International Labour Organization

Preliminary list of cases as submitted by the social partners

Texts of CEACR 2021 comments

Committee on the Application of Standards (ILC 2022)

Preliminary list of cases as submitted by the social partners Committee on the Application of Standards - ILC 2022		
	Country	**Convention(s) No(s)**
1	Afghanistan	182
2	Azerbaijan	105**
3	Belarus	87
4	Benin	182
5	Plurinational State of Bolivia	131
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8	China	111**
9	Colombia	98
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15	El Salvador	144
16	Fiji	105
17	Guatemala	87
18	Guinea-Bissau	26
19	Haiti	1/14/30/106
20	Hungary	98
21	Iraq	98
22	Kazakhstan	87
23	Lebanon	29
24	Liberia	87
25	Malawi	111**
26	Malaysia	98
27	Maldives	87
28	Mauritius	98
29	Myanmar	87**
30	Netherlands – Sint Maarten	87
31	New Zealand	98
32	Nicaragua	87
33	Nigeria	26/95
34	Philippines	87
35	Solomon Islands	182
36	Tajikistan	81
37	Turkmenistan	105
38	Tuvalu	MLC, 2006
39	United Kingdom of Great Britain and Northern Ireland	111
40	Bolivarian Republic of Venezuela	87

** double footnoted

Total number of cases concerning Fundamental Conventions	29
Total number of cases concerning Priority Conventions	6
Total number of cases concerning Technical Conventions	9

Afghanistan

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

(Ratification: 2010)

Observation, 2021

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

The Committee notes the observations of the International Organisation of Employers (IOE) received on 30 August 2017, and the in-depth discussion on the application of the Convention by Afghanistan in the Committee on the Application of Standards at the 106th Session of the International Labour Conference in June 2017.

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

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

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

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

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

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

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

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

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

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

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

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

Article 7(2). Clauses (a) and (e). Preventing the engagement of children in the worst forms of child labour and taking into account the special situation of girls. Access to free basic education. The Committee previously noted the Government's statement that as a result of the past three decades of conflict, insecurity and drought, children and youth are the most affected victims, a majority of whom are deprived of proper education and training. The Committee

noted that Afghanistan is among the poorest performers in providing sufficient education to its population. A large number of boys and girls in 16 out of 34 provinces had no access to schools by 2013 due to insurgents' attacks and threats that lead to the closure of schools. In addition to barriers arising from insecurity throughout 2015, anti-government elements deliberately restricted the access of girls to education, including closure of girls' schools and a ban on girls' education. More than 369 schools were closed partially or completely, affecting at least 139,048 students, and more than 35 schools were used for military purposes in 2015. Finally, the Committee noted the low enrolment rate of girls, in particular at the secondary school level, high dropout rates especially in rural areas owing to a lack of security in the journey to and from school, and the increased number of attacks on girls' schools and written threats warning girls to stop going to school by non-state armed groups.

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

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

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

Azerbaijan

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

(Ratification: 2000)

Observation, 2021

Article 1(a) of the Convention. Sanctions involving compulsory labour as a punishment for expressing political views or views ideologically opposed to the established political, social or economic system. In its previous comments, the Committee noted that several provisions of the Criminal Code, which provide for sanctions of correctional work or imprisonment (involving compulsory labour), are worded in terms broad enough to lend themselves to application as a means of punishment for the expression of views opposed to the established political, social or economic system. These provisions include:

·– section 147 regarding defamation, defined as "dissemination, in a public statement … or through the mass media, or a publicly displayed Internet information resource of false information discrediting the honour and dignity of a person";

·– sections 169.1 and 233, read together with sections 7 and 8 of the Act on freedom of assembly, regarding "organization or participation in a prohibited public assembly" and "organization of group actions violating public order"; and

·– section 283.1 regarding "inflaming the national, racial or religious enmity".

The Committee further noted the indication by an important number of United Nations and European institutions and bodies of a growing tendency to apply various provisions of the Criminal Code as a basis for the prosecution of journalists, bloggers, human rights defenders and other persons who expressed critical opinions. In particular, the following provisions of the Criminal Code were often used for that purpose: insult (section 148); embezzlement (section 179.3.2); illegal business (section 192); tax evasion (section 213); hooliganism (section 221); state treason (section 274); and abuse of office (section 308). The Committee also observed the introduction in the Criminal Code of section 148(1) on the offence of posting slander or insult on an Internet information resource by using fake user names, profiles or accounts, punishable by imprisonment for up to one year, and the extension of section 323(1) (smearing or humiliating the honour and dignity of the President in public statements, publicly shown products or the mass media) to online activities through the use of fake user names, profiles or accounts, punishable by up to three years' imprisonment. In addition, according to the UN Human Rights Committee, the maximum term of imprisonment under the Code of Administrative Offences for misdemeanours, with which human rights defenders were often charged (for example, hooliganism, resisting police and traffic violations), had been increased from 15 to 90 days.

The Committee notes with ***regret*** the absence of information on this point in the Government's report. The Committee observes from the report of the Commissioner for Human Rights of the Council of Europe following her visit to Azerbaijan in July 2019 that no progress has been made with regard to protecting freedom of expression in Azerbaijan and that journalists and social media activists, who expressed dissent or criticism of the authorities, are continuously detained or imprisoned on a variety of charges, such as disobeying the police, hooliganism, extortion, tax evasion, incitement to ethnic and religious hatred or treason, as well as drug possession or illegal possession of weapons. The Committee also notes that, in its Opinion No. 12/2018, the UN Working Group on Arbitrary Detention concluded that deprivation of liberty of the journalist, who had been accused of drug crimes under section 234.4.3 of the Criminal Code and sentenced to nine years in prison, was as a result of his exercise of the right to freedom of expression (A/HRC/WGAD/2018/12, paragraph 59). The Committee further observes that the European Court of Human Rights (ECHR) has continued to hear a number of cases from Azerbaijan concerning the detentions and convictions of opposition political activists, particularly in the following cases: *Hasanov and Majidli v. Azerbaijan,* applications Nos 9626/14 and 9717/14, judgement of 7 October 2021; *Azizov and Novruzlu v. Azerbaijan,* applications Nos 65583/13 and 70106/13, judgement of 18 February 2021; *Khadija Ismayilova v. Azerbaijan,* application No. 30778/15, judgment of 27 February 2020, among others.

The Committee once again ***deplores*** the continued use of the provisions of the Criminal Code to prosecute and convict persons who express their political views or views ideologically opposed to the established political, social or economic system, leading to penalties of correctional work or imprisonment, both involving compulsory labour. ***The Committee therefore once again strongly urges the Government to take immediate and effective measures to ensure that, both in law and practice, no one who, in a peaceful manner, expresses political views or opposes the established political, social or economic system can be sentenced to sanctions under which compulsory labour is imposed. The Committee once again requests the Government to review the abovementioned sections of the Criminal Code by clearly restricting the scope of these provisions to situations connected with the use of violence or incitement to violence, or by repealing sanctions involving compulsory labour.***

In light of the situation described above, the Committee is bound to observe that there has been no progress with regard to protecting freedom of expression in Azerbaijan and that journalists, social media activists and opposition political activists who express dissent or criticism of the authorities are convicted and imprisoned under various provisions of the Criminal Code. The Committee once again deplores the continued use of the provisions of the Criminal Code to prosecute and convict persons who express their political views or views ideologically opposed to the established political, social or economic system, leading to penalties of correctional work or imprisonment, both involving compulsory labour. The Committee considers that this case meets the criteria set out in paragraph 95 of its General Report to be asked to come before the Conference.

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

[The Government is asked to supply full particulars to the Conference at its 110th Session and to reply in full to the present comments in 2022.]

Belarus

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

(Ratification: 1956)

Observation, 2021

The Committee notes the observations of the Belarusian Congress of Democratic Trade Unions (BKDP) received on 30 September 2021, and of the International Trade Union Confederation (ITUC), received on 1 and 29 September 2021, and examined by the Committee below.

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 109th Session, June 2021)

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

The Committee notes the discussion that took place in the Conference Committee on the Application of Standards (the Conference Committee) in June 2021 concerning the application of the Convention. The Conference Committee expressed its deep concern that, 17 years after the Commission of Inquiry's report, the Government of Belarus had failed to take measures to address most of the Commission's recommendations and recalled the outstanding recommendations of the 2004 Commission of Inquiry and the need for their rapid, full and effective implementation. The Conference Committee urged the Government to: restore without delay full respect for workers' rights and freedom; implement Recommendation 8 of the Commission of Inquiry on guaranteeing adequate protection or even immunity against administrative detention for trade union officials in the performance of their duties or when exercising their civil liberties (freedom of speech, freedom of assembly, etc); take measures for the release of all trade unionists who remain in detention and for the dropping of all charges related to participation in peaceful protest action; refrain from the arrest, detention or engagement in violence, intimidation or harassment, including judicial harassment, of trade union leaders and members conducting lawful trade union activities; and investigate without delay alleged instances of intimidation or physical violence through an independent judicial inquiry. As regards the issue of legal address as an obstacle to trade union registration, the Conference Committee called on the Government to ensure that there were no obstacles to the registration of trade unions, in law and in practice, and requested the Government to keep it informed of further developments on this matter, in particular any discussions held and outcomes of these discussions in the tripartite Council for the Improvement of Legislation in the Social and Labour Sphere (hereinafter, tripartite Council). As regards the demand by the President of Belarus for the setting up of trade unions in all private companies by 2020 on the request of the Federation of Trade Unions of Belarus (FPB), the Conference Committee urged in the strongest terms the Government: to refrain from any interference with the establishment of trade unions in private companies, in particular from demanding the setting up of trade unions under the threat of liquidation of private companies otherwise; to clarify publicly that the decision whether or not to set up a trade union in private companies is solely at the discretion of the workers in these companies; and to put an immediate stop to the interference with the establishment of trade unions and refrain from showing favouritism towards any particular trade union in private companies. As regards the restrictions of the organization of mass events by trade unions, the Conference Committee urged the Government, in consultation with the social partners, including in the framework of the tripartite Council: to amend the Law on Mass Activities and the accompanying Regulation, in particular with a view to: set out clear grounds for the denial of requests to hold trade union mass events, ensuring compliance with freedom of association principles; widen the scope of activities for which foreign financial assistance can be used; lift all obstacles, in law and practice, which prevent workers' and employers' organizations to benefit from assistance from international organizations of workers and employers in line with the Convention; abolish the sanctions imposed on trade unions or trade unionists participating in peaceful protests; repeal Ordinance No. 49 of the Council of Ministers to enable workers' and employers' organizations to exercise their right to organize mass events in practice; and to address and find practical solutions to the concerns raised by the trade unions in respect of organizing and holding mass events in practice. As regards consultations in respect of the adoption of new pieces of legislation affecting the rights and interests of workers, the Conference Committee requested the Government to amend the Regulation of the Council of Ministers No. 193 to ensure that social partners enjoy equal rights in consultations during the preparation of legislation. As regards the functioning of the tripartite Council, the Conference Committee urged the Government to take the necessary measures to strengthen the tripartite Council so that it could play an effective role in the implementation of the recommendations of the Commission of Inquiry and other ILO supervisory bodies towards full compliance with the Convention in law and practice. The Conference Committee expressed its disappointment at the slow process in the implementation of the recommendations of the Commission of Inquiry. Recent developments indicated a step backward and further retreat on the part of the Government from its obligations under the Convention. The Conference Committee therefore urged the Government to take before the next Conference, in close consultation with the social partners, all necessary steps to fully implement all outstanding recommendations of the Commission of Inquiry. The Conference Committee invited the Government to avail itself of ILO technical assistance and decided to include its conclusions in a special paragraph of the report.

The Committee notes the 394th (March 2021) report of the Committee on Freedom of Association on the measures taken by the Government of the Republic of Belarus to implement the recommendations of the Commission of Inquiry.

Civil liberties and trade union rights. The Committee recalls that in its previous comments it expressed its deep concern over the serious allegations of extreme violence to repress peaceful protests and strikes, detention, imprisonment and torture of workers while in custody, submitted by the ITUC and BKDP, and the continued deterioration of the situation of human rights in the country following the presidential election in August 2020. The Committee urged the Government to take all necessary measures to implement the above-mentioned Recommendation 8 of the Commission of Inquiry; to take measures for the release of all trade unionists who remain in detention and the dropping of all charges related to participation in peaceful protests and industrial actions; to supply copies of the relevant court decisions upholding detention and imprisonment of workers and trade unionists and to provide a list of the affected persons; and to investigate without delay any alleged instances of intimidation or physical violence through an independent judicial inquiry.

The Committee notes that in its report, the Government expresses its regret at what, in its opinion, is a significant negative shift in the Committee's assessments of the situation in Belarus in relation to the political events that took place in the country following Presidential election. The Government considers that purely political events, not related to the processes of social dialogue in the world of work, should not be the basis for assessing the situation regarding the country's compliance with the provisions of the Convention. The Government emphasizes that external forces interested in destabilizing the country took an active organizational and financial part in the preparation and conduct of illegal street actions that took place after the election of the President, in furtherance of their own geopolitical interests. The Government points out that the main demands put forward by the protesters included the resignation of the Head of State, the holding of new elections and the exoneration of citizens who had broken the law. The Government explains that these demands have no connection to trade union or labour, social and economic rights. The Governments further points out that protests were not peaceful, but rather, were carried out in violation of the law and posed a serious threat to public order, safety, and the health and life of citizens. During the protest actions, numerous incidents of active resistance to the legal requests of law enforcement officers were recorded, involving aggression, the use of violence, damage to official vehicles, blocking the movement of vehicles, and causing damage to infrastructure facilities. The Government considers that the BKDP, the ITUC and the IndustriALL Global Union are deliberately attempting to link illegal protest actions of a political nature with an alleged strike movement in the country. The Government indicates that in practice, the discontent affected only a small segment of workers; no demands were presented to employers concerning the

regulation of labour and socio-economic matters. The Government indicates that the citizens referred to in the complaints made by trade union organizations as having allegedly suffered for their participation in peaceful protests and strikes, were charged with disciplinary, administrative and, in certain cases, criminal offences for having committed specific illegal actions. In this regard, the Government indicates that it cannot provide the Committee with copies of court decisions as the national legislation does not permit copies of court decisions and other documents to be shared with persons with no connection to the proceedings. The Government emphasizes, however, that the status of a worker or a trade union leader does not confer additional privileges on the holder and does not guarantee the unconditional right to absolute freedom of actions without regard for the existing national legislation and the interests of the public and the State. The Government considers that trade union activists not only have the same rights as other citizens but also, like everyone, are answerable for violations of the law; therefore, Recommendation 8 of the Commission of Inquiry, in line with *Article 8(1)* of the Convention, does not require the release of trade unionists from liability for any illegal acts that they may commit. In light of the above, the Government considers that the Committee's calls for the release of and the dropping of all charges against trade union activists who were charged with specific violations of the law to be unfounded. The Government insists that using events of a purely political nature to measure the country's implementation of the Commission of Inquiry's recommendations is unreasonable, counterproductive and unacceptable, and that this approach may become a serious obstacle to the continuation of the well-established constructive engagement, both within the country and with ILO experts.

As to the Committee's and the Commission of Inquiry's request to ensure impartial and independent judiciary and justice administration in general, the Government points out that the Republic of Belarus is a State governed by the rule of law. People, their rights and freedoms are of the highest value and concern. All are equal before the law and are entitled without discrimination to equal protection of their rights and interests. Under the provisions of article 60 of the Constitution, everyone is guaranteed protection of their rights and freedoms by a competent, independent and impartial judiciary. In dispensing justice, judges are independent and subject only to the law. Interfering with the activities of judges is prohibited.

The Committee ***regrets*** that the Government does not address the issue of the alleged intimidation and physical violence against trade unionists. The Committee notes that in her Oral Update on the Situation of Human Rights in Belarus on 24 September 2021, the High Commissioner for Human Rights stated that the scale and pattern of behaviour by the Belarusian authorities to date strongly suggested that limitations to freedoms of expression and assembly were primarily aimed at suppressing criticism of and dissent from Governmental policies, rather than any aim regarded as legitimate under human rights law, such as the protection of public order. The High Commissioner was also alarmed by persistent allegations of widespread and systematic torture and ill-treatment in the context of arbitrary arrests and detention of protesters. The Committee notes with ***deep concern*** new detailed allegations of criminal prosecution, arrests and imprisonment of trade unionists and the sentencing of three trade unionists to three years of imprisonment. It further notes with ***concern*** the allegations of searches of trade union premises and houses of trade union leaders by the police, disruption of trade union meetings by law enforcement forces, and acts of retaliation and pressure on workers to leave trade unions submitted by the BKDP and the ITUC. The Committee recalls that the UN High Commissioner for Human Rights reported to the Human Rights Council in December 2020 that the monitoring and analysis of demonstrations since 9 August 2020 indicated that participants were overwhelmingly peaceful. The Committee once again recalls the International Labour Conference 1970 resolution concerning trade union rights and their relation to civil liberties, which emphasizes that the rights conferred upon workers' and employers' organizations must be based on respect for civil liberties, as their absence removes all meaning from the concept of trade union rights. Among those liberties essential for the normal exercise of trade union rights are freedom of opinion and expression, freedom of assembly, freedom from arbitrary arrest and detention and the right to a fair trial by an independent and impartial tribunal. The Committee further considers that strikes and demonstrations relating to the Government's economic and social policies cannot be regarded as purely political strikes, which are not covered by the principles of the Convention. In its view, trade unions and employers' organizations responsible for defending socio-economic and occupational interests should be able to use strike or protest action to support their position in the search for solutions to problems posed by major social and economic policy trends which have a direct impact on their members. Moreover, noting that a democratic system is fundamental for the free exercise of trade union rights, the Committee considers that, in a situation in which they deem that they do not enjoy the fundamental liberties necessary to fulfil their mission, trade unions and employers' organizations would be justified in calling for the recognition and exercise of these liberties and that such peaceful claims should be considered as lying within the framework of legitimate trade union activities, including in cases when such organizations have recourse to strikes (see the 2012 General Survey on the fundamental Conventions, paragraph 124).

The Committee once again recalls that the Commission of Inquiry on Belarus considered that adequate protection or even immunity against administrative detention should be guaranteed to trade union officials in the performance of their duties or when exercising their civil liberties (freedom of speech, freedom of assembly, etc.). While noting the Government's reference to paragraph 1 of *Article 8* of the Convention, the Committee recalls that it should be read together with paragraph 2 of the same Article, according to which, the law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention. The Committee points out that for a number of years, the ILO supervisory bodies have been expressing concerns at the numerous violations of the Convention in law and in practice in Belarus. ***The Committee therefore once again urges the Government in the strongest of terms to investigate without delay all alleged instances of intimidation or physical violence through an independent judicial inquiry and to provide detailed information on the outcome. The Committee further urges the Government to take measures for the release of all trade unionists who remain in detention and for dropping of all charges related to participation in peaceful protest action. The Committee expects the Government to provide detailed information on all measures taken in this regard.***

The Committee notes the Government's indication that it cannot provide court judgments as per the Committee's request as the legislation in force does not provide for such a possibility, which implies that court decisions and judgments are not public. The Committee emphasizes that when it requests a government to furnish judgments in judicial proceedings, such a request does not reflect in any way on the integrity or independence of the judiciary. The very essence of judicial procedure is that its results are known, and confidence in its impartiality rests on their being known. In addition, the absence of court judgments prevents the Committee from examining or confirming the Government's conclusion that the arrests in question were unrelated to the exercise of basic trade union rights. The Committee further recalls that the International Covenant on Civil and Political Rights, in Article 14, states that everyone shall be entitled to a fair and public hearing. The Committee emphasizes that the right to a fair and public hearing implies the right for the judgment or decision to be made public and that the publicizing of decisions is an important safeguard in the interest of the individual and of society at large. The Committee also recalls that the absence of guarantees of due process of law may lead to abuses and may also create a climate of insecurity and fear which may affect the exercise of trade union rights. ***The Committee requests the Government to take all necessary steps, including legislative, if necessary, to ensure the right to a fair trial. Further in this respect, the Committee, with reference to the recommendations of the Commission of Inquiry, stresses the need to ensure impartial and independent judiciary and justice administration in general in order to guarantee that investigations into these grave allegations are truly independent, neutral, objective and impartial. Accordingly, the Committee also renews its request that the Government take steps, including by legislation if necessary, to supply copies of the relevant court decisions upholding detention and imprisonment of workers and trade unionists.***

Article 2 of the Convention. Right to establish workers' organizations. The Committee recalls that in its previous observations, it had urged the Government to consider, within the framework of the tripartite Council, the measures necessary to ensure that the matter of legal address ceases to be an obstacle to the registration of trade unions in practice. In particular, it expected the Government, as a member of the tripartite Council, to submit the Committee's comments on the issue of registration for the Council's consideration at one of its meetings as soon as possible.

