

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

*Observations 2019*

*Regional file by country -*

Asia and the Pacific



**C100 - Equal Remuneration Convention, 1951 (No. 100)****Observation 2019**

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

*Articles 1 and 2 of the Convention. Equal remuneration for work of equal value. Legislation.* The Committee previously noted that while some of the provisions of the Labour Law (namely sections 8, 9(1), 59(4) and 93) read together provided some protection against discrimination based on sex with respect to remuneration, they did not reflect fully the principle of the Convention. The Committee takes note of the Government's indication, in its report, that the Tripartite Consultative Committee is still engaged in the revision process of the Labour Law with a view to ensuring greater conformity with the provisions of the Convention. The Committee wishes to point out that the concept of "work of equal value" lies at the heart of the fundamental right of equal remuneration for men and women for work of equal value as it permits a broad scope of comparison, including, but going beyond equal remuneration for "equal", "the same" or "similar" work, and also encompasses work that is of an entirely different nature, which is nevertheless of equal value (see 2012 General Survey on the fundamental Conventions, paragraph 673). *The Committee requests the Government to continue to provide information on the activities and recommendations of the Tripartite Consultative Committee concerning the revision of the Labour Law, and trusts that in the near future its national legislation will explicitly give full legislative expression and effect to the principle of equal remuneration for men and women for work of equal value set out in the Convention.*

*Gender pay gap.* The Committee welcomes the statistics provided by the Government and notes that, according to the Afghanistan Living Conditions Survey (ALCS) for 2013–14, women's average monthly wages were lower than those of men in all job categories, except in the public sector. Men were earning on average 30 per cent more than women in the same occupation and up to three and a half times more than women in the agriculture and forestry sector, where women represented two-thirds of the workforce. The Committee notes that, according to the ALCS for 2016–17, the situation of women has deteriorated as the labour force participation rate of women decreased from 29 per cent in 2014 to 26.8 per cent in 2017, and remained far lower than the labour force participation of men (80.6 per cent in 2017). Moreover, more women than men were in a vulnerable employment situation (89.9 per cent of women compared to 77.5 per cent of men). The Committee *regrets* that the ALCS for 2016–17 does not contain any more information on the gender pay gap. *The Committee requests the Government to provide information on the measures taken to reduce the gender pay gap and identify and address its underlying causes, as well as on the results achieved in this regard. Recalling the importance of the regular collection of statistics in order to undertake an assessment of the nature, extent and evolution of the gender pay gap, the Committee requests the Government to provide updated information on the earnings of men and women disaggregated by economic activity and occupation, both in the private and public sectors, as well as any available statistics or analysis on the gender pay gap.*

*Article 3. Objective appraisal of jobs. Civil service.* Referring to its previous comments, the Committee takes note of the salary scale annexed to the Civil Servants Law, 2008, according to which salaries are determined by reference to grades and steps. It notes that section 8 of the Law refers to the criteria used to determine employment grades according to diploma, skills and work experience. The Committee notes from the data of the national Central Statistics Organization that in 2016 women represented 22.5 per cent of all public sector employees, but only 7.5 per cent of those were placed in the third grade or higher position. *The Committee requests the Government to provide information on the practical application of section 8 of the Civil Servants Law, 2008, including on the methods and factors used to classify jobs under the different grades in order to ensure that tasks mainly performed by women are not being undervalued in comparison to the tasks traditionally performed by men. The Committee further requests the Government to provide information on the distribution of men and women in the various categories and positions of the civil service with their corresponding levels of earnings.*

*Article 4. Awareness-raising activities. Cooperation with employers' and workers' organizations.* The Committee notes the Government's indication that public information campaigns and activities to raise awareness about the principle of the Convention, particularly among employers' and workers' organizations, have been continued, some of which with the assistance of the ILO. *The Committee requests the Government to continue to provide information on awareness-raising activities carried out to promote the principle of the Convention, and to indicate whether any cooperation or joint activities have been undertaken together with the employers' and workers' organizations. The Committee also requests the Government to specify whether, as a result of the awareness-raising activities already implemented, the principle of the Convention has been effectively addressed by the social partners in collective agreements and, if so, to provide information in this respect, including copies of the relevant provisions.*

*Enforcement.* The Committee notes that, in the National Labour Policy for 2017–20, the Government recognizes laxity in the enforcement of labour-related legislation and indicates that periodic inspections will be conducted to reveal quality of compliance, as well as gaps in compliance for which appropriate actions would be taken against defaulting employers. The Committee further notes that, in its last concluding observations, the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) expressed concern at the fact that decisions of informal justice mechanisms are discriminatory against women and undermine the implementation of existing legislation, and recommended that women's accessibility to the formal justice system be enhanced (CEDAW/C/AFG/CO/1-2, 30 July 2013, paragraphs 14 and 15). *The Committee requests the Government to provide information as to the steps taken to ensure stricter enforcement of labour legislation as regards the application of the Convention. In particular, the Committee requests information regarding compliance with the requirements of the Convention, including the level of compliance and the identification of gaps in compliance, as well as any actions taken against defaulting employers. The Committee further requests the Government to provide information on any measures taken or envisaged to enhance women's accessibility to the formal justice system, as well as on any complaints made with regard to the principle of the Convention dealt with by the courts or any other competent authorities, including information on sanctions and remedies provided.*

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

**C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111)****Observation 2019**

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

*Articles 1 and 2 of the Convention. Legislation.* The Committee previously noted that the prohibition of discrimination in section 9 of the Labour Law is very general and urged the Government to take the opportunity of the Labour Law reform process, in the context of the Decent Work Country Programme and the National Action Plan for Women of Afghanistan (NAPWA) 2007–17, to amend its legislation to explicitly prohibit direct and indirect discrimination covering all the grounds listed in *Article 1(1)(a)* of the Convention, as well as any other grounds determined in consultation with employers' and workers' organizations, in accordance with *Article 1(1)(b)* of the Convention. The Committee notes the Government's indication, in its reports, that the Tripartite Consultative Committee is still engaged in the revision process of the Labour Law. Referring to its previous comments on section 10(2) of the Civil Servants Law, 2008, which only prohibits discrimination in recruitment based on the grounds of sex, ethnicity, religion, disability and "physical deformity", the Committee notes the Government's general statement that provisions of the Labour Law are also applicable to civil servants. *The Committee requests the Government to continue to provide information on the activities and recommendations of the Tripartite Consultative Committee concerning the revision of the Labour Law, and trusts that in a near future its national legislation will explicitly prohibit, both in the private and public sectors, direct and indirect discrimination covering*

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*all the grounds listed in Article 1(1)(a) of the Convention, as well as any other grounds determined in consultation with employers' and workers' organizations, in accordance with Article 1(1)(b) of the Convention, covering all aspects of employment and occupation. In the meantime, the Committee requests the Government to clarify the relationship between section 9 of the Labour Law and section 10(2) of the Civil Servants Law and, more generally, to indicate whether all the provisions of the Labour Law shall apply to civil servants or whether this is limited to provisions of the Labour Law which are expressly referred to by the Civil Servants Law.*

*Article 1(1)(a). Discrimination on the ground of sex. Work-related violence and sexual harassment.* The Committee takes note of the Law on the Prohibition of Harassment against Women and Children, adopted in December 2016 and approved by the President on April 2018, which defines and criminalizes physical, verbal and non-verbal harassment, and provides that harassment is punishable with a fine. On the other hand, it notes that section 30 of the Law on the Elimination of Violence against Women (EVAW), 2009, which provides that harassment is punishable by up to six months of imprisonment, was firstly incorporated into the revised Penal Code in March 2017 and then removed on the instruction of the Government in August 2017, as a result of pressure exerted by some members of the Parliament, which left the status of the EVAW Law in a state of uncertainty. The Committee also notes that several United Nations (UN) bodies expressed concern at the escalating level of targeted attacks, including killings, against high profile women, particularly those in the public sector, as well as at the prevalence of sexual harassment against women in the workplace (Report of the UN High Commissioner for Human Rights, A/HRC/37/45, 21 February 2018, paragraph 55 and Report of the UN Special Rapporteur on violence against women, its causes and consequences, A/HRC/29/27/Add.3, 12 May 2015, paragraphs 21 and 26). It notes that, according to a survey carried out in 2015 by the Women and Children's Legal Research Foundation, based in Afghanistan, 87 per cent of the women interviewed experienced harassment in the workplace. It further notes that the Afghanistan Independent Human Rights Commission (AIHRC) recently indicated that women police officers are particularly affected and that the Ministry of the Interior is currently finalizing an internal complaints mechanism to this end (Report of the UN High Commissioner for Human Rights, A/HRC/37/45, 21 February 2018, paragraph 53). The Committee notes that, pursuant to the 2015 Regulations on the Elimination of Harassment Against Women (11/07/1394), commissions aimed at addressing complaints have been established in several provinces, but that the UN High Commissioner for Human Rights recently highlighted that the mechanisms to combat sexual harassment against women in the workplace remained largely ineffective owing to underreporting, which is mainly due to the social stigma attached to the issue (Report of the UN High Commissioner for Human Rights, A/HRC/37/45, 21 February 2018, paragraph 54). *The Committee requests the Government to provide information on any concrete measures (such as, for example, campaigns addressed to the general public to promote gender equality) and specific programmes taken or envisaged to combat violence against women (and more particularly high-profile women), and sexual harassment at the workplace, both in the private and public sectors, including any social stigma attached to this issue. It further requests the Government to provide information on the number, nature and outcome of any complaints or cases of work-related violence or sexual harassment in the workplace handled by the commissions established under the 2015 Regulations, the labour inspectorate and the courts. The Committee also requests the Government to clarify the relationship between the Law on the Elimination of Violence against Women, 2009, and the Law on the Prohibition of Harassment against Women and Children, 2016, as well as the current status of both legislations. Please provide a copy of the Law on the Prohibition of Harassment against Women and Children, 2016, and of the 2015 Regulations on the Elimination of Harassment Against Women (11/07/1394).*

*Article 2. Equal access of men and women to vocational training and education.* The Committee notes the Government's indication that girls represent 45 per cent of total school enrollment. Referring to the discussion held at the Conference Committee on the Application of Standards at its 106th Session (June 2017) on the application of the Worst Forms of Child Labour Convention, 1999 (No. 182), the Committee notes that non-state groups deliberately restricted the access of girls to education, including attacks and closure of girls' schools, and that 35 schools were used for military purposes in 2015. It further notes the low enrollment rate of girls, in particular at the secondary school level, high dropout rates especially in rural areas owing to a lack of security in the journey to and from school, and the written threats warning girls to stop going to school by non-state armed groups. The Committee notes that, in the Afghanistan Living Conditions Survey (ALCS) for 2016–17, the Central Statistics Organization indicates that, in 2016, girls' access to primary education was in decline, and female gross attendance rates in primary, secondary and tertiary education represented only 0.71, 0.51 and 0.39 per cent of the corresponding male rates, respectively. Furthermore, it is estimated that only 37 per cent of adolescent girls are literate, compared to 66 per cent of adolescent boys and that 19 per cent of adult women are literate compared to 49 per cent of adult men. *While acknowledging the difficult situation prevailing in the country, the Committee requests the Government to step up its efforts to encourage girls' and women's access and completion of education at all levels, and to enhance their participation in a wide range of training programmes, including those in which men have traditionally predominated. It requests the Government to provide updated statistics disaggregated by sex, on participation and completion rates of the different levels of education, as well as in the various vocational training programmes. The Committee again requests the Government to provide information on any measures taken as a result of the affirmative action policy in education envisaged by the NAPWA 2007–17.*

*Article 5(1). Special measures of protection. Work prohibited for women.* The Committee previously noted that the list of physically arduous or harmful work prohibited for women to be established under section 120 of the Labour Law was still under preparation. *Noting the absence of updated information provided by the Government in that respect, the Committee again urges the Government to ensure that, in the process of the Labour Law reform, any restrictions on the work that can be done by women are strictly limited to maternity protection and are not based on stereotyped assumptions regarding their capacity and role in society that would be contrary to the Convention. It requests the Government to provide a copy of the list of work that is prohibited for women, once adopted.*

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

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

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

*Observation 2019*

The Committee takes note of the observations made by the International Trade Union Confederation (ITUC) received on 9 September 2019 in relation to the application of the Convention in law and in practice. ***It requests the Government to provide its comments thereon.***

*Articles 2, 3 and 5 of the Convention. Right of workers to form and join organizations of their own choosing without previous authorization and of these organizations to elect their officers, freely organize their activities and formulate their programmes without undue interference.* The Committee notes that the ITUC expresses its deep and serious concern regarding the ongoing attempt by the Government to pass the Fair Work (Registered Organisations) Amendment (Ensuring Integrity) Bill 2019 into law. The ITUC considers these attempts as reckless and harmful to industrial relations and the protection of workers' rights and liberal democratic values in Australia. The ITUC contends that the Bill will violate Australia's international labour standards and human rights obligations, undermining, in particular, the right to freedom of association and effective recognition of collective bargaining and the right to freedom of expression for organised labour. According to the ITUC, the "Ensuring Integrity Bill" has introduced unprecedented measures for trade union governance and administration that threaten the effective functioning and very existence of unions in Australia without meaningful consultations with the unions. The Bill conflates the right to form or join unions to protect the social and economic interests of workers with the duties of officers of a corporation, leading to further conflation of the punishment arising from criminal conduct with breaches of civil duties and obligations arising from running a membership-based organization in the nature of a trade union. The measures introduced will seriously undermine the agency of workers' organizations, permit gross interference by public authorities and hostile persons, create uncertainty and instability in the administration and operation of the organizations and result in undermining the peace and stability required for a productive industrial relations landscape in Australia. The Committee considers that this communication received after the deadline in a reporting year falls within the exceptional cases for its consideration as it refers to legislative proposals where the Committee's comments may be of assistance in the country's further consideration of this proposed legislation (CEACR 2019 General Report, paragraph 95).

The ITUC enumerates four broad measures it considers to be contrary to the Convention: disqualification from office; cancellation of registration; administration of dysfunctional organisations; and a public interest test for amalgamations. As regards the first point, the ITUC refers to the proposed power for the State officials to seek to deny trade union officers their right to stand for office because they have committed civil offences, some of which may be unrelated to the capacity to properly perform trade union duties, or for having been held in contempt of court. According to the ITUC, this measure has the potential to destabilize trade union functionality with frivolous but debilitating court actions and thereby denying the union its autonomy and its members their primary responsibility to protect their own interest. The ITUC indicates that the Bill also proposes to grant power to apply to the Federal Court to cancel trade union registration on grounds such as: officers having acted in a conflict-of-interest situation; and officers managing the affairs of the organization in an oppressive, unfairly prejudicial or discriminatory manner against members, or acting contrary to the interest of the organization, or having a record of not complying with designated laws (with no limitation as to scope or reach or time covered by this compliance record). Also included in the grounds for requesting cancellation of registration is the organization of unprotected industrial action. The ITUC is deeply concerned that these measures impute individual responsibility and actions of officers and officials to the existence of the organization itself and mete out collective punishment by the cancellation or deregistration of the trade union organization and create a high risk of legal uncertainty. Similarly, the Bill grants powers to apply to the Federal Court for a declaration that the organisation is not functioning effectively, for which a number of measures including placing it under administration may be applied. The ITUC considers these measures to be intrusive and to pose a serious risk of interfering with, or imposing a chilling effect on, the free functioning of trade unions. The autonomy and independence of the union would be undermined to the extent that matters and concerns that would ordinarily be addressed through the normal democratic and accountable functioning of the membership would instead elicit a public takeover possibly instigated by hostile interests. Finally, the ITUC refers to the proposed public interest test for the amalgamation of unions. The Fair Work Commission (FWC) has to decide that an amalgamation is in the public interest before it can take effect. Those who can make submissions in this regard include the Commissioner, the Minister, any other organisation that represents industrial interests of employers or employees or may otherwise be affected by the amalgamation, other organisations not representing interests of employers or employees in the industry concerned, and any other person of a sufficient interest in the amalgamation. The grounds for establishing public interest include record of compliance with law, the impact on employees and employers in the industry concerned and other matters which may be considered by the FWC. According to the ITUC, this represents an intrusive interference in trade union affairs and amounts to previous authorisation for trade union registration.

The Committee observes with ***concern*** the numerous proposals raised in the Bill which would broaden the possibilities of intervention in the internal functioning of workers' organizations. It recalls that it has always considered that the conviction for an act the nature of which is not such as to call into question the integrity of the person concerned and not such as to be prejudicial to the performance of trade union duties should not constitute grounds for disqualification from trade union office (see the 2012 General Survey on the fundamental Conventions, paragraph 106). Moreover, cancellation of trade union registration is an extreme measure affecting the entire trade union membership. Where there are individual acts that need to be sanctioned, measures taken should rather focus on those responsible and avoid undermining the rights and benefits of collective representation. Finally, the Committee recalls that the right of workers to establish organizations of their own choosing without previous authorization, enshrined in the Convention, includes the amalgamation of unions. ***In light of the seriousness of the matters raised, the Committee calls upon the Government to review the proposals in the Bill with the representative workers' and employers' organizations concerned so as to ensure that any measures adopted are in full conformity with the Convention. It requests the Government to keep it informed of the steps taken in this regard and any further developments.***

*Article 3. Right of organizations to freely organize their activities and to formulate their programmes.* In its previous comments, the Committee requested the Government to take all appropriate measures, in consultation with the social partners, to review: (i) the provisions of the Competition and Consumer Act prohibiting secondary boycotts; (ii) sections 423, 424 and 426 of the Fair Work Act (FWA) relating to suspension or termination of protected industrial action in specific circumstances; (iii) sections 30J and 30K of the Crimes Act prohibiting industrial action threatening trade or commerce with other countries or among states; and (iv) boycotts resulting in the obstruction or hindrance of the performance of services by the Government or the transport of goods or persons in international trade; and to provide detailed information on the application of these provisions in practice with a view to bringing them into full conformity with the Convention.

The Committee notes the Government's indication that it considers the current provisions dealing with industrial action to be necessary, reasonable and proportionate to support the objects of the FWA, which is to provide a balanced framework for cooperative and productive industrial relations that promotes national economic prosperity and social inclusion for all Australians. While protected industrial action is legitimate during bargaining for a proposed enterprise agreement, there may be cases where the impact of that action on the parties or on third parties is so severe that it is in the public interest, or even potentially the interests of those engaging in the action, that the industrial action cease, at least temporarily. The Government adds that a variety of factors must be taken into account when considering an application under section 423 of the FWA and that such applications are rare, with two applications lodged in 2016–17 and one application lodged in 2017–18. As regards section 424, there have been relatively few applications with only nine in 2017–18, in contrast to 579 applications for a protected action ballot order during the same period. Finally, there were only two applications made under section 426 in 2017–18.

The Government indicates that no decisions were made under sections 423 and 426, while it provides some examples of decisions taken by the FWC under section 424 either to suspend or terminate protected industrial action or to refuse to issue such an order. Cases concerning the termination or suspension of industrial action included: (a) terminated action in an oil refinery that would cause significant damage to the Western Australian economy estimated at nearly AUD90 million per day as well as to the Australian economy as a whole; (b) suspension for two months of industrial action by employees of court security and



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custodial services where the action threatened to endanger the personal safety, health and welfare of part of the population; (c) the suspension in the form of an indefinite ban on a work stoppage in railway transport which threatened to endanger the welfare of a part of the population and threatened to cause significant damage to the Sydney economy; and (d) termination of industrial action affecting the Australian Border Force. An application requesting termination of industrial action in independent schools was however refused noting that, while the action was causing "inconvenience", it was "not as yet causing significant harm".

The Committee appreciates the information transmitted by the Government concerning the practical application of these provisions in the FWA. The Committee notes that some of the services concerned in the cases where industrial action was either suspended or terminated (such as border control, court security and custodial services) may be understood to be essential services in the strict sense of the term or public servants exercising activity in the name of the State where strike action may be restricted. The Committee recalls however that it does not consider oil refinery or railway transport to constitute services in which this right may be fully restricted, although the Government may consider the establishment of negotiated minimum services.

*Observing finally that there have been no changes to the provisions of the Competition and Consumer Act prohibiting secondary boycotts or to sections 30J and 30K of the Crimes Act, the Committee once again requests the Government, in light of its comments above and in consultation with the social partners, to review the above-mentioned provisions so as to ensure that they are not applied in a manner contrary to the right of workers' organizations to organize their activities and carry out their programmes in full freedom. It further requests the Government to continue providing detailed information on the application of these provisions in practice.*

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

[The Government is asked to reply in full to the present comments in 2020.]

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

### Observation 2019

*Article 4 of the Convention. Promotion of collective bargaining. Scope of collective bargaining. Fair Work Act (FWA).* In its previous comments, the Committee noted that sections 186(4), 194 and 470–475 of the FWA exclude from collective bargaining as "unlawful terms" any terms relating to the extension of unfair dismissal benefits to workers not yet employed for the statutory period, the provision of strike pay, the payment of bargaining fees to a trade union, and the creation of a union's right to entry for compliance purposes more extensive than under the provisions of the FWA. It had observed the concerns expressed by the Australian Council of Trade Unions (ACTU) with respect to the restrictions in the FWA on the content of agreements and requested the Government to review these sections, in consultation with the social partners, so as to bring them into accordance with the Convention.

The Committee notes that the Government considers these provisions to be appropriate to Australia's national conditions (as permitted by article 4) and that the formulation "matters pertaining to the employment relationship" in section 172(1) in relation to permissible content in enterprise agreements is a long-standing part of Australia's industrial relations framework developed through extensive tripartite negotiation and consultation with the social partners, including the ACTU. The Government adds that the post-implementation review of the FWA by an independent expert panel (the Review Panel) was informed by submissions from various stakeholders (including the social partners) and supported the FWA content rules. Finally, the Government concludes that the current provisions dealing with permitted matters in enterprise agreements are necessary, reasonable and proportionate to support the objects of the FWA.

*Emphasizing that the measures adapted to the national conditions referred to in Article 4 of the Convention should aim to encourage and promote the full development and utilization of machinery for collective bargaining, and recalling that legislation or measures taken unilaterally by the authorities to restrict the scope of negotiable issues are often incompatible with the Convention, while tripartite discussions for the voluntary preparation of guidelines for collective bargaining are a particularly appropriate method of resolving such difficulties (see 2012 General Survey on the fundamental Conventions, paragraph 215), the Committee once again requests the Government to review the above-mentioned sections of the FWA, in consultation with the social partners, so as to leave the greatest possible autonomy to the parties in collective bargaining.*

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

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

### Observation 2019

The Committee notes the observations of the Australian Council of Trade Unions (ACTU), received on 10 October 2018.

*Articles 1 and 2 of the Convention. Legislative developments.* The Committee previously welcomed the adoption of the Workplace Gender Equality Act of 2012 (the Act), under which all non-public sector employers with more than 100 employees must report annually to the Workplace Gender Equality Agency (WGEA) against a set of gender equality indicators, including equal remuneration between women and men. It noted that, following the amendments made in 2015 to the Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 (No. 1), with the aim of streamlining workplace gender equality reporting requirements in response to the difficulties encountered by businesses in complying with the former requirements (employers were no longer required to report on several elements concerning remuneration), a working group of stakeholders had been established to identify ways of improving data collection. The Committee requested the Government to provide information on the composition of the working group, the outcome of its discussions and any follow-up action taken. The Committee notes the Government's statement, in its report, that the non-manager working group was tasked with ensuring that reporting on standardized occupational categories and remuneration met the intended purpose of identifying disparities at the workplace level, so that the data is useful for benchmarking and for employers to improve gender equality in the workplace, which is consistent with the Act's objectives and the principle of the Convention. The working group identified Standard Business Reporting (SBR) as the best option to meet the dual aims of reducing the reporting burden on employers while improving data quality. The Workers' group recommended that an SBR pilot be developed and tested by the WGEA to investigate how an SBR-like solution could work for reporting under the Act. The Government adds that the options tested were not viable at that time. Referring to the amendments made in 2015 to the Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 (No. 1), the Government indicates that the amendments reflected extensive consultation, following the Workplace Gender Equality Reporting Regulation Impact Statement (2015), which assessed the burden of reporting as quite high, to the extent that it was affecting data quality. The Government states that the 2013 Instrument requires reporting on additional data including appointments, promotions and resignations, as well as the proportion of employees ceasing employment before returning to work from parental leave. Furthermore, data continue to be collected on flexible working arrangements, as well as gender-specific access to parental leave and support for caring. The Committee notes the Government's indication that the WGEA 2016–17 dataset indicates that there has been a 10.8 percentage points rise in the proportion of employers analysing their remuneration data for gender pay gaps, and that the proportion of organizations with specific pay equity objectives in their remuneration policy and/or strategy has doubled over the last three reporting periods. In 2017, in accordance with the Workplace Gender Equality Act 2012, the WGEA reported on progress achieved in relation to the gender equality indicators in its 2014–16 Progress Report to the Minister. The Report indicated that compliance with the Act remains strong at about 99 per cent. The Report also noted that the value of the data is becoming widely recognized by employers and the research community. The Committee however notes the ACTU's reiterated concerns regarding the reporting process implemented under the WGEA and its indication that it is neither rigorous nor detailed enough, as companies do not have to disclose actual pay data, but merely

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to tick a box advising whether or not they have an equal remuneration policy in place. The ACTU adds that companies, including those with fewer than 100 employees, should be required to provide detailed information on wages to enable a proper assessment of the causes, effects and drivers of the gender pay gap. *The Committee asks the Government to provide information on the steps taken to evaluate, in collaboration with workers' and employers' organizations, the amendments made to the Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 (No. 1) in light of the objectives of the Workplace Gender Equality Act, 2012 and the principle of the Convention. It asks the Government to provide information on any measures taken or envisaged to improve data collection on remuneration from companies, including those that employ fewer than 100 employees, and ensure the effectiveness of the reporting process implemented under the Workplace Gender Equality Act of 2012, including as a result of the recommendations made by the multi-stakeholders working group.*

With regard to *Queensland*, the Committee welcomes the adoption of the Industrial Relations Act 2016 (IR Act), which entered into force on 1 March 2017 and covers only public sector workers and those who work for municipal councils in *Queensland*, as well as of the Industrial Relations Regulations 2018, which entered into force on 1 March 2018. It notes more particularly that the *Queensland* Industrial Relations Commission shall ensure equal remuneration for work of equal or comparable value, including by establishing and maintaining a system of non discriminatory awards; supervising the bargaining of agreements and certifying those agreements; and making equal remuneration orders to ensure that employees covered by the order receive equal remuneration when the Commission is not satisfied that an award or agreement provides equal remuneration (sections 4(j), 141(2)(d), 143(1)(c), 201, 245–259, and 447(1) of the IR Act). *The Committee asks the Government to provide information on the practical implementation of the Industrial Relations Act 2016 and the Industrial Relations Regulations 2018, including on the measures taken by the Queensland Industrial Relations Commission to ensure equal remuneration for work of equal value in awards, agreements and through equal remuneration orders in accordance with the obligations imposed by the Convention. It asks the Government to provide information on any difficulties encountered in the implementation of the Act and the Regulations, as well as the measures taken or envisaged to overcome them.*

With regard to *Victoria*, the Committee notes that a Gender Equality Bill 2018, containing new obligations for the Victorian public sector to plan and report on gender equality, has been released for public consultation. *The Committee asks the Government to provide information on any progress made towards the adoption of the Gender Equality Bill 2018 and to provide a copy once adopted.*

With regard to *Western Australia*, the Committee notes that, in September 2017, the Ministerial Review of the State Industrial Relations System (the Review) was established in order to, inter alia, consider including an equal remuneration provision in the Industrial Relations Act 1979 (the IR Act), which applies to State public sector workers, municipal council workers and other workers in *Western Australia* not covered by the Fair Work Act, 2009. It notes that, on July 2018, the Review released its final report in which it recommended amending the IR Act to: (i) include an equal remuneration provision based on the model of the Queensland Industrial Relations Act 2016; and (ii) require the Western Australian Industrial Relations Commission (WAIRC), established under the IR Act, to develop an equal remuneration principle to assist parties in bringing applications pursuant to the equal remuneration provisions. The Committee notes that the final report was tabled in the state Parliament on 11 April 2019. *The Committee asks the Government to provide information on any progress made towards the inclusion of an equal remuneration provision in Western Australian legislation, in particular by amending the Industrial Relations Act 1979, as well as the development of an equal remuneration principle by the Western Australian Industrial Relations Commission.*

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

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

#### Observation 2019

The Committee notes the observations of the Australian Council of Trade Unions (ACTU) of 10 October 2018.

*Articles 1 and 2 of the Convention. Legislative developments and enforcement. Gender equality. Federal level.* In its previous comments, the Committee asked the Government to report on the amendments to the Fair Work Act 2009, the adoption of comprehensive anti-discrimination legislation at the federal level and on any evaluation undertaken of the amendments made to the Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 (No. 1) of 2015. The Committee notes the Government's repeated indication in its report that the proposal to consolidate the five Commonwealth anti-discrimination Acts into a single comprehensive federal law was withdrawn and does not form part of the current Government's policy. The Government adds that equality and non-discrimination continue to be protected and promoted through legislative, policy and programme measures, including legislative anti-discrimination protections at the Commonwealth, state and territory levels. The Committee notes the Government's indication that the Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 (No. 1) requires reporting from relevant employers on additional data including appointments, promotions and resignations, as well as the proportion of employees ceasing employment before returning to work from parental leave. Data on flexible working arrangements, as well as gender-specific access to parental leave and support for caring, continue to be collected. Referring to its 2019 observation on the application of the Equal Remuneration Convention, 1951 (No. 100), the Committee notes the Government's indication that reporting provided for under the 2013 Instrument seems to have had a positive impact in practice. The Workplace Gender Equality Agency's (WGEA) most recent 2016–17 dataset shows that the proportion of organizations with specific pay equity objectives in their remuneration policy and/or strategy has doubled over the last three reporting periods. *The Committee asks the Government to report any new legislative developments or amendments made to the federal anti-discrimination laws, including the Fair Work Act 2009, as well as their application in practice. It asks the Government to provide information on any evaluation undertaken of the amendments made to the Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 (No. 1) and their impact in achieving effective equality of opportunity and treatment.*

*Article 1(1)(a). Discrimination based on religion. State level. Victoria.* The Committee previously raised concerns about sections 82(2) and 83(2) of the *Victoria* Equal Opportunity Act 2010, which provides exemptions to the prohibition on discrimination in the case of religious bodies and schools that conform to the doctrines, beliefs or principles of a religion, or when it is reasonable to avoid injury to the religious sensitivities of adherents to the religion. The Committee noted the Victorian Government's commitment to amending the religious exemptions in the Equal Opportunity Act 2010. The Committee further notes that the Victorian Government introduced the Equal Opportunity Amendment (Religious Exceptions) Bill 2016 to that end. This will reinstate the "inherent requirement" test for employment by a religious body or religious school, which had previously been removed. The Committee, however, notes that the Bill passed the Legislative Assembly in September 2016, but was defeated in the Legislative Council in December 2016 and that as a result the "inherent requirement" test for employment by a religious body or religious school has not been reintroduced. *The Committee asks the Government to indicate how it is ensured that sections 82(2) and 83(2) of the Victoria Equal Opportunity Act 2010 do not, in practice, hinder the enjoyment of equality of opportunity and treatment in respect of employment. The Committee also asks the Government to continue to provide information on any amendments envisaged to the Equal Opportunity Act 2010 with a view to bringing the provisions regarding religious exemptions into conformity with the Convention by establishing an "inherent requirement" test.*

*Discrimination on the basis of race, colour and social origin. Indigenous peoples. Federal level.* For a number of years, the Committee has been expressing concern regarding restrictions on the rights of indigenous peoples to land and property recognition and use. It previously noted that the Council of Australian Governments (COAG) conducted an investigation into indigenous land administration and use and, in its December 2015 final report, made six key recommendations to take forward this agenda, including many proposed amendments to the Native Title Act 1993. The Committee notes the Government's

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indication that it is developing a package of native title reforms to improve the efficiency and effectiveness of the native title system for all parties, including by: focusing on improving claims resolution; coming to agreements around the use of native title land; and introducing measures to promote the autonomy of native title groups to make decisions about their land and to resolve internal disputes. The Government indicates that, as of November 2017, approximately 79 per cent of native title determinations had been made by consent (406 determinations made in total). The Government adds that a paper seeking stakeholders' views on options for reform was released on 29 November 2017 and that feedback from stakeholders will inform the development of a draft Native Title Amendment Bill. The Committee however notes that several United Nations (UN) Treaty Bodies remain concerned about: (i) the high standard of proof required to demonstrate an uninterrupted connection to the area being claimed, and a continued practice of their traditional laws and customs; and (ii) the extreme difficulties in obtaining compensation under the current native title scheme for those people who had their native title extinguished. The Special Rapporteur on the rights of indigenous peoples expressed further concerns at the complex system, with multiple and overlapping legal regimes applicable to native title claims and land rights at the federal, state and territory levels (CEDAW/C/AUS/CO/8, 25 July 2018, paragraph 51; CERD/C/AUS/CO/18-20, 26 December 2017, paragraph 21; CCPR/C/AUS/CO/6, 1 December 2017, paragraph 51; A/HRC/36/46/Add.2, 8 August 2017, paragraph 99; and E/C.12/AUS/CO/5, 11 July 2017, paragraph 15). ***The Committee asks the Government to provide specific information on any progress made in the review and adoption of the draft Native Title Amendment Bill, in collaboration with indigenous peoples and other relevant stakeholders. It asks the Government to provide information on any other steps taken to ensure that indigenous peoples have access to land and resources to allow them to engage in their traditional occupations and access employment without discrimination.***

***Article 2. Equality of opportunity and treatment of indigenous peoples. Constitutional recognition.*** The Committee recalls the steps undertaken to examine, raise awareness and build support for the constitutional recognition of Aboriginal and Torres Strait Islander peoples, including the adoption of the Aboriginal and Torres Strait Islander Peoples Recognition Act 2013. It previously noted that while the Referendum Council, established to give advice on Aboriginal and Torres Strait Islander peoples, called for constitutional recognition of indigenous peoples, the Government had rejected this proposal. The Committee notes the Government's statement that it remains committed to recognizing Aboriginal and Torres Strait Islander peoples in the Constitution, but does not believe that the Referendum Council's proposal to provide for a national indigenous representative assembly to constitute a 'Voice to Parliament' is either desirable or capable of winning acceptance in a referendum. The Government indicates that the Commonwealth Parliament's Joint Select Committee on Constitutional Recognition Relating to Aboriginal and Torres Strait Islander Peoples was appointed in March 2018 and will consider the recommendations of the Referendum Council (2017), the Uluru Statement from the Heart (2017), the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples (2015) and the Expert Panel on Constitutional Recognition of Indigenous Australians (2012). ***The Committee asks the Government to continue providing information on the status of the process of specifically recognizing Aboriginal and Torres Strait Islander peoples in the Constitution.***

***National policy and programmes for indigenous peoples.*** The Committee previously noted the "Closing the Gap Strategy", which is a formal commitment by federal, state and territory governments to achieve equality for Aboriginal and Torres Strait Islander peoples within 25 years. However, it noted from the 2017 assessment report that the employment target was not being met, and that while there had been an increase in the employment rate of indigenous peoples since 1994, there has been a decline since 2008. The Committee notes the Government's indication that it is on track to meet three out of seven of the current "Closing the Gap" targets and that all Australian governments are working together, in consultation with Aboriginal and Torres Strait Islander peoples, to update the "Closing the Gap" targets. The Government adds that, between November 2017 and April 2018, "Closing the Gap Refresh" hosted a special gathering of indigenous representatives, conducted 18 national round tables and held a series of workshops, presentations and meetings. Over 1,000 stakeholders have participated in these consultations. The Government indicates that a public submission process closed on 30 April 2018 with over 170 submissions received and that, based on these consultations, Commonwealth, state and territory officials worked with indigenous academics, experts and practitioners to draft potential targets. The Committee notes that the COAG will consider "Closing the Gap" targets at its next meeting.

Concerning indigenous employment initiatives, the Committee notes the reference made by the Government to several specific initiatives aimed, inter alia, at enhancing indigenous people's access to employment and vocational training, such as the Employment Parity Initiative (EPI) which encourages large employers to enter into a parity partnership with the Government to increase the proportion of indigenous employment, as well as to use indigenous businesses in their supply chains. The Government adds that specific affirmative measures have been implemented to expand the range of indigenous employment opportunities in the public sector, including in the framework of the Australian Public Service Commissioner's Directions 2016 and the Commonwealth Aboriginal and Torres Strait Islander Employment Strategy. While welcoming this information, the Committee notes that the ACTU remains concerned that work-related discrimination against indigenous peoples is not being properly addressed by the current governmental scheme. The ACTU also highlights that, according to a recent survey, 9 per cent of Australians aged 25–44 would not hire an indigenous person for a job and 22 per cent do not see this as an act of discrimination. The ACTU expresses specific concern about the Community Development Programme (CDP), which aggressively targets indigenous people, who represent 80 per cent of CDP participants. The ACTU indicates that, according to the Australia Institute, the programme is not generating employment, as less than 20 per cent of CDP participants are supported into a job and less than 10 per cent stay in that job for six months. The trade union further expresses concern at the fact that CDP participants are typically required to work 25 hours a week for 280 Australian dollars (AUD) or AUD11.20 per hour, while the hourly minimum wage was AUD18.93 in 2018. The ACTU highlights that recipients receive even less if penalties for non-compliance are incurred, which is a common occurrence, and asks the Government to end this programme. The Committee notes that several UN Treaty Bodies express further concern at: (i) the low level of implementation of the "Closing the Gap" targets; (ii) the low level of school attainment and high drop-out rates at all school levels; as well as (iii) the high unemployment rate among indigenous peoples (CEDAW/C/AUS/CO/8, 25 July 2018, paragraph 51; A/HRC/38/47/Add.1, 17 April 2018, paragraph 47; CERD/C/AUS/CO/18-20, 26 December 2017, paragraphs 17 and 23; A/HRC/36/46/Add.2, 8 August 2017, paragraphs 11, 46, 54 and 57; E/C.12/AUS/CO/5, 11 July 2017, paragraphs 15 and 51; and A/HRC/35/41/Add.2, 9 June 2017, paragraphs 40, 48 and 51).

***State level.*** The Committee notes the range of initiatives being undertaken in some of the states and territories to promote equality of opportunity and treatment of indigenous peoples and to address discrimination. The Committee notes that several states, such as *Queensland, New South Wales, Victoria and Western Australia*, are implementing affirmative actions to enhance the employment of Aboriginal and Torres Strait Islander peoples in the public sector, in particular in senior positions. It further notes that, within the framework of Queensland's Annual Vocational Education and Training (VET) Investment Plan, several programmes have been implemented to enhance access to vocational education and training for indigenous people. The Committee notes the release in 2017 of the "Tharamba Bugheen" Aboriginal Business Strategy 2017–21 in *Victoria*, which aims to strengthen the entrepreneurial culture and to advance the economic position of aboriginal Victorians, as well as improving the visibility and networks of aboriginal businesses.

***In light of the failure to meet the employment targets and the persistent disadvantaged position of indigenous peoples in education and employment, the Committee asks the Government to pursue its efforts and provide information on any assessment carried out on the impact of the different measures undertaken to enhance indigenous peoples' access to the labour market, as well as on any corrective measures taken as a result, in particular to address the concerns expressed regarding the Community Development Programme. It asks the Government to provide information on any revision made of the "Closing the Gap Strategy" targets, in collaboration with indigenous peoples and other relevant stakeholders, as well as on any progress made in meeting these targets, in particular concerning employment. The Committee asks the Government to continue providing detailed information on the policies and programmes implemented to address discrimination and promote equality of opportunity and treatment in employment and occupation for indigenous peoples at the federal, state and territory levels, as well as on their impact.***

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



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

*Observation 2019***Follow-up to the decisions of the Governing 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-compliance by Bangladesh with this Convention, as well as the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), submitted by several Workers' delegates to the 2019 International Labour Conference, was declared receivable in November 2019 and is pending before the Governing Body.

*Articles 2, 4, 12 and 23 of the Convention. Labour inspection in export processing zones (EPZs) and special economic zones (SEZs).* In its previous comments, the Committee requested that EPZs and SEZs be brought under the purview of the labour inspectorate.

The Committee notes the Government's reference in its report to the EPZ Labour Act, which was adopted in February 2019. It welcomes that Chapter XIV of that Act now provides for labour inspection by labour inspectors appointed under the Bangladesh Labour Act (BLA) and that the Government indicates that labour inspectors of the Directorate of Inspection for Factories and Establishments (DIFE) have already undertaken labour inspections in five factories in EPZs. The Committee also notes the Government's indications that consultations are ongoing with workers, investors and relevant stakeholders to see how labour inspections undertaken by the DIFE can best be integrated with the existing supervision exercised by the Bangladesh Export Processing –Zones Authority (BEPZA). The Committee notes, in particular, that section 168 of the EPZ Labour Act allows the Chief Inspector and other Inspectors appointed under the BLA to undertake inspections but observes that an approval of the Executive Chairman of the BEPZA is required. In this respect, the Committee recalls that, pursuant to section 4(3) of the Bangladesh Export Processing Zones Authority Act, the objectives of the BEPZA include encouraging and promoting foreign investment in the zone. The Committee recalls that *Article 12* of the Convention provides that labour inspectors provided with proper credentials shall be empowered to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection. *While the Committee welcomes the progress made in opening EPZs and SEZs for labour inspections by the DIFE, it requests the Government to provide information on the outcome of the abovementioned discussions and consultations. Further, the Committee requests the Government to take the necessary measures to ensure that labour inspectors are empowered to enter freely and without previous notice establishments in EPZs and SEZs, without any restrictions. In this respect, the Committee requests the Government to provide information on the nature and the modalities of the approval required from the BEPZA for the undertaking of inspections, including if a separate request is required before each inspection, and if so, the number of requests made, the number approved, the time elapsed between each request and approval, and the reasons given for each failure to approve. Lastly, it requests the Government to provide statistical information on the labour inspections undertaken in EPZs and SEZs, disaggregated into inspections by the DIFE and inspections under the BEPZA, including the overall number of inspections undertaken, the violations detected and the measures taken as a result.*

*Article 6. Status and conditions of service of labour inspectors.* In its previous comments, the Committee noted that retention of labour inspectors was a problem and that a number of recently recruited labour inspectors had left the DIFE after having been trained, to take up work with other government services. The Committee noted that a study on the reasons for the high attrition rate of the DIFE recommended, among other things, the creation of more senior positions and the further development of staff competencies. In this respect, the Committee notes the Government's indication that following the recommendations in that study, a new proposal providing for the recruitment of a significant number of labour inspectors was made, including the creation of senior positions. The Committee notes that the amendments to the BLA, adopted in November 2018, provide for the creation of an additional labour inspection position, bringing the number of career positions with the labour inspectorate to six (previously five). *The Committee requests the Government to continue to provide information on the measures taken to implement the recommendations in the study on the reasons for the high attrition rate, and to provide information on the implementation of the new career structure adopted in 2018, including the number of appointments made at each position, as well as information on the attrition rate among inspectors at different professional levels.*

*Articles 7, 10, 11 and 16. Human resources and material resources of the labour inspectorate. Frequency and thoroughness of labour inspections.* In its past comments, the Committee noted that 575 labour inspection positions had been approved in 2014 but not filled, and that the number of labour inspectors decreased from 345 to 320 between 2017 and 2018.

The Committee notes with *concern* from the statistics provided by the Government responding to the Committee's request that the number of labour inspectors further decreased to 308 labour inspectors by August 2019. On the other hand, it also notes the reference of the Government to a proposal, following the recommendations of a recent study, to increase the number of labour inspectors working at the DIFE to 1,458, which will require the approval of the Ministry of Public Administration and the Ministry of Finance. The Committee also notes the up-to-date information provided, on the number of labour inspections carried out, the training provided to labour inspectors, and that the Government reiterates the information from July 2017 with respect to the equipment and transport facilities available to the DIFE. Finally, it welcomes the information concerning the increase in the budget of the DIFE from Bangladesh taka (BDT) 351.20 million to BDT418.5 million. *Welcoming the proposed increase in the number of labour inspectors, the Committee requests the Government to continue to make every effort to recruit an adequate number of qualified labour inspectors, including by taking measures to fill all of the 575 labour inspection posts already approved in 2014, and to continue to provide information on the proposal to further increase the number of labour inspectors. It requests the Government to strengthen its efforts to ensure that workplaces are inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions, and to continue to provide information on the current number of labour inspectors working at the DIFE, as well as on the number of labour inspection visits carried out, and to disaggregate this information by sector. Noting the information provided by the Government in this respect, the Committee also requests the Government to continue to provide up-to-date information on the budget, equipment and transport facilities available to the DIFE, and the training provided to labour inspectors.*

*Articles 12(1), 15(c) and 16. Inspections without previous notice.* Duty of confidentiality in relation to complaints. In its previous comments, the Committee noted an increase in the number of inspections that were unannounced (random or complaints-driven), from 2.5 per cent of all inspections in 2014 to 20 per cent in 2016–17, compared with those undertaken with prior notice (regular inspections).

The Committee notes the indication of the Government that the BLA permits labour inspectors to deal with complaints confidentially. The Committee also notes with *concern* that the Government indicates that inspections in factories are normally announced, while inspections in shops and establishments are normally unannounced, and it notes the information provided concerning the number of inspections in each. The Committee recalls the importance of undertaking a sufficient number of inspections that are unannounced, including at factories as well as shops and establishments, to ensure that when inspections are conducted as a result of a complaint without prior notice, the fact of the complaint is kept confidential. *The Committee requests the Government to provide further information on the specific measures taken or envisaged to ensure that labour inspectors treat as absolutely confidential the source of any complaint and give no intimation to the employer that an inspection visit was made in consequence of the receipt of such a complaint, including measures taken with respect to inspections of factories. It also requests the Government to provide more specific information on the number of inspection visits that were unannounced and those that were undertaken with prior notice, disaggregated by RMG factory, shop, establishment, and other factories, as well as statistical information on the outcome of those visits disaggregated in the same manner.*

*Articles 17 and 18. Legal proceedings, effective enforcement and sufficiently dissuasive penalties.* The Committee notes the information provided by the

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Government, in reply to the Committee's request for statistics on enforcement in relation to violations of the legal provisions. In 2018, 42,866 labour inspections were undertaken and 116,618 violations detected (compared with 40,386 inspections and 100,336 violations in 2017), 1,531 cases submitted to the labour courts (1,583 in 2017) and 798 resolved cases (574 in 2017). The Committee notes that the outcome of cases referred to the courts were limited to the imposition of fines, and that the amount of penalties imposed in 2018 was BDT3.55 million (approximately US\$41,268, an average of approximately US\$52 per resolution). The Committee also notes that the Government reiterates that there is one legal officer at the DIFE responsible for the follow-up of labour law violations detected by labour inspectors, that a legal advisory firm is affiliated with the DIFE, and that there is a plan to establish a legal unit at the DIFE. The Government indicates that this unit is proposed to be composed of 17 legal officers. The Committee notes with *regret* that the Government does not provide a reply in response to the Committee's request for information on any measures taken or envisaged to ensure that penalties for labour law violations are sufficiently dissuasive, including penalties other than fines. *The Committee, once again, requests the Government to provide information on any measures introduced or envisaged to ensure that penalties for labour law violations are sufficiently dissuasive and to improve the proceedings for the effective enforcement of the legal provisions. In this respect, it also requests the Government to provide information on the progress made to establish a legal unit at the DIFE, including on the number of staff and their functions. Lastly, it requests the Government to continue to provide information on the specific outcome of the cases referred to the labour courts (such as the imposition of fines and also sentences of imprisonment) and to specify the legal provisions to which they relate.*

The Committee previously noted that labour officials of the Department of Labour (DOL) address cases of alleged violations of freedom of association through conciliation and requested information on the measures taken to secure the enforcement of legal provisions related to freedom of association. In this respect, the Committee notes the Governments' indication that pursuant to the BLA, the DOL does not intervene in the conciliation concerning violations of freedom of association. The Committee takes due note of this information and refers to its comments under Conventions Nos. 87 and 98.

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

*[The Government is asked to reply in full to the present comments in 2020.]*

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

### Observation 2019

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 1 September 2019 referring to matters addressed in this comment.

The Committee notes that a complaint under article 26 of the ILO Constitution alleging non-compliance by Bangladesh with this Convention, as well as the Labour Inspection Convention, 1947 (No. 81) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), submitted by several Workers' delegates to the 2019 International Labour Conference, was declared receivable and is pending before the Governing Body.

The Committee notes the 2018 amendment of the Bangladesh Labour Act, 2006 (BLA) and the adoption of the 2019 Export Processing Zones Labour Act (ELA).

*Civil liberties.* In its previous comments, the Committee expressed deep concern at the continued violence and intimidation of workers and urged the Government to provide information on the remaining specific allegations of violence and intimidation and to take all necessary measures to prevent such incidents in the future and ensure that, if they occur, they are properly investigated. The Committee further notes the Government's general statement that: any case of grave allegations of violence and intimidation is investigated by the Department of Police or the Ministry of Home Affairs; preventive measures have been put in place, including awareness-raising, training and seminars for police personnel on human and labour rights; and 29 committees have been formed in eight labour-intensive districts, comprised of officials from the Department of Labour (DOL) and the Department of Inspection for Factories and Establishments (DIFE), with the aim of ensuring peaceful and congenial working conditions in ready-made garment (RMG) factories through a number of concrete activities, such as resolving adverse situations in consultation with workers' and employers' representatives, publicizing the helpline introduced by the DIFE, reporting to the Ministry on the prevailing labour situation, etc.

The Committee notes, however, with *concern* the new allegations of violent suppression by the police of several workers' protests in 2018 and 2019 communicated by the ITUC, which denounce the use of rubber bullets, tear gas and water cannons, and the raiding of homes and destruction of property, as a result of which one worker was killed and more than a hundred injured, as well as the filing of false criminal complaints against hundreds of named unionists and thousands of unnamed persons. The Committee notes the Government's detailed reply thereto and observes that no information was provided in respect of: (i) the alleged injuries to 20 rickshaw drivers during suppression of protests in April 2018; (ii) the alleged injuries to 25 jute mill workers after dispersal of two protests in Chittagong in August 2018; (iii) the alleged injuries to ten garment workers during a protest over non-payment of wages in Gazipur in September 2018; and (iv) the alleged repression of export-processing zones (EPZs) workers for attempting to exercise their limited rights permitted under the law. In this regard, the Committee recalls once again that a truly free and independent trade union movement can only develop in a climate free from violence, pressure and threats of any kind against the leaders and members of such organizations. *The Committee requests the Government to provide information on the remaining specific allegations of violence and repression, including to report on any investigations or prosecutions initiated and the results thereof.*

*The Committee encourages the Government to continue to provide all necessary training and awareness-raising to the police and other State agents to sensitize them about human and trade union rights with the aim of avoiding the use of excessive force and ensuring full respect for civil liberties during public assemblies and demonstrations, and requests the Government to take all necessary measures to prevent such incidents of violence and repression in the future and ensure that, if they occur, they are properly investigated.*

*Article 2 of the Convention. Right to organize. Registration of trade unions.* In its previous comment, having observed that the number of rejected applications for registration remained high, the Committee requested the Government to continue to take all necessary measures to ensure that the registration process is a simple formality; to provide updated statistics as to the overall number of applications for registration received, accepted and rejected, and to clarify the status of the 509 applications submitted through the online system, which were not granted. The Committee notes the Government's indication that: (i) the Standard Operating Procedures (SOPs) have been incorporated in the 2018 amendment of the BLA as a new section and the concerned officials received training on the subject; (ii) after the adoption of the SOPs, the success rate in union registration has increased from 65 per cent in 2017 before the adoption of the SOPs to 79.85 per cent after their adoption, 74.85 per cent in 2018 and 74 per cent up to July 2019; (iii) although the rejection rate remains high it can be further reduced through training of concerned DOL officials and workers and, with support from the ILO, effort is being taken in this regard; (iv) if an application for registration is incomplete, the applicant may resubmit it after having complied with the Registrar's observations or appeal to the Labour Court within 30 days; sometimes, instead of taking legal action, the applicants submit repeated applications which can be a cause for repeated rejection; (v) if an application is incomplete due to non-fulfilment of the requirements or lacking information and the concerned parties are not able to meet the objection raised by the Registrar within 15 days, the application will be filed without any action; (vi) there are no cases of arbitrary refusal of registration but applications can be rejected for not meeting one of the requirements set out in the BLA and the decision is communicated to the applicant by registered post; (vii) the time limit for the DOL to register a trade union was reduced from 60 to 55 days and the time limit to communicate any objection to the applicant and for the applicant to reply was reduced from 15 to 12 days (section 182(1), (2) and (4)); (viii) on the basis of 546 applications granted between March 2015 and April 2018, the average time for registration is 45 days; (ix)

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the online registration system is not yet mandatory and both the service providers at the DOL and the workers require intensive training on the matter for which a request has been submitted to the ILO, Dhaka; (x) due to the huge volume of documents that have to be submitted, the applicants and the service providers follow a combination of the manual and online systems; (xi) due to administrative and technical reasons, including the upgrading of the software, neither the online registration nor the public database on registration are currently available; (xii) once the upgrade is complete, the database will include information on applications for registration accepted and rejected, registration of sectoral and national federations and confederations, trade union-related court cases, conciliation, election of collective bargaining agents, anti-union discrimination and information on participation committees; (xiii) as for the 509 applications for registration referred to previously, they were processed manually and at this stage, it is not possible to mention how many were granted; (xiv) trade union registration functions of the DOL have been decentralized and there are now 16 offices mandated to give registration (head office, six divisional labour offices and nine regional labour offices); and (xv) the Government has completed the upgrade of the Directorate of Labour to a Department of Labour, which has resulted in an increase of manpower from 712 to 921, a considerable increase in the DOL budget, and the creation of two additional divisional labour offices.

The Committee takes note of the detailed information provided by the Government and welcomes the increase of manpower of the DOL, as well as the decentralization of registration, which have the potential to increase the rapidity and efficiency of the registration process. The Committee observes however, that despite the Government's efforts to simplify the process and ensure its transparency, registration seems to remain overly complicated, obliging the applicants to comply with stringent conditions and submit numerous documents, leading to the online registration not being fully functional. While further noting the reported increase in the rate of trade union registration, the Committee observes that the rejection rate remains high (26 per cent), especially considering that this number seems to refer only to the rejection of complete applications and does not include incomplete applications, which are filed by the DOL without further action. The Committee also notes that, according to the ITUC, the registration process remains extremely burdensome, the SOPs fail to prevent arbitrary denial of applications, the Registrar routinely imposes conditions not based in the law or regulations and the Joint Director of Labour retains total discretionary power to refuse registration for false or fabricated reasons. *In light of the above and noting the Government's commitment to a further reduction in the number of rejected trade union applications, the Committee encourages the Government to continue to take all necessary measures to ensure that registration is, both in law and practice, a simple, objective, rapid and transparent process, which does not restrict the right of workers to establish organizations without previous authorization. It invites the Government to explore, in cooperation with the social partners, concrete ways of simplifying the registration process to make it more user-friendly and accessible to all workers, as well as to provide, where necessary, training to workers on submitting complete and duly documented applications for trade union registration. It also encourages the Government to provide comprehensive training to divisional and regional officers who, following the decentralization of the registration process, are responsible for registration of trade unions, so as to ensure that they have sufficient knowledge and capacities to handle applications for registration rapidly and efficiently. While further noting the technical difficulties currently encountered, the Committee trusts that both the online registration system and the publicly available database will be fully operational in the near future so as to ensure total transparency of the registration process. Regretting that the Government fails to provide full statistics on registration, the Committee requests it once again to provide updated statistics on the overall number of applications submitted, granted, filed and rejected, disaggregated by year and sector.*

*Minimum membership requirements.* In its previous comments, the Committee urged the Government to continue to take the necessary measures to review sections 179(2) and 179(5) of the BLA without delay, in consultation with the social partners, with a view to truly reducing the minimum membership requirement. The Committee notes the Government's indication that: (i) through the 2018 BLA amendment, the minimum membership requirement to form a trade union and maintain its registration has been reduced from 30 to 20 per cent of the total number of workers employed in the establishment in which a union is formed; (ii) since this reduction, a total of 216 trade unions have been registered; (iii) section 179(5) of the BLA which limits the number of trade unions in an establishment or group of establishments to a maximum of three might require some time to amend; and (iv) both issues may be considered at the next revision of the BLA. While welcoming the reduction in the minimum membership requirement, the Committee observes that the 20 per cent threshold is still likely to be excessive, especially in large enterprises, and notes that, according to the ITUC, it does in practice constitute a hurdle for the workforce to organize in large companies. The Committee also observes that a trade union formed in a group of establishments (defined as more than one establishment in a particular area carrying out the same or identical industry) can only be registered if it has as members not less than 30 percent of the total number of workers employed in all establishments, an excessive requirement that unduly restricts the right of workers to establish sectoral or industry unions. *The Committee requests the Government to clarify whether, in handling applications for registration, the reduced minimum membership requirement is being applied even in the absence of adjustments to the Bangladesh Labour Rules (BLR) and, should this not be the case, to take the necessary steps without delay to apply these amendments so as to facilitate trade union registration and to indicate the results once it has been applied. The Committee also requests the Government to indicate whether the reduced minimum membership requirement has had any impact on the overall number of trade union registrations submitted and granted, especially in large enterprises. Noting the Government's openness to further reducing the threshold, the Committee expects the Government to engage in meaningful discussions with the social partners in order to: continue to review the BLA with the aim of reducing the minimum membership requirements to a reasonable level, at least for large enterprises and trade unions in a group of establishments; amend section 179(5); and repeal section 190(f) that allows for cancellation of a trade union if its membership falls below the minimum membership requirement.*

With regard to the application of the BLA to workers in the agricultural sector, the Committee notes the Government's indication that the BLA is applicable to workers engaged in commercial agricultural farms where at least five workers are employed – they can participate in trade union activities and collective bargaining – and that small agricultural farms where less than five workers are employed are characterized by low productivity and subsistence farming and generally do not express any interest in trade union activities. While noting the Government's explanation, the Committee recalls that workers in small farms should also be allowed to form or at least join existing trade unions, even if in practice this may not result in a common occurrence. The Committee had also previously requested the Government to clarify, under this Convention and the Right of Association (Agriculture) Convention, 1921 (No. 11), whether Rule 167(4) of the BLR establishes a 400 minimum membership requirement to form an agricultural trade union and to provide information on its effects in practice and its impact on the right of agricultural workers to form trade union organizations of their own choosing. The Committee notes the Government's statement that workers in mechanized farms run for commercial purposes may organize according to the existing provisions of the BLA (the Government provides statistics on the number of existing trade unions in various agricultural sectors) and workers in family-based subsistence farms characterized by few workers can form groups of establishment under Rule 167(4). The Government further explains that Rule 167(4) erroneously referred to the requirement of 400 workers to form a trade union but that this requirement has been redefined through a gazette notification in January 2017. The Rule thus provides an opportunity for workers engaged in field crop production to form a group of establishments in every subdistrict or district, if there are at least five workers in each farm and a minimum of 400 workers unite (there are 18 such entities registered with the Department of Labour). According to the Government, since 77 per cent of the population lives in villages and agriculture represents the main source of livelihood, this membership requirement is not too high. *Taking due note of the Government's clarification but observing that the requirement of 400 workers to form a group of establishments in one district might still be excessive, especially considering that, in order to reach the 400 threshold, a large number of small family farms would need to unite, the Committee requests the Government to endeavor to reduce this requirement, in consultation with the social partners, to a reasonable level so as not to unduly restrict the right to organize of agricultural workers.*

*Articles 2 and 3. Right to organize, elect officers and carry out activities freely. Bangladesh Labour Act.* In its previous comments, the Committee had urged the Government to take the necessary measures, in consultation with the social partners, to continue to review and amend a number of provisions of the BLA in



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order to ensure that any restrictions on the exercise of the right to freedom of association are in conformity with the Convention. The Committee notes the detailed information provided on tripartite consultations held before the 2018 BLA amendment, as well as the Government's indication that reform in the labour sector has been a part of national political commitment. The Committee notes with *satisfaction* the following modifications introduced in the BLA: addition of section 182(7) instructing the Government to adopt SOPs for the processing of applications for registration of trade unions; repeal of section 184(2)–(4) imposing excessive restrictions on organizing in civil aviation; repeal of section 190(d) allowing cancellation of a trade union due to violation of any of the basic provisions of its constitution; repeal of section 202(22) providing for automatic cancellation of a union if, in an election for determination of collective bargaining agent, it obtains less than 10 per cent of the total votes cast; addition of section 205(12) stating that there is no requirement to form a participation committee in an establishment where there is a trade union; and addition of section 348(A) which provides for the establishment of a Tripartite Consultative Council to provide advice to the Government on matters related to law, policy and labour issues.

The Committee welcomes the clarification that workers in the informal sector do not need to provide identity cards issued by an establishment to apply for registration but can also use a national identity card or birth registration certificate (section 178(2)(a)(iii)), as well as the replacement of the obligation to obtain approval from the Government by an obligation to inform the Government of any funds received from any national or international source, except union dues (section 179(1)(d)). The Committee further welcomes the reduction of the requirement of support of two thirds of trade union members to call a strike to 51 per cent (section 211(1)). The Committee also notes that the 2018 amendments introduced section 196(4) providing for the adoption of SOPs for investigating unfair labour practices on the part of the workers and reduced by half the maximum prison sentence imposable on workers for a series of violations – unfair labour practices, instigation and participation in an illegal strike or a go-slow, participation in activities of unregistered trade unions and dual trade union membership (sections 291(2)–(3), 294–296, 299 and 300). However, the Committee observes that the sanctions still include imprisonment for activities that do not justify the severity of the sanction and recalls that it has been requesting the Government to eliminate such penalties from the BLA and to let the penal system address any possible criminal acts.

