international labour standards covered under Article 5(1) of the Convention. The Committee further requests the Government to communicate information on the effective consultations held with social partners on the manner in which the functioning of the procedures required by the Convention could be improved. In addition, and in the context of the procedures required by the Convention, the Committee expresses the hope that the Government will take measures to establish a reasonable time period that will provide sufficient advance notice to enable employers' and workers' organizations to form their opinions and make the comments that they consider appropriate in relation to the drafts communicated by the Government, in accordance with Article 5(1).***

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

#### Observation 2017

The Committee notes the observations of the International Organisation of Employers (IOE) and the Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS), dated 30 August 2017. It also notes the observations, dated 18 September 2017, by the National Union of Workers of Venezuela (UNETE), the Confederation of Workers of Venezuela (CTV), the General Confederation of Labour (CGT) and the Confederation of Autonomous Trade Unions (CODESA). ***The Committee requests the Government to provide its comments in this regard.***

***Article 8 of the Convention. Remedies against unjustified dismissal.*** In response to its previous comments, the Government reiterates that there are two types of stability of employment: relative and absolute stability. The Committee notes the Government's response indicating that through executive decrees, employment security was granted to workers with more than 30 days' seniority who were not employed in managerial positions. The Committee notes that, under section 94 of the Basic Labour Act (LOTTT), workers protected by employment security cannot be dismissed, transferred or demoted without justified grounds, which must first be approved by a labour inspector. In this respect, the Committee notes that this procedure is laid down in section 422 of the LOTTT, which provides that the labour inspector's decision is final, unless the parties assert their right to file an administrative appeal with the competent labour courts. The Government also refers to section 425 of the LOTTT, which provides that, when a worker covered by trade union protection or by employment security is

dismissed, transferred or demoted, within a period of 30 consecutive days he or she may submit a complaint to the labour inspectorate requesting reinstatement and the payment of any unpaid wages, and that the decision of the labour inspector regarding reinstatement or redress of the situation of a protected worker is final. In this respect, the Committee notes that the authorities do not proceed with an administrative appeal to set aside the dismissal until the administrative authority has certified that the order of reinstatement or redress of the legal situation has been effectively implemented (section 425(9) of the LOTTT). The IOE and FEDECAMERAS consider that the legal provisions on employment security and the procedures for the approval of dismissals and for reinstatement are not effective. They add that no mechanisms have been established by law or regulations to guarantee the objectivity and impartiality of the procedures for the approval of dismissals nor to guarantee the right to defence and due process for employers. In this respect, the Committee recalls that, under *Article 9(1)* of the Convention, only impartial bodies such as the courts, labour courts and arbitration boards should be able to examine the reasons given to justify the termination of an employment relationship and all other circumstances related to the case, and to determine whether the termination was justified. In addition, in its report, the Government indicates, with regard to the case previously referred to by the trade unions of the dismissal of 972 workers in toll stations belonging to the Ministry of Transport, that, of the 71 toll stations in the country, only 21 remain in operation, and that in 2014 the management of those toll stations was transferred to the governors' offices, under the direction of the Department for Land Transport and Public Works (*Official Gazette* No. 40.577). ***The Committee requests the Government to specify the manner in which it guarantees, for employers and workers, the impartiality of the labour inspectorate when effectively certifying a reinstatement order under the terms of section 426(9) of the LOTTT. In addition, it requests the Government to indicate the number of times that an appeal to set aside a dismissal has been filed and the number of times it was upheld. Lastly, the Committee requests the Government to indicate, with regard to the 972 workers who were dismissed, whether they were reinstated in their posts.***

*Application of the Convention in practice.* The Government indicates that, at the national level and up to the third quarter of 2017, a total of 27,214 complaints procedures were initiated against dismissals, transfers and demotions and 13,244 procedures for the approval of dismissals were submitted to the labour inspectorate. Furthermore, the Government indicates that, from January to July 2017, 9,989 decisions were issued on complaints against dismissals, transfers and demotions, and 5,150 dismissal procedures were authorized. The Committee notes that only 41 per cent of the cases pending between 2006 and 2015 were resolved, which is why the Government has implemented two plans aimed at reducing cases of contempt of court and delays: (i) the plan for the restoration of rights and liabilities in cases of insolvency in the registration system for insolvencies and restructuring (SIRIS), implemented in 2017, which aims to reduce the number of cases of non-compliance with the administrative procedures for reinstatement. In this respect, the Government indicates that during the first 12 weeks of implementation, 6,575 reinstatement orders were issued; and (ii) the Update Plan, which aims at taking action to prevent procedural delays and to follow-up cases in order to prevent non-compliance. In this respect, the Government indicates that, since this plan was implemented, decisions have been issued on 12,139 cases relating to the restoration of rights and 2,684 relating to approvals for dismissals in cases that were pending between 2006 and 2015. The Committee notes the observations of the IOE and FEDECAMERAS indicating that no new labour inspectorates have been established to lighten the workload in processing the approval of dismissals and that neither the statistics nor the Government's follow up mechanisms are effective or accessible. ***The Committee requests the Government to continue providing updated information on the number of dismissals, the number of reinstatements ordered by the labour inspectorate and the number of cases in which the labour courts have upheld reinstatement orders. The Committee also requests the Government to provide information on the impact of the plan for the restoration of rights and liabilities in cases of insolvency and the Update Plan in terms of the reduction of delays and cases of non compliance.***