The Committee notes the Government's indication that the possibility of implementing the Committee's recommendation may be considered when the tripartite Council resumes its work once the epidemiological situation in the country has improved. To that end, a member of the tripartite Council, submitting this issue for discussion must also establish that the issue is one of concern. In the Government's opinion, in practice, the question of legal address is not an obstacle to registration as trade unions have been offered the possibility to be assigned not only the address where the employer is located, but that of any other location. The Committee notes detailed statistical data on the number of registered trade unions and their organizational structures provided by the Government. It notes, in particular that while in the first six months of 2021, 1,278 organizational structures have been registered, there was only one refusal to register a union; in that particular case because the union's constitution was not in conformity with the legal requirements. The Government considers that the assertions by the BKDP, that the legal requirement for trade unions and their organizational structures to submit a legal address in order to register constitutes an obstacle to trade union activities in Belarus, appear to lack any objective substance.

In this connection, the Committee notes with ***concern*** new allegations submitted by the BKDP and the ITUC regarding several cases of refusals to register primary organizations of the BKDP affiliates. ***The Committee requests the Government to provide its observations thereon. The Committee further once again requests the Government to put the issue of registration of trade union organizations, including the question of legal address requirement, on the agenda of the tripartite Council, as per its previous request and most recent call by the Conference Committee, which considered this issue to be of concern. The Committee expects the Government to provide detailed information on the outcome of the discussion by the tripartite Council.***

As regards the demand by the President of Belarus for the setting up of trade unions in all private companies by 2020 on the request of the FPB, which the Committee considered to be a display of favouritism towards the Federation and interference with the establishment of trade unions in private companies, the Committee notes the Government's indication that the FPB is the country's most representative and active among social partners when it comes to developing, improving and implementing socioeconomic policy. As part of its considerable commitment to protect the labour, social and economic rights of citizens, the FPB constantly brings to the authorities' attention the most current, critical and problematic issues that workers face in exercising their rights. In defending the rights of citizens, the FBP trade unions regularly deal with and actively collaborate with the authorities, including at the highest levels. During a meeting between the Head of State and the chairperson of the FPB as leader of the country's largest and most representative trade union, the President of Belarus clearly set out the State's position that private companies must not obstruct workers' right to join a trade union, and also expressed his appreciation of the trade unions' work to defend the labour and socioeconomic rights of citizens.

The Committee observes with ***deep regret*** the absence of information on the measures taken by the Government to refrain from interference with the establishment of trade unions in private companies and the lack of any public clarification that the decision to set up a trade union is solely at the discretion of workers themselves. Instead, the Government provides what appears to be a justification for the favouritism of the FPB at the higher levels of the State. The Committee further notes with ***deep concern*** that on 5 August 2021, in his televised meeting with the leader of the FPB, the Head of the State reiterated his previous statement and stressed that "if certain private companies had not understood his message, the Government should immediately discuss these issues and make specific proposals, including on liquidation of private companies that refuse to have trade union organizations". The Committee draws the Government's attention to the fact that all three ILO bodies responsible for the supervision and follow-up of the implementation of the recommendations of the Commission of Inquiry on Belarus in relation to the non-observance of this Convention, i.e. this Committee, the Conference Committee and the Committee on Freedom of Association, concluded, that such demands by the country's President constituted an interference with the establishment of trade union organizations and favouritism towards a particular trade union, and therefore a violation of *Article 2* of the Convention. ***The Committee therefore once again urges the Government to refrain from any interference with the establishment of trade unions in private companies, in particular from demanding the setting up of trade unions under the threat of liquidation of private companies otherwise; to clarify publicly that the decision whether or not to set up a trade union in private companies is solely at the discretion of the workers in these companies; and to refrain from showing favouritism towards any particular trade union in private companies. The Committee expects that all steps in this regard will be taken without delay and detailed in the Government's next report.***

Articles 3, 5 and 6. Right of workers' organizations, including federations and confederations, to organize their activities. Legislation. The Committee recalls that the Commission of Inquiry had requested the Government to amend Presidential Decree No. 24 (2003) on Receiving and Using Foreign Gratuitous Aid. The Committee recalls in this respect that it had considered that the amendments should be directed at abolishing the sanctions imposed on trade unions (liquidation of an organization) for a single violation of the Decree and at widening the scope of activities for which foreign financial assistance can be used so as to include events organized by trade unions. The Committee recalls that Decree No. 24 had been superseded by Presidential Decree No. 5 (2015) and then by Decree No. 3 of 25 May 2020, under which the foreign gratuitous aid could still not be used to organize or hold assemblies, rallies, street marches, demonstrations, pickets or strikes, or to produce or distribute campaign materials, hold seminars or carry out other forms of activities aimed at "political and mass propaganda work among the population", and that a single violation of the Regulation still bore the sanction of possible liquidation of the organization. The Committee observed that the broad expression "political and mass propaganda work among the population" when applied to trade unions may hinder the exercise of their rights as it was inevitable and sometimes normal for trade unions to take a stand on questions having political aspects that affect their socio-economic interests, as well as on purely economic or social questions.

Further in this connection, the Committee recalls that the Commission of Inquiry had requested the Government to amend the Law on Mass Activities, under which, a trade union that violates the procedure for organizing and holding mass events may, in the case of serious damage or substantial harm to the rights and legal interests of other citizens and organizations, be liquidated for a single violation. The Committee further recalls that it had also noted with regret the Regulation on the procedure of payment for services provided by the internal affairs authorities in respect of protection of public order, expenses related to medical care and cleaning after holding a mass event (Ordinance of the Council of Ministers No. 49). The Regulation outlines the fees in relation to maintenance of public services and provides for the expenses of the specialized bodies (medical and cleaning services) that must be paid by the organizer of the event.

Reading these provisions alongside those forbidding the use of foreign gratuitous aid for the conduct of mass events, the Committee considered that the capacity for carrying out mass actions would appear to be extremely limited if not non-existent in practice. The Committee therefore urged the Government to amend Decree No. 3 of 25 May 2020 on the registration and use of foreign gratuitous aid, the Law on Mass Activities and the accompanying Regulation, and recalled that the amendments should be directed at abolishing the sanctions imposed on trade unions or trade unionists for a single violation of the respective legislation; at setting out clear grounds for the denial of requests to hold trade union mass events, bearing in mind that any such restriction should be in conformity with freedom of association principles; and at widening the scope of activities for which foreign financial assistance can be used.

The Committee notes that the Government once again reiterates that there is no link between the established procedure for obtaining funding from abroad (foreign gratuitous aid) and *Articles 5* and *6* of the Convention. The Government once again points out that allowing external forces (in this case the trade unions of other countries and international trade union associations) to sponsor the holding of mass events in Belarus can present an opportunity to destabilize the socio-political and socio-economic situation, which in turn has an extremely negative effect on public life and citizens' wellbeing. Thus, the existing ban on receiving and using foreign gratuitous aid for the purposes of conducting political and mass propaganda work among the population is bound up with the

interests of national security, and the need to exclude any possible destructive influence and pressure from external forces. The Government further reiterates that the exercise of the right of peaceful assembly is not subject to any restrictions, except those that are imposed in conformity with the law and are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals, the protection of the rights and freedoms of others. In holding mass events, trade unions are obliged to observe public order and must not permit actions which may cause an event to lose its peaceful character and inflict serious harm on citizens, society or State. In the Government's opinion, the legal penalty prescribed for the organizers of mass events which cause substantial damage or harm to the interests of citizens and organizations, and also to the interests of State and society, does not constitute, and should not be interpreted as, a constraining factor on the exercise of their rights to freedom of peaceful assembly by citizens and trade unions. The Government once again points out that the decision to terminate the activities of a trade union for a violation of the legislation on mass events which caused serious damage and significant harm to the rights and interests of citizens, organizations, society and the State, can only be taken in court. No decisions have been taken to disband trade unions for violating the procedure for organizing and holding mass events in Belarus. In light of the above, the Government considers that any relaxation of responsibility for violation of the procedure for holding mass events or any lifting of restrictions on the use of foreign financial aid for the holding of political and mass propaganda work could only lead to circumstances likely to strengthen the external destructive influence on the situation in the country, which does not serve the interests of the country.

The Committee notes with ***deep regret*** that the Government merely reiterates the information it had previously provided and in particular, that it has no intention of amending the legislation as requested by the Commission of Inquiry, whose recommendations the Government accepted as per article 29(2) of the ILO Constitution, with follow-up of the implementation of the recommendations entrusted by the Governing Body to the CFA, this Committee and the Conference Committee. The Committee notes that the Law on Mass Activities was amended on 24 May 2021 and observes with ***regret*** in this respect that according to the BKDP and publicly available information, the amendment aims at further tightening the requirements for holding public events as follows: the organization of mass events has to be authorized by municipal authorities; funds cannot be raised, money and other assets cannot be received and used, services cannot be rendered in order to compensate for the cost caused by prosecution for violating the established procedure of organization of mass events; public associations will be held responsible if their leaders and members of their governing bodies make public calls for organizing a mass event before the permission to organize the event is granted.

The Committee further notes with ***deep regret*** that on 8 June 2021, the Criminal Code was amended so as to introduce the following restrictions and associated penalties: repeated violations of the procedure for organizing and holding of mass events, including public calls therefor, are punishable by arrest, or restraint of liberty or imprisonment of up to three years (section 342-2); insult of a government official is punishable by a fine and/or restriction of liberty or imprisonment for up to three years (section 369); the penalty for "discrediting the Republic of Belarus" was increased from two to four years imprisonment with a fine (section 369-1); section 369-3 of the Criminal Code has been retitled from "violation of procedure for organizing and holding of mass events" to "public calls for the organization or conduct of an illegal meeting, rally, street procession, demonstration or picketing, or the involvement of persons in such mass events", which became an offence punishable by up to five years of imprisonment. The BKDP points out that criminal liability can now be established simply for organizing peaceful assemblies and that any criticism and slogans are seen by the authorities as insults within the meaning of section 369 of the Criminal Code. The BKDP alleges that there are many precedents of bringing citizens, including members of independent trade unions, to criminal responsibility under section 369 of the Criminal Code. The BKDP also draws attention to the statement of the Minister of Labour and Social Protection to the Conference Committee in June 2021 when she stated that the BKDP spoke out against the Government and took steps against the interest of the State and the Government, calling for a boycott of Belarusian goods and application of sanctions. The BKDP alleges in this respect that its leaders are under the threat of being prosecuted under section 369-1 of the Criminal Code. The Committee recalls that the right to express opinions, including those criticizing the Governments economic and social policy, is one of the essential elements of the rights of occupational organizations. With reference to the considerations above and below, the Committee further once again recalls that the mere fact of participation in peaceful assemblies should not be penalized by detention or imprisonment. The Committee also recalls that simply calling for a demonstration and any other public event, even if declared illegal by the courts, should not result in arrest and that in general, sanctions should be envisaged only where, during such event, violence against persons or property, or other serious infringements of penal law have been committed.

The Committee therefore reiterates its previous request to amend without further delay and in consultation with the social partners, Decree No. 3, the Law on Mass Activities and the accompanying Regulation (Ordinance No. 49 of the Council of Ministers), as per the outstanding recommendations of the Commission of Inquiry, the Conference Committee, the Committee of Freedom of Association and this Committee. The Committee further requests the Government to repeal the above-mentioned amended provisions of the Criminal Code in order to bring them into compliance with the Government's international obligations regarding freedom of association.

Practice. The Committee recalls that it had urged the Government to engage with the social partners, including in the framework of the tripartite Council, with a view to addressing and finding practical solutions to the concerns raised by the unions, in particular, the BKDP, in respect of organizing and holding mass events. The Committee further requested the Government to provide statistical information on the requests submitted and permissions granted and denied, segregated by the trade union centre affiliation.

The Committee notes that the Government indicates that the BKDP and its affiliated unions, like the FPB, have repeatedly exercised their right to freedom of assembly and held mass events. The Government reiterates that all decisions to deny the holding of mass events were taken by local executive and regulatory bodies in accordance with the law and with due regard to the obligation to uphold citizens' right to freedom of association and the right of trade unions to take collective action to defend their members' interests. The Government once again indicates that the most common reasons for refusal to grant authorization to hold a mass event were: the application did not contain the information required by the law; the event was to take place in a location not allowed for such a purpose; the documents submitted did not indicate the precise location of the event; the event was announced in the mass media prior to receiving authorization; another mass event was being held in the same place at the same time. The Government considers that the denials of permission to hold mass events relate not so much to legal requirements that are excessive or difficult to comply with, but rather to inadequate preparation by the organizers and points out that once the shortcomings have been rectified, the organizers can re-apply for authorization. The Government further indicates that the possibility of discussing the issues of the organization and holding of mass events in the framework of the tripartite Council can be reviewed once the Council resumes its work when the epidemiological situation improves. The Government points out, however, that a necessary condition for the review by the Council is that the initiator should submit information which establishes that the issue is one of concern. ***The Committee considers that the Government, as a member of the tripartite Council and as ultimately responsible for ensuring respect for freedom of association on its territory, should be in the position to place on the agenda of the tripartite Council the concerns expressed by the ILO supervisory bodies with regard to the issues of the exercise of the right to demonstrate and hold public meetings in practice. The Committee expects the Government to provide information on the outcome of such discussions with its next report. The Committee requests the Government to provide statistical information on the requests to demonstrate and to hold public meetings that have been submitted, and the permissions granted and denied, segregated by the trade union centre affiliation.***

The Committee recalls the 2019 BKDP and ITUC allegations regarding the cases of Messrs Fedynich and Komlik, leaders of the REP union, found guilty,

in 2018, of tax evasion and use of foreign funds without officially registering them with the authorities as per the legislation in force. They were sentenced to four years of suspended imprisonment, restriction of movement, a ban on holding senior positions for five years and a fine of BYN47,560 (over US$22,500 at that time). In this connection, the Committee also noted the BKDP allegation that the equipment seized during searches in the REP union and BNP premises had not been returned and requested the Government to provide information thereon.

The Committee notes the Government's indication that in view of the application of amnesty legislation to the convicted offenders, the main punishment, in the form of restriction of freedom without being sent to an open-type institution, has been served by Mr Fedynich and Mr Komlik in full. The further fate of the information storage devices seized during the investigation of the criminal case will be decided after completion of a check to establish whether the persons concerned have committed other crimes of a similar nature. The Committee notes that the particulars of these cases are being considered by the Committee on Freedom of Association in the framework of its examination of the measures taken by the Government to implement the recommendations of the Commission of Inquiry.

Right to strike. The Committee recalls that it had been requesting the Government for a number of years to amend sections 388(1), (3) and (4), 390, 392 and 393 of the Labour Code. The Committee ***regrets*** that the Government merely reiterates its previously expressed consideration that the national legislation is in conformity with the international labour instruments, which in any case do not expressly provide for the right to strike; that the legality of the interpretation by the ILO supervisory bodies that Convention No. 87 enshrines the right to strike has repeatedly and rightly been questioned; that only the International Court of Justice has the right to interpret ILO Conventions for subsequent mandatory application of that interpretation by the members States; that in Belarus, according to section 388 of the Labour Code, a strike constitutes a temporary and voluntary refusal by workers to perform their employment duties (fully or in part) for the purpose of settling a collective labour dispute; and that strikes of political nature are forbidden. The Government once again states that unauthorized protest actions that took place after the presidential election campaign in 2020 and the attempts to organize a strike movement in enterprises without regard for the law have nothing to do with the exercise of trade unions' rights and the work carried by trade unions to protect workers or the social and economic rights of citizens. The Government adds that the broader issues relating to economic and social policy take place in the framework of the social partnership system through negotiations, consultations and the rejection of confrontation. The Government therefore reiterates that amending the legislation regulating strikes would not facilitate the exercise of the right of workers' organizations to act in full freedom, but to the contrary, would create additional opportunities for abuse by every kind of destructive agent and provide an instrument for undermining the country's economic potential.

The Committee deems it important to once again recall that its opinions and recommendations derive their persuasive value from the legitimacy and rationality of the Committee's work based on its impartiality, experience and expertise. The Committee's technical role and moral authority are well recognized, particularly as it has been engaged in its supervisory task for 95 years, by virtue of its composition, independence and its working methods built on continuing dialogue with governments taking into account information provided by employers' and workers' organizations. This has been reflected in the incorporation of the Committee's opinions and recommendations in national legislation, international instruments and court decisions. It is within this mandate that it has been dealing with the questions pertaining to the right to strike.

The Committee notes with ***regret*** that the Labour Code was amended on 28 May 2021 to further restrict the right to strike by expressly allowing an employer to dismiss/terminate a labour contract with a worker who is absent from work in connection with serving an administrative penalty in the form of an administrative arrest; who forces other workers to participate in a strike or calls on other workers to stop performing work duties without sound reason; and who participates in an illegal strike or other forms of withholding labour without sound reasons (section 42(7)). Recalling the BKDP allegations that numerous trade unionists who participated in mass events and strikes organized following the August 2020 Presidential election were found guilty of administrative breaches and received corresponding penalty in the form of administrative arrest, the Committee notes that in its latest observations, the BKDP provides a list of workers who in such circumstances were dismissed. The Committee ***regrets*** that the amendment of the Labour Code would appear to facilitate the dismissal and penalization of workers for exercising their civil liberties and trade union rights. ***The Committee is therefore bound to request the Government to take measures, in consultation with the social partners, to revise the above-mentioned legislative provisions, which negatively affect the right of workers' organizations to organize their activities in full freedom, and to provide information on all measures taken or envisaged to that end.***

The Committee recalls that it had previously noted with concern detailed allegations of numerous cases of arrests, detention of and fines imposed on trade unionists for having organized and participated in strikes following the August 2020 events. The Committee notes with ***concern*** new detailed allegations of retaliation (arrests, detention, fines and dismissals) against trade unionists and workers who participated in trade union led strike actions. ***With reference to its considerations regarding the exercise of civil liberties and their importance for exercising trade union rights outlined above, the Committee urges the Government to conduct independent inquiries into the BKDP and the ITUC allegations bearing in mind the above considerations and to provide all relevant particulars on the outcome with its next report.***

Consultations with the organizations of workers and employers. The Committee recalls that in its previous comment it had noted that the BKDP alleged lack of consultations in respect of the adoption of new pieces of legislation affecting the rights and interest of workers. The Committee had further noted Regulation of the Council of Ministers No. 193 of 14 February 2009, pursuant to which, draft legislation affecting labour and socio-economic rights and interests of citizens is submitted to the FPB as the most representative organization of workers for possible comments and/or proposals. The Committee had requested the Government to amend the Regulation so as to ensure that the BKDP and the FPB, as members of both the National Council on Labour and Social Issues (NCLSI) and the tripartite Council, enjoyed equal rights in consultations during the preparation of legislation. The Committee notes that the Government considers that the Regulation is in conformity with international labour standards and reiterates in this respect that the FPB, as an organization with a higher overall number of members, has preferential rights in the processes of consultation on legislation affecting rights and interest of workers. The Committee is bound to emphasize once again that in determining the representativeness of an organization, both the number of members and independence from the authorities and employers' organizations are essential elements for consideration. In light of the above-noted publicly expressed support by the State authorities at the highest level for the FPB, the Committee is once again bound to reiterate its previous comments made in 2007, which recalled the importance of ensuring an atmosphere in which trade union organizations, whether within or outside the traditional structure, are able to flourish in the country before establishing the notion of representativeness. ***The Committee once again requests the Government to amend Regulation No. 193 without further delay and to provide information on all measures taken in this respect.***

With regard to the Committee's request to further strengthen the role of the tripartite Council, which should, as its title indicates, serve as a platform where consultations on the legislation affecting rights and interests of the social partners and workers and employers represented by them can take place, the Committee notes that the Government reiterates that the tripartite Council was set up with the advice of the ILO to consider issues related to the implementation of the recommendations of the Commission of Inquiry as well as other issues that may arise between the Government and its social partners, including the consideration of complaints received from trade unions. The Committee notes that the Government reiterates its willingness to either work to further improve the tripartite Council's function or to create another structure. The Committee also notes that the Government once again expresses its concern over the issue of representation at the Council and the willingness of the parties to accept the decisions that will be made within this tripartite body.