***Taking due note of the above amendments introduced to improve compliance with the Convention, the Committee expects them to be applied in practice without delay so as to enhance the right to organize of workers and employers and requests the Government to indicate whether they are fully in force and applied or whether their application is dependent upon the issuance of a revised BLR.***

The Committee *regrets* that many other additional changes it has been requesting for a number of years have either not been addressed or have been addressed only partially, including some that were previously announced by the Government for amendment. In this regard, the Committee emphasizes once again the need to further review the BLA to ensure its conformity with the Convention regarding the following matters: (i) scope of the law – restrictions on numerous sectors and workers remain, including, among others, Government workers, university teachers and domestic workers (sections 1(4), 2(49) and (65) and 175); (ii) one remaining restriction on organizing in civil aviation (section 184(1) – the provision should clarify that trade unions in civil aviation can be formed irrespective of whether they wish to affiliate with international federations or not); (iii) restrictions on organizing in groups of establishments (sections 179(5) and 183(1)); (iv) restrictions on trade union membership (sections 2(65), 175, 193 and 300); (v) interference in trade union activity, including cancellation of registration for reasons that do not justify the severity of the act (sections 192, 196(2)(b) read in conjunction with 190(1)(c), (e) and (g), 229, 291(2)–(3) and 299); (vi) interference in trade union elections (section 180(1)(a) read in conjunction with section 196(2)(d), and sections 180(b) and 317(4)(d)); (vii) interference in the right to draw up constitutions freely by providing overly detailed instructions (sections 179(1) and 188 (in addition, there seems to be a discrepancy in that section 188 gives the DOL the power to register and, under certain circumstances, refuse to register any amendments to the constitution of a trade union and its Executive Council whereas Rule 174 of the BLR only refers to notification of such changes to the DOL who will issue a new certificate)); (viii) excessive restrictions on the right to strike (sections 211(3)–(4) and (8) and 227(c)) accompanied by severe penalties (sections 196(2)(e), 291(2)–(3) and 294–296); and (ix) excessive preferential rights for collective bargaining agents (sections 202(24)(b), (c) and (e) and 204 (while noting the minor amendments to sections 202 and 204, the Committee notes that they do not address its concerns in that they limit the scope of action of trade unions other than the collective bargaining agents). Furthermore, the Committee previously requested the Government, under Convention No. 11, to indicate whether workers in small farms consisting of less than five workers can, in law and practice, group together with other workers to form a trade union or affiliate to existing workers' organizations (section 1(4) (n) and (p) of the BLA).

***In light of the numerous provisions mentioned above which still need to be amended to bring the BLA fully in line with the Convention, the Committee encourages the Government to engage rapidly with the Tripartite Consultative Council (TCC) referred to in section 348(A) so as to pursue the legislative review of the BLA. It requests the Government to provide information on the composition, mandate and functioning in practice of the TCC and trusts that, in the next revision of the BLA, these comments will be duly taken into account to ensure that its provisions are in full conformity with the Convention.***

*Bangladesh Labour Rules.* In its previous comments, the Committee requested the Government to review a number of BLR provisions to bring them in line with the Convention and trusted that during the revision process its comments would be duly taken into account. The Committee notes the Government's indication that, following the amendment of the BLA, revision of the BLR is a priority action for the Government and a tripartite committee, composed of six representatives of the Government and three representatives of workers and employers each, has already been formed for this purpose and has met on three occasions. Welcoming this information, the Committee emphasizes the need to review the BLR to align it with the 2018 amendments of the BLA, as well as regarding the following matters previously raised: (i) Rule 2(g) and (j) contains a broad definition of administrative and supervisory officers who are excluded from the definition of workers under the BLA and thus from the right to organize; (ii) Rule 85, Schedule IV, sub-rule 1(h) prohibits members of the Safety Committee from initiating or participating in an industrial dispute; Rule 169(4) limits eligibility to a trade union executive committee to permanent workers, which can have an impact on the right of workers' organizations to elect their officers freely; (iii) Rule 188 provides for employer participation in the formation of election committees which conduct the election of worker representatives to participation committees in the absence of a union – this, according to the ITUC, could lead to management domination of participation and safety committees; (iv) Rule 190 prohibits certain categories of workers from voting for worker representatives to participation committees; (v) Rule 202 contains broad restrictions on actions taken by trade unions and participation committees; (vi) Rule 204, which restrictively determines that only subscription-paying workers can vote in a ballot to issue a strike, is not in line with section 211(1) of the BLA which refers to union members; (vii) Rule 350 provides for excessively broad powers of inspection of the Director of Labour; and (viii) the BLR lacks provisions providing appropriate procedures and remedies for unfair labour practice complaints. ***The Committee expects the revision process to be concluded without delay so as to ensure that the 2018 BLA amendments introduced to improve compliance with the Convention are reflected in the BLR and its application, and to address other pending issues, as referred to above.***

*Right to organize in EPZs.* In its previous comments, the Committee had requested the Government to continue to revise the draft EPZ Labour Act, 2016 and 2017 in consultation with the social partners, so as to provide equal rights of freedom of association to all workers and bring the EPZs within the purview of the Ministry of Labour and the Labour Inspectorate. The Committee notes the Government's indication that the draft EPZ Labour Act was formulated after a pragmatic and neutral analysis of the socio-economic conditions of the country and went through a long process of extensive and inclusive consultations and dialogue with all levels of stakeholders, including the ILO. The Government provides detailed information on the consultations that have taken place and informs that the Bangladesh ELA, adopted in February 2019, upholds the rights and privileges of the workers and includes comprehensive changes and measurable progress. The Committee notes with *satisfaction* the following amendments made, which address its previous observations: simplification of the formation and registration of workers' welfare associations (WWAs) – the institutional form given to workers' organizations in EPZs – through amendment of a number of provisions of the draft EPZ Labour Act, 2016 and repeal of section 96 establishing an excessive referendum requirement to constitute a WWA; section 16 of the



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EPZ Workers' Welfare Association and Industrial Relations Act, 2010 (EWWAIRA) prohibiting the establishment of a WWA in a new industrial unit for three months has not been included in the ELA; repeal of section 98 of the draft EPZ Labour Act prohibiting the holding of a new referendum to form a WWA during one year after a failed one; repeal of section 101 authorizing the Zone Authority to form a committee to draft a WWA constitution and to approve it; repeal of section 116 allowing deregistration of a WWA for a number of reasons, including at the request of 30 per cent of eligible workers even if they are not members of the association and prohibiting the establishment of a new association within one year after such deregistration; amendment of section 103(2) to remove the mandatory opening of election of Executive Council members to all workers and not only WWA members; repeal of section 103(5) of the draft EPZ Labour Act, 2017 restricting the right to elect and be elected to the Executive Council to workers who have worked at the enterprise for a specific period; and reduction of the requirement to issue a strike notice from three quarters of members of the Executive Council to two-thirds (section 127(2) of the ELA).

The Committee further welcomes the reduction in the minimum membership requirement to form WWAs but observes that the new requirement of 20 per cent (sections 94(2) and 97(5)) may still be excessive, especially in large enterprises, and considering that only permanent workers may apply to form a WWA. While also welcoming the addition of a provision allowing for the formation of higher-level organizations within a Zone (sections 2(50) and 113), the Committee observes that the conditions to form a federation are excessively strict – more than 50 per cent of WWAs in one Zone must agree to establish a federation – and that a WWA federation cannot affiliate or associate in any manner with another federation in another Zone or beyond the Zone (section 113(3)). *In view of the above, the Committee requests the Government to provide information on the application in practice of the new amendments, in particular the reduced minimum membership requirement to form WWAs and the possibility to create federations, including to indicate the practical implications of these amendments on the number of applications for WWAs and WWA federations submitted and registered. The Committee trusts that, in order to achieve full compliance with the Convention, the Government will continue, in consultation with the social partners concerned, to endeavor to further reduce, to a reasonable level, the minimum membership requirements to form a WWA, especially in large establishments, as well as federations and to allow WWAs and federations to associate with other entities in the same Zone and outside the Zone in which they were established, including with non-EPZ workers' organizations at different levels.*

While taking due note of the above amendments and of the Government's efforts to address some of its previous observations, the Committee *regrets* that most of the changes it requested have not been addressed despite the Government's assurance that it took the Committee's observations into the highest consideration. The Committee, therefore, emphasizes once again the need to further review the ELA to ensure its conformity with the Convention regarding the following matters: (i) scope of the law – specific categories of workers continue to be excluded from the law (workers in supervisory and managerial positions – sections 2(48)) or from Chapter IX dealing with WWAs (members of the watch and ward or security staff, drivers, confidential assistants, cipher assistants, casual workers, workers employed by kitchen or food preparation contractors and workers employed in clerical posts (section 93), as well as workers in managerial positions (section 115(2)); (ii) the imposition of association monopoly at enterprise and industrial unit levels (sections 94(6), 97(5) paragraph 2, 100 and 101); (iii) detailed requirements as to the content of a WWA's constitution which go beyond formal and may thus hinder the free establishment of WWAs and constitute interference in the right to draw up constitutions freely (section 96(2)(e) and (o)); (iv) limitative definition of the functions of WWA members despite the deletion of the word "mainly" from section 102(3); (v) prohibition to hold an election to the Executive Council during a period of six months (reduced from one year), if a previous election was ineffective in that less than half of the permanent workers of the enterprise cast a vote (section 103(2)–(3)); (vi) prohibition to function without registration and to collect funds for an unregistered association (section 111); (vii) interference in internal affairs by prohibiting expulsion of certain workers from a WWA (section 147); (viii) broad powers and interference of the Zone Authority in internal WWA affairs by approving funds from an outside source (section 96(3)), approving any amendment in a WWA constitution and Executive Council (section 99), arranging elections to the Executive Council of WWAs (section 103(1)) and approving it (section 104), ruling on the legitimacy of a transfer or termination of a WWA representative (section 121), determining the legitimacy of any WWA and its capacity to act as a collective bargaining agent (section 180(c)) and monitoring any WWA elections (section 191); (ix) interference by the authorities in internal affairs by allowing supervision of the elections to the WWA Executive Council by the Executive Director (Labour Relations) and the Inspector-General (sections 167(2)(b) and 169(2)(e)); (x) restrictions imposed on the ability to vote and on the eligibility of workers to the Executive Council (sections 103(2) and (4) and 107); (xi) legislative determination of the tenure of the Executive Council (section 105); (xii) broad definition of unfair labour practices, which also include persuasion of a worker to join a WWA during working hours or commencement of an illegal strike, and imposition of penal sanctions for their violation (sections 116(2)(a) and (f), 151(2)–(3) and 155–156); (xiii) power of the Conciliator appointed by the Zone Authority to determine the validity of a strike notice, without which a lawful strike cannot take place (section 128(2) read in conjunction with section 145(a)); (xiv) possibility to prohibit strike or lockout after 30 days or at any time if the Executive Chairman is satisfied that the continuance of the strike or lockout causes serious harm to productivity in the Zone or is prejudicial to public interest or national economy (section 131(3)–(4)); (xv) possibility of unilateral referral of a dispute to the EPZ Labour Court which could result in compulsory arbitration (sections 131(3)–(5) and 132, read in conjunction with section 144(1)); (xvi) prohibition of strike or lockout for three years in a newly established enterprise and imposition of obligatory arbitration (section 131(9)); (xvii) possibility of hiring temporary workers during a legal strike in cases where the Executive Chairman of the Zone Authority is satisfied that complete cessation of work is likely to risk causing serious damage to the machinery or installation of the industry (section 115(1)(g)); (xviii) excessive penalties, including imprisonment, for illegal strikes (sections 155 and 156); (xix) prohibition to engage in activities which are not described in the constitution as objectives of the association (section 178(1)); (xx) prohibition to maintain any linkage with any political party or organization affiliated to a political party or non-governmental organization, as well as possible cancellation of such association and prohibition to form a WWA within one year after such cancellation (section 178(2)–(3)); (xxi) cancellation of a WWA registration on grounds which do not appear to justify the severity of the sanction (sections 109(b)–(h), 178(3)); (xxii) limitation of WWA activities to the territorial limits of the enterprise thus banning any engagement with actors outside the enterprise, including for training or communication (section 102(2)) and, subject to the right to form federations under section 113, prohibition to associate or affiliate with another WWA in the same Zone, another Zone or beyond the Zone, including non-EPZ workers' organizations at all levels (section 102(4)); (xxiii) interference in internal affairs of a WWA federation – legislative determination of the duration of a federation (four years) and determination of the procedure of election and other matters by the Zone Authority (section 113); (xxiv) power of the Government to exempt any owner, group of owners, enterprise or group of enterprises, worker or group of workers from any provision of the Act making the rule of law a discretionary right (section 184); (xxv) excessive requirements to form an association of employers (section 114(1)); (xxvi) prohibition of an employer association to associate or affiliate in any manner with another association beyond the Zone (section 114(2)); (xxvii) excessive powers of interference in employers' associations' affairs (section 114(3)); and (xxviii) the possibility for the Zone Authority, with the approval of the Government, to establish regulations (section 204) – these could further restrain the right of workers and their organizations to carry out legitimate trade union activities without interference. *Taking due note of the fact that the ELA was adopted in February 2019 but observing that a large number of provisions still need to be repealed or substantially amended to ensure its conformity with the Convention and taking good note of the Government's commitment to further improve and reform the existing provisions, the Committee expects that the discussion on the revision of the ELA will continue in the near future, in consultation with the social partners, so as to address the issues highlighted above (and others that may arise during discussion) in a meaningful manner and provide EPZ workers with all the rights guaranteed in the Convention. The Committee trusts that the Government will be able to report progress in this regard.*

Finally, the Committee notes with *interest* the Government's indication that the inspection and administration system of EPZs have been brought in line with the BLA (Chapter XIV of the ELA), that section 168 allows the Chief Inspector and other inspectors appointed under the BLA to undertake inspections of EPZs and that several joint inspections have already taken place. The Committee observes, however, that for the DIFE to inspect EPZ establishments, an approval of the Executive Chairman is required and the Chairman retains ultimate supervision of labour standards in EPZs (sections 168(1) and 180(g)), which may hinder

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the independent nature and proper functioning of labour inspection. The Committee notes the Government's indication that consultations with the workers, investors and relevant stakeholders are ongoing to analyse how best the DIFE may be allied with the existing inspection system in EPZs and to develop an integrated inspection framework. *Referring to its more detailed comments on this point made under Convention No. 81, the Committee encourages the Government to take steps to elaborate the aforementioned inspection framework in order to clarify the powers of the DIFE and the Zone Authority, as well as the functioning in practice of joint inspections or inspections conducted by the Labour Inspectorate of EPZ establishments. The Committee also requests the Government to continue to take further steps to ensure unrestricted access and jurisdiction over labour inspection activities in EPZs for DIFE inspectors.*

*The Committee once again recalls the critical importance which it gives to freedom of association as a fundamental human and enabling right and, in view of the Government's reiterated commitment to labour reform and to ensuring protection of the rights of workers, the Committee expresses its firm hope that significant progress will be made in the very near future to bring both the legislation and practice into conformity with the Convention. The Committee reminds the Government that it can avail itself of the technical assistance of the Office should it so desire in order to assist the national tripartite dialogue in determining further areas for progress.*

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

### Observation 2019

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 1 September 2019 referring to matters addressed in this comment.

The Committee notes that a complaint under article 26 of the ILO Constitution alleging non-compliance by Bangladesh with this Convention, as well as the Labour Inspection Convention, 1947 (No. 81), and the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), submitted by several Workers' delegates to the 2019 International Labour Conference, was declared receivable and is pending before the Governing Body.

The Committee notes the 2018 amendment of the Bangladesh Labour Act, 2006 (BLA) and the adoption of the 2019 Export Processing Zones Labour Act (ELA).

*Articles 1 and 3 of the Convention. Adequate protection against acts of anti-union discrimination.* In its previous comments, the Committee requested the Government to provide detailed statistics on the number of complaints of anti-union discrimination received by the relevant authorities and their follow-up and to take the necessary measures, after consultation with the social partners, to increase the penalties envisaged for unfair labour practices and acts of anti-union discrimination, and to indicate the outcome of 39 mentioned complaints that gave rise to criminal cases. It also expressed its expectation that the measures taken by the Government would contribute to an expedient, efficient and transparent handling of anti-union discrimination complaints. The Committee notes with *interest* the addition of section 196(A) in the BLA explicitly prohibiting anti-union activities by the employer and providing for the establishment of standard operating procedures (SOPs) for investigating such acts. The Committee notes the Government's statement that in case of alleged anti-union activities at enterprise level, it generally intervenes through tripartite consultations, including by setting up dedicated committees for rapid and effective remedial measures, which proved effective in the national industrial relations context, and that in case of serious allegations, there is scope for on-site investigation and referral to the labour courts. It also notes the details provided by the Government on the procedure established under the SOPs to follow up complaints received, which consists of seven stages (written complaint, verification, communication with the employer, investigation, resolution, record with recommendations and referral to labour courts). The Committee further notes the Government's indication that: (i) following the adoption of the SOPs on anti-union discrimination, the handling of complaints has become easier and more transparent and the SOPs are referred to in the 2018 BLA amendment (sections 195(2), 196(4) and 196(A)); (ii) the upgrade of the Directorate of Labour (DOL) to a Department of Labour has been completed, resulting in an increase of manpower from 712 to 921, a considerable increase in the DOL budget, and the creation of two additional divisional labour offices; (iii) the software for the publicly available online database on anti-union discrimination is currently being upgraded, but once completed, the database will include information on, among others, trade union related court cases, conciliation, election of collective bargaining agents, anti-union discrimination and information on participation committees; (iv) from 2013 to July 2019, 257 complaints regarding anti-union discrimination and unfair labour practices were submitted to the labour office, of which 203 were addressed (51 cases referred to labour courts and 152 disposed of amicably through reinstatement, compensation, memorandums of understanding, arrear wages, etc.) and 54 are undergoing investigation; and (v) of 51 criminal cases referred to labour courts (39 in the previous report), 48 are pending and three were settled – two in favour of the employer and one in favour of the workers. The Committee also notes the details provided by the Government on the type of anti-union practices referred to in the complaints and the remedies applied, as well as information on training and capacity-building activities provided to the concerned stakeholders and workers, including through the workers' resource centre. Taking due note of the information provided, the Committee recalls that the existence of legal provisions prohibiting acts of anti-union discrimination is not enough if they are not accompanied by effective and rapid procedures to ensure their application in practice (see the 2012 General Survey on the fundamental Conventions, paragraph 190). *The Committee requests the Government to continue to provide detailed statistics on the number of complaints of anti-union discrimination received by the relevant authorities and their follow-up, including time taken to resolve the disputes, remedies imposed, the number of complaints settled amicably compared to those referred to labour courts, the results of judicial proceedings and the sanctions ultimately imposed following full proceedings. The Committee encourages the Government to continue to provide the necessary training to labour officials on dealing with anti-union and unfair labour practices complaints with a view to ensuring their efficient and credible handling and to inform about the functioning in practice of the workers' resource centre. While noting the technical challenges encountered, the Committee expects the online database on anti-union complaints to be fully operational in the near future so as to ensure transparency of the process and at the same time ensuring protection of personal data of the workers concerned.*

The Committee *regrets* that despite its previous request to increase the penalties envisaged for unfair labour practices and acts of anti-union discrimination by employers, the applicable fines remained unchanged and, as a result, are not sufficiently dissuasive (a fine of maximum 10,000 Bangladeshi taka (BDT) which equals US\$120 – section 291(1) of the BLA). The Committee further notes that the penalty of imprisonment has been reduced through the 2018 BLA amendment from two years to one year (section 291(1) of the BLA). *While noting that the BLA has been recently amended, in order to ensure that acts of anti-union discrimination give rise to a just reparation and sufficiently dissuasive sanctions, the Committee requests the Government once again to take the necessary measures, after consultation with the social partners, to increase the amount of the fine imposable for acts of anti-union discrimination.*

*Helpline for submission of labour-related complaints.* In its previous comment, the Committee requested the Government to continue to provide detailed updates on the functioning of the helpline for submission of labour-related complaints targeting the ready-made garment (RMG) sector in the Ashulia area and to clarify the status of the 1,567 complaints mentioned that had not been settled. The Committee notes the detailed information provided on the functioning of the helpline: complaints are received through the helpline by a tele consultant group and are then transferred to district offices of the Department of Inspection for Factories and Establishments (DIFE) and investigated by a labour inspector. Mitigation of the complaints is done in three ways: (1) through tripartite meetings (section 124A of the BLA); (2) communication of the complaint to the factory management, who then resolves the issue; or (3) legal action by the DIFE through filing of cases to labour courts. The Government informs that the DIFE received a total of 3,559 complaints between March 2015 and August 2019, of which 3,529 were resolved and 30 complaints are pending, and that the time for resolving the complaints depends on the nature and complexity of the issue. *Taking*

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*due note of the information, the Committee requests the Government to clarify the outcome of the 3,529 complaints that have been resolved, to indicate the number or the percentage of complaints specifically related to anti-union practices, and to provide information on whether any steps are taken to ensure anonymity of the complainants so as to prevent reprisals against helpline users. Observing that the helpline has been in service since 2015, the Committee encourages the Government to formally expand the helpline to other geographical areas and industrial sectors, in line with its previously expressed commitment.*

*Allegations of anti-union discrimination following the 2016 Ashulia incident and the 2018 minimum wage protests.* In its previous comment, the Committee requested the Government to ensure that any pending proceedings in relation to the Ashulia incident are concluded without delay, that all workers dismissed for anti-union reasons who wish to return to work are reinstated, and expressed its expectation that measures would be taken to prevent repeated and institutionalized acts of anti-union discrimination. The Committee notes the information provided by the Government that, in relation to the Ashulia incident, all those in custody were immediately released, no worker was imprisoned and after primary investigation, all cases were concluded without framing any charge against any worker and observes that the Committee on Freedom of Association had noted the Government's indication that no worker had been removed for participation in activities related to the Ashulia strike but that a number of workers resigned upon receipt of their due payments (see 388th Report, March 2019, Case No. 3263, paragraph 202). With regard to the 2018 minimum wage protests, the Committee notes the Government's indication that while the social partners provided a list of 12,436 workers dismissed from 104 factories, after primary verification by the Bangladesh Garment Manufacturers and Exporters Association (BGMEA) and the Bangladesh Knitwear Manufacturers and Exporters Association (BKMEA), it was found that 94 factories were involved and 4,489 workers were terminated from 41 factories. The Government clarifies that all terminated workers received benefits according to the existing provisions of the BLA, two factories were found closed, memorandums of understanding were signed between workers' federations and the employer in ten factories and collection of information from 12 factories is in progress. Noting with *concern* the massive dismissals of workers following their participation in the 2018 minimum wage protests, the Committee observes that investigations into these allegations do not seem to be conducted by an independent entity but by employers' organizations concerned. *In view of the above, the Committee requests the Government to clarify its involvement in the ongoing investigations into the massive dismissals of workers following the 2018 minimum wage protests and to provide information on whether an investigation, by an independent entity, has taken place in this regard. The Committee firmly expects that any future investigations into concrete allegations of anti-union discrimination will be done in full independence and impartiality and that the Government will continue to take all necessary measures to prevent repeated and institutionalized acts of anti-union discrimination. Further recalling that in case of dismissal by reason of trade union membership or legitimate trade union activities, reinstatement should be included among the range of measures that can be taken to remedy such a situation and that, if compensation or fines are imposed, these should be sufficiently dissuasive, the Committee requests the Government to provide information on the concrete remedies applied in all cases of termination of workers in the above incidents for which it has been found that they had occurred for anti-union reasons.*

*Case concerning dismissed workers in the mining sector.* In its previous comments, the Committee requested the Government to provide information on the outcome of the judicial proceedings concerning dismissed workers in the mining sector who were charged with illegal activities (case No. 345/2011) once the judgment of the District Sessions Court, Dinajpur has been rendered. Noting the Government's statement that no hearing has yet been held but observing that the case has been pending for several years, the Committee emphasizes the importance of ensuring expeditious examination of allegations of anti-union discrimination so as to ensure adequate protection against such acts in practice. *The Committee expects the case to be completed rapidly and requests the Government to provide information on its outcome once the judgment of the District Sessions Court, Dinajpur has been rendered.*

*Protection of workers in export-processing zones (EPZs) against acts of anti-union discrimination.* In its previous comment, the Committee requested the Government to provide clarification on several aspects of inspection and hearings conducted by the Bangladesh Export Processing Zones Authority (BEPZA or Zone Authority) and on the application of the RMG helpline to EPZ workers. It requested the Government to establish an online database for anti-union discrimination complaints specific to the EPZs and to continue to provide statistics on anti-union discrimination complaints. The Committee notes the Government's clarification that the RMG helpline established by the DIFE is not applicable to EPZ factories but that there is an individual helpline and independent help desk in eight EPZs where labour-related complaints can be easily submitted, and that the establishment of an online database for workers' complaints is in process. It also notes the detailed information provided on the inspection and monitoring of the working conditions, complaints and grievances of workers by BEPZA, which includes: spontaneous visits to enterprises; possibility to submit anonymous complaints to counsellor-cum-inspectors, industrial relation officers, general manager of the concerned zone or BEPZA executive office which are investigated neutrally; an enquiry option on the BEPZA official website where anyone can drop a message, query or complaint; a complaint box in each EPZ office where workers can drop a complaint and get assistance from the Zone Authority; and the possibility of posting updates and getting information on the social media website. *Taking due note of the detailed information provided but observing that no statistics were submitted in this regard, the Committee requests the Government once again to provide detailed statistics on the number of anti-union discrimination complaints brought to the competent authorities, their follow-up and the remedies and sanctions imposed.*

The Committee also previously requested the Government to bring the EPZs within the purview of the Ministry of Labour and the Labour Inspectorate. The Committee notes with *interest* the Government's indication that the inspection and administration system of EPZs have been brought in line with the BLA (Chapter XIV of the ELA), that section 168 of the ELA allows the Chief Inspector and other inspectors appointed under the BLA to undertake inspections of EPZs and that several joint inspections have already taken place. The Committee refers to its more detailed comments in this regard made under Conventions Nos 81 and 87.

While noting the Government's indication that radical changes have been made to bring the ELA in line with the BLA and improve protection against anti-union discrimination, the Committee observes that, in terms of ensuring adequate protection against acts of anti-union discrimination, there is a further need to continue to review the law to ensure its conformity with the Convention regarding the following matters: specific categories of workers continue to be excluded from the law (workers in supervisory and managerial positions – sections 2(48)) or from Chapter IX dealing with workers' welfare associations (WWAs), and thus from protection against anti-union discrimination (members of the watch and ward or security staff, drivers, confidential assistants, cipher assistants, casual workers, workers employed by kitchen or food preparation contractors and workers employed in clerical posts (section 93), as well as workers in managerial positions (section 115(2)); broad power of the Executive Chairperson to rule on the legitimacy of a transfer or termination of a WWA representative (section 121(3)-(4)); broad exception to protection against anti-union discrimination (section 121(2) paragraph 2); lack of specific measures to remedy acts of anti-union discrimination except in case of WWA officials covered by section 121; insufficiently dissuasive fines for unfair labour practices – a maximum of US\$600 (section 151(1)) and for anti-union discrimination during an industrial dispute – a maximum of US\$120 (section 157). *Taking due note of the fact that the ELA has been adopted in February 2019 but observing that the above provisions need to be further amended to ensure their conformity with the Convention, the Committee expects that the discussion on the revision of the ELA will continue in the near future, in consultation with the social partners, to address the issues highlighted above in a meaningful manner so as to ensure that all workers covered by the Convention are adequately protected against acts of anti-union discrimination. The Committee trusts that the Government will be able to report progress in this regard.*

Finally, the Committee observes with *concern* the allegations communicated by the ITUC referring to widespread anti-union practices in the country and illustrated by the dismissal of 36 workers in two EPZ factories in April 2019 following unsuccessful attempts at collective bargaining. *The Committee requests the Government to provide its reply to these allegations.*

*Articles 2 and 3. Lack of legislative protection against acts of interference in the BLA and the ELA.* The Committee previously emphasized the importance of



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providing for explicit provisions in the BLA granting full protection against acts of interference. While noting the Government's emphasis on the 2018 BLA amendments and noting that sections 195(1)(g) and 202(13) prohibit employer's interference in the conduct of elections for a collective bargaining agent and Rule 187(2) of the Bangladesh Labour Rules (BLR) prohibits interference in elections of workers' representatives to participation committees, the Committee observes that these provisions do not cover all acts of interference prohibited under Article 2 of the Convention, such as acts designed to promote the establishment of workers' organizations under the domination of the employer, to support workers' organizations by financial or other means with the objective of placing them under the control of an employer or an employers' organization, to exercise pressure in favour or against any workers' organization, etc. Similarly, while noting that the ELA contains certain provisions prohibiting acts of interference (sections 115(1)(f) and 116(3)), the Committee observes that they do not cover all acts of interference prohibited under Article 2 of the Convention. ***The Committee therefore requests the Government to take all necessary measures to broaden the current scope of protection against acts of interference in the BLA and the ELA, so as to ensure that workers' and employers' organizations are effectively protected against all acts of interference both in law and in practice. The Committee trusts that, in the meantime, efforts will be made to ensure that, in practice, workers' and employers' organizations will be protected from any acts of interference against each other.***

***Article 4. Promotion of collective bargaining.*** The Committee previously requested the Government to inform about the application in practice of section 202A(1) of the BLA providing for assistance from specialists in the context of collective bargaining. The Committee notes the Government's explanation that there is currently no uniform procedure for the use of experts in collective bargaining but that the issue may be considered during the revision of the BLR, that out of nine collective bargaining agreements concluded at the national level and seven at the sectoral level between 2017 and 2019, support of experts was used in five cases and that the assistance of experts facilitates decision-making on collective agreements with confidence.

The Committee also requested the Government to ensure that Rule 4 of the BLR giving the Inspector General total discretion to shape the outcome of service rules and determine their conformity with the law was not used to limit collective bargaining and to provide information on the application in practice of Rule 202, which prohibits certain trade union activities in a way that could impinge on the right to freedom of association and collective bargaining. In relation to Rule 4, the Government informs that the management of factories prepares service rules together with trade unions and in case of any objection, tripartite meetings are arranged to address the objection and only then does the DIFE verify the conformity of the service rules with the law, thus not hampering collective bargaining. It also states that amendment of Rule 202 may be discussed in the next revision of the BLR. ***The Committee encourages the Government to consider amending Rule 202, in consultation with the social partners, during the next revision of the BLR in order to ensure it does not unduly impinge on the right to collective bargaining.***

***Higher-level collective bargaining.*** The Committee previously requested the Government to consider amending sections 202 and 203 of the BLA to clearly provide a legal basis for collective bargaining at the industry, sector and national levels and to continue to provide statistics on the number of higher-level collective agreements concluded. While noting the amendments made to section 202 of the BLA, the Committee observes that these do not address its previous concerns about the lack of a legal basis for higher-level collective bargaining. The Committee notes the statistics provided by the Government on the number of collective agreements concluded, the number of workers covered and the sectors to which they relate but observes that these agreements appear to have been concluded at the level of the enterprise and not at sectoral or national levels. It recalls in this regard the need to ensure that collective bargaining is possible at all levels, both at the national level, and at enterprise level: it must also be possible for federations and confederations (see the 2012 General Survey, paragraph 222). ***In view of the above, the Committee requests the Government to consider, in consultation with the social partners, to further revise sections 202 and 203 of the BLA so as to clearly provide a legal basis for collective bargaining at the industry, sector and national levels. Observing that the information provided by the Government lacks certain elements previously called for, the Committee requests the Government to continue to provide statistics on the number of higher-level collective agreements concluded (at the sectoral and national levels), the areas of industry to which they apply and the number of workers covered.***

***Collective bargaining in the agricultural sector.*** The Committee notes the information provided by the Government in reply to the Committee's comments made under the Right of Association (Agriculture) Convention, 1921 (No. 11), in particular that, through bipartite or tripartite negotiations, trade unions and associations of agricultural workers conclude agreements with employers every three years concerning terms and conditions of work, welfare facilities, insurance, safety, security and other matters. ***The Committee requests the Government to indicate whether statistics are available on the number of collective agreements concluded in the agricultural sector, the type of activity concerned and the number of workers covered, and if so, to provide details in this regard. It also requests the Government to clarify the functioning in practice of tripartite negotiations in this sector.***

***Determination of collective bargaining agents.*** In its previous comment, the Committee requested the Government to provide clarification on the exact requirements for a trade union to become a collective bargaining agent. The Committee notes the Government's explanation that there has not yet been a situation where, among several existing unions, no union received the required percentage of votes (one third of the total number of workers employed in the establishment concerned) and recalls that the determination of the threshold of representativeness to designate an exclusive agent for the purpose of negotiating collective agreements which are destined to be applied to all workers in a sector or establishment is compatible with the Convention insofar as the required conditions do not constitute an obstacle to the promotion of free and voluntary collective bargaining in practice. The Committee wishes to clarify that it is not requesting the Government to remove the one third majority requirement for the acquisition of the exclusive bargaining agent status but recalls that if no union in a specific negotiating unit meets the required threshold of representativeness to be able to negotiate on behalf of all workers, the existing unions should be able to negotiate, jointly or separately, at least on behalf of their own members. ***The Committee therefore requests the Government to clarify whether, in case where no union reaches the required threshold to be recognized as the exclusive collective bargaining agent under section 202 of the BLA, the existing unions are given the possibility, jointly or separately, to bargain collectively, at least on behalf of their own members.***

***Promotion of collective bargaining in the EPZs.*** In its previous comment, the Committee requested the Government to provide information on any cases where the BEPZA Executive Chairperson rejected the legitimacy of a WWA and its capacity to act as a collective bargaining agent, to take the necessary measures to ensure that the determination of collective bargaining agents in EPZs is the prerogative of an independent body and to continue to provide statistics on the number of collective bargaining agreements concluded. The Committee notes the Government's statement that a WWA registered under the Act in an industrial unit is the collective bargaining agent for that industrial unit (section 119) of the ELA, that there has been no case of rejection of the legitimacy of a WWA and its capacity to act as a collective bargaining agent so far under section 180(c) and that this provision is a safeguard of legitimate WWAs and collective bargaining agents. Taking due note of the explanation, the Committee recalls, however, that the determination of bargaining agents should be carried out by a body offering every guarantee of independence and objectivity. The Government further informs that all 237 elected and registered WWAs are actively performing their activities with full freedom and that during the last five years they had submitted 521 charters of demands, all of which had been negotiated successfully and collective bargaining agreements or memorandums of understanding had been signed. ***Welcoming the Government's commitment to take the necessary measures to maintain yearly statistics in this regard, the Committee requests the Government to continue to provide statistics on the number of collective bargaining agreements concluded in the EPZs, the sectors and the number of workers covered, along with some sample agreements. The Committee requests the Government to endeavour to further amend section 180 of the ELA, in consultation with the social partners, to ensure that the determination of collective bargaining agents in EPZs is the prerogative of an independent body, such as the Department of Labour. The Committee also requests the Government to clarify the implications in practice of section 117(2) which does not allow any proceedings before a civil court for the purpose of enforcing or recovering damages for breach of any agreement.***

***Compulsory arbitration in the BLA and the ELA.*** The Committee welcomes the Government's indication, in response to its previous request, that the proposed



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amendment to section 210(10) of the BLA that would enable a conciliator to refer an industrial dispute to an arbitrator even if the parties do not agree was finally not included in the amended BLA. The Committee observes, however, that the ELA allows for unilateral referral of a dispute to the EPZ Labour Court which could result in compulsory arbitration (sections 131(3)–(5) and 132 read in conjunction with section 144(1)). *Recalling that compulsory arbitration is only acceptable in relation to public servants engaged in the administration of the State (Article 6 of the Convention), or in essential services in the strict sense of the term or in cases of acute national crisis, the Committee expects that, during the next revision of ELA, the Government will address this issue in a meaningful manner, in consultation with the social partners.*

*Articles 4 and 6. Collective bargaining in the public sector.* The Committee previously requested the Government to clarify what specific categories of workers in the public sector can bargain collectively, to indicate the criteria based on which this right is granted and to provide examples of collective agreements concluded in the public sector. The Committee notes the Government's indication that there are 408 public sector trade unions, including in various sector corporations, city corporations and municipalities, port authorities, secondary and higher secondary education boards, water development boards, energy sectors, various banks and financial institutions, power sectors, jute mills and sugar mills. *Observing that the Government's reply refers to the right to form trade unions without indicating whether, in the various sectors mentioned, these organizations have the right to undertake collective bargaining, the Committee requests the Government to indicate whether this is indeed the case, and if so, to provide examples of collective bargaining agreements concluded in the public sector.*

The Committee further observes the Government's statement that only staff of autonomous organizations have the right to form trade unions and not the officers, and that neither officers nor staff of public sector organizations other than public autonomous organizations have the right to form trade unions. The Committee recalls in this regard that, in accordance with *Article 6*, only public servants engaged in the administration of the State (civil servants in Government ministries and other comparable bodies, and ancillary staff) may be excluded from the scope of the Convention and that a distinction must thus be drawn between, on the one hand, this type of public servants and, on the other hand, all other persons employed by the Government, by public enterprises or by autonomous public institutions, who should benefit from the guarantees provided for in the Convention. *The Committee therefore requests the Government to provide a list of public sector services or entities where collective bargaining is not allowed. For those autonomous public sector organizations where collective bargaining is permitted, the Committee requests the Government to indicate the criteria used to distinguish between staff and officers for the purposes of collective bargaining.*

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

### Observation 2019

*Articles 1 to 4 of the Convention. Assessing and addressing the gender wage gap.* With reference to its previous comments concerning the wide and persistent gender wage gap, the Committee notes the Government's statement in its report that there is no gender pay gap in the formal sector, but that invisible pay differentials exist in the informal sector which is excluded from the scope of application of the Labour Act, 2006. The Committee recalls in that respect that it previously noted that section 345 of the Labour Act, 2006, provides that, in determining wages or fixing minimum wage rates, the principle of equal wages for male and female workers for work of "equal nature or equal value" shall be followed. The Committee notes the adoption of the Seventh Five-Year Plan (2016–20) for implementing the Government's Vision 2021, which sets specific targets on gender equality and income equality. With reference to the Decent Work Country Programme (DWCP), which provides for the promotion of the Convention and the enhancement of the capacity of constituents' for its better implementation, the Committee notes that the United Nations Development Assistance Framework (UNDAF) for 2017–20 sets as a specific outcome that, by 2020, relevant state institutions, together with their respective partners, shall increase opportunities, especially for women to contribute to and benefit from economic progress, including by the reducing the gender wage gap which was estimated at 21.1 per cent in 2007 to a target of 10 per cent in 2020. The Committee notes that, according to the 2017 Labour Force Survey (LFS) of the Bangladesh Bureau of Statistics, the labour force participation rate of women remains far below that of men (36.4 per cent for women compared to 80.7 per cent for men), while their unemployment rate is twice as high as that of men (6.7 per cent for women compared to 3.3 per cent for men). It notes that only 0.6 per cent of women are managers, while 15.8 per cent of them are in elementary occupations. The Committee notes that, according to the LFS, the gender wage gap persists in some occupations, such as craft and related trade workers, elementary occupations and agricultural workers, and that wage differentials between the average monthly earnings of paid women and men employees in 2016–17 was estimated at 9.8 per cent. The Committee further notes, from the LFS, that women employed in the same occupational categories as men systematically receive lower remuneration in all occupational categories. Noting the Government's statement that pay differentials in the informal sector are decreasing as a result of actions by the Government and the media but that it is very difficult to control the pay gap in the sector, the Committee notes the increasing number of women who are working in the informal economy, which is characterized by low earnings and poor conditions, who are estimated at 91.8 per cent of women in 2017 (compared to 85.6 per cent in 2005–06). The Committee notes that, in its 2018 concluding observations, the United Nations Committee on Economic, Social and Cultural Rights expressed concern at the large and persistent gender pay gap which reached 40 per cent (E/C.12/BGD/CO/1, 18 April 2018, paragraph 33(b)). It also notes that, in the framework of the Universal Periodic Review (UPR), the Human Rights Council specifically recommended reducing the gender wage gap and ensuring women's access to the labour market (A/HRC/39/12, 11 July 2018, paragraph 147). *The Committee asks the Government to adopt concrete measures to reduce the existing gender wage gap, in both the formal and informal economy, and to ensure that implementation of the principle of equal pay for work of equal value. The Committee also asks the Government to promote women's access to the labour market and to jobs with career prospects and higher pay, particularly in the framework of the Seventh Five-Year Plan for 2016–20 and the Decent Work Country Programme for 2017–20. It asks the Government to provide any assessment made of the effectiveness of the measures adopted and implemented to that end, as well as any study undertaken to assess the nature and extent of wage differentials in the informal economy. The Committee asks the Government to provide updated statistical data on the earnings of men and women, disaggregated by economic activity and occupation, in both the public and private sectors, as well as in the informal economy.*

*Article 1(a). Definition of remuneration. Legislation.* The Committee previously noted that section 2(xlv) of the Labour Act excludes particular aspects of remuneration from the definition of "wages", including in-kind emoluments such as accommodation. It also recalls the provisions of section 345 of the Labour Act, referred to above. The Committee notes the Government's statement that it considers that the definition of wages in the Labour Act to be in line with the Convention. In this regard, the Committee draws the Government's attention to the fact that *Article 1(a)* of the Convention sets out a broad definition of remuneration, which includes not only "the ordinary, basic or minimum wage or salary" but also "any additional emoluments whatsoever ... whether in cash or in kind". The use of "any additional emoluments whatsoever" requires that all elements that a worker may receive for his or her work, including accommodation, are taken into account in the comparison of remuneration. Such additional components are often of considerable value and need to be included in the calculation, otherwise much of what can be given a monetary value arising out of the job would not be captured (see the 2012 General Survey on the fundamental Conventions, paragraphs 686–687 and 690–691). *The Committee asks the Government to take appropriate steps so that the definition of "wages" provided under section 2(xlv) of the Labour Act is modified to encompass all the elements of remuneration, as defined in Article 1(a) of the Convention, in order to ensure that section 345 of the Labour Act fully reflects the principle of the Convention. In the meantime, the Committee asks the Government to provide information on the manner in which it is ensured that the principle of equal remuneration for men and women for work of equal value is applied in practice in relation to those aspects of remuneration which are excluded from the definition of "wages" under section 2(xlv)*

## *of the Labour Act.*

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

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

### ***Observation 2019***

*Article 1 of the Convention. Protection against discrimination. Definition and prohibition of discrimination in employment and occupation. Legislation.* For a number of years, the Committee has been drawing the Government's attention to the absence of legislative provisions providing protection against discrimination based on all the grounds listed in *Article 1(1)(a)* of the Convention, with respect to all aspects of employment and occupation as defined in *Article 1(3)* of the Convention, and covering all workers. In its previous comments, the Committee noted that the Government did not take the opportunity of the adoption of the Bangladesh Labour (Amendment) Act of 2013 (Act No. 30 of 2013) nor of the Bangladesh Labour Rules of 15 September 2015 (S.R.O. No. 291-Law/2015) to include the principles of the Convention in its national legislation. In this regard, the Committee notes the Government's repeated statement in its report that the Constitution provides protection against discrimination in employment and occupation. The Committee recalls that the main non-discrimination provision of the Constitution provides for non-discrimination by the State, but does not address the situation of the private sector and does not prohibit all the grounds of discrimination enumerated in *Article 1(1)(a)* of the Convention (Article 28 of the Constitution). The Committee again draws the Government's attention to the fact that general equality and non-discrimination provisions in the Constitution, although important, have generally not proven to be sufficient to address specific cases of discrimination in employment and occupation (see the 2012 General Survey on the fundamental Conventions, paragraph 851). The Committee also notes that several United Nations (UN) Treaty Bodies (Committee on the Elimination of Discrimination against Women, Human Rights Committee, Committee on Migrant Workers) have expressed concern that the Government has delayed the adoption of the "long-awaited comprehensive anti-discrimination legislation" and that, in 2018, the Human Rights Council, in the context of the Universal Periodic Review (UPR), recommended that the Government expedite the formulation of an anti-discrimination Act (A/HRC/39/12, 11 July 2018, paragraph 147). ***The Committee therefore urges the Government to take concrete steps without delay to ensure that the Labour Act of 2006 is amended or other anti-discrimination legislation adopted, in order to: (i) prohibit direct and indirect discrimination, on at least all of the grounds enumerated in Article 1(1)(a) of the Convention with respect to all aspects of employment and occupation; and (ii) cover all categories of workers, in both the formal and informal economy, including domestic workers. It asks the Government to provide information on any progress made in this regard, as well as a copy of any new legislation once adopted. The Committee further asks the Government to ensure the protection of men and women workers against discrimination in employment and occupation in practice, and particularly by the categories of workers excluded from the scope of the Labour Act.***

*Domestic workers.* The Committee recalls that the Labour Act, 2006, excludes domestic workers from its scope of application. It notes the Government's indication that, considering the economic and social settings of the country and the level of development of the inspection machinery, some sectors and occupations, such as domestic workers, mainly composed of self-employed and own-account workers, are excluded from the scope of the Labour Act. The Government indicates that this is because it is not feasible to apply all provisions of the Labour Act to them, but that such workers are being brought within the scope of the law gradually. The Committee recalls that all categories of workers, including domestic workers, should enjoy equality of opportunity and treatment irrespective of race, colour, sex, religion, political opinion, national extraction or social origin, in all aspects of employment (see 2012 General Survey, paragraph 778). The Committee notes that, in its 2016 concluding observations, the CEDAW highlighted the difficult situation of women domestic workers in the country and expressed concern that: (i) women domestic workers are subject to violence, abuse, food deprivation and murder; (ii) such crimes go unreported; and (iii) the victims have limited access to justice and redress (CEDAW/C/BGD/CO/8, 25 November 2016, paragraph 32). ***The Committee hopes that the Government will take the necessary steps to ensure that domestic workers are protected, in both law and practice, against any form of discrimination in employment and occupation and that they enjoy full equality of opportunity and treatment on the same footing as other workers without discrimination. The Committee asks the Government to ensure that domestic workers have effective access to adequate procedures and remedies and to provide information on the number, nature and outcome of complaints concerning discrimination in employment filed by domestic workers, disaggregated by sex, race national extraction, and social origin.***

*Article 1(1)(a). Discrimination based on sex. Sexual harassment.* The Committee previously noted section 332 of the Labour Act, which prohibits conduct towards female workers that is "indecent or repugnant" to their modesty or honour, and the guidelines on sexual harassment contained in a High Court ruling in 2009. The Committee notes the Government's statement that, following the ruling of the High Court, several initiatives were implemented by the Ministry of Women and Children Affairs (MOWCA) to prevent any kind of gender-based violence, including through the implementation of the National Plan for the Prevention of Violence against Women and Children for 2013–25 and the establishment of several committees under different ministries, and a national centre for violence against women and children. While welcoming these initiatives, the Committee notes that the Government does not provide information on any activity or programme specifically targeting sexual harassment in employment and occupation. The Committee notes the Government's statement that sexual harassment in employment and occupation is very rare and that workers, employers and their organizations are very much aware of their rights, obligations and procedures. However, the Committee notes that, as highlighted in the Decent Work Country Programme (DWCP) 2017–20, studies and data from the Bangladesh Bureau of Statistics (BBS) show that violence against women in the form of verbal and physical abuse is taking place among industrial workers. It further notes that, as highlighted in 2018 in the context of the UPR, the UN Special Rapporteur on violence against women reported that sexual harassment was also commonplace in various working environments and was sometimes justified as being "part of the culture" by state and non-state actors (A/HRC/WG.6/30/BGD/2, 19 March 2018, paragraph 54). The CEDAW also expresses concern at: (i) the lack of information on the impact of the ruling of the High Court requiring all schools to develop a policy against sexual harassment in schools and on the way to and from school; and (ii) the failure to implement the High Court guidelines concerning the protection of women from sexual harassment in the workplace (CEDAW/C/BGD/CO/8, 25 November 2016, paragraphs 18, 28(b) and 30(b)). Given the gravity and serious repercussions of sexual harassment on workers and also on the enterprise, the Committee highlights the importance of taking effective measures to prevent and prohibit sexual harassment at work which is a serious manifestation of sex discrimination (see 2012 General Survey, paragraph 789). ***The Committee encourages the Government to take steps to ensure that a comprehensive definition and a clear prohibition of both forms of sexual harassment (quid pro quo and hostile work environment) in employment and occupation is included in the Labour Act. It also asks the Government to take preventive measures, including awareness-raising initiatives on sexual harassment in employment and occupation and on the social stigma attached to this issue, among workers, employers and their respective organizations, as well as law enforcement officials, specifying the procedures and remedies available. It asks the Government to provide information on the number, nature and outcome of any complaints or cases of sexual harassment in employment and occupation dealt with by labour inspectors, the courts or any other competent authority, as well as updated statistical data on the extent of sexual harassment perpetrated against girls and women in education and in employment and occupation.***

*Articles 2 and 3. Equality of opportunity and treatment for men and women.* Referring to its previous request regarding the measures taken to promote gender equality in employment and occupation and the results achieved, the Committee welcomes the Government's statement that, as a result of the National Women Development Policy of 2011, several national action plans and programmes have been implemented to promote women's entrepreneurship and access to productive employment. These plans and programmes include capacity-building on information and communication technology, and the establishment of a

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selling and exhibition centre ('Joyeeta') to help in the selling of products from remote areas through the Women's Association. The Committee notes that, as a result of the Northern Areas Reduction of Poverty Initiative (NARI) project (completed in December 2018), aimed at facilitating access to employment opportunities in the ready-made garments sector for poor and vulnerable women, training and employment was provided to 10,800 poor and vulnerable women aged 18–24 years of whom 3,236 have so far graduated. The Government adds that several programmes have been continued by the Rural Development and Cooperatives Division (RDCD), such as microcredit to promote the self-employment of rural and vulnerable women, and livelihood programmes in rural areas. The Government also refers to the introduction of a 15 per cent quota of women, in the public service, as well as a 60 per cent quota in the posts of primary school teachers, and that women are now allowed to join the armed forces. Furthermore, in order to increase women's participation in tertiary education, arrangements have been made for stipends and 20 per cent of place are reserved for women in the Technical and Vocational Institute. The Committee notes the adoption of the Seventh Five-Year Plan (2016–20), for the implementation of the Government's Vision 2021, which sets specific targets on gender equality, such as increasing literacy and enrolment in tertiary education for women, encouraging women's enrolment in technical and vocational education, and creating good jobs for unemployed women and new entrants in the labour market by increasing their share of employment in the manufacturing sector from 15 to 20 per cent. The Committee notes that the new DWCP for 2017–20 encourages women's enrolment in technical and vocational education to enhance their employability (outcome 1.2 of the DWCP). It notes that the DWCP acknowledges that gender inequality is evidenced by large differences in labour force participation rates, greater women's involvement in vulnerable and informal employment and in wage differentials, and sets as a specific outcome in 2.1, the promotion of the ILO fundamental Conventions, including Convention No. 111, and the enhancement of constituents' capacity for their better implementation. While welcoming the efforts made by the Government, the Committee notes that, according to the 2017 labour force survey of the BBS, the labour force participation rate of women remains far below that of men (36.4 per cent for women compared to 80.7 per cent for men), and their unemployment rate is twice as high as that of men (6.7 per cent for women compared to 3.3 per cent for men). It notes that women are mostly concentrated in agriculture (59.7 per cent) and manufacturing (15.4 per cent) and that, in 2017, only 0.6 per cent of women were managers, while 15.8 per cent of them were in elementary occupations. The Committee further notes that while almost 40 per cent of women are own-account workers, an increasing number of women (estimated at 91.8 per cent of women in 2017, compared with 85.6 per cent in 2005–06) are working in the informal economy which is characterized by low earnings and poor conditions. The Committee notes that several UN treaty bodies (such as the Human Rights Committee and the Committee on the Elimination of Discrimination against Women) have expressed concerns at the lack of implementation of the provisions of the Constitution and of existing laws on the rights of women and girls, due in part to prevailing patriarchal attitudes (CCPR/C/BGD/CO/1, 27 April 2017, paragraph 11(a), and CEDAW/C/BGD/CO/8, 25 November 2016, paragraph 10). It further notes that in its 2016 concluding observations, the CEDAW expressed concern at: (i) the low participation rate of women in the formal economy; (ii) the persistent patriarchal attitudes and discriminatory stereotypes about the roles and responsibilities of women and men; (iii) the limited efforts made by the Government to eliminate such stereotypes which constitute serious barriers to women's equal enjoyment with men of their human rights and their equal participation in all spheres of life; (iv) the underrepresentation of women and girls in non-traditional fields of study and career paths, such as in technical and vocational education, and in higher education; and (v) the large number of girls dropping out of school between the primary and secondary levels of education owing to early child marriage, sexual harassment and early pregnancy, the low value placed on girls' education, poverty and the long distances to schools in rural and marginalized communities. Further, the CEDAW was concerned about: (i) the limited access of rural women to education, land ownership and financial credit and loans from public banks, given that laws and policies do not recognize them as farmers; and (ii) persistent discrimination against pregnant women in the private sector and the lack of implementation of the six months maternity period provided for in the Bangladesh Labour (Amendment) Act of 2013 (CEDAW/C/BGD/CO/8, paragraphs 16, 28, 30, 32 and 36). ***The Committee therefore urges the Government to strengthen its efforts to address obstacles to women's employment, in particular patriarchal attitudes and gender stereotypes and lack of access to productive resources, and to enhance women's economic empowerment and promote their access to equal opportunities in formal employment and decision-making positions as well as by encouraging girls and women to choose non-traditional fields of study and occupations while reducing the number of girls dropping out of school early. The Committee asks the Government to indicate how the quotas in public employment (15 per cent) and applicable to primary school teachers (60 per cent) are implemented and the results achieved. The Committee also asks the Government to provide updated statistical information on the participation of men and women in education, training, employment and occupation, disaggregated by occupational categories and positions, in both the public and private sectors, as well as the informal economy.***

***Article 5. Special measures of protection. Restrictions on women's employment.*** For more than a decade, the Committee has been drawing the Government's attention to the fact that section 87 of the Labour Act, which provides that the restrictions set out in sections 39, 40 and 42 of the Labour Act shall apply to women workers as they apply to adolescent workers, are gender biased with respect to women's capabilities and aspirations and may have the effect of excluding women from work opportunities. The Committee notes the Government's statement that, despite the amendments made in 2013, these sections of the Labour Act were retained in order to protect the life and dignity of children and women. The Committee wishes to recall that protective measures for women may be broadly categorized into those aimed at protecting maternity in the strict sense, which come within the scope of *Article 5*, and those aimed at protecting women generally because of their sex or gender, based on stereotypical perceptions about their capabilities and appropriate role in society, which are contrary to the Convention and constitute obstacles to the recruitment and employment of women. In addition, provisions relating to the protection of persons working under hazardous or difficult conditions should be aimed at protecting the health and safety of both men and women at work, while taking account of gender differences with regard to specific risks to their health (see 2012 General Survey, paragraphs 839–840). ***In light of the above, the Committee urges the Government to review its approach to restrictions on women's employment and to take the necessary steps to ensure that section 87 of the Labour Act is modified so that any restrictions on the work that can be done by women are limited to maternity protection, in the strict sense, and are not based on stereotyped assumptions regarding their capacity and role in society. It asks the Government to provide information on any progress made in this regard.***

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



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

*Observation 2019*

The Committee takes note of the comments of the Government in reply to the 2016 and 2017 observations from the International Trade Union Confederation (ITUC), including the indication that the provisions in the draft Law on Minimum Wage that had been questioned by the ITUC as prohibiting legitimate trade union activities were subsequently removed from the promulgated law. The Committee further notes the observations submitted by the ITUC received on 1 September 2019, concerning matters examined in this comment, as well as alleging violent repression of strikes by hired criminals and the detention of union leaders organizing strike action in the garment sector. ***The Committee requests the Government to provide its comments in this respect.***

**Trade union rights and civil liberties**

***Murders of trade unionists.*** With regard to its long-standing recommendation to carry out expeditious and independent investigations into the murders of trade union leaders Chea Vichea and Ros Sovannareth (in 2004) and Hy Vuthy (in 2007), the Committee notes that the Government indicates once again that the relevant ministries and institutions have been working on the cases but that their long-standing nature, coupled with the lack of cooperation from Mr. Vichea's family, renders the investigation even more complicated. The Government further states that in order for the investigation to conclude, all relevant parties, especially the families of victims, need to cooperate fully, and indicates that the investigation was brought up to the annual meeting of the National Commission on Reviewing the Application of the International Labour Conventions ratified by Cambodia (NCRILC). The Committee must express once again its ***deep concern*** with the lack of concrete results concerning the investigations, even bearing in mind the suggested lack of cooperation of victims' families, and the Committee refers to the conclusions and recommendations of the Committee on Freedom of Association in its examination of Case No. 2318 (see 390th Report, October–November 2019). ***Recalling the need to conclude the investigations and to bring to justice the perpetrators and the instigators of these crimes, the Committee urges once again the competent authorities to take all necessary measures to expedite the process of investigation.***

***Incidents during the January 2014 demonstrations.*** Concerning the trade unionists facing criminal charges in relation to incidents during the January 2014 demonstrations, the Committee notes with ***interest*** the Government's indication that the six trade union leaders that had initially been sentenced to a suspended three years and six months imprisonment and collective payment of compensation equivalent to US\$8,750 were acquitted of all charges on 28 May 2019 by the Court of Appeal after the initial judgement was appealed with legal support from the Ministry of Labour and Vocational Training (MLVT) and the Ministry of Justice (MoJ). The Committee further notes the Government's indication that: (a) as to other trade unionists under judicial procedures, the MLVT and the MoJ have established a working group, which requested trade unions to provide information on their cases, so that the two ministries could follow up with the court in order to expedite the settlement (80 per cent of the criminal cases against trade unionists have been settled so far); (b) out of a total of 121 criminal cases identified as involving trade unionists, 71 cases have been settled (with verdicts issued for 27 cases, filing without processing by the prosecutor for 13 cases and charges dropped by the investigating judge for 23 cases); 33 cases remain under judicial proceedings and 17 cases are not related to freedom of association or labour rights but have also been settled; and (c) out of the 19 civil cases, 11 have been settled (verdicts issued for nine cases and charges dropped for two cases), and eight cases are under court proceedings (two of which are not related to freedom of association or labour rights). ***The Committee requests the Government to continue providing information on these procedures, in particular on any verdicts issued, as well as undertaking all necessary efforts to ensure that no criminal charges or sanctions are imposed in relation to the peaceful exercise of trade union activities.***

***Training of police forces in relation to industrial and protest action.*** In its previous comment, recalling that the intervention of the police should be in proportion to the threat to public order and that the competent authorities should receive adequate instructions so as to avoid the danger of excessive force in trying to control demonstrations that might undermine public order, the Committee encouraged the Government to consider availing itself of the technical assistance of the Office in relation to the training of police forces, with a view, for example, to the development of guidelines, a code of practice or a handbook on handling industrial and protest action. The Committee notes the Government's indication that: (i) the MLVT has cooperated with the Ministry of Interior to produce documents for the training of police forces to ensure full respect of trade union rights; (ii) on December 2018 the MLVT sent a letter to the ILO requesting technical assistance to provide a training course for police forces; and (iii) on April 2019 its representatives met with ILO officials to prepare the training for the national police and agreed to organize four courses of training of trainers, in cooperation with the Ministry of Interior and the Officer of the High Commissioner for Human Rights to take place in the second semester of 2019. ***The Committee requests the Government to provide information on developments in this regard, including with respect to completion of the four training courses, their duration, number of participants, and particular subjects covered.***

**Legislative issues**

The Committee takes due note of the information provided by the Government on the process to prepare amendments to the Law on Trade Unions (LTU) in consultation with the social partners. The Government indicates that: (i) the MLVT submitted a first draft amendment for tripartite consultation; (ii) workers and employers organizations submitted written comments; (iii) two national tripartite consultative workshops took place on 25 April 2019 and on 2 August 2019, with the technical support of the ILO and during which the social partners could provide additional inputs; (iv) on 9 August 2019 a final draft was submitted to the Council of Ministers, with a view to its further submission to the National Assembly for review and adoption by the end of 2019; and (v) in the meantime, a number of regulations (*prakas*) have been adopted to simplify the implementation of the LTU, including on the subjects of registration of unions, federations and confederations. The Committee observes that the draft law was approved by the National Assembly on 26 November 2019. ***The Committee requests the Government to provide a copy of the adopted amendments to the LTU.***

***Article 2 of the Convention. Rights of workers and employers, without distinction whatsoever, to establish and join organizations.*** In its previous comments the Committee urged the Government to take appropriate measures, in consultation with the social partners, to ensure that civil servants – including teachers – who are not covered by the LTU are fully ensured their freedom of association rights under the Convention, and that the legislation is amended accordingly. The Committee notes that, while in the Progress Report for the Roadmap on Implementation of ILO Recommendations concerning Freedom of Association submitted to the ILO in June 2019, the Government had indicated that it continued to organize consultative workshops and to finalize draft legislative amendments, no amendments have been drafted in this respect. In its report to the Committee the Government only reiterates that it considers that freedom of association is guaranteed to all workers through two pieces of legislation: (i) the LTU, applicable to the private sector – including domestic workers (the amendments will introduce an explicit reference to domestic workers in section 3 of the LTU on the scope of the law), teachers who are not civil servants, and workers in the informal economy meeting the LTU's requirements to form a union; and (ii) the Law on Associations and Non-Governmental Organizations (LANGO) providing for the right to organize of civil servants, including teachers who now have such status.