The Committee notes with ***concern*** the BKDP allegation that laws and regulations affecting labour and social interests of people are adopted without due public discussion and coordination with the interested parties. The BKDP alleges that it is also being excluded from the process and that its chairperson was not invited to the meeting of the NCLSI in 2020, nor to the meeting held on 29 April 2021 by videoconference to discuss the preparation of the draft General Agreement for 2022-2024, nor to the meeting held on 28 July 2021, also by videoconference, to discuss the issue of economic sanctions imposed on the country. The BKDP indicates that on 15 July 2021 it sent a letter to the Ministry of Labour and Social Protection suggesting to convene a meeting of the tripartite Council to discuss the possibility of developing an Action Plan for the implementation of the conclusions of the Conference Committee and the recommendations of the Commission of Inquiry, but that it received no reply. ***The Committee requests the Government to provide its comments thereon***.

The Committee notes the Government's indication that various actions it has taken – the steps to develop the social partnership system which involves all interested trade unions and employers' associations in the dialogue, its constructive cooperation with the ILO to implement the Commission of Inquiry's recommendations and its openness to further cooperation – confirm the commitment of Belarus to the underlying principles and rights at work and its readiness to continue to engage on issues of concern raised by the parties. ***The Committee expects that the Government will fully engage with the social partners, the ILO, as well as relevant national institutions and bodies, with a view to improving the functioning, procedures and the work of the tripartite Council aimed at enhancing its impact in addressing the issues stemming from the recommendations of the Commission of Inquiry and other ILO supervisory bodies.***

Labour disputes resolution system. The Committee recalls that it had previously noted the need to continue working together towards building a strong and efficient system of dispute resolution, which could handle labour disputes involving individual, collective and trade union matters. The Committee notes that the Government emphasizes its commitment to continuing its joint work with the social partners and the ILO to develop such a system. In this connection the Government expresses its appreciation of the assistance received from the ILO to further the work of the tripartite Council, which in the Government's opinion has shown positive and concrete results. ***The Committee requests the Government to actively engage with the social partners with a view to developing a labour dispute resolution system that is robust, efficient and enjoys the confidence of the parties. It requests the Government to indicate all measures and steps taken to that end.***

The Committee recalls that in its 2004 report, the Commission of Inquiry considered that its recommendations should be implemented without further delay and that the majority of its recommendations should be completed at the latest by 1 June 2005. The Committee ***deeply regrets*** that 17 years later, the situation in Belarus remains far from ensuring full respect for freedom of association and the application of the provisions of the Convention and that many of the recommendations of the Commission of Inquiry have not been implemented. The Committee observes that the 2021 Conference Committee urged the Government to take before the 2022 International Labour Conference, in close consultation with the social partners, all necessary steps to fully implement all outstanding recommendations of the Commission of Inquiry. The Committee ***regrets*** to observe that the recent developments, including of legislative nature, as examined above appear to indicate continuing steps backward on some previously achieved progress. ***The Committee therefore urges the Government to pursue its efforts referred to above and expects that the Government, with the assistance of the ILO and in consultation with the social partners, will take the necessary steps to fully implement all outstanding recommendations without further delay.***

In light of the situation described, the Committee is obliged to note that there has been no meaningful progress towards full implementation of the 2004 Commission of Inquiry recommendations, and notes with grave concern that the recent developments referred to in detail above and the apparent lack of action on the part of the Government to follow up on the conclusions of the Conference Committee in consultation with all the social partners in the country would appear to demonstrate a lack of commitment to ensure respect for its obligations under the ILO Constitution.

[The Government is asked to reply in full to the present comments in 2022.]

Benin

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

(Ratification: 2001)

Observation, 2021

Article 3 of the Convention. Clause (a). Worst forms of child labour. Forced labour. Vidomégon children. In its previous comments, the Committee noted with concern that *vidomégon* children, namely children who are placed in the home of a third party by their parents or by an intermediary in order to provide them with education and work, face various forms of exploitation in host families. The Committee further noted that section 219 of the Children's Code (Act No. 2015-08 of 8 December 2015) establishes the obligation for the child placed in the family to attend school and prohibits the use of such children as domestic workers. The Committee, however, noted that the Committee on the Rights of the Child (CRC), in its concluding observations of 2016, expressed concern at the distortion of the traditional practice of *vidomégon* into forced labour and that children placed outside their families, particularly *vidomégon* children, face sexual exploitation. The United Nations Human Rights Committee, in its concluding observations of 2015, also expressed concern at the persistent misuses of the placement of *vidomégon* children, who had become a source of financial and sometimes sexual exploitation.

The Committee notes the Government's indication in its report that the identification of cases of labour exploitation of *vidomégon* children is hampered by the fact that labour inspectors cannot access households. The Government, however, points out that in case of identified abuse or violence against *vidomégon* children, perpetrators of such actions are prosecuted and convicted. The Government further indicates the launch of a helpline for child victims of violence and abuse, including *vidomégon* children, with a view to combat mistreatment and physical violence against children. It further points out that the phenomenon of *vidomégon* children has declined since more parents are aware of the exploitation of children in host families. The Committee, however, notes that the CRC, in its concluding observations of 2018, expressed concern about the persistence of harmful practices in Benin, such as *vidomégon,* and recommended to investigate and prosecute persons responsible for such harmful practices (CRC/C/OPSC/BEN/CO/1, paragraphs 20(e), 21(e)). The Committee further notes the indication in the 2017 Report of the Office of the United Nations High Commissioner for Human Rights that 90 per cent of *vidomégon* children do not go to school and that they are employed at markets and in the street trade, in addition to performing unpaid domestic tasks. The 2017 Report further indicates that young *vidomégon* girls, in addition to being exploited economically, were reportedly often victims of prostitution (A/HRC/WG.6/28/BEN/2, paragraph 38). The Committee notes with ***deep concern*** the continuing situation of vidomégon children exposed to various forms of exploitation in host families. ***While noting certain measures taken by the Government, the Committee urges the Government to intensify its efforts to protect children under 18 years of age from all forms of forced labour or commercial sexual exploitation, particularly vidomégon children. It also requests the Government to take the necessary measures to ensure, as a matter of urgency, that thorough investigations and prosecutions are conducted of persons subjecting children under 18 years of age to forced labour or commercial sexual exploitation, and that sufficiently effective and dissuasive penalties are imposed in practice. The Committee requests the Government to provide information on the results achieved in this regard.***

Articles 3(a) and 7(1). Worst forms of child labour and penalties. Sale and trafficking of children. In its previous comments, the Committee noted that the Act No. 2006-04 of 10 April 2006 establishing conditions for the movement of young persons and penalties for the trafficking of children in the Republic of Benin prohibits the sale and trafficking of children for economic or sexual exploitation. The Committee also noted that the Children's Code of 2015 contains provisions relating to the sale and trafficking of children (sections 200–203 and 212). The Committee, however, noted that statistics on the number of convictions and criminal penalties handed down were not yet available. The Committee further noted that the CRC, in its concluding observations of 2016, expressed concern at the number of children who fell victim to internal trafficking for the purpose of domestic work, subsistence farming or trade or, particularly in the case of adolescent girls, to transnational trafficking for sexual exploitation and domestic labour in other countries. Furthermore, the Committee noted that the Human Rights Committee, in its concluding observations of 2015, continued to express concern that Benin was at the same time a country of origin, transit and destination for trafficking in persons, and in particular women and children.

The Committee notes the Government's indication that, in January-May 2020, the Central Office for the Protection of Children and Families and the Elimination of Trafficking in Persons (OCPM) identified 10 cases of trafficking of children in Benin. The Government further indicates that statistical data on the number of investigations, prosecutions, convictions and penal sanctions imposed for trafficking of children is being currently collected. The Committee further notes in the Government's report concerning the application of the Forced Labour Convention, 1930 (No. 29) the establishment of the branches of the OCPM in risk areas and the adoption of identification procedures of child victims of trafficking. The Committee, however, notes that the CRC, in its concluding observations of 2018, expressed concern about the prevalence of cases of trafficking in children from and into neighbouring countries, particularly for domestic servitude and commercial sexual exploitation in cases of girls, and for forced labour in mines, quarries, markets and farms in cases of boys, especially in diamond-mining districts. The CRC further noted that the system in place for identifying child victims of sale and trafficking, is inadequate and inefficient (CRC/C/OPSC/BEN/CO/1, paragraphs 20(f), 32(a)). ***The Committee requests the Government to strengthen its efforts to ensure the effective implementation and enforcement of the provisions of the Act No. 2006-04 of 10 April 2006, including by conducting thorough investigations and prosecutions of persons who engage in the trafficking of children under 18 years of age. The Committee further requests the Government to provide information on the number of investigations, prosecutions, convictions and penalties imposed for the offence of trafficking of children under 18 years of age. Lastly, the Committee requests the Government to provide information on the activities of the OCPM in preventing and combatting trafficking of children.***

Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour and providing assistance for the removal of children from such labour. Children working in mines and quarries. The Committee previously noted that, according to a survey conducted as part of the ILO–IPEC ECOWAS II project (December 2010–April 2014), 2,995 children had been found working on 201 different mining sites, and 88 per cent of them were children of school age. The Committee also noted that further to the implementation of the ILO–IPEC ECOWAS II project, targeted actions had been carried out to prevent child labour on mining sites, such as awareness raising and occupational safety and health training for mining site operators. Quarry operators had also established internal regulations prescribing penalties for operators or parents who use child labour on the sites. Alert mechanisms had also been put in place to notify site supervisors of the presence of working children.

The Committee notes the Government's indication that the committees to monitor child labour in quarries and on granite crushing sites were established in the communes of Djidja, Zangnanado, Bembéréké, Tchaourou, and Parakou with the UNICEF's support in 2020. The monitoring committees are consisted of labour inspectors, heads of mining and quarrying departments, heads of social promotion centres, judicial police officers, site and quarry operators, heads of women's crushers' associations, and district and village leaders. The Government further indicates that a training workshop on child labour, particularly in mines and quarries, was conducted for the members of the monitoring committees. During the monitoring committees' visits, several working children were found at the granite crushing sites in the commune of Bembéréké. ***The Committee once again encourages the Government to continue to take effective and time-bound measures to protect children from hazardous work in the mining and quarrying sector. It further requests the Government to provide statistical data on the number of children protected or removed from this hazardous type of work and to indicate the***

rehabilitation and social integration measures from which they have benefited.

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

Bolivia (Plurinational State of)

Minimum Wage Fixing Convention, 1970 (No. 131)

(Ratification: 1977)

Observation, 2021

The Committee notes the observations of the Confederation of Private Employers of Bolivia (CEPB), received on 31 August 2021, and of the International Organisation of Employers (IOE), received on 1 September 2021. The Committee also notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2021.

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 109th Session, June 2021)

The Committee notes that, for the third consecutive year, the Conference Committee on the Application of Standards (Conference Committee) examined the application of the Convention by the Plurinational State of Bolivia. The Committee observes that the Conference Committee once again urged the Government to: (i) carry out full consultations with the social partners with regard to minimum wage setting; (ii) take into account the needs of workers and their families as well as economic factors when determining the level of the minimum wage as set out in *Article 3* of the Convention; and (iii) accept an ILO direct contacts mission before the next session of the International Labour Conference in 2022. The Conference Committee also requested the Government to avail itself, without delay, of ILO technical assistance to ensure compliance with the Convention in law and practice.

Articles 3 and 4(1) and (2) of the Convention. Elements for the determination of the level of the minimum wage and full consultations with the social partners. In its previous comments, the Committee observed that divergences persisted between the Government and the CEPB and the IOE regarding both the holding of full and good faith consultations with the representative organizations of employers and the criteria reportedly taken into consideration in determining the minimum wage. The Committee notes the Government's indication in its report that: (i) a series of mechanisms have been adopted for the direct participation of both employers and workers and meetings have been held with each of them in light of the principle of equality; (ii) these measures were not effective due to the positions adopted by the employers' representatives, which led to the Government taking the decisions concerned, taking into consideration the national situation and the economic conditions of employers and workers; (iii) the increase in the national minimum wage for each financial year is determined on the basis of prior macroeconomic analysis and taking into account inflation, the Gross Domestic Product (GDP) and other variables, which are presented and assessed in the various meetings held for that purpose, including those held by the Government with the Bolivian Central of Workers (COB), in which the claims of that organization are considered; in view of the circumstances resulting from the COVID-19 pandemic, Supreme Decree No. 4501 of 1 May 2021 provided for an increase of only 2 percent in relation to the national minimum wage set in the 2019 financial year; and (iv) a direct contacts mission is not necessary as no difficulty is being experienced in the application of the Convention. Furthermore, the Committee notes the hope expressed by the IOE that the Plurinational State of Bolivia will make progress in the application of the Convention in accordance with the conclusions of the Conference Committee and in close consultation with the CEPB. The Committee further notes the CEPB's indication that: (i) with the adoption of Supreme Decree No. 4501 of 1 May 2021, the centralization of dialogue continued solely with workers' representatives and all prior consultation with employers' representatives was omitted; (ii) their participation was prevented in the establishment, operation and modification of the machinery for the fixing of the national minimum wage and they were not able to put forward criteria in this regard; and (iii) objective technical parameters adapted to the real situation were absolutely not taken into consideration, in particular taking into account the difficult situation experienced due to the pandemic and its impact on economic trends and performance and on employers. Finally, the Committee notes the indication by the ITUC that: (i) while highlighting the efforts made by the Government to improve the life of workers, the Government should continue to organize consultations on the fixing of minimum wages in accordance with the Convention, enabling representative organizations to hold in-depth discussions on the machinery for fixing minimum wages, which does not mean codetermination of the minimum wage; and (ii) the increases in the minimum wage have taken fully into account economic factors. The Committee once again observes that contradictions and divergences persist between the Government and the CEPB concerning the holding of full and good faith consultations with the representative organizations of employers and on the criteria taken into account in determining the minimum wage. In this context, the Committee once again notes with ***regret*** the Government's refusal to accept a direct contacts mission to the country with a view to finding a solution to the difficulties raised in the application of the Convention and to have recourse to ILO technical assistance in this respect. The Committee considers that the direct contacts mission could contribute to finding solutions to the divergences indicated and assist in the full application of the Convention. ***The Committee firmly expects that the Government will review its position and that a mission can take place before the 110th Session of the International Labour Conference, as the Conference Committee has been requesting since 2018.***

[The Government is asked to reply in full to the present comments in 2022.]

Bosnia and Herzegovina

Employment Policy Convention, 1964 (No. 122)

(Ratification: 1993)

Observation, 2021

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

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

Articles 1 and 2 of the Convention. Implementation of an active employment policy. In their observations, the workers' organizations allege that the Government has failed to declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment. They stress that the employment situation in both Federation of Bosnia and Herzegovina (FBiH) and Republika Srpska (RS) is dire, with extremely high rates of unemployment, citing a 28 per cent general unemployment rate and youth unemployment rates exceeding 60 per cent. The Committee notes the Government's indication that, pursuant to the Law on Employment Intermediation and Social Security of Unemployed Persons of the FBiH, the relevant authorities of the FBiH or Cantons are responsible for establishing measures to increase employment rates and improve the situation of employed persons. The FBiH adds that the work plan of the FBiH Employment Institute provides for the various forms of support for the promotion of employment, self-employment, preparation for entering the labour market; and professional development and training. These measures seek to integrate unemployed persons into the labour market, particularly in relation to persons belonging to hard-to-employ categories of unemployed persons. The Committee notes that section 23 of the Law gives priority to persons with disabilities in employment. With respect to the Brčko District of BiH, the Committee notes that the Law on Employment and Rights during Unemployment and the Labour Law of the Brčko District provide for professional training, preparation for employment and special protections for women, minors and persons who are not fit for work. In relation to the RS, the Committee notes that the RS Employment Strategy 2011–15 established a system for the registration of unemployed persons with the RS Employment Bureau (RSEB). The Committee notes the Government's indication that the RSEB implemented three projects providing support for employment in the RS from 2013 to 2015, through which a total of 4,522 persons were employed. In October 2016, the RS National Assembly adopted the RS Employment Strategy 2016–20, which seeks to increase employment and stimulate economic activity in RS through the implementation of thirteen operational goals and fifty specific measures. The Committee notes the Government's indication that, according to the records of the RSEB, implementation of these measures led to the employment of 34,593 persons in 2015. The Government adds that the measures set out in the RS Employment Action Plan for 2017 seek, inter alia, to structurally reform the role of the RSEB and focus its activity on employment intermediation. ***The Committee requests the Government to provide detailed updated information, including statistical data disaggregated by sex, age and administrative entity, on the impact of the policies and measures implemented to promote full, productive and freely chosen employment, including the employment promotion activities carried out under the Employment Strategy of Republika Srpska 2016–20.***

Employment trends. The FBiH reports that there were a number of positive changes in the labour market in 2016. The RS indicates that a gradual stabilization of the labour market began in 2013, adding that numerous measures taken by the RS and other stakeholders addressed the increasing unemployment rate. The Committee notes that, according to data from the FBiH Statistics Institute, 457,974 workers were employed in the FBiH in 2016. It further notes that data from the Labour Force Survey indicates that the employment rate in the FBiH stood at 30.5 per cent in 2016, while the average unemployment rate was 25.6 per cent, a reduction of 3.31 per cent in comparison with the 2015 average. The Committee notes the high unemployment rate among young persons 15–24 years of age, which decreased from 64.9 per cent in 2015 to 55.1 per cent in 2016. The Committee further notes that, according to the ILOSTAT database, the general unemployment rate for young persons was 45.8 per cent in 2017. At the end of 2016, the largest percentage of those registered as unemployed in the FBiH (44.24 per cent) were in the 30–49 age group, followed by persons under the age of 30 (32.5 per cent) and persons over the age of 50 (25.26 per cent). In 2016, 133,037 persons were removed from the records of the Cantonal employment services, 115,379 persons were registered as unemployed and 92,263 persons were placed in employment. This represents an increase of 15,671 in comparison with 2015. According to the ILOSTAT database, in 2017, the general unemployment rate was 20.5 per cent, whereas the unemployment rate for men and for women was 18.9 per cent and 23.1 per cent, respectively. ***The Committee requests the Government to continue to provide statistical data disaggregated by sex and age concerning the size and distribution of the labour force, including the size of the informal economy and employment trends in relation to employment, unemployment, and visible underemployment.***

Undeclared work. In their observations, the workers' organizations indicate that the informal economy is widespread, maintaining that the Government has not made serious efforts to tackle this issue effectively. They emphasize that nearly one-third of all persons who are employed are working in the informal economy, trapped there primarily due to poor access to the labour market, slow job creation in the formal economy and the lack of skills matching labour market demands. They add that workers in rural areas face a higher probability of remaining in informal employment in comparison with workers in other sectors. The Committee notes that, according to the RS Employment Strategy 2016–20, informality is predominately present in agriculture, making up about two-thirds of informal employment, with informal employment concentrated among the rural population. ***The Committee therefore once again requests the Government to provide detailed updated information on the measures taken or envisaged to facilitate the transition of undeclared workers in the informal economy to employment in the formal economy, with special attention to the agricultural sector and rural communities.***

Workers vulnerable to decent work deficits. The FBiH indicates that a number of gender-sensitive programmes implemented by the FBiH Employment Institute focus on specific groups of workers vulnerable to decent work deficits: women; young persons; persons with disabilities; persons belonging to the Roma community; persons over the age of 40; and the long-term unemployed. The RS reports that 2,859 persons were employed through Social Safety Nets and the Employment Support Project. In addition, 543 persons were employed in 2015 through a project to support the employment of persons over the age of 45 and 135 persons were employed through an employment support project targeting the Roma minority from 2011 to 2015. It adds that the RS Employment Action Plan for 2017 sets out a number of measures aimed at increasing the employability of persons under the age of 30, persons over the age of 50 and persons belonging to the Roma community. In their observations, the workers' organizations allege that the 2015–18 Reform Agenda fails to address the interests of women, workers in the informal economy and workers with disabilities. In addition, the workers' organizations observe that women have low participation levels in political and public affairs, noting that the gender pay gap in BiH is larger than the EU average. ***The Committee requests the Government to provide detailed updated information, including statistical data disaggregated by age and sex in the three administrative entities, on the nature and impact of measures taken to promote full, productive, freely chosen and sustainable employment for persons vulnerable to decent work deficits, including women, young persons, persons over the age of 50, informal workers, the long-term unemployed, persons with disabilities and members of the Roma community. Noting, moreover, the gender pay gap and the higher rates of unemployment for women, the Committee requests the Government to provide information on specific measures taken to promote employment for women at all levels and across all sectors, including in decision-making positions.***

Employment of young persons. The Committee notes that, according to the ILOSTAT database, the youth unemployment rate in the country stood at 45.8 per cent in 2017. The Committee notes that both FBiH and the RS took measures to promote the employment of young persons. In this regard, the RSEB

implemented five projects from 2011 to 2014 to support young persons in gaining work experience, through which 3,650 persons were employed as trainees. Furthermore, the RS Employment Action Plan for 2017 contemplates the promotion of socially useful employment for youth, for which 50,000 Bosnian convertible marka (BAM) are allocated. In their observations, the workers' organizations express concerns in relation to the high rate of youth unemployment and the likelihood that they will remain in long-term unemployment and the mass exodus of young educated persons from the country seeking work elsewhere. ***The Committee requests the Government to provide updated detailed information, including disaggregated statistical data on the impact of the measures taken by the three administrative entities of the country to promote full, productive, freely chosen and lasting employment for young workers.***

Vocational education and training. The Committee notes that the FBiH Employment Institute and the Cantonal employment services are responsible for implementing the Job Preparation Programme: from Training to Employment, which provides co-financing for the training of unemployed persons to enable them to acquire professional skills tailored to the needs of employers. In respect of the RS, the Committee notes the establishment of 11 job clubs and 6 Information, Counselling and Training Centres which provided job search assistance to more than 34,376 beneficiaries from 2011 to 2015, leading to the employment of 9,172 persons. Furthermore, the RS Employment Action Plan for 2017 contemplates the development, financing and delivery of training aimed at enhancing the employability of active jobseekers, for which BAM500,000 are allocated. ***The Committee requests the Government to continue to provide information on the nature and impact of measures taken to improve vocational education and training and on their impact on the employability and competitiveness of the national labour force.***

Article 3. Consultation with the social partners. The Committee notes the Government's indication that the tripartite FBiH Economic and Social Council discusses all measures related to economic and social policy prior to their formal adoption and that the RS Employment Action Plan for 2017 was adopted after consultation with the social partners. In their observations, the workers' organizations allege that the social partners were not able to participate in the development and implementation of the 2015–18 Reform Agenda and that this lack of participation and transparency continued in relation to laws and policies adopted by regional governments in 2016. They further allege that the 2015 Labour Law undermines the strategic position of trade unions and collective agreements. ***The Committee requests the Government to provide detailed information on the nature and extent of the involvement of the social partners in the development, implementation, monitoring and review of employment policy measures and programmes in the different administrative entities.***

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

Central African Republic

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

(Ratification: 2000)

Observation, 2021

Article 3(a) of the Convention. All forms of slavery or practices similar to slavery. Forced recruitment of children for use in armed conflict. The Committee previously noted the forced recruitment of children of under 18 years of age for use in the armed conflict which was taking place in the country. The Committee noted an agreement signed on 5 May 2015 by ten armed groups to stop and prevent the recruitment and use of children, and the adoption of a new Constitution in March 2016. It noted the information provided by the Government, according to which, as part of the first pillar of the National Recovery and Peacebuilding Plan for the Central African Republic (RCPCA) for 2017-21, entitled "Support peace, security and reconciliation", the Government has initiated the process of disarmament, demobilisation, reintegration and repatriation, and also the reform of the security sector, with a view to restoring the authority of the State to allow it undertake investigations and prosecute the perpetrators of forced recruitment of children. The Committee observes, however, from a report dated 28 July 2017 by the independent expert on the human rights situation in the Central African Republic, that the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) estimated that between 4,000 and 5,000 children were enlisted. The Committee expressed deep concern at the current situation and urged the Government to intensify its efforts to eliminate the forced recruitment of children under 18 years of age by all armed groups in the country. It also urged the Government to take immediate measures to ensure that the investigation and prosecution of offenders is carried out and that sufficiently effective and dissuasive penalties are imposed on persons found guilty of recruiting children under 18 years of age for use in armed conflict.

The Government indicates in its report that efforts continue under the implementation of the first pillar of the National Recovery and Peacebuilding Plan for the Central African Republic for 2017-21. It states that, in partnership with the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA), the progressive redeployment of the defence and security forces is intensifying throughout the territory, especially in the secondary cities of the country, previously occupied by armed groups, in order to ensure the security and protection of the civilian populations. The Government further indicates the adoption of an Act issuing the Child Protection Code in 2020, to protect children from enlistment in the armed forces or by armed groups. The Committee takes due note of this information and observes that the Report of the United Nations Secretary-General of 12 October 2020 on the Central African Republic clarifies that the Child Protection Code, promulgated on 15 June 2020, criminalizes the recruitment and use of children by the armed forces and groups, and considers enlisted children as victims (S/2020/994, paragraph 70).

The Committee notes the Political Agreement for Peace and Reconciliation in the African Republic (APPR-RCA), signed on 6 February 2019 between the Government and 14 armed groups, which calls for a stop to hostilities between the armed groups, as well as the ceasing of all exactions and violence against the civilian populations. The Agreement, which includes an implementation mechanism, calls for the establishment of a Truth, Justice, Reparation and Reconciliation Commission (CVJRR). The Committee notes from the report by the independent expert on the human rights situation in the Central African Republic of 24 August 2020, covering the period from July 2019 to June 2020, that the time limit fixed by the national authorities of the end of January 2020 to complete disarmament and demobilisation was not respected. Regardless of their engagements under the Agreement, the armed forces and armed groups in the country that were signatories thereof had recourse to the recruitment and use of children (A/HRC/45/55, paragraphs 24, 25, 33, 36, 39 and 40).

According to a report dated 4 August 2021 published jointly by the United Nations Office of the High Commissioner for Human Rights (OHCHR) and the MINUSCA on violations of human rights and international humanitarian law in the Central African Republic during the electoral period, and specifically on the period from July 2020 to June 2021, the security situation worsened progressively in the country. The recruitment of children by parties to the conflict were included among the violations observed.

The Committee notes from the report of the United Nations Secretary-General of 6 May 2021 on children and armed conflict, that 584 cases of children (400 boys and 184 girls) recruited and used by armed groups and the armed forces were confirmed in 2020, including by ex-Séleka factions (the majority), and other armed groups as well as by the internal security forces and the Central African armed forces. Children were used as combatants and in support roles, and were subjected to sexual violence. Moreover, 42 cases of child deaths were confirmed and 82 cases of sexual violence were verified; 58 children were abducted by armed groups for the purposes of recruitment, sexual violence and ransoms. The Secretary-General expressed alarm at the sharp increase in recruitment and use of children in the armed conflicts as well as the increased incidence of sexual violence, abduction, compounded by electoral violence (A/75/873-S/2021/437, paragraphs 24, 26, 27, 30, 34, 35). The same report also emphasizes the conviction of 110 perpetrators of violations against children (paragraph 32). The Committee finds itself obliged to ***deplore*** the continuing recruitment and use of children in the armed conflict in the Central African Republic, all the more so as it gives rise to other serious violations of the child rights, such as abductions, murder and sexual violence. ***While recognizing the complexity of the situation prevailing on the ground and the existence of an armed conflict and armed groups in the country, the Committee urges the Government to pursue its efforts to put an end to the practice of forced recruitment of children of less than 18 years of age by the armed forces and armed groups in the country. Moreover, the Committee again urges the Government to take immediate and effective measures to ensure that all persons, including members of the regular armed forces, who recruit children of under 18 years of age for use in armed conflict, are thoroughly investigated and prosecuted and that sufficiently effective and dissuasive penalties are imposed in practice, in conformity with the Child Protection Code. The Committee requests the Government to provide information on the number of investigations undertaken, prosecutions filed and convictions handed down against such persons. It also requests a copy of the Child Protection Code.***

Article 7(2). Effective and time-bound measures. Clause (a). Prevent the engagement of children in the worst forms of child labour. Access to free basic education. The Committee previously observed that the impact of the political and security crisis in the Central African Republic has aggravated the situation regarding basic education for children. It noted various measures taken by the Government to promote children's access to education. However, the Committee noted information according to which the school attendance rate is extremely low, in particular for girls, and the drop-out rate between primary and secondary education is high. The Committee urged the Government to intensify its efforts and take effective and time-bound measures to improve the operation of the education system and facilitate access to good quality basic education for all children in the Central African Republic, including in the zones affected by the conflict, giving special attention to the situation of girls.

The Government indicates that the Act issuing the Child Protection Code, adopted in 2020, includes provision on education and the protection of children in the school environment. The Committee notes that the Report of the United Nations Secretary-General on the Central African Republic of 16 June 2021 highlights the fact that half of the country's children are out of school (S/2021/571, paragraph 38). Furthermore, the independent expert on the human rights situation in the Central African Republic draws attention, in his report of 24 August 2020, to the partial or total closure of several schools as a result of the armed conflict, particularly in the hinterland, cutting off children's access to education (A/HRC/45/55, paragraph 61). According to the UNICEF communication of 27 April 2021, available on the UN info internet site, one school in four is not functioning due to the combat.

The Committee also noted that the confrontations during the electoral period between July 2020 and June 2021 gave rise to pillaging, attacks and occupation of numerous schools, gravely affecting the resumption of school in early January 2021 joint report of the OHCHR and the MINUSCA on violations of human rights and international humanitarian law in the Central African Republic during the electoral period, paragraphs 31, 112, 113 and 115). The

Committee is obliged to express its ***deep concern*** at the large number of children deprived of education as a result of the climate of insecurity prevailing in the country. It recalls that education plays a key role in preventing children from engaging in the worst forms of child labour, including their recruitment in armed conflicts. ***While recognizing the difficult situation prevailing in the country, the Committee urges the Government to intensify its efforts to improve the operation of the education system and facilitate access to free basic education for all children, including girls, and in the zones affected by the conflict. It requests the Government to provide information on the concrete measures taken in this regard as well as on the school attendance, maintenance and drop-out rates at primary and secondary levels.***

Clause (b). Direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. Forced recruitment of children for use in armed conflict. In its previous comments, the Committee noted the revision of the national disarmament, demobilization and reintegration strategy to include appropriate provisions concerning children. It noted information from UNICEF to the effect that 9,449 children had been freed from armed groups between January 2014 and March 2017, but only 4,954 had benefited from reintegration programmes. Furthermore, the United Nations Secretary-General indicated that many demobilized children and been enlisted again in the armed groups. The Committee urged the Government to intensify its efforts to provide appropriate direct assistance to remove child victims of forced recruitment from armed groups and ensure their rehabilitation and social integration so as to guarantee their long-term, definitive demobilization.

The Committee notes the absence of information in the Government's report on this point. The Committee notes the report of the independent expert on the human rights situation in the Central African Republic of 24 August 2020, which covers the period from July 2019 to June 2020, according to which, within the framework of the Programme for Disarmament, Demobilisation, Reintegration and Repatriation, the armed groups signed protocols and action plans with the authorities to liberate children from their ranks and abstain from further recruitment. The independent expert remarks that some children were discharged following the signature of the protocols. However, he notes that cases of enlistment and use of children by armed groups had been documented (A/HRC/45/55, paragraph 59).

The Committee notes that the United Nations Secretary-General, in his report on children and armed conflict of 6 May 2021, indicates that 497 children recruited into the armed groups were liberated in 2020, and that 190 children, self-demobilized from the armed groups, were identified (A/75/873-S/2021/437, paragraph 33). The Secretary-General also indicates, in his report of 16 February 2021, that on 30 November 2020 four children, accused of association with armed groups and imprisoned, were released and enrolled in reintegration programmes. The Secretary-General also indicates that, as part of the "ACT to protect children affected by armed conflict" campaign, MINUSCA has raised awareness among 2,000 persons on the increased risk of grave violations child rights violations during the electoral period (S/2021/146, paragraph 65 and 66). The Committee notes the information in the UNICEF communication of 27 April 2021, to the effect that although, since 2014, UNICEF and its partners have helped liberate more than 15,500 children from the armed groups, more than one in five of the children had yet to be enrolled in a reintegration programme. ***The Committee urges the Government to take appropriate and time-bound measures to ensure the removal of children recruited for use in the armed conflict and for their rehabilitation and social integration. It also urges the Government to take the measures necessary to ensure that all children removed from the armed groups and from the armed forces benefit from reintegration programmes. It requests the Government to provide information in this regard, including on existing reintegration programmes for these children and on the number of children that have benefited from rehabilitation and social integration.***

In light of the situation described above, the Committee deplores the continued recruitment and use of children in armed conflict by both armed groups and the armed forces, especially as it entails other violations of children's rights, such as abductions, murders and sexual violence. The Committee has been raising this issue since 2008, and the recruitment and use of children in armed conflict, both as combatants and in support roles, has sharply increased in recent years. The Committee must also express its deep concern at the significant number of children deprived of education due to the climate of insecurity in the country. The Committee considers that this case meets the criteria set out in paragraph 96 of its General Report to be asked to come before the Conference.

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

[The Government is asked to supply full particulars to the Conference at its 110th Session and to reply in full to the present comments in 2022.]

China

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

(Ratification: 2006)

Observation, 2021

With reference to its previous comments, the Committee recalls the observations by the International Trade Union Confederation (ITUC) received on 16 and 28 September 2020 and notes that additional observations by the ITUC were received on 6 September 2021 reiterating and supplementing its previous observations. The Committee also notes the Government's reply received on 19 November 2020 and the additional information communicated by the Government on 30 August 2021 in reply to the Committee's direct request.

Article 1(1)(a) and (3) of the Convention. Definition and prohibition of discrimination in employment and occupation. Prohibited grounds of discrimination. Legislation. The Committee recalls that the English translation of section 12 of the Labour Law of 1994 provides that "[w]ith regard to employment, the workers shall not be discriminated in aspects of nationality, race, sex and religious beliefs" and the English translation of section 3 of the Employment Promotion Law of 2007 provides that "[i]n seeking employment, the workers shall not be subject to discrimination because of their ethnic backgrounds, races, gender, religious beliefs, etc." The Committee notes that, in its report, the Government refers to: (1) the revised "Regulation on Religious Affairs", which took effect on 1 February 2018 and provides that "no organization or individual … may discriminate against citizens who believe in any religion … or citizens who do not believe in any religion …"; and (2) the Labour Law and the Employment Promotion Law that contain provisions on the prohibition of employment discrimination and the promotion of fair employment. The Committee notes nonetheless that these laws and regulations do not provide for a definition of discrimination, whether direct or indirect, and both do not seem to cover all aspects of "employment and occupation" as defined in *Article 1(3)* of the Convention. ***The Committee therefore asks the Government to take steps to: (i) include a clear and comprehensive definition of discrimination (both direct and indirect) in its labour legislation; and (ii) clarify whether the provisions of the Labour Law of 1994 also cover access to employment and vocational training. With respect to the anti-discrimination legal provisions in force, the Committee also asks the Government to confirm that: (i) the Labour Law of 1994 covers only the grounds of nationality, race, sex and religious beliefs; and (ii) the Employment Promotion Law of 2007 provides for an open list of prohibited discrimination grounds and therefore also covers discrimination based on colour, national extraction, social origin and political opinion (even if such grounds are not explicitly mentioned). It further asks the Government to indicate whether any interpretation concerning the wording "etc." in the Employment Promotion Law of 2007 has been handed down by the judicial authorities and, if so, to provide a copy of the given decisions.***

Articles 1(1)(a), 2 and 3. Allegations of discrimination based on race, religion, national extraction and social origin affecting ethnic and religious minorities in Xinjiang. The Committee refers to its comments on the application of the Employment Policy Convention, 1964 (No. 122). In the interest of coherence and transparency in its comments, considering that both the allegations and the information in reply raise a close connection between employment policy, the free choice of employment of ethnic and religious minorities and their protection against discrimination in employment and occupation, the Committee presents the same synopsis of the information available in both comments.

In its observations of 2020 and 2021, the ITUC alleges that the Government of China has been engaging in a widespread and systematic programme involving the extensive use of forced labour of the Uyghur and other Turkic and/or Muslim minorities for agriculture and industrial activities throughout the Xinjiang Uyghur Autonomous Region (Xinjiang), in violation of the right to freely chosen employment set out in *Article 1(2)* of Convention No. 122. The ITUC maintains that some 13 million members of the ethnic and religious minorities in Xinjiang are targeted on the basis of their ethnicity and religion with a goal of social control and assimilation of their culture and identity. According to the ITUC, the Government refers to the programme in a context of "poverty alleviation", "vocational training", "re-education through labour" and "de-extremification".

The ITUC submits that a key feature of the programme is the use of forced or compulsory labour in or around internment or "re-education" camps housing some 1.8 million Uyghur and other Turkic and/or Muslim peoples in the region, as well as in or around prisons and workplaces across Xinjiang and other parts of the country.

The ITUC indicates that, beginning in 2017, the Government has expanded its internment programme significantly, with some 39 internment camps having almost tripled in size. The ITUC submits that, in 2018, Government officials began referring to the camps as "vocational education and training centers" and that in March 2019, the Governor of the Xinjiang Uyghur Autonomous Region described them as "boarding schools that provide job skills to trainees who are voluntarily admitted and allowed to leave the camps". The ITUC indicates that life in "re-education centers" or camps is characterized by extraordinary hardship, lack of freedom of movement, physical and psychological torture, compulsory vocational training and actual forced labour.

The ITUC also refers to "centralized training centers" that are not called "re-education camps" but have similar security features (e.g. high fences, security watchtowers and barbed wire) and provide similar education programmes (legal regulations, Mandarin language courses, work discipline and military drills). The ITUC adds that the "re-education camps" are central to an indoctrination programme focused on separating and "cleansing" ethnic and religious minorities from their culture, beliefs, and religion. Reasons for internment may include persons having travelled abroad, applied for a passport, communicated with people abroad or prayed regularly.

The ITUC also alleges prison labour, mainly in cotton harvesting and the manufacture of textiles, apparel and footwear. It refers to research according to which, starting in 2017, the prison population of Uyghurs and other muslim minorities increased dramatically, accounting for 21 per cent of all arrests in China in 2017. Charges typically included "terrorism", "separatism" and "religious extremism".

Finally, the ITUC alleges that at least 80,000 Uyghurs and other ethnic minority workers were transferred from Xinjiang to factories in Eastern and Central China as part of a "labour transfer" scheme under the name "Xinjiang Aid". This scheme would allow companies to: (1) open a satellite factory in Xinjiang; or (2) hire Uyghur workers for their factories located outside this region. The ITUC alleges that the workers who are forced to leave the Uyghur Region are given no choice and, if they refuse, are threatened with detention or the detention of their family. Outside Xinjiang, these workers live and work in segregation, are required to attend Mandarin classes and are prevented from practicing their culture or religion. According to the ITUC, state security officials ensure continuous physical and virtual surveillance. Workers lack freedom of movement, remaining confined to dormitories and are required to use supervised transport to and from the factory. They are subject to impossible production expectations and long working hours. The ITUC adds that, where wages are paid, they are often subject to deductions that reduce the salary to almost nothing. ITUC adds that, without these coercively arranged transfers, Uyghurs would not find jobs outside Xinjiang, as their physical appearance would trigger police investigations.