The Committee must recall once again that some provisions in the LANGO contravene freedom of association rights of civil servants under the Convention, as it lacks provisions recognizing civil servants' associations' right to draw up constitutions and rules, the right to elect representatives, the right to organize activities and formulate programmes without interference of the public authorities, and the right to affiliate to federations or confederations, including at the international level, and subjects the registration of these associations to the authorization of the Ministry of Interior. In addition, the Committee had noted that workers' organizations and associations expressed deep concern at: (i) the lack of protection of teachers' trade union rights (referring in particular to sanctions and threats to teachers seeking to organize); and (ii) the difficulties faced by domestic workers and workers in the informal economy in general seeking to create or join unions, since the LTU provides for an enterprise union model, whose requirements are often very difficult to meet by these workers, and does not allow for the creation of unions by sector or profession. Similarly, the Committee had taken note of the ITUC's claim that the absence of any structure for sectoral representation results in the exclusion from the right to organize of hundreds of thousands of workers in the informal sector. ***Regretting the absence of progress in this respect, the Committee must once again urge the Government to take appropriate measures, in consultation with the social***



*partners, to ensure that civil servants – including teachers – who are not covered by the LTU are fully ensured their freedom of association rights under the Convention, and that the legislation is amended accordingly. The Committee further encourages the Government to promote the full and effective enjoyment of these rights by domestic workers and workers in the informal economy and, to this effect, submit to tripartite consultations the possibility of allowing the formation of unions by sector or profession.*

*Article 3. Right to elect representatives freely. Requirements for leaders, managers, and those responsible for the administration of unions and of employer associations.* In its previous comments, the Committee had requested the Government to take the necessary measures to amend sections 20, 21 and 38 of the LTU – requiring those wishing to vote, to stand as a candidate for election, or be designated to leadership or management positions in unions or employer associations to meet a minimum age requirement (18), minimum literacy requirements and make a declaration that they have never been convicted for any criminal offence. On the one hand, the Committee notes with *interest* that the amendments to the LTU submitted by the Government remove the requirements of making a declaration that they have never been convicted of any criminal offense and, as to Khmer nationals, the literacy requirement. However, the Committee observes that the draft amendments submitted still impose literacy requirements on foreign nationals (sections 20 and 21). Moreover, the Committee observes that the draft submitted does not include a proposal to amend section 38, on the election of worker representatives in the enterprise or establishment. As the Committee had noted in its previous comments, this section also presents issues of compatibility with the Convention. *Having taken due note of the draft submitted, the Committee recalls its previous comments and expects that, in the context of its ongoing consultations on the amendment of the LTU, the Government will take the necessary measures to amend sections 20, 21 and 38 of the LTU to remove the requirement to read and to write Khmer from the eligibility criteria of foreigners. The Committee requests the Government to provide information on any developments in this respect.*

*Article 4. Dissolution of representative organizations.* In its previous comments the Committee had requested the Government to amend paragraph 2 of section 28 of the LTU, providing that a union is automatically dissolved in the event of a complete closure of the enterprise or establishment. The Committee observes that the draft amendments to the LTU submitted by the Government retain under paragraph 2 of section 28 the automatic dissolution of a union in the event of a complete closure of its enterprise or establishment, but add an additional condition: complete payment of workers' wages and other benefits. In this respect, the Committee considers that, while the payment of wages and other benefits may be one of the reasons why a union may have a legitimate interest to continue to operate after the dissolution of the enterprise concerned, there may be other legitimate reasons for it to do so (such as defending other legitimate claims). *Recalling that the dissolution of a workers' or employers' organization should only be decided under the procedures laid down by their statutes, or by a court ruling, the Committee requests once again the Government to take the necessary measures to amend section 28 of the LTU accordingly by fully removing its paragraph 2.*

*Grounds to request dissolution by Court.* In its previous comments the Committee had requested the Government to take the necessary measures to amend section 29 of the LTU, which affords any party concerned or 50 per cent of the total of members of the union or the employer association the right to file a complaint to the Labour Court to request a dissolution. Observing that the draft amendments to the LTU submitted by the Government do not modify the provision in question, and that members can always decide to leave the union, the Committee must recall once again that the manner in which members may request dissolution should be left to the organization's by-laws. *The Committee requests the Government to take the necessary measures to amend section 29 of the LTU to leave to the unions' or employers' associations own rules and by-laws the determination of the procedures for their dissolution by their members.*

The Committee had further requested the Government to take the necessary measures to remove paragraph (c) of section 29, which provides that a union or an employers' association shall be dissolved by the Labour Court in cases where leaders, managers and those responsible for the administration were found guilty of committing a serious act of misconduct or an offence on behalf of the union or the employer association. The Committee had recalled that if it is found that trade union officers have committed serious misconduct or offences through actions going beyond the limits of normal trade union activity – including actions carried out on behalf of the trade union – they may be prosecuted under the applicable legal provisions and in accordance with ordinary judicial procedures, without triggering the dissolution of the trade union and depriving it of all possibility of action. The Committee observes with *interest* that the amendments submitted by the Government remove from the LTU the above-mentioned paragraph. *The Committee requests the Government to provide a copy of the amendment removing paragraph (c) of section 29 of the LTU.*

## Application of the Convention in practice

*Independent adjudication mechanisms.* In its previous comments the Committee had recalled the importance of ensuring the effectiveness of the judicial system as a safeguard against impunity, and an effective means to protect workers' freedom of association rights during labour disputes, as well as to address the serious concerns raised on the independence of the judiciary and its impact on the application of the Convention. The Committee had welcomed the Government's commitment to strengthen the Arbitration Council (AC) and trusted that the AC would continue to remain easily accessible and to play its important role in the handling of collective disputes, and that any necessary measures would be undertaken to ensure that its awards, when binding, are duly enforced. The Committee notes that the Government informs that it revoked the draft law on procedure of the labour courts and further notes with *interest* that the MLVT agreed to continue to provide financial support to the AC and study the possibility and launch a pilot on the settlement of individual labour rights disputes by the AC in early 2020. *The Committee requests the Government to continue to provide information in this respect, including as to any measures undertaken to ensure that the AC awards, when binding, are duly enforced.*

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 2019

The Committee notes the observations of the International Trade Union Confederation (ITUC) dated 1 September 2019 referring to matters examined in this comment.

The Committee takes note of the comments of the Government in reply to the 2016 and 2017 ITUC observations. Concerning the allegations of extended use of short-term contracts to terminate employment of trade union leaders and members and weaken active trade unions, the Government states that the Law on Trade Unions (LTU) provides remedies for both dismissal or non-renewal of fixed-term contracts due to anti-union discrimination and, if verified, the labour inspectors instruct the employer to reinstate the workers or impose a substantial fine. The Government adds that, to avoid misinterpretation of legal provisions concerning fixed-term contracts, the Ministry of Labour and Vocational Training (MLVT) conducted consultations with the social partners and other actors, such as the Arbitration Council, and that a common understanding was reached that the maximum duration of fixed-term contracts would be four years and, if exceeding this maximum period, the contract would be considered as having unfixed duration. This was reflected in an Instruction on determination of the type of employment contract, issued by the MLVT on 17 May 2019. *While taking due note of the information provided, the Committee requests the Government to ensure that all measures are taken to monitor, in consultation with the social partners, that fixed-term contracts are not used for anti-union purposes, including through their non-renewal, and to continue to provide information in this respect.*

*Articles 1 and 3 of the Convention. Adequate protection against anti-union discrimination.* For many years several workers' organizations, in particular the ITUC – including in its most recent observations, have been denouncing serious and numerous acts of anti-union discrimination in the country. The Committee

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notes that the Government indicates in this regard that the MLVT: (i) issued an administrative letter on 31 May 2019 to all employers and their associations to ensure strict and effective implementation of the provisions relating to anti-union discrimination; (ii) invited employers' representatives from 50 companies to disseminate information on the special protections against anti-union discrimination; and (iii) met with the representative of the Cambodia Labour Confederation (CLC) on two different occasions (13 June and 18 July 2019) to follow-up on its 44 cases before the courts (the Government informs that 11 of these were resolved with acquittal of charges and that the MLVT is working closely with the Ministry of Justice to review the remaining cases). While welcoming the steps undertaken for the effective implementation of the protections against anti-union discrimination, the Committee observes that, other than the reference to two meetings with the CLC, it has not received more detailed information on the numerous and grave allegations of anti-union discrimination laid out in previous observations of workers' organizations. ***The Committee requests the Government to provide detailed information on the handling of the allegations of anti-union discrimination laid out in the observations of the ITUC in 2014, 2016 and 2019, and recalls the need to take all necessary measures to ensure that anti-union discrimination allegations are investigated by independent organs that enjoy the confidence of the parties and that, whenever such allegations are verified, adequate remedies and sufficiently dissuasive sanctions are applied.***

Furthermore, in its previous comments, the Committee urged the Government to ensure that national legislation provided adequate protection against all acts of anti-union discrimination, such as dismissals and other prejudicial acts against trade union leaders and members, including sufficiently dissuasive sanctions. The Committee had taken note, in this respect, of the ITUC's observations that penalties provided for under the LTU for anti-union practices by employers were too low (a maximum of 5 million Cambodian riels (KHR), equivalent to US\$1,250) and may not be sufficiently dissuasive. The Committee was of the view that fines for unfair labour practices provided for in the LTU may be a deterrent for small and medium-sized enterprises, but would not appear to be so for high-productivity and large enterprise cases. The Committee had thus invited the Government to assess, in consultation with the social partners, the dissuasive nature of sanctions in the LTU or any other relevant laws. The Committee notes that the Government replies by affirming that the existing legal mechanisms set out adequate protection against anti-union discrimination. The Government indicates that: (i) in addition to the application of the provisions and remedies in the LTU concerning anti-union discrimination (chapter 15), the LTU itself acknowledges (section 95) that other criminal laws may be applied to punish these actions (violence and discrimination against worker unions being criminal offences under sections 217 and 267 of the Penal Code) and that the employer could thus even face imprisonment, for example if the actions entailed violence; (ii) in addition to the fines imposed by the LTU, those affected can also claim compensation; (iii) the MLVT has never received complaints or grievances from trade unionists regarding existing sanctions; and (iv) the Government is committed to further strengthening the capacity of labour inspectors and raising the awareness of workers on their rights. The Committee observes, on the other hand, that, while several consultation meetings were held on the review and amendment of the LTU, the Government does not indicate that, as recommended by the Committee, these tripartite fora were used to assess the effective and dissuasive nature of the protections against anti-union discrimination. Moreover, the Committee notes that the ITUC observations, in addition to the concrete cases noted above, denounce in general a lack of action and adequate protection against rampant anti-union discrimination. ***The Committee requests the Government to provide detailed statistical information on the application of the different mechanisms to protect against anti-union discrimination, including as to sanctions and other remedies effectively imposed, for example reinstatement or compensation. The Committee further requests the Government to assess, in light of such data, and in consultation with the social partners, the appropriateness of existing remedies, in particular the dissuasive nature of sanctions; and to provide information on any development in this regard.***

***Article 4. Recognition of trade unions for purposes of collective bargaining.*** In its previous observation, noting that the Government's statement that by lowering the most representative organisation threshold to 30 per cent, the law encouraged the increase of collective agreements, the Committee had invited the Government to assess the impact of the implementation of the LTU by providing statistics on: (a) the number of representative organizations identified based on their having secured at least 30 per cent of workers' support without an election, and the number of collective agreements concluded by these representative organizations; and (b) the number of separate elections organized based on no union having secured 30 per cent support, and the number of collective agreements concluded by the organizations so elected. The Committee notes that the Government provides the following information: (i) the number of representative organizations having secured at least 30 per cent of workers' support without election were four unions in 2018 (all in the garment sector, covering 3,226 workers) and 15 unions in 2019 (11 in the garment sector, covering 11,070 workers and four in the hotel sector, covering 890 workers); and (ii) the number of collective bargaining agreements concluded in 2018 and 2019 was seven (in 2018, four collective bargaining agreements were concluded between the employer and the shop steward; and, in 2019, three collective bargaining agreements between the employer and a most representative status union). The Government indicates that the information concerning point (b) above will be provided in its next report. The Committee further observes that the March 2017 direct contacts mission (DCM) recommended the Government to take the necessary measures, including issuing instructions to the competent authorities, to ensure that most representative status are recognized without delay and without the exercise of arbitrary discretion to workers' organizations or coalitions of organizations meeting the minimum threshold. In this respect, while noting that the Government indicates that it issued an Instruction on the Facilitation for the Most Representative Status Certification and that one of the objectives of the amendments to the LTU is to facilitate the requirements to obtain most representative status, the Committee observes that the number of organizations having secured at least 30 per cent of workers' support without election, as well as the number of collective bargaining agreements concluded, for 2018 and 2019, were very low. ***The Committee requests the Government to keep on providing information on the number of organizations recognized as having the most representative status, and the number of collective agreements in force, indicating the parties that concluded the agreement (in particular, if a most representative union, a bargaining council or a shop steward), the sectors concerned and the number of workers covered by these agreements; as well as information on any additional measures undertaken to address the issues noted by the DCM concerning the recognition of most representative status organizations, and to promote the full development and utilization of collective bargaining under the Convention.***

***Articles 4, 5 and 6. Right to collective bargaining of public servants not engaged in the administration of the State.*** In its previous comments the Committee had urged the Government to take the necessary measures, in consultation with the social partners, to ensure that public servants not engaged in the administration of the State, including teachers, who are governed by the Law on the Common Statute of Civil Servants and the Law on Education with regard to their right to organize, enjoy collective bargaining rights under the Convention. The Committee notes that, in its reply, the Government indicates that civil servants, including teachers, can form associations in accordance with the Law on Associations and Non-Governmental Organizations (LANGO), but does not provide any information on measures to ensure that public servants not engaged in the administration of the State can exercise the right to collective bargaining. ***Regretting the lack of progress in this respect, the Committee urges once again the Government to take the necessary measures, in consultation with the social partners, to ensure that public servants not engaged in the administration of the State, including teachers, enjoy collective bargaining rights under the Convention. The Committee requests the Government to report on any measures taken or envisaged in this regard and recalls that it may avail itself of the technical assistance of the Office.***

**C155 - Occupational Safety and Health Convention, 1981 (No. 155)****C167 - Safety and Health in Construction Convention, 1988 (No. 167)****Observation 2019**

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 155 (OSH) and 167 (OSH in construction) together.

**General provisions****Occupational Safety and Health Convention, 1981 (No. 155)**

*Article 11(c) and (e) of the Convention. Production of annual statistics on occupational accidents and diseases and application of the Convention in practice.* The Committee previously noted the 26,393 cases of occupational diseases reported in 2013, including 23,152 cases of pneumoconiosis. In response to its request on concrete measures taken to address pneumoconiosis, the Committee notes the information in the Government's report concerning different preventative OSH measures taken in recent years, including the formulation of risk prevention and control plans in coal mines. The Committee also notes with *interest* the adoption, in 2019, of a National Action Plan on the Prevention and Control of Pneumoconiosis. The Committee further notes the information provided by the Government that in 2018, there were 51,373 occupational safety accidents resulting in the death of 34,046 workers. It notes the Government's indication that the 2018 figures represent a 23.4 per cent decrease since 2015 in the number of accidents, and a 23.9 per cent decrease in the number of fatalities. *The Committee requests the Government to continue to provide statistics on occupational accidents and diseases at the national level. The Committee further requests the Government to continue its efforts with regard to the prevention of occupational accidents and occupational diseases, and to continue to provide information on the specific preventative measures taken in this regard, including measures taken in the implementation of the National Action Plan on the Prevention and Control of Pneumoconiosis*

**Protection in specific branches of activity****Safety and Health in Construction Convention, 1988 (No. 167)**

*Article 8 of the Convention. Cooperation between two or more employers undertaking activities simultaneously at one construction site.* The Committee previously noted section 24 of the Administrative Regulations on Work Safety in Construction Projects which states that the main contractor shall be responsible for the overall occupational safety at the construction site. When the main contractor subcontracts a construction project to any other entity, it shall explicitly stipulate their respective rights and obligations regarding work safety. The main contractor and the subcontractor shall bear joint and several liability with regard to the safety of the subcontracted project and shall share duties and responsibilities. The Committee also noted that the Government identified the inadequacy of accountability and responsibility as a contributing factor to the high accident rate in the construction sector, and it requested information on the enforcement of section 24 in practice.

The Committee notes the statistics provided by the Government, in response to the Committee's previous request, regarding enforcement in the construction industry in general. The Government refers to the adoption of the Opinion on Further Accelerating the Development of General Project Contracting (No. 93, 2016), which provides that project contracting enterprises may directly subcontract design or construction work to enterprises with the corresponding qualifications, but the general contractor enterprise shall be fully responsible for, among others, the quality and safety of the project in accordance with the contract signed with the construction entity. The Government also indicates that the Ministry of Housing and Urban-Rural Development issued a Notice on Management Measures for the Evaluation and Punishment of Contract Awarding and Contracting of Construction Projects (No 1, 2019) which identified violations relating to illegal contract awarding, subcontracting and illegal subcontracting, as well as established standards for investigation and punishment. The Government further indicates that the Measures for the Administration of Subcontracting for the Construction of Houses and Municipal Infrastructure Projects (Decree No. 47 of the Ministry of Housing and Urban-Rural Development) was revised in 2019, and provides that the contractor of a project through subcontracting shall have the necessary qualifications for the work required, and shall obey the occupational safety management measures of the main contractor on the construction site. *The Committee requests the Government to continue to provide information on the measures it is taking to ensure the implementation of prescribed safety and health measures under the responsibility of the principal contractor whenever two or more employers undertake activities simultaneously at one construction site, particularly with respect to construction sites with several tiers of subcontracting. Noting the general information provided, the Committee once again requests detailed information on the application and enforcement of section 24 of the Administrative Regulations on Work Safety in Construction Projects in practice, including inspections undertaken, violations detected, and penalties applied for non-compliance, including fines collected and prosecutions. The Committee requests that this detailed information identify how often the principal contractor, as distinct from the subcontractor, is the object of enforcement actions.*

*Article 18(1). Work at heights including roof work.* The Committee notes the Government's statement, in reply to the Committee's previous request, that falls from heights are the main type of accident in construction, representing 52.2 per cent of total accidents in 2018. The Government indicates that supervision of personal protective equipment (such as safety belts) shall be strengthened in order to prevent such falls, and that in 2019, the Ministry of Housing and Urban-Rural Development, together with the State Administration for Market Regulation and the Ministry of Emergency Management, issued the Notice on Further Strengthening Supervision and Management over Personal Protective Equipment. The Government also reports that it is taking measures to strengthen monitoring of projects considered to be higher risk, including those involving work at high heights particularly through the development of detailed enforcement rules regarding such projects and the undertaking of targeted inspections. *The Committee urges the Government to pursue its efforts to enforce safety measures for work at heights and to promote the use of safety equipment at all construction sites. It requests the Government to continue to provide information on the enforcement measures implemented in that respect and to provide data on the number of occupational accidents reported (including fatal and serious accidents) due to falls from heights, as well as the number and nature of violations detected and penalties applied for non-compliance.*

*Article 35. Effective enforcement of the provisions of the Convention and application in practice.* The Committee previously noted the Government's identification of the contributing factors to accidents in the construction sector, including the non-standardization of the construction market; the inadequacy of enterprise ownership, accountability and responsibility; the lack of thoroughness in the elimination of hidden workplace hazards; and the inadequacy of investigations and penalties following occupational accidents. It noted that in 2018, the construction industry was, for the ninth consecutive year, the sector with the largest number of occupational accidents.

The Committee notes the information provided by the Government, in response to its previous request, on the measures taken by the Ministry of Housing and Urban-Rural Development to improve the implementation of the Convention, including: (i) measures to strengthen safety inspections in the construction sector, including the elimination of more than 360,000 potential safety hazards on construction sites and the suspension of licences for 164 enterprises in 2018; (ii) improved regulation of the construction market to address illegal subcontracting; (iii) further awareness raising on safety in construction and safety training for construction workers; and (iv) the development of a national information system on construction safety to promote supervision, collaboration and information sharing. The Government indicates that departments in charge of housing and urban-rural construction at all levels inspected 320,155 projects, investigated 11,302 illegal activities, penalized 8,161 enterprises and imposed fines of approximately ¥102 million. In 2018, there was 734 occupational safety accidents in housing and municipal projects nationwide, resulting in the death of 840 workers. In this respect, the Committee notes with *concern* the Government's statement that this represents a 4.1 per cent increase in the number of fatalities due to accidents in the sector between 2017 and 2018. The major cause of accidents were falls from heights, falling objects, mechanical accidents and crane-related accidents. It further notes that in 2018, 983 cases of occupational diseases were reported in the construction sector, mostly related to civil engineering projects (827 cases). With reference to its comments above on Convention

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No. 155, the Committee notes that the main occupational disease reported in the construction industry was pneumoconiosis. *The Committee urges the Government to pursue its efforts to ensure the application of the Convention in practice, and to continue to provide information on the concrete steps taken to reduce the number of fatal accidents in the sector. It also urges the Government to continue to take measures to ensure the effective enforcement of the Convention through the provision of appropriate inspection services in the sector, as well as appropriate penalties and corrective measures. Lastly, the Committee requests the Government to continue to provide information on the application of the Convention in practice, including the number and nature of the contraventions reported and the measures taken to address them, and the number, nature and cause of occupational accidents and occupational diseases reported.*

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



# China - Hong Kong Special Administrative Region

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

### Observation 2019

The Committee notes the observations of the International Trade Union Confederation (ITUC) and the Hong Kong Confederation of Trade Unions (HKCTU) received on 1 September 2019, concerning the application of the Convention and denouncing intimidation and harassment of workers in the context of public protests, as well as limited protection of the right to assembly and the right to strike, accompanied by excessive penalties. The Committee notes the Government's reply thereto. The Committee further observes that the Government does not provide any information on the 2016 ITUC observations concerning the application of the Convention, including the alleged arrest of Mr Yu Chi Hang, organizing secretary of the Hong Kong Confederation of Trade Unions (HKCTU), after leading a demonstration to demand improvements in workers' rights; and the alleged dismissal of all workers (coach drivers) prior to an announced strike coupled with the hiring of replacement labour. ***The Committee requests the Government to provide its comments on these ITUC allegations.***

***Article 2 of the Convention. Right of workers to establish organizations of their own choosing without previous authorization.*** The Committee had previously noted the proposals to implement article 23 of the Basic Law which, among others, would allow for the proscription of any local organization which was subordinate to a mainland organization, the operation of which had been prohibited on the grounds of protecting the security of the State; and had considered that those proposals could impede the right of workers and employers to form and join the organizations of their own choosing and to organize their administration and activities free from interference by the public authorities. The Committee expressed the firm hope that the Government would ensure that any new legislation would take due account of the Committee's comments and be in line with the Convention. The Committee notes the Government's indication that while it has a constitutional responsibility to legislate for article 23 of the Basic Law in order to safeguard national security, it will carefully consider all relevant factors, act prudently and continue its efforts to create a favourable social environment for the legislative work. The Government states that it will listen to public views earnestly and explore ways to enable the society to respond positively to the constitutional requirement. ***Continuing to express the firm hope that the Government will ensure that any new legislation will take due account of the Committee's comments and be in line with the Convention, the Committee requests the Government to provide information on any developments in relation to the legislative proposals implementing article 23 of the Basic Law, including on consultations held with the social partners in this regard.***

The Committee welcomes the statistics supplied by the Government according to which, as of 31 May 2019, the number of trade unions was 914, representing an increase of 13.1 per cent in the last ten years.

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

### Observation 2019

The Committee notes the observations of the International Trade Union Confederation (ITUC) and the Hong Kong Confederation of Trade Unions (HKCTU) received on 1 September 2019 referring to matters addressed in the present comment and denouncing violations of the Convention in practice, including anti-union dismissals and threats of dismissals in the context of public protests, as well as limited promotion of the right to collective bargaining. The Committee notes the Government's reply thereto. The Committee observes that the Government does not provide any information in relation to the 2016 observations from the ITUC and the HKCTU, alleging violations of the Convention in practice. ***The Committee requests the Government to provide a detailed reply to the 2016 ITUC and HKCTU observations.***

***Article 1 of the Convention. Adequate protection against acts of anti-union discrimination.*** In its previous comments, the Committee had noted the Government's reference to the drafting of an amendment that would empower the Labour Tribunal to make an order of reinstatement/re-engagement in cases of unreasonable and unlawful dismissal without the need to secure the employer's consent. The Committee had expressed its expectation that the Bill, which had been under examination for 17 years, would be adopted without any further delay so as to give legislative expression to the principle of adequate protection against acts of anti-union discrimination and would be effectively enforced in practice. The Committee notes with *interest* the Government's indication that, by virtue of the Employment (Amendment) (No. 2) Ordinance, 2018, which amends the Employment Ordinance (EO), the Labour Tribunal and the courts are now empowered, in case of an unreasonable or unlawful dismissal (among others, dismissal by reason of exercising the right to trade union membership or participation in trade union activities), to make a compulsory order for reinstatement or re-engagement without having to secure the agreement of the employer. The Committee observes, however, that, according to the ITUC and the HKCTU, the amended ordinance allows for discretion in ordering reinstatement and the penalty for the employer's failure to observe a reinstatement is not sufficiently dissuasive to ensure such compliance (three months of the worker's average salary and not exceeding 72,500 Hong Kong Dollars (HKD) (US\$9,300)). The Committee also notes the Government's statement that it accords high priority to investigating complaints on suspected anti-union discrimination but observes that, according to the ITUC and the HKCTU, only two prosecutions of anti-union discrimination resulted in reinstatement since 1974, as it is difficult to prove the employer's covert intent in criminal proceedings. ***In light of the above, the Committee requests the Government to provide information on the application in practice of the amended EO, in particular to inform about its impact on the number of reinstatement orders issued by the courts and effectively implemented by the employers. Bearing in mind the allegations made by the ITUC and the HKCTU with regard to anti-union dismissals and threats of dismissals in the context of public protests, the Committee requests the Government to take the necessary measures to investigate any allegations of anti-union discrimination and to impose sufficiently dissuasive sanctions to avoid the occurrence of such acts in the future. The Committee further requests the Government to provide updated statistics on the number and nature of complaints of anti-union discrimination filed to the competent authorities, their follow-up and outcome.***

***Article 4. Promotion of collective bargaining.*** The Committee recalls that it had previously referred to the need to strengthen the collective bargaining framework in the light of the low levels of coverage of collective agreements, which were not binding on the employer, and the absence of an institutional framework for trade union recognition and collective bargaining. In its previous comment, the Committee requested the Government, in consultation with the social partners, to step up its efforts to take effective measures, including of a legislative nature, in order to encourage and promote free and voluntary collective bargaining in good faith between trade unions and employers and their organizations. The Committee notes the Government's indication that: (i) collective bargaining compelled by law is not conducive to voluntary negotiation and there is no consensus on introducing compulsory bargaining in the legislation; (ii) the Labour Department, making use of its conciliation services, encourages employers and employees to draw up agreements on the terms and conditions of employment, which has contributed to harmonious industrial relations; (iii) collective agreements have been reached in certain industries including printing, construction, public bus transport, air transport, food and beverage processing, pig-slaughtering and elevator maintenance; (iv) the Government has been taking numerous measures appropriate to local conditions, both at the enterprise and industry levels, to encourage and promote voluntary negotiation and effective communication between employers and employees or their respective organizations, including through the industry-based tripartite committees; and (v) all the above efforts help foster an environment conducive to voluntary bipartite negotiation between employers and employees or their respective organizations.

While taking due note of the information provided, including on the promotional measures and activities undertaken, the Committee observes the concerns raised by the ITUC and the HKCTU that there is still no legal framework to regulate the scope, protection and enforcement of the agreements and that less than one per cent of workers are covered by collective bargaining. The Committee recalls in this regard that collective bargaining is a fundamental right which members States have an obligation to respect, promote and to realize in good faith and that the overall aim of *Article 4* of the Convention is to promote

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good-faith collective bargaining between workers or their organizations on the one hand, and employers or their organizations, on the other hand, with a view to reaching an agreement on terms and conditions of employment. The Committee also emphasizes that it has not been requesting the Government to impose compulsory collective bargaining, as under the terms of *Article 4* of the Convention, collective bargaining must be free and voluntary but that it has been pointing to the need to strengthen the collective bargaining framework. The Committee also reiterates, as regards the tripartite committees established at the industry-level, that the principle of tripartism, which is particularly appropriate for the regulation of questions of a larger scope (drafting of legislation and formulating labour policies), should not replace the principle enshrined in the Convention of autonomy of workers' organizations and employers (or their organizations) in bipartite collective bargaining on conditions of employment. The Committee also recalls that, whatever the type of machinery used, its first objective should be to encourage by all possible means free and voluntary collective bargaining between the parties, allowing them the greatest possible autonomy, while establishing a legal framework and administrative structure to which they may have recourse, on a voluntary basis and by mutual agreement, to facilitate the conclusion of a collective agreement under the best possible conditions (see the 2012 General Survey on the fundamental Conventions, paragraph 242). *Considering the above, the Committee requests the Government, in consultation with the social partners, to step up its efforts to take effective measures, including of a legislative nature, to strengthen the legislative framework for collective bargaining so as to encourage and promote free and voluntary collective bargaining in good faith between trade unions and employers and their organizations. The Committee requests the Government to provide statistics on the number of collective agreements concluded, the sectors to which they apply and the number of workers covered.*

*Article 6. Collective bargaining in the public sector.* In its previous comments, the Committee requested the Government to ensure that public servants not engaged in the administration of the State, including teachers and employees in public enterprises, enjoy the right to collective bargaining. The Committee *regrets* to observe that the Government simply reiterates that every civil servant, irrespective of grade or rank, is a part of the civil service and contributes to the administration of the Government, and that all civil servants are thus excluded from the application of *Article 6* of the Convention. It also observes the concerns expressed by the ITUC and the HKCTU that civil servants are excluded from the enforcement of the Convention without distinction of rank and job. While further noting the Government's explanation that there are sufficient avenues for staff representatives to participate in the process for determining the terms and conditions of employment, including through an elaborate three-tier staff consultation mechanism and independent bodies which provide impartial advice on matters of conditions of employment, the Committee reiterates that a distinction must be drawn between, on the one hand, public servants who by their functions are directly employed in the administration of the State (for example, in some countries, public servants in government ministries and other comparable bodies, and ancillary staff), who may be excluded from the scope of the Convention and, on the other hand, all other persons employed by the Government, by public enterprises or by autonomous public institutions, who should benefit from the guarantees provided for in the Convention. It recalls that the establishment of simple consultation procedures for public servants instead of real collective bargaining procedures is not sufficient. *The Committee therefore urges the Government to take the necessary measures, in consultation with the social partners, to ensure that public servants not engaged in the administration of the State, including teachers and employees in public enterprises, enjoy the right to collective bargaining. The Committee trusts that the Government will be able to report progress in this regard in the near future.*

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

#### Observation 2019

*Articles 2(1) and 3(1) of the Convention. Effective tripartite consultations. Election of representatives of the social partners.* The Committee has been requesting for some years that the Government and the social partners promote and strengthen tripartism and social dialogue in order to facilitate the operation of the procedures governing effective tripartite consultations, including ensuring the meaningful participation of the Hong Kong Confederation of Trade Unions (HKCTU) in the consultation process. In its previous comments, the Committee expressed its concern that there is a risk that the HKCTU may have been excluded from meaningful participation in the consultative process among the most representative organizations of workers in the Labour Advisory Board (LAB), as a result of the electoral system in place in the country. In this context, the Committee recalls the previous observations of the HKCTU, which expressed concern in relation to the electoral system for representation on the LAB, the designated tripartite body for tripartite consultations for purposes of the Convention. In its observations, the HKCTU indicated that the composition of the LAB includes six workers' representatives, five of whom are elected by registered trade unions, with a sixth representative appointed *ad personam* by the Government. It noted that, according to the current system, union votes are given equal weight regardless of size of membership, according to the principle of "one union, one vote". Moreover, the electoral system allows voters to vote for a slate of five candidates, as a block, in one ballot. As a result, if the slate of five candidates receives more than half of the votes, the slate would win all five seats. In its observations, the HKCTU maintained that this electoral system was unjust and had effectively prevented it from being elected to the LAB, despite its status as the second largest trade union confederation. The Committee notes that, in its report, the Government reiterates its commitment to ensuring effective tripartite consultations through the operation of the LAB, as well as reiterating information previously provided concerning its electoral system. The Government reiterates that, in the Hong Kong Special Administrative Region (HKSAR), every workers' union is free either to affiliate to one or more trade union groups or to remain unaffiliated. All registered workers' unions are entitled to exercise their free choice in the election. The Government reiterates its commitment to continuing to ensure that every registered trade union, including those affiliated to the HKCTU, enjoys the same right as other registered trade unions to nominate candidates and to vote in the election of workers' representatives of the LAB. Nevertheless, the Government considers that it would be improper and inappropriate if the system of electing workers' representatives to the LAB were to be changed for the advantage of a particular organization. In this context, the Committee notes that the latest election of workers' representatives in the LAB was held in November 2018. The Government indicates that 12 nominations were received, which included four incumbent workers' representatives and that, after the trade unions cast their votes by secret ballot, three incumbent workers' representatives and two other candidates were elected. The HKCTU was not elected to the LAB. The Committee recalls that the term "most representative organizations of employers and workers", as provided for in Article 1 of the Convention, "does not mean only the largest organization of employers and the largest organization of workers". In its 2000 General Survey on tripartite consultations, paragraph 34, the Committee refers to Advisory Opinion No. 1 of the Permanent Court of International Justice, dated 31 July 1922, in which the Court established that the use of the plural of the term "organizations" in Article 389 of the Treaty of Versailles referred to both organizations of employers and those of workers. Based on this opinion, the General Survey clarified that the term "most representative organizations of employers and workers" does not mean only the largest such organization. If in a particular country there are two or more organizations of employers or workers which represent a significant body of opinion, even though one of them may be larger than the others, they may all be considered to be "most representative organizations" for the purpose of the Convention. In such cases, governments should endeavour to secure an agreement of all the organizations concerned in establishing the tripartite procedures (2000 General Survey on tripartite consultations, paragraph 34). *The Committee therefore once again urges the Government to make every effort, together with the social partners, to ensure that tripartism and social dialogue are promoted and strengthened so as to facilitate the operation of procedures that ensure effective tripartite consultations that include the most representative organizations of employers and workers, as required under Articles 1 and 2 of the Convention, including by encouraging the Labour Advisory Board to amend its current electoral system. The Committee also once again requests the Government to report on progress made in ensuring the HKCTU's meaningful participation in the consultative process among the most representative organization of workers.*

*Article 5(1). Effective tripartite consultations.* The Government indicates that, during the reporting period, the LAB's Committee on the Implementation of

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International Labour Standards (CIILS) was consulted on all reports to be submitted under article 22 of the ILO Constitution. The procedures for preparing these reports and copies of the reports were communicated to all members of the LAB. In 2018, members of the CIILS met with officials from the Transport and Housing Bureau and the Marine Department of the HKSAR Government and were informed of progress with regard to the application of the Maritime Labour Convention, 2006 (MLC, 2006), in the HKSAR. The Committee notes the report of the LAB for 2017–18, communicated together with the Government's report. *The Committee requests the Government to continue to provide detailed and up-to-date information on the content and outcome of the consultations held on all of the matters relative to international labour standards as required under Article 5(1)(a)–(e) of the Convention.*

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

### Observation 2019

The Committee notes the observations of representative organizations of workers communicated with the Government's report and collected through the Standing Committee for the Coordination of Social Affairs, whose members are appointed from the most representative workers' and employers' organizations (currently the Macao Chamber of Commerce and the Macao Federation of Trade Unions). These refer to the need to adopt specific laws on freedom of association. It further notes the observations of the Macao Civil Servants' Association received on 6 August 2019, also referring to the need to legislate on matters of freedom of association and collective bargaining, and the Government's general reply thereto. The Committee further notes the Government's additional reply to the 2014 observations of the International Trade Union Confederation (ITUC).

*Articles 2 and 3 of the Convention. Right to organize of all categories of workers. Right of organizations to organize their activities.* The Committee recalls that it had previously noted the Government's indication that freedom of association, procession and demonstration, as well as the right and freedom to form and join trade unions and to strike, are guaranteed to all Macao residents by section 27 of the Basic Law of the Macao Special Administrative Region, and that in line with section 2(1) of the Regulation on the Right of Association (Law No. 2/99) everyone can form associations freely and without obtaining authorization. In its previous comment, the Committee noted that the Labour Relations Law adopted in 2008 did not include a chapter on the right to organize and collective bargaining and that the draft Law on Fundamental Rights of Trade Unions, which would give effect to these rights, had been pending adoption since 2005. The Committee strongly encouraged the Government to intensify its efforts to achieve consensus on the draft Law and expected that it would explicitly grant the rights enshrined in the Convention to all categories of workers (with the only permissible exception of the police and the armed forces).

The Committee notes the Government's indication that the draft Law on Fundamental Rights of Trade Unions was submitted to the legislative council and vetoed for the tenth time. In April 2019, those who oppose the draft law considered that many substantive and procedural laws already exist to protect workers and that the social situation has changed since the first draft was submitted, as a result of which the draft law does not reflect the needs of the current society. While the Government does not oppose the enactment of the trade union law at an appropriate time, it must listen to the opinions of all members of society and the relevant stakeholders to respond to the societal situation and tailor the law and regulations accordingly. The Government indicates that since 2016, a research study has been ongoing on the essential social conditions for the discussion of the draft Law on Fundamental Rights of Trade Unions and it should be concluded in the second half of 2019. The Committee also notes that in their observations, the representative organizations of workers consider that the absence of a law on trade unions and collective bargaining constitutes a severe legislative loophole and they remain in favour of enacting a set of concrete and specific laws to truly guarantee and protect the right to form, join and represent trade unions. *Bearing in mind the views expressed by workers' organizations and recalling that the draft Law on Fundamental Rights of Trade Unions has been pending adoption for more than a decade, the Committee urges the Government to intensify its efforts to achieve consensus on the draft Law and to bring about its adoption in the near future, and to inform the Committee of the results of the above-mentioned study. The Committee expects that this Law will explicitly grant the rights enshrined in the Convention to all categories of workers (with the only permissible exception of the police and the armed forces), including domestic workers, migrant workers, self-employed workers and those without an employment contract, part-time workers, seafarers and apprentices, so as to ensure that freedom of association, including the right to strike, can be effectively exercised. The Committee requests the Government to provide information on any developments in this regard.*

In the same vein, the Committee also previously requested the Government to provide information on developments regarding the adoption of legislative frameworks regulating rights of specific categories of workers, as provided for in section 3(3) of the Labour Relations Law. The Committee notes in this regard that: (i) the draft Part-Time Labour Relations Law was submitted to the Standing Committee in 2018 but due to the need for a more comprehensive discussion, the Government resubmitted the draft law again for further comments from workers' and employers' representatives; and (ii) the draft Seafarers' Labour Relations Law is still under discussion to ensure its compatibility with the relevant international Conventions. The Government reiterates that while these draft laws are specialized regulations to address the specific characteristics of labour relations in the above sectors, the basic regulations concerning these workers are contained in the Labour Relations Law and workers in all industries, including seafarers and part-time workers, are entitled to freedom of association, organization and the right to participate in trade unions. *Taking due note of the Government's explanation, the Committee requests the Government to continue to provide information on developments regarding the adoption of legislative frameworks regulating rights of specific categories of workers, including part-time workers and seafarers, and to indicate whether these instruments include any provisions on the promotion and protection of the rights granted in the Convention. The Committee expects that any legislative frameworks regulating rights of specific categories of workers will be in full conformity with the Convention.*

*Application of the Convention in practice.* The Committee notes the statistics provided by the Government on the number of trade unions (408 registered workers' organizations, out of which 49 involve civil servants as of April 2019), as well as the detailed information on dispute settlement of labour disputes involving more than ten workers. The Committee also takes note of the measures that the Government indicates having taken to protect workers' freedom of association and assembly and improve labour conditions, including: consultation of workers' and employers' organizations when drafting policies on issues of labour and social security; several legislative amendments initiated to strengthen the legal protection of labour rights and monitoring; setting up of consultation hotlines and monitoring employers' compliance with labour laws; and promotional activities and seminars conducted by the Labour Affairs Bureau. Finally, the Committee notes the Government's statement that in order to formalize the employment agency system, the Government proposed the Employment Agency Bill to the legislative council.

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

### Observation 2019

The Committee notes the observations of representative organizations of workers communicated with the Government's report and collected through the Standing Committee for the Coordination of Social Affairs, whose members are appointed from the most representative workers' and employers' organizations (currently the Macao Chamber of Commerce and the Macao Federation of Trade Unions). These refer to the need to adopt specific laws on freedom of association and point to anti-union practices in some enterprises. The Committee further notes the observations of the Macao Civil Servants' Association received on 6 August 2019, also referring to the need to legislate on matters of freedom of association and collective bargaining, and the Government's general reply thereto. The Committee further notes the Government's additional reply to the 2014 observations of the International Trade Union Confederation (ITUC) but observes that the Government fails to address the concrete allegations of unfair dismissals of union members and teachers. *The Committee requests the Government to provide its comments on these specific allegations.*

*Legislative developments.* The Committee previously referred to its comments made under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in which it recalled that while the Labour Relations Law adopted in 2008 contained some provisions that prohibit anti-union discrimination and provided sanctions for such acts, it did not include a chapter on the right to organize and collective bargaining, and that the draft Law on Fundamental Rights of Trade Unions, which would give effect to these rights, had been pending adoption since 2005. *Taking due note of the information provided by the Government in this regard and referring to its comments made under Convention No. 87, the Committee strongly encourages the*



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*Government to intensify its efforts in order to achieve the adoption, in the near future, of a legislation that will explicitly grant the various rights enshrined in the Convention and address the Committee's pending comments. The Committee requests the Government to provide information on any developments in this regard.*

The Committee also previously requested the Government to provide information on any developments regarding the adoption of legislative frameworks regulating the rights of seafarers and part-time workers and expressed the expectation that any such instruments would, in full conformity with the Convention, allow these categories of workers to exercise their right to organize and to bargain collectively. The Committee takes due note of the information provided by the Government and refers to its more detailed comments made under Convention No. 87.

*Article 1 of the Convention. Adequate protection against acts of anti-union discrimination.* Having previously noted that fines imposed by section 85(1)(2) of the Labour Relations Law for acts of discrimination against workers due to their union membership or the exercise of their rights might not be sufficiently dissuasive, particularly for large enterprises (from 20,000 to 50,000 Macau patacas (MOP) equivalent to US\$2,500–6,200), the Committee requested the Government to take the necessary measures to strengthen the existing pecuniary sanctions applicable to acts of anti-union discrimination in order to ensure their sufficiently dissuasive character. It also requested the Government to provide clarification on the use, if any, of sanctions provided for in the Penal Code, to which the Government made reference. The Committee notes the Government's indication that: (i) heavy penalties are already imposed for illegal acts violating workers' rights and the Government will continue to carefully review and improve the laws and regulations in the field of labour; (ii) violations of the Labour Relations Law are divided into administrative violations and "minor violations", which are more serious, have a criminal nature and to which the Penal Code applies; (iii) in case an employer deters an employee from exercising his or her rights or subjects the employee to any adverse treatment for exercising such rights (section 10(1) of the Labour Relations Law) and the act constitutes a criminal offence, the Labour Affairs Bureau will actively follow-up, institute a punishment procedure and impose a fine; and (iv) upon refusal by the employer to pay the fine, judicial proceedings will be initiated, in which the court can impose a fine under the provisions of the Penal Code. While taking due note of the information provided, the Committee observes that there do not seem to have been any concrete measures taken to increase the penalties foreseen for acts of anti-union discrimination, which therefore, still appear to be insufficiently dissuasive, particularly for large enterprises. The Committee notes in this regard that representative organizations of workers also emphasize the need to increase the amount of penalties and fines for anti-union discrimination in order to enhance the deterrence of such acts. They further consider that there is evidence of anti-union practices in some enterprises in which enterprise regulations require employees who join trade unions and assume trade union functions to inform the management. *In light of the above, the Committee requests the Government once again to take the necessary measures, in consultation with the social partners, to strengthen the existing pecuniary sanctions applicable to acts of anti-union discrimination in order to ensure their sufficiently dissuasive character. The Committee requests the Government to provide information on any progress in this regard.*

The Committee also previously noted the 2014 ITUC observations, that section 70 of the Labour Relations Law, which allows rescission of contract without just cause accompanied by compensation, was in practice used to punish union members when they take part in union activities or industrial actions, and requested the Government to take the necessary measures, including legislative, if necessary, to ensure that this provision is not used for anti-union purposes. The Committee notes that the Government states that between 2014 and May 2019, the Labour Affairs Bureau has not received any complaints of anti-union dismissals but does not elaborate on any measures taken to address the ITUC concerns. *Recalling that anti-union acts may not, in practice, always result in the filing of complaints to the competent authorities, the Committee requests the Government once again to take the necessary measures, including of a legislative nature, to ensure that termination of employment contract under section 70 of the Labour Relations Law is not used for anti-union purposes.*

*Article 2. Adequate protection against acts of interference.* The Committee had previously noted that sections 10 and 85 of the Labour Relations Law did not explicitly prohibit all acts of interference as described in *Article 2* of the Convention, or guarantee adequate protection by means of dissuasive sanctions and rapid and effective procedures. In its previous comment, it therefore requested the Government to take the necessary measures to ensure that the relevant legislation includes express provisions to this effect. The Committee notes that the Government reiterates the procedure explained above relating to obstruction by the employer of the exercise of employees' rights and states that it will continue its efforts to work towards the goals set by the Convention. Recalling once again that the applicable legislation (sections 10 and 85 of the Labour Relations Law and section 4 of the Regulation on the Right of Association) do not explicitly prohibit all acts of interference as described in *Article 2* of the Convention, the Committee emphasizes the need for legislation to explicitly protect workers' and employers' organizations against any acts of interference by each other or each other's members, including, for instance, acts which are designed to promote the establishment of workers' organizations under the domination of employers or employers' organizations, and to make express provisions for rapid appeals procedures against such acts, coupled with effective and dissuasive sanctions. *In light of these considerations, the Committee requests the Government once again to take the necessary measures to include in the relevant legislation provisions explicitly prohibiting acts of interference and providing for sufficiently dissuasive sanctions and rapid and effective procedures against such acts.*

The Committee also previously requested the Government to provide statistical information on the functioning, in practice, of the Labour Affairs Bureau and the Labour Tribunal, including the number of cases of anti-union discrimination and interference brought before them, the duration of the proceedings and their outcome. The Committee notes the Government's indication that between June 2016 and May 2019 one case was opened on the allegations that an employee had been suspended for participating in a procession but it was later found that it was due to poor performance, and that no decisions were found before the courts that would deal with cases of discrimination or interference. *The Committee requests the Government to continue to provide statistical information on the functioning, in practice, of the Labour Affairs Bureau and the Labour Tribunal with regard to allegations of anti-union discrimination and interference brought before them, the duration of the proceedings and their outcome.*

*Articles 1, 2 and 6. Protection of public servants not engaged in the administration of the State against acts of anti-union discrimination and interference.* The Committee previously observed that the General Provisions on the Personnel of the Public Administration in Macao did not contain any provisions against anti-union discrimination and interference and that the Government did not indicate any other specific provisions that would explicitly provide protection to public servants against acts of anti-union discrimination and interference. The Committee requested the Government to take the necessary measures to amend the legislation so that it explicitly prohibits acts of anti-union discrimination and interference and grants public servants not engaged in the administration of the State adequate protection against such acts. The Committee notes that the Government reiterates that protection of civil servants against discrimination or interference for participating in trade union activities is guaranteed but observes once again that it does not point to any specific legislative provisions to this effect. *In these circumstances, recalling that the scope of the Convention covers public servants not engaged in the administration of the State, the Committee requests the Government once again to take the necessary measures, including of a legislative nature, to explicitly prohibit acts of anti-union discrimination and interference and grant public servants not engaged in the administration of the State adequate protection against such acts.*

*Articles 4 and 6. Absence in legislation of provisions on collective bargaining for the private sector and public servants not engaged in the administration of the State.* In its previous comments, the Committee requested the Government to take the necessary measures to ensure the full application of *Article 4* of the Convention both for the private sector and public servants not engaged in the administration of the State, whether through the adoption of the draft Law on Fundamental Rights of Trade Unions or any other legislation. The Committee notes the Government's statement that it always conducts discussions and consultations with the social partners, either through the tripartite consultation platform of the Standing Committee for the Coordination of Social Affairs in the private sector, which has become an essential platform to communicate, negotiate and reach consensus and helps construct stable and harmonious employer-worker relations, or through the permanent consultation mechanism established by the Civil Service Pay Review Council to formulate standards and

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procedures for pay adjustment in the civil service. The Government indicates that several laws and regulations on the conditions of work of civil servants are currently being revised and that through the different consultation channels, civil servants can express their opinions on relevant matters. ***Recalling that the Convention tends to essentially promote bipartite negotiations of terms and conditions of employment and that the establishment of simple consultation procedures instead of real collective bargaining procedures is not sufficient, the Committee requests the Government once again to take the necessary measures in the very near future to ensure the full application of Article 4 of the Convention both for the private sector and public servants not engaged in the administration of the State, whether through the adoption of the draft Law on Fundamental Rights of Trade Unions or any other legislation, and to provide information on any developments in this regard.***

*Collective bargaining in practice.* The Committee notes that the Government has not conducted any relevant statistical analysis on collective agreements reached. ***The Committee requests the Government once again to provide statistics as to the number of collective agreements concluded, specifying the sectors concerned, their level and scope, as well as the number of enterprises and workers covered.***

**C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)****Observation 2019**

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 1 September 2019 and of the Fiji Trades Union Congress (FTUC) received on 23 May and 13 November 2019, denouncing violations of civil liberties and lack of progress on the legislative reform. *The Committee notes the Government's general reply thereto, as well as to the 2017 and 2018 FTUC observations, and requests it to provide further details on the specific incidents of alleged violations of civil liberties reported by the FTUC.*

**Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 108th Session, June 2019)**

The Committee notes the discussion that took place in the Conference Committee on the Application of Standards (hereafter the Conference Committee) in June 2019 concerning the application of the Convention. It notes that the Conference Committee observed serious allegations concerning the violation of basic civil liberties, including arrests, detentions and assaults, and restrictions of freedom of association and noted with regret the Government's failure to complete the process under the Joint Implementation Report (JIR). The Conference Committee called upon the Government to: (i) refrain from interfering in the designation of the representatives of the social partners on tripartite bodies; (ii) reconvene the Employment Relations Advisory Board (ERAB) without delay in order to start a legislative reform process; (iii) complete without further delay the full legislative reform process as agreed under the JIR; (iv) refrain from anti-union practices, including arrests, detentions, violence, intimidation, harassment and interference; (v) ensure that workers' and employers' organizations are able to exercise their rights to freedom of association, freedom of assembly and speech without undue interference by the public authorities; and (vi) ensure that normal judicial procedures and due process are guaranteed to workers' and employers' organizations and their members. The Conference Committee also requested the Government to report on progress made towards the implementation of the JIR in consultation with the social partners by November 2019 and called on the Government to accept a direct contacts mission to assess progress made before the 109th Session of the International Labour Conference. *The Committee trusts that the direct contacts mission requested by the Conference Committee will be able to take place before the next International Labour Conference.*

*Trade union rights and civil liberties.* In its previous comments, the Committee requested the Government to respond in full detail to the FTUC allegations of continued harassment and intimidation of trade unionists, in particular with respect to its National Secretary, Felix Anthony. The Committee notes the Government's general statement that Mr Anthony has been able to organize and carry out trade union activities without any interference from the Government and that the arrest, search and detention of persons previously alleged by the ITUC and the FTUC were not intended to harass or intimidate trade unionists but to allow the Commissioner of Police to conduct investigations into alleged violations of applicable laws. The Government also affirms that the Commissioner of Police and the Office of the Director of Public Prosecutions are both independent and neither the entities nor their decisions are subject to the direction or control of the Government. The Committee notes with *concern*, however, the ITUC and FTUC allegations of continued intimidation by the police, arrests, detention, interrogation and the filing of criminal charges against trade unionists, as well as prolonged confiscation of personal and union property and violent dispersal of gatherings between April and June 2019. *Recalling the interdependence between civil liberties and trade union rights and emphasizing that a truly free and independent trade union movement can only develop in a climate free from violence, pressure and threats of any kind against the leaders and members of such organizations, the Committee requests the Government to make serious efforts to ensure that state entities and their officials refrain from anti-union practices, including arrests, detentions, violence, intimidation, harassment and interference in trade union activities, so as to contribute to an environment conducive to the full development of trade union rights. The Committee requests the Government to consider issuing instructions to the police and the armed forces in this regard and to provide training to ensure that any actions taken during demonstrations respect the basic civil liberties and fundamental labour rights of workers and employers.*

*Appointment of members to and the functioning of the Employment Relations Advisory Board to review labour legislation.* In its previous comments, having observed the FTUC concerns that the Government had systematically dismantled tripartism by removing or replacing the tripartite representation on a number of bodies with its own nominees, the Committee requested the Government to provide detailed information on the manner in which it designated individuals to these bodies and the representative nature of the organizations that appeared therein. The Committee notes the detailed reply provided by the Government on the appointment of members to the ERAB, the Fiji National Provident Fund, the Fiji National University, the Wages Council and the Air Terminal Service (Fiji) Limited. The Committee also notes the Government's clarification that, in addition to the ERAB, the National Occupational Health and Safety Advisory Board (NOHSAB) and the National Employment Centre Board (NECB) also have tripartite membership. The Government further indicates, with regard to the ERAB, that: (i) the Minister for Employment is the appointing authority and representatives of workers and employers are appointed from persons nominated by workers' and employers' organizations; (ii) appointment of members is undertaken through a consultation process to allow expanded representation of workers from various organizations; (iii) there is no interference from the Government in the designation of representatives of the social partners; and (iv) as the current ERAB membership ended in October 2019, the social partners were invited to submit nominees and both the Fiji Commerce and Employers Federation (FCEF) and the FTUC have already done so at the end of October 2019. The Committee observes, however, that, according to the FTUC, there is no indication as to when the appointment of ERAB members will take place, despite the urgency of the situation, and that the ITUC remains concerned about government manipulation of national tripartite bodies, thus curtailing the possibility of genuine tripartite dialogue. *The Committee trusts that the Government will refrain from any undue interference in the nomination and appointment of members to the ERAB and to other tripartite bodies, and will ensure that the social partners can freely designate their representatives. The Committee expects the appointment of ERAB members to take place without delay so as to allow this mechanism to reconvene and meet regularly in order to pursue the labour law review and meaningfully address all outstanding matters in this regard.*

*Progress on the review of labour legislation as agreed in the JIR.* The Committee previously noted with regret the apparent lack of progress on the review of the labour legislation as agreed in the JIR and urged the Government to take the necessary measures with a view to rapidly bringing the legislation into line with the Convention. The Committee notes the Government's indication that several meetings took place with the tripartite partners and the ILO between June 2018 and August 2019, in which it was agreed that a number of matters under the JIR have already been implemented and that the tripartite partners are making good progress on the outstanding matters concerning the review of labour laws and the list of essential services and industries, despite the FTUC's boycott and withdrawal from the tripartite dialogue within the ERAB in June 2018, February and August 2019. The Committee notes that, according to the FTUC, the Government's reference to boycott clearly reveals that there remain issues in the appointment process of ERAB members and shows the Government's lack of genuine commitment to previously agreed timelines that had led to the boycott. The Committee also notes that the ITUC calls on the Government to return to the negotiating table with the social partners to fully implement the JIR and to grant safeguards and guarantees to those participating in the dialogue. *In light of the above, the Committee urges the Government to take all necessary measures to continue to review the labour legislation within the reconvened ERAB, as agreed in the JIR, with a view to rapidly bringing it into line with the Convention, taking into account the Committee's comments below.*

*Article 2 of the Convention. Right of workers to establish and join organizations of their own choosing.* The Committee had previously noted that the following issues were still pending after the adoption of the Employment Relations (Amendment) Act, 2016: denial of the right to organize to prison guards (section 3(2)); and excessively wide discretionary power of the Registrar in deciding after consultation whether or not a union meets the conditions for registration under the Employment Relations Promulgation, 2007 (ERP) (hereinafter, ERA, section 125(1)(a) as amended). The Committee notes, on the one hand, the Government's indication that the tripartite partners met in August 2019 to discuss the proposed amendments and all clauses in the ERA matrix but observes, on the other

hand, the FTUC allegation that no progress has been achieved since then and the matrix agreed by the tripartite partners is still pending with the Solicitor General's office. ***In the absence of any substantial progress in this regard, the Committee urges the Government to finalize the process of review on the basis of the tripartite-agreed matrix so that the necessary amendments for bringing the legislation into full conformity with the Convention may be rapidly submitted to Parliament and adopted.***

***Article 3. Right of organizations to elect their representatives in full freedom, organize their activities and formulate their programmes.*** The Committee had previously observed that, pursuant to section 185 of the ERA as amended in 2015, the list of industries considered as essential services included: (i) the services listed in Schedule 7 of the ERP; (ii) the essential national industries declared under the former Essential National Industries (Employment) Decree, 2011 (ENID) (financial industry, telecommunications industry, civil aviation industry and public utilities industry), and the corresponding designated companies; and (iii) the Government, statutory authorities, local authorities and government commercial companies (following the adoption of the Public Enterprise Act, 2019, these are now referred to as public enterprises – an entity controlled by the State and listed in Schedule 1 of the Act or designated as such by the Minister).

The Committee welcomes the Government's indication that, as agreed in the JIR and with the technical assistance of the Office, a workshop was held on 16 and 17 October 2019 with the participation of the tripartite partners to consider, gauge and determine the list of essential services and industries. The Committee also welcomes that, as a result of the workshop, the tripartite parties agreed on a time-bound plan of action to review the existing list of essential services within the ERAB and to engage in discussion with the aim of restricting limitations on the right to strike to essential services in the strict sense of the term and public servants exercising authority in the name of the State. The Government informs that it has received proposals for amendments from representatives of workers and employers and is currently considering them. The Committee notes, however, the concerns expressed by the FTUC that due to the Minister's absence from the workshop, all decisions had to be referred to the Solicitor General's office and that the timelines continue to be ignored without any justification for the delay in convening meetings to finalize the essential national industries list and the ERA matrix.

The Committee wishes to reiterate that while some essential industries are defined in line with the Convention, namely those which had been initially included in Schedule 7 of the ERP, other industries where strikes may now be prohibited due to the inclusion of the ENID in the ERA do not fall within the definition of essential services in the strict sense of the term, including: statutory government authorities; local, city, town or rural authorities; workers in managerial positions; the financial sector; radio, television and broadcasting services; civil aviation industry and airport services (except air traffic control); public utilities industry in general; pine, mahogany and wood industry; metal and mining sector; postal services; and public enterprises in general. The Committee also wishes to emphasize that provisions which prohibit the right to strike on the basis of potential detriment to public interest or economic consequences are not compatible with the principles relating to the right to strike. The Committee recalls, however, that for services which are not considered essential in the strict sense of the term, but in which strikes of a certain magnitude and duration could cause an acute crisis threatening the normal conditions of existence of the population or in public services of fundamental importance in which it is important to deliver the basic needs of users, a negotiated minimum service, as a possible alternative to fully restricting industrial action through imposed compulsory arbitration, could be appropriate. The right to strike may also be restricted for public servants but only those exercising authority in the name of the State. ***Given the extensive breadth of the services where workers' rights to take industrial action may be prohibited, as noted above, the Committee urges the Government to meaningfully engage with the social partners without further delay to review the list of essential services, as agreed in the JIR and the October 2019 action plan, so as to restrict limitations on the right to strike to essential services in the strict sense of the term and public servants exercising authority in the name of the State. The Committee requests the Government to provide information on the progress achieved in this regard.***

In addition, the Committee has requested for a number of years that the Government take measures to review numerous provisions of the ERA. In the absence of any progress reported in this regard, the Committee recalls that the following issues in the ERA are still pending: obligation of union officials to be employees of the relevant industry, trade or occupation for a period of not less than three months (section 127(a) as amended); prohibition of non-citizens to be trade union officers (section 127(d)); interference in union by-laws (section 184); excessive power of the Registrar to request detailed and certified accounts from the treasurer at any time (section 128(3)); provisions likely to impede industrial action (sections 175(3)(b) and 180); compulsory arbitration (sections 169 and 170, section 181(c) as amended, new section 191BS (formerly 191(1)(c)); penalty in form of a fine in case of staging an unlawful but peaceful strike (sections 250 and 256(a)); provisions likely to impede industrial action (section 191BN); penalty of imprisonment in case of staging a (unlawful or possibly even lawful) peaceful strike in services qualified as essential (sections 191BQ(1), 256(a), 179 and 191BM); excessively wide discretionary powers of the Minister with respect to the appointment and removal of members of the Arbitration Court and appointment of mediators, calling into question the impartiality of the dispute settlement bodies (sections 191D, 191E, 191G and 191Y); and compulsory arbitration in services qualified as essential (sections 191Q, 191R, 191S, 191T and 191AA). ***The Committee therefore requests the Government once again to take measures to review the above provisions of the ERA, in accordance with the agreement in the JIR and in consultation with the representative national workers' and employers' organizations, with a view to their amendment, so as to bring the legislation into full conformity with the Convention.***

***Public Order (Amendment) Decree (POAD).*** With regard to its previous comments concerning the practical application of the POAD, the Committee notes that the Government simply reiterates that the POAD facilitates the maintenance of public order and that prior permission is required to ensure the carrying out of administrative functions and the provision of law enforcement officers to maintain order. While further noting that the Government points to two instances, in October 2017 and January 2018, in which the FTUC obtained a permit and undertook marches, the Committee observes that, according to the FTUC, its recent requests to march from May, August and November 2019 were all refused. The ITUC and the FTUC denounce that permission for union meetings and public gatherings continues to be arbitrarily refused and that section 8 of the POAD has been increasingly used to interfere in, prevent and frustrate trade union meetings and assemblies. ***The Committee once again requests the Government to take the necessary measures to bring section 8 of the POAD into line with the Convention by fully repealing or amending this provision so as to ensure that the right to assembly may be freely exercised.***

***Political Parties Decree.*** The Committee had previously noted that, under section 14 of the 2013 Political Parties Decree, persons holding an office in any workers' or employers' organization are banned from membership or office in any political party and from any political activity, including merely expressing support or opposition to a political party; and that sections 113(2) and 115(1) of the Electoral Decree prohibit any public officer from conducting campaign activities, and any person, entity or organization that receives any funding or assistance from a foreign government, intergovernmental or non-governmental organization to engage in, participate in or conduct any campaign (including organizing debates, public forums, meetings, interviews, panel discussions, or publishing any material) that is related to the election. In its previous comments, the Committee further observed that the Political Parties Decree was unduly restrictive in prohibiting membership in a political party or any expression of political support or opposition by officers of employers' or workers' organizations, and requested the Government once again to take measures to amend the above provisions, in consultation with the representative national workers' and employers' organizations. ***Observing that the Government does not provide any new information and noting the ITUC concerns about the restrictive effect of the Political Parties Decree on legitimate trade union activities, the Committee reiterates its request in this respect.***

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

### Observation 2019

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 1 September 2019 and of the Fiji Trades Union



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Congress (FTUC) received on 23 August 2018, and 23 May and 13 November 2019, denouncing massive dismissals of workers, including members of the National Union of Workers (NUW), restrictions on collective bargaining, especially in the public sector and essential services, and lack of progress on the legislative reform. The Committee notes the Government's reply thereto. In its previous comment, the Committee also requested the Government to provide a reply to the 2016 observations from Education International and the Fiji Teachers' Union (FTU) concerning the lack of consultation in regard to wages and terms and conditions of employment. The Committee notes the Government's reply that it has been continuously meeting with representatives of the FTU and the Fijian Teachers' Association (FTA) in relation to the terms and conditions of employment, including in November 2018 and February 2019.