According to the ITUC's allegations, to facilitate the implementation of these schemes, the Government offers incentives and tax exemptions to enterprises that train and employ detainees; subsidies are granted to encourage Chinese-owned companies to invest in and build factories near or within the internment camps; and compensation is provided to companies that facilitate the transfer and employment of Uyghur workers outside the Uyghur Region.

In its 2021 observations, the ITUC supplements these observations with information, including testimonies from the Xinjiang Victims Database, a publicly accessible database which as of 3 September 2021 had allegedly recorded the experience of some 35,236 ethnic minority members forcibly interned by the Government since 2017.

The Government states that the right to employment is an important part of the right to subsistence and development, which constitute basic human rights. The Government indicates that, under its leadership, Xinjiang has made great progress in safeguarding human rights and development. It adds that people of all ethnic groups voluntarily participate in employment of their own choice, and that the ITUC has ignored the progress made in economic development, poverty alleviation, improvement of people's livelihood and efforts to achieve decent work in Xinjiang.

With respect to the ITUC observations in relation to the use of forced labour, the Government emphasizes that these allegations are untrue and politically motivated.

The Government indicates that, pursuant to the Constitution, the State creates conditions for employment through various channels. The Employment Promotion Law (2007) stipulates that workers have the right to equal employment and to choose a job on their own initiative, without discrimination. Under the Vocational Education Law of 1996, citizens are entitled to receive vocational education and the State takes measures to develop vocational education in ethnic minority areas as well as remote and poor areas.

The Government indicates that residents of deeply poverty-stricken areas in southern Xinjiang have suffered insufficient employability, low employment rates, very limited incomes and long-term poverty. It states that eliminating poverty in Xinjiang has been a critical part of the national unified strategic plan to eradicate poverty by the end of 2020. The Government adds that it has eliminated absolute poverty, including in southern Xinjiang, thanks to government programmes such as the Programme for Revitalizing Border Areas and Enriching the People during the 13th Five-Year Plan Period (GUOBANFA No. 50/2017) and the Three-Year Plan for Employment and Poverty Alleviation in Poverty-stricken Areas in the four prefectures of Southern Xinjiang (2018-2020). The Programme for Revitalizing Border Areas and Enriching the People had set development targets for nine provinces and autonomous regions, including Xinjiang, such as the lifting out of poverty of all rural poor and the continuous expansion of the scale of employment combining individual self-employment, market-regulated employment, government promotion of employment and entrepreneurship, and vocational training to increase the employability of workers. The Three-Year Plan laid the foundation for the Xinjiang government to provide dynamic, categorized and targeted assistance to people with employment difficulties and families where no one is employed, and create structured conditions for people to find jobs locally, to seek work in urban areas, or to start their own businesses.

The Government reports that the task of relocating the poor for the purpose of poverty relief has been completed, and that the production and living conditions of poor people have been greatly improved: the poverty incidence rate in the four poverty-stricken prefectures of Xinjiang dropped from 29.1 per cent in 2014 to 0.21 per cent in 2019. Between 2014 and 2020, the total employed population in Xinjiang grew from 11.35 million to 13.56 million, representing an increase by 19.4 per cent. In the same period, an average of 2.8 million urban job opportunities were provided annually to the “surplus rural workforce”.

The Government is firm in its view that it fully respects the employment wishes and training needs of Xinjiang workers, including ethnic minorities. The Xinjiang Government regularly conducts surveys of labourers' willingness to find employment and keep abreast of their needs in terms of employment location, job positions, remuneration, working conditions, living environment, development prospects and training needs. These surveys demonstrate that more urban and rural “surplus” workers hope to go to cities in northern Xinjiang or other more developed provinces and cities in other parts of the country, which offer higher wages, better working conditions and a better living environment. Ethnic minorities count on the government to provide more employment information and other public employment services to their members. The fact that ethnic minority workers go out to work is entirely voluntary, autonomous and free. According to the Government, the Three-Year Plan for Southern Xinjiang explicitly refers to the “willingness for employment” and states that the wishes of individuals “who are unwilling to work due to health and other reasons” shall be fully respected, and that they will never be forced to register for training.

The Government stresses that language training for ethnic minority workers in Xinjiang is necessary to increase their language ability, and enhance their employability, and does not deprive them of the right to use their own language.

The Government also replies to the ITUC allegations that the Uyghur and other ethnic minorities in Xinjiang are not paid the applicable local minimum wage, indicating that the Labour Law of the People’s Republic of China stipulates that the minimum wage system applies across the country, although minimum wage standards may vary across administrative regions. As of 1 April 2021, the minimum wage in Xinjiang is divided into four grades: 1,900 yuan, 1,700 yuan, 1.620 yuan and 1,540 yuan. The Government considers reports that the wages of some migrant workers in Xinjiang are as low as US$114 (approximately 729 yuan) per month to be groundless, stating that the overwhelming majority of this information is taken from individual interviews and lacks clear sources of data or statistical information. In addition, the Government points out that the reports do not fully clarify whether the workers concerned are working less than the statutory working hours, in which case they would be paid less. The Government states that by going out to work, the actual income of many people is much higher than the minimum wage of Xinjiang.

The Government also reports that the local government of Xinjiang has put in place labour inspection systems for protecting the rights and interests of workers and addressing their reports and complaints concerning wage arrears, failure to sign labour contracts and other infringements. The Government indicates that it will take steps to further strengthen the supervision and inspection of employer compliance with minimum wage provisions, call on employers to respect the minimum wage standards and address violations.

The Government provides detailed information on its laws, regulations and policies regarding freedom of religion; equality among the 56 ethnic groups in China and for consolidating and developing unity between and within these groups.

The Government reports that China adopts policies securing freedom of religious belief; manages religious affairs in accordance with the law; adheres to the principle of independence from foreign countries and self-management; and actively guides religions to adapt to the socialist society so that religious believers may love their country and compatriots, safeguard national unity and ethnic solidarity, be subordinate to and serve the overall interests of the nation and the Chinese people. The Law of the People’s Republic of China on the Administration of Activities of Overseas Non-Governmental Organizations within China prohibits overseas NGOs from illegally engaging in or sponsoring religious activities. China’s Criminal Law, National Security Law, and Counter-Terrorism Law provide for the protection of citizens’ freedom of religious belief. The Counter-Terrorism Law of the People’s Republic of China states that China opposes all extremism that seeks to instigate hatred, incite discrimination and advocate violence by distorting religious doctrines or through other means, and forbids any discriminatory behaviour on the grounds of region, ethnicity and religion. The Regulations on Religious Affairs prohibit any organization or individual from advocating, supporting or sponsoring religious extremism, or using religion to undermine ethnic unity, divide the country, or engage in terrorist activities. According to the Government, China takes measures against the propagation and spread of religious extremism, and at the same time, carefully avoids linking violent terrorism and religious extremism with any particular ethnic group or religion.

The Committee takes due note of all the allegations and information communicated by both the ITUC and the Government on the application of Convention Nos 111 and 122, which appear interrelated, as well as stated government policy as it transpires from various regulatory and policy documents.

The Committee takes note of the Government’s explanation of its various regulations and policies, including on the eradication of poverty without discrimination. However, the Committee expresses ***concern*** in respect of the methods applied, the impact of their stated objectives and their (direct or indirect) discriminatory effect on the employment opportunities and treatment of ethnic and religious minorities in China.

The Committee recalls that Convention No. 111 requires the formulation and the adoption of a national equality policy, with a view to eliminating any discrimination (*Article 2)* and defines discrimination as “any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation”

(*Article 1(1)(a)*). Under the Convention, the term "race" includes any discrimination against linguistic communities or minority groups whose identity is based on religious or cultural characteristics or national or ethnic origin (see General Survey on the fundamental Conventions, 2012, paragraph 762). It further recalls that racial harassment, which is a serious form of discrimination, occurs where a person is subject to physical, verbal or non-verbal conduct or other conduct based on race which undermines their dignity or which creates an intimidating, hostile or humiliating working environment for the recipient (see the general observation of 2018 on the application of the Convention).

The Committee recalls that freedom from discrimination is a fundamental human right and is essential for workers in order to choose their employment freely, to develop their full potential and to reap economic rewards on the basis of merit. As such, the promotion of equality of opportunity and treatment in employment and occupation should be mainstreamed in relevant national policies, such as education and training policies, employment policies, poverty reduction strategies, rural or local development programmes, women's economic empowerment programmes, and climate mitigation and adaptation strategies (see the 2018 general observation).

The Committee also recalls that the Convention aims to provide protection against religious discrimination in employment and occupation, which often arises as a result of a lack of religious freedom or intolerance towards persons of a particular faith, a different faith, or towards those who profess no religion. The expression and manifestation of religion is also protected. Appropriate measures need to be adopted to eliminate all forms of intolerance (see 2012 General Survey, paragraph 798).

The Committee observes that discrimination on the basis of actual or perceived religion, combined with exclusions and distinctions based on other grounds such as race, ethnicity or national extraction continues to acquire greater significance, especially in the context of increasing global movements of people looking for better opportunities, and concerns about countering and preventing terrorism. Measures to promote tolerance and coexistence among religious, ethnic and national minorities and awareness-raising on the existing legislation prohibiting discrimination are therefore more than ever essential to achieving the objectives of the Convention (2012 General Survey, paragraph 801).

The Committee recalls that, in its previous comment, it referred to the concluding observations by the United Nations Committee on the Elimination of Racial Discrimination (CERD) regarding the situation in the Xinjiang Uyghur Autonomous Region. It notes that the CERD was alarmed *inter alia* by: (1) "numerous reports of the detention of large numbers of ethnic Uighurs and other Muslim minorities, held incommunicado and often for long periods, without being charged or tried, under the pretext of countering religious extremism"; (2) "reports of mass surveillance disproportionately targeting ethnic Uighurs"; and (3) "reports that all residents of the Xinjiang Uighur Autonomous Region are required to hand over their travel documents to police and apply for permission to leave the country, and that permission may not come for years". The CERD recommended that action be taken in this regard, in particular halting "the practice of detaining individuals who have not been lawfully charged, tried and convicted for a criminal offence in any extra-legal detention facility" and immediately releasing "individuals currently detained under these circumstances, and allow those wrongfully held to seek redress"; undertaking "prompt, thorough and impartial investigations into all allegations of racial, ethnic and ethno-religious profiling" and eliminating "travel restrictions that disproportionately affect members of ethnic minorities". The Committee further notes the concern expressed by the CERD regarding "reports that ethnic Uighurs … often face discrimination in job advertisements and recruitment processes" (CERD/C/CHN/CO/14-17, 19 September 2018, paragraphs 40, 42 and 47).

In addition, the Committee refers to its comments on the application of Convention No. 122 for the concern expressed by UN human rights experts mandated by the Human Rights Council about the forceful relocation of minority workers, especially Uyghur, across the country and the vocational training policy with the stated objective of combatting terrorism and religious extremism.

The Committee recalls that *Article 3* of Convention No. 111 establishes a number of specific obligations with respect to the design of a national policy to promote equality of opportunity and treatment and eliminate discrimination in respect of employment and occupation. In particular, it requires parties to the Convention to repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with such policy; to pursue the policy under the direct control of a national authority; and to ensure observance of the policy in the activities of vocational guidance, vocational training and placement services under the direction of a national authority.

The Committee notes that in its white paper on vocational education and training in Xinjiang (2019), the government describes Xinjiang, which is home to the Uyghur people and other muslim minorities, as a "key battlefield in the fight against terrorism and extremism in China". In accordance with the law, the government has established "a group of vocational centers" to offer systematic education and training in response to "a set of urgent needs": to curb frequent terrorist incidents; to eradicate the breeding ground for religious extremism; to help trainees acquire better education and vocational skills, find employment, and increase their incomes; and, most of all, to safeguard social stability and long-term peace in Xinjiang. Article 33 of the Decision of 10 October 2018 to revise the Xinjiang Uyghur Autonomous Region regulation on de-radicalization (the "XUAR decision") introduced a new provision defining the responsibility of the vocational education and training centres and other education and transformation bodies in de-radicalization efforts as follows: to carry out education and training efforts on the national spoken and written language, laws and regulations, and occupational skills; to organize and carry out de-radicalization ideological education, psychological rehabilitation, and behavioural corrections; and to promote ideological conversion of those receiving education and training, returning them to society and to their families.

The Decision read jointly with the white paper provide the basis to authorize the administrative detention for the purpose of ideological conversion, including of "people who participated in terrorist or extremist activities that posed a real danger but did not cause actual harm, whose subjective culpability was not deep, who acknowledged their offences and were contrite about their past actions and thus do not need to be sentenced to or can be exempted from punishment, and who have demonstrated the willingness to receive training" (White Paper on vocational education and training in Xinjiang). The white paper considers that education and training is not a measure to limit or circumscribe the freedom of the person but is rather an important measure to help trainees to break free from ideas of terrorism and religious extremism.

The Committee notes that the XUAR decision also lays down de-radicalization responsibilities for enterprises (article 46) and trade unions (article 34). Enterprises failing to perform their de-radicalization duties are subject to "criticism and education" by the unit they are located at or by their higher-ranking competent department and ordered to reform (article 47).

The Committee shares the concerns expressed by the Special Rapporteurs to the UN Human Rights Council (see commentary on the Counter-Terrorism Law of the People's Republic of China (2015) and its Regional Implementing Measures; and the Xinjiang Uyghur Autonomous Region Implementing Measures of the Counter-Terrorism Law (2016)) about terrorist profiling practices based on a person's ethnicity, national origin or religion in as much as they generate a climate of intolerance, which is conducive to discrimination in employment and occupation and forced labour practices such as those alleged in the observations of the ITUC.

In this regard, the Committee recalls that under *Article 4* of the Convention, any "measures affecting an individual who is justifiably suspected of, or engaged in, activities prejudicial to the security of the State shall not be deemed to be discrimination, provided that the individual concerned shall have the right to appeal to a competent body established in accordance with national practice". However, the mere expression of religious, philosophical or political beliefs is not a sufficient basis for the application of the exception. Persons engaging in activities expressing or demonstrating opposition to established political principles by non-violent means are not excluded from the protection of the Convention by virtue of *Article 4.*

Having duly considered the information provided by the Government in response to these serious allegations, the Committee expresses its

deep concern in respect of the policy directions expressed in numerous national and regional policy and regulatory documents and requests therefore the Government to:

(i) review its national and regional policies with a view to eliminating all distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity and treatment in employment and occupation;

(ii) repeal provisions in the XUAR decision that impose de-radicalization duties on enterprises and trade unions and prevent enterprises and trade unions from playing their respective roles in promoting equality of opportunity and treatment in employment and occupation without discrimination based on race, national extraction, religion or political opinion;

(iii) revise national and regional policies with a view to ensuring that the activities of vocational guidance, vocational training and placement service serve the purpose of assisting ethnic and religious minorities in the development and use of their capabilities for work in their own best interests and in accordance with their own aspirations, account being taken of the needs of society;

(iv) amend national and regional regulatory provisions with a view to re-orienting the mandate of vocational training and education centers from political re-education based on administrative detention towards the purpose set out in (iii);

(v) provide information on the measures taken to ensure observance of the policy to promote equality of opportunity and treatment in vocational training activities carried out in Xinjiang's vocational training and education centres; and

(vi) provide information on the measures taken to ensure observance of the policy to promote equality of opportunity and treatment for the Uyghurs and other ethnic minority groups when seeking to access employment outside the Xianjing Autonomous Province.

Articles 2 and 3. Equality of opportunity and treatment of ethnic and religious minorities, including in the civil service. Further to its request, the Committee notes the information provided by the Government regarding: (1) increased efforts on training programmes for skilled personnel in ethnic areas (more than 30 advanced training programmes in ethnical areas such as Inner Mongolia, Guangxi, Yunnan, Qinghai, Tibet, Guizhou, Ningxia, and Xinjiang), with a number of trained personnel reaching 10,000 people per year; (2) special training programmes for skilled personnel in Xinjiang and Tibet (selection of 200 ethnic talents selected from Xinjiang and 120 from Tibet); (3) the effective recruitment of a total of 25,000 ethnic civil servants nationwide in 2016 (13.3 per cent of the newly recruited civil servants) and 23,000 in 2017 (11.75 per cent of the newly recruited civil servants); and (4) the continuation of the workforce capacity building in ethnic areas, through intensified efforts to support the training targeted at civil servants in ethnic areas, thematic training sessions and on-site training workshops (14 sessions, with more than 870 civil servants engaged, since 2016) and active engagement in bilingual programmes. ***Noting these developments, the Committee requests the Government to continue to provide information on the measures taken, and their results, to promote equality of opportunity and treatment for ethnic and religious minorities, indicating if, and how, the social partners and the groups concerned are consulted when designing and implementing such measures. The Committee also requests the Government to provide information on the current employment situation of various ethnic and religious minorities inside and outside the autonomous regions, including employment data disaggregated by sex and ethnicity in the civil service.***

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

[The Government is asked to supply full particulars to the Conference at its 110th Session and to reply in full to the present comments in 2022.]

Colombia

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

(Ratification: 1976)

Observation, 2021

The Committee notes the joint observations of the Single Confederation of Workers of Colombia (CUT), the Confederation of Workers of Colombia (CTC) and the General Confederation of Labour (CGT) received on 1 September 2021. The Committee notes that these observations relate to matters examined by the Committee in its comments, as well as allegations of violations of the Convention in practice. The Committee also notes the allegations of anti-union discrimination contained in the observations of the International Trade Union Confederation relating to the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), received on 1 September 2021, as well as the Government's comments in this regard.

The Committee also notes the observations of the National Employers' Association of Colombia (ANDI), transmitted by the International Organisation of Employers (IOE) on 1 September 2021, which refer to matters raised in the Committee's previous direct request relating to this Convention and, in relation to the matters examined in the present observation, refer to its 2020 observations.

Articles 1 and 2 of the Convention. Adequate protection against anti-union discrimination and interference. In its previous comments, having noted the slowness of the various administrative and judicial mechanisms for protection against anti-union discrimination and the recurrent criticisms by the unions concerning their lack of effectiveness, the Committee requested the Government, in consultation with the social partners, to launch a comprehensive examination of these mechanisms with a view to the adoption of the necessary measures to ensure the rapid imposition of effective sanctions in the event of anti-union acts. The Committee notes the Government's indication that, in the context of the national inspection strategy, the Department of Territorial Inspection, Supervision, Control and Management formulates an annual strategic plan which includes within its priorities enterprises which have registered collective accords and contracts.

The Committee notes that the Government also refers to the administrative investigations undertaken by the Ministry of Labour into anti-union discrimination, in relation to which it provides the following statistics: (i) in 2020, there were 351 administrative labour disputes relating to complaints of acts against freedom of association and collective bargaining, of which 83 gave rise to a decision (of which 51 were given effect); (ii) between 1 January and 15 June 2021, there were 92 administrative labour disputes, of which 13 gave rise to a decision (of which four have already been given effect). The Committee notes that the Government also provides information on the general activities of the labour inspectorate, including detailed descriptions of the measures adopted by the labour inspectorate during the health emergency resulting from the COVID-19 pandemic, on inspection procedures relating to penalties and the collection of fines and on the frequent training courses provided to labour inspectors.

The Committee further notes the information provided by the Government on the investigations undertaken under section 200 of the Penal Code, which criminalizes violations of the rights of association and assembly, subjects that have been examined by the Committee in recent years within the context of Convention No. 87 in relation to acts of anti-union violence. The Committee notes the Government's indication that: (i) the Office of the National Public Prosecutor received a total of 90 complaints during the course of 2020, which was clearly lower than in previous years, probably, as emphasized by the Government, due to suspensions of work as a result of the COVID-19 pandemic; (ii) in one case, the issue was the subject of conciliation; in five cases the case was set aside due to related offences, or in other words the Public Prosecutor decided to continue the investigation under other criminal charges; 29 cases were set aside, either because there was no evidence of a crime or the complainant was not legitimate; of the 90 cases, 53 are still active (48 at the pre-trial stage and five under investigation). The Committee notes the Government's further indication that the Ministry of Labour and the Office of the National Public Prosecutor have created an elite group with a view to promoting the investigation of anti-union offences.

The Committee also notes that the trade union confederations reiterate their denunciation of the ineffectiveness of the various administrative and judicial protection mechanisms against anti-union discrimination. With reference to administrative labour disputes, the confederations indicate that: (i) the procedure envisaged in section 354 of the Substantive Labour Code is not expeditious and in practice is excessively slow; (ii) on the basis of the statistics provided by the Government, only 11.5 per cent of the administrative labour disputes registered in 2020 and 2021 have so far resulted in a decision, without taking into account the possibility of appeals in those cases; the preliminary verification stage may last four or five years and many disputes from previous years have still not been resolved. The Committee notes that, in relation to the investigations by the Office of the National Public Prosecutor into complaints of violations of section 200 of the Penal Code, the trade union confederations indicate that: (i) following ten years of the labour action plan, in the context of which section 200 was amended, there have still been no investigations or sanctions imposed by the Office of the National Public Prosecutor; (ii) in addition to the consequences of the COVID-19 pandemic, the reduction in 2020 in the number of complaints of violations of section 200 is due to the loss of credibility of the mechanism, which suffers in particular from very long delays. The Committee finally notes that the trade union confederations once again denounce the absence of an expeditious judicial mechanism for protection against acts of interference and anti-union discrimination (with the exception of the special procedure for lifting trade union protection). Providing information on a series of specific cases, they indicate in this respect that: (i) unions only have access to ordinary labour courts through procedures that often take longer than four or five years, which makes the mechanism inoperative for the restoration of rights; and (ii) in the majority of cases, the courts find that appeals for constitutional protection, which are the most expeditious, are not valid to protect freedom of association, as there are other means of defence, such as the ordinary labour courts and the administrative penalty procedure of the Ministry of Labour.

The Committee notes the various elements provided by the Government and the unions. The Committee observes in this respect that: (i) the available data shows that the examination of administrative labour disputes in relation to freedom of association often takes a very long time; (ii) the Government has not provided information on cases in which criminal penalties have been handed down for violations of section 200 of the Penal Code, despite the high number of criminal complaints lodged since 2011; and (iii) the Government has still not expressed a view on the effectiveness of cases brought before labour tribunals. In this context, the Committee ***regrets*** that the Government has not provided information on the preparation of a comprehensive examination of the existing protection mechanisms against anti-union discrimination in consultation with the social partners, despite the Committee making this request on several occasions since 2016, and the request to the Government made by the Committee on Freedom of Association several times (Case No. 3061, 381st Report, March 2017, and Case No. 3150, 387th Report, October 2018). ***In light of the above, recalling the fundamental importance of protection against anti-union discrimination for the effective exercise of freedom of association, the Committee urges the Government, after consulting the social partners, to take the necessary measures, including through laws and regulations, to revise the procedures for the examination of administrative labour disputes in relation to freedom of association, on the one hand, and the judicial procedures concerning acts of anti-union discrimination and interference, on the other, in order to ensure that both are examined promptly and effectively. The Committee requests the Government to provide information on the progress made in this regard and recalls that it may avail itself of the technical assistance of the Office.***

Articles 2 and 4. Collective accords with non-unionized workers. The Committee recalls that it has been requesting the Government since 2003 to take the necessary measures to ensure that collective agreements with non-unionized workers (collective accords) can only be concluded in the absence of trade union organizations. The Committee notes that the Government reiterates its position, in line with that of the ANDI, that: (i) collective accords with non-unionized workers are a form of social dialogue and collective bargaining recognized and regulated by the law and the case law of the Constitutional

Court; and (ii) within this framework, collective accords can only be concluded when there is no union in the enterprise representing over one-third of the workers and the conditions negotiated in collective accords and agreements must be the same to prevent anti-union discrimination and any breach of the principle of equality. The Committee notes that the Government also indicates that the undue use of collective accords is being closely monitored by the competent authorities and penalized where necessary, and that their impact on association in unions is under examination in accordance with the considerations of the Organisation for Economic Co-operation and Development (OECD), the United States and Canada. The Government indicates in this regard that: (i) the labour inspection services carried out 23 planned inspections in 2020 of enterprises focussing on the use of collective accords; (ii) on 15 June 2021, the territorial labour inspection departments were examining 62 cases of the undue use of collective accords; (iii) through the Special Investigation Unit, 11 claims were being examined between January 2020 and 15 June 2021 relating to the undue use of collective accords; and (iv) as a result of the action described above, the number of collective accords concluded has decreased significantly, from 253 deposited in 2016 to 73 in 2020.

The Committee also notes that the national union confederations reiterate their previous allegations in their observations concerning the anti-union impact of collective accords, even in cases where the benefits of collective accords, which apply to non-unionised workers, are not more favourable than those agreed in the corresponding collective agreements. The trade union confederations also denounce: (i) the practice of first concluding a collective accord with non-unionized workers so as to then impose during the negotiation of the collective agreement a ceiling on benefits that cannot be improved upon, which removes any relevance from the negotiations undertaken by the union, thereby acting as a powerful disincentive to trade union membership; (ii) the supervision of the Ministry of Labour in relation to the unlawful nature of collective accords is biased and ineffective, as it focuses solely on verification of whether the content of collective accords is more favourable than that of collective agreements, without examining the common practice described in the previous point nor the other anti-union strategies involved in the conclusion of collective accords; and (iii) the lower numbers of collective accords deposited in 2020 is probably the consequence of the COVID-19 pandemic, which also resulted in fewer collective agreements being concluded that year.

While noting the information provided by the Government on the action taken to control the use of collective accords on the basis of the current legislation, the Committee ***regrets*** to note that there has been no progress in taking into account the comments that it has been making for many years on the need to revise the abovementioned legislation. The Committee is therefore bound to recall once again that *Article 4* of the Convention recognizes, as the parties to collective bargaining, employers or their organizations, on the one hand, and workers' organizations, on the other, in recognition that the latter offer guarantees of independence that may be absent in other forms of association. The Committee has therefore always considered that direct bargaining between the enterprise and unorganized groups of workers, in avoidance of workers' organizations, where they exist, is not in accordance with the promotion of collective bargaining, as envisaged in *Article 4* of the Convention. Moreover, the Committee has repeatedly noted that in practice the negotiation of terms and conditions of employment and work by groups that do not offer sufficient guarantees to be considered as workers' organizations can be used to undermine the exercise of freedom of association and weaken the existence of workers' organizations with the capacity to defend the interests of workers independently through collective bargaining. ***In light of the above, the Committee once again urges the Government to take the necessary measures to ensure that the conclusion of collective accords with non-unionized workers (pactos colectivos) is only possible in the absence of trade union organizations. The Committee hopes that the Government will be in a position to report progress in this regard in the near future.***

Article 4. Personal scope of collective bargaining. Apprentices. In its previous comments, the Committee requested the Government to take the necessary measures to ensure that the remuneration of apprentices is not excluded by law from the scope of collective bargaining. The Committee notes the Government's reiterated indication that, in accordance with the national legislation and the case law of the Constitutional Court, the apprenticeship contract is not a contract of employment, but is designed to help young persons who are still at the training stage. ***Recalling once again that the Convention does not exclude apprentices from its scope of application and that the parties to collective bargaining should therefore be able to decide to include the subject of their remuneration in their collective agreements, the Committee urges the Government to take the necessary measures to ensure that the remuneration of apprentices is not excluded by law from the scope of collective bargaining.***

Subjects covered by collective bargaining. Pensions. After noting the Government's indications that Legislative Act No. 1 of 2005 does not prevent the parties to collective bargaining, in both the public and private sectors, from improving on pensions through supplementary benefits based on voluntary savings, the Committee previously requested the Government to provide specific examples of collective agreements which provide for supplementary pension benefits. The Committee notes that the Government once again indicates that: (i) through voluntary savings, those covered by the Colombian pension system can make periodic contributions, or pay in amounts that are higher than the compulsory contributions set out by law, with a view to receiving a higher pension; and (ii) the possibility for a third party to pay contributions on behalf of the beneficiary makes it possible for the employer to act as a sponsor, and the possibility therefore exists for this supplementary benefit to be covered by collective bargaining. The Committee nevertheless observes that the Government has not provided specific examples of collective agreements which contain clauses of this nature. ***The Committee therefore reiterates its request for information on the application of this possibility in practice. It also invites the Government, in its activities to promote collective bargaining, to inform the social partners of the possibility, within the framework of and in accordance with the General Pensions System, to negotiate clauses in collective agreements providing for supplementary pension benefits.***

Promotion of collective bargaining in the public sector. The Committee notes with ***satisfaction*** the Government's indication that a new National State Agreement was concluded on 18 August 2021 with all the confederations in the country which benefits around 1,200,000 public sector workers. The Committee notes in particular the Government's indication that: (i) in accordance with the agreement, Decree No. 961 of 22 August 2021 was adopted setting the remuneration for positions exercised by public employees in the executive branch, autonomous regional and sustainable development corporations, and issuing other provisions; and (ii) the agreement contains a series of clauses intended to reinforce the protection of the exercise of freedom of association in the public sector. The Committee also notes the indications by the CUT, CTC and CGT which: (i) welcome the conclusion of the agreement; (ii) nevertheless regret the high level of non-compliance with previous agreements, as noted by the Commission for the verification of the agreements concluded between the National Government and workers in the State sector, which met in July and August 2021; and (iii) denounce the role played by the Office of the Comptroller General of the Nation and its departmental offices which, through investigations into potential prejudices to the resources of public bodies, is undermining compliance with the agreements that have been concluded, and is likely to have a dissuasive effect on future negotiations. ***The Committee requests the Government to pay due attention to the observations of the trade union confederations and to indicate the action taken in this regard.***

Promotion of collective bargaining in the private sector. The Committee recalls that in its previous comments it noted with concern the very low level of coverage of collective bargaining in the private sector. The Committee also noted the indication by the trade union confederations that a series of both legal and practical obstacles and inadequacies resulted in the complete absence of collective bargaining above the enterprise level, which in turn contributed to the very low coverage of collective bargaining in the private sector. The Committee requested the Government, in consultation with the social partners, to take all measures in the near future, including legislative measures where appropriate, to promote the use of collective bargaining in the private sector at all appropriate levels.

The Committee notes the Government's indication that: (i) 194 collective agreements were signed in 2020 (in comparison with 572 in 2019, 490 in 2018 and 380 in 2017); (ii) collaboration with the Government of Canada is continuing for the development of a registration system which will make it possible to determine the coverage rate of collective bargaining; (iii) it is still planned to amend Decree No. 089 of 2014 to facilitate bargaining in a context of a multiplicity

of unions by providing that, where there are several unions in the same enterprise, they will be required to form a joint bargaining committee and submit unified claims; and (iii) and the Government continues to be willing to support and accompany, without interference, the social partners when they so request. The Committee also notes that the trade union confederations: (i) place emphasis on the reduction in the number of collective agreements concluded in 2020 and point to the possible effects of the COVID-19 pandemic in this regard; (ii) regret the continuing absence of multi-level bargaining; and (iii) consider that the case of professional football is symptomatic in this respect where the clubs, the Colombian Football Federation (FCF) and the Major Division of Professional Football (*Dimayor*), institutions which, according to the trade unions confederations, are competent to determine the working conditions in the sector, refuse to bargain with the Colombian Association of Professional Footballers (ACOLFUTPRO), in relation to which the Ministry of Labour set aside the complaint by ACOLFUTPRO concerning the refusal to negotiate.

While noting the information provided by the Government, reiterating indications provided in previous reports, the Committee ***regrets*** to note that, despite the very low level of coverage of collective bargaining in the private sector, the Government does not refer to any further specific measures or initiatives adopted to resolve this situation. The Committee particularly notes with ***concern*** the absence of action to facilitate bargaining at levels higher than the enterprise level in a context in which: (i) collective bargaining at the sectoral level, in contrast with enterprise bargaining, is not covered by a specific legislative framework (with the exception of the provisions of the Substantive Labour Code relating to the possibility of extending collective agreements) and is almost non-existent in practice (with the exception of the banana sector in Urabá; and (iii) workers in small enterprises may have difficulty in gaining access to enterprise-level collective bargaining as they do not have enterprise unions, for the establishment of which a minimum of 25 members is required.

Recalling once again that, under the terms of Article 4 of the Convention, collective bargaining should be possible at all levels and should be promoted in a manner that is appropriate to national conditions and that, in accordance with Article 5(2)(d) of the Collective Bargaining Convention, 1981 (No. 154), which has been ratified by Colombia, the Government is required to ensure that collective bargaining is not hampered by the absence of rules governing the procedure to be used or by the inadequacy or inappropriateness of such rules, the Committee requests the Government: (i) following consultations with the social partners, to take measures, including legislative measures, for the effective promotion of collective bargaining in the private sector, especially at levels higher than the enterprise level; and (ii) to provide detailed information on the coverage rate of collective bargaining in the private sector.

Settlement of disputes. Committee for the Handling of Conflicts referred to the ILO (CETCOIT). The Committee notes the information provided by the Government on the activities of the CETCOIT, a tripartite body for the resolution of disputes relating to freedom of association and collective bargaining. The Committee notes with ***interest*** the Government's indication that: (i) in 2020 and 2021, the CETCOIT held 71 meetings, during which 23 cases were identified for the promotion of conciliation decisions and agreements, with 48 follow-up meetings; (ii) agreements were concluded in 95 per cent of the cases, with the signature of 20 reports; (iii) effect was given to the recommendation made by the Committee on Freedom of Association in relation to Case No. 2657; and (iv) the conclusion was facilitated of two collective agreements in the private sector and one agreement in the public sector. ***The Committee welcomes the results achieved by the CETCOIT and requests the Government to continue providing information in this regard.***

In its previous comments, the Committee noted the Government's indications that the international affairs subcommittee of the Standing Committee for Dialogue on Wage and Labour Policies would follow up the comments made by the Committee of Experts on the application of the Conventions ratified by Colombia and hoped that the work of the subcommittee would facilitate the adoption of the various measures requested by the Committee to give full effect to the Convention. The Committee ***regrets*** to note that it has not received further information on this subject. ***The Committee finally recalls that the Government may request ILO technical assistance in this regard.***

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

Comoros

Employment Policy Convention, 1964 (No. 122)

(Ratification: 1978)

Observation, 2021

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

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

Article 1 of the Convention. Implementation of an active employment policy. Youth employment. In its previous comments, the Committee requested the Government to indicate in its next report whether the Act issuing the national employment policy had been adopted and to indicate whether specific difficulties had been encountered in achieving the objectives set out in the national Poverty Reduction and Growth Strategy Paper (PRGSP). The Committee notes with ***interest*** that the national employment policy act (PNE) was adopted through the promulgation on 3 July 2014 of Decree No. 14-11/PR enacting Framework Act No. 14-020/AU of 21 May 2014 issuing the national employment policy. The Government indicates that this Act aims to provide a common and coherent vision of the strategic approaches for taking national action on employment, by increasing opportunities for low-income population groups to access decent work and a stable and sustainable income. The Government adds that in November 2014, with ILO support, it developed and adopted the Emergency Plan for Youth Employment (PUREJ), which is part of the process to implement the PNE. The PUREJ involves the adoption of programmes to promote youth employment which result from priority measures identified in the strategic framework of the PNE and integrated in the Strategy for Accelerated Growth and Sustainable Development (SCA2D). The Government adds that the overall objective of the PUREJ is to ensure strong employment growth in the short and medium term. In this context, the PUREJ focuses mainly on the promotion of youth employment in job-creating sectors for a period of two years, in order to contribute to the diversification of the economy, the production of goods and services and the building of social peace. The Government points out that the objective was to create 5,000 new decent and productive jobs for young persons and women by the end of 2016, through the development of skills in line with the needs of priority sectors of the Comorian economy and support for the promotion of employment and vocational integration. The Committee notes that in May 2015 the Government signed, together with the constituents and the ILO, the second generation Decent Work Country Programme (DWCP), of which the main priority is to ensure the promotion and governance of employment. The Committee notes the observations of the CTC which indicate that the implementation of the PNE is not effective. It points out that the vocational training component, which is being conducted through a project with the European Union, is the only one being applied. In this regard, the provisions and mechanisms of the PNE have not been implemented and the text has not been disseminated to the public. The CTC also reports the dismissal of over 5,000 young persons without compensation. ***The Committee once again requests the Government to indicate whether specific difficulties have been encountered in achieving the objectives set out in the PRGSP. It requests the Government to provide more detailed information on the measures taken with a view to achieving the employment priorities established in the framework of the DWCP 2015–19, and on the impact of measures and programmes such as the PUREJ, which are aimed at increasing access to decent work for young persons. In this regard, the Committee requests the Government to indicate the number of young persons who have benefited from these programmes.***

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

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

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

Democratic Republic of the Congo

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

(Ratification: 2001)

Observation, 2021

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

The Committee notes the Government's report sent in June 2019, in response to comments formulated in previous observations, starting in 2013. With regard to the serious failure of the obligation to submit the instruments adopted by the Conference, laid down in article 19(5) and (6) of the ILO Constitution, the Government indicates its commitment to submitting the instruments adopted by the International Labour Conference to the competent authorities, in full respect of the provisions of the Convention. It also supplies a list of representative organizations of employers (three organizations) and of workers (12 organizations), indicating that they participated in the drafting of the reports. The Committee nevertheless notes with ***regret*** that the Government's report contains no response to the Committee's previous comments, reiterated since 2013, requesting the Government to provide detailed information on the content of the consultations and the recommendations made by the social partners on each of the matters listed in *Article 5(1)* of the Convention. ***Noting that the Government has not provided for many years any information on the practical application of the Convention, the Committee again requests the Government to provide information on the consultations held with the social partners concerning the proposals made to Parliament upon the submission of instruments adopted by the Conference (Article 5(1)(b) of the Convention. It again requests the Government to provide detailed information on the frequency, the content and the results of the tripartite consultations held on the questions concerning international labour standards covered by the Convention and other ILO activities, in particular with regard to questionnaires concerning items on the agenda of the Conference (Article 5(1)(a)); the submission of instruments adopted by the Conference to the Parliament (Article 5(1)(b)); the re-examination, at appropriate intervals of unratified Conventions and of Recommendations to which effect has not yet been given (Article 5(1)(c); and reports on the application of ratified Conventions (Article 5(1)(d)).***

COVID-19. The Committee notes that as a result of the COVID-19 pandemic, tripartite consultations on international labour standards may have been postponed. With that in mind, the Committee recalls the guidance provided by international labour standards and encourages the Government to use tripartite consultations and social dialogue as a solid basis for formulating and implementing effective responses to the profound socio-economic repercussions of the pandemic. ***The Committee invites the Government to provide, in its next report, up-to-date information on all measures taken in this regard, particularly as concerns the measures taken to strengthen constituents' capacities and also to improve national tripartite mechanisms and procedures. It also requests the Government to provide information on the challenges encountered and good practices identified regarding application of the Convention during and after the pandemic period.***

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

Djibouti

Employment Policy Convention, 1964 (No. 122)

(Ratification: 1978)

Observation, 2021

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 2022, 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. Adoption and implementation of an active employment policy. ILO technical assistance. In response to previous comments, the Government indicates in its report that, although the strategy for the formulation of a national employment policy was commenced in April 2003, and new structures have been established, the preparation of a national employment policy paper has still not been completed. The Committee notes that the National Employment Forum held in 2010 showed the need to develop a new employment policy adapted to labour market needs, which will have to target as a priority the reform of the vocational training system and the improvement of employment support services. The Government indicates that, out of a population of 818,159 inhabitants of working age, recent estimates place the unemployment rate at 48.4 per cent. It also indicates that, following a mission for the evaluation of technical cooperation undertaken by the ILO in March 2011, the Government reiterated its commitment to developing a Djibouti Decent Work Programme. It adds that it is still awaiting Office support for this purpose. ***The Committee requests the Government to provide information on the measures taken to ensure that employment, as a key element of poverty reduction, is central to macroeconomic and social policies, and on the progress made in the adoption of a national policy for the achievement of full employment within the meaning of the Convention.***

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

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

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

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

Ecuador

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

(Ratification: 1967)

Observation, 2021

The Committee notes the Government's reply to the joint observations of the Trade Union Association of Agricultural, Banana and Rural Workers (ASTAC) and the Ecuadorian Confederation of Unitary Class Organizations of Workers (CEDOCUT), received on 1 October 2020, which are concerned with issues that the Committee examines in the present comment. The Committee also notes the observations of Public Services International in Ecuador (PSI-Ecuador), received on 1 September 2021, which are concerned with issues examined in the present comment, as well as the Government's reply in this regard.