*Article 1 of the Convention. Adequate protection against acts of anti-union discrimination.* With reference to the long-standing dispute in relation to the Vatukoula Mining Company (concerning the refusal to recognize a union and the dismissal of striking workers over 20 years ago), the Committee recalls that, in its previous comments, it had noted the Government's indication that the Vatukoula Social Assistance Trust Fund (VSATF) had been established to benefit around 800 recipients through money grants and assistance for relocation, small and micro-enterprise development and education for dependants. The Committee noted the completion of a mediation process and requested the Government to supply detailed information on its outcome and the follow-up measures taken to compensate the persons concerned, as well as in relation to the VSATF fund. The Committee notes the Government's indication that, following the mediation process and keeping in mind that it does not have any legal obligation to compensate the concerned workers, it is considering making an ex gratia payment to the workers in view of resolving their grievances but that this will require Cabinet approval. The Committee observes, however, that the Government does not provide any details as to the actual outcome of the mediation or the use of the VSATF fund. **Recalling that this long-standing dispute has caused great hardship to the dismissed workers, the Committee expects that it will be finally and equitably resolved through the implementation of a mutually satisfactory settlement. The Committee requests the Government to supply information on the outcome of the mediation process and any compensation granted to the concerned workers, including any recourse to the VSATF fund. It also invites the Fiji Mine Workers' Union (FMWU) to provide information on any developments in this regard.**

*Article 4. Promotion of collective bargaining.* In its previous comment, the Committee welcomed the repeal of the Essential National Industries (Employment) Decree, 2011 (ENID) through the adoption of the Employment Relations (Amendment) Act, 2015, as well as the removal of the concept of bargaining units from the Employment Relations Promulgation, 2007 through the Employment Relations (Amendment) Act, 2016. The Committee noted with regret however that the abrogation by ENID of the collective agreements in force which it had considered contrary to *Article 4*, had not been addressed and requested the Government to engage in consultations with the representative national workers' and employers' organizations with a view to exploring a mutually satisfactory solution in this respect. The Committee notes the Government's indication that there has been successful bargaining between employers and workers between 2016 and 2018 resulting in the signing of 63 collective agreements and 59 amendments to collective agreements but observes that, according to the FTUC: (i) all negotiations have been reverted to zero instead of using the abrogated agreements as a basis for discussion; (ii) the topics that can be negotiated in the local Government sector are severely restricted; and (iii) there is a continued refusal of the Government to engage in collective bargaining in the public sector. The FTUC also denounces that all Government-owned entities, including those employing teachers, nurses and civil servants, insist on imposing individual fixed-term contracts without any consultation with the unions, as a way of achieving the goals of the abrogated ENID. **In light of the above, the Committee requests the Government to continue to take concrete measures to facilitate negotiations and promote collective bargaining between workers and employers or their organizations in the public sector so as to create an enabling environment for collective agreements to be concluded in replacement of those abrogated by ENID. It also requests the Government to continue to provide information on the number of collective agreements concluded, the sectors to which they apply and the number of workers covered.**

*Compulsory arbitration.* In its previous comment, the Committee noted that sections 191Q(3), 191(R), 191(S) and 191AA(b) and (c) of the Employment Relations Act (ERA), as amended in 2015, allowed for compulsory conciliation or arbitration and requested the Government to take measures to review the above provisions with a view to their amendment so as to bring the legislation into full conformity with the Convention. The Committee notes the Government's statement that the Minister for Employment, Productivity and International Relations conducts compulsory arbitration only where he or she considers that the dispute may be resolved by conciliation and that one such dispute has been resolved through compulsory conciliation in 2018. The Government informs that the Employment Relations Advisory Board (ERAB) will review the relevant laws and consider any appropriate amendments. The Committee recalls once again that compulsory arbitration is contrary to the voluntary nature of collective bargaining and is only acceptable in relation to public servants engaged in the administration of the State, essential services in the strict sense of the term and acute national crises. **The Committee expects that the above provisions of the ERA will be reviewed within the ERAB, in accordance with the agreement in the Joint Implementation Report and in consultation with the representative national workers' and employers' organizations, with a view to their amendment so as to bring the legislation into full conformity with the Convention.**

**C081 - Labour Inspection Convention, 1947 (No. 81)****Observation 2019**

The Committee notes the observations made by the Council of Indian Employers (CIE), received on 30 August 2019, and the observations made by the International Trade Union Confederation (ITUC), received on 1 September 2019, as well as the Government's reply in relation to the observations made by the ITUC.

**Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 108th Session, June 2019)**

The Committee notes the discussion in the Conference Committee on the Application of Standards (CAS) of the International Labour Conference, at its 108th Session (June 2019), on the application of the Convention, and the conclusions adopted. The conclusions of the CAS called upon the Government to: (i) ensure that the draft legislation, in particular the Code on Wages, and the OSH and Working Conditions Act, is in compliance with the Convention; (ii) ensure that effective labour inspections are conducted in all workplaces, including the informal economy and in all Special Economic Zones (SEZs); (iii) promote collaboration between officials of the labour inspectorate and employers and workers, or their organizations, in particular when it comes to the implementation of inspection reports; (iv) increase the resources at the disposal of the central and state government inspectorates; (v) ensure that labour inspectors have full powers to undertake routine and unannounced visits and to initiate legal proceedings; (vi) pursue its efforts towards the establishment of registers of workplaces at the central and state levels; (vii) provide detailed information on the progress made with respect to measures taken to improve the data collection system, enabling the registration of data in all sectors; (viii) ensure that the operation of the self-certification scheme does not impede or interfere with the powers in functions of labour inspectors to carry out regular and unannounced visits in any way, as this is only a complementary tool; (ix) submit its annual report on labour inspection to the ILO; and (x) provide information on the number of routine and unannounced visits, as well as on the dissuasive sanctions imposed against infractions to guarantee the enforcement of labour protections in practice. The CAS also invited the Government to accept a direct contacts mission and to elaborate a report in consultation with the most representative employers' and workers' organizations on progress made in the implementation of the Convention in law and practice. The Committee notes with *concern* the statement in the Government's report that it does not accept any direct contacts mission.

*Articles 2 and 4 of the Convention. Labour inspection in SEZs.* In its previous comments, the Committee noted the Government's earlier indication that few inspections had been carried out in SEZs, and that Development Commissioners continued to exercise inspection powers in some SEZs. The Committee notes the observations of the ITUC expressing concern that the power of labour inspectors are being exercised by Development Commissioners who have a responsibility to promote investment in SEZs. The Committee also notes the observations made by the CIE that some of the SEZs have jurisdictions in more than one state, and that due to this administrative difficulty, Development Commissioners have been appointed to oversee the functioning of the SEZs. The CIE adds that Development Commissioners have been given full powers to enforce the labour laws through labour inspectors deputed by the local governments.

The Committee notes the Government's indication, in response to the concerns expressed by the ITUC, that the deputed labour inspectors from the states work independently, are paid by the states and may conduct inspections on their proper initiative without prior intimation to the Development Commissioners. The Committee further notes the Government's indications, in reply to the Committee's request to ensure that effective labour inspections are conducted in all SEZs, that the number of inspections has increased substantially in the last three years. In this respect, the Committee notes with *interest* from the statistical information provided by the Government, an increase in the number of inspections undertaken in six of the seven SEZs from 2016–17 to 2018–19: from 0 to 62 in Falta Kolkata; from 26 to 30 in Vishakapatnam; from 46 to 105 in Mumbai; from 16 to 30 in Noida; from 368 to 2,806 in Kandla; and from 189 to 222 in Chennai. The number of inspections undertaken in the SEZ Cochin went from 22 to 18 over the same period. The Committee notes however, that the number of penalties imposed remained low, and in three out of the seven SEZs, no penalties were imposed during this period. *The Committee requests the Government, in line with the 2019 conclusions of the CAS, to ensure that effective labour inspections are conducted in all SEZs. Welcoming the information already provided, the Committee requests the Government to provide more detailed statistical information on the number of labour inspectors responsible for inspections in these zones, the number of inspection visits, the number and nature of offences reported, the number of penalties imposed, the amounts of fines imposed and collected, and information on criminal prosecutions, if any. It also requests the Government to continue to provide information on the number of enterprises and workers in each SEZ. The Committee further requests the Government to provide up-to-date information indicating in which SEZs labour inspection powers have been delegated to Development Commissioners, including the specific powers so delegated and how inspections are carried out in those SEZs.*

*Articles 4, 20 and 21. Availability of statistical information on the activities of the labour inspection services at the central and state levels. Availability of statistics in specific sectors.* The Committee notes the Government's reference, in reply to the Committee's previous request for an annual labour inspection report, to the 2018–19 report published by the Ministry of Labour and Employment, which contains statistical information on inspection activities at the central level (including the number of labour inspections, the number of irregularities detected, the number of prosecutions and convictions, as well as the number of accidents in mines). Concerning the state level, the Committee notes the statistical information on labour inspection activities provided by the Government with its report (including on the number of labour inspections in 14 states, and the number of violations detected, prosecutions and penalties imposed in 15 states). Finally, the Committee welcomes the information available on the Shram Suvidha web portal at the Ministry of Labour and Employment concerning the information on registered workplaces in nine states and the information that discussions are ongoing with other states concerning the integration of information into the portal. The Committee also notes the observations made by the ITUC that the statistical data provided does not allow for an assessment of the effective operation of the labour inspection services. *The Committee urges the Government to pursue its efforts to ensure that the central authority (at the central level or the state levels), publishes and transmits to the ILO annual reports on labour inspection activities containing all the information required by Article 21. In line with the 2019 conclusions of the CAS, the Committee encourages the Government to pursue its efforts towards the establishment of registers of workplaces at the central and state levels. In this regard, the Committee also once again requests the Government to provide detailed information on the progress made with respect to measures taken to improve the data collection system enabling the registration of data in all sectors.*

*Articles 10 and 11. Material means and human resources at the central and state levels.* The Committee notes with *interest* the Government's indication, in response to the Committee's request to increase the resources at the central and state government inspectorates, that more than 574 labour inspectors have been recruited at the state levels in the last two years, bringing the total number of labour inspectors to 3,721. The Government adds that at the central level, the number of labour inspectors is 4,702. The Committee also notes the information provided by the Government in relation to the central level and 19 states on the transport facilities or transport allowance provided, as well as on the available material resources.

The Committee notes the statement of the CIE that the use of technology, information and communications technology in particular, has contributed to promoting compliance. The Committee also notes the observations made by the ITUC that the human and material resources of the labour inspectorate are inadequate. It notes the Government's reply that inspectors at the central government level and in most states are provided vehicles for conducting inspections. *In line with the 2019 conclusions of the CAS, the Committee requests the Government to continue to take measures to increase the resources at the disposal of the central and state government inspectorates, and to provide information on the concrete measures taken in that respect. It also requests the Government to continue to provide information on the number of labour inspectors, material resources and transport facilities and/or budget for travel allowances of the labour inspection services at the central level and for each state, and to provide statistical information on the workplaces liable to inspection at the central level and state levels.*

*Articles 12 and 17. Free initiative of labour inspectors to enter workplaces without prior notice, and discretion to initiate legal proceedings without previous*

*warning.* The Committee previously requested the Government to ensure that, in the ongoing legislative reform, any legislation developed be in conformity with the Convention. The Committee notes the Government's indication, in response to this request, that the Code on Wages was adopted in August 2019, and that the OSH and Working Conditions Bill is currently before Parliament. The Committee notes that pursuant to section 51(5)(b) of the Code on Wages, labour inspectors entitled "inspectors-cum-facilitators" may inspect establishments "subject to the instructions or guidelines issued by the appropriate Government from time to time". It further notes that the Code on Wages provides that inspectors-cum-facilitators shall, before the initiation of prosecution for an offence, give employers an opportunity to comply with the provisions of the Code within a certain time limit through a written direction (section 54(3)). The Committee further notes that the OSH and Working Conditions Bill provides that inspectors-cum-facilitators shall conduct inspections, including web-based inspections, in such manner as prescribed by the appropriate Government (section 34(2)). The Bill gives inspectors-cum-facilitators the power to enter workplaces, but requires them to give notice in writing prior to undertaking a survey (section 20(1)), and with respect to inspections in mines, to provide at least three days before conducting inspections, except in emergency situations (section 41). The Committee notes the statistics provided by the Government concerning the number of convictions and penalties imposed at the central level and for 11 states for the period of 2016–19. **Noting that the Code on Wages provides for inspections subject to the instructions or guidelines issued by the appropriate Government, the Committee urges the Government to ensure that the instructions issued fully empower labour inspectors in accordance with Article 12(1)(a) and (b) of the Convention. It also requests the Government to take the necessary measures to ensure that labour inspectors are able to initiate legal proceedings without previous warning, where required, in conformity with Article 17 of the Convention. In this respect, it requests the Government to provide further information on the meaning of the term "inspectors-cum-facilitators," including the functions and powers of officials performing this role. The Committee further requests the Government, in line with the 2019 conclusions of the CAS, to take measures to ensure that any legislation developed is in conformity with the Convention, including empowering labour inspectors to enter workplaces without previous notice, in conformity with Article 12(1)(a) and (b) of the Convention. Noting the statistics already provided, the Committee requests the Government to provide information on the number and nature of offences reported, the number of penalties imposed, the amounts of fines imposed and collected, and information on criminal prosecutions, if any.**

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

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

### Observation 2019

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

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

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

Regarding affirmative action measures in the private sector, the Committee notes the information concerning some initiatives taken by the Apex Industry Chambers, such as providing skills training, entrepreneurship development programmes, and coaching and scholarships to more disadvantaged sections of society. The Government also indicates that some of the industry associates have prepared a voluntary code of conduct in which emphasis is placed on increasing opportunity in employment for disadvantaged sections of society through skills upgrading, continuous training and scholarships, among other matters. As regards the steps taken to intensify awareness raising on the prohibition and unacceptability of caste-based discrimination in employment and occupation, the Government indicates that it has addressed a set of recommendations, in its advisory capacity under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, to the chief secretaries of all states/union territories (UTs). These recommendations include: (i) creating awareness through print and electronic media; (ii) developing a community monitoring system to verify cases of violence, abuse and exploitation and taking necessary steps to curb such cases; (iii) involving the community at large in creating and spreading such awareness; and (iv) organizing legal literacy and legal awareness workshops. The Committee notes that no information is, however, provided by the Government on the specific measures taken at central and local government levels to raise awareness about discrimination based on social origin in employment and occupation. **Recalling that continuous measures are required to put an end to discrimination in employment and occupation due to real or perceived membership of a certain caste and noting the absence of specific information on the impact of the various schemes and measures, except for the implementation of the quota system, the Committee asks the Government to undertake a comprehensive assessment of the progress made to date in addressing caste-based discrimination in employment and occupation. It also asks the Government to identify the additional measures needed in order to advance equality of opportunity and treatment for all**

*men and women, irrespective of social origin and to provide information in this respect. This information should include the results of any study conducted by the National Commission for Scheduled Castes with regard to education, training, employment and occupation. The Committee also asks the Government to step up its efforts to raise public awareness of the prohibition of caste-based discrimination and to provide information on the specific measures taken to this end, including steps taken in cooperation with the social partners. The Government is also asked to continue to provide information on the affirmative action measures adopted in the private sector to combat caste-based discrimination and to promote equality of opportunity and treatment, irrespective of social origin, and on their impact. Noting the Government's indication that the implementation of the quota system for Dalit Muslims and Dalit Christians has been brought to the attention of the Supreme Court, the Committee further asks the Government to provide information on any progress made on this matter.*

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

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

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

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



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

*Observation 2019*

The Committee notes the observations made by the Japanese Trade Union Confederation (JTUC-RENGO), transmitted with the Government's report, and the Government's reply thereto. JTUC-RENGO indicated that it was hopeful at the outset that the Government would address the issues of implementation of the Convention as an enforcement of the "Resolution on Japan's increased contribution to the ILO" adopted on 26 June 2019 by the Diet on the occasion of the Centenary of the Organization. In the Resolution, the Diet noted that "given the role it should be playing to attain the ILO's Fundamental Principles, International Labour Standards, tripartism and reach the goal of decent work is becoming greater and greater, it recognizes a new importance of the role the country should be playing in the ILO, and resolve in the future to continue contributing maximally to the pursuit and actualization of these principles together with the other Member States worldwide ...". However, JTUC-RENGO regrets that the report of the Government reveals an apparent lack of will to resolve issues within the current legal system. The Committee also notes the observations of the Rental Union Suginami, the Apaken Kobe (Casual/Temporary/Part-time Non-regular Workers' Union), the Rental Workers' Union, Itabashi-ku Section; and the Union Rakuda (Kyoto Municipality Related Workers' Independent Union), received on 19 July 2019, in relation to the right to organize of local public service employees and their unions. The Committee notes the observations of the International Organisation of Employers (IOE) and the Japan Business Federation (NIPPON KEIDANREN), received on 30 August 2019, and the Government's reply thereto.

*Article 2 of the Convention. Right to organize of firefighting personnel.* The Committee recalls its long-standing comments concerning the need to recognize the right to organize for firefighting personnel. For the past years, the Government had been referring to the operation of the Fire Defence Personnel Committee (FDPC) system, which was presented as an alternative. The role of the FDPC was to examine proposals on working conditions by the personnel and to submit its conclusions to the chief of the fire department. The Government further indicated that surveys, directed to fire defence headquarters, were regularly conducted to gather information on the deliberations and results of the FDPC. The Government also mentioned a specific survey, conducted in January 2018, aiming at assessing the operation of the FDPC system and eventually seeking improvement. The results of the survey were discussed in the Fire and Disaster Management Agency. While the outcome of this survey was that the FDPC system is operated properly, the workers representatives in the Fire and Disaster Management Agency called for improvement in the operation of the FDPC, including procedural transparency, and a more conducive environment for personnel to provide their opinions to the FDPC. The Government indicates that a new implementation policy of the FDPC was consequently developed with the social partners and came into force in April 2019. The Fire and Disaster Management Agency had notified all fire defence headquarters of the new policy requesting them to hold information sessions on the amendments to the policy. Moreover, the Government indicates that, since January 2019, the Ministry of Internal Affairs and Communications held three consultations with the workers representatives where it discussed the Government's opinion that fire defence personnel are considered as police in relation to the implementation of the Convention. The Government indicates that the Fire and Disaster Management Agency will continue to hold regular consultations in this regard.

The Committee notes the observations of JTUC-RENGO indicating that in discussions held with the All-Japan Prefectural and Municipal Workers' Union (JICHIRO), the Government reaffirmed its views that firefighters are considered as police. The Committee also notes the view of NIPPON KEIDANREN that the reporting line, the organizational managerial order, and the cooperative relationship of fire defense personnel with workers organizations may affect the residents' trust in firefighting, the nation's safety, and security. Therefore, according to NIPPON KEIDANREN, it is necessary to continue carefully reviewing the granting of the right to organize to firefighters.

The Committee however notes the concerns raised by JTUC-RENGO that the Government has not responded directly to the Conference Committee's conclusions from 2018, and that no time-bound action plan was developed with social partners as requested by the Conference Committee. The only development that could be noted is the intention to proceed in consultations between the Ministry of Internal Affairs and Communications and JICHIRO, which have been conducted since July 2018. JTUC-RENGO regrets that the Government continues to allude to old reports of the Committee on Freedom of Association (CFA), which predated the Government's ratification as justification for the status quo, and recalls that the CFA's June 2018 examination of these issues called on the Government to fully grant to firefighters the rights to organize and to collective bargaining.

While it appreciates the information on the new implementation policy for the FDPC, the Committee wishes to emphasize that this policy remains distinct from the recognition of the right to organize under *Article 2* of the Convention. The Committee notes the developments in relation to consultations with JICHIRO initiated in January 2019 and the intention of the Government to maintain this dialogue. ***The Committee once again expresses its firm expectation that continuing consultations will contribute to further progress towards ensuring the right of firefighting personnel to form and join an organization of their own choosing to defend their occupational interests. The Committee requests the Government to provide detailed information on any developments in this regard.***

*Article 2. Right to organize of prison staff.* The Committee recalls its long-standing comments concerning the need to recognize the right to organize of prison staff. The Committee notes that the Government reiterates its position that prison officers are included in the police. The Government also reiterates that this view is accepted by the Committee on Freedom of Association in its 12th and 54th Report. According to the Government, granting the right to organize to the personnel of penal institutions would pose difficulty for the appropriate performance of their duties and the proper maintenance of discipline and order in the penal institutions. However, taking into account the Committee's previous comments, the Government decided to grant meaningful opportunities for the personnel of penal institutions to express their opinions by the following measures: (i) the Ministry of Justice organized meetings for executive officials and representatives of the personnel from each penal institution to the Regional Correctional Headquarters (RCH) to exchange opinions on the improvement of work environments and recreational activities for the personnel; (ii) in the framework of the agenda on "improvement of workplace to prevent resignation", female personnel will be interviewed and their opinions will be examined and reflected in measures for improvement of their work conditions; and (iii) inspectors from the Ministry of Justice and the RCH will provide opportunities to the personnel to express their opinions on their working conditions. The Government recalls that contact persons are designated in penal institutions to hear proposals from the personnel on their proposal to improve their working conditions, and that a Penal Institution Visiting Committee is established in each penal institution to hear the personnel on matters such as the administration of the penal institution, working conditions, work-life balance, paid leave, etc. Finally, the Government asserts that in cases where any emergency occurs in a penal institution, and that it is required to promptly and properly bring the situation under control, by force if necessary, granting the right to organize to the personnel of penal institutions could pose a problem for appropriate performance of their duties and the proper maintenance of discipline and order.

The Committee notes the observations from NIPPON KEIDANREN supporting the Government's view that prison officers should be considered as part of the police under *Article 9* of the Convention.

The Committee also notes the observations from JTUC-RENGO regretting that the Government did not follow up on the Committee's previous comments to consider the different categories of prison officers in determining, in consultation with the social partners, whether they are part of the police. JTUC-RENGO is of the view that: (i) the different measures described by the Government to provide opportunities to the personnel of penal institutions to express their opinions on their working conditions are irrelevant to union rights, including the right to organize. Since they merely constitute exchange of views with individual employees, they cannot be considered as negotiation; (ii) these measures described by the Government serve as substitutes for a meaningful discussion on granting the right to organize to the personnel of penal institutions; (iii) the carrying and use of weapons and administration of judicial police work, as motives for denying the right to organize to prison officers, does not constitute a logical argument. The right to organize is recognized for labour standards inspectors, authorized fisheries supervisors and other employees designated as special judicial police officials similarly to prison officers. Furthermore, the right to organize is recognized for narcotics agents, despite the fact that they are special judicial police officials and are granted the authority to carry and use weapons; and (iv)

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the increased utilization of private finance initiative (PFI) techniques for correctional institutions and the private consignment of a variety of work, and the fact that the Government is not questioning the right to organize of private sector workers, contradicts the argument put forward by the Government not to grant the right to organize to prison staff because of the need for this category of workers to be able to maintain control in cases of emergency situation. Finally, JTUC–RENGO observes that regulations granting the right to organize to the private sector workers receiving these consignments has not been disputed. Consequently, for the union, the argument of the Government that it is not appropriate to give the personnel of penal institutions the right to organize, because it poses a problem for appropriate performance of duties and proper maintenance of discipline and order in case of an emergency situation, falls short due to the Government's own policy on private sector consignment in penal institutions.

The Committee considers it useful to recall that, in previous reports, the Government referred to the following distinction among staff in penal institutions: (i) prison officers with a duty of total operations in penal institutions, including conducting security services with the use of physical force, who are allowed to use small arms and light weapons; (ii) penal institution staff other than prison officers who are engaged directly in the management of penal institutions or the treatment of inmates; and (iii) penal institution staff designated, by virtue of the Code of Criminal Procedure, to carry out duties of the judicial police officials with regard to crimes which occur in penal institutions and who have the authority to arrest, search and seize. While appreciating the information provided by the Government in its report on the new initiatives to give opportunities to the personnel of penal institutions to provide their opinions on various aspects, including on their working conditions, the Committee emphasizes that these measures remain distinct from the recognition of the right to organize under *Article 2* of the Convention. The Committee further observes that the Government has not engaged, despite reiterated calls from this Committee and the Conference Committee, in any consultation with the social partners to consider the different categories of prison officers. ***The Committee therefore urges the Government to take, in consultation with the national social partners and other concerned stakeholders, the necessary measures to ensure that prison officers other than those with the specific duties of the judicial police may form and join an organization of their own choosing to defend their occupational interests, and to provide detailed information on the steps taken in this regard.***

*Article 3. Denial of basic labour rights to public sector employees.* The Committee recalls its long-standing comments on the need to ensure basic labour rights for public service employees, in particular that they enjoy the right to industrial action without risk of sanctions, with the only exception being public servants exercising authority in the name of the State and workers employed in essential services in the strict sense of the term. The Committee notes the general information provided by the Government on its overall approach, which remains to continue to hear opinions from employee organizations. The Committee also notes that, according to the Government, the number of employees in Governmental Administrative Agencies has diminished from 807,000 in March 2003 to 299,000 in March 2019, leaving fewer workers in the public sector without their basic labour rights.

Furthermore, the Committee recalls that the Government refers to the procedures of the National Personnel Authority (NPA) as a compensatory guarantee for public service employees deprived of their basic labour rights. Noting the persistent divergent views on the adequate nature of the NPA as a compensatory measure, the Committee requested the Government to consider, in consultation with the social partners, the most appropriate mechanism that would ensure impartial and speedy conciliation and arbitration. In its report, the Government indicates that the NPA held 213 official meetings with employees' organizations in 2018. The Government also reiterates that these compensatory measures maintain appropriately the working conditions of public service employees. The Committee notes the observations from NIPPON KEIDANREN supporting the Government's intention to continue to review carefully measures for an autonomous labour–employer relations system (which in the past the Government had indicated would grant to national public service employees in the non-operational sector the right to negotiate working conditions and to conclude collective agreements).

The Committee also notes the observations from the JTUC–RENGO regretting that the Government's position on the autonomous labour–employer relations system has not evolved and the Government's failure to take action as requested by the ILO supervisory bodies. JTUC–RENGO regrets that, despite assertion to the ILO that it would take into consideration the recommendation of the Conference Committee, in a meeting in March 2019, the Government merely gave the same response it has been repeating to employees' organizations for the last three years, that "there are wide-ranging issues regarding autonomous labour–management relations systems, so while exchanging views with employees organizations, it would like to consider this carefully". Consequently, JTUC–RENGO expresses its deep concern at the apparent lack of intention on the part of the Government to reconsider the legal system with regard to the basic labour rights of public service employees, and once again requests that the ILO investigate these matters through a mission to the country.

***The Committee urges the Government to indicate any measures taken or envisaged to ensure that public service employees, who are not exercising authority in the name of the State, enjoy fully their basic labour rights, including the right to industrial action. It further urges the Government to indicate any consultation with the social partners concerned for the review of the current system with a view to ensuring effective, impartial and speedy conciliation and arbitration procedures, in which the parties have confidence and can participate at all stages, and in which the awards, once made, will be fully and promptly implemented. In the meantime, the Committee requests the Government to provide information on the public departments and divisions that are no longer classified as Governmental Administrative Agencies since March 2003, accounting for the reduction in the number of workers in the public sector without their basic labour rights. It also requests the Government to continue to provide detailed information on the functioning of the NPA recommendation system.***

Furthermore, the Committee notes the observations of Rentai Workers' Union and Apaken Kobe referring to the possible impact of the amendment of the Local Public Service Act to be in force from April 2020 on their right to organize, and stating that: (i) non-regular local public service employees and their unions would not be covered by the general labour law that provides for basic labour rights and their ability to appeal to the labour relations commission in case of alleged unfair labour practice; (ii) the legal amendment, which aimed at limiting the use of part-time staff on permanent duties, will have the effect of increasing the workers stripped of their basic labour rights; and (iii) these situations further call for the urgent restoration of basic labour rights to all public service employees. While it notes the Government's reply asserting that the change of status will help improve the treatment of part-time employees, the Committee observes that these amendments have the effect of broadening the category of public sector workers that will no longer be fully assured of their rights under the Convention. ***The Committee therefore urges the Government to expedite its consideration of the autonomous labour relations system so as to ensure that municipal unions are not deprived of their long-held trade union rights through the introduction of these amendments. It requests the Government to provide detailed information on the measures taken or envisaged in this regard.***

***Recalling the Conference Committee conclusions, including the lack of meaningful progress in taking necessary measures regarding the autonomous labour–employer relations system, the Committee strongly encourages the Government to indicate any measures taken or envisaged to elaborate, in consultation with the social partners concerned, a time-bound plan of action to implement the recommendations made above and to report on any progress made in this respect.***

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

### *Observation 2019*

*Article 1(d) of the Convention. Penalties of imprisonment involving the obligation to work as punishment for participation in strikes.* The Committee previously noted the Government's indication that the Industrial Relations Act, which imposed sanctions of imprisonment (involving compulsory labour) for participation in strikes in essential services (section 37), would be repealed and replaced by the Employment and Industrial Relations Code of 2015 (EIRC). The Committee encouraged the Government to pursue its efforts to adopt the new EIRC with a view to addressing the issue of penal sanctions for participation in strikes.

The Committee notes with *satisfaction* that the Employment and Industrial Relations Code, which entered into force on 1 November 2016, addresses the issue of penal sanctions for participation in strikes. It notes that its section 138, contained in Part XVI on Industrial Action, provides for offences for the violation of an order of the Registrar regarding strikes in essential services. This section does not specify any penalty, however, section 152 provides for a fine for any person who commits an offence under this Code for which no specific penalty is prescribed. *The Committee requests the Government to provide information on the application in practice of sections 138 and 152 of the Employment and Industrial Relations Code.*

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

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

### Observation 2019

*Article 1 of the Convention. National policy and application of the Convention in practice.* The Committee previously requested the Government to provide information on the implementation of the National Strategy and Plan of Action on Prevention and Elimination of Child Labour (2014-2020), which aims at improving access for child labourers and vulnerable children to services and interventions, maintaining children in school and mainstreaming child labour concerns into agriculture sector policies and interventions. The Committee also requested the Government to provide information on the development of a database on child labour and school attendance and of the second National Child Labour Survey, planned for 2020.

The Government indicates in its report that it has collected data in two provinces (Savannakhet and Salavan), within the framework of the National Strategy and Plan of Action on Prevention and Elimination of Child Labour (2014–2020). The Committee observes however that the corresponding data has not been provided by the Government. The Committee notes from the Government's report to the United Nations Committee on the Rights of the Child (CRC) of October 2017, that the National Strategy and Plan of Action on Prevention and Elimination of Child Labour (2014–2020) institutionalized mandatory training on child labour for law enforcement officials, prosecutors, judges and labour inspectorates (CRC/C/LAO/3-6, paragraph 178).

The Committee observes that according to the Lao Social Indicator Survey II 2017 (LSIS II), issued in 2018 by the Lao Statistics Bureau and UNICEF, 41.5 per cent of children aged 5–14 years are engaged in child labour. It further notes that 16.5 per cent of children aged 5–11 years and 39.3 per cent of children aged 12–14 years are involved in hazardous types of work. A total of 27.9 per cent of children aged 5–17 years work under hazardous conditions (26.7 per cent of girls and 29 per cent of boys). The Committee is therefore bound to express its *concern* at the significant number of children below the minimum age for admission to employment who are engaged in child labour, including in hazardous conditions. *The Committee requests the Government to strengthen its efforts to ensure the progressive elimination of child labour in all economic activities. It requests the Government to provide information on the measures taken in this respect as well as on the results achieved, including within the framework of the National Strategy and Plan of Action on Prevention and Elimination of Child Labour (2014–2020).*

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 2019

The Committee notes the observations of the International Organisation of Employers (IOE), and the International Trade Union Confederation (ITUC) received on 29 August and 1 September 2019, respectively. It also notes the detailed discussion which took place at the 108th Session of the Conference Committee on the Application of Standards in June 2019, concerning the application by the Lao People's Democratic Republic of the Convention.

### Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 108th Session, June 2019)

*Articles 3(a) and (b) and 7(1) of the Convention. Worst forms of child labour and penalties. Trafficking and commercial sexual exploitation.* The Committee previously noted the Government's information that it was taking measures to implement the Anti-Human Trafficking Law of 2015, which imposes a sentence of 15 to 20 years of imprisonment for trafficking of children, in order to combat the trafficking and commercial sexual exploitation of children. The Committee also noted from the National Commission for the Advancement of Women and Mothers and Children (NCAW-MC), that the People's Supreme Court recorded 264 cases involving trafficking of children in 2017. It further noted that the United Nations Committee on the Rights of the Child (CRC) expressed concern at the large number of cases of trafficking and sexual exploitation of children not leading to prosecutions or convictions, among other reasons because of traditional out-of-court settlements at the village level, corruption and the alleged complicity of law enforcement, judiciary and immigration officials. The Committee therefore urged the Government to take the necessary measures to ensure that, in practice, thorough investigations and prosecutions were carried out for persons who engaged in the trafficking of children including foreign nationals and state officials suspected of complicity, and that sufficiently effective and dissuasive sanctions were imposed.

The Committee notes that the Government representative of Lao, during the discussion at the Conference Committee, indicated that at the village level, the Child Community Protection Network has been established to make child protection services more accessible to communities, including for children at risk of being trafficked or sexually exploited.

The Committee notes that, in its conclusions adopted in June 2019, the Conference Committee urged the Government to continue to formulate and thereafter carry out specific measures targeted at eliminating the worst forms of child labour, including trafficking and commercial sexual exploitation of children, in consultation with the social partners. The Conference Committee also urged the Government to take measures as a matter of urgency to strengthen the capacity of the law enforcement authorities including the judiciary; and to establish a monitoring mechanism in order to follow-up on complaints filed, investigations carried out as well as to ensure an impartial process of prosecuting cases that takes into account the special requirements of child victims, such as protecting their identity and the ability to give evidence behind closed doors.

The Committee notes the observations of the IOE that the national system is lacking consistency and effectiveness to combat child trafficking and commercial sexual exploitation, leading to few investigations, prosecutions and convictions relating to cases of trafficking of children for exploitation. The Committee also notes the observations of the ITUC that it is concerned at the absence of concrete steps taken by the Government to combat in practice the incidence of child trafficking and exploitation. It deplores the lack of results obtained so far in adequately investigating, prosecuting and convicting those responsible for child trafficking and states that stronger enforcement measures are needed in this regard.

The Committee notes the Government's information, in its report, that according to the data of the National Anti-trafficking Committee, in 2018, law enforcement officers have investigated and prosecuted 39 cases of trafficking in persons, including 26 new cases, involving 64 victims among which 24 were under 18 years of age. The Government also indicates that it will immediately build the technical capacities of law enforcement officials and judicial bodies to allow them to perform their duties with transparency, impartiality and effectiveness.

The Committee observes that, according to the report of the United Nations Special Rapporteur on the sale and sexual exploitation of children of January 2019 on her visit to the Lao People's Democratic Republic, the sexual exploitation of children, mainly girls, by both locals and foreigners, is an issue of concern in the country, happening in places such as casinos, bars and brothels, with the complicity of the authorities in some instances. It indicates that the sale and trafficking of children for sexual and labour exploitation, both internally and externally, including to Thailand, is also an issue of utmost concern in the country (A/HRC/40/51/Add.1, paragraphs 9, 10, 11 and 17). The Special Rapporteur also states that the lack of accountability for the perpetrators of trafficking in children and of enforcement of the existing legal frameworks impedes the prevention of sale and sexual exploitation of children. Moreover, the participation of the authorities in the trafficking rings and criminal networks, as well as the impunity of perpetrators are some of the main issues of concern relating to cross-border trafficking with Thailand (A/HRC/40/51/Add.1, paragraphs 25, 37 and 44).

While noting some measures taken by the Government to prosecute a certain number of cases of trafficking in persons, including children, the Committee notes an absence of information on the convictions or penalties applied, as well as an absence of information on prosecutions, convictions and penalties applied to child sex tourists. *The Committee therefore urges the Government to strengthen its efforts to combat the trafficking and commercial sexual*



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*exploitation of children, by ensuring that traffickers, including complicit officials, as well as child sex tourists, are held accountable, through thorough investigations and prosecutions, as well as through the imposition of sufficiently effective and dissuasive penalties. It requests the Government to provide information on the application of the relevant provisions of the Anti-Human Trafficking Law in practice, indicating in particular the number of investigations, prosecutions, convictions and penal sanctions applied for the offences of trafficking and commercial sexual exploitation of persons under 18 years of age.*

*Article 7(2). Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour and providing assistance for the removal of children from such labour. Trafficking and commercial sexual exploitation of children.* The Committee previously requested the Government to pursue its efforts to ensure that child victims of trafficking were provided with appropriate services for their repatriation, rehabilitation and social integration. The Committee also urged the Government to take effective and time-bound measures to protect children from becoming victims of commercial sexual exploitation in the tourism sector.

The Committee notes that, in its conclusion of June 2019, the Conference Committee urged the Government to take immediate and time-bound measures, together with the social partners, to protect children from falling victim to commercial sexual exploitation, including through the implementation of programmes to educate vulnerable children and communities about the dangers of trafficking and exploitation, with a focus on preventing children from being trafficked and being subject to commercial sexual exploitation, and through the establishment of centres to rehabilitate child victims and reintegrate them into society.

The Committee notes that, in its observations, the IOE calls upon the Government to implement effective measures, in consultation with employers and workers, to protect children from becoming victims of commercial sexual exploitation, targeting places where the incidence of such abuse and exploitation is said to be high. It also states that action should be taken to mobilize business groups within the tourism industry such as hotels, tour operators and taxi drivers, and to monitor more closely tourists and visitors. The Committee also notes the observations of the ITUC that it is seriously concerned that the absence of government investment in rehabilitation and education of victims of sexual exploitation and trafficking of children makes victims vulnerable to re-trafficking.

The Committee notes the Government's indication that it has conducted various awareness-raising events in several provinces in 2018 and 2019 to promote the prevention of and protection from commercial sexual exploitation of children, focusing inter alia on the tourism sector. The Government also indicates that, from 2014 to 2016, the National Commission for the Advancement of Women and Mothers and Children, together with the Ministry of Labour and Social Welfare (MLSW), provided assistance to 164 women and children victims of trafficking who were repatriated, as well as provided scholarships, vocational training, and counselling and medical services. The Government further indicates that, since 2006, the Centre for Counselling and Protection of Women and Children of the Lao Women's Union has provided 150 child victims of trafficking with accommodation and legal, medical, educational and vocational referrals. The Government specifies that four centres provide assistance to trafficking victims. It also states that, within the framework of the Memorandum of Understanding with Thailand, the Government will build a social development centre in Vientiane to provide victims of trafficking with medical services and vocational training. *While taking note of the efforts being made by the Government, the Committee requests it to redouble its efforts to prevent children under 18 years of age from becoming victims of trafficking as well as commercial sexual exploitation in the tourism sector and to supply information on the measures taken in this regard. It also requests the Government to continue to take the necessary measures to provide child victims of trafficking and commercial sexual exploitation with appropriate services for their rehabilitation and social integration, and to continue to supply information on the measures taken in this regard, including the number of child victims of trafficking and commercial sexual exploitation who have been removed and provided with support and assistance.*

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

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

### *Observation 2019*

*Articles 1(a) and (b), and 2 of the Convention. Equal remuneration for work of equal value. Legislation.* In its previous comment, the Committee noted the Government's indication that the suitability of incorporating the principle of the Convention into its national legislation would be examined in the framework of the ongoing review of its labour legislation, and more particularly of the Employment Act, in reply to the Committee's long-standing request. It also requested the Government to ensure that its national legislation allows for the comparison not only of the same jobs, but also of work of an entirely different nature which is nevertheless of equal value, taking into account that equality must extend to all elements of remuneration as indicated in *Article 1(a)* of the Convention and to provide information regarding the progress made in this regard and consider forwarding a copy of the draft legislation to the Office for its review. The Government indicates in its report that the Ministry has incorporated anti-discriminatory provisions in the proposed amendments to the Employment Act 1955 which would include the protection against unequal remuneration for men and women. The Act is undergoing a holistic review on all its provision and it is expected to be tabled by the end of 2019. The Committee notes that the UN Committee on the Elimination of Discrimination Against Women (CEDAW) in its concluding observations in 2018, recommended that Malaysia reduce the existing gender wage gap by regularly reviewing wages in sectors in which women are concentrated, and establishing effective monitoring and regulatory mechanisms for employment and recruitment practices to ensure that the principle of equal pay for work of equal value is guaranteed in national legislation and adhered to in all sectors (CEDAW/C/MYS/CO/3-5, 9 March 2018, paragraph. 38(c)). ***The Committee reiterates the importance of ensuring that the amendment of the Employment Act 1955 will expressly incorporate the principle of equal remuneration for men and women for work of equal value into its national legislation and allow for the comparison not only of the same jobs, but also of work of an entirely different nature which is nevertheless of equal value, taking into account that equality must extend to all elements of remuneration as indicated in Article 1(a) of the Convention. In this regard, it reiterates its request that the Government consider forwarding a copy of the draft legislation to the Office for its review.***

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

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

### *Observation 2019*

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 107th Session, June 2018)

In its previous comment, the Committee hoped that the Government would take advantage of the direct contacts mission requested by the Committee on the Application of Standards (CAS) with a view to implementing its conclusions as well as its long-standing requests, so as to guarantee to foreign workers the right to equality of treatment with national workers in case of employment injury, and requested a reply from the Government on the issue raised in its comments. The Committee welcomes that the direct contacts mission took place from 14 to 17 October 2019, and takes note of the findings and recommendations contained in its report.

The Committee recalls that the CAS, in June 2018, urged the Government to: (i) take steps to develop and communicate its policy for governing the recruitment and treatment of migrant workers; (ii) take immediate steps to conclude its work on the means for reinstating the equality of treatment of migrant workers, in particular by extending the coverage of the Employees' Social Security Scheme to migrant workers in a form that is effective; (iii) engage in genuine consultations with employers' and workers' organizations to develop laws and regulations that ensure the removal of discriminatory practices between migrant and national workers, in particular in relation to workplace injury; (iv) adopt special arrangements with other ratifying member States to overcome the administrative difficulties of monitoring the payment of compensation abroad; and (v) take necessary legal and practical measures to ensure that migrant workers have access to medical care in the case of workplace injury. The Committee notes with *satisfaction* that the coverage of accident compensation for foreign workers under the Employees' Social Security Act, 1969 (ESSA) is being implemented, as indicated by the Government in its report. In this regard, the Committee notes that, as of 1 January 2019, foreign workers' protection in case of work-related injury has moved from the scope of the Foreign Workers' Compensation Scheme under the Workmen's Compensation (Foreign Workers' Compensation Scheme) (Insurance) Order, 2005, to the Employees' Social Security Scheme (ESSS), administered under the Employees' Social Security Act, 1969 (Act 4) (ESSA, 1969). The Committee observes more particularly that, under this Act, foreign workers who suffer a work-related injury are now entitled to periodical payment for temporary disability and permanent disablement as a result of an employment injury, medical treatment, and constant attendance care for the workers with disabilities. Furthermore, the dependants of an insured foreign worker who dies as a result of a work-related injury are entitled to periodical payments for loss of support; and funeral benefits (sections 15 and 57, ESSA, 1969). The Committee further observes that these benefits are provided in the same manner and amount in respect of foreign workers and national workers, with the exception of the funeral grant, which is higher for foreign workers. The Committee further notes, from the direct contacts mission report, the importance that the authorities and social partners attach to tripartite consultation and social dialogue in this process. The Committee notes however the view of the Malaysian Trade Union Congress (MTUC) and the Malaysian Employers' Federation (MEF) that the effectiveness of consultative and participatory processes could be improved to better benefit from their insights and support in the implementation of the legislative amendments, the adoption of a work plan, and effective follow-up.

*In light of the above, the Committee requests the Government to ensure, through the appropriate mechanism, genuine, effective and meaningful social dialogue and a participatory process involving social partners in the implementation of the above-mentioned provisions, and to provide information on any measures taken to this effect. The Committee trusts that this dialogue will be framed by the issues addressed in the direct request. The Committee reminds the Government of the possibility to avail itself of the technical assistance of the Office in this regard.*

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

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

### *Observation 2019*

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The Committee recalls that the CAS, in June 2018, urged the Government to: (i) take steps to develop and communicate its policy for governing the recruitment and treatment of migrant workers; (ii) take immediate steps to conclude its work on the means for reinstating the equality of treatment of migrant workers, in particular by extending the coverage of the Employees' Social Security Scheme to migrant workers in a form that is effective; (iii) engage in genuine consultations with employers' and workers' organizations to develop laws and regulations that ensure the removal of discriminatory practices between migrant and national workers, in particular in relation to workplace injury; (iv) adopt special arrangements with other ratifying member States to overcome the administrative difficulties of monitoring the payment of compensation abroad; and (v) take necessary legal and practical measures to ensure that migrant workers have access to medical care in the case of workplace injury. The Committee notes with *satisfaction* that the coverage of accident compensation for foreign workers under the Employees' Social Security Act, 1969 (ESSA) is being implemented, as indicated by the Government in its report. In this regard, the Committee notes that, as of 1 January 2019, foreign workers' protection in case of work-related injury has moved from the scope of the Foreign Workers' Compensation Scheme under the Workmen's Compensation (Foreign Workers' Compensation Scheme) (Insurance) Order, 2005, to the Employees' Social Security Scheme (ESSS), administered under the Employees' Social Security Act, 1969 (Act 4) (ESSA, 1969). The Committee observes more particularly that, under this Act, foreign workers who suffer a work-related injury are now entitled to periodical payment for temporary disability and permanent disablement as a result of an employment injury, medical treatment, and constant attendance care for the workers with disabilities. Furthermore, the dependants of an insured foreign worker who dies as a result of a work-related injury are entitled to periodical payments for loss of support; and funeral benefits (sections 15 and 57, ESSA, 1969). The Committee further observes that these benefits are provided in the same manner and amount in respect of foreign workers and national workers, with the exception of the funeral grant, which is higher for foreign workers. The Committee further notes, from the direct contacts mission report, the importance that the authorities and social partners attach to tripartite consultation and social dialogue in this process. The Committee notes however the view of the Malaysian Trade Union Congress (MTUC) and the Malaysian Employers' Federation (MEF) that the effectiveness of consultative and participatory processes could be improved to better benefit from their insights and support in the implementation of the legislative amendments, the adoption of a work plan, and effective follow-up.

*In light of the above, the Committee requests the Government to ensure, through the appropriate mechanism, genuine, effective and meaningful social dialogue and a participatory process involving social partners in the implementation of the above-mentioned provisions, and to provide information on any measures taken to this effect. The Committee trusts that this dialogue will be framed by the issues addressed in the direct request. The Committee reminds the Government of the possibility to avail itself of the technical assistance of the Office in this regard.*

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



**C029 - Forced Labour Convention, 1930 (No. 29)****Observation 2019**

*Articles 1(1), 2(1) and 25 of the Convention.* 1. *Trafficking in persons.* The Committee previously noted the establishment of the National Sub-Council on Combating Trafficking in persons to regulate the activities on combating and preventing trafficking and provide professional guidance, following the adoption of the Law on Combating Human Trafficking (2012). It noted that a National Programme on Combating Human Trafficking had been drafted to provide a plan of action in implementing anti-trafficking activities. It also noted that the Parliament passed the Law on Witness and Victim Protection in 2013, providing for protection measures for victims of trafficking. The Committee encouraged the Government to pursue its efforts to prevent, suppress and combat trafficking in persons and to provide protection and assistance, including legal assistance, to victims of trafficking.

The Government indicates in its report that the updated National Programme on Combating Human Trafficking was adopted by resolution No. 148 of 24 May 2017. This programme aims, inter alia, at: (i) organizing work to prevent and combat trafficking in persons through the study of the root causes and the conditions of this phenomena; (ii) taking and implementing measures for the protection of victims, including medical and psychological assistance; and (iii) expanding cooperation with other Governments, international organizations and non-state organizations. The Government further states that the Minister of Justice and Home Affairs and the Chairman of the Coordinating Council for the Prevention of Crimes of Human Trafficking have approved in 2018 the Implementation Schedule for the National Programme on combating Human Trafficking. In this framework, the Ministry of Justice and Home Affairs and other organizations have implemented in 2018 a joint plan and set up training courses on the provision of assistance to victims of human rights and the identification of the victims for staff of the Ministry of External Relations, the Border Protection Agency, the Office for Foreign Nationals and the border Offices in Dornogov' Province. The Government also indicates that resolution No. A/173 regulates the composition and functions of the Sub-Council on Combating Trafficking in persons.

The Committee notes that the Criminal Code of 2015, which entered into force in July 2017, provides for a sentence of imprisonment of two to eight years for trafficking in persons for the purposes of labour and sexual exploitation, and of five to 12 years for cross-border trafficking. It also notes that, according to the 17th Status Report on human rights and freedoms issued in 2018 by the National Human Rights Commission of Mongolia, the National Programme on Combating Human Trafficking is a four year programme (2017–21), section 5.2 of which provides for comprehensive legal, psychological, medical and rehabilitative services for victims of trafficking and the establishment of shelters. This Report also indicates that in November 2017, ten criminal cases of trafficking in persons were registered at the national level, according to information received from the Ministry of Justice and Home Affairs. A common database was created in 2016 to improve inter-sectorial coordination among the Government and non-governmental organizations in combating trafficking in persons and in registering victims and suspects. The Committee also notes that a two-year project "Improving victim-centred investigation and prosecution monitoring on human trafficking in Mongolia", aimed at developing training manuals and at training law enforcement officials, prosecutors, judges and officers of the Immigration Department, is being implemented by the Ministry of Justice and Home Affairs and the Asia Foundation. The Committee further notes that, in its concluding observations of August 2017, the Human Rights Committee expressed concern at the lack of identification of victims and reports of arrest and detention of victims for acts committed as a direct result of being trafficked (CCPR/C/MNG/CO/6, paragraph 27). It also notes that, according to the European Commission's document of January 2018 on the assessment of Mongolia covering the period 2016–17, there are only two trafficking-specific shelters in the country (page 10). *The Committee requests the Government to provide information on the impact of the measures taken by the Government, particularly the National Programme on Combating Human Trafficking and its Implementation Schedule, in preventing trafficking in persons and in identifying and assisting victims of trafficking in persons. It also requests the Government to take the necessary measures to ensure that victims of trafficking are treated as victims rather than offenders and have access to protection and assistance, and to provide information in this respect. Lastly, the Committee requests the Government to provide information on the application in practice of the provisions criminalizing trafficking in persons.*

2. *Vulnerable situation of migrant workers with regard to the exaction of forced labour.* The Committee notes that according to the ILO's Mongolia Policy Brief on Forced Labour of June 2016, reports indicated that tens of thousands of Chinese construction and mining workers entered Mongolia with tourist visas through a Chinese labour agency and were sold to Mongolian employers, their passports being confiscated upon arrival. In addition, according to this Policy Brief and the concluding observations of the Human Rights Committee of August 2017 (CCPR/C/MNG/CO/6, paragraph 29), migrants from the Democratic People's Republic of Korea (DPRK) worked in Mongolia, in conditions tantamount to forced labour, and were prohibited from leaving work with their wages paid directly to a North Korean Government agency. The Committee recalls the importance of taking effective measures to ensure that the system of the employment of migrant workers does not place the workers concerned in a situation of increased vulnerability, particularly when they are subjected to abusive employer practices such as retention of passports, deprivation of liberty, non-payment of wages, and physical abuse, as such practice might cause their employment to be transformed into situations that could amount to forced labour. *The Committee requests the Government to take the necessary measures to ensure that migrant workers are fully protected from abusive practices and conditions amounting to the exaction of forced labour and to provide information on the measures taken in this regard. It requests the Government to supply information on the number of identified victims of forced labour among migrant workers, and on the number of investigations, prosecutions and sanctions imposed on the perpetrators.*

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

**C100 - Equal Remuneration Convention, 1951 (No. 100)****Observation 2019**

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

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

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

*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 2019**

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

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

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

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

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

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

**C138 - Minimum Age Convention, 1973 (No. 138)****Observation 2019**

*Article 1 of the Convention. National policy and application of the Convention in practice.* The Committee previously noted the outcomes of the National Programme for the Elimination of the Worst Forms of Child Labour 2011–16 (the NAP–WFCL) indicated by the Government, including 694 cases of child labour identified, and the organization of training and awareness-raising events. It further noted that child labour rose from 7 per cent in 2002–03 to 16 per cent in 2011, according to the Understanding Children's Work (UCW) project. The Committee requested the Government to continue its efforts to ensure the progressive abolition of child labour.

The Government indicates in its report that the National Programme for the Development and Protection of Children was adopted by resolution No. 270 of 20 September 2017. This programme, which will be implemented for the 2017–21 period, includes measures to eliminate child labour. The Government states that the Implementation Schedule for the National Programme for the Development and Protection of Children for 2018–19 was approved in 2018 by the Minister of Labour and Social Protection, the Minister of Education, Culture, Science and Sport, and the Minister of Health.

The Committee notes that, according to the 17th Status Report on Human Rights and Freedoms in Mongolia, issued in 2018 by the National Human Rights Commission of Mongolia, the Government expanded the child helpline service by resolution No. 55 of 2016, as an official service centre under the Authority for Family, Child and Youth Development. The Committee notes that the Deputy Minister of Labour and Social Protection indicated in its opening statement for the 75th Session of the United Nations Committee on the Rights of the Child (CRC) on 25 May 2017 that the child helpline is a 24-hour call centre free of charge, with four channels. The centre receives 15,000 calls per month and provides necessary information and advice related to child protection and contributes to monitoring the receipt and processing of complaints by children. ***The Committee encourages the Government to pursue its efforts towards the progressive elimination of child labour and to provide information on the measures taken in this regard, including on the implementation of the National Programme for the Development and Protection of Children and on the impact of the child helpline service.***

*Article 2(1). Scope of application. Informal economy.* In its previous comments, the Committee noted that the Labour Law excluded work performed outside the framework of a labour contract and self-employment from its scope of application. It noted that the definition provided in the new draft Labour Law did not cover work performed outside the framework of an employer/employee relationship or in the informal economy and requested the Government to modify its draft Labour Law to ensure that the protections provided are extended to children working outside of an employment relationship.

The Committee notes the Government's indication that a parliamentary working group on the Labour Law revision has been appointed by the Parliament, in order to suggest proposals and conclusions prior to the discussion in the Parliament. The Government states that the working group is preparing proposals in order to provide legal protection to all workers, including children, in the Labour Law. The Committee notes that, according to the ILO's information collected in the framework of the project on "Sustaining Generalised Scheme of Preferences-Plus (GSP+) Status by strengthened national capacities to improve International Labour Standards compliance and Reporting-Mongolia Phase 2 (GSP+3)", the draft Labour Law extends labour protection to all cases where employment relations exist, regardless of the existence of an employment contract. It also notes that, according to the ILO's information, the draft revised Labour Law will be discussed during the spring session of parliament, as of 5 April 2019. ***The Committee expresses the firm hope that the Government will take the necessary measures to ensure that the draft Labour Law does not fail to take into account the Committee's comments, thus ensuring that all children working outside of an employment relationship, such as children working on their own account or in the informal economy, benefit from the protection laid down by the Convention. It requests the Government to provide a copy of the new law, once adopted.***

*Article 2(3). Age of completion of compulsory schooling.* In its previous comments, the Committee had noted the contradictory provisions in various national laws which regulate the minimum age for admission to employment and the age of completion of education. It noted the Government's indication that its legislation provides for nine years of compulsory schooling starting from the age of 6. The Government indicated that the draft Labour Law provides for the prohibition of employment to "(1) children less than 15 years of age and (2) those who have reached that age but who have not finished compulsory education". The Committee accordingly requested the Government to take the necessary measures to ensure that a provision linking the minimum age for admission to employment to the age of completion of compulsory schooling is included in the draft Labour Law.

The Committee notes the Government's statement that the draft Labour Law is under review and that a parliamentary working group on the Labour Law revision has been appointed. ***The Committee expresses the firm hope that the revision of the Labour Law will include a provision linking the minimum age for admission to employment to the age of completion of compulsory schooling.***

*Article 7(1) and (3). Light work and determination of light work activities.* The Committee previously noted the Government's indication that the legislation

concerning light work is included in the draft Labour Law which provides for regulations that will determine light work and hours and conditions in which minors may be employed. It urged the Government to take the necessary measures to ensure that a provision regulating light work is adopted in the near future.

The Committee notes the Government's indication that, in the framework of the revision of the Labour Law, light work which may be carried out by children will be regulated for the first time. The Committee notes that, according to the Final Narrative Report of the project GSP+3, the draft revised Labour Law allows children of 13 years of age and above to perform light work that has adequate occupational safety and health conditions with the permission of their legal representatives. The Committee recalls that, under *Article 7(1)* of the Convention, national laws or regulations may permit the employment or work of persons as from 13 years of age in light work which is: (a) not likely to be harmful to their health or development; and (b) not such as to prejudice their attendance at school, their participation in vocational training or training programmes approved by the competent authority or their capacity to benefit from the instruction received.

***The Committee expects the Government to take the necessary measures without delay to regulate light work and determine the types of light work activities that may be undertaken by children of 13 years of age and above, within the framework of the Labour Law review process. It requests the Government to provide a copy of the list of the types of light work permitted for children, once it has been adopted.***

*Article 8. Artistic performances.* The Committee previously noted the Government's indication that there is no law or policy limiting age and work hours for children working in artistic performances yet. It requested the Government to take the necessary measures to establish a system of individual permits to be granted for children under 15 years who work in activities such as artistic performances and to limit the hours during which, and prescribe the conditions in which, such employment or work is allowed.

The Committee notes the Government's statement that, in the framework of the revision of the Labour Law, regulations for granting permits, limiting the number of hours during which, and prescribing the conditions in which children under the age of 15 are allowed to work in activities such as artistic performances, will be established. ***The Committee expresses the firm hope that the revision of the Labour Law will ensure the establishment of a system of individual permits to be granted for children under 15 years of age who work in activities such as artistic performances, in compliance with Article 8 of the Convention. It requests the Government to provide information in this respect.***

*Article 9(1). Penalties.* The Committee previously noted that a draft of the revised version of the Criminal Code, which includes a criminal offence provision for persons employing children in the worst forms of child labour, was being reviewed by the Parliament. It requested the Government to take the necessary measures to ensure that the draft Criminal Code establishes sufficiently effective and dissuasive penalties.

The Committee notes the absence of information on this point in the Government's report. It notes the Government's indication, in its report to the CRC, that a new Chapter "Crime against children" was added in the Criminal Code of 2015 (which entered into force on 1 July 2017), defining as a crime the intentional engagement of a child to conduct work that is physically and mentally harmful to him/her. The Committee notes that, pursuant to section 16.10 of the Criminal Code, this crime is punishable by a fine, community work, restriction of movements or imprisonment of six months to one year. ***The Committee requests the Government to provide information on the application of section 16.10 of the Criminal Code in practice, including information on the number of violations reported, the nature of the offences, and the penalties imposed.***

*Article 9(3). Keeping of registers.* In its previous comments, the Committee noted that the national legislation does not contain provisions on the obligation of an employer to keep and make available the registers of persons under the age of 18 whom he/she employs. It noted that the draft regulations to the Labour Law prescribes that an employer must keep a record of "minor employees", and requested the Government to ensure that the regulations will require employers to keep a register containing the name and age (or date of birth) of all persons under the age of 18 years whom they employ.

The Committee notes the Government's indication that section 93.7 of the draft Labour Law requires the employer to keep a register of all children employed by him/her, including their name, date of birth, the work period and the conditions of work, and to inform, within ten days of the start of employment, the relevant state body responsible for labour and labour supervision. The Government further indicates that the draft Penalties Act has been amended in line with the draft revised Labour Law to impose penalties on employers who do not keep registers of children employed. ***The Committee expresses the firm hope that the draft Labour Law will be adopted without further delay, so as to be in line with Article 9(3) of the Convention, and requests the Government to send a copy of the Law once it has been adopted. It also requests the Government to indicate the penalties applicable to employers who fail to comply with the keeping of registers of children whom they employ and to provide information on the adoption of the draft Penalties Act.***

***The Committee expresses the firm hope that the Government will take into consideration the Committee's comments while finalizing its draft legislation. In this regard, the Committee welcomes the ILO project financed by the European Union to support the Generalised Scheme of Preferences (GSP+) beneficiary countries to effectively implement international labour standards targeting Mongolia.***

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

### Observation 2019

*Article 3 of the Convention. Worst forms of child labour. Clause (b). Use, procuring or offering of a child for prostitution.* The Committee previously noted that the Criminal Code, as amended in 2012, provided for a fine of 51–100 amounts of minimum salary or incarceration for a term of three to six months for involving minors into prostitution (section 115.2). It noted that the draft revised Criminal Code, which included a provision incriminating the use, procurement and offer of a child for prostitution, was under review by the Parliament. It also noted that, according to the Understanding Children's Work (UCW) programme's report entitled: *The twin challenges of child labour and education marginalisation in East and South East Asia region*, girls are trafficked internally and subjected to commercial sexual exploitation. The Committee requested the Government to provide information on the application in practice of the provisions of the Criminal Code incriminating the involvement of minors in prostitution.

The Government indicates in its report that detailed information in this respect is not available. It states that, according to the General Police Department, no cases of children sexually exploited were registered in 2016 and 2017, and that one case was registered between January and May 2018. The Committee notes that the Government has adopted a new Criminal Code in 2015 (entered into force in July 2017), pursuant to which the sexual exploitation of children is punishable by 12 to 20 years of imprisonment, and by two to eight years of imprisonment for the sexual exploitation of children aged from 14 to 18 (section 12.3). The Committee further notes that the Special Representative and Co-ordinator for Combating Trafficking in Human Beings of the Organization for Security and Co-operation in Europe (OSCE) indicated in her report on Mongolia, finalized in February 2018, that Mongolian children are trafficked for the purpose of sexual exploitation in saunas, hotels, massage parlours and karaoke clubs. ***Recalling that the best legislation only takes value when it is applied effectively, the Committee requests the Government to take the necessary steps to ensure the effective application of section 12.3 of the Criminal Code, indicating the number of child victims of commercial sexual exploitation and the number and nature of convictions and penalties imposed.***

*Clause (d). Hazardous work. Horse jockeys.* In its previous comments, the Committee noted that, under the Law on National Naadam Festival, the lower age limit for children riding racehorses is established at 7. It noted that, according to the National Human Rights Commission, despite the progress in regulating the use of protective clothing for child jockeys in the Mongolian National Standard (MNS 6264:2011), the implementation of the standard was not effective. The Government indicated that around 10,000 children were used as child jockeys every year during the summer holidays, and that 59 per cent of child jockeys were covered by an accident insurance. It stated that, according to the 2014 National Social Indicator Survey, 5 per cent of all children aged from 4 to 15 were child jockeys for a minimum of one year (10 per cent of boys and 1 per cent of girls). Furthermore, half of the child jockeys interviewed reported to carry out bareback riding on their last race and 3 per cent were injured. The Committee noted that several activities were organized by the National Authority for Children (NAC) in



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order to ensure the safety of child jockeys. However, the Government indicated that there had been no unannounced inspections. It also mentioned that access to a database on legal cases in Mongolia is quite limited. The Committee observed that, according to the UCW project, the Ministry of Health reported that more than 300 children injured during horse races were treated at the National Trauma Centre alone, in 2012. The Committee accordingly urged the Government to take the necessary measures in law and in practice to ensure that no child under 18 years of age is employed as a horse jockey. The Committee further requested the Government, where such work is performed by young persons between 16 and 18 years of age, to ensure that protective measures are strictly enforced and that unannounced inspections are carried out by the labour inspectorate.

The Committee notes the Government's indication that the National Child Development and Protection Programme for the 2017–21 period, approved by resolution No. 270 of 20 September 2017, reflects measures to be implemented to advance towards the prohibition of hazardous work, including the prohibition of children under the age of 16 from taking part in winter and spring horse races and the regulation of health, safety and protection issues when races are permitted. The Government indicates that in 2016, 13,572 children taking part in horse races were identified, and 10,453 were identified in 2017.

The Committee notes that, according to the 17th Status Report on Human Rights and Freedoms in Mongolia, issued in 2018 by the National Human Rights Commission of Mongolia, the list of jobs prohibited for children under 18 years of age was revised in 2016 to include, inter alia, the prohibition of child jockeys from attending horse racing from 1 November to 1 May of each year. However, the National Human Rights Commission indicates that the Minister of Labour and Social Protection issued Decree A/28 on 20 February 2017 which has shortened the period of the ban to the winter season each year. Moreover, the Committee notes that, in January 2019, the Government issued resolution No. 57, prohibiting the organization of horse races every year from 1 February to 1 May.

The Government also indicates, in its comments of 13 June 2018 on the OSCE report, that the Authority on Family, Child and Youth Development (formerly the NAC) has been taking concrete measures in order to improve the protection of rights and safety of child jockeys, such as the holding of consultations with domestic insurance companies to increase the insurance fees and compensation payments. The Professional Inspection Agency carried out an inspection on the safety of child jockeys in horse races held during several festivals, including the national Nadaam Festival, to ensure the implementation of the Law on National Nadaam Festival, as well as the standard MNS6264:2011 on the requirements for safety clothing for child jockeys and horse wear. The Committee observes that the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings noted the efforts of the Authority on Family, Child and Youth Development to register child jockeys and ensure that they are provided with life insurance and protective clothing (paragraph 29).

The Committee however notes that, in its concluding observations of July 2017, the United Nations Committee on the Rights of the Child (CRC) expressed serious concern at the prevalence of conflicts of interest between official duties and the private interests of those in public service roles, including members of Parliament and Government officials having personal investments in horse racing and training. The CRC also remained seriously concerned that children continue to be engaged in hazardous work, including horse racing (CRC/C/MNG/CO/5, paragraphs 13 and 40). The Committee observes that, in its recommendation submitted to the Prime Minister of Mongolia on 22 January 2018, the National Human Rights Commission reported 79 falls of child jockeys, involving 12 children injured and one death, during horse races which took place in 2016 and 2017. It further notes that, according to the Final Narrative Report of the project to sustain the Generalised Scheme of Preferences (GSP+) Status by implementing international labour standards in Mongolia, in March 2018, 16 children, including children under 12 years of age, were reportedly injured at the Dunjingarav Horse Racing Races. The Committee is therefore bound to express its *deep concern* at the situation of child jockeys exposed to serious injuries and fatalities. ***Recalling that horse racing is inherently dangerous to the health and safety of children, the Committee urges the Government to take, as a matter of urgency, the necessary measures in law and in practice to ensure that no child under 18 years of age is employed as a horse jockey, throughout the year. It requests the Government to provide information on the application in practice of the hazardous work list, including the number of violations detected and penalties applied.***

*Article 7(2). Clause (a). Effective and time-bound measures. 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 UCW project reported in 2015 that the percentage of out-of-school rural children aged from 10 to 14 years of age was five times that of urban children. The Committee requested the Government to provide information on the measures taken to provide access to free, basic and quality education to both working and out-of-school children, as well as in increasing school attendance rates, in particular in the rural areas.

The Committee notes the Government's indication that, for the academic year 2017–18, 402 children have dropped out of school, compared to 445 in the 2016–17 academic year and 612 in the 2015–16 year. It further notes that the Deputy Minister of Labour and Social Protection indicated in its opening statement for the 75th session of the United Nations Committee on the Rights of the Child (CRC) on 25 May 2017 that the pre-school, primary and secondary school enrolments have considerably increased. In the academic year 2016–17, 79.2 per cent of children were enrolled in preschool and 97 per cent were enrolled in primary and secondary school. The Deputy Minister of Labour and Social Protection also stated that the Government has revised its State Policy on Education in 2015. The Committee however notes that the Action Programme 2016–20 of the Government provides that all children in urban areas are allowed to enrol in kindergarten, without mentioning children living in rural areas. It also notes that the Action Programme provides that herders' children are able to start school between 6 and 8 years old, at their choice. The Committee underlines that the Government shall ensure access to free basic education to all children, regardless of their geographical location. The Committee also points out that, by raising from 6 to 8 the age at which herders' children can start school, children are more likely to be engaged in the worst forms of child labour. ***Considering that education is key to preventing the engagement of children in the worst forms of child labour, the Committee requests the Government to take the necessary measures to improve the functioning of the educational system, in order to ensure that both children living in rural and in urban areas have equally access to free basic education. It requests the Government to provide information on the measures taken in this regard and the results obtained, particularly with regard to increasing school attendance rates and reducing school drop-out rates, in primary and secondary education. Please disaggregate the data by gender and age.***

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



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

*Observation 2019*

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 1 September 2019. It also notes the detailed discussion which took place at the 108th Session of the Conference Committee on the Application of Standards in June 2019, concerning the application by Myanmar of the Convention.

**Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 108th Session, June 2019)**

*Articles 1(1), 2(1) and 25 of the Convention. Elimination of all forms of forced labour. 1. Engagement of the ILO regarding the elimination of forced labour. (a) Historical background.* In March 1997, a Commission of Inquiry was established under article 26 of the ILO Constitution to address the forced labour situation in Myanmar. As reported to the ILO Governing Body, forced labour had taken various forms in the country over the years, including forced labour in conflict zones, as well as for public and private undertakings. In its recommendations, the Commission of Inquiry urged the Government to take the necessary steps to ensure that: (i) the relevant legislative texts, in particular the Village Act and the Towns Act, be brought into line with the Convention; (ii) in practice, no more forced or compulsory labour be imposed by the authorities, in particular the military; and (iii) the penalties which may be imposed under section 374 of the Penal Code for the exaction of forced or compulsory labour be strictly enforced.

Since then, the issue has been the focus of cooperation between the Government and the ILO for more than a decade. In 2002, an Understanding was agreed between the Government and the ILO, which permitted the appointment of an ILO Liaison Officer. Later in 2007, the Supplementary Understanding (SU) was signed, in particular, to set out a complaints mechanism with the objective "to formally offer the possibility to victims of forced labour to channel their complaints through the services of the Liaison Officer to the competent authorities with a view to seeking remedies available under the relevant legislation and in accordance with the Convention". In addition, in 2012, the ILO concluded a Memorandum of Understanding (MoU) on a Joint Strategy for the Elimination of Forced Labour by 2015, which provided a basis for seven interrelated action plans. The ILO also participated in the Country Task Force on Monitoring and Reporting on underage recruitment issues.

(b) *Recent developments.* The Action Plan for the elimination of all forms of forced labour, 2018 and the SU, which provided for a complaints mechanism, expired in December 2018. On 21 September 2018, the Government, the workers' and employers' organizations and the ILO signed the MoU on Decent Work Country Programme (DWCP) (2018–21). The significant implementation outputs, as indicated in the DWCP document, include institutionalization of national forced labour complaints mechanisms and strengthened protection against unacceptable forms of work, in particular forced and child labour by 2021. The Committee notes that in the course of the discussion in October–November 2019, the Governing Body noted, in respect of progress in the elimination of the use of forced labour that the number of complaints received had continued to decrease since 2016 suggesting progress towards elimination of underage recruitment, which generally accounted for the highest proportion of complaints received. It noted that in 2019 the ILO received 108 forced labour complaints, 48 of which have been assessed as being within the definition of forced labour while there were no complaints received of forced labour related to the involuntary use of civilians as guides and porters from conflict areas. Very few reports of forced labour in the private sector have been received since March 2019. The Governing Body also noted that the proposal for the establishment of a National Complaints Mechanism (NCM) was approved by the Government by a letter dated 7 August 2019 (GB.337/INS/9). The Governing Body noted that the ILO stressed on the following elements as necessary for a credible and effective complaints mechanism: (a) impartiality in the assessment and investigation of complaints; (b) guaranteed protection of victims; (c) credible accountability; (d) decentralization of responsibility to eliminate forced labour; and (e) awareness-raising programmes, particularly for those living in remote and conflict-affected areas. Although the Government had publicly advertised its intention to establish an NCM, no reference had been made to complainants being able to continue to submit complaints to the ILO. The GB also noted that while the Government had made efforts to develop interim procedures for dealing with complaints, a framework for the development of the NCM and an action plan for the elimination of forced labour under the DWCP, the victim protection measures remained unclear and the decentralization responsibility to state and regional governments to eliminate forced labour still needed to be addressed.

2. *Application of the Convention in law and in practice.* In its previous comments, the Committee noted that the Ward or Village Tract Administration Act of 2012, which repealed the Village Act and the Towns Act of 1907 makes the use of forced labour by any person a criminal offence punishable with imprisonment and fines (section 27A). It noted that no action had been taken to amend article 359 of the Constitution (Chapter VIII – Citizenship, fundamental rights and duties of citizens), which exempts from the prohibition of forced labour "duties assigned by the Union in accordance with the law in the interest of the public" and could be interpreted in such a way as to allow a generalized exaction of forced labour from the population. It also noted that the developments within the peace process, such as the National Ceasefire Agreement of 2015 as well as the ILO initiation with the Government and the Ethnic Armed groups which resulted in two non-state armed groups committing to end forced labour, led to a significant decrease in the numbers of reported cases of forced recruitment for military purposes by both the security forces and armed groups. The Committee, however, noted from the Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar of 17 September 2018 (A/HRC/39/CRP.2) that the use of forced labour by the *Tatmadaw* (the armed forces of Myanmar) persisted, particularly in Kachin and Shan States, as well as among the ethnic *Rakhine* and *Rohingya*. It noted that in many instances, the *Tatmadaw* arrived in a village and took villagers directly from their homes or from the areas surrounding their village while they were fishing, farming, running errands or travelling while in some cases, this was done in an organized way, such as house by house, on the basis of a quota for each family, through a list, or with the cooperation of village leaders. Persons subjected to forced labour were required to perform a variety of tasks and the duration varied from a few days to months. Many of them were required to act as porters, carrying heavy packages including food, clothes and in some cases weapons. Other common types of work included digging trenches, cleaning, cooking, collecting firewood, cutting trees, and constructing roads or buildings in military compounds. Victims were also sometimes required to fight or participate in hostilities. Often, victims were given insufficient food of poor quality or were not able to eat at all. They did not have access to water and were kept in inadequate accommodation, including in the open air without bedding and without adequate sanitary facilities. Victims were subjected to violence if they resisted, worked slowly or rested. Particularly, female victims also faced sexual violence (paragraphs 258–273, 412–424 and 614–615). The Committee noted with deep concern the persistence of forced labour imposed by the *Tatmadaw* in Kachin and Shan States, as well as among the ethnic *Rakhine* and *Rohingya*. It urged the Government to strengthen its efforts to ensure the elimination of forced labour in all its forms, in both law and practice, particularly the forced labour imposed by the *Tatmadaw*; to take the necessary measures to ensure the strict application of the provisions of the Ward or Village Tract Administration Act of 2012 and the Penal Code; as well as to provide information on any progress made regarding the amendment to article 359 of the Constitution.

The Committee notes that, in its observations, the ITUC stated that forced labour is exacted in a systematic and continuous manner and that this practice is also persistent in the private sector, especially in the agricultural sector (fisheries, sugarcane, beans) and in the jade industry. The ITUC further highlights the plight of the *Rohingya* population, nearly 700,000 of them, who were expelled from the *Rakhine* State following the so-called clearance operations, commenced in 2017, and who are at an increased risk of falling victims to forced labour by both state and non-state actors.

The Committee notes the statement made by the Government representative of Myanmar to the Conference Committee that a total of ten ethnic armed forces have already signed the National Ceasefire Agreement and a unilateral ceasefire has been announced in the States of *Kachin* and *Shan* from December 2018 to April 2019. The Government representative further indicated that interim procedures for continuously receiving complaints are in place and that a Joint Parliamentary Committee was established to amend the Constitution. The Worker members, in their statement to the Conference Committee, alleged that the Government failed to implement most of the activities designed under the 2012 and 2018 action plans. The Committee notes that the Conference Committee, in

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its concluding observations, while welcoming the efforts in eliminating forced labour, expressed concern over the persistent use of forced labour and therefore urged the Government to take all necessary measures to ensure that forced labour is not imposed in practice by the military or civilian authorities; to ensure that victims of forced labour have access to effective remedies and comprehensive victim support without fear of retaliation; to increase the visibility of awareness-building and capacity-building activities for the general public and administrative authorities to deter the use of forced labour; to provide detailed information on the progress made within the DWCP; and to intensify its cooperation with the ILO through the development of a time-bound action plan for the establishment of, and transition to, an effective complaints handling procedure.

The Committee notes the Government's information in its report that within the framework of the DWCP, in January 2019, a Training of Trainers on the Elimination of Forced Labour was conducted with representatives from the High Level Working Group (HLWG), members of the Technical Working Group (TWG) and representatives of the ILO. Moreover, a knowledge-sharing workshop was held during the same period with 50 representatives, including members from the HLWG, TWG, representatives of ILO, Government, and employers' and workers' organizations to share good practices of other countries on developing the National Complaints Mechanism. Furthermore, an action plan for developing the NCM (2019–21) on forced labour has been drafted. The Government indicates that the interim procedures for receiving and resolving forced labour complaints are, and will be, carried out by the HLWG until the establishment of the NCM. According to the Government's report, to date, the HLWG has received ten complaints concerning forced labour.

The Committee also notes the Government's information that from July 2018 to August 2019, a total of 6,423 awareness-raising workshops on forced labour were conducted for an estimated 507,935 people in related townships across the country and 115,113 posters were distributed. Moreover, to prevent the use of forced labour in the private sector, from January 2018 to July 2019, 1,903 knowledge-sharing workshops were conducted with 92,698 participants from 4,252 factories, shops, establishments and training centres. Regarding the amendments to the Constitution, the Committee notes the Government's statement that the Ministry of Labour, Immigration and Population has submitted a proposal to the Joint Parliamentary Committee, established to amend the Constitution, to consider the amendment of article 359 of the Constitution in August 2019. The Committee further notes the Government's information that no one was punished under the Ward or Village Tract Administration Act and the Penal Code from July 2018 to July 2019. While taking note of the measures taken by the Government towards the elimination of all forms of forced labour, the Committee once again reminds the Government that, by virtue of *Article 25* of the Convention, the exaction of forced or compulsory labour shall be punishable as a penal offence, and the penalties imposed by law shall be really adequate and strictly enforced. ***The Committee therefore strongly urges the Government to take the necessary measures to ensure the strict application of the national legislation, particularly the provisions of the Ward or Village Tract Administration Act of 2012 and the Penal Code, so that sufficiently dissuasive penalties of imprisonment are imposed and enforced against perpetrators in all cases. In this regard, the Committee requests the Government to provide information on the application in practice of the above-mentioned legislation to ensure accountability, including the statistical data on cases of forced labour detected and the specific penalties imposed on perpetrators. It also requests the Government to continue providing detailed information on the measures taken to ensure that, in practice, forced labour is no longer imposed by the military or civilian authorities, as well as the private sector, such as awareness-raising and capacity-building activities for local administrators, military personnel, other stakeholders and the general public. The Committee further urges the Government to take the necessary measures to ensure the establishment and functioning of the National Complaints Mechanism, without delay and that the procedures for amending article 359 of the Constitution will be carried out in the very near future. It requests the Government to provide information on any progress made in this regard. The Committee finally requests the Government to continue to provide information on the number of complaints on forced labour received and resolved by the HLWG interim complaints mechanism. It once again reiterates the firm hope that all the necessary measures will be taken, in law and in practice, without delay to achieve full compliance with the Convention so as to ensure that all use of forced or compulsory labour in Myanmar is completely eliminated.***

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

**C100 - Equal Remuneration Convention, 1951 (No. 100)****Observation 2019**

*Articles 1 and 2 of the Convention. Work of equal value. Legislative developments.* For a number of years, the Committee has been drawing the Government's attention to the fact that article 13(4) of the interim Constitution and Rule No. 11 of the Labour Regulations, 1993, were narrower than the principle of the Convention, as they did not encompass the concept of "work of equal value". The Committee notes that, despite its recommendations, article 18(4) of the new Constitution of 2015 and section 18(3) of the new National Civil Code of 2017, which entered into force on 17 August 2018, both merely reproduce the previous provision of the interim Constitution providing that there shall be no discrimination with regard to remuneration and social security between men and women "for the same work". It takes also note of the adoption of the new Labour Act of 2017 and Labour Regulations of 2018, which apply to all entities in both the formal and informal sectors, including domestic workers, but excludes the civil service, Nepal army, police and armed forces, entities incorporated under other prevailing laws or situated in "special economic zones" (to the extent separate provisions are provided), as well as working journalists (unless specifically provided in the contract) (section 180). The Committee, however, notes with *interest* that section 7 of the Labour Act provides that there shall be no discrimination with regard to remuneration between men and women "for work of equal value", which shall be assessed on the basis of the nature of work, time and efforts required, skills and productivity. It further notes the adoption of the Decent Work Country Programme (DWCP) for 2018–22 which sets as a specific outcome the fact that "tripartite constituents have enforced the new Labour Act of 2017 and Labour Regulations of 2018", and defined as indicator "an increased number of workers benefiting from the provisions of the Labour Act", as it is estimated that only 5 per cent of workers currently benefit from such provisions. Noting the Government's statement, in its report, that the Labour Act which provides for equal remuneration for "work of equal value" is exactly in line with the Constitution which refers to equal remuneration for the "same work", the Committee wishes to draw attention to the fact that the concept of "work of equal value", which is fundamental to tackling occupational gender segregation in the labour market, permits a broad scope of comparison, including, but going beyond equal remuneration for "equal", "the same" or "similar" work, and also encompasses work that is of an entirely different nature, which is nevertheless of equal value (see General Survey on fundamental Conventions, 2012, paragraph 673). The Committee notes that the Government solicits ILO technical assistance to ensure the full implementation of the new Labour Act, in particular concerning the assessment of work of different nature which are nevertheless of equal value.

*Welcoming the adoption of the new Labour Act of 2017 and Labour Regulations of 2018, the Committee asks the Government to provide information on the application of section 7 of the Labour Act in practice, indicating how the term "work of equal value" has been interpreted on the basis of the criteria enumerated in the Labour Act, including by providing information on any cases of pay inequality dealt with by the labour inspectors, the courts or any other competent authority, the sanctions imposed and remedies granted. In light of article 18(4) of the new Constitution of 2015 and section 18(3) of the new National Civil Code of 2017 which are narrower than the principle of the Convention, it asks the Government to provide information on the measures taken to ensure that: (i) discrepancies between recently adopted legislations do not undermine the protection granted under the Labour Act; and (ii) the principle of the Convention is applied to all workers, including those excluded from the scope of application of the Labour Act, such as for example civil servants and members of the Nepal police, army and armed forces. The Committee asks the Government to provide information on the measures taken to raise awareness of the meaning and scope of application of the principle of equal remuneration for work of equal value and the relevant provisions of the Labour Act of 2017 and Labour Regulations of 2018, in particular in the framework of the Decent Work Country Programme for 2018–22, among workers, employers and their representative organizations, as well as among law enforcement officials, and of the remedies and procedures available, including detailed information on the contents of the training provided and awareness-raising activities undertaken to that end. The Committee reminds the Government of the possibility to avail itself of ILO technical assistance in this regard.*

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

**C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111)****Observation 2019**

*Article 1 of the Convention. Protection against discrimination. Legislation.* For a number of years, the Committee has been noting that the labour legislation reform process was under way and requested the Government to ensure that the new legislation defines and prohibits direct and indirect discrimination on at least all the grounds set out in *Article 1(1)(a)* of the Convention, and covers all workers and all aspects of employment and occupation. The Committee notes with *interest* the recent adoption of several legislative provisions on non-discrimination, namely:

--Article 18(1) of the new Constitution of 2015, which provides that every citizen shall be equal before the law, and Article 18(2), which provides that there shall be no discrimination in the application of general laws on the grounds of origin, religion, race, caste, tribe, sex, physical conditions, disability, health conditions, matrimonial status, pregnancy, economic condition, language or geographical region or ideology or any other such grounds;

--the new Labour Act of 2017 (section 180) and the Labour Regulations of 2018 (section 6) which prohibit discrimination on the basis of sex at work, covering all entities both in the formal and informal sectors, but excluding in particular the civil service, as well as the Nepal army, police and other armed forces from their scope of application;

--the new National Civil Code of 2017, which entered into force on 17 August 2018, which provides that there shall be no discrimination in the application of general laws and no person shall be discriminated against in any public and private place on the grounds of origin, religion, colour, caste, race, sex, physical condition, disability, condition of health, marital status, pregnancy, economic condition, language, region, ideological conviction or on similar other grounds (section 18(1) and (2)). Section 18(4) provides that any citizen appointed to a governmental or public office shall be appointed only on the basis of the qualifications determined by law and shall not be discriminated against on the grounds of origin, religion, colour, caste, race, sex, physical condition, disability, condition of health, marital status, pregnancy, economic condition, language, region, ideological conviction or similar other grounds; and

--the Right to Employment Act of 2018, which provides that every citizen shall have the right to employment (section 3) and that, except where special provisions apply by reason of the prevailing law for any particular class or community with respect to the provision of employment to the unemployed, no person shall be discriminated against on the grounds of origin, religion, colour, caste, ethnicity, sex, language, region, ideology or similar other grounds (section 6). The Act provides for a fine of 10,000 Nepalese rupees (NPR) in the case of discrimination made by the employer (sections 25 and 26).

Noting that the grounds of political opinion and national extraction set out in *Article 1(1)(a)* of the Convention are not expressly covered by the national legislation, which does not specifically refer to direct and indirect discrimination in employment and occupation. Further, the legislation appears in some important respects to grant protection against discrimination only to citizens. In view of the foregoing, the Committee draws the Government's attention to the fact that, where legal provisions are adopted to give effect to the principle of the Convention, they should include at least all the grounds of discrimination specified in *Article 1(1)(a)* of the Convention (see the 2012 General Survey on the fundamental Conventions, paragraphs 850–853). The Committee also notes that, in its 2018 concluding observations, the United Nations (UN) Committee on the Elimination of Discrimination against Women (CEDAW) expresses specific concern at the lack of explicit protection against direct and indirect discrimination against women (CEDAW/C/NPL/CO/6, 14 November 2018, paragraph 8(a)).

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*The Committee urges the Government to take all the necessary steps to ensure that its national legislation includes an explicit prohibition of direct and indirect discrimination against all persons on at least all of the grounds enumerated in Article 1(1)(a) of the Convention concerning all stages of the employment process. It asks the Government to provide information on any progress made in that regard, while specifying how the protection of the Convention is ensured to all workers, including those in the informal economy and non-nationals, irrespective of their regular or irregular situation. In the meantime, the Committee asks the Government to provide information on the application in practice of section 180 of the Labour Act of 2017 section 6 of the Labour Regulations of 2018, section 18 of the National Civil Code of 2017 and section 6 of the Right to Employment Act of 2018, including on any relevant administrative or judicial decisions.*

*Discrimination based on sex. Sexual harassment.* The Committee notes with *interest* the adoption of the Sexual Harassment at the Workplace (Prevention) Act of 2015, which prohibits both quid pro quo and hostile work environment sexual harassment (section 4) and requires employers to disseminate information about and prevent sexual harassment, as well as to set up an internal complaint mechanism. The Act also provides for penalties of six months of imprisonment and/or a fine of NPR50,000 against any person who commits sexual harassment (section 12). The Committee further notes that section 132 of the new Labour Act provides for the termination of the employment of any person who has committed sexual harassment. The Committee however notes that in its 2018 concluding observations, the CEDAW expresses concern that: (i) rates of violence against women are increasing; (ii) girls suffer sexual harassment, corporal punishment and abuse in school, including by teachers; (iii) cases of sexual harassment are under-reported and judicial and law enforcement officers, in particular at the local level, prevent the registration of cases of sexual and gender-based violence; and (iv) the Sexual Harassment at the Workplace (Prevention) Act is insufficiently implemented. The CEDAW specifically recommends that the culture of silence surrounding sexual harassment should be broken; that a confidential and safe complaint mechanism should be established; and that access to justice for victims of sexual harassment in the workplace should be facilitated (CEDAW/C/NPL/CO/6, 14 November 2018, paragraphs 10(d), 20(a), 32(c), 34(c) and 35(c)). Lastly, noting that criminal proceedings require a higher burden of proof, the Committee recalls that the establishment of easily accessible dispute resolution procedures (in addition to criminal proceedings) can make an effective contribution to combating discrimination (see 2012 General Survey, paragraphs 792 and 855). *The Committee requests the Government to indicate whether any implementing measures have been adopted since the enactment of the Sexual Harassment at the Workplace (Prevention) Act to combat sexual harassment. The Committee also requests the Government to take steps to address the social stigma attached to this issue for workers, employers and their representative organizations, as well as law enforcement officials. The Committee further requests the Government to report on the number of cases of sexual harassment at work dealt with by internal complaint mechanisms set up at the enterprise level, labour inspectors, the courts or any other competent authority, the sanctions imposed and remedies granted, as well as updated statistical data on the extent of sexual harassment perpetrated against girls and women in education institutions and at the workplace.*

*Articles 2 and 3. Equality of opportunity and treatment irrespective of social origin.* The Committee previously welcomed the adoption of the Caste-Based Discrimination and Untouchability (Offence and Punishment) Act of 2011, which prohibits caste-based discrimination and “untouchability” (sections 3 and 4). The Committee notes that Article 24(4) of the new Constitution provides that there shall be no racial discrimination in the workplace on the ground of “untouchability”. Noting the constitutional recognition of the National Dalit Commission (Articles 255 and 256 of the Constitution), the Committee notes the Government’s statement that no recommendation concerning the employment sector has been made so far by the Commission, but that information on the implementation of the Act of 2011 will be provided at a later stage. The Government adds that, from 2014 to 2016, 1,372 Dalit women and 1,553 Dalit men participated in training programmes conducted by the Vocational and Skill Development Training Centre of the Ministry of Labour and Employment. The Committee however notes that in their 2018 concluding observations, the UN Committee on the Elimination of Racial Discrimination (CERD) and the CEDAW express concern at: (i) the insufficient funding of the National Dalit Commission, which is only operational in Kathmandu; (ii) the insufficient implementation of the Caste-Based Discrimination and Untouchability (Offence and Punishment) Act of 2011; as well as (iii) reports that law enforcement officials are sometimes reluctant to act upon caste-based discrimination (CEDAW/C/NPL/CO/6, 14 November 2018, paragraphs 18(a) and 40(b), and CERD/C/NPL/CO/17–23, 29 May 2018, paragraphs 9 and 11). The CERD also expresses deep concern as to the way in which caste-based occupational specialization obstructs socio-economic mobility and assigns members of certain castes to degrading and/or exploitative occupations (CERD/C/NPL/CO/17–23, 29 May 2018, paragraph 31). *Recalling that continuous measures are required to put an end to discrimination in employment and occupation due to real or perceived membership of a certain caste, the Committee urges the Government to take proactive measures to ensure the effective implementation of the Caste-Based Discrimination and Untouchability (Offence and Punishment) Act of 2011, including by raising awareness among the general public, as well as law enforcement officials, of the prohibition of caste-based discrimination in the national legislation, the remedies and procedures available. The Committee also requests the Government to provide information on any measures envisaged or implemented to this end. The Committee further asks the Government to provide information on the activities of the National Dalit Commission, as well as on the number, nature and outcome of any complaints of caste-based discrimination dealt with by labour inspectors, the courts or any other competent authority.*

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



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

*Observation 2019*

The Committee notes the observations of the New Zealand Council of Trade Unions (NZCTU) and of Business New Zealand (Business NZ) communicated with the Government's report, on 4 September 2017, as well as the Government's reply thereto.

*Article 6(1)(a)(i) of the Convention. Equality of treatment with respect to conditions of work.* In its previous comment, noting the situation regarding working conditions and unpaid wages of migrant workers in horticulture and viticulture, as well as in food and other services, and the concerns relating to the conditions and unequal treatment of international students in the labour market, the Committee requested the Government, in cooperation with employers' and workers' organizations to: (1) examine the benefits of extending the Recognized Seasonal Employment (RSE) scheme to the dairy and food sectors, and provide information on the results achieved; and (2) indicate the outcome of, and any follow-up given to, the operational response and policy review relating to migrant students in the labour market, and to provide information on any of the measures to improve the conditions of work of migrant workers in horticulture, viticulture, food and hospitality, and other services. As regard the RSE scheme, the Committee notes that, in its report, the Government indicates that the Ministry of Business, Innovation and Employment (MBIE) has not explored extending the RSE scheme to the dairy and food sectors, or other occupational sectors as suggested. In New Zealand, most dairy sector jobs are permanent and this does not align with the seasonal nature of the RSE scheme. Any other preferential work programmes would need to be consistent with the "New Zealanders first" approach and would most likely not be an "extension" of RSE, but would make use of existing work visa settings. Concerning the measures taken to improve the conditions of work of migrant RSE workers in horticulture, viticulture, food and hospitality, and other services, the Government indicates that it has taken measures, through the formulation of two complementary wrap around programmes: the Strengthening Pacific Partnerships (SPP) Project, and the RSE Worker Training Programme (Vakameasina), which provide inter alia for training to RSE workers with the aim of improving English-language, numeracy, financial and computer literacy and health and life skills during their time in New Zealand; publication of hospitality sector guides for workers (information about minimum employment entitlements, including minimum wage, leave, health and safety, list of employment services) and their employers (employers' responsibilities to ensure that migrant workers understand their entitlements and are employed lawfully), developed in consultation with WorkSafe, the Labour Inspectorate and hospitality industry groups and unions. The Committee notes the observations made by BusinessNZ that it is important to highlight that most employers do not exploit migrant workers and that, whether working lawfully or unlawfully in New Zealand, migrant workers have long had the protection of the country's employment laws. The Committee notes, from the statistics provided by the Government, that between 2012 and 2017, out of the 1,246 investigations involving migrant workers, where breaches of employment standards were identified, 695 or more than 50 per cent concerned the dairy, horticulture, viticulture and hospitality sectors. ***The Committee requests the Government to continue its efforts to improve the working situation of migrant workers in the horticulture, viticulture, food and hospitality industries and to continue to provide detailed and up-to-date statistics, disaggregated by sex, in order to assess progress made over time.***

*Migrant students involved in the labour market.* In its observation, NZCTU recalls that student visa holders are eligible, under the terms of their visa, to undertake up to 20 hours per week of paid employment and indicates that, in some cases, student visas are being promoted by offshore migration agents as a pathway to temporary work in New Zealand. Section 11 of the Immigration Advisers Licensing Act 2007 provides an exemption from the general licensing requirement for persons who provide immigration advice offshore; and advice only in respect of applications made under the Immigration Act 2009 for a temporary entry class visa – temporary visa – student visa. NZCTU states that there is evidence that this exemption from licensing is being exploited by unscrupulous migration agents, and a minority of education providers, to provide misleading advice and to facilitate exploitation in employment of migrants on student visas and recommends that this exemption for providing advice on applications for student visas be removed. The Committee notes also the observations made by BusinessNZ that, in many instances where exploitation occurs, both in relation to migrant students in the labour market (and migrant workers more broadly), the perpetrator is a migrant employer from the worker's own country. As regards misleading advice provided to migrant students by offshore agents, the Government declares that it has considered a range of options to improve the quality of advice to students from offshore agents, including removing the licensing exemption for advice on student visas provided offshore, as suggested by NZCTU. However, a decision was taken to allow the exemption to remain, as changes to the provision of immigration advice to students were being implemented to improve the quality of advice. The Government has sought to address this issue through changes to the Education (Pastoral Care of International Students) Code of Practice (the Code) which makes education providers fully accountable for the outcomes of their agents. The New Zealand Qualifications Authority (NZQA) has new powers to take actions against those providers who use poor performing agents. The effectiveness of these changes to the Code has been supported by improving the information on agent performance available to providers. As regards international students, the Committee notes that the Government recognizes that some populations may be at greater risk of being exploited in the New Zealand labour market and that international students may be particularly vulnerable as they are often young, without existing contacts in New Zealand and may agree to work under substandard terms and conditions, due to a lack of awareness of New Zealand's minimum employment standards or fear to report employers if they are working unlawfully. In addition, they may have financial and family pressures from their home country and face language and cultural barriers, including finding acceptable employment. These factors combined with limited work skills and experience, may cause them to accept any work conditions they are offered. The Government is taking steps to address this vulnerability by enforcing employers' compliance with minimum employment standards but also by developing an: (i) International Education Strategy, a cross-agency strategy involving the Ministry of Education (MoE), Education New Zealand (ENZ), MBIE (including ImmigrationNZ), the New Zealand Qualifications Authority (NZQA), the Tertiary Education Commission (TEC) and other agencies; and (ii) an International Student Wellbeing Strategy which provides an outcomes framework for government agencies focused on ensuring international students are welcome, safe and well, enjoy a high quality education and are valued for their contribution to New Zealand. The Committee notes that, in February/July 2016, ImmigrationNZ, ENZ, Auckland Tourism Events and Economic Development (ATEED) ran a pilot programme "Project Skills" to improve work-readiness for international students. ***The Committee encourages the Government to continue taking measures to address the specific vulnerability of migrant students involved in the labour market, and to monitor and assess regularly the results achieved with a view to adjusting the measures taken or envisaged, if needed.***

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

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

*Observation 2019*

*Articles 1(1), 2(1) and 25 of the Convention. 1. Debt bondage. 1. Legislative framework.* The Committee previously noted the Government's statement that the Bonded Labour System (Abolition) Act 1992 remained applicable in the Islamabad Capital Territory (ICT) and Balochistan Province. The Committee noted that the Governments of Khyber Pakhtunkhwa (KPK) Province and Sindh Province adopted the KPK Bonded Labour System Abolition Act 2015, and the Sindh Bonded Labour System (Abolition) Act 2015, respectively, both of which contained provisions prohibiting bonded labour, extinguishing remaining debts, and providing for criminal penalties in case of violations. However, the Committee noted the information of the All Pakistan Federation of Trade Unions (APFTU) that, despite the prohibition of bonded labour by law, this practice persisted in brick kilns due to the absence of effective enforcement of the law. The Committee therefore urged the Government to take immediate measures to ensure the effective application of the newly enacted provincial legislation related to the abolition of bonded labour in practice, and to provide information in this regard.

The Committee notes the Government's information in its report that the Government of Punjab enacted the Punjab Bonded Labour System (Abolition) (Amendment) Act, 2018 and that the Balochistan Bonded Labour Bill, 2019 is under the process of promulgation. It also notes the Government's information that the Ministry of Overseas Pakistanis and Human Resource Development (OP and HRD) in consultation with the ILO has initiated the "Gap analysis concerning Protocol of 2014 to the Forced Labour Convention, 1930" with the aim of: (i) identifying the extent to which Convention No. 29 and the Protocol have been incorporated into the national laws and policies; (ii) identifying gaps in the application of Convention No. 29 and areas where current mechanisms and actions to address forced labour need to be strengthened to meet the requirements of the Protocol; and (iii) formulating a set of recommendations to support greater compliance with Convention No. 29 and move towards the ratification of the Protocol.

The Committee further notes that according to the findings of the study conducted by the Bureau of Statistics Planning and Development Department of the Government of KPK in May 2017 on bonded labour in the brick kiln industry in the two districts of KPK, of the total of 190 brick kilns in the two districts, a range of four to 270 workers were found working in each kiln. The study reveals that according to the data collected from the workers in the brick kilns, no evidence of forced labour or punishment by owners was found and that they were all treated humanely and according to the laws. The Committee also notes the information from this study that, unlike Punjab, the rights of workers in the brick kiln in KPK are protected mainly due to enforcement of the laws. ***The Committee requests the Government to continue taking effective measures to eliminate bonded labour in all its provinces, including through the effective implementation of the newly enacted provincial laws abolishing bonded labour and to provide information in this regard. It also expresses the firm hope that the Government will take the necessary measures to ensure the adoption of the Balochistan Bonded Labour Bill, 2019 and requests the Government to provide information on any progress made in this regard.***

*2. Programmes of action.* The Committee previously noted the measures taken by the provincial governments to eliminate bonded labour, such as the adoption and implementation of the Provincial Plan of Action to Combat Bonded Labour and the ILO project entitled "Strengthening Law Enforcement Responses and Action against Internal Trafficking and Bonded Labour" by the Governments of the Provinces of Sindh and Punjab as well as the implementation of the "Elimination of Bonded Labour in Brick Kilns" project in Punjab.

The Committee notes the Government's information that the Provincial Action Plan to combat Bonded Labour in Punjab is in progress and a Legal Aid Service Unit has been established by the Punjab Labour Department to help the victims of bonded labour. It also notes that the Labour and Human Resources Department of Punjab, with support of the ILO technical cooperation project is undergoing a gap analysis of the project entitled "Elimination of Child and Bonded Labour Project – an integrated project for the promotion of decent work of vulnerable workers in Punjab". The Committee also notes that the Government of Sindh has released and rehabilitated eight families under bondage from the district of Khairpur. The Government further indicates that the Government of Balochistan is making efforts to adopt a specific development scheme for brick kiln workers through a survey in Balochistan. Furthermore, the Committee notes from the Government's report under the Worst Forms of Child Labour Convention, 1999 (No. 182), that the National Strategic Framework to Eliminate Child and Bonded Labour in Pakistan, which sets 18 recommendations of actions by provinces to eliminate child and bonded labour, has been adopted in 2017. ***The Committee encourages the Government to pursue its efforts to combat and eliminate bonded labour, as well as to continue adopting measures aimed at supporting freed bonded labourers. It requests the Government to continue to provide detailed information on the specific measures implemented in the Punjab and other provinces in this regard, including the actions taken under the National Strategic Framework, as well as information on the concrete results of these initiatives, including the number of bonded labourers and former bonded labourers, benefiting from these measures.***

*3. District vigilance committees (DVCs).* The Committee previously noted the Government's indication that it was impossible to monitor bonded labour through the normal inspection procedure and hence DVCs were established under the provincial bonded labour laws. It noted that the DVCs were operational throughout Punjab while the KPK and Sindh Provinces had enacted new laws on bonded labour, under which the DVCs would be re-established in accordance with the rules framed. Moreover, Balochistan Province indicated that the DVCs would be functionalized without delay. The Committee requested the Government to take the necessary measures to ensure that the DVCs would be re-established in KPK and Sindh Provinces under the new laws and functionalized in Balochistan.

The Committee notes the Government's information that there are seven DVCs working efficiently in the Province of Sindh. These DVCs comprise the elected representatives of the area, representatives of the District Administration, Bar Associations, press, recognized social services and the Labour Department of the Province. The Government report indicates that the Islamabad Capital Territory (ICT) has also established DVCs to eliminate bonded labour from brick kilns. The Punjab Bonded Labour System (Abolition) (Amendment) Act, 2018 contains provisions to strengthen and streamline inspections and reporting through reactivating the DVCs and redefining the role of authorized inspectors. According to the Government's report, in Punjab, 188 DVC meetings were held in all the 36 districts in 2018. The Government further indicates that in 2018, 7420 inspections related to bonded labour were carried out in Punjab, 33 complaints were received, 24 complaints were disposed of and one case was referred to the DVC. Moreover, it notes that the Government of Punjab formulated a subcommittee in April 2019 to assist the Provincial Vigilance Committees to review the implementation of the law and action plan relating to the abolition of bonded labour and the rehabilitation of freed bonded labourers; to monitor the working of the DVC; and to address the concerns of the national and international bodies on matters relating to bonded labour. ***The Committee encourages the Government to continue its efforts to establish, reinforce and strengthen the DVCs in all the provinces, including in Balochistan. It also requests the Government to continue to provide information on the functioning of the DVCs, including the number of bonded labourers identified and rescued, and to provide copies of monitoring or evaluation reports. It further requests the Government to indicate if any legal action has been taken against persons employing bonded labourers, and to provide information on the number of prosecutions, convictions, and specific penalties applied, as well as copies of relevant court decisions.***

*4. Data-gathering measures to ascertain the current nature and scope of bonded labour.* In its previous comments, the Committee urged the Government to pursue its efforts to ensure that a survey of bonded labour would be undertaken in each province of the country in the near future, in cooperation with employers' and workers' organizations and other relevant partners.

The Committee notes the Government's reference to the study conducted in 2017 in the brick kiln industry in the two districts of KPK. The Committee notes the Government's indication that due to the traditionally hidden nature of the cases of bonded labour, no survey has been conducted so far on bonded labour. However, provinces are making efforts to conduct surveys and research studies on the subject, for formulation of a comprehensive bonded labour eradication policy. ***The Committee encourages the Government to pursue its efforts to conduct surveys and research studies on bonded labour in all the***

provinces. It requests the Government to provide information on any measures taken in this regard, as well as copies of the surveys, once completed.

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

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

### Observation 2019

*Articles 3(1) and (2), 4(2), 10 and 16 of the Convention. Effective organization of the labour inspection services and the supervision and control by central labour inspection authorities at the provincial levels. Number of labour inspectors and number and thoroughness of labour inspections.* The Committee previously noted from the 2016 national occupational safety and health (OSH) profile published by the Ministry of Overseas Pakistanis and Human Resources Development that there continued to be a serious shortage of labour inspectors in relation to the number of workplaces liable to inspection. One of the recommendations in that profile concerned the creation of independent labour inspection authorities (separate from the provincial labour departments currently acting as central authorities) at the provincial levels with sufficient human and financial resources. The Committee notes the Government's reiterated indication in its report, in reply to the Committee's previous request, that the provincial governments do not have the necessary resources to set up independent labour inspection entities. In this regard, the Committee also notes from the information in the 2017 annual labour inspection report transmitted by the Government that the provincial labour directorates have a number of functions, which include the enforcement of labour legislation, but also other functions such as the registration of trade unions and the conciliation and settlement of industrial disputes.

In response to the Committee's request to increase the number of labour inspectors in all provinces, the Committee notes the statistics provided by the Government on the number of labour inspectors in all provinces. The Committee notes that there are significant discrepancies in the statistics on the number of labour inspectors contained in the 2017 annual labour inspection report transmitted by the Government, the report sent by the Government in 2018 and the current report of the Government, in view of which it is not possible for the Committee to make an informed assessment as regards the evolution in the number of labour inspectors. *The Committee urges the Government to pursue its efforts to increase the number of labour inspectors, and to ensure the availability of accurate information on the number of labour inspectors in each province. Recalling that the labour inspection system shall be placed under the supervision and control of a central authority, which is expected to ensure the effective functioning of inspections in each province, the Committee once again requests the Government to provide information on any measures taken or envisaged to strengthen the authorities responsible for labour inspection in the four provinces, including any measures related to the creation of independent labour inspection authorities, or the establishment of separate labour inspection structures in the labour directorates. In this respect, the Committee requests the Government to provide an organizational chart regarding the organization of the labour inspection services in each province, and to provide information on the number of labour inspectors and labour inspections performed in each province, disaggregated by year from 2017 to the present. Lastly, the Committee requests the Government to take the necessary measures to ensure that, in accordance with Article 3(2) of the Convention, additional duties assigned to labour inspectors are not such as to interfere with the effective discharge of their primary duties, as defined in Article 3(1). The Committee accordingly requests the Government to provide further information on the amount of time spent by labour inspectors on additional functions such as the registration of trade unions, conciliation and settlement of industrial disputes, in comparison to their primary duties under Article 3(1).*

*Article 12. Free access of labour inspectors to workplaces.* In its previous comment, the Committee noted that the 2017 Sindh OSH Act restricts the conduct of inspection visits to "any reasonable time" (and only permits entry "at any time" in situations that are or may be dangerous) (section 19), while *Article 12* of the Convention provides that labour inspectors shall be empowered to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection. The Committee notes the Government's indication, in response to the Committee's request to ensure that labour inspectors may enter workplaces freely and without previous notice, that in Sindh and Punjab and all other provinces, pursuant to the Factories Act and the Mines Act, labour inspectors have this right. The Government adds that some inspections may be conducted following prior notice to ensure that records are ready and available during inspections. The Committee notes that while the 2019 Punjab OSH Act contains provisions related to inspection, it does not contain any provisions related to the power of labour inspectors to freely enter workplaces liable to inspection without prior notice.

The Committee recalls the importance of fully empowering labour inspectors to make visits without previous notice in order to guarantee effective supervision, in accordance with *Article 12* of the Convention. With reference to paragraph 266 of its 2006 General Survey, *Labour Inspection*, the Committee also recalls that restrictions placed in law or in practice on inspectors' right of entry into workplaces can only stand in the way of achieving the objectives of labour inspection as set out in the Convention. *The Committee urges the Government to take the necessary measures to ensure that labour inspectors in all provinces are empowered in law and practice to enter any workplace liable to inspection freely and without previous notice at any hour of the day or night, as provided for in Article 12(1) of the Convention. Noting that the Government has not provided the requested statistics, the Committee once again requests the Government to provide information on the number of inspections conducted with and without prior notice in the provinces of Sindh and Punjab, disaggregated by year from 2017 to the present.*

*Articles 17 and 18. Effective enforcement. Sufficiently dissuasive penalties for labour law violations and for obstructing labour inspectors in the performance of their duties.* The Committee notes that the Government refers, in reply to the Committee's previous request, to the progress made with respect to draft labour legislation providing for increased penalties in Balochistan, Khyber Pakhtunkhwa and Sindh. The Committee also notes the Government's reference to the consideration of draft legislation providing for an increase in the level of penalties for the obstruction of labour inspectors in their duties in Balochistan and Khyber Pakhtunkhwa. The Committee also notes that the Government only provides the requested information on cases concerning the obstruction of labour inspectors for the province of Khyber Pakhtunkhwa, where the Government indicates that no such cases have been observed. *The Committee requests the Government to continue to provide information in relation to each of the provinces on the number of violations detected, the number of such violations which resulted in prosecution, and subsequent convictions, and both the number and amount of the fines imposed. The Committee also requests the Government to continue to provide information on the progress made with respect to increasing the level of fines and other penalties for labour law violations and for the obstruction of labour inspectors in their duties in each of the provinces, and to provide a copy of the relevant legislation, once adopted. Lastly, the Committee urges the Government to provide information on cases relating to the obstruction of labour inspectors in their duties, in relation to each of the provinces, including the specific number of instances of obstruction, the number of prosecutions undertaken, their outcome and the specific penalties applied (including the amount of fines imposed).*

*Articles 20 and 21. Publication of an annual inspection report.* The Committee welcomes the 2017 annual report on the work of the labour inspection services communicated to the Office within the time limits prescribed in *Article 20*, containing information on all the subjects listed in *Article 21* for the four provinces and the Islamabad Capital Territory. In this respect, the Committee also notes the Government's reference to the project of a centralized database in Khyber Pakhtunkhwa, which would contain data about workplaces, the number of workers employed therein, as well as compliance with labour legislation. *Welcoming this positive development, the Committee trusts that the Government will continue to regularly publish and communicate to the ILO the annual labour inspection reports. The Committee requests the Government to continue to provide information on any measures undertaken in each of the provinces for the collection of labour inspection data.* Further, the Committee draws the Government's attention in this regard to the guidance provided in



# Pakistan

Paragraph 9 of the Labour Inspection Recommendation, 1947 (No. 81) concerning the type of information that should be included in the annual labour inspection reports.

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

*[The Government is asked to reply in full to the present comments in 2020.]*

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

### Observation 2019

*Articles 1(a) and (e) of the Convention. Penalties involving compulsory labour as a punishment for expressing political views and as a means of religious discrimination.* In its previous comments, the Committee observed that sections 10–13 of the Security of Pakistan Act 1952; sections 5, 26, 28 and 30 of the Press, Newspaper, News Agencies and Books Registration Ordinance 2002; section 32(2) and (3) of the Electronic Media Regulatory Authority Ordinance 2002; and sections 8 and 9 of the Anti-Terrorism Act 1997, provided for restrictions on the expression of political views and provided for penalties of imprisonment involving compulsory labour in cases of violations. The Committee also referred to sections 298B(1) and (2) and 298C of the Penal Code, inserted by the Anti-Islamic Activities of Qadiani Group, Lahori Group and Ahmadis (Prohibition and Punishment) Ordinance, No. XX of 1984, under which any person of these groups who uses Islamic epithets, nomenclature and titles is punishable with penalties of imprisonment (which may involve compulsory labour) for a term of up to three years. In this regard, the Committee noted the Government's statement that, the Ministry of Overseas Pakistanis and Human Resources Development submitted a proposal to the Ministry of Law and Justice to consider bringing any breach of the civil and social rights and liberties beyond the purview of criminal punishment; to limit penalties for such breaches to fines or other sanctions that does not involve compulsory labour; and to confer a special status to prisoners convicted of political offences. The Committee therefore requested the Government to continue its efforts to bring the above-mentioned laws into conformity with the Convention in the near future, and requested the Government to provide information on any progress made in this regard.

The Committee notes that the Government's report does not contain any information on this matter. *The Committee therefore urges the Government to take the necessary measures to amend the above-mentioned provisions, either by repealing them, by limiting their scope to acts of violence or incitement to violence, or by replacing sanctions involving compulsory labour with other kinds of sanctions (e.g. fines), in order to ensure that no form of compulsory labour (including compulsory prison labour) may be imposed on persons who, without using or advocating violence, express certain political views or oppositions to the established political, social or economic system. It also requests the Government to provide information on any progress made in this regard.*

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

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

### Observation 2019

*Article 2(1) of the Convention. Minimum age for admission to employment or work.* The Committee previously noted the Government's statement that, following the 18th Constitutional Amendment, the power to legislate on labour matters had been transferred to the provinces. Accordingly, it noted that the Khyber Pakhtunkhwa Prohibition of Employment of Children Act, 2015 (KPK Act 2015) and the Punjab Restriction on Employment of Children Ordinance, 2016 (Punjab Ordinance 2016) contained provisions specifying a minimum age of 14 and 15 years for admission to employment or work, respectively. Noting that the Islamabad Capital Territory (ICT), as well as Balochistan and Sindh provinces had also drafted legislation containing similar provisions, the Committee requested the Government to take the necessary measures to ensure the adoption of the draft laws in the near future.

The Committee notes with *interest* the Government's information in its report that the Sindh Prohibition of Employment of Children Act which was adopted in 2017 establishes a minimum age of 14 years for admission to employment or work (section 3(1)). The Government also indicates that the Balochistan Employment of Children (Prohibition and Regulation) Bill, 2019 is under the process of being presented to the Cabinet while the ICT administration is making efforts to revise the provisions of the Employment of Children Act, 1991 with the ILO's support. *The Committee expresses the firm hope that the Government will take the necessary measures to ensure that the Balochistan Employment of Children (Prohibition and Regulation) Bill, 2019 and the revised Employment of Children Act, 1991 of ICT which establishes a minimum age of 14 years for admission to employment or work will be adopted without delay. It requests the Government to provide information on any progress made in this regard.*

*Article 3(1) and (2). Hazardous work and determination of types of hazardous work.* In its previous comments the Committee noted that the KPK Act 2015 and the Punjab Ordinance 2016 provided for two lists of types of hazardous work prohibited to young persons under 18 years of age. It noted that the draft laws from ICT, Balochistan and Sindh also prohibit hazardous work for children below 18 years of age. The Committee requested the Government to take the necessary measures to ensure that the draft laws prohibiting the employment of persons under 18 years of age in hazardous types of work in ICT, Balochistan and Sindh provinces are adopted in the near future, after consultation with the organizations of employers and workers concerned.

The Committee notes with *satisfaction* that section 3(2) of the Sindh Prohibition of Employment of Children Act 2017, prohibits the employment of adolescents in 38 hazardous occupations and activities listed in its schedule. The Committee further notes the Government's indication that the Balochistan Employment of Children (Prohibition and Regulation) Bill, 2019 has also updated the list of hazardous occupations and processes prohibited to young persons and the ICT administration is in the process of adopting laws prohibiting hazardous types of work by young persons under the age of 18 years. *The Committee once again requests the Government to take the necessary measures to ensure that the Balochistan Employment of Children (Prohibition and Regulation) Bill of 2019 and the draft laws of ICT which contain provisions prohibiting the employment of young persons under the age of 18 years in hazardous types of work and occupations are adopted in the near future. It requests the Government to provide information on any progress made in this regard.*

*Article 9(1). Penalties and labour inspectorate.* The Committee previously noted that the enforcement of child labour legislation was weak due to the lack of inspectors assigned to child labour, lack of training and resources, and corruption, and that the penalties imposed were often too minor to act as a deterrent. In this regard, the Committee noted the Government's information that the new laws in Khyber Pakhtunkhwa (KPK) and Punjab provinces on the prohibition of employment of children as well as the Punjab Prohibition of Child Labour at Brick Kilns Act 2016 increased the fines for the violation of their provisions. It further noted the Government's information that reforms of the labour inspection system was being carried out under the Strengthening Labour Inspection System Programme in Pakistan (SLISP) with the support from the ILO country office. The Committee requested the Government to continue its efforts to strengthen the capacity of the labour inspectorate, and to continue providing information on the number and nature of violations relating to the employment of children detected by the labour inspectorate.

The Committee notes the observations made by the Pakistan Workers Federation (PWF) in October 2017 that the incidence of child labour has increased even in the formal sector due to the abolition of the labour inspection system, the imposition of restrictions on inspections or due to the inspections being conditioned on the employer's permission.

The Committee notes the Government's information that the Balochistan Employment of Children (Prohibition and Regulation) Bill, 2019 and the ICT draft



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laws on child labour have increased the maximum fines for violations of the child labour provisions. It also notes the Government's information regarding the application of the KPK Act of 2015 that, in 2017, 3,367 inspections were conducted, 23 convictions were handed out, out of 36 prosecutions, involving 21,921 Pakistani rupees (PKR) in fines (approximately US\$142); while in 2018, 8,367 inspections were conducted, and 95 convictions were handed out, out of 213 prosecutions, involving PKR134,000 in fines (approximately \$863). The Committee observes that the fines imposed are very low and do not appear to be sufficiently effective and dissuasive.

The Committee further notes from the Government's report under the Labour Inspection Convention, 1947 (No. 81) on the various measures taken within the framework of SLISP to strengthen and improve the capacity of the provincial labour inspectors. According to this information, trainings were provided: to 121 labour inspectors in Punjab on effective monitoring; to 29 labour inspectors in Sindh on risk assessment and accident investigation; and to 40 labour inspectors in Sindh on occupational health and safety in the construction sector. Moreover, a labour inspection profile has been developed and will be finalized by the end of 2019. The Government also indicates that efforts are being made by the provincial governments to increase the annual budget for labour inspection services and for material resources and transport and travel allowances for labour inspectors. ***The Committee requests the Government to continue its efforts to strengthen the capacity of the labour inspectorate, and to continue providing information on the number and nature of violations detected and penalties imposed relating to the employment of children. It also requests the Government to continue to strengthen its measures to ensure that persons who violate the above-mentioned laws are prosecuted and that sufficiently effective and dissuasive penalties are imposed.***

*Application of the Convention in practice.* The Committee previously noted the Government's indication that, with the assistance of UNICEF, the governments of Punjab, Sindh, KPK and Balochistan had initiated measures to carry out child labour surveys in their respective provinces. The Committee also noted from the report *Understanding Children's Work in Pakistan: An Insight into Child Labour Data (2010–15) and Legal Framework* that the number of children of 10–17 years of age engaged in child labour had decreased from 4.04 million in 2010–11 to 3.7 million in 2014–15, of which 2.067 million (55 per cent) were in the 10–14 years age group. The Committee urged the Government to strengthen its efforts to prevent and eliminate child labour, and to provide the results of the child labour surveys at the provincial levels once available.

The Committee notes the observations made by the PWF that in Pakistan no dedicated child labour survey has been carried out since 1996. However, all reliable evidence indicates that the incidence of child labour, though showing a decline in recent years, is still considerably high. Child labour is rampant in the agricultural sector, factories, textile, garments, carpet and industrial units, brick kilns, hotels and restaurants, auto workshops and in mines and quarries.

The Committee notes the Government's information that the government of KPK has paid special attention to prevent and eliminate child labour from the province. An exclusive unit on child labour has been established with the Directorate of Labour. It also notes the Government's statement that regular inspections at industrial establishments have gradually led to the complete elimination of child labour from this sector and efforts are being continued to do likewise in the commercial establishments. Furthermore, the Khyber Pakhtunkhwa Child Labour Policy 2018 and the KPK Act of 2015 are a milestone to eliminate child labour from the province. The Government also indicates that the implementation of the Sindh Labour Policy of 2017 and the new laws on child labour will result in the elimination of child labour in the province. The Government further indicates that the child labour survey is ongoing in the provinces of KPK, Sindh and ICT while the project is in the pipeline in Balochistan. The Committee finally notes the Government's statement in its report under the Worst Forms of Child Labour Convention, 1999 (No. 182), that a comprehensive system is being formulated to eliminate child labour from the country through awareness-raising programmes in the society and the reshaping of the political, economic and social systems of the country and by taking such measures that make child labour a crime.

The Committee notes that according to the Punjab Multiple Indicator Cluster Survey (MICS) findings Report, 2017–18, 13.4 per cent of children aged between 5 and 17 years are engaged in child labour with 10.3 per cent of them involved in hazardous work. Furthermore, the MICS report of 2016–17 of the KPK indicates that over 14 per cent of children of 5–17 years are involved in child labour, of which 12.3 per cent are working in hazardous conditions. The Committee further notes that according to the UNICEF report on the Situation Analysis of Children in Pakistan, 2017, there is a high prevalence of child labour in Pakistan coupled with low rates of school participation. The persistence of child labour has multi layered roots such as poverty, lack of decent work for adults, need for strengthened social protection and the lack of a system that can ensure that all children attend school rather than engaging in economic activities. The Committee finally notes that the Committee on Economic, Social and Cultural Rights, in its concluding observations of July 2017, expressed concern that over 2 million children aged between 10 and 14 years are working and that 28 per cent of them are engaged in hazardous work, including in agriculture, brick kilns, coal mining, on the streets and in domestic settings (E/C.12/PAK/CO/1, paragraph 63). While taking due note of the measures taken by the Government, the Committee must express its ***deep concern*** at the significant number of children under the minimum age who are engaged in child labour, including in hazardous work. ***The Committee therefore urges the Government to take the necessary measures to ensure the progressive elimination of child labour, including through continued cooperation with the ILO, and to provide information on the results achieved. The Committee also once again requests the Government to provide the results of the child labour surveys at the provincial levels once available.***

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

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

### ***Observation 2019***

*Articles 3(a) and 5 of the Convention. Debt bondage and monitoring mechanisms.* The Committee previously noted that the Bonded Labour System (Abolition) Act (BLSA) 1992 abolished bonded labour and that district vigilance committees (DVCs) were constituted to monitor the implementation of the BLSA. It noted that the BLSA was applicable in Islamabad Capital Territory (ICT), Balochistan and Punjab, while Khyber Pakhtunkhwa (KPK) and Sindh provinces enacted provincial legislation on bonded labour (KPK Bonded Labour System Abolition Act 2015 and Sindh Bonded Labour System Abolition Act 2015). The Committee requested the Government to continue its efforts to eliminate child debt bondage and to strengthen the capacity of DVCs and law enforcement officials responsible for the monitoring of bonded labour.

The Committee notes the Government's information in its report that the BLSA was adapted in the Punjab province with certain amendments through the Punjab Bonded Labour System (Abolition) Amendment Act of 2018 which primarily aims at strengthening the ongoing system of inspections and reporting. The Government also indicates that the Balochistan Bonded Labour System (Abolition) Bill 2019 is awaiting approval from the Cabinet. The Committee further notes the Government's information that the DVCs have been revitalized in all the 36 districts of Punjab and are working vigilantly to eradicate child bonded labour under the district administration, particularly in brick kilns and workshops. The provinces of Sindh, KPK and Balochistan are in the process of establishing DVCs. Provincial child and bonded labour units have been established in Punjab and KPK while Sindh, Balochistan and ICT are making efforts in this respect. The Government also indicates that the Sindh administration has registered and brought 740 brick kilns all over the province within the ambit of various labour laws, including the Sindh Prohibition of Employment of Children Act, 2015, in order to combat the menace of bonded labour. The Committee further notes the Government's statement that the provinces are making efforts to strengthen institutional mechanisms for inspection and improvement in enforcement of labour laws on child and bonded labour, extension of coverage of such labour laws to the uncovered sectors and capacity development of inspection staff.

The Committee notes, however, from the National Commission for Human Rights Pakistan report entitled *Towards Abolishing Bonded Labour in Pakistan, 2018* that over 1.3 million persons, including men, women and children in the brick kiln sector in Pakistan are working under conditions of debt

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bondage. This report further indicates that despite efforts by the Government and civil society, Pakistan remains a country with a large number of its workforce trapped in the systemic cycle of bondage. *The Committee therefore urges the Government to intensify its efforts to eliminate child debt bondage, including through the effective implementation of the laws abolishing bonded labour and by establishing DVCs in all the provinces and strengthening their capacity as well as the capacity of the law enforcement officials responsible for the monitoring of child bonded labour. The Committee requests the Government to continue to provide information on the measures taken in this regard and on the results achieved, including the number of child bonded labourers identified by the DVCs and other law enforcement officials, the number of violations reported, investigations conducted, prosecutions, convictions and penal sanctions imposed. The Committee finally requests the Government to take the necessary measures to ensure that the Balochistan Bonded Labour System (Abolition) Bill 2019 is adopted in the near future.*

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

*Article 7(2). Effective and time-bound measures. Clauses (a) and (e). Preventing the engagement of children in the worst forms of child labour. Access to free basic education and the special situation of girls.* The Committee previously noted that the United Nations Committee on the Rights of the Child (CRC), in its concluding observations of 11 July 2016, expressed concern at the large number of children (47.3 per cent of all children aged 5 to 16 years) who were not enrolled in formal education, of which the majority had never attended school and at the high dropout rate for girls, 50 per cent in Balochistan and KPK and 77 per cent in the Federal Administered Tribal Areas (CRC/C/PAK/CO/5, paragraph 61). The Committee urged the Government to redouble its efforts to improve access to free basic education for all children, taking into account the special situation of girls.

The Committee notes the Government's information that measures are being implemented to improve the enrolment of children in education, including the provision of monetary incentives through *Khidmat* ATM cards for vulnerable children and children involved in the worst forms of child labour. According to this scheme, 2,000 Pakistani rupees (PKR) shall be paid to the family while enrolling a child and thereafter PKR1,000 per month to each child enrolled after verification of their attendance at school. The Government indicates that more than 90,000 identified children working in brick kilns have benefited from this scheme. The Committee also notes the Government's indication that the school enrolment rates have currently reached 50.6 million compared to 48 million during 2016–17, an increase by 5.3 per cent while the gender disparity has also narrowed. The Committee notes from the UNICEF *2018 Annual Report, Pakistan* that the provincial governments have been engaged in developing key policies with UNICEF such as the Punjab Non-Formal Education (NFE) Policy and the Sindh NFE Policy to enrol 600,000 out-of-school children in school in five years and the KPK NFE policy which will be endorsed shortly. These policies ensure that children excluded from education have opportunities to learn and develop skills through alternative learning pathways (ALP). In 2018, 550 ALP centres in all four provinces received direct UNICEF support, reaching 17,500 children (44 per cent girls). Moreover, UNICEF supported 2,784 early childhood education (ECE) centres across the four provinces enabling 99,400 children (58 per cent girls) to acquire ECE. The Committee, however, notes from the UNICEF report that over 5 million children are out of school, 60 per cent of whom are girls, while the number increases drastically after primary level with 17.7 million adolescents aged 10–16 years, of whom 51 per cent are girls, who are outside formal education. The Committee further notes that according to UNESCO statistics, the net enrolment rate in primary education in 2018 was 67.7 per cent (61.6 per cent female and 73.37 per cent male) and at the secondary level was 38.53 per cent (36.38 per cent female and 40.51 per cent male). While noting the measures taken by the Government, the Committee must express its *deep concern* at the low enrolment rates at the primary and secondary education levels and at the high number of out-of-school children. *Considering that education is key in preventing the engagement of children in the worst forms of child labour, the Committee urges the Government to continue its efforts to improve access to free basic education for all children, taking into account the special situation of girls. The Committee requests the Government to continue to provide information on the concrete measures taken in this regard, and to provide statistical information on the results achieved, particularly with regard to increasing school enrolment rates and reducing school drop-out rates and the number of out-of-school children. To the extent possible, this information should be disaggregated by age and gender.*

*Clause (d). Identifying and reaching out to children at special risk. Street children.* The Committee previously noted the increasing number of street children and the lack of a systematic and comprehensive strategy to protect them. It also noted the establishment of centres for the rehabilitation of street children and other vulnerable groups in the provinces of Punjab, Sindh and KPK. It further noted the Government's information that the KPK Government had established a special centre for street children which provides street children with education, health, recreation, sports, boarding, food, career and psychological counselling, and other necessary facilities. However, the Committee noted, from the concluding observations of the CRC of 11 July 2016, that children living or working on the streets, or whose parents were in conflict with the law, were often dealt with by the police rather than trained staff in child protection centres (CRC/C/PAK/CO/5, paragraph 73). The Committee requested the Government to strengthen its efforts to protect street children and to provide information on the measures taken in this regard.