Technical assistance. The Committee recalls that in December 2019 the Office, at the request of the Government, carried out a technical assistance mission, which presented the tripartite constituents with a draft road map for initiating a tripartite dialogue with a view to adopting measures to address the comments of the ILO supervisory bodies. The Committee notes the Government's indication that the technical assistance provided in 2019 and the draft road map abovementioned did not result in any practical action. The Committee also takes note of the Government's indication that for the time being it wishes to receive technical assistance only with regard to tripartite dialogue with the aim of improving and strengthening communication between the Government and the social partners. ***Noting with regret that no action has been taken to follow up the technical assistance provided by the Office in December 2019 concerning the measures to address the comments of the supervisory bodies, the Committee hopes that the technical assistance that the Government wishes to receive will be provided very soon so that the subsequent strengthening of social dialogue enables progress in taking the necessary measures to bring the legislation into line with the Convention with respect to the points set out below.***

Application of the Convention in the private sector

Article 2 of the Convention. Excessive number of workers (30) required for the establishment of workers' associations, enterprise committees or assemblies for the organization of enterprise committees. Possibility of creating trade union organizations by branch of activity. For several years the Committee has been asking the Government to take the necessary steps, in consultation with the social partners, to revise sections 443, 449, 452 and 459 of the Labour Code in such a way as to: (i) reduce the minimum number of members required to establish workers' associations and enterprise committees; and (ii) enable the establishment of primary-level unions comprising workers from several enterprises. The Committee notes the Government's indication that: (i) fixing a minimum number of workers and limiting associations to the level of an enterprise for the establishment of a trade union is not intended to restrict or limit the creation of this type of organization, but seeks to ensure the representativeness of the trade union organization in its relations with the employers, demonstrating cohesion and agreement on the part of the majority; and (ii) with regard to establishing labour organizations with workers from different enterprises, the Labour Code does not provide for a form of association that would allow for such organizations. In this regard, the Committee recalls that: (i) the requirement of a reasonable level of representativeness to conclude collective agreements must not be confused with the conditions required for the establishment of trade union organizations; (ii) the minimum number of members must be kept within reasonable limits so as not to obstruct the free establishment of organizations as guaranteed by the Convention; and (iii) the Committee generally considers that the requirement of a minimum number of 30 members to establish enterprise unions in countries where the economy is characterized by the prevalence of small enterprises hinders the freedom to establish trade unions. With regard to section 449 of the Labour Code, which requires trade unions to consist of workers from the same enterprise, the Committee recalls that, under *Articles 2 and 3* of the Convention, it should be possible to establish primary-level trade unions comprising workers from several enterprises. The Committee recalls that ASTAC, in its observations of 2020, indicated that the Ministry of Labour had refused to register it as a trade union on the grounds that it was not formed of workers from the same enterprise. The Committee notes the Government's indication, in reply to ASTAC's observations, that ASTAC brought an action for constitutional protection and, by a ruling issued on 25 May 2021, the Provincial Court of Justice of Pichincha ordered the Ministry, pursuant to revision and analysis of the documents of ASTAC, to proceed with its registration as a trade union and also to regulate the exercise of the right to freedom of association by branch of activity so as to avoid any recurrence of such situations. The Government indicates that, even though it has filed an extraordinary motion for protection which is before the Constitutional Court of Justice, this action does not suspend the obligation to comply with the ruling, and so the Directorate of Labour Organizations at the Ministry of Labour continues to review the requirements of the present procedure for establishing ASTAC, in accordance with the ruling of 25 May 2021. ***Duly noting the ruling concerning ASTAC, the Committee firmly hopes that steps will be taken to proceed with the registration of ASTAC as a trade union. In particular, the Committee welcomes the fact that the ruling contributes towards enabling the establishment of trade union organizations by branch of activity, and trusts that the Committee's view on this important development in the application of the Convention will be brought to the attention of the Constitutional Court of Justice. In light of the above, the Committee fully expects that the Government will take the necessary steps, in consultation with the social partners, to revise the sections of the laws referred to above in the manner indicated and requests the Government to keep it informed of developments in this respect.***

Article 3. Compulsory time limits for convening trade union elections. The Committee has been asking the Government to amend section 10(c) of Ministerial Decision No. 0130 of 2013 issuing regulations on labour organizations, which provides that trade union executive committees shall lose their powers and competencies if they do not convene elections within 90 days of the expiry of their term of office, as set out in their respective union constitutions; such amendment being necessary to ensure that the consequences of any delay in holding elections shall be determined by the union constitutions themselves, subject to the observance of democratic rules. The Committee notes the Government's reiteration that the regulations in question were approved with the participation of representatives of several labour organizations and trade union confederations, with the intention of resolving the issues faced by workers' organizations when the latter are without leadership and it is impossible to convene new elections – providing a responsive, simplified mechanism in which the principles of participation, transparency and democracy predominate. The Government also indicates that, with the objective of providing legal certainty during the health emergency resulting from the COVID-19 pandemic, the Ministry of Labour exceptionally authorized the extension of the terms of office of executive committees of labour organizations for up to 90 days when their terms had expired after the last state of emergency. ***Recalling that under Article 3 of the Convention, trade union elections are an internal matter for organizations and should primarily be regulated by their constitutions, and observing that the consequences established by the regulations in the event of failure to respect the prescribed deadlines – the loss of powers and competencies for trade union committees – involve a serious risk of paralysing the capacity for trade union action, the Committee once again requests the Government to amend section 10(c) of the regulations in the manner indicated and to keep it informed of any developments in this respect.***

Article 3. Requirement of Ecuadorian nationality to be eligible for trade union office. The Committee recalls that in 2015 it noted with satisfaction that section 49 of the Labour Justice Act had amended section 459(4) of the Labour Code and removed the requirement of Ecuadorian nationality to be eligible for trade union office. The Committee notes that the Government confirms that, as previously indicated by the social partners, section 49 was declared unconstitutional by ruling No. 002-18-SIN-CC of 2018. ***The Committee requests the Government to send a copy of the aforementioned ruling.*** The Government indicates in this regard that it is up to the legislative authorities to analyse and, if they see fit, to amend this prohibition. ***Recalling that under Article 3 of the Convention, workers' and employers' organizations should have the right to elect their representatives in full freedom, the national legislation must***

allow foreign workers to serve as trade union officials if permitted under their constitutions and rules, at least after a reasonable period of residence in the host country, the Committee accordingly requests the Government to amend section 459(4) of the Labour Code and to keep it informed of any developments in this regard.

Elections as officers of enterprise committees of workers who are not trade union members. The Committee previously indicated to the Government the need to amend section 459(3) of the Labour Code in such a way that workers who are not enterprise committee members may stand for office only if the enterprise committee's own statute envisages that possibility. The Committee notes the Government's indication that the purpose of the legal provision is to ensure that all members have the right to participate and that in any case it will depend on how the right is formulated in the statute. ***Recalling that the legislative provision enabling workers who are not trade union members to stand for office on an enterprise committee is contrary to trade union independence as recognized by Article 3 of the Convention, the Committee once again requests the Government to take the necessary steps to amend the abovementioned provision of the Labour Code and to keep it informed of any developments in this respect.***

Application of the Convention in the public sector

Article 2 of the Convention. Right of workers, without distinction whatsoever, to establish and to join organizations of their own choosing. The Committee previously noted that although section 11 of the Basic Act reforming the legislation governing the public sector (Basic Reform Act), adopted in 2017, establishes the right to organize for public servants, certain categories of public service staff were excluded from that right, especially those under contract for occasional services, those subject to free appointment and removal from office, and those on statutory, fixed-term contracts. Recalling that under *Articles 2 and 9* of the Convention, with the sole possible exception of the members of the police and of the armed forces, all workers, including permanent or temporary public servants and those under fixed-term or occasional services contracts, have the right to establish and to join organizations of their own choosing, the Committee asked the Government to take the measures required to bring the legislation into line with the Convention. The Committee notes the Government's indication that: (i) the public institutions of the State are working to ensure that public servants have their respective definitive appointments, provided that their activities are not temporary; and (ii) public servants on statutory, fixed-term contracts and those who are subject to free appointment and removal from office are officials who technically could perform roles equivalent to those of employers in the private sector, and so their participation in the exercise of public servants' right and freedom to organize would cause conflicts of interest. In this regard, the Committee is bound to emphasize that even though barring public servants who exercise authority from the right to join trade unions which represent other public sector workers is not necessarily incompatible with the Convention, this depends on two conditions: (i) senior public officials should be entitled to establish their own organizations to defend their interests; and (ii) the legislation should limit this category to persons exercising senior managerial or policy-making responsibilities (see 2012 General Survey on the fundamental Conventions, paragraph 66). ***In light of the above and once again recalling that under Articles 2 and 9 of the Convention, with the exceptions previously mentioned, all workers have the right to establish and to join organizations of their own choosing, the Committee once again requests the Government to take the necessary measures to bring the legislation into line with the Convention.***

Article 2 of the Convention. Right of workers to establish organizations of their own choosing without previous authorization. Organizations of public servants other than the committees of public servants. The Committee observed that, according to the provisions of the Basic Reform Act and Ministerial Decision MDT-2018-0010 regulating the right to organize of public servants, the committees of public servants, which must comprise "50 per cent plus one" of the staff of a public institution, have the responsibility for defending the rights of public servants and are the only bodies which can call a strike. Recalling that trade union pluralism must be possible in all cases, the Committee has been asking the Government to indicate what means are available to organizations of public servants, other than the committees of public servants, for defending the occupational interests of their members. The Committee notes the Government's indication that: (i) public servants' right to organize is duly guaranteed by the Basic Public Service Act (LOSEP) (amended by the Basic Reform Act); and (ii) Decision No. SNGP0008-2014 of the National Policy Management Secretariat promotes the functioning of organizations which exercise the constitutional right of association and organization without there being any legal basis for dealing with these organizations in the Basic Reform Act. The Committee observes that the Decision No. SNGP0008-2014 to which the Government refers, establishes the competencies of the institutions of the State for regulating social organizations created under the Civil Code. It also notes the Government's indication, in the reply to the observations of PSI-Ecuador, that the LOSEP recognizes the committees of public servants as the only form of organization. In light of the above, the Committee is bound once again to recall that under *Article 2* of the Convention, trade union pluralism must be possible in all cases, and that no organization of public servants should be deprived of the essential means for defending the occupational interests of its members, organizing its administration and activities, and formulating its programmes. ***Underlining the fact that all organizations of public servants must be able to enjoy the various guarantees established in the Convention, the Committee requests the Government to provide information on organizations of public servants other than the committees of public servants and to indicate in detail what means they have for defending the occupational interest of their members. The Committee also requests the Government to provide a copy of the updated text of the LOSEP and to take the necessary steps to ensure that this law does not restrict recognition of the right to organize to the committees of public servants as the sole form of organization.***

Articles 2, 3 and 4. Registration of associations of public servants and their officers. Prohibition of the administrative dissolution of such associations. The Committee previously asked the Government to take the necessary measures to ensure that the rules of Decree No. 193, which retains engagement in party-political activities as grounds for administrative dissolution, do not apply to associations of public servants whose purpose is to defend the economic and social interests of their members. The Committee notes the Government's indication that party politics are the sum total of activities aimed at governing society from a specific ideological or philosophical standpoint and that these activities are prohibited for trade union organizations since the unions' objectives, regardless of political affinity, must seek and focus on the economic and social improvement of their members. It indicates that the amendment of the Decree is a matter for the President of the Republic in any case. ***Recalling that defending the interests of their members requires associations of public servants to be able to express their views on the Government's economic and social policy and that Article 4 of the Convention prohibits the suspension or administrative dissolution of such associations, the Committee firmly urges the Government to take the necessary steps to ensure that the rules of Decree No. 193 do not apply to associations of public servants which have the purpose of defending the economic and social interests of their members.***

Article 3. Right of workers' organizations and associations of public servants to organize their activities and to formulate their programmes. The Committee previously asked the Government to take the necessary measures to amend section 346 of the Basic Comprehensive Penal Code (COIP), which provides for imprisonment of one to three years for stopping or obstructing the normal provision of a public service, so as to prevent the imposition of criminal penalties on workers engaged in a peaceful strike. The Government previously indicated that this matter was going to be referred to the relevant state institutions in order to consider whether the Code should be amended. The Committee notes that the Government focuses its reply on emphasizing that public servants' right to strike is set forth in chapter III of the LOSEP, and that the criminal penalties are only imposed in cases where strikers act unlawfully, namely, by totally blocking access for the general public to public services, committing acts of violence or causing damage to public property. The Committee recalls in this regard that it has continually emphasized that no penal sanctions should be imposed against a worker for having carried out a peaceful strike and thus for merely exercising an essential right, and therefore that measures of imprisonment or fines should not be imposed on any account. Such sanctions could be envisaged only where, during a strike, violence against persons or property, or other serious infringements of penal law have been committed, and can be imposed exclusively

pursuant to legislation punishing such acts, such as the Penal Code (for example, in the case of failure to assist a person in danger, deliberate injury or damage deliberately caused to property) (see 2012 General Survey, paragraph 158). ***In light of the above, the Committee once again urges the Government to take the necessary measures to ensure that section 346 of the Basic Comprehensive Penal Code (COIP) is amended in the manner indicated and to keep it informed of any developments in this regard.***

Administrative dissolution of the National Federation of Education Workers (UNE). In its last comment, having noted the registration of social organizations related to the UNE, (which was dissolved by an administrative act issued by the Under-Secretariat of Education in 2016), the Committee asked the Government to take the necessary steps to ensure the registration of the UNE as a trade union organization with the Ministry of Labour, if the organization so requested. It also asked the Government to ensure the full return of the property seized from the UNE as well as the removal of any other consequences resulting from the administrative dissolution of the UNE. The Committee notes the Government's indication that: (i) the UNE opted to register as a social organization and there are no procedures pending at the Ministry of Labour in which the UNE applied for registration as a trade union organization; (ii) in the 2019–21 period, 38 social organizations were registered under the UNE title; and (iii) by a decision of 7 June 2021, the Under-Secretariat of Education of the Metropolitan District of Quito approved the constitution of the organization called the "National Federation of Education Workers (UNE-E)" and granted it legal personality. While duly noting the detailed information from the Government, the Committee notes that, according to PSI-Ecuador, the registration of the UNE as a trade union organization and not as a social organization is facing obstruction because of legal confusion and the lack of application of the Convention in its sector. ***The Committee requests the Government to indicate whether the registration of the UNE-E with the Under-Secretariat of Education of the Metropolitan District of Quito means that the UNE has been able to resume its activities of defending the occupational interests of its members. The Committee also once again requests the Government to take all necessary measures to ensure the registration of the UNE as a trade union organization with the Ministry of Labour, if the UNE so wishes. The Committee also once again requests the Government to ensure the full return of the property seized as well as the removal of any other consequences resulting from the administrative dissolution of the UNE, and to provide information in this regard.***

The Committee notes with ***regret*** that to date it has been unable to observe progress on the adoption of measures needed to bring the legislation into line with the Convention. The Committee notes the Government's indication that, because of the upheaval caused by the COVID-19 pandemic, it is currently giving priority to an Opportunities Bill, which incorporates the different views of the stakeholders in the labour and social spheres and through which the Government is endeavouring to stimulate and revitalize the labour market. ***While taking due note of these indications, the Committee recalls the fundamental importance of ensuring the full application of the Convention to tackle the consequences of the pandemic and urges the Government to make the necessary efforts to adopt specific measures in relation to the points highlighted in this comment.*** In this regard, the Committee notes that the Ministry of Labour, through the Directorate of Labour Organizations, expresses the intention of collaborating on any legislative initiative aimed at improving the exercise of workers' rights. ***The Committee hopes that the technical assistance that the Government wishes to receive to strengthen social dialogue will be provided very soon and that its results enable progress with regard to the matters raised in the present comment. In this regard, the Committee hopes that any legislative reforms undertaken, in consultation with the social partners, will contribute towards ensuring observance of the rights established by the Convention.***

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 2022.]

Egypt

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

(Ratification: 1954)

Observation, 2021

The Committee takes note of the observations made by Public Services International (PSI) on behalf of the Center for Trade Union Workers' Services (CTUWS) received on 1 September 2021 and those of the International Trade Union Confederation (ITUC) received on 6 September 2021 on matters concerning the application of the Convention in law and in practice. The ITUC refers in particular to acts of anti-union discrimination and persecution allegedly suffered by representatives of trade unions established in government departments. ***While noting the receipt on 24 November 2021 of the Government's comments in Arabic in response to these observations, which it will examine in detail with the Government's next report, the Committee trusts that all measures are being taken to ensure that the persons concerned enjoy the guarantees of the Convention.***

Articles 1, 2 and 3 of the Convention. Adequate protection against anti-union discrimination and interference. In its previous comments, the Committee requested the Government to indicate the legislative provisions which ensure full protection in respect of acts of anti-union discrimination and interference and specifically to indicate the sanctions and remedies provided for this purpose.

The Committee takes due note of the Government's indication that the Trade Union Organizations Law No. 213 of 2017 prohibits employers from taking any measure that impedes the exercise of union activity under penalty of a fine of not less than 5,000 Egyptian pounds and not exceeding 10,000 pounds (approximately US$320 to US$640). Further measures of protection are afforded through procedural safeguards for dismissal or transfer of trade union officers or candidates. Additional penalties are provided if the employer refrains from implementing a final court judgment. As for the draft Labour Code, the Government indicates that numerous methods and mechanisms afford protection for workers, including conciliation, mediation and arbitration, and further refers to the provisions on the establishment of labour courts.

Articles 4 and 6. Collective bargaining for public servants not engaged in the administration of the State. The Committee recalls that its previous comments concerned the exclusion from the scope of application of the draft Labour Code of the right to collective bargaining of civil servants of state agencies, including civil servants of units under local governments. The Committee notes that the Government refers once again to the Trade Union Organizations Law under which all civil workers have the right to form and join unions and to enjoy all the rights and privileges afforded to such organizations, including collective bargaining and consultation to defend their rights.

The Committee is however obliged to observe once again that the Trade Union Organizations Law does not establish mechanisms and procedures for the engagement in collective bargaining, while the draft Labour Code has entire chapters devoted to collective bargaining, collective agreements and collective disputes. The Committee also recalls that while Act No. 81 on the civil service and its implementing decree created a Civil Service Council with an advisory role as well as human resources committees in each department: (i) these bodies are mainly composed of representatives of the administration and a trade union representative whose appointment is mainly the responsibility of the Federation of Egyptian Trade Unions; and (ii) the law and its decree make no mention of other forms of representation of public service personnel or of collective bargaining mechanisms open to them.

Moreover, the Committee notes the PSI request that civil workers not be excluded from the Labour Law so that they may be able to engage in collective bargaining as set out therein. ***Recalling that Article 4 of the Convention provides that measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreement, the Committee requests the Government, in consultation with the social partners, to take the necessary measures, for example, by revising Act No. 81 or by extending the scope of the Labour Code, to ensure that civil servants not engaged in the administration of the State have an effective framework in which they may engage in collective negotiations over their working and employment conditions through the trade union of their choice. The Committee requests the Government to provide information on the steps taken in this regard.***

Finally, the Committee recalls that it has been raising comments relating to restrictions on collective bargaining rights in the Labour Code No. 12 of 2003 for several years, many of which would appear to be addressed in the draft Labour Code. ***Noting the Government's indication that it will send a copy of the new Labour Code as soon as it is adopted, the Committee trusts that the Code will be adopted in the very near future so as to ensure greater conformity with the Convention and requests the Government to provide information on the progress made in this regard.***

El Salvador

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

(Ratification: 1995)

Observation, 2021

The Committee notes the observations of the National Business Association (ANEP), endorsed by the International Organisation of Employers (IOE), received on 13 October 2020 and 25 October 2021, providing information on issues addressed in this comment. The Committee observes with ***deep concern*** that the observations of the ANEP from October 2020 state, as an element contrary to compliance with the Convention, that since the current President of the ANEP took office in April 2020, the Government has refused to deliver his credentials, and the highest government authorities, including the President of the Republic and the Minister of Labour and Social Welfare – who chairs the Higher Labour Council (Consejo Superior de Trabajo) (CST) – refuse to recognize the unanimous election of Mr Javier Ernesto Simán Dada as President of the ANEP and representative of the employers, as well as denigrating him and launching slanderous attacks against him personally, against his family and his enterprises, and also against the ANEP.