The Committee notes an absence of information in the Government's report on this issue. The Committee observes that according to information available in a 2019 report of the United Nations, entitled *Pakistan's street children*, somewhere between 1.2 and 1.5 million children are thought to be on the streets of Pakistan's major cities. These children, who often have little or no contact with their families, form one of the most vulnerable strata of society and are denied basic rights such as access to shelter, education and healthcare. These children are highly exposed to the risk of being drawn into abusive situations including engagement in child labour and subjection to sexual exploitation, trafficking and arbitrary arrest and detention. *Recalling that street children are particularly vulnerable to the worst forms of child labour, the Committee urges the Government to take effective and time-bound measures to protect and withdraw these children from engaging in the worst forms of child labour and provide for their rehabilitation and social integration. It requests the Government to provide information on the specific measures undertaken and the results achieved in this regard, particularly the number of street children benefiting from shelter and other rehabilitative services.*

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 2019**

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

*Legislative matters.* In its previous comments, the Committee had noted the Government's indication that the new Industrial Relations Bill (IRB 2014) was undergoing a vetting process at the Government Executive Committee and the Central Agency and Consultative Council to harmonize it with other relevant legislation and that the revised Bill should be presented to Cabinet before November 2016 or early 2017 and consultations on the matter should be held in the national Tripartite Consultative Council. *Noting that the last information sent by the Government through an anticipated report dates back to 5 January 2017 and that its 2018 report was not received, the Committee hopes that the Government will provide in its next report information on the outcome of these consultations and whether the IRB 2014 has been enacted.*

*Article 1 of the Convention. Adequate protection against acts of anti-union discrimination.* The Committee had previously requested the Government to provide information on the measures taken to ensure effective implementation of the prohibition of anti-union discrimination in practice and to provide statistics on the number of anti-union discrimination complaints brought before the competent authorities, their follow-up, sanctions and remedies imposed. *Noting that the Government did not provide specific information in this regard, the Committee reiterates its previous request.*

*Article 4. Promotion of collective bargaining. Power of the Minister to assess collective agreements on the grounds of public interest.* The Committee had previously requested the Government to take the necessary measures to bring section 50 of the Industrial Relations Bill (2011) into conformity with the principle that the approval of a collective agreement may only be refused if it has a procedural flaw or does not conform to the minimum standards laid down by general labour legislation. While observing once again that the Government does not provide a copy of the Bill, the Committee takes note of the Government's indication that section 50 of the IRB 2014 has been amended and that under the revised version the Attorney General is not entitled to appeal against the making of an award on the grounds of public interest.

*Compulsory arbitration in cases where conciliation between the parties has failed.* While recalling that it had noted the conformity of section 78 of the IRB 2014, as described by the Government, with the Convention, the Committee notes that the Government has still not clarified the content of section 79 of the IRB 2014.

*The Committee trusts once again that the Government, taking into account the Committee's comments, will ensure the full conformity of any revised legislation with the Convention. In this regard, the Committee encourages the Government to avail itself of the technical assistance of the Office, if it so wishes and requests it to provide detailed information on the process of revision of the Industrial Relations Bill.*

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

**C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111)****Observation 2019**

The Committee notes with *deep concern* that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2020, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

*Article 1(1)(a) of the Convention. Prohibited grounds of discrimination. Legislation.* Referring to its previous comments regarding legal protection against discrimination on the basis of the grounds set out in *Article 1(1)(a)* of the Convention, the Committee welcomes the Government's indication in its report that section 8 of the final draft of the Industrial Relations Bill prohibits direct and indirect discrimination on the grounds of race, colour, sex, religion, pregnancy, political opinion, ethnic origin, national extraction or social origin, against an employee or applicant for employment or in any employment policy or practice. The Government adds that further consultations were held between the National Tripartite Consultative Council (NTCC) and the State Solicitor's Office in order to make final amendments to the Bill which was anticipated to be enacted in 2015. The Committee notes that the Government does not provide information on progress made concerning the review of the Employment Act, 1978, including the revision of sections 97–100 which prohibit only sex-based discrimination against women. It notes that the Decent Work Country Programme for 2013–15, which has been extended until 2017, has set as a priority the completion of the Industrial Relations Bill, and revisions of the Employment Act through the delivery of a new Employment Relations Bill. *While noting that none of these Bills have been enacted to date, the Committee trusts that the Industrial Relations Bill will be adopted in the near future, and requests the Government to provide information on progress made in this regard. It also requests the Government to provide information on progress made concerning the review of the Employment Act 1978, and in particular sections 97–100, in collaboration with workers' and employers' organizations, with a view to aligning the provisions on discrimination with the Industrial Relations Bill and to bring them into conformity with the Convention.*

*Discrimination on the ground of sex in the public service.* For over 15 years, the Committee has been referring to the discriminatory impact of section 36(2)(c)(iv) of the Public Services (Management) Act 1995, which allows calls for candidates to specify that "only males or females will be appointed, promoted or transferred in particular proportions", and section 20.64 of General Order No. 20 as well as section 137 of the Teaching Services Act 1988, which provide that a female official or female teacher is only entitled to certain allowances for their husband and children if she is the breadwinner. A female officer or female teacher is considered to be the breadwinner if she is single or divorced, or if her spouse is medically infirm, a student or certified unemployed. The Committee notes with *deep regret* that despite the adoption of a new Public Services (Management) Act in 2014, which repealed the Act of 1995, section 36(2)(c)(iv) referred to above has been maintained. It however notes that the National Public Service Policy on Gender Equity and Social Inclusion (GESI) adopted in 2013, and its action plan, set as priority action the revision of employment conditions in order to ensure equal access and employment conditions for all individuals regardless of gender. *Noting the discriminatory impact of section 36(2)(c)(iv) of the Public Services (Management) Act 2014, section 20.64 of General Order No. 20 and section 137 of the Teaching Services Act 1988, the Committee urges the Government to take expeditious steps to review and amend these laws in order to bring it in line with the requirements of the Convention. It also requests the Government to provide information on any measures taken as a result of the GESI policy and action plan and any progress made to ensure equality of opportunity and treatment between men and women in the public service.*

*Discrimination against certain ethnic groups.* Referring to its previous comments concerning the allegations made by the International Trade Union Confederation (ITUC) on the increased violence against Asian workers and entrepreneurs, who were blamed for "taking away employment opportunities", the Committee notes that the Government does not provide any information in this regard. *The Committee once again requests the Government to investigate the allegations of discrimination against Asian workers and entrepreneurs including incidents of violence and to provide information on the results of such investigations. It also requests the Government to provide information on concrete measures taken to ensure protection in the context of employment and occupation, against discrimination on the grounds of race, colour, or national extraction, as well as on any measures taken or envisaged to promote equality of opportunity and treatment of members of different ethnic groups in employment and occupation.*

*Article 2. National equality policy.* The Committee notes that the Government still does not provide information on a national policy specifically addressing discrimination on all the grounds enumerated in the Convention. With regard to discrimination based on sex, the Committee notes that some sections of the National Public Service Policy on Gender Equity and Social Inclusion of 2013 and the National Policy for Women and Gender Equality for 2011–15 seem to



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address the issue of gender equality in employment and occupation. The Committee recalls that, even though the relative importance of the problems relating to each of the grounds may differ for each country, when reviewing the situation and deciding on the measures to be taken, it is essential that attention be given to all the grounds of discrimination set out in the Convention in implementing the national equality policy, which presupposes the adoption of a combination of legislative and administrative measures, collective agreements, public policies, affirmative action measures, dispute resolution and enforcement mechanisms, specialized bodies, practical programmes and awareness raising (2012 General Survey on the fundamental Conventions, paragraphs 848–849). ***The Committee again urges the Government to provide full particulars on the specific measures taken or envisaged, in collaboration with workers' and employers' organizations, to implement a national policy aimed at ensuring and promoting equality of opportunity and treatment in employment and occupation on all the grounds enumerated in 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 action in the near future.***

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

### Observation 2019

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2020, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

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

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

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

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

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

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

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

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

***Article 3(3). Admission to types of hazardous work from the age of 16 years.*** The Committee previously noted that the conditions of work for young people



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

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

The Committee once again notes the Government's information that this issue will be addressed within the review of the Employment Act. *The Committee expresses the firm hope that the Government will take the necessary measures, without delay, to ensure that employers are obliged to keep register of all persons below the age of 18 years who work for them and to provide information with regard to the progress made in ensuring that the Employment Act and the Minimum Age (Sea) Act are in conformity with Article 9(3) of the Convention.*

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

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

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

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

### Observation 2019

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

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

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

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

### Observation 2019

*Article 3 of the Convention. Worst forms of child labour. Clause (a). Sale and trafficking of children.* The Committee previously noted that the Criminal Code only provided protection to girls trafficked for the purpose of sexual exploitation and that there appeared to be no provisions protecting boys or prohibiting the sale and trafficking of children for the purpose of labour exploitation. In this regard, it noted the Government's indication that it was addressing this issue through the adoption of the People Smuggling and Trafficking in Persons Bill which would amend the Criminal Code to include a provision prohibiting human trafficking, including children under the age of 18 years, for labour and sexual exploitation. The Committee, therefore, urged the Government to take the necessary measures to ensure the adoption of the People Smuggling and Trafficking in Persons Bill, without delay.

The Committee notes with *satisfaction* that the People Smuggling and Trafficking in Persons Bill, which contains a specific provision prohibiting the sale and trafficking of all children for labour and sexual exploitation, has been enacted as the Criminal Code (Amendment) Act of 2013. The Committee notes that section 208C(2) of the Criminal Code (Amendment) Act of 2013 makes it an offence to recruit, transport, transfer, conceal, harbour or receive any person under the age of 18 years with the intention of subjecting them to exploitation. The penalties include imprisonment for a term not exceeding 25 years. The term "exploitation" as defined under section 208E includes prostitution or other forms of sexual exploitation, forced labour or services, and slavery and servitude. The Committee notes that according to a report entitled *Transnational Organized Crime in the Pacific: A Threat assessment, 2016* by the United Nations Office on Drugs and Crime (UNODC report), Papua New Guinea is a key source and destination country for men, women and children trafficked for forced labour and sexual exploitation. *The Committee requests the Government to take the necessary measures to ensure the effective implementation of the Criminal Code (Amendment) Act, in particular to ensure that thorough investigations and prosecutions are carried out for persons who engage in the trafficking of children, and that sufficiently effective and dissuasive sanctions are imposed in practice. It requests the Government to provide information on the number of investigations, prosecutions, convictions and penal sanctions applied for the offences related to the trafficking of children under 18 years of age pursuant to section 208C(2) of the Criminal Code (Amendment) Act.*

*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 national legislation does not specifically prohibit the use, procuring or offering of a child for the production and trafficking of drugs. It noted the Government's indication that the offences related to the use, procuring or offering of a child for illicit activities would be dealt with in the People Smuggling and Trafficking in Persons Bill.

The Committee notes the Government's statement that the offences related to the use, procuring or offering of a child for illicit activities are interpreted as slavery or practices similar to slavery and are severely penalized under section 208C(2) of the Criminal Code (Amendment) Act of 2013. The Committee, however, notes that section 208C(2) deals with offences related to trafficking in children and does not constitute a prohibition on the use, procuring or offering of a child for the production and trafficking of drugs. The Committee recalls that, by virtue of *Article 3(c)* of the Convention, the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs constitutes one of the worst forms of child labour and is therefore prohibited for children

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below 18 years of age. *The Committee therefore urges the Government to take the necessary measures to prohibit the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs, and sanctions envisaged. It requests the Government to provide information on any measures taken in this regard.*

*Articles 3(d) and 4(1). Hazardous work and determination of these types of work.* The Committee notes the Government's information that one of the key activities identified for implementation under the recently adopted National Action Plan to Eliminate Child Labour 2017–20 is to formulate a list of types of hazardous work prohibited to children under the age of 18 years. *With regard to the minimum age for admission to hazardous work and determination of types of hazardous 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 7(2). Effective and time-bound measures. Clause (e). Taking into account the special situation of girls.* 1. *Child victims of prostitution.* The Committee previously noted that, according to the findings of the rapid assessment conducted in Port Moresby an increasing number of girls were involved in prostitution. The most common age at which girls were engaged in prostitution was 15 years (34 per cent), while 41 per cent of the children were involved in prostitution before the age of 15 years. The survey report further indicated that girls as young as 10 years were also involved in prostitution. The Committee urged the Government to take effective and time-bound measures to provide the necessary and appropriate direct assistance to remove children, particularly girls under 18 years of age from prostitution, and provide for their rehabilitation and social integration.

The Committee notes with *regret* that the Government has not provided any information in this regard. The Committee notes from the UNODC report that children's involvement in prostitution is substantially increasing in Papua New Guinea, and an estimated 19 per cent of the country's labour market is comprised of child labourers many of whom are subject to prostitution and forced labour. The Committee once again expresses its *deep concern* at the prevalence of the prostitution of children in Papua New Guinea. *The Committee therefore urges the Government to take effective and time-bound measures to provide the necessary and appropriate direct assistance to remove children, particularly girls under 18 years of age from prostitution, and to provide for their rehabilitation and social integration. It requests the Government to provide information on the measures taken in this regard and on the results achieved.*

2. *"Adopted" children.* In its previous comments, the Committee noted the observation of the International Trade Union Confederation (ITUC) that indebted families sometimes pay off their dues by sending children – usually girls – to their lenders for domestic servitude. The ITUC indicated that "adopted" children usually worked long hours, lacked freedom of mobility or medical treatment, and did not attend school. The Committee also noted the Government's indication that the practice of "adoption" is a cultural tradition in Papua New Guinea. In this regard, the Committee noted the Government's reference to the Lukautim Pikinini Act of 2009, which provided for the protection of children with special needs. The Committee requested the Government to take immediate and effective measures to ensure, in law and in practice, that "adopted" children under 18 years of age are not exploited under conditions equivalent to bonded labour or under hazardous conditions.

The Committee notes with *regret* that the Government report contains no information on this point. The Committee notes that Lukautim Pikinini Act of 2015, which repealed the Lukautim Pikinini Act of 2009, contains provisions to protect and promote the rights and well-being of all children, including children in need of protection and children with special needs who are vulnerable and subject to exploitation. This Act establishes penalties including imprisonment and fines to any person who causes or permits a child to be employed in hazardous conditions (section 54); or abuses, ill-treats or exploits children (section 78); or unlawfully subjects a child to a social or customary practice that is harmful to a child's well-being (section 80). *The Committee urges the Government to take immediate and effective measures, including through the effective implementation of the Lukautim Pikinini Act, to ensure, that "adopted" children under 18 years of age are not exploited under conditions equivalent to bonded labour or under hazardous conditions, taking account of the special situation of girls. It requests the Government to provide information on the measures taken in this regard and on the results achieved, including the number of children who have been prevented and withdrawn from such exploitative situations.*

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

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

### Observation 2019

*Articles 1(1), 2(1) and 25 of the Convention. Trafficking in persons. Law enforcement measures and penalties.* The Committee previously requested the Government to provide information on the measures taken to strengthen the capacity of law enforcement agencies and the activities undertaken within the framework of the National Strategic Action Plan for 2012–16.

The Committee notes the Government's indication in its report that the Anti-Trafficking Task Forces all over the country have conducted a total of 136 training, capacity-building and seminars on trafficking in persons and other related topics which were attended by a total of 6,593 participants. Some 2,098 came from private sectors and non-government organizations while 4,495 were government personnel. The Government also indicates that the National Bureau of Investigation (NBI) is in the final drafting stage of the creation of the NBI Manual and Standard Operating Procedures for Trafficking in persons and online sexual exploitation of children cases. This aims to improve the efficiency of investigations and operations involving trafficking in persons and online sexual exploitation of children cases. Moreover, in 2018, the NBI conducted 32 operations nationwide causing the arrest of 67 offenders and the rescue of 620 victims, 123 of whom are minors. There were a total of 201 illegal recruitment cases, 75 (37 per cent) of which were filed in Court. The National Police has investigated a total of 300 trafficking in persons cases, which resulted in the rescue of 1,039 victims and the arrest of 498 suspects. According to the Government, the establishment of 24 Anti-Trafficking Task Forces in the country with 226 prosecutors significantly contributed to the increase in the prosecution of trafficking in persons cases. The Committee notes that in 2018, a total number of 88 persons were convicted, in comparison to 48, in 2017. The Committee notes that a 2017–21 National Strategic Action Plan Against Trafficking in Persons has been adopted. It also observes from the UNICEF 2016 Summary Report on Situation Analysis of Children in the Philippines that domestic and cross-border trafficking of women and children for sexual exploitation continues, with 1,465 victims of trafficking assisted in 2015, and sex tourism reportedly on the rise (page 24). ***Taking due note of the measures taken by the Government, the Committee requests the Government to continue to take measures to strengthen the capacity of law enforcement bodies to combat trafficking in persons and to identify victims of trafficking, and to provide statistical information on the number of legal proceedings initiated, convictions handed down and penalties imposed. The Committee also requests the Government to provide a copy of the 2017–21 National Strategic Action Plan against Trafficking in Persons, indicating the measures taken within its framework and the results achieved.***

*Complicity of law enforcement officials in trafficking activities.* The Committee notes the relevant points from the Court of Appeals Decision of 2018, in which the accused was acquitted for lack of evidence of complicity in a case of trafficking. The Committee notes that the UN Committee on Economic, Social and Cultural Rights, in its concluding observations of October 2016, expressed concern at the persistently high incidence of trafficking in women and children; the very small number of prosecutions and convictions of traffickers; the insufficient level of understanding of the issues relating to trafficking and the anti-trafficking legal framework among law enforcement officials; and the allegations of complicity of law enforcement officials in the cases related to trafficking in persons (E/C.12/PHL/CO/5–6, paragraph 41). ***The Committee requests the Government to strengthen its efforts to ensure that complicit law enforcement officials are subject to thorough investigations and prosecutions, and that appropriate and dissuasive penalties are imposed. It requests the Government to provide updated information on the number of cases registered and prosecuted, as well as the sanctions imposed.***

*Protection and assistance to victims.* The Committee notes the Government's indication that the Department of Social Workers and Development (DSWD) implements the Recovery and Reintegration Program for Trafficked Persons (RRPTP) since 2011. The RRPTP is a comprehensive programme that ensures that adequate recovery and reintegration services are provided to trafficked persons. Utilizing a multi-sectoral approach, it delivers a complete package of services that will enhance the psychosocial, social and economic needs of the victims. It also enhances the awareness, skills and capabilities of the families and the communities where the trafficked persons will eventually return. It also improves community-based systems and mechanisms that ensure the recovery of the victims, and prevents other families and community members from being victims of trafficking. In 2018, according to the DSWD, the RRPTP served and assisted a total of 2,318 identified trafficked persons, of whom 1,732 (75 per cent) are women while 611 (26 per cent) are minors. The Government also indicates that in June 2018, a Residential Care Facility for Male Victims of Trafficking in Mindanao was set up in collaboration with the Local Government Unit of Tagum City. It aims to provide services in recovery, rehabilitation and reintegration of trafficked victims. As of 2018, there were 44 residential care facilities available in the country for victims of trafficking: 24 for children; 13 for women; 1 for men; 4 for older persons; and 2 for processing centres. ***The Committee requests the Government to continue to take measures to ensure that appropriate protection and assistance is provided to victims of trafficking and to provide statistical information on the number of victims who have been identified, as well as those who have benefited from the RRPTP services.***

*Articles 1(1) and 2(1). Vulnerable situation of migrant workers with regard to the exaction of forced labour.* The Committee notes the Government's indication that, the Department of Foreign Affairs, Department of Health, Department of Labor and Employment, Department of Social Welfare and Development, Department of Interior and Local Government, Manila International Airport Authority, Philippine Overseas Employment Administration and Philippine Charity Sweepstakes Office, issued Joint Memorandum Circular No. 2017-0001 dated 16 June 2017 entitled "Integrated Policy Guidelines and Procedures in the Implementation of the Inter-Agency Medical Repatriation Program (IMRAP) for Overseas Filipinos". This programme aims to establish an integrated system and process flow in medical repatriation among appropriate government agencies and stakeholders. In addition, the Government indicates that the Philippine Overseas Employment Administration (POEA) provides overseas jobseekers with Pre-Employment Orientation Seminar (PEOS) on for example, legal modes of recruitment, the procedures and documentary requirements when applying for jobs, and the government services available to overseas job applicants and hired workers. For 2018, the POEA conducted community-based PEOS with a total of 30,517 participants, among them 9,935 males, 10,848 females and 9,736 with unspecified sex. The POEA has also entered into partnerships with 50 local government units and one non-government organization and conducted 48 anti-illegal recruitment and anti-trafficking in persons seminar nationwide, with 1,695 male participants and 1,544 female participants.

The Committee further observes that in its concluding observations, the UN Committee on the Elimination of Discrimination against Women (CEDAW) welcomed the adoption, in 2010, of the amended Migrant Workers and Overseas Filipinos Act of 1995 (Republic Act No. 10022) to protect migrant workers working in the state party. It was concerned, however, at the widespread exploitation and abuse of Filipina migrant workers working abroad, in particular as domestic workers, and the insufficient support provided to reintegrate those who return (CEDAW/C/PHL/CO/7–8, paragraph 37). ***Taking due note of the measures taken by the Government, the Committee requests it to ensure that migrant workers are fully protected from abusive practices and conditions that amount to the exaction of forced labour. The Committee also requests the Government to continue to supply information on the pre-departure services provided for migrant workers, indicating also the assistance received in case of forced labour practices.***

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

### Observation 2019

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 1 September 2019, of the International Transport Workers' Federation (ITF) received on 3 September 2019 and of Education International (EI) received on 20 September 2019, referring to matters addressed below. ***The Committee requests the Government to provide its reply thereto.***

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 108th Session, June 2019)

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The Committee notes the discussion that took place in the Conference Committee on the Application of Standards (Conference Committee) in June 2019 concerning the application of the Convention. The Committee observes that the Conference Committee called upon the Government to: (i) take effective measures to prevent violence in relation to the exercise of workers' and employers' organizations legitimate activities; (ii) immediately and effectively undertake investigations into the allegations of violence in relation to members of workers' organizations with a view to establishing the facts, determining culpability and punishing the perpetrators; (iii) operationalize the monitoring bodies, including by providing adequate resources, and provide regular information on these mechanisms and on progress on the cases assigned to them; and (iv) ensure that all workers without distinction are able to form and join organizations of their choosing in accordance with *Article 2* of the Convention. The Committee also called on the Government to accept a high-level tripartite mission before the next International Labour Conference, and to elaborate in consultation with the most representative workers' and employers' organizations, a report on progress made for the transmission to this Committee by 1 September 2019. ***While noting the Government's request to defer the high-level tripartite mission due to the thorough administrative and technical preparations that have to be undertaken in order to ensure attainment of responsive and substantive outcomes, the Committee expresses the hope that the Government will take the necessary arrangements to enable the high-level tripartite mission requested by the Conference Committee to take place before the next International Labour Conference.***

## Civil liberties and trade union rights

***2016 ITUC observations.*** The Committee notes the Government's reply to earlier observations from the ITUC, providing an update on the status of the investigations into the alleged assassination of two trade union leaders in 2016 and clarifying that the activities conducted in Compostela Valley, Mindanao were visits under the Community Support Programme of the Armed Forces of the Philippines (AFP), a peace and development effort aimed at establishing, developing and protecting conflict-resilient communities. The Committee further notes the Government's general statement that the policy and programme reforms on freedom of association and collective bargaining implemented by the Government contributed to reduced incidence of labour disputes and labour related violence since 2011 and that this decline can also be attributed to the continuous efforts towards raising awareness and strengthening the capacity of all relevant Government institutions.

***New allegations of violence and intimidation.*** The Committee notes, however, with ***deep concern*** the grave allegations of violence and intimidation of trade unionists communicated by the ITUC and EI, including: (i) assassination of 23 trade union leaders in 2018 and 2019, as well as several attempted assassinations documented by the Center for Trade Union and Human Rights (CTUHR); (ii) death threats targeting trade union leaders in the education sector in January and February 2019, as well as profiling, surveillance, harassment and red-tagging by the Philippine National Police (PNP) and AFP officials; (iii) violent dispersal of a number of workers' strikes and protests in Marilao, Bulacan in June and July 2018, resulting in serious injuries, arrests, multiple charges (later dropped) and a week-long detention; (iv) violent dispersal of a strike by workers of a fruit-exporting company in Compostela Town in Compostela Valley in October 2018 and the murder of a trade union activist; (v) assassination of nine sugar cane workers during a protest at Hacienda Nene in Sagay, Negros Occidental; and (vi) suspected arson attack of a labour leader's home during a strike in a banana-packing plant in December 2018. ***The Committee requests the Government to provide a detailed reply to these allegations.***

***Pending cases of alleged killings of trade union leaders.*** The Committee previously requested the Government to provide detailed information on the progress achieved on the prosecution and judicial investigations relating to three cases of alleged killings of trade union leaders previously reported by the ITUC. While taking due note of the update provided by the Government that the case of Rolando Pango should be reviewed by regional police for possible re-filing, that the case of Florencio "Bong" Romano has not yet been deliberated on due to the non-reactivation of the Administrative Order (AO) 35 Inter-Agency Committee (IAC) and that in the case of Victoriano Embang, a case of murder was filed and an arrest warrant issued against suspects who are at large, the Committee ***regrets*** to observe that even after numerous years, none of these cases have yet been fully concluded. ***The Committee expresses the firm hope that the investigations into the serious allegations of killings of the above trade union leaders, as well as the ongoing judicial proceedings in this regard, will be completed in the very near future with a view to shedding full light, at the earliest date, on the facts and the circumstances in which such actions occurred and, to the extent possible, determining responsibilities, punishing the perpetrators and preventing the repetition of similar events.***

***Monitoring mechanisms.*** In its previous comment, the Committee requested the Government to provide detailed information on the progress made by the Tripartite Validating Teams, the National Tripartite Industrial Peace Council Monitoring Body (NTIPC-MB) and other relevant bodies in ensuring the collection of the necessary information to bring the pending cases of violence to the courts and the outcome in this regard. The Committee notes the Government's assertion that: (i) the existing mechanisms remain steadfast in ensuring expeditious investigation, prosecution and resolution of pending cases concerning alleged harassment and assassination of labour leaders; (ii) for example, after the alleged extra-judicial killing (EJK) of a trade unionist Dennis Sequeña was endorsed by the IAC, the Department of Justice ordered the set-up of a special investigating team to conduct the investigation and case build-up; and (iii) the existing mechanisms monitor 72 cases of EJK and attempted murders and have also been mobilized to validate and gather information on the 43 cases of alleged murders of unionists and union leaders, as identified by the CTUHR and discussed at the Conference Committee. The Committee welcomes the information provided by the Government to the Conference Committee that, in the spirit of social dialogue and tripartite engagement, trade unions' and employers' representatives were enlisted as deputized labour inspectors (as of January 2019, there were 241 deputized social partners) and that 16 Regional Tripartite Monitoring Bodies (RTMBs) across the country were ready to be mobilized in case of need, bringing about an immediate response and concrete appropriate action.

The Committee observes, however, that the Government representative at the Conference Committee recognized that the mandates, structures and internal rules of the monitoring mechanisms need to be further revisited. According to the Government representative, the IAC, for instance, needed strengthening by ensuring openness and transparency on the prosecution and movement of EJK cases, adopting inclusive criteria in the screening of these cases, relatedness to the exercise of freedom of association, capacity-building on freedom of association and on the collection of physical and vital forensic evidence to reduce heavy reliance on testimonial evidence. The Committee ***regrets*** to observe that the IAC has not yet reconvened and that due to the risks and dangers involved for the members of the Tripartite Validating Teams, this initiative has not yet been put into practice. The Committee further observes the concerns raised by the ITUC and the ITF with regard to the criteria used by the IAC to determine extra-judicial killings, the lack of effective monitoring mechanisms and of resources to investigate and prosecute all complaints of EJK of trade unionists and the need to rapidly identify perpetrators of violence and bring them to justice to combat impunity.

The Committee ***regrets*** that despite a number of initiatives undertaken, there continue to be numerous allegations of violence perpetrated against trade union members for which the presumed perpetrators have not yet been identified and the guilty parties punished. It notes in this regard the Government's acknowledgment that conviction has indeed been the recurring and imposing challenge due to the amount of evidence required to convict perpetrators of a crime and that there is a need for major support on this aspect. The Committee observes that the Conference Committee also noted with concern the numerous allegations of murders of trade unionists and anti-union violence, as well as the allegations regarding the lack of investigation in relation to these allegations. ***In light of the above, the Committee requests the Government to take the necessary measures to ensure that all of the existing monitoring mechanisms can function properly and efficiently, including by allocating sufficient resources and staff, so as to contribute to effective and timely monitoring and investigation of allegations of EJK and other forms of violence against trade union leaders and members. In particular, the Committee expects that, despite the challenges faced, the Tripartite Validating Teams will be established in practice and the IAC will reconvene in the near future. The Committee requests the Government to continue to provide detailed information on the progress made by the existing monitoring mechanisms in ensuring the collection of the necessary information to bring the pending cases of violence to the courts.***

***Measures to combat impunity.*** The Committee previously requested the Government to provide detailed information on the steps taken to combat impunity,



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provide sufficient witness protection and build the capacity of the relevant State actors in the conduct of forensic investigation. The Committee welcomes the detailed information provided by the Government to the Conference Committee relating to numerous trainings, capacity-building activities, seminars and lectures conducted to enhance the knowledge and capacities of various State and non-State actors, including the police, military, prosecutors, enforcers, relevant actors in criminal investigation, local chief executives and social partners on international labour standards, the principles and application of the Convention, as well as on criminal investigation. The Committee also welcomes additional steps taken by the Government in this regard: elaboration of a workers' training manual and of an e-learning module on freedom of association as part of the Labour and Employment Education Services (LEES); call by the Department of Labour and Employment (DOLE) on the PNP and AFP to ensure the observance of the guidelines on the conduct to be observed during the exercise of workers' rights and activities; AFP and PNP commitment to integrating the Labour Code and the guidelines in their education programme; and review of the guidelines for amendment and updating. Finally, the Committee observes the Government's explanation that reliance on testimonial evidence in the prosecution of criminal cases remains indispensable and that forensic evidence is supplemental in character and in addition that programmes should be conducted, together with the ILO, to enhance the capacity of the concerned agencies in gathering and handling forensic evidence. The Government representatives also informed the Conference Committee about a strategic planning conducted in March 2019 regarding the provision of adequate assistance and protection to witnesses under the Witness Protection Programme. ***Welcoming the above initiatives and measures undertaken, the Committee encourages the Government to continue to provide regular and comprehensive training to all concerned State actors in relation to human and trade union rights, as well as on the collection of evidence and the conduct of forensic investigation, with the aim of combating impunity, increasing the investigative capacity of the concerned officials and providing sufficient witness protection. The Committee invites the Office to provide any technical assistance required in this regard.***

***Review of operational guidelines of monitoring mechanisms.*** The Committee previously requested the Government to inform it of developments with regard to the review and updating of the operational guidelines of the investigating and monitoring bodies, as part of the National Action Plan under the DOLE-ILO-EU-GSP+ Development Cooperation Project. The Government indicated to the Conference Committee that one of the outcomes of the project is the review of the existing mechanisms to address cases of violations of workers' civil liberties and trade union rights. Following the review of the operational guidelines and process structures of the NTIPC-MB, the RTMBs, the IAC and the National Monitoring Mechanisms (NMM), gaps and issues in the operationalization of these mechanisms have been identified, as well as problem areas encountered by investigative agencies, such as the PNP, the Commission on Human Rights (CHR) and the AFP Human Rights Officer. According to the Government, recommendations issued to help address the identified gaps and blockages will be taken up by the concerned agencies for consideration and possible implementation. ***Welcoming this information, the Committee trusts that the recommendations addressing the current gaps and blockages will be rapidly implemented so as to contribute to swift and efficient investigation of pending labour-related cases of EJK and other violations.***

## Legislative issues

***Labour Code.*** In its previous comments, the Committee had been noting the numerous amendment bills pending before Congress over many years and in various forms with a view to bringing the national legislation into conformity with the Convention. The Committee notes the Government's assertion that, in coordination with the social partners, it has sought to address emerging labour, economic and social concerns affecting workers' rights and exercise thereof and has achieved substantial progress in its commitments towards the promotion and protection of freedom of association rights, including a multitude of actions and reforms undertaken. On the other hand, the Committee notes that, according to the ITUC, there appears to be an absence of good faith by the Government to adopt the necessary measures that would bring the legislation into compliance with the Convention. The Committee further observes that the Conference Committee regretted that the reforms introduced to address some of the issues were not adopted and urged the Government to bring the law into compliance with the Convention. The Committee on Freedom of Association also trusted that the Government would make serious efforts to bring the Labour Code into conformity with the principles of freedom of association and referred these legislative aspects to this Committee (see 391st Report, October 2019, Case No. 2745, paragraph 50). ***The Committee expects that the Government will make serious efforts to align the Labour Code and other pieces of national legislation with the Convention on the following matters.***

***Article 2 of the Convention. Right of workers, without distinction whatsoever, to establish and join organizations of their own choosing, without previous authorization. Aliens.*** In its previous comments, the Committee had requested the Government to provide information on the progress made in relation to amendments to sections 284 and 287(b) of the Labour Code so as to grant the right to organize to all workers residing in the Philippines. The Committee notes, from the information provided by the Government to the Conference Committee that House Bill No. 4448 (extending the right to self-organization to aliens in the Philippines and withdrawing the prohibition of foreign trade union organizations to engage in trade union activities) and House Bill No. 1354 (allowing foreign individuals and foreign organizations to engage in trade union activities) are expected to be refiled in the 18th Congress. ***The Committee regrets the absence of any progress in this regard and expects that the necessary amendments will be adopted in the near future and that they will ensure that any individuals residing in the country, whether or not they have a residence or a working permit, can benefit from the trade union rights provided by the Convention. The Committee requests the Government once again to provide information on progress made in this respect and to transmit copies of the amending legislation once adopted.***

***Other categories of workers excluded from the guarantees of the Convention.*** The Committee had previously pointed to the lack of trade union rights for certain categories of workers, including workers in managerial positions or with access to confidential information, firefighters, prison guards and other public sector workers, as well as temporary or outsourced workers and workers without employment contract (sections 253 and 255 of the Labour Code, Rule II Section 2 of the Amended Rules and Regulations Governing the Exercise of the Right to Government Employees to Organize, 2004). The Committee notes the Government's indication that for the purposes of exercising the right to organize, the first parameter to take into account is whether or not a worker is covered by an employer–employee relationship. It states that under section 253 of the Labour Code, only employees may join trade unions for purposes of collective bargaining, whereas ambulant, intermittent, itinerant, self-employed and rural workers, as well as those without any definite employer may only form labour organizations for their mutual aid and protection. The Committee understands from this information that several categories of workers continue to be excluded from the full guarantees set out in the Convention and that no legislative changes have yet been made in this regard. It also observes the concerns expressed by the ITUC in this regard. In its previous comment, the Committee also noted the Government's reference to House Bills Nos 4553 and 5477 and Senate Bill No. 641 (seeking to address concerns regarding Government employees' right to self-organization) and House Bill No. 8767 (filed in December 2018 and aimed at addressing the gaps in public sector labour relations, particularly on the protection of the right to organize). The Committee observes, from the information provided by the Government to the Conference Committee, that the above Bills are expected to be refiled in the 18th Congress. ***Recalling that the legislative reform addressing the right to organize of the above-mentioned categories of workers has been pending for a number of years, the Committee firmly expects any legislative amendments currently pending on the issue to be adopted without delay so as to ensure that all workers, other than the armed forces and the police, including those in managerial positions or with access to confidential information, firefighters, prison guards and other public sector workers, as well as temporary or outsourced workers and workers without employment contracts are able to form and join the organizations of their own choosing to defend their occupational interests, and requests the Government to transmit copies of the amending legislation once adopted. The Committee reminds the Government that it can avail itself of the technical assistance of the Office, if it so desires.***

***Registration requirements.*** The Committee had previously referred to the need to amend section 240(c) of the Labour Code so as to lower the excessive minimum membership requirement for forming an independent union (20 per cent of all the employees in the bargaining unit where the union seeks to operate). The Committee notes, from the information provided by the Government to the Conference Committee that House Bill No. 1355 (seeking to lower the minimum membership requirement for registration of an independent union from 20 to 10 per cent and to develop an online system for trade union registration), House Bill

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No. 4446 (promoting “employee free choice” by making it easier for workers to join and establish unions through “majority sign-up”) and Senate Bill No. 1169 (seeking to reduce the minimum membership requirement from 20 to 5 per cent and to institutionalize online registration) are expected to be refiled in the 18th Congress. *Observing that the Government has been referring to amending legislation for several years now, the Committee firmly expects that the necessary amendments will be adopted in the very near future, reducing the minimum membership requirement to a reasonable level so that the establishment of organizations is not hindered. The Committee requests the Government to provide information on progress made in this respect and to transmit copies of the amending legislation once adopted.*

*Article 3. Right of workers’ organizations to organize their activities and to formulate their programmes without interference by the public authorities. Essential services.* The Committee previously requested the Government to provide information on the legislative progress made to ensure that Government intervention leading to compulsory arbitration is limited to essential services in the strict sense of the term (amendments to section 278(g) of the Labour Code). The Committee notes from the information provided to the Conference Committee that the previously mentioned House Bills Nos 175, 711, 1908 and 4447 and Senate Bill No. 1221 (aimed at rationalizing Government intervention in labour disputes by adopting the essential services criteria in the exercise of the assumption of jurisdiction power of the Secretary of Labour and Employment) are expected to be refiled in the 18th Congress and observes that no significant progress has thus been achieved in this regard. The Committee also notes that the Government simply reiterates information provided previously on the issuance in 2013 of Order No. 40-H-13 (an implementing guideline for section 278(g) of the Labour Code), which harmonizes the list of industries indispensable to the national interest with the essential services criteria of the Convention in the exercise of assumptive power of the Secretary of Labour and Employment over labour disputes, strikes and lockouts, and which should help facilitate the passage in Congress of the respective bill. The Committee recalls that the industries referred to in Order No. 40-H-13 include the hospital sector, electric power industry, water supply services (except small water supply services, such as bottling and refilling stations) and air traffic control; and that other industries may be included upon recommendation of the NTIPC. It observes in this regard that, according to the ITUC, the Government still retains an expansive instead of a strict and limited definition of essential services. *Observing that the Committee on Freedom of Association has also previously addressed this issue (see 390th Report, June 2019, Case No. 2716, paragraph 78 and 391st Report, October 2019, Case No. 2745, paragraph 51) and recalling that the Government has been referring to legislative amendments to section 278(g) for numerous years, the Committee expects that these legislative amendments will be adopted in the very near future and that they will ensure that Government intervention leading to compulsory arbitration is limited to essential services in the strict sense of the term. The Committee requests the Government to report progress in this regard and to transmit copies of the amending legislation once adopted.*

*Penal sanctions for participation in a peaceful strike.* In its previous comments, the Committee firmly trusted that sections 279 and 287 of the Labour Code would be amended in the very near future to ensure that no penal sanctions are imposed against a worker for having carried out a peaceful strike, even if non-compliant with bargaining or notice requirements. The Committee notes that, as indicated above, House Bills Nos 175, 711, 1908 and 4447 and Senate Bill No. 1221 decriminalizing violations related to the assumption of jurisdiction and modifying the penalty for direct participation in illegal strike from dismissal or imprisonment to disciplinary measures or payment of a fine, are expected to be refiled in the 18th Congress. The Committee further observes the allegations raised by the ITF, indicating that in addition to sections 279 and 287 of the Labour Code, the 1946 Commonwealth Act has also been used to impose penal sanctions against an organizer of a peaceful strike. *Regretting the absence of any substantial progress on the adoption of the previously announced amendments to sections 279 and 287 of the Labour Code, the Committee expects the Government to take the necessary measures to ensure that these amendments are adopted in the near future and that any other necessary changes are made in national laws or regulations to ensure that no penal sanctions are imposed against a worker for having carried out a peaceful strike, even if non-compliant with bargaining or notice requirements. The Committee requests the Government to provide information on the progress made, as well as its reply to the ITF allegations.*

*Foreign assistance to trade unions.* The Committee had previously referred to the need to amend section 285 of the Labour Code, which subjected the receipt of foreign assistance to trade unions to prior permission of the Secretary of Labour. The Committee notes, from the information provided by the Government to the Conference Committee, that the previously mentioned House Bill No. 4448 (regulating foreign assistance to Philippine trade unions), House Bill No. 1354 (allowing the extension of foreign assistance to labour organizations and workers’ groups) and Senate Bill No. 1169 (removing the prior authority requirement on foreign assistance to local trade union activities) will be refiled in the 18th Congress. *Recalling that the Government has been referring to amending legislation for several years now, the Committee firmly expects that the previously reported proposed legislative amendments removing the need for Government permission for foreign assistance to trade unions will be adopted in the very near future. It requests the Government to provide information on any progress made in this regard and to transmit copies of the amending legislation once adopted.*

*Article 5. Right of organizations to establish federations and confederations.* The Committee previously referred to the need to lower the excessively high requirement of ten union locals or chapters duly recognized as collective bargaining agents for the registration of federations or national unions set out in section 244 of the Labour Code. The Committee notes from the information provided to the Conference Committee that House Bill No. 1355 and Senate Bill No. 1169 reducing the number of affiliate local chapters required to register a federation from ten to five are expected to be refiled in the 18th Congress. *Observing that the revision of the Labour Code on this point has been pending for several years, the Committee firmly expects that the legislative amendments lowering the excessively high requirement for registration will be adopted in the very near future and requests the Government to provide information on the progress achieved.*

*Application of the Convention in practice.* The Committee welcomes the statistics provided by the Government on the number of workers’ organizations and the number of workers covered in both the private and public sectors, as well as the introduction of a prohibition to contract or subcontract when undertaken to circumvent the workers’ right to security of tenure, self-organization, collective bargaining and peaceful concerted activities (Executive Order No. 51, series of 2018).

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

### Observation 2019

*Article 1(a) of the Convention. Punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system.* In its previous comments, the Committee hoped that the Government would take the necessary measures within the framework of the revision of the Penal Code, to amend sections 142 (inciting to sedition by means of speeches, proclamations, writings or emblems; uttering seditious words or speeches; writing, publishing or circulating scurrilous libels against the Government) and 154 (publishing any false news which may endanger the public order or cause damage to the interest or credit of the State, by means of printing, lithography or any other means of publication) of the Penal Code under which penalties of imprisonment (involving compulsory prison labour) may be imposed.

The Committee notes the Government’s indication in its report that sections 142 and 154 of the revised Penal Code do not provide for a penalty of forced labour, rather a penalty of “prison correccional” under section 142 and a penalty of “arresto mayor” under section 154. Both penalties range from six months and one day to six years imprisonment. In this connection, the Committee once again observes that sections 142 and 154 of the Revised Penal Code are worded in terms broad enough to lend themselves to be applied as a means of punishment for the peaceful expression of views, enforceable with sanctions involving compulsory prison labour under Chapter 2, section 2, of the Bureau of Corrections manual. The Committee further notes that, in the 2017 Report of the Officer of the United Nations High Commissioner for Human Rights, the Human Rights Committee expressed regret that the Cybercrime Prevention Act of 2012 had

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criminalized libel over the internet. It urged the State party to consider the decriminalization of defamation (A/HRC/WG.6/27/PHL/2, paragraph 39). The Committee notes with *regret* that under section 4(4) of the Cybercrime Prevention Act, libel is punishable by a prison sentence ranging from six months and one day to six years, involving compulsory prison labour.

The Committee recalls that *Article 1(a)* prohibits the use of forced or compulsory labour as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system. It emphasizes that the range of activities which must be protected under this provision, from punishment involving forced or compulsory labour, thus includes the freedom to express political or ideological views (which may be exercised orally or through the press and other communications media (see 2012 General Survey on the fundamental Conventions, paragraph 302). *The Committee therefore, urges the Government to take the necessary measures to repeal or amend sections 142 and 154 of the Revised Penal Code, as well as section 4(4) of the Cybercrime Prevention Act in order to ensure that no prison sentence entailing compulsory labour can be imposed on persons who, without using or advocating violence, express certain political views or opposition to the established political, social or economic system.*

*Article 1(d). Punishment for having participated in strikes.* Over a certain number of years, the Committee has been drawing the Government's attention to section 263(g) of the Labor Code under which in the event of a planned or current strike in an industry considered indispensable to the national interest, the Secretary of Labor and Employment may assume jurisdiction over the dispute and settle it or certify it for compulsory arbitration. Furthermore, the President may determine the industries indispensable to the national interest and assume jurisdiction over a labour dispute. The declaration of a strike after such "assumption of jurisdiction" or submission to compulsory arbitration is prohibited (section 264), and participation in an illegal strike is punishable by imprisonment (section 272(a) of the Labor Code), which involves an obligation to perform labour. Furthermore, the Revised Penal Code also provides for sanctions of imprisonment for participation in illegal strikes (section 146). The Committee requested the Government to take the necessary measures to amend the above-mentioned provisions of the Labor Code and the Revised Penal Code so as to ensure their compatibility with the Convention.

The Committee notes the Government's explanation on the absence of a forced labour penalty for participation in an illegal strike under the provisions of the Labor Code. The Committee points out however that pursuant to sections 272(a) and 264 of the Labor Code and 146 of the Penal Code, participation in illegal strikes is punishable with imprisonment from three months to three years, and from six months and one day to six years, respectively, penalty that involves compulsory prison labour under chapter 2, section 2, of the Bureau of Corrections Manual. The Committee further recalls that the Convention prohibits the imposition of compulsory labour, including compulsory prison labour, on persons participating peacefully in a strike. *The Committee requests the Government to take the necessary measures to amend the above-mentioned provisions of the Labor Code and the Revised Penal Code so as to ensure that penalties of imprisonment (involving compulsory labour) cannot be imposed for the mere fact of persons peacefully participating in strikes. Pending the adoption of such measures, the Committee requests the Government to provide copies of court decisions issued under the above-mentioned sections of the Penal Code and the Labor Code in order to assess their application in practice, indicating in particular the facts that gave rise to the conviction, and the penalties applied.*

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

### Observation 2019

*Article 2(1) of the Convention. Scope of application. Children working on their own account or in the informal economy.* The Committee previously noted the results achieved following the implementation of the Campaign for Child Labor-Free Barangays, such as bringing the total number of child labour free *barangays* (villages) to 213 and removing a total of 7,584 children from child labour and placing them in schools. The Committee however, noted from the country report "Understanding child labour and youth employment outcomes in the Philippines, December 2015", (UCW 2015 report), that child labour in the Philippines continues to affect an estimated 2.1 million children aged 5–17 years of which 62 per cent work in agriculture, about 6 per cent are self-employed and an additional 3 per cent work in private households, most likely as domestic workers. The Committee requested to pursue its efforts to ensure that children working in the informal economy or on a self-employed basis benefit from the protection of the Convention.

The Committee notes the Government's information in its report that as of December 2018, a total of 348 *barangays* have been declared as child labour-free by the Department of Labour and Employment (DOLE), while in June 2016, the Municipality of Angono was recognized as the first child labour-free municipality. The Committee also notes the Government's information regarding the various orders issued through DOLE to combat child labour, such as: (i) the Department Order No. 173 of 2017 on the Revised Guidelines in the implementation of DOLE Integrated Livelihood and Emergency Employment Programmes (DILEEP) which provides that the beneficiaries of livelihood programs shall not be engaged in child labour; (ii) the Department Order No. 175 of 2017 on the Implementing Rules and Regulations of Republic Act No. 10917 which provides that the beneficiaries of the Special Program for Employment of Students shall not be engaged in hazardous work; (iii) the Department Order No. 159 of 2016 which contains provisions prohibiting child labour in the sugar cane industry; and (iv) the Department Order No. 156 of 2016 on the Rules and Regulations Governing the Working and Living conditions of fishers on board fishing vessels in Commercial Fishing Operations which provides for penalties for engaging child labour in this sector. The Committee further notes from the Government's report that one of the aims of the proposed amendments to the Republic Act of 9231 is to address child labour in the informal sector. *Noting that a high number of children are involved in child labour in the informal sector, the Committee requests the Government to intensify its efforts to ensure that children working in the informal economy or on a self-employed basis benefit from the protection afforded by the Convention. It requests the Government to continue to provide information on the measures taken in this regard as well as the results achieved, in terms of the number of these children who are effectively protected and provided with the appropriate services.*

*Application of the Convention in practice.* In its previous comments, the Committee noted that the Government developed the HELP ME Convergence Program as a sustainable and responsive convergence programme to address child labour. It also noted that the ABK3 LEAP project (implemented by World Vision to combat exploitative child labour in the sugar cane sector through education) had achieved significant results in eliminating child labour through providing assistance and educational and livelihood support to children. The Committee requested the Government to strengthen its efforts, including through the effective implementation of the HELP ME Convergence Program, to progressively eliminate child labour.

The Committee notes the Government's information that in 2017, the Government, in collaboration with the ILO, launched several programmes to eliminate child labour, such as the Convening Actors to Reduce Child Labour and Improve Working Conditions in Artisanal and Small-Scale Gold Mining (ASGM), the CARING Gold Mining project and the SHIELD Against Child Labour project. According to the Government's report, the CARING Gold Mining project which seeks to address the problem of poverty in ASGM is piloted in Camarines Norte and South Cotabato. As of July 2019, 66 children were removed from child labour through this project. Moreover, the SHIELD Against Child Labour project which aims to eliminate child labour and its worst forms, particularly in small-scale gold mining, deep sea fishing and sugar cane industry is being implemented in four regions. In 2018, with the support of ILO, a Child Labour Local Registry (CLLR) was developed which will be used at the *barangay* level to serve as a repository of data of child labourers. The Committee notes the Government's information that within the framework of this project, a total of 596 children were identified as child labourers, of which 380 children were removed from child labour and provided with the necessary assistance. Moreover, following the implementation of the Administrative Order No. 142 of 2018 on Guidelines on the Profiling of Child Labourers and Provisions of Services to Remove them from Child Labour, the DOLE, through its 16 regional offices, has identified a total of 85,582 child labourers, from June to December 2018, of which 18,651 children have been referred to appropriate agencies, 7,941 children have been provided with services and 116 children were removed from child labour.



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The Government further indicates that within the Livelihood Assistance to Parents of Child Labourers Program, up to 2018, a total of 32,507 parents of child labourers were provided with livelihood assistance. Furthermore, the *Sagip Batang Manggagawa*, an inter-agency mechanism to monitor and rescue children from child labour, conducted a total of 955 rescue operations until 2018, wherein a total of 3,565 child labourers were removed from hazardous and exploitative working conditions. The Project Angel Tree provided assistance, including school supplies, to a total of 66,256 children involved in child labour or children who are at risk of engaging in child labour. The Committee also notes from the Government's report under the Worst Forms of Child Labour Convention, 1999 (No. 182) that the National Child Labour Committee which is the central policy and coordinating mechanism for the implementation of the Philippine Program Against Child Labor agreed to target one million children to be withdrawn from child labour by 2025.

The Committee however, notes that the United Nations Committee on Economic, Social and Cultural Rights, in its concluding observations of October 2016, reiterated its concern that an estimated 1.5 million children between the ages of 5 and 14 are engaged in child labour and that half of them are working in hazardous or dangerous conditions and are exposed to various forms of exploitation (E/C.12/PHL/CO/5-6, paragraph 37). While taking due note of the measures taken by the Government to combat child labour, the Committee must express its *concern* that there remains a significant number of children engaged in child labour, particularly in hazardous conditions in the country. ***The Committee therefore urges the Government to strengthen its efforts to progressively eliminate child labour. It requests the Government to continue to provide information on the measures taken in this regard, including within the framework of the Philippine Program Against Child Labor and on the results achieved.***

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

### Observation 2019

*Articles 3 and 7(1) of the Convention. Worst forms of child labour and penalties. Clause (a). All forms of slavery or practices similar to slavery. 1. Sale and trafficking of children.* In its previous comments, the Committee noted the measures taken by the various Government departments and the Inter-Agency Council Against Trafficking (IACAT) to address cases related to trafficking of children. It requested the Government to continue its efforts to strengthen the capacity of law enforcement agencies in identifying and combating the sale and trafficking of children under 18 years of age.

The Committee notes the Government's information in its report that the Department of Labor and Employment (DOLE) issued Administrative Order No. 551 of 2018 for the Creation of the DOLE Task Force Against Illegal Recruitment, Recruitment of Minor Workers, and Trafficking in Persons to have more focused, concerted, coordinated and effective programmes of action to combat the illegal recruitment and trafficking of children. It also notes the Government's information on the number of orientation and awareness-raising activities undertaken by the DOLE concerning the worst forms of child labour. In April 2017, a Child Protection Compact Partnership was signed by the IACAT and the US Embassy to support Philippines' campaign against trafficking of children. Moreover, in October 2017, DOLE participated in a workshop conducted by the IACAT and the Australia-Asia Program to Combat Trafficking in Persons on identifying, investigating and prosecuting cases of trafficking of persons for labour exploitation. The Committee further notes from the Government's report that Republic Act No. 10821 which was adopted in May 2016, provides that upon declaration of a national and local state of calamity, the Philippine National Police, the Department of Social Welfare and Development, with the assistance from the Armed Forces shall immediately heighten comprehensive measures and monitoring to prevent trafficking of children and their exploitation in the areas declared under a state of calamity. The Committee, however, notes from the UNICEF 2016 Summary Report on Situation Analysis of Children in the Philippines that domestic and cross-border trafficking of women and children for sexual exploitation continues, with 1,465 victims of trafficking identified and assisted in 2015, and that sex tourism is reportedly on the rise. Furthermore, the Committee notes that the United Nations Committee on Economic, Social and Cultural Rights, in its concluding observations of October 2016, expressed concern at the persistently high incidence of trafficking in women and children; the very small number of prosecutions and convictions of traffickers; the insufficient level of understanding of the issues relating to trafficking and the anti-trafficking legal framework among law enforcement officials; and the allegations of complicity of law enforcement officials in the cases related to trafficking of persons (E/C.12/PHL/CO/5-6, paragraph 41). ***While noting the measures taken by the Government, the Committee urges the Government to intensify its efforts to eliminate in practice the trafficking of children by ensuring that thorough investigations and prosecutions are carried out for persons who engage in the trafficking of children, including state officials suspected of complicity, and that sufficiently effective and dissuasive sanctions are imposed. It requests the Government to pursue its efforts to strengthen the capacity of law enforcement agencies in identifying and combating the sale and trafficking of children under 18 years of age. The Committee further requests the Government to provide information on the number of reported violations, investigations, prosecutions, convictions and penal sanctions imposed in cases related to the trafficking of children.***

*2. Compulsory recruitment of children for use in armed conflict.* The Committee previously noted the adoption of Executive Order No. 138 on a Comprehensive Programme Framework for Children in Armed Conflict, which calls on the national agencies and local government units affected by armed conflict to integrate the implementation of the Children in Armed Conflict (CIAC) programme framework. The CIAC programme includes developing, strengthening and enhancing policies to promote the protection and prevention of children in armed conflict. It also noted from a report of the United Nations Office of the Special Representative of the Secretary-General for Children and Armed Conflict of 2016 that the majority of the benchmarks established in the action plan aimed at ending the recruitment and use of child soldiers, which was signed between the United Nations and the Moro Islamic Liberation Front (MILF) in 2009, had been reached and that the Moro Islamic Liberation Front was implementing a four-step process to identify and release all children associated with the military. However, noting from the Report of the Secretary-General on Children and Armed Conflict of April 2016 that children continued to be recruited by armed forces and groups, the Committee urged the Government to intensify its efforts to put an end, in practice, to the forced or compulsory recruitment of children for use in armed conflict, and proceed with the full and immediate demobilization of all children.

The Committee notes the Government's information that in January 2018, the President signed Republic Act No. 11188 on the Special Protection of Children in Situations of Armed Conflict and Providing Penalties for Violations Thereof. This Act requires the State to take all feasible measures to prevent the recruitment, re-recruitment, use, displacement of, or grave violations of the rights of children involved in armed conflict. It notes the Government's information that in order to effectively implement the provisions of Act No. 11188, an Inter-Agency Committee on Children in Situations of Armed Conflict (IAC-CSAC), chaired by the Council for the Welfare of Children and comprising representatives from various government organisations, has been created. The functions of the IAC-CSAC include, formulating guidelines and developing programmes in coordination with concerned agencies, for dealing with children involved in armed conflict and monitoring and documenting cases of capture, surrender, arrest, rescue or recovery by government forces. The Committee also notes from the 2017 UNICEF report *Children in Armed Conflict: Philippines* that the implementation of the UN-MILF Action Plan ended in July 2017 with the disengagement of nearly 2,000 children from the ranks of the MILF-Bangsamoro Islamic Armed Forces (BIAF). However, the Committee notes that the report of the Secretary-General on children and armed conflict of June 2019, referred to the recruitment and use of 19 children (ten boys and nine girls); 18 by armed groups and one by the armed forces. The United Nations also received additional allegations of recruitment and use of 13 children by the armed groups, such as the New People's Army, Maute Group and the Abu Sayyaf Group. While taking note of the measures taken by the Government, the Committee must express its *concern* at the continued use and recruitment of children by armed forces and groups. ***The Committee therefore urges the Government to continue to take the necessary measures to ensure the full and immediate demobilization of all children and to put a stop, in practice, to the forced recruitment of children under 18 years of age into the armed forces and armed groups, including through the effective implementation of Republic Act No. 11188. The Committee also urges the Government to take immediate and effective measures to ensure that thorough investigations and prosecutions of all persons who forcibly***



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*recruit children under 18 years of age for use in armed conflict are carried out, and that sufficiently effective and dissuasive penalties are imposed in practice.*

Articles 3(b) and 7(2)(a) and (b). Use, procuring or offering of children for the production of pornography or for pornographic performances. Preventing children from being engaged in the worst forms of child labour, removing them from these forms of labour and ensuring their rehabilitation and reintegration. Commercial sexual exploitation of children. The Committee notes that the Anti-Child Pornography Act of 2009 provides for the protection of children under 18 years of age from all forms of exploitation and abuse including the use of a child in pornographic performances and materials and the inducement or coercion of a child to engage or be involved in pornography through whatever means (section 2). Section 4 of the Act further prohibits a wide range of offences related to using, hiring, inducing or coercing children for the production of child pornography, and its publication, possession, distribution, and accessing of child pornography while providing for penalties of maximum imprisonment and fines to the perpetrators of such offences (section 14).

The Committee notes that according to the UNICEF Summary Report of 2016 on Situation Analysis of Children in the Philippines, cyber violence has emerged as a serious threat and that the new technologies put children at risk of online sexual solicitation and grooming. The number of children coerced, often by relatives, to perform sex acts for live streaming on the internet has increased making online child abuse the leading cybercrime in the country. This report further states that the Philippines is one of the top ten countries globally producing sexual content using children. Moreover, a document by the International Organization for Migration, entitled Human Trafficking Snapshot, Philippines, September 2018, indicates that there are tens of thousands of children being exploited and abused in cybersex dens across the Philippines. The Committee notes with **deep concern** at the significant number of children who are subject to commercial sexual exploitation in the Philippines. **The Committee therefore urges the Government to take the necessary measures to ensure the effective enforcement of the Anti-Child Pornography Act, by ensuring that thorough investigations and prosecutions of persons who use children in the production of pornography and in pornographic performances are carried out and that sufficiently effective and dissuasive sanctions are imposed in practice. It also urges the Government to take immediate and effective time-bound measures to prevent the engagement of children in commercial sexual exploitation as well as to remove those who are victims of such forms of child labour and to provide for their rehabilitation and reintegration. It requests the Government to provide information on the measures taken in this regard and on the results achieved.**

Articles 3(d), 4(1) and 7(2)(b). Hazardous work and time-bound measures to provide direct assistance for their removal and rehabilitation and social integration. Child domestic workers. In its previous comments, the Committee noted the International Trade Union Confederation's (ITUC) allegations that there were at least 1 million children under the age of 18 years in domestic work, some of whom were subject to slavery-like practices or working in harmful and hazardous conditions, while some of them, especially girls, suffered physical, psychological and sexual abuses and injuries. In this regard, the Committee noted the adoption of Republic Act No. 10361 which provides for instituting policies for the protection and welfare of domestic workers as well as setting the minimum age for employment in domestic work at 15 years. It also noted that a road map for the elimination of child labour in domestic work and the provision of adequate protection for young domestic workers of legal working age was adopted and a Joint Memorandum Circular (JMC) on the Protocol on the Rescue and Rehabilitation of Abused *Kasambahay* (domestic workers) was signed by the DOLE, the Department of Social Welfare and Development, the National Bureau of Investigation and the Philippine National Police. The Committee urged the Government to strengthen its efforts to ensure the effective implementation of Republic Act No. 10361, to provide information on the implementation of the road map for the elimination of child labour in domestic work as well as the measures taken to rescue and rehabilitate abused domestic workers following the JMC on the Protocol on the Rescue and Rehabilitation of Abused *Kasambahay*.

The Committee notes the Government's information that in July 2017, the DOLE issued an Administrative Order which provides for guidelines for the effective enforcement of the rights of domestic workers under Republic Act No.10361 as well as on the terms and conditions of employment of children under Republic Act No.9231. It also notes the Government's information that DOLE, with support from ILO, conducted training for 35 DOLE personnel to enhance their capacity in detecting and assessing child labour incidents. In 2017, the Bureau of Workers with Special Concerns (BWSC) conducted capacity enhancement training for regional *kasambahay* focal persons in addressing the vulnerability of domestic workers. However, the Committee notes from the 2018 ILO document on Social Dialogue to Achieve Sustainable Development Goals: Formalising the Informal Economy, Country Brief, Philippines that domestic work is the largest single source of wage employment for women as well as for young workers. **The Committee therefore strongly encourages the Government to strengthen its efforts to prevent children under 18 years from engaging in hazardous working conditions in domestic work, including through the effective implementation of the road map for the elimination of child labour. It requests the Government to provide information on the measures taken in this regard as well as on the results achieved in terms of the number of child domestic workers who have been protected or withdrawn from child labour and rehabilitated. It also urges the Government to strengthen its efforts to ensure that Republic Act No. 10361 is effectively applied and that sufficiently effective and dissuasive penalties are imposed in practice on persons who subject children under 18 years of age to domestic work in hazardous or exploitative conditions.**

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

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

### Observation 2019

The Committee notes the observations of the Federation of Korean Trade Unions (FKTU) communicated with the Government's report and the observations of the Korean Confederation of Trade Unions (KCTU), received on 31 August 2018.

*Article 1 of the Convention. Equality of treatment of migrant workers.* In its previous comments, the Committee requested the Government to take measures aimed at re-establishing equality of treatment between national and foreign workers by amending sections 57 and 58 of the Industrial Accident Compensation Insurance Act (IACIA), pursuant to which the employment injury disability pension of foreign workers, who leave the Republic of Korea, is converted into a lump sum whereas Korean nationals continue receiving such pensions while residing abroad. The Committee notes the reply provided by the Government in its report, which refers to difficulties in monitoring the eligibility of foreign nationals to employment injury pensions (for example, due to death or remarriage) after they leave the country while the eligibility of Korean nationals residing abroad can be checked through the Korean Ministry of Foreign Affairs. In this regard, the Committee notes the Government's intention to continue consulting with other countries who are parties to the Convention to find ways to facilitate the sharing of information necessary for the payment of benefits to foreign nationals who reside abroad. The Committee also notes the FKTU's observations indicating that the Government should ensure the collection of the information on eligibility of foreign nationals to employment injury pensions through the Employment Permit System (EPS) centres of the foreign nationals' countries of origin. In this regard, the Committee takes note of the Government's reply that the EPS centres lack personnel and therefore cannot handle the additional task of reviewing pension eligibilities of injured foreign workers. The Committee further notes that, according to the KCTU, measures should be taken to enable injured foreign workers to receive disability aids, rehabilitation services, including treatments for complications and vocational training after they return to their countries of origin. The KCTU also indicates that seafarers who are subject to the Act on Accident Compensation Insurance for Fishers and Fishing Vessels of 2017 get a compensation for employment injury based on a minimum wage scale that is lower than the minimum wage applicable to national seafarers. In addition, the KCTU refers to language barrier as a main source of difficulties for foreign workers in applying for workers' compensation and participation in post-accident vocational trainings. ***The Committee urges the Government to take the necessary measures: (1) to ensure equality of treatment in respect of workers' cash compensation and medical care benefits for all foreign workers, including seafarers, who are nationals of any other Member which has ratified the Convention; and (2) to ensure the provision of employment injury pensions instead of lump sums to foreign workers leaving the Republic of Korea, with a view to give full effect to Article 1 of the Convention. The Committee requests the Government to keep it informed of agreements concluded with other ratifying countries in this regard. The Committee also requests the Government to take the necessary measures to facilitate the access of foreign workers to employment injury benefits by ensuring that relevant documents and information are available in a language that they can understand.***

*Application of the Convention in practice.* In its previous comments, the Committee requested the Government to provide information on new legal provisions on securing better compliance with the national legislation on employment injury. The Government replies that it continues strengthening penalties for employers who failed to report or who concealed industrial accidents by adopting new provisions on criminal punishment and increasing fines. The Committee notes the FKTU's observations indicating that although there is an increase in the number of applications for recognition of industrial accidents, stronger punishment measures should be imposed to prevent employers from not reporting and concealing industrial accidents. In this regard, the Government indicates that it intends to promote education activities and campaigns on the reporting on industrial accidents in the workplace, and enhance administrative and legal enforcement actions. ***The Committee requests the Government to provide information on the outcome of the measures taken to enhance the enforcement and application of the national legislation.***

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

### Observation 2019

The Committee notes the observations of the Korean Confederation of Trade Unions (KCTU), received in 2017, and of the Federation of Korean Trade Unions (FKTU), communicated with the Government's report, and the Government's reply thereto.

*Articles 6, 10, 16 and 17 of the Convention. Number of labour inspectors and inspection visits, conditions of service of labour inspectors and enforcement.* The Committee notes the indication in the Government's report, in reply to its previous request, that the workload of labour inspectors persists despite a steady increase in the number of labour inspectors since 2012. The Government indicates that in 2016, there were 1,282 labour inspectors (up from 1,241 in 2012) and 412 OSH inspectors (up from 362 in 2012), but that the number of workplaces subject to labour and OSH inspections has also continued to rise. The Government indicates that the decision was made to add 500 more labour inspectors in the second half of 2017 with further increases in 2018. According to the statistics provided by the Government, the number of inspections increased from 2014 to 2016 (16,889 inspections in 2014 to 21,465 in 2016, and 20,299 OSH inspections in 2014 to 26,920 in 2016), accompanied by an increase in the number of cases of judicial action ordered. In 2016, 1,410 cases related to labour law violations were referred to judicial proceedings following labour inspection procedures (corrections or suspension measures and fines), compared with 331 cases in 2014. In the area of OSH, 4,285 cases were referred for judicial action, compared with 2,447 cases in 2014. The Committee also notes the revision of the Work Guidelines for Labour Inspectors (Directive No. 185) that aims to strengthen compliance by, among other measures, enabling labour inspectors to take immediate judicial action regarding serious violations and expedite corrective action through shortening the applicable time limits.

The Committee notes the observations of the KCTU that the increase in the number of labour inspectors has not been sufficient to cover the increase in the volume of cases handled by them, and that in a number of cases the Ministry of Employment and Labour did not begin investigations even when significant suspicion was raised about violations of workplace laws, allowing employers sufficient time to destroy evidence. Referring to a study released in 2015 by the Korean Labour Institute indicating that labour inspectors are likely to be exposed to overtime work of more than 12 hours a week, the KCTU emphasizes the importance of monitoring the implementation of the Government's plan to increase the number of labour inspectors. ***The Committee urges the Government to strengthen its efforts to ensure that the number of labour inspectors is sufficient to secure the effective discharge of the duties of the inspectorate, as required under Article 10 of the Convention. It also asks the Government to provide information on the implementation of its plan to increase the number of labour inspectors, including its impact on the performance of labour inspection activities and the conditions of work for labour inspectors. The Committee further requests the Government to provide information on the amount of overtime currently being worked by inspectors and to provide further information on any measures taken or envisaged to improve their conditions of service. In this respect, the Committee requests the Government to provide information on levels of compensation and working conditions for labour inspectors compared to other civil servants exercising similar authority or with comparable levels of responsibility. Lastly, the Committee requests the Government to provide information on the outcome of the judicial proceedings for the cases referred following labour inspections.***

*Article 12(1)(a). Unannounced visits.* The Committee previously noted the Government's indication that, pursuant to the 2010 amendments to the Work Guidelines for Labour Inspectors, a ten-day prior notice to the employer is required for a regular inspection visit (section 17 of the Work Guidelines), but that occasional and special visits are conducted without advance notice mainly based upon complaints. With regard to OSH inspections, it notes that, pursuant to section 13 of the Work Guidelines for OSH Inspectors, OSH inspections shall be carried out without prior notice in principle except when an inspection visit needs to be made outside business hours or where free access is not allowed for military or security reasons. In addition, the Committee notes the introduction

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of the Integrated Unpaid Wage Report System. Under the system, anyone can confidentially report cases of unpaid wages to the labour inspectorate, upon which unannounced inspections can be initiated. According to the Government, the number of unannounced inspections was substantially reduced (by more than two-thirds) from 14,985 in 2014 to 4,606 in 2015, before being somewhat increased to 6,351 in 2016, a number roughly equivalent to the 6,297 regular inspections that year. The Committee notes that since 2015, a significant number of new inspections regarding basic employment rules have been carried out (9,045 in 2015 and 8,578 in 2016). The Government indicates that it continues to expand the number of unannounced inspections in order to strengthen compliance with basic employment rules, such as minimum wages, payment of wages and hours of work. *Further to its previous comments, the Committee requests the Government to indicate whether inspections regarding basic employment rules are carried out without prior notice. It also requests the Government to provide information on the reasons for the significant decrease in the number of unannounced inspections since 2014. Finally, the Committee requests the Government to continue to provide information on the number of unannounced visits, including those initiated upon complaints made under the Integrated Unpaid Wage Report System, as compared to the total number of inspection visits, and to provide information, disaggregated between announced and unannounced visits, on the results secured from these inspections (violations identified, corrective measures ordered, judicial action undertaken and sanctions imposed and collected).*

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

### C142 - Human Resources Development Convention, 1975 (No. 142)

#### *Observation 2019*

The Committee notes the observations of the Federation of Korean Trade Unions (FKTU) received on 17 September 2018 and the Government's reply thereto, communicated together with its report. The Committee further notes the observations of the Korean Confederation of Trade Unions (KCTU) received on 31 August 2018. *The Committee invites the Government to provide its comments in respect to the observations of the KCTU.*

*Article 1(3) of the Convention. Policies and programmes appropriate to national conditions.* In reply to the Committee's previous comments requesting further information on the implementation of the Work-Learning Dual System established in 2014, the Government reports that the system combines in-class education and training with hands-on work experience. The Government indicates that, as of May 2018, 12,493 enterprises had been selected as dual training providers, and 67,307 participants had benefited from the training. The Government also indicates that, to achieve a workforce tailored to industry-specific needs, 17 Industry-Specific Human Resources Development Committees (ISCs) were established in September 2016, in which 456 associations, organizations and businesses participate. At the regional level, the Government built an industry-specific infrastructure, which includes: 70 Work-Learning Dual Training Centres for workers in small and medium-sized enterprises (SMEs); specialized support institutions for quality control and promotion of the Work-Learning Dual System; and industry-specific Special Apprenticeship Zones. The system has expanded its scope to include the newly employed, as well as students in vocational high schools, universities and other educational institutions. The Committee notes the Government's indication that a draft law to regulate the Work-Learning Dual System was submitted to the National Assembly in 2016, containing provisions concerning the training environments provided by employers, setting out protections for workers who are also learners and providing for certification for apprentices. The Committee also notes the adoption of an Amendment to the Vocational Education and Training Promotion Act (VETPA), with the objective of protecting the rights of vocational students and trainees and building a safer training environment. In its observations, the FKTU maintains that the status of a learning worker is more vulnerable than that of an ordinary worker, indicating that the introduction of a "learning employment contract" proposed by the Government would be inappropriate and potentially lead to abuses. In its reply to the FKTU, the Government indicates that both categories of workers in fact have the same legal status and enjoy the same protections, and that the learning employment contract stipulates training-related matters, such as hours and content, and is in addition to the statutory content of an ordinary employment contract. The Committee also notes the observations made by the KCTU, alleging that, despite the requirement of section 9 of the amended VETPA that employers use the standard contract template approved by the Ministries of Education, Labour and SMEs, employers commonly – and with impunity – write up and maintain different contracts for on-site student trainees. The KCTU also alleges that the SME Vocational Training Consortium Program is being misused in that large corporations are using it as a vehicle to illegally source workers via subcontractors, rather than hiring full-time workers of their own. *The Committee requests the Government to provide updated detailed information, including disaggregated statistical data, on the functioning of the Work-Learning Dual System, including on the activities of the Industry-Specific Human Resources Development Committees, the Work-Learning Dual Training Centres and the industry-specific Special Apprenticeship Zones and their impact on participants' access to lasting employment indicating the starting wages received by participants, the average period of time between completion of the training and employment as well as the nature of the employment secured (full-time, part-time, fixed or short-term, or permanent). The Committee further requests the Government to provide detailed information on measures taken or envisaged to adapt continuously technical and vocational training to sector-specific labour market needs. It further requests the Government to provide a copy of the Amendment to the Vocational Education and Training Promotion Act (VETPA) and on any other measures adopted by the National Assembly relevant to the application of the Convention, including in relation to the Work-Learning Dual System.*

*Article 1(5) of the Convention. Equality of opportunity and treatment.* The Committee notes the information provided by the Government in response to its 2013 direct request concerning vocational education and training opportunities for specific groups.

*Young persons.* The Government refers to a number of Work-Learning Dual Programs targeting young persons. In 2018, these Programs included: 194 Industry-Academia Partnership Apprenticeship Schools where students at specialized high schools start apprenticeships at enterprises while continuing their studies; 16 Uni-Tech Programs that strengthen links between vocational educational courses by integrating the curricula of specialized high schools and junior colleges; the Industry Professional Practice (IPP) Work-Learning Dual System implemented in 38 schools; and the Pathways in Technical Education Convergent Hi-Technology (P-TECH) model used in 13 schools for intensive vocational training. In its observations, the KCTU refers to a report issued by the Board of Audit and Inspection (BAI), "Implementation of Educational Policies Supporting Workforce Development", indicating that, in 2015, 20.5 per cent of high school seniors in three educational offices were dispatched to workplaces of no relevance to their studies as a form of cheap labour. The KCTU further maintains that, in 2013, 15 high schools dispatched 36 students to hazard-prone businesses, such as semiconductor plants and factories that handle first-grade carcinogenic substances. The KCTU alleges that high school students are exposed to bullying, sexual harassment, burnout and stress at workplaces where they train and that they are both overworked and underpaid. In addition, the KCTU maintains that students have been used to illegally replace striking workers. Additionally, due to Ministry of Employment Regulation 26 on the Enforcement Directive for the Employer-Commissioned Training of College Students, students are forced to remain at their jobs training or face expulsion from school, leading to situations of forced labour. *The Committee requests the Government to provide more information on measures taken or envisaged to safeguard the rights of young people in vocational training programmes. In addition, the Committee draws the attention of the Government to Paragraphs 18 and 19(f) and (g) of the Human Resources Development Recommendation, 2004 (No. 195), and requests the Government to provide statistics, disaggregated by gender and age and other socio-economic indicators, on the impact of vocational training provided to young persons, including on the level of starting wages received by young persons after completing the training, and the period of time between completion of training and their entry into employment, compared to persons who have not undergone such trainings.*

*The new middle-aged who need re-employment support; the self-employed who are more likely to change their jobs; and workers in special employment types.* The Government reports that in 2018, Korea Polytechnic provided several programmes for 300 students categorized as the new middle-aged, including

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electric system control, senior healthcare and air-conditioning and refrigeration. The Government further reports that the Tomorrow Learning Card System was implemented for workers in special employment relationships. ***The Committee requests the Government to provide a definition of the new middle-aged and of workers in special employment relationships. The Committee further requests the Government to provide more information on the activities and impact of the Tomorrow Learning Card System.***

***Women.*** The Government indicates that the Korea Polytechnic runs vocational training for women returning to work after having taken career breaks. In 2018, four special campuses offered seven courses focused on re-employment training in the beauty and care industries, in which 950 women participated. The KCTU observes that women are subjected to discriminatory working environments that include wage gaps, sexual harassment, gender-streamed training and higher barriers to accessing the job market. Additionally, the workers' organization alleges that the Government is alienating women from securing employment by forcing them into jobs where they work short hours (less than 15 hours a week), preventing them from obtaining regular employment status as defined in the Act on the Protection of Fixed-Term and Part-Time Workers (APFPW). The Committee notes that the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) has expressed concern at the "persistence of the gender gap in pay (amounting to a difference of 35.4 per cent in 2016) ... which remains the widest among all OECD countries". Furthermore, the CEDAW Committee noted that 70.2 per cent of short-time workers in the State party are women with limited protection under the Korean Labour Standards Act and the APFPW. Women in this situation may only enrol in the national pension scheme as individually insured persons and in employment insurance programmes only after three months of continuous employment. (CEDAW/C/KOR/CO/8, March 2018, paragraph 38). Furthermore, the Committee notes that section 6 of the Labour Standards Act prohibits discrimination against workers on the basis of gender and discriminatory treatment in relation to terms and conditions of employment. ***The Committee requests the Government to provide information on activities and measures taken or envisaged to provide women with vocational guidance, education and training, and the impact of such measures on women's access to full, productive, freely chosen and lasting employment. The Committee encourages the Government to develop and implement a policy aimed at ensuring that vocational guidance and training provided to women is available with respect to all occupations.***

***Persons with disabilities.*** In its observations, the KCTU notes that sections 6 and 7 of the Minimum Wage Act allows employers to pay workers with disabilities less than the minimum wage. The KCTU maintains that the Government has granted the requests made by 97.9 per cent of those employers having applied for authorization to pay a worker with disabilities less than the minimum wage, pursuant to the Guide on the Permission of Employers Not to Pay the Minimum Wage to Disabled Workers. ***The Committee refers to its comments concerning the application of the Employment Policy Convention, 1964 (No. 122), and invites the Government to provide information on measures taken to encourage and enable all workers to access employment opportunities without discrimination. The Committee further requests the Government to provide information on the manner in which sections 6 and 7 of the Minimum Wage Act impact persons with disabilities and how the Government is ensuring the application of equality of opportunities and treatment in the workplace for workers with disabilities.***

***Article 3(2) and (3). Vocational guidance information. Lifelong learning.*** The Government reiterates that its online platform, Work-Net, assists people with occupational information and career development advice by providing information on 130 academic departments. Additionally, the Government published 86,000 copies of books on new occupations and 65,000 copies of promotional guidance materials from 2014 to 2017. In its observations, the FKTU maintains that there is a significant shortage of personnel that provide employment support in the public employment service (PES). In its response to the FKTU, the Government acknowledges that, due to factors such as workforce shortages, the functions of job-matching between employers and jobseekers and placement services in PES centres has weakened. To improve the performance of the PES, the Government undertakes to continue its efforts to reinforce infrastructure in order to strengthen the counselling function of the PES centres. It also undertakes to establish and implement an Employment Centre innovation plan to focus on employment support. ***The Committee invites the Government to continue to supply updated detailed information on the activities of the PES information system, particularly with regard to the development of information and guidance relating to choice of occupation, access to vocational education and training – including lifelong learning – and related educational opportunities to assure the effectiveness of vocational guidance policies. In addition, the Government is requested to provide information on the measures taken to promote quality vocational education and training that is inclusive and available to all.***

***Article 5. Cooperation with employers' and workers' organizations.*** The Government reports that, in 2015, in concluding the Tripartite Jobs Pact, the tripartite partners agreed to establish a Regional Joint-Training Network to develop human resources services tailored to regional needs. Thereafter, 16 Regional Human Resource Development (HRD) Committees were established in metropolitan areas. In July 2015, the local area and industry-specific HRD system was put in place, whose functions include analysing labour market demand and providing for joint training and hiring. The Committee notes the FKTU's observation that worker representatives do not head any of 16 HRD Committees and that some of the HRD Committees have no worker representatives. In its response, the Government indicates that, as of August 2018, worker representatives have been co-chairing two of the Regional HRD Committees, adding that worker representatives participate in all 16 Committees. ***The Committee invites the Government to provide more information on the composition of the 16 regional HRD Committees as well as the 17 industry-specific HRD committees. The Committee also invites the Government to provide more information on the manner in which the cooperation of employers' and workers' organizations and, where applicable, other interested bodies, is ensured in the formulation and implementation of vocational guidance and vocational training policies and programmes.***



**C138 - Minimum Age Convention, 1973 (No. 138)****Observation 2019**

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

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

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

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

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

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

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

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

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

The Committee is raising other 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 2019**

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

*Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 107th Session, May–June 2018)*

The Committee notes the discussion which took place at the 107th Session of the Conference Committee on the Application of Standards in June 2018, concerning the application by Samoa of the Convention.

*Article 3 of the Convention. Worst forms of child labour. Clause (b). Use, procuring or offering of a child for the production of pornography or for pornographic performances.* The Committee previously noted that section 82 of the Crimes Act 2013, makes it an offence to sell, deliver, exhibit, print, publish, create, produce or distribute any indecent material that depicts a child engaged in sexually explicit conduct. It observed, however, that for the purposes of this section a child is defined as a person under the age of 16 years. The Committee therefore urged the Government to take the necessary measures to ensure that the use, procuring or offering of children between the ages of 16 and 18 for the production of indecent materials is also effectively prohibited.

The Committee notes the Government's information in its report that the Ministry of Commerce, Industry and Labour (MCIL), with the technical assistance from the Samoa Technical Facility Project is carrying out a revision of the national legislation, including the Crimes Act in order to align the definition of a child with the provisions of the Convention. *The Committee expresses the firm hope that the Government will take the necessary measures, during the revision of the national legislation, to ensure that the definition of a child under section 82 of the Crimes Act will refer to persons under the age of 18 years, so that the prohibition under this section on the production and distribution of indecent materials depicting children will include children between 16 and 18 years of age. It requests the Government to provide information on any progress made in this regard.*

*Article 4(1). Determination of hazardous types of work.* In its previous comments, the Committee noted the Government's statement that a draft list

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determining the types of hazardous work prohibited to children would be submitted to the Samoa National Tripartite Forum for endorsement. The Committee expressed the firm hope that the list of types of hazardous work prohibited for children under 18 years of age would be finalized and adopted in the near future.

The Committee notes that at the Conference Committee, the Employer members expressed their concern over the absence of a list of hazardous work in which the employment of young persons is prohibited.

The Committee notes with *interest* the Government's indication that the Hazardous Work List, which contains a list of types of hazardous work prohibited to children under 18 years, has been approved by the Cabinet in May 2018 and is in the process of being incorporated into the Labour and Employment Relations Regulations. The Committee notes the Government's information that this list was reviewed by the National Occupational Safety and Health Task Force and supported by the Samoa National Tripartite Forum. The Government further indicates that the MCIL has included this list in its first National Occupational Safety and Health Framework 2018 to ensure that all stakeholders take ownership in monitoring and reporting of any activities that are in breach of this list. ***The Committee expresses the firm hope that the Government will take the necessary measures to ensure that the Hazardous Work List will be enacted and enforced, without delay. It requests the Government to provide information on any progress made in this regard. The Committee also requests the Government to provide information on any cases of hazardous work by children under 18 years that have been identified and reported through the National Occupational Safety and Health Framework.***

*Article 7(2). Effective and time-bound measures. Clause (d). Reaching out to children at special risk. Children working as street vendors.* In its previous comments, the Committee noted that section 20 of the Education Act 2009 specifically prohibits the engagement of compulsory school-aged children in street trading during school hours, and that it provides for the appointment of school attendance officers, responsible for identifying children who are out of school during school hours, and returning them to school. It also noted that the Community Sector Plan of 2016–21 (CSP) provides for a platform for the development of an intervention plan to respond to the needs of vulnerable children and their families. The Committee further noted that the majority of cases regarding child vendors in the streets were mainly dealt with by the Community Engagement Unit in collaboration with the Ministry of Education, Sports and Culture (MESC) and the Ministry of Women, Community and Social Development (MWCSD), whereby parents of the children involved in street vending were held responsible, after investigation, and then charged. However, the Committee noted that, according to the ILO Rapid Assessment Report on Children working on the streets in Apia, 2017, the majority of the 106 children interviewed started working on the streets due to the fact that the family needed income (page 36). Children, as young as 7 years of age, sold food, homemade juice and razor blades in dangerous environments, and worked long hours (over five to 12 hours a day), under harsh weather conditions, to sell their products. The majority of the children work for their own family and are not aware of the social support services available to them. Noting with concern that children continued to work as street vendors, often in hazardous conditions, the Committee requested the Government to take the necessary measures to identify and protect children engaged in street vending from the worst forms of child labour.

The Committee notes that at the Conference Committee, the Employer members expressed their concern about the prevalence of under 15-year olds exploited as street vendors. Moreover, the Worker members indicated that around 38 percent of child labour in Samoa was performed by under 15-year olds, which called into question the Government's capacity and commitment to address the worst forms of child labour.

In this regard, the Committee notes the following measures taken by the Government as indicated in its report: (i) a Child Vending Task Force (CVTF), comprised of representatives from the MESC, Ministry of Police (MoP), the MCIL and the Office of the Attorney General and the Council of Churches, was established within the MWCSD to address the issues pertaining to children working as street vendors; (ii) collaborative efforts were initiated by the MWCSD along with the MoP to monitor exploitation of children in the formal and informal economy, including through regular inspections in the streets of Apia and rural areas; (iii) awareness-raising programmes on the use of children in street vending were conducted by the Ministry of Commerce, Industry and Labour for employers in Upolu and Savaii, in order to prevent them from employing children under the age of 18 to sell goods and products during school hours; (iv) the Supporting Children initiative was started by the MWCSD in March 2016 for children from vulnerable families, in order to ensure their safety through positive parenting support and providing training and financial assistance to parents for income generating projects; and (v) the Small Business Youth Incubator for Economic Development which aims to instigate programmes for small businesses and income generating projects for youth, women and vulnerable families, were initiated. The Committee notes, however, that the Committee on the Rights of the Child, in its concluding observations of 12 July 2016, expressed its concern that children continue to work as vendors and that school absenteeism remains a challenge (CRC/C/WSM/CO/2-4, paragraph 52). ***While noting the measures taken by the Government, the Committee strongly encourages it to continue its efforts to identify and protect children engaged in street trading from the worst forms of child labour. It requests the Government to continue to provide information on the measures taken in this regard as well as information on the number of child street vendors who have been removed from the worst forms of child labour, including by the CVTF and through the collaborative efforts by the MWCSD and the MoP, and provided with assistance and socially integrated.***

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 2019*

*Articles 1 and 2 of the Convention. Assessing and addressing the gender pay gap.* The Committee recalls the lack of legislation requiring equal remuneration for men and women for work of equal value. The Committee previously noted the Guidelines issued by the Tripartite Alliance for Fair Employment Practices (TAFEP) on 3 May 2007, which include a section on remuneration stating that “[e]mployers should pay employees wages commensurate with the value of the job [...] regardless of age, gender, race, religion and family status, employees should be paid and rewarded based on their performance, contribution and experience”. It notes, from the TAFEP’s website, that as of September 2019, 7,144 organizations have signed the Employers’ Pledge for Fair Employment Practices, which is a public commitment from employers to create fair and inclusive workplaces according to the TAFEP’s Guidelines. The Committee notes the Government’s statement, in its report that, in July 2017, Tripartite Standards (TSes) were introduced to enhance fair and progressive employment practices on flexible work agreements, recruitment practices and unpaid leave for unexpected care needs. Noting that the TAFEP continued training workshops to assist employers implementing fair and progressive employment practices, the Committee notes the Government’s indication that the Human Capital Partnership (HCP) Programme was launched in 2017 by tripartite partners to “grow an inclusive community of progressive employers”, and will be managed by the TAFEP. The Committee however observes that the Government does not provide information on any measures taken by the TAFEP to promote specifically the principle of equal remuneration for men and women for work of equal value. While noting the Government’s statement that the gender pay gap was estimated at 11.8 per cent in 2017 with broad-based improvement across most occupational groups, the Committee notes, from the statistical information provided by the Government, that in 2017 the median gross monthly salary of women employed in the same occupational category as men was systematically lower than that of men, except for clerical support workers where it was slightly higher. It notes in particular that the gender wage gap was estimated at 12.2 per cent for managers and administrators; 18.7 for working proprietors; 14.4 for professionals and still remains wider for craftsmen and related trades workers (22.3 per cent) and plant and machine operators and assemblers (19.1 per cent). The Committee notes the Government’s indication that the wage gap can be attributed to the fact that women are more likely to exit the workforce or have intermittent patterns of work, for reasons such as childcare and the care of the elderly. The Government adds that its approach to address the gender pay gap is to empower women with choices to stay in the workforce, instead of having to exit it to fulfil caregiving responsibilities. In this regard, the Committee welcomes the adoption and implementation of measures to assist women to enter, re-enter or remain in the workforce, including through flexible working arrangements and the introduction of measures to encourage shared parental responsibilities (such as a two weeks paid paternity leave and the possibility for fathers to share up to four weeks of their wife’s maternity leave). The Committee however notes that, in its 2017 concluding observations, the United Nations (UN) Committee on the Elimination of Discrimination against Women (CEDAW) remained concerned about: (i) the persistent gender wage gap in all occupational categories, except clerical support; (ii) the continued vertical and horizontal occupational segregation in both the public and private sectors; (iii) the persistence of discriminatory stereotypes about the role of women as primary caregivers, including as caregivers of older persons; (iv) the fact that women still remain underrepresented in traditionally male-dominated fields of study, such as engineering, electronics and information technology, at the tertiary level; as well as (v) the underrepresentation of women on corporate boards, notwithstanding their high educational and professional achievements and qualifications. The Committee further notes that the CEDAW recommended that “the Government reduces the gender wage gap by regularly reviewing wages in sectors in which women are concentrated and by establishing effective monitoring and regulatory mechanisms for employment and recruitment to ensure that the principle of equal pay for work of equal value is adhered to in all sectors” (CEDAW/C/SGP/CO/5, 21 November 2017, paragraphs 18, 26, 28 and 29). The Committee notes that the CEDAW, as well as the UN Independent Expert on the enjoyment of all human rights by older persons, also expressed specific concern that older women frequently lack sufficient savings to sustain a living as a result of the gender pay gap, a lack of employment opportunities and their caregiving responsibilities, and are therefore forced to continue to work beyond their retirement age in low-paid and low-skilled occupations (CEDAW/C/SGP/CO/5, 21 November 2017, paragraph 38 and A/HRC/36/48/Add.1, 31 May 2017, paragraphs 27 and 93). ***In light of the absence of a legislative framework providing for equal remuneration for men and women for work of equal value and the persistence of significant gender wage gaps, in particular in sectors where women are traditionally concentrated, the Committee asks the Government to take proactive measures, including legislative measures in the framework of the Tripartite Alliance for Fair Employment Practices, to establish the principle of the Convention and raise awareness among workers, employers and their respective organizations, as well as among law enforcement officials of the right to equal remuneration for men and women for work of equal value. It also asks the Government to continue to take measures to address the underlying causes of the gender wage gap, such as vertical and occupational gender segregation and stereotypes relating to the aspirations, preferences and abilities of women, including by encouraging girls and women to choose non-traditional fields of study and professions and promoting their access to jobs with career prospects and higher pay. The Committee asks the Government to continue to provide statistical information on the level of earnings of men and women, disaggregated by economic activity and occupational group, both in the public and private sectors.***

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

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

*Observation 2019*

*Articles 1(1), 2(1) and 25 of the Convention.* 1. *Trafficking in persons.* 1. *Penalties and law enforcement.* The Committee previously noted the Government's statement that, in 2016–17, the high courts had handed down six convictions of trafficking in persons, and the perpetrators had received penalties of imprisonment from six months to five years, along with fines. The Committee also noted the Government's information that, in October 2016, the police department established the "Anti-Human Trafficking Unit" comprising 13 police officers to investigate cases on trafficking in persons. A special unit was also established under the Sri Lanka Bureau of Foreign Employment (SLBFE) to investigate trafficking-related complaints reported to it. The Committee requested the Government to continue its efforts to ensure thorough investigations, prosecutions and sufficiently effective and dissuasive penalties with regard to perpetrators of trafficking in persons.

The Government indicates in its report that the statistics of reported trafficking in persons cases have dropped significantly, indicating a very low prevalence of trafficking in persons related cases. It states that between April 2018 and March 2019, 18 cases of trafficking in persons have been investigated, ten indictments have been filed in court, and five convictions were handed down, under sections 360A (procuring of persons) or 360C (trafficking in persons) of the Penal Code. Between April 2017 and March 2018, 16 cases of trafficking have been investigated, 28 indictments have been filed in court and three convictions were handed down under section 360A of the Penal Code. The Government further indicates that, in 2019, two persons were convicted under section 360C of the Penal Code and sentenced to two years of rigorous imprisonment, suspended for seven and ten years, respectively. The Committee recalls that, in light of the seriousness of the violation, it is essential that penalties imposed on perpetrators of offences of trafficking in persons are severe enough to fulfil their dissuasive function. ***The Committee requests the Government to continue its efforts to ensure that perpetrators of trafficking in persons are prosecuted and that sufficiently effective and dissuasive penalties are imposed in practice, and to specify the penalties applied. It also requests the Government to provide information on any cooperation initiatives in practice between law enforcement authorities, including the Anti-Human Trafficking Unit and the special unit established under the SLBFE.***

2. *Identification and protection of victims.* The Committee previously noted that legal, medical and psychological assistance for trafficking victims was provided in a shelter maintained by the Ministry of Women and Child Affairs. The Committee encouraged the Government to continue to take measures to ensure that victims of trafficking were provided with appropriate protection and services, and to provide information on the number of persons benefiting from these services.

The Committee notes the Government's information that the government-run shelter, established for both foreign and local victims of trafficking, hires specially trained officers. It also notes the Government's indication that Standard Operating Procedures (SOPs) for the identification, protection and referral of victims of trafficking have been approved, in order to ensure the identification of victims of trafficking among vulnerable groups, including foreigners detained for visa overstays, women arrested for prostitution and related crimes, and Sri Lankans who find themselves victims of trafficking and exploitation whilst working regularly or irregularly overseas. ***The Committee requests the Government to pursue its efforts to ensure that victims of trafficking are effectively protected and assisted, and to provide information on the impact of the SOPs on the identification, referral and protection of victims of trafficking in persons. The Committee also requests the Government to provide information on the number of victims of trafficking identified, as well as the number of those who received the services provided by the above-mentioned shelter.***

3. *Programme of action and coordinating body.* The Committee previously noted that the National Strategy Plan to Monitor and Combat Human Trafficking 2015–19 had been adopted in February 2016 and that a high-level committee chaired by the Prime Minister and the National Anti-Human Trafficking Task Force monitored the implementation of the Strategic Plan. It requested the Government to provide information on the implementation of this Plan.

The Committee notes the absence of information on this subject in the Government's report. It notes the Government's indication, in its report to the UN Human Rights Committee of April 2019, that the National Anti-Human Trafficking Task Force aims to strengthen coordination among key government stakeholders, increase prosecutions and improve the protection of victims. The National Anti-Human Trafficking Task Force is the national coordinating body to advise and monitor activities to be implemented in combating trafficking in persons in Sri Lanka (CCPR/C/LKA/6, paragraph 107). ***The Committee encourages the Government to pursue its efforts to prevent and combat trafficking in persons and requests the Government to provide information on the activities carried out in this regard, including the results achieved within the framework of the National Strategy Plan to Monitor and Combat Human Trafficking 2015–19 and whether it has been renewed.***

II. *Vulnerable situation of migrant workers with regard to the exaction of forced labour.* The Committee previously noted that various measures had been taken by the Government to safeguard the rights of Sri Lankan migrant workers, including the implementation of programmes to raise awareness among migrant workers on their rights and obligations, the signing of 22 memorandums of understanding (MoU) with major labour host countries on the protection of rights of migrant workers, the compulsory registration scheme requiring registration prior to departure for foreign employment and the development of standard-approved contracts. The Committee also noted that the SLBFE managed a transit shelter which provided medical assistance and accommodation to migrant workers referred upon their return by the Bureau's airport desk. The Government further indicated that consular assistance was provided through diplomatic missions in 16 major destination countries and 11 temporary shelters for female migrant workers as victims of abuse or exploitation. The Committee requested the Government to continue its efforts to ensure that migrant workers were fully protected from abusive practices and conditions that amount to the exaction of forced labour.

The Committee notes the Government's indication that it has organized a pre-departure training programme for migrant workers, in particular to inform them of the existence of an SLBFE complaint handling mechanism, which helps Sri Lankan migrant workers to lodge their complaints when they are abroad. The Government also indicates that consular assistance has been maintained through diplomatic missions' temporary shelters. In this regard, the Committee notes that, in its report to the UN Committee on Economic, Social and Cultural Rights of August 2017, the Government stated that there were 12 temporary shelters ("safe houses") in ten countries for female migrant workers, which benefited 3,552 migrant workers (E/C.12/LKA/Q/5/Add.1, paragraph 74).

The Committee observes that, according to the Decent Work Country Programme (DWCP) 2018–22, in 2017, approximately 212,162 Sri Lankan migrated overseas for work, a decrease from 242,816 in the previous year, with the majority headed to the Middle East in low-skilled jobs. The DWCP indicates that factors such as exorbitant recruitment costs and fees for migrants have reportedly resulted in instances of debt bondage and exploitative labour practices. It also indicates that there are deficiencies in the implementation of the labour migration policy, which regulates the recruitment, in-service, return and reintegration of migrant workers, especially at the recruitment stage.

The Committee also takes note of the adoption of the National Action Plan for the Protection and Promotion of Human Rights 2017–21, which focuses on the protection of the rights of vulnerable communities, including migrant workers. It further notes that the Government has introduced a Sub Policy and National Action Plan on Return and Reintegration of Migrant Workers to protect the rights of migrant workers, in the framework of the Sri Lanka's labour migration policy. Furthermore, the Committee notes that, according to a report of December 2017 entitled "Labour migration, skills development and the future of work in the Gulf Cooperation Council (GCC) countries", the working conditions of Sri Lankan construction workers are improving so that the wage differential is less attractive (page 7). The Government is also investing on up/re-skilling programmes in construction, service and other hospitality industries to reduce the vulnerability of migrant workers (page 12). ***While taking due note of the measures undertaken by the Government, the Committee requests it to pursue its efforts to ensure that migrant workers are not exposed to practices that might increase their vulnerability to the exaction of forced labour, and to provide information on the results achieved in this regard, including within the framework of the National Action Plan for the Protection and Promotion of***



*Human Rights 2017–21. The Committee also requests the Government to take the necessary measures to enhance the protection of migrant workers during the recruitment process by private recruitment agencies, and to provide information in this respect. Lastly, the Committee encourages the Government to pursue its efforts to sensitize migrant workers on their rights, including within the framework of the pre-departure training programme, and to provide information regarding the return and reintegration of migrant workers, especially within the framework of the Sub Policy and National Action Plan on Return and Reintegration of Migrant Workers.*

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

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

### **Observation 2019**

The Committee notes that a representation under article 24 of the Constitution of the ILO was presented to the Governing Body by the Flight Attendants' Union alleging non-observance by Sri Lanka of the Labour Inspection Convention, 1947 (No. 81) and the Protection of Wages Convention, 1949 (No. 95). At its 334th session (October 2018), the Governing Body decided that the representation was receivable and to set up a tripartite committee to examine it (GB.334/INS/14/3). In accordance with its past practice, the Committee has decided to suspend its examination of the application of the Convention, insofar as the effective enforcement of measures taken by labour inspectors to institute proceedings and the impartiality of the labour inspection system are concerned, pending the decision of the Governing Body in respect of the representation.

The Committee notes the observations of the Ceylon Bank Employees' Union (CBEU), the Ceylon Estates Staffs' Union (CESU), the Ceylon Federation of Labour (CFL) and the Ceylon Mercantile Industrial and General Workers Union (CMU) on the application of the Convention, and the Government's reply thereto, both received in 2018.

*Articles 3, 4, 5(a), 16, 20 and 21 of the Convention. Effective functioning of the labour inspection system and reliable statistics to evaluate its effectiveness. Annual reports of the labour inspectorate.* The Committee notes the information provided by the Government in its report for the period ending 31 August 2016, in response to the Committee's previous comments, on the implementation of the Labour Inspection System Application (LISA), and the Government's indication that all labour and occupational safety and health (OSH) inspectors have been trained to implement the system. In this context, the Government stated that from 2017 onwards, it would be possible to provide a comprehensive annual labour inspection report, in accordance with *Articles 20 and 21* of the Convention. The Committee nevertheless notes that the observations of the CBEU, the CESU, the CFL and the CMU take issue with the administration of LISA and its effectiveness in the collection of data, and allege that the system does not systematize the labour inspectorate's work or contribute to the improvement of its quality. In response, the Government states that LISA has been continuously improved since its launch, with newly added modules that should help to speed up related inspections. The Committee notes that, while the 2016 annual report of the Department of Labour contains information on laws and regulations relevant to the work of the inspection service, as well as statistics on the number of labour inspectors and the number of inspection visits, it does not contain information on all the subjects listed under *Article 21(a)–(g)* of the Convention. **Accordingly, the Committee requests the Government to take all the necessary measures to enable the central authority on labour inspection to publish and transmit to the ILO an annual labour inspection report, containing complete information on all the subjects listed in Article 21(a)–(g) of the Convention, in particular on: statistics of workplaces liable to inspection and the number of workers employed therein (Article 21(c)); statistics of violations and penalties imposed (Article 21(e)); statistics of industrial accidents (Article 21(f)); and statistics of occupational diseases (Article 21(g)). The Committee requests the Government to provide information on the measures taken in this regard. In addition, the Committee requests the Government to provide detailed information on the implementation of LISA in practice, including its impact on the effectiveness of the work of the labour inspectorate, both with regard to the number and quality of inspections and the collection of statistics.**

*Articles 3(1)(a) and (b), 9, 13 and 14. Role of the labour inspectorate in the field of OSH. Notification of industrial accidents and cases of occupational disease to the labour inspectorate.* Following its previous comments, the Committee notes the information on the number of inspections visits provided by the Government and in the 2016 annual report of the Department of Labour. The Committee also notes the Government's indication regarding the role of the National Institute of Occupational Safety and Health (NIOSH), which provides continued services to train labour inspectors on OSH issues. In this regard, the Committee notes the observations of the CBEU, the CESU, the CFL and the CMU stating that the NIOSH is poorly resourced in terms of trained staff and equipment. In addition, as regards measures to ensure that the labour inspectorate is informed of industrial accidents and cases of occupational disease, the CBEU, the CESU, the CFL and the CMU allege that there is no proper link between the general labour inspectorate and the OSH inspectorate to allow for: (i) information sharing and recording; and (ii) issues detected by regular labour inspectors to be followed-up on by OSH inspectors. The unions further allege that occupational injuries are very under-reported. The Government does not provide comments in this respect, but states that, due to the scope of application of the Factories Ordinance, certain workplaces, such as estates in plantations, can only be inspected by general labour inspectors and not by OSH inspectors. **The Committee requests the Government to indicate the measures taken to ensure that there is effective cooperation between general labour inspectors and OSH inspectors, with a view to securing the effective enforcement of the legal provisions relating to OSH. In addition, the Committee requests the Government to take the necessary measures to ensure that the labour inspectorate are notified of industrial accidents and cases of occupational disease, in accordance with Article 14 of the Convention, and to provide further information on the application in practice of this provision.**

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 2019**

The Committee notes the Government's reply to the 2018 observations of the International Trade Union Confederation (ITUC) and the Free Trade Zones and General Services Employees Union (FTZ and GSEU) which referred to allegations of anti-union dismissals in export processing zones (EPZs) as well as the refusal to recognize the right of unions to bargain collectively in the EPZs. The Committee notes that the Government indicates that labour inspectors have the right to enter workplaces in EPZs at any time and without prior notice and that the Labour Offices have not received any complaints in this regard.

The Committee also notes the observations of the ITUC received on 1 September 2019 alleging anti-union dismissals in a company and denouncing that anti-union discrimination and union-busting remain a major problem in the country. **The Committee requests the Government to send its reply thereon.**

*Article 1 of the Convention. Adequate protection against acts of anti-union discrimination. Effective and expeditious procedures.* For many years, the Committee has referred to the fact that, in practice, only the Department of Labour can bring cases concerning anti-union discrimination before the Magistrate's Court and that there are no mandatory time limits within which complaints should be made to the Court. Recalling the importance of efficient and rapid proceedings to redress anti-union discrimination acts, the Committee had urged the Government to take the necessary measures to ensure that workers who are victims of anti-union discrimination can lodge a complaint before the judicial courts. The Committee had also expressed the hope that the Industrial Disputes Act be amended to grant trade unions the right to bring anti-union discrimination cases directly before the courts. In this respect, the Committee notes that the Government indicates once again that the possibility for workers and for trade unions to lodge complaints before the judicial courts has been discussed for years

at the National Labour Advisory Council (NLAC) but that no consensus has been reached on this matter. The Government expresses the view that, as an impartial institution, the Department of Labour is in a better position than the victims are to carry out investigations and collect evidence in relation to anti-union discrimination complaints. The Government reports that, by the end of 2018, 311 cases of anti-union discrimination were pending and eight had concluded. *Recalling that anti-union discrimination is one of the most serious violations of freedom of association, and observing that, according to the ITUC, anti-union discrimination and union-busting remain a major problem in the country, the Committee once again: (i) urges the Government to take the necessary measures in the near future to ensure that workers who are victims of anti-union discrimination can lodge a complaint before the courts and (ii) expresses the hope that the Government will take the necessary measures to amend the Industrial Disputes Act so as to grant trade unions the right to bring anti-union discrimination cases directly before the courts. The Committee also requests the Government to continue to provide information on the number of cases of anti-union discrimination examined by the courts as well as to indicate the duration of proceedings and the sanctions or remedies imposed.*

*Article 4. Promotion of collective bargaining. Export processing zones (EPZs).* The Committee notes the information provided by the Government on measures taken to promote collective bargaining in the EPZs and welcomes the Government's indication that in 2018 and 2019 the Department of Labour conducted 12 awareness-raising programmes in the EPZs reaching approximately 1,000 workers and covering more than 50 work places. The Committee also notes the Government's indication that the fact that only trade unions can engage in collective bargaining discourages the establishment of employee councils in the EPZ's. The Committee notes, however, that the Government has not provided information on the number of collective agreements concluded by trade unions in the EPZs and has not indicated the number of trade unions and employees' councils in the EPZs, as requested by the Committee. *The Committee therefore requests the Government to provide such information. Recalling previous ITUC observations regarding the refusal to recognize the right of unions to bargain collectively in the EPZs, the Committee encourages the Government to continue to take measures to promote collective bargaining in the EPZs and requests it to provide information in that regard.*

*Representativeness requirements for collective bargaining.* In its previous comments, the Committee had requested the Government to review section 32(A)(g) of the Industrial Disputes Act, according to which no employer shall refuse to bargain with a trade union which has in its membership not less than 40 per cent of the workers on whose behalf the trade union seeks to bargain. The Committee notes that the Government reiterates that this matter was discussed within the NLAC but that both the employers and major trade unions do not agree to reduce the threshold, as it would create more divisions in the work place and dilute the trade union representation and bargaining power. The Government also reiterates that unions who do not meet the required threshold of representativity can merge and operate as one and indicates that some employers have accepted to bargain with trade unions without considering the threshold of 40 per cent. Recalling that the ITUC had previously referred to cases where companies had refused to bargain collectively with unions that did not reach the 40 per cent threshold, the Committee wishes to recall that the determination of the threshold of representativity to designate an exclusive agent for the purpose of negotiating collective agreements, which are designed to be applied to all workers in a sector or establishment, is compatible with the Convention in so far as the required conditions do not constitute an obstacle to the promotion of free and voluntary collective bargaining in practice. The Committee considers however that, if no union in a specific negotiating unit meets the required threshold of representativity to be able to negotiate on behalf of all workers, minority trade unions should be able to negotiate, jointly or separately, at least on behalf of their own members. *The Committee therefore reiterates that it expects that the NLAC and the Government will take the necessary measures to review section 32(A)(g) of the Industrial Disputes Act, in accordance with Article 4 of the Convention, in order to ensure that, if there is no union representing the required percentage to be designated as the collective bargaining agent, the existing unions are given the possibility, jointly or separately, to bargain collectively, at least on behalf of their own members. The Committee requests the Government to provide information in this respect.*

*Article 6. Right to collective bargaining for public service workers other than those engaged in the administration of the State.* The Committee had previously noted that the procedures regarding the right to collective bargaining of public sector workers did not provide for genuine collective bargaining, but rather established a consultative mechanism. In its last report, the Government had indicated that it was going to take measures with a view to addressing this issue. In that respect, the Committee notes that the Government once again indicates that: (i) the Industrial Disputes Act recognizes the right of private sector trade unions to bargain collectively with the employer or the authority concerned; (ii) in Sri Lanka, the private sector includes government corporations where a large segment of workers are engaged; and (iii) section 32(A) of the Act, which deals with unfair labour practices and collective bargaining, applies not only to trade unions in the private sector but also to trade unions in public corporations. The Government also indicates that the public sector of Sri Lanka constitutes 14 per cent of all employees and that trade unions with significant bargaining power have bargained specific allowances which have led to disproportionate disparities in the public sector with respect to net salaries. The Government expresses the view that legally allowing collective bargaining rights to the public sector employees would be unfavourable to the sustainability of the Government. In that connection, the Committee wishes to reiterate once again that there are arrangements that allow for the conciliation of the balance of public budgets and the protection of the principle of equal remuneration for work of equal value in the public sector, on the one hand, and the recognition of the right to collective bargaining, on the other. It also recalls once again that, in order to give effect to Article 6 of the Convention, a distinction should be drawn between, on the one hand, public servants who by their functions are directly employed in the administration of the State (such as, in some countries, civil servants in government ministries and other comparable bodies, and ancillary staff), who may be excluded from the scope of the Convention and, on the other hand, all other persons employed by the Government, by public enterprises or autonomous public institutions, who should benefit from the guarantees provided for in the Convention (see the 2012 General Survey on the fundamental Conventions, paragraph 172). *In view of the above, and considering that section 49 of the Industrial Disputes Act excludes state and government employees from the Act's scope of application, the Committee reiterates its previous request to the Government to take the necessary measures to guarantee the right to collective bargaining of the public sector workers covered by the Convention with respect to salaries and other conditions of employment. The Committee also reminds the Government that it may have recourse to the technical assistance of the Office.*

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

### Observation 2019

*Article 2(2) of the Convention. Raising the minimum age for admission to employment or work.* The Committee previously noted the Government's information that the Ministry of Labour and Trade Union Relations (MoLTUR) was currently in the process of amending relevant labour laws such as the Employment of Women, Young Persons and Children Act No. 47 of 1956, in order to raise the minimum age for admission to work or employment from 14 to 16 years. It trusted that the amendments raising the minimum age for employment to 16 years would be adopted in the near future.

The Committee notes with *interest* the Government's indication in its report that it has obtained the approval of the Cabinet of Ministers to increase the minimum age for employment from 14 to 16 years. The Government indicates that the revised draft labour laws and regulations, namely the Employment of Women, Young Persons and Children Act No. 47 of 1956, the Shop and Office Employees Act No. 19 of 1954, the Factory Ordinance No. 45 of 1942, and the Employees' Provident Fund Act No. 15 of 1958, which contain provisions raising the minimum age from 14 to 16 years, would enter into force in 2020. *The Committee welcomes the measures taken by the Government to raise the minimum age for admission to employment or work from 14 to 16 years, and hopes in this regard that the above-mentioned draft labour laws and regulations will be adopted in the near future. The Committee reminds the Government of the provisions of Article 2(2) of the Convention, which provide that any Member having ratified this Convention may subsequently*

*notify the Director-General of the International Labour Office, by a new declaration, that it has raised the minimum age that it had previously specified. The Committee would be grateful if the Government would consider sending a declaration of this nature to the Office, once the minimum age fixed by the national legislation is raised to 16 years.*

*Article 2(3). Compulsory education.* The Committee previously noted with interest the adoption of the Compulsory Attendance of Children at School Regulation No. 1 of 2015, which provides for compulsory education from 5 to 16 years of age. It noted however that the minimum age for admission to work or employment was therefore lower than the school-leaving age, and accordingly urged the Government to continue its efforts to raise the general minimum age. ***Noting that the Government is in the process of raising the minimum age for admission to employment or work to 16 years, the Committee once again requests the Government to continue its efforts in this respect, in order to link the minimum age with the age of completion of compulsory schooling, in conformity with the Convention.***

*Application of the Convention in practice and the labour inspectorate.* The Committee previously encouraged the Government to pursue its efforts to ensure the progressive abolition of child labour and to take effective measures to strengthen the capacity and expand the reach of the labour inspectorate to better monitor children working in the informal sector, including domestic workers.

The Committee notes the Government's information that a special inspection group is in charge of inspecting workplaces specifically for child labour, both in the formal and informal sector. In 2018, it inspected 472 workplaces. Moreover, there is a mechanism to inspect workplaces, including households, where underage children are suspected to be employed, in which interdepartmental teams comprising members of the police and of the Department of Probations and Child Care conduct the inspection together. Accordingly, 129 interdepartmental investigations were conducted following complaints on child labour in 2018, resulting in two instances of child labour. From 1 January to 31 August 2019, 112 investigations have been initiated following complaints on child labour, and no incidents of child labour have been identified.

The Committee further notes the Government's information that it has increased awareness-raising measures on child labour for multiple stakeholders, including the members of the Child Development Committees instituted by the Ministry of Women and Child Affairs in the 25 districts, field officers of the Department of Manpower and Employment, who come into direct contact with school students, teachers and parents, of the five districts in which child labour is estimated to be most prevalent, and the general public. The Government also states that the National Policy on Elimination of Child Labour was adopted in 2017, and that a national action plan is being prepared in this regard. The Committee notes in this regard that the National Steering Committee within the Ministry of Labour is in charge of the coordination and the monitoring of the implementation of the Policy.

The Committee notes that, according to the 2015–16 Child Activity Survey, the total child population aged between 5 and 17 years involved in child labour was 43,714 children (1 per cent). It also notes that the National Policy on Elimination of Child Labour of 2017 indicates that child labour is particularly prevalent in fisheries, tourism, small private estates and domestic labour. The Committee further observes that both the Committee on the Rights of the Child and the Committee on Economic, Social and Cultural Rights of the United Nations expressed concern that, despite significant progress made, children remain employed as street vendors, in domestic service, in agriculture, mining, construction, manufacturing, transport and fishing (CRC/C/LKA/CO/5-6, paragraph 41 and E/C.12/LKA/CO/5, paragraph 43). ***Welcoming the measures taken by the Government, the Committee requests it to continue its efforts to ensure the progressive elimination of child labour in the country, with a focus on the informal economy. It requests the Government to provide information on the measures taken and the results achieved in this regard, including within the framework of the National Policy on Elimination of Child Labour of 2017. It also requests the Government to continue to provide information on the measures taken to strengthen the capacity and expand the reach of the labour inspectorate regarding children working in the informal sector and on the number of children engaged in child labour identified.***

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

### Observation 2019

*Article 3 of the Convention. Worst forms of child labour. Clause (a) and Article 7(2)(a) and (b). Sale and trafficking of children and effective time-bound measures for prevention, assistance and removal from the worst forms of child labour.* The Committee previously noted that there are four safe houses, four certified schools and two national training and counselling centres in the country, which provide medical, legal and psychological services to child victims of trafficking. The Government also stated that 11 "places of safety" for child victims of trafficking were maintained at the provincial level, and that the Ministry of Justice established a National Anti-Human Trafficking Task Force. Moreover, it indicated that in 2016–17, prosecutors have been able to secure six convictions for trafficking of children. The Committee requested the Government to indicate the number of child victims of trafficking who have benefited from the services provided by the safe houses, certified schools and national training and counselling centres. It also requested the Government to continue providing information on the number of persons prosecuted, convicted and sentenced with regard to cases involving trafficking of children.

The Government indicates in its report that it has taken various measures to prevent trafficking in persons, including the development of training and awareness raising programmes and campaigns for government officials and the general public. The Government further indicates the adoption of the National Strategy Plan to Monitor and Combat Human Trafficking 2015–19. The implementation of this Strategy Plan is a key responsibility of the National Anti-Human Trafficking Task Force led by the Ministry of Justice. The Government further states that the task force is in charge of monitoring and strengthening the coordination among state actors, increasing victim identification and prosecutions, and improving the protection accorded to victims. The Government also indicates that during the reporting period, two suspected cases of trafficking in children for labour or commercial sexual exploitation were reported to the Sri Lanka Police. The Committee notes that, according to the statistics of the National Child Protection Authority, in 2018, 125 cases of trafficking were reported to it. It notes the Government's indication, in its report to the United Nations Committee on the Rights of the Child (CRC) under the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC) of April 2019, that there is a special unit in the Sri Lanka Police to investigate complaints relating to trafficking of children (CRC/C/OPSC/LKA/Q/1/Add.1, paragraph 4). ***While taking due note of the measures taken by the Government to prevent trafficking in children, the Committee requests it to take the necessary measures to ensure that perpetrators of trafficking of children are effectively prosecuted and that sufficiently effective and dissuasive penalties are imposed on them in practice, and to supply information in this respect. It also requests the Government to provide information on the number of child victims of trafficking identified by the special unit in the Police established for this purpose. Noting the absence of information from the Government on this point, the Committee once again requests it to indicate the number of these children who have benefited from the services provided by the safe houses, certified schools and national training and counselling centres.***

*Clause (b). Use, procuring or offering of a child for prostitution, the production of pornography or pornographic performances.* In its previous comments, the Committee noted that sections 286A, 288A, 360A and 360B of the Penal Code, as amended, prohibited the use, procuring or offering of children for prostitution, and for pornographic performances. It noted the high incidence of children in prostitution. The Committee therefore urged the Government to strengthen its efforts to ensure that perpetrators were brought to justice, thorough investigations and prosecutions of perpetrators were carried out, and sufficiently effective and dissuasive penalties were imposed in practice.

The Committee notes the Government's indication that although there is a prevalence of child prostitution in certain areas of the country, there is an absence of accurate statistics in this regard. It indicates, in its Policy on Elimination of Child Labour in Sri Lanka (2017), that the sexual exploitation of children among young boys (the "beach boy" phenomenon) in tourism is of high concern because of the rapid increase in tourism and the willingness to expand it further. The



Government also states, in its report to the CRC under the OPSC of October 2018, that issues pertaining to child prostitution and child pornography are critical, with increasing access to information and communication technologies which have brought with them the concern that children will be exposed to harm through these platforms (CRC/C/OPSC/LKA/1, paragraph 2). In this report, it further indicates that a national database on complaints received by the police desks, containing a special segment on complaints relating to sexual exploitation and pornography, has been established (paragraph 59).

The Committee further notes that, in its report to the CRC under the OPSC of April 2019, the Government indicates that the Sri Lanka Police identified in 2018 nine cases of child pornography and seven cases of procurement of children (CRC/C/OPSC/LKA/Q/1/Add.1, paragraph 2). It observes that, in its concluding observations under the OPSC of July 2019, the CRC expressed concern at the low prosecution rates and a high number of pending cases, and reports of official complicity in relation to cases of child prostitution and child pornography (CRC/C/OPSC/LKA/CO/1, paragraph 29). ***The Committee therefore urges the Government to take the necessary measures to combat child prostitution and child pornography, by ensuring that sections 286A, 288A, 360A and 360B of the Penal Code are effectively applied through thorough investigations and prosecutions of persons suspected of using, procuring or offering children for prostitution, the production of pornography or pornographic performances, including State officials suspected of complicity. The Committee requests the Government to provide information on the application of these sections in practice, indicating in particular the information from the database on complaints relating to prostitution and pornography, the number of investigations, prosecutions and convictions, as well as the specific penalties applied.***

***Clause (d) and Article 4(3). Hazardous work and revision of the list of hazardous types of work.*** The Committee previously noted that, according to the 2015–16 Child Activity Survey, 0.9 per cent of children aged 5–17 years (39,007 children) are engaged in hazardous work. The Government stated however that no incidents of hazardous work by children had been detected in the formal economy. The Committee further noted the Government's information that a committee had been appointed by the Commissioner General of Labour to revise the list of hazardous work according to international standards. It requested the Government to pursue its efforts to ensure the protection of children from hazardous types of work, including in the informal economy, and to provide information on the adoption of the new list of hazardous types of work.

The Committee notes the Government's information that, in 2018, 472 workplaces were inspected specifically for hazardous work performed by children and for child labour, through a special group inspection programme, following which one instance of hazardous work by children was identified. The Government indicates that awareness-raising activities were conducted, targeting inter alia all the district child development committees, and the field staff of the Department of Manpower and Employment in the five most child labour prevalent districts, to eliminate hazardous work by children. The Committee takes due note of the Government's indication that the new draft regulation for hazardous occupations, consisting of 77 types of hazardous work, has been finalized in 2018 and approved by the Cabinet of Ministers. The Government also indicates that it will supply a copy of the regulation, once adopted.

The Committee takes note of the National Action Plan for the Protection and Promotion of Human Rights 2017–21, which includes activities to eliminate effectively the hazardous forms of child labour. ***The Committee encourages the Government to pursue its efforts to ensure that children under 18 years of age are not engaged in work that is harmful to their health, safety or morals, and to continue to provide information on the measures taken in this regard. It requests the Government to ensure that the new draft regulation for hazardous occupations will be adopted in the near future, and to provide a copy of the list once it has been adopted.***

***Articles 6 and 7(2)(a) and (b). Programmes of action and effective time bound measures for prevention, assistance and removal of children from the worst forms of child labour. Commercial sexual exploitation of children.*** The Committee previously noted the Government's statement that awareness-raising programmes were delivered to the public and tourists to promote child-safe tourism and that 360 hotel staff members had received child protection awareness training in this regard. The Committee accordingly encouraged the Government to strengthen its efforts to combat child sex tourism.

The Committee notes the Government's indication that, in 2016, the National Child Protection Authority has initiated targeted programmes related to the zero tolerance policy of the Government regarding child-sex tourism for foreigners in Bentota and Kalutara, two coastal cities of the country. The Government also states that programmes to combat child labour and child-sex tourism have been conducted for 1,893 beneficiaries in the plantation sector and for education and health staff.

The Committee observes that one of the objectives of the National Plan of Action for Children in Sri Lanka 2016–20 is to protect children from all forms of sexual exploitation in relation to trafficking, sale and commercial sex networks, and to respond to the needs of such children for rehabilitation. It also takes note of the Policy Framework and National Plan of Action to address Sexual and Gender based Violence in Sri Lanka 2016–20, which focuses, inter alia, on preventing the commercial sexual exploitation of children, by raising awareness against this phenomenon, strengthening the existing mechanism of detection and responding to complaints. The Committee notes the Government's information, in its report to the CRC under the OPSC of October 2018, that with regard to the online safety of children including from pornography, it is developing programmes to raise awareness among children (CRC/C/OPSC/LKA/1, paragraph 58). However, the Committee notes that, in its concluding observations under the OPSC of July 2019, the CRC expressed concern about reported cases of parents encouraging children, particularly girls, to enter the sex industry (CRC/C/OPSC/LKA/CO/1, paragraph 19). ***Taking due note of the measures taken by the Government, the Committee requests it to pursue its efforts to eliminate the commercial sexual exploitation of children, as well as to prevent the engagement of children in commercial sexual exploitation and to provide direct assistance for the removal, rehabilitation and social integration of child victims of commercial sexual exploitation. It also requests the Government to provide information on the number of children who have been removed from commercial sexual exploitation and who have been rehabilitated and socially integrated.***

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



**C019 - Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)****Observation 2019**

*Article 1 of the Convention. Equality of treatment in case of employment accident.* In its previous comments, the Committee requested the Government to provide information on the measures taken to ensure access to benefits from the Workmen's Compensation Fund for foreign workers. The Committee notes the Government's indication that the Workmen's Compensation Fund directly provides benefits to undocumented workers regardless of their nationality and legal status should they suffer employment injury and their employers are obligated to pay contributions. The Committee further notes the measures indicated by the Government to address the situation of undocumented migrant workers, including measures to facilitate the procedure of obtaining the relevant identity and working documents and informing by employers on the status of employment of migrant workers. The Committee further notes with *satisfaction* the adoption of the Workmen's Compensation Act No. 2 on 9 December 2018 (WCA 2018) and the Notification of the Ministry of Labour on 20 March 2019, which require the registration of employees engaged in the agriculture, fishery, forestry and livestock sectors within the Workmen's Compensation Fund. The Government points out that the expansion of coverage of the WCA 2018 has resulted in a significant increase in the number of employees covered by the Workmen's Compensation Scheme.

**C029 - Forced Labour Convention, 1930 (No. 29)****Observation 2019**

The Committee notes the observations of the International Transport Worker's Federation (ITF) received on 4 September 2019.

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

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

**(a) Recruitment practices**

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

*(i) Brokers and recruitment fees.* In its previous comments, the Committee noted the provisions under the Royal Ordinance on the Management of Foreign Workers Employment B.E. 2560 (23 July 2017) (Royal Ordinance B.E. 2560) which provided for harsher penalties for offenders and stated clearer responsibilities of employers and licensed recruitment agencies. The Committee also noted the observations made by the ITUC in January 2016 that some migrant and Thai workers in certain fishing vessels had paid recruitment fees of up to US\$742 to brokers. In addition, they had reported not receiving any information regarding working conditions, payment of wages or the length of time at sea prior to getting on board the vessels. The payment system consisted of salary advances sent home in undocumented transfers via brokers and lump sums promised to workers after completing their work at sea. In this regard, the Committee noted the Government's indication that it had prohibited the imposition of recruitment fees on migrant workers, except for certain costs such as the cost of preparing documents and transportation expenses. The Committee requested the Government to continue to strengthen its efforts to ensure that migrant workers in the fishing sector are not exposed to practices that would increase their vulnerability to forced labour, in particular in matters related to the payment of recruitment fees and the recruitment by illegal brokers.

The Committee notes from the observations made by the ITF that the interviews with the fisher members of the ITF's Fishers Rights Network (FRN) over the past 12 months in Ranong, Songkhla and Trat provinces revealed that 89 per cent of fishers are in debt bondage of more than 10,000 Thai baht (THB). The average debt bondage across the entire FRN network is THB21,000 which represents at least two months' salary for most fishers.

The Committee notes the Government's indication in its report that the Foreigners' Working Management Emergency Decree (No. 2) B.E. 2561 (2018) (FWME Decree), which repealed certain provisions of the Royal Ordinance B.E. 2560, stipulates that an employer who brings a foreigner to work with him/her in the country shall not request or accept money or other assets from such workers, except for the expenses paid by the employer beforehand for passport fees, health check-up fees, work permits or other similar expenses as prescribed in a notification by the Director-General of the Department of Employment (section 24). Any employer who violates this provision shall be liable to imprisonment for a term not exceeding six months and a fine of twice the amount or asset value requested, received or accepted by the employer in this regard (section 53). The Committee further notes the Government's information on the steps taken to integrate various government agencies such as the Department of Employment, the Royal Thai Police, Security agencies and administrative officials in respective areas for effectively enforcing this law. Moreover, the Ministry of Labour has integrated cooperation with the navy, the army, the Department of Immigration and other local security agencies to intercept smuggling of migrant workers into the country as well as to conduct operations against recruitment companies and illegal brokers. Accordingly, the Committee notes that in 2018: (i) the Department of Employment inspected 364 migrant workers recruitment agencies and brokers, identified and prosecuted 452 illegal brokers; (ii) the Royal Thai Navy conducted 10,563 patrols along the Thai territorial water border zones, identified 351 irregular migrants and arrested nine illegal brokers; (iii) the Royal Thai Army conducted 99,982 patrols along the territorial border and identified 24,664 irregular migrants; and (iv) the Department of Immigration intercepted and denied entry to 6,800 illegal migrants. The overall operations resulted in the deportation of 28,178 smuggled migrant workers. ***Noting the alarmingly high level of debt bondage among fisher members in the FRN network, the Committee urges the Government to continue to strengthen its efforts to ensure that migrant workers in the fishing sector are not exposed to practices that would increase their vulnerability to forced labour or debt bondage, in particular in matters related to the payment of recruitment fees and the recruitment by illegal brokers; and to report in detail on results in this respect. It also requests the Government to continue to provide information on the application in practice of section 53 of FWME Decree of 2018, indicating the number and nature of violations detected and the penalties imposed for cases of violations.***

*(ii) Contract substitution.* The Committee previously noted that the tripartite committee observed the persistence of the practice of contract substitution of migrant workers. It noted that according to sections 14/1 and 17 of the Labour Protection Act of 1998 and section 6 of the Ministerial Regulation Concerning Labour Protection in Sea Fishery Work of 2014, a formal contract should be signed between the employer and the worker and a copy should be kept with the worker. Moreover, under the Fishery Law of 2017 an identification document (known as a Seabook) has to be issued by the owner of a fishing vessel to any migrant worker in the fisheries sector while signing a standard contract of the Department of Labour Protection and Welfare (DLPW) with that worker. The employment of a worker on a fishing vessel without an identification document, or without a licence shall be subject to a fine of THB400,000 (US\$12,000). The Committee requested the Government to continue to strengthen its efforts to ensure that, in practice, labour contract substitution is effectively prohibited and that the competent authorities register and verify that the signed contract corresponded to the original offer of employment consented to by the worker.

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The Committee notes from the observations made by the ITF that 78 per cent of the fishers interviewed by the FRN indicated that they do not have a copy of their employment contract in their possession while some others have never seen it. Some of them have it in Thai language, which is not their language and therefore are unable to understand their pay scale and other mandatory protections available for them.

The Committee notes that according to section 23 of the FWME Decree of 2018, an employer employing a foreigner shall prepare a written contract containing all the details as prescribed by the Director-General and keep it at the business place of the employer for inspection by the competent officials. The Committee further notes the information provided by the Government on the number of Seabook documents that have been issued for migrants under the Fisheries Act, 2017. Accordingly, from October 2017 to June 2019, 14,722 Seabooks were issued and between 30 September to 15 November 2017, 13,455 migrants who did not have a work permit were provided with special Seabooks. ***The Committee requests the Government to continue to strengthen its efforts to ensure that section 23 of the FWME Decree is implemented and that labour contract substitution is effectively prohibited, in practice. In this regard, it encourages the Government to ensure that the competent authorities register and verify that the signed contract corresponds to the original offer of employment consented to by the worker. It also requests the Government to take the necessary measures to ensure that the migrant workers are provided with a copy of their employment contract in their own language.***

(iii) ***Corrupt and complicit officials.*** The Committee previously noted that the tripartite committee considered that corruption of government officials could create an environment of impunity that exacerbates the situation of vulnerability of migrant fishers and constitutes a major obstacle in the identification of victims of forced labour and trafficked victims. It also noted the observations of the ITUC in 2016, that often, police officers or high-ranking government officials threaten witnesses, interpreters or other police officers. The Committee requested the Government to continue to take proactive measures to ensure that government officials complicit with human traffickers are prosecuted and that sufficiently effective and dissuasive penalties are imposed in practice for violation of the legislation.

The Committee notes the Government's statement that the number of government officials involved or colluding with the offences related to trafficking in persons have decreased due to the intensive legal measures that have been taken against such officials. According to the Government's report, from 2013 to 2016, an average of 44 officials per year were prosecuted and disciplinary actions, including asset seizure/asset freezes, were carried out for their involvement in criminal cases. In 2017, the number had been reduced to 11 officials and in 2018, two officials were prosecuted. ***The Committee requests the Government to continue to take proactive measures to ensure that government officials complicit with human traffickers are prosecuted and that sufficiently effective and dissuasive penalties are imposed in practice for violation of the legislation. It requests the Government to continue to provide information on the measures taken in this regard, including data on the number of government officials who have been prosecuted and convicted for their involvement in the offences related to trafficking of persons.***

### (b) Employment practices

(i) ***Confiscation of seafarers' identity documents (SIDs).*** In its previous comments, the Committee noted that the tripartite committee highlighted that the confiscation of SIDs is a serious problem in the Thai fishing industry. The Committee noted that according to section 68 of the Royal Ordinance B.E. 2560 of 2017, the work permit should always be kept with the migrant worker during his/her work while the confiscation of IDs shall be punishable under section 131 of the Royal Ordinance. The Committee requested the Government to strengthen its efforts to ensure the effective implementation of the Royal Ordinance B.E. 2560 of 2017.

The Committee notes the observations made by the ITF that only 13 per cent of the fishers interviewed had their IDs in their possession while most workers stated that the owner or captain retained possession of their IDs and denied the fishers free access to their documents. When fishers want to change boats, the vessel owner has to sign a release before fishers can legally change the employer. The owner can demand tens of thousands of baht from the fishers for their "document fees" before they release the document or can demand that the new vessel owner "purchase" the debt from the previous owner thereby continuing a severe system of debt bondage or forced labour.

The Committee notes the Government's indication that the Foreigners' Working Management Emergency Decree (No. 2) B.E. 2561 (2018) (FWME Decree), which repeals many of the provisions of the Royal Ordinance of 2017, addresses the problems arising from the work permit applications and difficulties in changing an employer with the implementation of a comprehensive system for prevention, protection, remedies and enforcement in line with the policy of hiring migrant workers. According to section 62 of the FWME Decree which repeals section 131 of the Royal Ordinance, any person who confiscates a work permit or identification card of a foreign worker shall be liable to imprisonment for a term not exceeding six months or a fine up to THB100,000 or both. The Committee further notes the Government's indication that the provisions of the FWME Decree have been disseminated to employers for them to understand that work permits or other documents of the migrant workers shall be deposited with the employer upon consent of the worker and that employers should provide timely access to such documents at any time upon the request of the worker. ***Recalling that the practice of confiscation of work permits or SIDs is a serious problem that may increase migrant fisher workers' vulnerability to abuse, by leaving them undocumented, reducing their freedom of movement and preventing them from leaving an employment relationship, the Committee urges the Government to strengthen its efforts to ensure that the FWME Decree of 2018 is effectively implemented, and that sufficiently dissuasive penalties for confiscation of work permits or SIDs are imposed on employers who are in breach of the legislation.***

(ii) ***Withholding of wages.*** The Committee previously noted that the tripartite committee encouraged the Government to continue to strengthen its efforts to address the non-payment of wages, and ensure the effective application of the Ministerial Regulation concerning Labour Protection in Sea Fishery Work B.E. 2557 (2014). It noted the ITUC's assertions in its observations that withholding of wages continued to be a common practice in Thailand, and that weak labour law enforcement and access to justice has led to the lack of guarantee of the payment of wages. The Committee noted that section 8 of the 2014 Ministerial Regulation B.E. 2557 requires an employer to prepare a salary statement including paid leave in the Thai language and that section 11 prohibits the employer from withholding wages. If an employer intentionally refrains from the payment of the salary seven days beyond the agreed initial date of payment, he/she is required to pay an additional amount of 15 per cent of the amount withheld. The Committee requested the Government to ensure that the 2014 Ministerial Regulation B.E. 2557 is effectively implemented, so that all wages were paid on time and in full, and that deterrent penalties for non-payment of wages were imposed.

The Committee notes from the ITF's observations that 82 per cent of the fishers surveyed indicated that they are not paid monthly. While 95 per cent of the fishers know that a bank account has been created along with an ATM card attached to that account, only 3 per cent indicated as having control and possession of their bank account and ATM card. In the majority of cases, the captains or owners control access to the bank account or ATM card and create fictitious electronic payment records showing compliance with minimum wage standards when in reality they are paying much less.

The Committee notes the Government's information that the Port-In-Port-Out Control Centre (PIPO), which is a law enforcement mechanism to control and supervise whether the employees receive their benefits, conduct three levels of inspection on fishing vessels, fishing gears, and workers. Before and after a fishing vessel departs or arrives a port, the vessel must be inspected by a labour inspector in the PIPO to check the payslips and to ensure that the workers have received their wages and benefits as prescribed. The Committee further notes the information provided by the Government on the results of labour inspections conducted by the PIPO. However, the Committee notes with ***concern*** that there is no specific information on the number of cases that relate to wages. ***The Committee urges the Government to take the necessary measures to ensure that the provisions of the Ministerial Regulation B.E. 2557 are effectively implemented, so that all wages are paid on time and in full, and employers face appropriate sanctions for the non-payment of wages. It also requests the Government to continue to provide information on the monitoring activities of the PIPO, including the number of violations detected relating to the non-payment or withholding of wages and the penalties applied.***

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(iii) *Physical abuse.* The Committee previously noted that the tripartite committee emphasized the vulnerable situation of fisher workers who may face physical violence that could in certain cases amount to murder. The Committee noted that in its observations, the ITUC provided several examples of fisher workers who had been physically abused or suffered from health complications or even killed. Survivors reported that they were deprived of food for several days, and had to work for up to three days without a break. In this regard, the Committee noted the Government's explanation that the amendment of 2015 (B.E. 2558) of the Anti Trafficking Act increased the penalty to 20 years' imprisonment if the offence of trafficking causes the victim(s) serious injuries, and life imprisonment or death penalty if the offence causes the victim(s) death. The amendment of 2017 (B.E. 2560) of the Anti-Trafficking Act provides for more explicit provisions, including: (i) the revision of the definition of "exploitation" to cover slavery; and (ii) the revision of the definition of "forced labour or forced service" to cover confiscation of IDs and debt bondage. The Committee urged the Government to take the necessary measures to ensure that the Anti-Trafficking Act, as amended, was effectively implemented.

The Committee notes that Emergency Decree B.E. 2562 (2019), amending the Anti-Human Trafficking Act (B.E. 2551), includes offences related to forced labour or services. According to section 5 of the Decree, any person who compels another person to work or provide services by means of threatening to cause injury to the life, body, liberty, reputation or property of the person threatened; intimidating; using force; confiscating identification documents; using debt burden incurred by such person; or by using any other similar means shall be liable to imprisonment for a maximum term of four years or to a fine up to THB400,000 or to both. If the above offence results in the victim being seriously injured or having a fatal disease, such person shall be liable to imprisonment for a maximum term of twenty years and a fine or to life imprisonment and in case of victim's death shall be liable to life imprisonment or the death penalty.

The Committee also notes the Government's information on the measures taken for the effective enforcement of the Anti-Human Trafficking Act, including the various training activities provided for inquiry officials, administrative staff and labour inspectors on victim identification. Moreover, a workshop to consult the multidisciplinary teams and law enforcement bodies on victim identification was hosted in Bangkok with the participation of officials from the Chief Inquiry Office, the Department of Special investigations and the Department of Local administration. Recalling the particular nature of the work of fisher workers, due in part to their isolated situation at sea, the Committee once again underlines the importance of taking effective measures to ensure that this category of workers is not placed in a situation of increased vulnerability, especially when they are subjected to physical violence. ***The Committee therefore urges the Government to take the necessary measures to ensure that the provisions of the Emergency Decree B.E. 2562 (2019) are effectively implemented, and regularly monitored by the law enforcement bodies, to investigate cases of physical abuse. It also requests the Government to take the necessary measures to ensure that the appropriate sanctions are imposed on employers who are in breach of the legislation.***

II. *Law enforcement and access to justice.* In its previous comments, the Committee noted that the tripartite committee highlighted the importance of: (a) strengthening the labour inspectorate body; and (b) providing access to justice and protection to the victims in order to enable the strict enforcement of the provisions prohibiting forced labour.

### (a) Labour inspection and the application of penal sanctions

The Committee previously noted that the tripartite committee found that the Government had established multidisciplinary inspection teams on fishing vessels that had the mandate to interview workers with a view to preventing them from becoming victims of debt bondage and human trafficking in the fisheries sector. It noted that in addition to the development of the Vessel Monitoring System (VMS), the Command Centre for Combating Illegal Fishing (CCCIF) had established the Electronics Monitoring Messaging and Electronics Reporting System (EM and ERS) which would enhance the capability to control illegal trans-shipment at seas, and help in detecting cases of trafficking in persons. The Committee also noted that according to Order No. 22/2017 on the implementation to combat Illegal, Unreported and Unregulated fishing (IUU), any authorized official who detects unlawful practices under fishery laws, shall have the right to detain the vessel and report it to the Marine Department within 24 hours. It further noted the various trainings provided for labour inspectors and the employment of language coordinators in Department of Labour Protection and Welfare (DLPW) provincial offices, PIPO centres and Migrant Workers Assistance Centres to facilitate communication between migrant workers and government officials. The Committee encouraged the Government to continue to take measures to strengthen the capacity of the labour inspectors in detecting forced labour practices and trafficking of persons.

The Committee notes the observations made by the ITF that the PIPO's use of the vessel monitoring system as a replacement for physical inspections will increase the risk of labour rights violations going unnoticed under the guise of statistics that falsely indicate compliance. The information from the electronic system could be used to conclude that there are no problems on vessels without ever inspecting a vessel or interviewing the crew. An electronic monitoring system may assist in combating illegal, unreported and unregulated fishing, but cannot be viewed as a replacement to physical inspections and human intelligence gathered through hands on inspection.

The Committee notes the Government's information that the DLPW has increased the number of labour inspectors from 1,245 in 2016 to 1,900 in 2018. With regard to the measures taken to enhance the capacity of law enforcement officials in identifying victims of trafficking, the Committee notes the detailed information provided by the Government on the training and capacity-building activities carried out from 2016–18 for labour inspectors and other law enforcement officials. According to the Government's information: (i) training was provided to 185 officials from the Ministry of Labour, Navy and Marine Police within the framework of the ILO Ship to Shore rights project, to increase their inspection skills, particularly in sea fishery and related businesses; (ii) training was provided to more than 250 labour inspectors and officials under the "Enhance Law Enforcement Efficiency for Qualitative Labour Inspectors Training Project" to prevent and deal with issues related to the use of forced labour, debt bondage, trafficking of persons and child labour; (iii) training activities was provided for 52 law enforcement officers to address illegal unreported and unregulated fishing problems; (iv) training activities on forced labour and debt bondage were provided for 101 labour inspectors; and (v) capacity-building activities were provided for 140 participants from the multidisciplinary teams to handle cases of trafficking in persons.

Moreover, the Committee notes the Government's information that it has improved the methods of inspecting sea fishery workers, particularly to identify cases of forced labour and trafficking in persons and that the inspection ensures that workers have an employment contract as specified and receive benefits mentioned in the employment contract. The Government indicates that during 2018–19, owners of two fishing vessels were prosecuted and fined following a preliminary interview with workers in a secluded zone in the absence of the employer and through an interpreter. In 2018, the multidisciplinary team and interpreters interviewed 78,623 vessels in 22 coastal provinces and identified 511 violations relating to rest time, incorrect employment contracts, payslips and documents. Of these, 507 cases have been prosecuted, of which 482 litigations have been finalized.

The Committee further notes the information provided by the Government on the results of the labour inspections at the PIPO centres. Accordingly, in 2018, 74,792 fishing vessels were inspected, 509 offences were detected, 482 orders were issued, owners of 24 vessels were fined, and three cases were prosecuted. It further notes the Government's indication that in 2018, 304 offenders of trafficking in persons were prosecuted, including 258 cases for sexual exploitation, 29 cases for employment-related issues, eight cases for the purpose of begging, and six cases related to the use of forced labour in the fishery sector. ***The Committee requests the Government to continue its efforts to strengthen the capacity of the labour inspectors in detecting forced labour practices and trafficking in persons in the fishery sector. It also requests the Government to continue to provide statistical information on the number and nature of violations related to forced labour or trafficking concerning migrant fisher workers that have been registered by the labour inspectors, as well as by the PIPO centres and penalties imposed. The Committee also requests the Government to take the necessary measures to ensure that the vessels are monitored through physical inspections by labour inspectors and the PIPO centres and that the inspection results are disaggregated by offences.***

### (b) Access to justice and assistance to victims

The Committee previously noted the tripartite committee's observation that, while the legislation provided for the establishment of different complaints



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mechanisms, there existed some obstacles to their effective use by workers, such as the duration of the complaints procedure, language barriers and the lack of information on preventive measures with regard to re-trafficking. The Committee noted the Government's statement that there existed special assistance centres for migrant workers and that a number of centres, such as the Fishing Worker Coordinator Centres and the Fisherman's Life Enhancement Centre (FLEC) had been established for migrant fishing workers. In addition, the Committee noted the establishment of 24-hour assistance channels that are accessible to migrant workers in their own languages, as well as the Complaint System for Foreign Workers which operates through the Internet. The Committee further noted the signing of Memoranda of Understanding (MOUs) to tackle trafficking in persons with source countries, such as Lao People's Democratic Republic, Myanmar and Viet Nam and an agreement with the Government of Myanmar on the implementation procedure for the repatriation and reintegration of victims under the concept of safe repatriation, safe receiving and no re-trafficking. The Committee encouraged the Government to continue to take measures to ensure improved protection and assistance to migrant fisher workers so as to prevent them from falling into situations of forced labour or trafficking in persons.

The Committee notes the detailed information provided by the Government on the establishment of various service centres which provide assistance to migrant workers, including:

- four Migrant Workers Assistance Centres aimed at upgrading the quality of life of fishery workers and providing assistance, knowledge on welfare and benefits and receiving grievances from workers;

- Fisherman Centre established by the DLPW and the Labour Rights Promotion Network Foundation which provides assistance to foreign fishers who are victims of forced labour and other abuses;

- Migrant Workers Protection and Monitoring Network under the Ministry of Labour's LINE Application which sets up chat groups that assist migrant workers to reclaim wages and compensation and to advise workers on their rights under relevant provisions (currently there are 29 chat groups gathering 1,431 members);

- PROTECT-U, a mobile application that receive reports of trafficking in persons and refers to the relevant government agencies or other service providers;

- Joint Service Centres for Migrant Workers established in ten provinces and covering workers in 24 industrial sectors which provide advice on work-related benefits, changing employers and coordination and referral for assistance or access to their rights (from October 2018 to June 2019, the centres provided services to 31,934 migrant workers);

- "DOE Help me", a grievance mechanism through the website supporting six languages which provides employment and job-seeking information and receives complaints from Thai and migrant workers (from October 2018 to May 2019, the website recorded 213 grievances from workers and all the complaints received assistance); and

- Hotline 1506 to receive complaints and grievances from migrant workers which has three interpreters.

Moreover, the DLPW has employed language coordinators and interpreters for the effective protection and assistance of migrant workers and to prevent them from becoming victims of forced labour or trafficking of persons. The number of interpreters has increased from 72 in 2016 to 153 in 2018. *The Committee encourages the Government to continue to take measures to ensure improved protection and assistance to migrant fisher workers, so that they do not fall victims to forced labour or trafficking in persons. The Committee also requests the Government to provide statistical information on the number of migrant fisher workers who have had recourse to legal and other assistance from the above-mentioned assistance centres and other online grievance mechanisms.*

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

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

#### Observation 2019

*Article 1(a) of the Convention. Penal sanctions involving compulsory labour as a punishment for holding or expressing political views.* Over a number of years, the Committee has been drawing the Government's attention to section 112 of the Criminal Code under which whoever defames, insults or threatens the king, the queen, the heir apparent or the regent, shall be punished with imprisonment of three to 15 years, as well as sections 14 and 15 of the Computer Crimes Act of 2007 that prohibit the use of a computer to commit an offence under the provisions of the Criminal Code concerning national security (including section 112 of the Criminal Code), with a possible sanction of five years' imprisonment. The Committee noted that under the Penitentiary Act BE 2479 (1936), penalties of imprisonment involve an obligation to perform prison labour. The Committee observed that in its 2017 Concluding observations the United Nations Human Rights Committee (HRC) was concerned that criticism and dissension regarding the royal family is punishable with a sentence of three to 15 years' imprisonment, about reports of a sharp increase in the number of people detained and prosecuted for the crime of lèse-majesté since the military coup and about extreme sentencing practices, which resulted in dozens of years of imprisonment in some cases (CCPR/C/THA/CO/2, paragraph 37). The HRC was also concerned about reports of the severe and arbitrary restrictions imposed on the right to freedom of opinion and expression in the state party's legislation, including in the Criminal Code and the Computer Crimes Act. The HRC further expressed concern about criminal proceedings, especially criminal defamation charges, brought against human rights defenders, activists, journalists and other individuals under the above-mentioned legislation, and about reports of the suppression of debate and campaigning, and criminal charges against individuals during the run-up to the constitutional referendum in 2016. The Committee noted with deep concern that the penalties of imprisonment involving compulsory prison labour, contained in the Penitentiary Act of 1936, were retained under the 2017 amendments to the same Act. The Committee therefore urged the Government to take all necessary measures, in both law and practice, to ensure that no penalties involving compulsory labour may be imposed for the peaceful expression of political views or views opposed to the established system.

The Committee notes the explanation provided by the Government in its report that the lèse-majesté offence, which relates to the security of the Kingdom under section 112 of the Criminal Code, is intended to protect the king, the queen, the heir apparent and the regent from defamation, insults or threats in the same way as defamation law for citizen. These provisions maintain stability and order without any intention to impede freedom of expression. The Committee also notes the Government's indication that the provisions under section 112 of the Criminal Code and sections 14 and 15 of the Computer Crimes Act shall be considered as a criminal offence only if they are constituted by the following elements namely: (i) an offender has committed an act defaming, insulting or threatening; (ii) the act is committed against the king, the queen, the heir apparent or the regent; and (iii) the act is intentional. The Government further refers to the amendments made in 2017 to sections 14 and 15 of the Computer Crime Act of 2007. According to these amendments, section 14 makes it an offence to dishonestly or fraudulently convey a distorted or fake or false data through the computer system which may cause damage to the people, or to the national security, public safety, national economic security or infrastructure, or an offence relating to terrorism, or data involving obscene materials that the general public may have access. This offence shall be punished with imprisonment not exceeding five years or a fine. According to section 15, any service provider who cooperates or consents to the offences committed under section 14 shall be liable to the same penalty. The Government states that if the service provider complies with the notification issued by the Minister prescribing the suspension on dissemination of that particular data and removal of that data from the computer system, they shall not be liable to any punishment.

The Committee finally notes the Government's information that the Corrections Act BE 2560 (2017) which repeals the Penitentiary Act of 1936, does not have any provision that imposes compulsory labour for prison sentences. According to the Government's report, the Department of Corrections has measures to ensure that prisoners can choose to work voluntarily. However, the Committee notes that section 48 of the Corrections Act of 2017 requires prisoners to comply



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with the orders of prison officials to work in certain prison functions relevant to the prisoner's physical and mental aptitude, gender and status as well as the desire to improve inmates' behaviour and the security and specific characteristics of a prison.

The Committee recalls that restriction on fundamental rights and liberties, including freedom of expression, have a bearing on the application of the Convention if such restrictions are enforced by sanctions involving compulsory prison labour. The Committee draws the Government's attention to the fact that legal guarantees of the rights to freedom of thought and expression, freedom of peaceful assembly, freedom of association, as well as freedom from arbitrary arrest, constitute an important safeguard against the imposition of compulsory labour as a punishment for holding or expressing political or ideological views, or as a means of political coercion or education (see General Survey on the fundamental Conventions, 2012, paragraph 302). *The Committee therefore once again urges the Government to take immediate measures to ensure that no penalties involving compulsory labour, including compulsory prison labour, may be imposed for the peaceful expression of political views opposed to the established system, both in law and in practice. In this regard, the Committee requests the Government to ensure that section 112 of the Criminal Code is amended, by clearly restricting the scope of these provisions to acts of violence or incitement to violence, or by repealing or replacing sanctions involving compulsory labour with other kinds of sanctions (e.g. fines) in order to ensure that no form of compulsory labour (including compulsory prison labour) may be imposed on persons who, without using or advocating violence, express certain political views or oppositions to the established political, social or economic system. The Committee requests the Government to provide information on any progress made in this respect. The Committee also requests the Government to provide information on the application in practice of sections 14 and 15 of the Computer Crimes Act 2007, including court decisions issued under these sections, indicating in particular the facts that gave rise to the convictions and the sanctions applied.*

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

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

### Observation 2019

*Articles 1 and 2 of the Convention. Implementation of an active employment policy. Labour market trends.* The Committee welcomes the detailed information communicated in the Government's report and its annexes. In its previous comments, the Committee requested the Government to provide information on the implementation of the 11th National Plan of Social and Economic Development for 2012–16 (11th Plan) with respect to employment promotion, including its impact on national labour market trends. The Government reports that the 11th Plan supported workforce development in balance with labour market demands through proactive measures that respond to the changing environment of the labour market and technological advancements. During the implementation of the 11th Plan, Thailand's services sector experienced continuous growth, particularly in tourism and related services. The Government indicates that the unemployment rate was 1.18 per cent in 2017 and that it increased, particularly in construction and manufacturing, partly due to the shift of workers from agricultural sector to non-agricultural sectors as a result of continuous drought during 2014–16. The Committee notes that, according to the Labour Force Survey (LFS) of the National Statistical Office, the unemployment rate declined to 0.9 per cent by the last quarter of 2018, while labour force participation reached 68.29 per cent. The Government refers to a series of employment promotion programmes implemented under the 11th Plan. In this respect, the Committee takes note of the establishment of Tri-Thep Centres for Improving Employment and Income Opportunities in 2013 to provide sustainable employment and lifelong career development, as well as the establishment of 87 Smart Job Centres nationwide in 2015, offering employment services as one-stop service centres. The Committee also notes that the Government established the M-Powered Thailand, an online career development website, and developed the Smart Labour Line Mobile Application to facilitate workers in digital age to access services provided. The Committee notes that 1,303,967 were employed through employment services provided during the period 2015–18, including 8,530 persons with disabilities. The Government promotes the employment for persons with disabilities pursuant to the Empowerment of Persons with Disabilities Act, B.E. 2550 (2007), and its amendment (No. 2) B.E. 2556 (2013). The Committee notes with interest the adoption of the 12th Social and Economic Development Plan (2017–21). *The Committee requests the Government to communicate detailed information on the implementation of the 12th Social and Economic Development (2017–21) with respect to employment promotion. It also requests the Government to provide updated statistical data disaggregated by sex and age on the labour market situation, including trends in employment, unemployment and visible underemployment, as well as information on the size and distribution of the informal economy.*

*Article 3 of the Convention. Consultations with the social partners.* The Committee notes the Government's indication that tripartite consultations were held in relation to the development and adoption of the 11th Plan, as well as in relation to the draft development strategies incorporated into the "Labour Master Plan 2012–16". In particular, comments received from the tripartite partners were subsequently incorporated into the draft to better reflect stakeholders' perspectives and interests. The Government adds that the Ministry of Labour also held three public hearings to gather further inputs from stakeholders from four regions across the country. The comments and suggestions from the events were taken into account to improve the Plan, ensure its inclusivity and enhance its ability to respond to people's needs and demands of the labour market. *The Committee requests the Government to continue to provide information on the consultations held with the social partners with regard to the development and implementation of active employment policy measures under the 12th Plan.*

*Migrant workers.* In response to the Committee's previous comments, the Government reports that, recognising the enormous contributions that migrant workers make to the Thai economy and its society, it has implemented a variety of measures to ensure adequate protection of labour rights and decent livelihood for all migrant workers in Thailand and to help accelerate the regularization of undocumented workers to enable them to access public services, legal protection and grievance mechanisms. From March 2015 to March 2018, the Government organized one-stop registration services via 88 One-Stop Service Centres across the country. As of July 2018, there are 3,420,595 migrants permitted to work in Thailand. The Committee takes note of the temporary stay extension granted for migrants working without work permits. In this context, the Government emphasizes the importance of adhering to regular migration pathways established through memorandum of understanding agreements (MOU agreements) between Thailand and countries of origin, which help ensure that incoming workers will not fall victims of illegal employment, labour exploitation, and labour trafficking. The Government reviewed and amended existing MOU agreements, with the Governments of Laos, Myanmar and Cambodia to make labour migration through MOUs channels more straightforward and compelling enough to be used as the standard mechanism for bringing in migrant workers to limit the possibilities of labour exploitation and human trafficking. The Government has organized an integrated operation to combat labour trafficking and exploitation, inter alia, through the Command Centre of Prevention on Labour Trafficking (CCPL) and the Labour Trafficking Operation Centres in 76 provinces. The Ministry of Labour also put forward updated legal measures (The Royal Ordinance/Decree on the Management of Foreign Workers Employment B.E. 2560 and its amendment (No. 2) B.F. 2561 (2018)) to respond to the current situation in labour migration by increasing penalties to dissuade both workers and employers from potential wrongdoings and deter repeated violations. The Government refers to a series of measures specifically targeted to reducing vulnerability of migrant workers. The Ministry of Labour has increased the frequency of multidisciplinary inspections in order to prevent and suppress labour exploitation in high-risk establishments. Furthermore, with the Cabinet Resolution dated 26 July 2016, three post-arrival and reintegration centres have been established to provide orientation trainings for migrant workers entering for work in Thailand through MOU channels. Furthermore, the Committee notes the increased access to Government services through digital means, the introduction of a new web-based complaint channel "DOE help me" to allow complaint launching online and the Department of Employment's Hotlines which comprise a convenient channel for Government information. The Ministry of Labour organized training courses for migrant workers and employers to raise awareness on their rights, duties, laws, regulations, tradition and culture. The Government indicates that migrant workers in Thailand have access to healthcare; either through the Social

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Security Fund or the Compulsory Migrant Health Insurance Scheme. The Government reports on a series of specific measures to protect fundamental rights of workers in the fishing industry. Because the majority of migrant workers employed in the fishing industry prior to 2014 were undocumented; therefore very vulnerable, the Government undertook multiple rounds of migrant fishers' registration and renewals of fishers' working status. The Government entered into negotiations with industry stakeholders to guarantee incentives for migrant fishers incoming under MOU arrangements, which were proven relatively successful as, in the first seven months of 2018, 2,151 migrants were recruited into fishing under MOUs. The Committee notes that the "Baseline research findings on fishers and seafood workers in Thailand, ILO 2018" emphasizes the importance of ensuring effective enforcement of the labour laws and other standards across multiple tiers of seafood supply chains, protecting workers and creating an industry level playing field. The Baseline suggests that the Thai Government and the Ministry of Labour should reorient the inspectorate to investigate, identify and punish violations of labour laws. The Committee notes that, in this regard, the Ministry of Labour has sought to make new tools available to inspectors and, from 2015 to 2016, collaborated with the ILO under different projects to provide trainings to officials to build capacity on labour inspection. The Government indicates that Port In – Port out Controlling Centres (PIPO) were established on 12 June 2015 to conduct fishing vessels inspections. Acknowledging that the rate of prosecutions nevertheless remained low, DLPW issued the Rules concerning Labour Inspection and Criminal Procedure against offences under the Ministerial Regulation on Labour Protection Sea Fishery Work (No. 2) B.E. 2561 effective from 15 July 2018. The Committee notes the establishment of a Fishermen's Life Enhancement Centre (FLEC) with Stella Maris to improve the quality of life for workers in sea fishery and provides access to services and assistance for workers and victims of labour exploitation. The Committee also notes the establishment of Provincial Coordination Centres for Sea Fishery Workers in 22 provinces to encourage bringing in migrant workers through legal channels. Regarding overseas employment, the Government notes that in 2017 there were 168,438 Thai workers working overseas. The Ministry of Labour, through the Department of Employment provides overseas employment services for Thai workers as well as trainings and capacity building for workers in response to overseas labour market needs. The Ministry of Labour also implements projects, such as pre-departure orientation trainings, to assist and protect workers from falling victims of human trafficking and other forms of labour exploitation. The Committee notes that there are 13 overseas labour offices located in 12 countries which comprise a very important mechanism to ensure the protection of overseas Thai workers. ***The Committee requests the Government to continue to provide information on the impact of the measures implemented to address and resolve issues relating to migrant workers, especially those occupied in the fishing industry, including information on the labour violations identified in the supply chain, the sanctions imposed and the compensation awarded. It also requests the Government to continue to report on the measures taken or envisaged to prevent abuse and exploitation of migrant workers in Thailand.***

***Women. Prevention of discrimination.*** The Government indicates that women's labour market participation rate stands at 60 per cent, but that women continue to face many cultural barriers to employment. The Government has taken a number of measures to increase women's participation in the labour market. The Committee notes that the Ministry of Labour launched a nationwide promotional campaign for business establishments to dedicate an area as a "lactation corner" in 2006 and a promotional campaign for business establishments to create childcare centres in 2004. The Government indicates that the Ministry of Labour organizes International Women's Day annually to raise awareness among government and social partners on the importance of women workers, decent work and workplace protection. The Committee takes note of the establishment of the Women's Empowerment Fund on 23 June 2015, which provides financial support for activities aimed at empowering women. The Government indicates that it has developed and implemented legal mechanisms and procedures to prevent discrimination against women workers. The Committee notes the promulgation of the Gender Equality Act B.E. 2558 (2015) on 13 March 2015, which established the following mechanisms: the Gender Equality Promotion Committee (or the Sor-Tor-Por Committee), responsible for policymaking, determining measures, work plans and monitoring to ensure gender equality; the Committee on the Determination of Unfair Gender Discrimination; and the Gender Equality Promotion Fund, established to cover expenses used in promoting gender equality or to provide compensation for women, men, or LGBTQ persons who experience unfair treatment on the basis of their gender or sexual orientation. ***The Committee requests the Government to continue to provide information, including statistical data disaggregated by sex and age, on the impact of the measures taken to promote increased participation of women in the labour market at all levels, and to prevent discrimination in terms of employment.***

***Informal economy workers.*** The Government indicates that the number of informal workers in Thailand increased from 32.48 per cent in 2012 to 36.24 per cent in 2016. The Government indicates that social security and welfare coverage was extended under the 11th Social and Economic Development Plan, making it more inclusive and more easily accessible for informal workers. It adds that, as a consequence, the ratio of informal workers with access to social security benefits increased from 3.7 per cent in 2011, the last year of the 10th Plan, to 10.75 per cent at the end of the 11th Plan. The Committee also notes that skills development training provided under the Skills Development Promotion Act B.E. 2545, aims to improve the employability of persons belonging to target groups, including informal workers. ***The Committee requests the Government to supply information, including disaggregated data, on the impact of the measures implemented to promote the transition to formal employment and extend access to social security benefits to workers in the informal economy. Referring to the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), the Committee reiterates its request that the Government include information on the nature and impact of measures taken to facilitate the transition of informal workers from the informal economy to the formal labour market.***

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

#### ***Observation 2019***

***Article 1 of the Convention. National policy, labour inspection and application of the Convention in practice.*** The Committee previously noted that child labour was a problem in the country and in practice children in rural areas worked in sugar cane, cassava and corn plantations, in rice paddies, in fisheries, shrimp farms and seafood processing under conditions which are often hazardous. In urban areas, children worked in sectors such as restaurants, markets, street vending, construction and entertainment. The Committee noted that according to the information from the Ministry of Labour in December 2015, there were an estimated 10.88 million children aged between 5–17 years, of which 6.4 per cent were working (692,819) and 2.9 per cent were considered in child labour (approximately 315,520). However, the Committee observed that the number of cases of child labour identified by the Department of Labour Protection and Welfare (DLPW) was extremely low compared to the number of children considered to be in child labour. The Committee therefore requested the Government to pursue and strengthen its efforts to identify and combat child labour and to indicate the measures taken to strengthen the capacity and expand the reach of the labour inspectorate and of the relevant law enforcement agencies, as well as of the child labour monitoring system.

The Committee notes the Government's information in its report on the various measures taken for the elimination of child labour. Accordingly, the Committee notes that the "World Day Against Child Labour" was held on 11 June 2019 focusing on awareness-raising on the issue of child labour and its worst forms. In addition, actions and policies under the National Child and Youth Development Plan, 2017–2021, the Family Development Policy and Strategy 2017–2021 and various national education policies from the Ministry of Education are also being implemented. Furthermore, output 2.2 of the Thailand Decent Work Country Programme (DWCP) 2019–2021 aims to reduce unacceptable forms of work, especially child labour through the effective implementation of relevant policies and programmes.

Regarding the measures taken to strengthen the capacity and expand the reach of the labour inspectorate, the Government indicates that: (i) the number of labour inspectors was increased from 1,245 inspectors in 2016, to 1,506 in 2017, and to 1,900 inspectors in 2018; (ii) the labour inspection system was integrated in sectors where child labour is more prevalent, such as in marine fishing vessels and aquaculture processing establishments; (iii) a Ministerial

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Regulation on Labour Protection in Marine Fisheries, 2018 was issued which authorizes the labour inspectors to issue criminal charges against persons who involve children under 18 years in child labour and hazardous work; and (iv) several training activities for labour inspectors were organized to strengthen their ability to enforce labour protection laws. The Committee further notes from the Government's report that according to the data from the Economic-Labour Activity Report (October–December), 2018, a total of 42,685 establishments were inspected by the labour inspection of the Ministry of Labour in 2018, of which 527 establishments were found to be engaging child labour, a reduction by 378 establishments in 2017. Children under the age of 15 years were found to be working in hotel and restaurants, wholesale, retail and repairs, manufacturing, construction and real estate services. Furthermore, criminal prosecutions were carried out in 95 cases for violation of the provisions related to child labour under the Labour Protection Act, 1998, involving 206 offenders and in 53 cases offenders were penalized with fines amounting to 1,090,000 baht. These cases were related to the hiring of children under 15 years (18 cases); not notifying the hiring of children under 18 years to the labour inspectorate (64 cases); and engaging children under 18 years in forbidden work or places (13 cases).

The Committee further notes that according to the results of the National Working Children Survey of 2018, of the total number of 10.47 million children aged between 5–17 years, 409,000 children (3.9 per cent of all children) are engaged in economic activities, of which 177,000 children are involved in child labour and 133,000 children are engaged in hazardous work. Children are mostly involved in work in the agricultural sector (46.3 per cent); commerce and service sector (39.5 per cent); and in the manufacturing sector (14.2 per cent). Of these, 65.1 per cent are engaged in unpaid household businesses and 31.3 per cent in the private sector. Gender disaggregated data indicate 127,000 boys (71.9 per cent) and 49,700 girls (28.1 per cent) are involved in child labour. While taking due note of the measures taken by the Government to combat child labour, the Committee notes that the number of children involved in child labour is still significant. *The Committee therefore urges the Government to continue taking effective measures to identify and combat child labour, including within the framework of the DWCP. It also encourages the Government to continue its efforts to strengthen the capacity and expand the reach of the labour inspectorate to the agricultural, commerce and service sector, marine fishing vessels and aquaculture processing establishments where child labour is more prevalent and to continue providing information in this regard. The Committee also requests the Government to continue to provide information on the number and nature of violations detected by the labour inspectors and the relevant law enforcement bodies and penalties applied in child labour cases.*

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 2019

*Articles 3(a), 5 and 7(1) of the Convention. Worst forms of child labour, monitoring mechanisms and penalties. 1. Trafficking.* In its previous comments, the Committee noted the establishment of a Centre for Combating Human Trafficking (CCHT) in the offices of each police commander which receive complaints and investigate offences related to trafficking in persons and One Stop Critical Centres were established to monitor all anti-human trafficking activities. It also noted the statistical information provided by the Government on the number of cases of trafficking of children registered, prosecutions carried out and penalties imposed. However, it noted that the United Nations Committee on the Rights of the Child (CRC), in its concluding observations expressed its concerns at the increase in the trafficking of children from neighbouring countries into Thailand for sexual exploitation, contributing to the large child sex tourism industry in the country, while Thai children were often trafficked to foreign countries for sexual exploitation (CRC/C/THA/CO/3-4, paragraph 76). The Committee, therefore, strongly urged the Government to intensify its efforts to strengthen the capacity of law enforcement officials responsible for the monitoring of trafficking in children to ensure the effective implementation of the Anti-Trafficking in Persons Act.

The Committee notes the Government's information in its report that the 2018 Emergency Decree amending the Anti-Trafficking in Persons Act of 2008 has been adopted. According to section 4 of the Decree, section 6(1) of the Act of 2008 shall be repealed and replaced as follows: Any person who for the purpose of exploitation, commits any of the offences related to procuring, buying, selling, vending, bringing, sending detaining, confining, harbouring or receiving a child shall be guilty of trafficking in persons. The term "exploitation" is defined to include a wide range of offences, including prostitution, production or distribution of pornographic materials, exploitation of other forms of sexual acts, slavery like practices, begging, forced labour services and any other forcible extortion regardless of such person's consent. The Committee also notes the detailed information provided by the Government on the training activities, seminars and personnel development programme carried out by the Department of Labour Protection and Welfare (DLPW) from 2016 to 2018 for government officials, labour inspectors, public officials and non-governmental officials to enhance their capacity to monitor and identify child victims of trafficking and on protection of victims of trafficking, including:

- Law Enforcement Efficiency for Qualitative Labour Inspectors Training Project which was attended by over 100 labour inspectors;
- workshop for public prosecutors to strengthen the effectiveness of trafficking in persons investigations and prosecutions;
- seminars on victim identification and investigation of trafficking in persons litigation for 200 police officers;
- child safeguard training activities on the protection of child victims of trafficking for staff in Trafficking in Persons Protection Centres;
- victim specialized training activities for 711 trainees; and
- training of trainers to prevent trafficking in persons attended by 228 trainees.

Furthermore, several manuals and guidelines on the effective implementation of the Anti-Trafficking Act were issued, including: (i) the Labour Inspection Guidelines on the procedures to be followed on detecting cases of trafficking in persons including children; (ii) the operational guideline manuals for combating trafficking in persons issued by the Royal Thai Police; (iii) the Trafficking in Persons Case Management Guideline issued in collaboration with the Australia–Asia Programme to Combat Trafficking in Persons; and (iv) the Thai Internet Crimes Against Children 101 Manual issued with the assistance of the Federal Bureau of Investigations for inquiry officials and primary offender prosecution against online child sexual abuse.

The Committee further notes that according to the statistics from the Royal Thai Police from October 2018 to September 2019, 205 cases related to trafficking of children involving 342 victims were registered under the Anti-Human Trafficking Act, of which 172 cases were prosecuted. Moreover, in 2019 the Thailand Anti-Trafficking in Persons Task Force (TATIP) investigated six cases of trafficking of children for sexual exploitation. The Government report also refers to certain cases of criminal proceedings and disciplinary measures taken against government officials as well as asset seizure from government officials for their alleged involvement in the offences related to trafficking of persons. The Committee notes that according to the United Nations Office on Drugs and Crime (UNODC) report, entitled *Trafficking in persons from Cambodia, Lao PDR and Myanmar to Thailand, August 2017*, children are trafficked from Cambodia, Lao People's Democratic Republic and Myanmar to Thailand for the purpose of labour and sexual exploitation and forced begging. Boys are trafficked into Thailand's fishing, construction and manufacturing industries, while girls are trafficked for domestic services, hospitality and retail industries. The Committee further notes that the United Nations Committee on the Elimination of Discrimination against Women (CEDAW), in its concluding observations of July 2017 expressed its concern that the State party remained a source, destination and transit country for trafficking in persons, particularly women and girls, for sexual and labour exploitation. The CEDAW also expressed concern at the lack of effective identification of victims of trafficking in practice and the prevalence of corruption and complicity of officials in trafficking cases, which impede the efforts to prevent and combat trafficking (CEDAW/C/THA/CO/6–7, paragraph 24).

*While taking due note of the measures taken by the Government, the Committee urges the Government to continue its efforts to eliminate in practice*



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*the trafficking of children by ensuring that thorough investigations and prosecutions are carried out for persons who engage in the trafficking of children, including complicit government officials, and that sufficiently effective and dissuasive sanctions are imposed in practice. It requests the Government to continue its efforts to strengthen the capacity of law enforcement agencies in identifying and combating the sale and trafficking of children under 18 years of age. The Committee further requests the Government to continue to provide information on the number of reported violations, investigations, prosecutions, convictions and penal sanctions imposed in cases related to the trafficking of children.*

2. *Children engaged in prostitution.* In its previous comments, the Committee noted that the CRC expressed concern at the fact that prostitution was practised quite openly, with the involvement of large numbers of children and that corruption and cases of police officers involved in the child sex trade industry contribute to the problem. The CRC also expressed concern that the existing laws, administrative measures, social policies and programmes of the State party were insufficient and do not adequately prevent children from becoming victims of these offences (CRC/C/OPSC/THA/CO/1, paragraph 21). The Committee urged the Government to take the necessary measures to ensure that persons suspected of procuring, using, offering or employing children under 18 for prostitution, including complicit and corrupt officials, are subject to thorough investigations and robust prosecutions and that sufficiently effective and dissuasive penalties are imposed in practice.

The Committee notes the Government's information that the Royal Thai Police is undertaking genuine efforts to arrest, investigate and punish perpetrators, including government officials who are involved in the use, procuring or offering of children for prostitution. According to the information provided by the Government, in 2018 the court sentenced 12 government officials for the offences related to the use or procuring of children for prostitution. In addition, disciplinary action was taken against three military officials and one police official for procurement of child prostitution in 2014 and 2016 respectively. The Committee also notes the Government's statement that it has strengthened law enforcement by creating a special task force consisting of officials from the Department of Provincial Administration, the Tourist Police, the Department of Juvenile Observation and Protection, the Ministry of Justice and other related agencies to patrol and inspect at-risk entertainment facilities and to investigate and arrest persons involved in the commercial sexual exploitation of children. Accordingly, in 2018, a total of 7,497 facilities were inspected, five-year closure orders were issued to 97 facilities, and seven prosecution cases related to trafficking in persons were initiated. Moreover, data from the Royal Thai Police reveals that 187 cases of trafficking of children registered in 2018 were for the purpose of commercial sexual exploitation and in 160 cases involving 318 victims, prosecution proceedings were ordered. Moreover, the operations undertaken by the TATIP, the Thailand Internet Crimes Against Children Task Force (TICAC) and the Anti-Human Trafficking Division have also resulted in the investigation and prosecution of several cases of trafficking of children for commercial sexual exploitation. The Committee notes from the UNODC report of 2017 that sexual exploitation is the most common form of trafficking involving girls and most migrant girls working in Thailand's sex industry are 16–18 years old. However, boys particularly those living in tourism spots are also vulnerable to sexual exploitation. *The Committee encourages the Government to strengthen its efforts to ensure that persons who use, procure or offer children under 18 for prostitution are subject to thorough investigations and prosecutions and that sufficiently effective and dissuasive penalties are imposed in practice. It requests the Government to continue to provide statistical information on the number and nature of violations reported, investigations, prosecutions, convictions and penalties imposed in this respect.*

*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. Child victims of trafficking and commercial sexual exploitation.* In its previous comments, the Committee noted the Government's information concerning the measures taken to assist child victims of trafficking, including the provision of compensation and a fund for rehabilitation, occupational training and development from the Ministry of Social Development and Human Security (MSDHS). The Committee requested the Government to pursue its efforts to provide compensation and financial assistance for child victims of trafficking as well as to provide information on the number of child victims of trafficking who have been provided assistance and rehabilitated in its various protection centres.

The Committee notes the Government's information that the victims of trafficking have the right to receive compensation from the Anti-Human Trafficking Fund and through damage compensation from offenders. In this regard, the Committee notes the Government's information that in 2019, 116 victims of trafficking received a total compensation of over 77.56 million baht. The Government further indicates that the MSDHS and Save the Children ensure that child victims of the worst forms of child labour are protected under the Child Safeguarding Standard. In 2018, 186 child victims of prostitution were provided protection and assistance by the MSDHS. The Committee notes that a victim normally spends six months in government shelters where they receive rehabilitation and reintegration services which ensure that they are safe and protected from being trafficked again. *The Committee requests the Government to continue its efforts to provide compensation and financial assistance for child victims of trafficking and to continue providing information in this regard. It also requests the Government to continue to provide information on the number of child victims of trafficking and commercial sexual exploitation who have been provided assistance and rehabilitated in its protection centres. Please provide data disaggregated by gender and age.*

*Article 8. International cooperation and assistance. Regional cooperation and bilateral agreements.* In its previous comments, the Committee noted that in 2015, the Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT), to which Thailand is a party along with Cambodia, China, Lao People's Democratic Republic and Myanmar, adopted the draft phase four of the sub regional plan of action to combat trafficking in persons. It also noted the various activities undertaken by the Department of Social Development and Welfare of the MSDHS, in cooperation with other neighbouring countries. The Government indicated that it was in the process of initiating bilateral MoUs with the Governments of Malaysia, Brunei Darussalam, United Arab Emirates, China and India. The Committee encouraged the Government to pursue its international cooperation efforts with regard to combating the trafficking of persons under 18.

The Committee notes the Government's information that Thailand has signed trafficking in persons bilateral agreements with Laos People's Democratic Republic in July 2017; with Myanmar in August 2018; with the United Arab Emirates in February 2018; and with China in November 2018. Furthermore, the ASEAN Regional Cooperation, an association of Southeast Asian States of which Thailand is a member, has adopted the ASEAN Convention on Anti-Trafficking in Persons, 2017 and the ASEAN Plan of Action Against Trafficking in Persons, Especially Women and Children, implemented through the Bohol Trafficking in Person Work Plan 2017–2020. Furthermore, the Regional Guidelines and Procedures to address the Needs of Victims of Trafficking in Persons have been launched in April 2019. *The Committee encourages the Government to pursue its efforts to cooperate with the neighbouring countries with a view to eliminating child trafficking for labour and commercial sexual exploitation. It also requests the Government to continue to provide information on the measures taken or envisaged in this regard, including through the COMMIT and ASEAN Regional Cooperation as well as the measures taken to ensure the rehabilitation, social integration and repatriation of child victims of trafficking.*

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



**C029 - Forced Labour Convention, 1930 (No. 29)****Observation 2019**

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

*Article 2(2)(a) of the Convention. Compulsory military service.* In its previous comments, the Committee noted the Government's statement that all citizens have the obligation to participate in the military service or the militia and self-defence forces, and participation in one service will exempt a person from the obligation to serve in the other. Section 8(3) of the Law on Militia and Self-Defence Forces of 2009 provides that the tasks of the militia and self-defence forces include, inter alia, protecting forests and preventing forest fires, protecting the environment and the construction and socio-economic development of localities and establishments. The Government indicated that this work includes dredging canals, building roads, supporting the economic development of households, planting trees and contributing to reducing and eliminating poverty. Between July 2010 and December 2012, the militia and self-defence forces had 163,124 enlisted persons who worked 2,508,812 working days.

The Committee notes the Government's information in its report that the involvement of militia and self-defence forces in the construction of infrastructure projects and public welfare projects at the grassroots level are conducted on the basis of discussions and self-determination, pursuant to the Ordinance on the democracy in communes, wards and townships No. 34/2007/PL-NASC11. The Committee also notes that, according to section 9 of the Law on Militia and Self-Defence Forces of 2009, Vietnamese citizens aged between 18 and 45 years for men and between 18 and 40 years for women are obliged to join militia or self-defence forces. Its section 10 provides that the term of service in the militia and self-defence force is four years. Moreover, based on the practical situation, the nature of tasks and work requirements, the term of service in the militia and self-defence force may be prolonged for not more than two years for militia persons, or for a longer period for self-defence members and commanders of militia and self-defence units until they reach the age limits. This decision is taken by the chairpersons of People's Committees at the commune level and heads of agencies or organizations.

The Committee observes that, in view of its duration, scope and the broad range of work performed, labour exacted from the population in the framework of compulsory service in the militia and self-defence force goes beyond the exceptions authorized by *Article 2(2)(c)* of the Convention. The Committee reminds the Government that compulsory military service is excluded from the scope of the Convention, provided that it is used "for work of a purely military character". This condition is aimed specifically at preventing the call-up of conscripts for public works (see 2012 General Survey on the fundamental Conventions, paragraph 274). **The Committee therefore urges the Government to take the necessary measures, in law and practice, to ensure that persons working by virtue of compulsory military conscription laws, including in the militia and self-defence forces, only engage in work of a military nature. It also requests the Government to provide information on the number of persons performing compulsory service in the militia and self-defence forces.**

*Article 25. Penal sanctions for forced labour.* The Committee previously noted that section 8(3) of the Labour Code of 2012 prohibits the exaction of forced labour. Section 239 of the Labour Code states that persons who violate the Code's provisions, depending on the nature and seriousness of their violations, shall be disciplined and administratively sanctioned or prosecuted for criminal liability. In this regard, the Committee noted the Government's statement that the Ministry of Justice was conducting consultations on the contents of the Criminal Code, and had requested the Government to include the criminal offence of forced labour to the Criminal Code.

The Committee notes with *satisfaction* that the Criminal Code (No. 100/2015/QH13) was adopted on 27 November 2015, section 297 of which provides for penal liability for coercive labour. According to it, any person who uses violence or threat of violence or other methods to force a person to work against his/her will is punishable by a fine of from 50 million to 200 million Vietnamese dong (approximately US\$2,195–\$8,782) or imprisonment from six months to 12 years. **The Committee requests the Government to provide information on the application of section 297 of the Criminal Code of 2015 in practice, including the number of investigations, prosecutions, convictions and specific penalties imposed.**

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.**

**C138 - Minimum Age Convention, 1973 (No. 138)****Observation 2019**

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

*Article 9(1) of the Convention. Penalties, labour inspectorate and application of the Convention in practice.* The Committee previously noted the Government's information that Decree No. 91/2011/ND-CP of 17 October 2011 provides for new penalties of fines for various cases of child labour, aimed at deterring the use of child labour in the country, including employing children in massage rooms, in casinos, bars, pubs or places that risk adversely affecting the development of the child, and employing children in certain illicit activities, such as the transport of illegal commodities. The Committee also noted the Government's information regarding the statistics on the employment of children and young persons, extracted from the reports of the labour inspection services for 2006–10. According to these statistics, in total 1,715 underage workers were detected during this period. The Government indicated that the number of children subjected to heavy labour and in hazardous and dangerous conditions, while decreasing, was as high as 68,000 in 2005 and 25,000 in 2010. The Committee further noted that according to the joint ILO, UNICEF and World Bank report on Understanding Children's Work (UCW) in Viet Nam of April 2009, an estimated 1.3 million children between the ages of 6 and 17 years were involved in child labour.

The Committee notes the Government's information that, in 2013, two decrees were issued to strengthen the sanctioning of administrative violations of child labour and juvenile labour, including cases of child labour abuse and using child for certain illicit activities. Moreover, section 296 of the Penal Code of 2015 provides for criminal liability for violations of the law on the employment of workers under 16 years of age, with sanctions of fines, community service and imprisonment of up to 10 years.

The Committee also notes the Government's information that, in 2012–14, with the support of the ILO, the Ministry of Labour, Invalids and Social Affairs (MOLISA) developed and distributed 1,000 sets of training materials on child labour, and organized two training courses on these materials in the provinces of Ninh Binh and Dong Nai. The labour inspectorate also undertook measures to mainstream child labour in their professional trainings. The Government indicates that, in 2015, the labour inspectorate carried out inspections on compliance with regulations on minor workers in 117 enterprises, involving 88,469 workers. No children under 15 years were found employed. Eighty-six minor workers aged 16–18 were found working mainly in the producing and tracing of apparels and seafood processing, 11 of which had not been documented for health examinations. No other violations regarding child labour were found.

However, the Committee notes that, according to the report of Vietnam National Child Labour Survey of 2012, around 1.75 million working children were categorized as "child labourers", accounting for 9.6 per cent of the national child population (5–17 years). Among children involved in child labour, 67 per cent worked in agriculture, 16.7 per cent worked in services and 15.7 worked in industry and construction. A significant number of working children operated in open-air workplaces that demanded great mobility and exposed children to activities with high accident risks, extreme temperatures and toxic environments which could inflict injuries and damage children's physical development. The Committee further notes that the Government is in the process of preparing the second National Survey on Child Labour.

The Committee takes due note of the Government's information regarding the measures taken, both in law and in practice, to combat child labour. However, it notes with *concern* that a significant number of children are engaged in child labour in Viet Nam, including in hazardous work and this number appears to be

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increasing. Moreover, the Committee observes that the results of the labour inspection activities do not reflect the magnitude of child labour in Viet Nam, as indicated in the report of Viet Nam National Child Labour Survey of 2012. *The Committee therefore urges the Government to intensify its efforts to ensure the effective elimination of child labour. It also urges the Government to take the necessary measures to strengthen the capacity and expand the reach of the labour inspectorate in its action to prevent and combat child labour, in particular in the informal economy and to provide information on the measures taken in this regard. Lastly, the Committee requests the Government to continue to provide information on the manner in which the Convention is applied in practice, including statistics provided by the National Child Labour Survey on the employment of children under 15 years of age, extracts from the reports of the inspection services and court decisions, as well as information on the number and nature of the violations reported and the sanctions imposed.*

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 2019

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

*Articles 3(b) and 7(2)(b) of the Convention. Use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; effective and time-bound measures to provide assistance for the removal of children in the worst forms of child labour and for their rehabilitation and social integration.* In its previous comments, the Committee noted the adoption of the Programme of Action to Combat Prostitution (PACP) for the period 2011–15. The Committee also noted that the Committee on the Rights of the Child (CRC) expressed its concern about the increasing number of children involved in commercial sexual activity, mainly due to poverty-related reasons. The CRC further expressed its concern that children who were sexually exploited were likely to be treated as criminals by the police, and that there was a lack of specific child-friendly reporting procedures. The Committee therefore urged the Government to intensify its efforts within the framework of the PACP to combat child prostitution, and to take effective and time-bound measures to remove children under 18 years of age from prostitution and provide them with the appropriate assistance.

The Committee notes the Government's information in its report on the implementation of the PACP 2011–15, including the adoption of several decrees and circulars regarding the protection of victims of trafficking, as well as on the measures taken to strengthen the work of child protection and care services. However, the Committee notes that no concrete information on specific measures targeting child prostitution is provided in the Government's report. The Committee also notes that, pursuant to section 147 of the 2015 Criminal Code, only persuading, enticing and forcing a person under 16 years of age to participate in a pornographic performance constitutes an offence, which is punishable by imprisonment of up to 12 years. The Committee observes that the provisions of the 2015 Criminal Code do not appear to prohibit the use, procuring or offering of a child aged 16–18 for the production of pornography or for pornographic performances. The Committee reminds the Government that, by virtue of *Article 3(b)* of the Convention, the use, procuring or offering of a child under 18 years for the production of pornography or for pornographic performances, is considered as one of the worst forms of child labour, and that under the terms of *Article 1* of the Convention, immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour shall be taken as a matter of urgency. *The Committee therefore urges the Government to take the necessary measures to ensure that the use, procuring or offering of a child under 18 years for the production of pornography or for pornographic performances is prohibited, and to provide information on any progress made in this regard. The Committee also requests the Government to provide information on the targeted measures undertaken to combat the commercial sexual exploitation of children under 18 years of age, as well as on the results achieved. The Committee further requests the Government to provide concrete information on the effective and time-bound measures taken to remove children from commercial sexual exploitation and to provide them with the appropriate assistance for their social integration through education, vocational training or jobs.*

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.*