The Committee also takes note of the observations of the International Trade Union Confederation (ITUC), received on 1 September 2021, and of the Single Confederation of Salvadoran Workers (CUTS), endorsed by the National Trade Union Federation of Salvadoran Workers (FENASTRAS) and the Single Federation of Rural Workers of El Salvador (FUOCA) received on 14 October 2021, both of which concern issues addressed in this comment.

Follow-up to the conclusions of the Committee on the Application of Standards (109th Session of the International Labour Conference, June 2021)

The Committee notes the discussion in the Conference Committee on the Application of Standards, in June 2021, on the application of the Convention. The Committee observes that the Conference Committee urged the Government to: (i) refrain from interfering in the constitution and activities of independent workers' and employers' organizations, in particular the National Business Association (ANEP); and (ii) reactivate, without delay, the Higher Labour Council (CST) and other tripartite entities, respecting the autonomy of the social partners and through social dialogue in order to guarantee their full functioning without any interference. The Conference Committee decided to include the case in a special paragraph of its report and requested the Government to continue to avail itself of ILO technical assistance, to submit a detailed report on the application of the Convention in law and in practice to this Committee, in consultation with the social partners, and to accept a high-level tripartite mission to be carried out before the 110th International Labour Conference. The Committee notes that, through a communication received on 3 December 2021, the Government has informed the Office that it agrees to receive the high-level tripartite mission.

Articles 2 and 3(1) of the Convention. Adequate procedures. Reactivation of the Higher Labour Council. In its previous comments, the Committee requested the Government to continue providing detailed and updated information on the measures adopted to ensure the effective operation of the CST, and on the content and outcome of the tripartite consultations held within the framework of that tripartite body. The Committee observes that the Government:

·(i) indicates that during the COVID-19 pandemic crisis, it engaged in dialogue with the employers and workers, including holding meetings between the leadership of the ANEP and the President of the Republic, and emphasizes that the drafting of 39 health and safety protocols for different types of enterprises or workplaces, developed following a broad discussion and consultation process with the participation of trade unions from each sector, bears witness to this social dialogue with the enterprise sector. The Government also underlines that for the first time in the country's history, employers' associations collaborated in establishing the "Institutional Strategic Plan 2020-2024" of the Ministry of Labour and Social Welfare, which includes social dialogue among its main objectives; and refers to the approval of the Act on protecting Salvadoran employment and the Act on teleworking;

·(ii) adds that the Minister of Labour sought to maintain tripartite communication to ensure due compliance with the labour standard, to maintain respect for workers' labour rights, and to support the enterprise sector to counter the negative effect the COVID-19 pandemic on enterprise, highlighting meetings regarding the health sector in particular. The Government also reports that, on 29 April 2021, the Ministry of Labour and Social Welfare inaugurated the first Trade Union Training Institute (IFS), to strengthen social dialogue and benefit more than 150,000 workers grouped in various unions; and

·(iii) reiterates that the CST was activated on 16 September 2019 – and indicates that in November 2019, the National Minimum Wage Council was also established, with the social partners freely electing their representatives. With regard to the activity of the CST, the Government recalls that the CST, at its meeting held in November 2019, approved ILO participation in the elaboration of a National Strategy for the Generation of Decent Employment. The Government specifies, however, that both the Higher Labour Council and the National Minimum Wage Council have been unable to meet in the normal manner due to the health crisis, and the measures adopted to suspend activities in order to contain it. To address the situation, the Ministry of Labour held meetings with representatives of the workers' organizations, establishing an Intersectoral Trade Union Roundtable on 22 April 2020, with a view to providing a space for legitimate, permanent dialogue that would be recognized by workers in the health sector.

With regard to the observations by the social partners, the Committee notes that the ANEP: (i) while recognizing that the CST was reactivated in 2019, specifies that it was not possible to induct all the employer representatives without an amendment to the rules to that end, since the rules listed explicitly the employers' organizations entitled to appoint representatives, and three of the eight organizations listed were inactive; (ii) reports that, after its inaugural meeting, the CST only met on three occasions, the last of which was in March 2020 (to address issues related to childcare facilities), and that no meetings were held during the four months prior to the pandemic emergency; (iii) reports that no meeting of the Officers or of a plenary meeting of the CST has been called since then; (iv) claims that the Government only reactivated the CST for a few months as a publicized tactical move to give the impression of compliance with the conclusions of this Committee and of the Conference Committee; and adds that the CST has not been convened due to the fact that the President of the Republic does not recognize the President of the ANEP, and to the President of the Republic's order, made clear on television and backed up by the Minister of Labour, to prohibit public servants from meeting with the ANEP; (v) emphasizes that the Government's justification for not holding CST meetings as a consequence of the pandemic is not credible (the Government's agenda includes many meetings held during the period that it decided not to convene the CST); since July 2020 the activity in the country has gradually returned to near normality with the corresponding preventive measures in place; the size of the CST is such that a plenary sitting could be accommodated in a large, well-ventilated space – not to mention its three Officers alone; and in any case, the CST would have been able to meet in a virtual session through online platforms; and (vi) rejects the claims that consultations were held with the participation of employers' representatives and affirms that in practice the Government had chosen its interlocutors at its own discretion and that when other employers' representatives are invited, the aim is purely for publicity and there is no true tripartite or bipartite dialogue.

The Committee also notes the observations of the ITUC, emphasizing that by freezing the CST, the Government is failing to comply with the obligation to consult provided under the Convention; and denouncing the Government for its unilateral appointment of workers' representatives for the tripartite consultations.

The Committee also takes note of the observation of the CUTS, indicating that: (i) since its last session on 2 March 2020, neither the plenary nor the

Officers of the CST have been convened; (ii) the term of office of the CST expired on 16 September 2021, and there is no indication of what the mechanism for electing representatives might be, given that no clear rules have been established, in consultation with the social partners, for designating the worker representatives on the CST, as the Committee has been requesting; (iii) tripartite consultation is thus absent in the country; and (iv) trade union organizations that are not among the group of unions close to the Government are not invited to meetings convened by the Ministry of Labour and Social Welfare, such as the consultations for the Ministry's Institutional Strategic Plan 2020-2024 or the general health safety protocol for the pandemic.

The Committee notes that the Government claims to have been able to hold a wide variety of meetings and gatherings for social dialogue during the pandemic, including in virtual format, and to take concrete measures. It nevertheless notes with ***concern*** the allegations made by the social partners that the Government, in a contrary and deliberate manner, has not taken a single measure to enable the CST to continue meeting, regardless of the repeated requests from the ILO's supervisory machinery – most recently from the Committee on the Application of Standards in June 2021. The social partners allege that this has enabled the Government to dialogue only with like-minded interlocutors, thus failing to comply with the requirements for tripartite consultation under the Convention. In this regard, the Committee ***regrets*** to observe that despite having requested up-to-date, detailed information on the measures adopted to ensure the effective operation of the CST, the Government simply attributes its inactivity to the pandemic without providing a fuller explanation, when the CST was supposed to play a key role in tripartite consultations on measures to address the pandemic, and the Government itself claims that despite the challenges posed by the pandemic it successfully managed the operation of many other dialogue mechanisms, even creating new, differently constituted fora, instead of promoting tripartite consultation within the CST.

The Committee further notes that, in its communication received on 3 December 2021, the Government indicates that a new CST is in the process of being set up for the period 2021–23. The Government affirms in this respect that the preliminary steps required by the regulations have been taken in order for the worker and employer sectors to designate their representatives and that, these designations having been completed, the first session of the new CST is scheduled to take place on 8 December 2021.

The Committee urges the Government to take all the necessary measures to ensure the effective operation of the CST, respecting the autonomy of the social partners, including with regard to the appointment of their representatives – urging it in particular to ensure full recognition of the President of the ANEP and of this most representative employers' organization in social dialogue and tripartite consultation, as well as during any revision of the Statute of the CST. The Committee refers to its previous recommendations in this regard, and requests the Government to provide information on any developments, as well as on the content and outcome of the tripartite consultations held within this tripartite body. The Committee also urges the Government to take the necessary measures to ensure the full autonomy of the ANEP, the recognition of the results of its April 2020 elections and, in particular, of its President, Mr Simán Dada, and of this employers' organization as a social partner, to allow the full participation of the ANEP in social dialogue through its chosen representatives.

Interference in the election of representatives for tripartite consultation and in delivery of credentials. With regard to the allegations formulated by the ANEP in respect of government interference in the election of representatives at the Superintendency for the Electricity and Telecommunications Sectors (SIGET), the Committee requested the Government to provide a copy of the ruling of the Supreme Court of Justice (CSJ) definitively setting aside the election of the 2017 employer representatives on the SIGET that is challenged by the ANEP, and further requested the Government to provide information on the forms of elections of the representatives of employers and the date on which the elections were held.

The Committee notes that the Government, while reiterating its respect for the free election of representatives of tripartite and joint bodies: (i) recalls that in its judgment of 17 January 2018, the CSJ ordered precautionary measures with immediate provisional effect that suspended the appointments challenged by the ANEP; (ii) specifies that although a definitive ruling was requested, the CSJ stated that the ruling was still pending, with the result that the private sector representatives remained the same persons appointed by the ANEP, and (iii) indicates that, given that procedures for the election of private sector representatives on the SIGET board of directors have not been initiated since the issuance of precautionary measures in January 2018, and because of the pending CSJ decision, for the moment, no election mechanism has been implemented.

The Committee notes that the ANEP, in its observations: (i) states that it is awaiting the results of its appeal regarding the election of the employers' representatives on the SIGET, recalling that in this case the Government had constituted 60 supposed employers' organizations that had participated and won the election illegally; (ii) indicates that the ANEP proposed a reform to the Labour Code which would allow employers' organizations to follow clear, objective, predictable and binding rules for appointing the social partners; (iii) alleges however that the current Government is continuing the same delaying tactics, withholding delivery of credentials to employers organizations with the intent of hindering their participation in the appointment of the directors of various autonomous tripartite or joint public entities; (iv) states in this regard that in September 2020 the Government refused the ANEP's participation in the election of the Board of Governors and Executive Board of the Development Bank of El Salvador – BANDESAL (the refusal was on the grounds of the absence of the ANEP's credentials, which were withheld by the Government itself); and refers to other examples where the appointment of employer representatives was obstructed, in the Salvadoran Social Security Institute, the Maritime Port Authority, and the Independent Executive Committee for Ports; and (v) denounces the submission to the Legislative Assembly by the President of the Republic on 29 May 2021 of reforms, which were then approved by Legislative Assembly, to the manner in which directors are appointed by employers' organizations in 23 autonomous public entities. These reforms grant the President power to appoint the directors who represent the employers' organizations, as well as to arbitrarily remove them from their posts.

The Committee also takes note of the observations of the ITUC, denouncing the Government for imposing a legal obligation on trade unions to request renewal of their legal status every 12 months, thereby deciding unilaterally to withdraw the unions' credentials, preventing them from carrying out their trade union activities, and denying them the conditions for carrying out tripartite consultations.

The Committee also notes that the CUTS alleges that: (i) the Government has been excluding organizations that are not close to it from participating in the elections of tripartite bodies; (ii) as well as the problems regarding worker representation on the CST, the majority of federations and confederations were not convened for the election of representatives in the Salvadoran Vocational Training Institute (INSAFORP), an election that was held without respect for the applicable rules and which resulted in the appointment of persons close to the Government; and (iii) the fact that the Ministry of Labour and Social Welfare delayed delivery of credentials for up to nine months, while other organizations were issued credentials promptly to allow them to participate in the INSAFORP elections, is germane to this issue.

In light of the above and observing with deep concern that multiple allegations of interference by the authorities in the appointment of employers' and workers' representatives in public tripartite and joint bodies have been made for a long time, and that recent developments indicate a worsening of the situation, the Committee urges the Government, in consultation with the social partners, to take the necessary measures to ensure respect for the autonomy of the employers' and workers' organizations in this regard, both in law and in practice, including measures to ensure the prompt delivery of credentials for all organizations, as well as the repeal of any legal provisions in respect of the abovementioned 23 autonomous entities that allow the Government the possibility of interfering in the appointment of employers' representatives.

Article 5(1). Effective tripartite consultations. In its previous observation, the Committee reiterated its request to the Government to provide updated information on the outcome of the tripartite consultations held concerning the Protocol on the submission procedure that the Government indicated was drawn up with ILO assistance, and to provide a copy of the Protocol when it has been adopted. It also reiterated its request to the Government to send detailed and

updated information on the content and outcome of the tripartite consultations held on all the matters relating to international labour standards covered by *Article 5(1)(a)–(e)* of the Convention. In this regard, the Committee notes that the Government: (i) indicates that an analysis has been conducted, and there is no previous example of a submission process in the country, as no official procedure for undertaking one existed; (ii) asserts that first steps have been taken in defining the procedure for the submission of Conventions, and an inter-institutional round table between the Ministry of Labour and the Ministry of Foreign Relations has been established for that purpose; and (iii) requests ILO assistance to take account of best practices at international level to establish and strengthen the submission process. The Committee further notes in this regard that the ANEP and the CUTS both assert that the tripartite consultations that the Committee requested the Government to undertake in respect of the Protocol on the submission procedure did not take place, and that they concur with the ITUC in denouncing the absence of tripartite consultations in matters related to international labour standards.

The Committee notes with ***concern*** that the Government, in reply to the Committee's previous observation, has not provided the information requested on the content and outcome of the tripartite consultations held on all matters related to international labour standards covered by the Convention, nor on the Protocol on the submission procedure, which the Committee was told had been elaborated; and principally affirms that there is no precedent in the country, nor any procedure in place for submitting international labour standards to the competent authorities exists.

While referring to the Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities, adopted by the Governing Body of the ILO, the Committee strongly hopes that, in conformity with the Constitution of the International Labour Organization, the submission of international labour standards to the Legislative Assembly can resume as soon as possible, and urges the Government, in consultation with the social partners, to take the necessary measures, in particular with regard to the CST, to comply with the obligation of tripartite consultation provided in the Convention. Once again, the Committee requests the Government to provide detailed and updated information on the content and outcome of tripartite consultations held on all issues related to international labour standards covered by Article 5(1)(a)–(e) of the Convention, including the submission of international labour standards and the preparation of its next report in consultation with the social partners.

Technical assistance. In its previous comments, the Committee requested the Government to continue providing detailed and updated information on the measures adopted or envisaged to promote tripartism and social dialogue in the country within the context of ILO technical assistance, and on their outcome. The Committee duly notes that the Government is grateful for the support and follow-up provided through ILO assistance and cites various areas of cooperation in this regard, including social protection, occupational safety and health or the labour market information system. With regard to social dialogue, the Government reiterates that it had support from the ILO to reactivate the CST in 2019 and that the ILO also provided accompaniment in regional coordination spaces.

In the hope that it will shortly see progress in tripartite consultation, and compliance with the Convention in the country, the Committee recalls that ILO technical assistance remains at the disposal of the tripartite constituents, while emphasizing the importance that such assistance be defined through social dialogue, for example within the framework of the CST.
[The Government is asked to reply in full to the present comments in 2022.]

Fiji

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

(Ratification: 1974)

Observation, 2021

Article 1(a) of the Convention. Sanctions of imprisonment involving compulsory labour as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system. The Committee previously noted the following legislative provisions, which are worded in such general terms that may lead to the imposition of penalties involving compulsory labour (by virtue of section 43(1) of the Prisons and Corrections Act 2006) for activities that could be linked to the expression of political views or views ideologically opposed to the established political, social and economic order:

Public Order Act (POA), as amended by the Public Order (Amendment) Decree 2012:

– Section 14, which provides for sanctions of imprisonment for up to three years for using threatening, abusive or insulting words in any public place or any meeting, or behaves with the intent to provoke a breach of peace or whereby such a breach is likely to be occasioned; and having been given by any police officer any directions to disperse or to prevent obstruction or for the purpose of keeping order in any public place, without lawful excuse, contravenes or fails to obey such direction.

– Section 17, which provides for sanctions of imprisonment for up to 10 years for spreading any report or making any statement, which is likely to undermine or sabotage, or attempt to undermine or sabotage the economy or financial integrity of Fiji.

Crimes Decree 1999:

– Section 67(b), (c) and (d), which provides for sanctions of imprisonment for seven years for uttering any seditious words; printing, publishing, selling, offering for sale, distributing or reproducing any seditious publication; or importing any seditious publication.

The Committee notes that the Government indicates in its report that the Public Order Act is in place to ensure the safety of people from acts of terrorism, racial riots, religious and ethnic vilification, hate speech and economic sabotage.

The Committee recalls that the Convention protects persons who express political views or views ideologically opposed to the established political, social or economic system by establishing that in the context of these activities they cannot be punished by sanctions involving an obligation to work. The range of activities protected include the right to freedom of expression exercised orally or through the press and other communications media, as well as the right of association and of assembly, through which citizens seek to secure the dissemination and acceptance of their views. While recognizing that certain limitations may be imposed on these rights as normal safeguards for public order to protect society, such limitations must be strictly within the framework of the law. In this respect, the protection provided for by the Convention does not extend to persons who use violence, incite to violence or engage in preparatory acts aimed at violence.

In this respect, the Committee observes that in its comments under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), it noted the allegations of the International Trade Union Confederation (ITUC) and the Fiji Trades Union Congress (FTUC) denouncing that permissions for union meetings and public gatherings continued to be arbitrarily refused, and that section 8 of the POA (as amended by the 2012 Decree) has been increasingly used to interfere in, prevent and frustrate trade union meetings and assemblies. The Committee notes in this regard that according to section 10 of the POA, a person who takes part in a meeting or procession for which no permit has been issued or in contravention of the provisions of the POA is liable to a prison sentence (involving compulsory prison labour).

Therefore, the Committee requests the Government to review sections 10, 14 and 17 of the POA and section 67 (b), (c) and (d) of the Crimes Decree to ensure that, both in law and practice, persons who express political views or views opposed to the established political, social and economic system, including through the exercise of their right to freedom of expression or assembly, are not liable to penal sanctions involving compulsory labour, including compulsory prison labour. The Committee further requests the Government to provide information on the manner in which the above-mentioned legislative provisions are applied in practice, including information on the number of prosecutions initiated, convictions handed down, specific penalties applied and on the facts that led to the convictions, as well as information on the grounds on which permits for public meetings and gatherings are granted or refused.

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

Guatemala

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

(Ratification: 1952)

Observation, 2021

The Committee notes the observations of the International Trade Union Confederation (ITUC) and the joint observations of the Autonomous Popular Trade Union Movement and the Global Unions of Guatemala, both received on 1 September 2021, relating to matters examined in the present comment. The Committee also notes the Government's replies to these observations. The Committee further notes the Government's comments on the matters raised in 2020 by the national trade union federations on the impact of the COVID-19 pandemic on the application of the Convention.

Follow-up by the Governing Body of the progress achieved in the implementation of the technical cooperation programme "Strengthening of the National Tripartite Committee on Labour Relations and Freedom of Association in Guatemala for the effective application of international labour standards"

The Committee recalls that: (i) on the basis of the Governing Body's decision adopted in November 2018 (Decision GB.334/INS/9) to close the procedure of the complaint made under article 26 of the ILO Constitution alleging the violation of the Convention by the State of Guatemala, the Governing Body requested the Office to draw up a technical cooperation programme to promote progress in the application of the Road Map adopted in 2013 within the framework of the follow-up to the complaint; and (ii) at its 340th Session (October–November 2020), the Government Body welcomed the adoption of the technical cooperation programme, "Strengthening of the National Tripartite Committee on Labour Relations and Freedom of Association in Guatemala for the effective application of international labour standards" and requested the Office to report annually on its implementation at its October–November sessions for the duration of the three-year programme (Decision GB.340/INS/10).

The Committee notes the discussions at the 343rd Session of the Governing Body (October–November 2021) on the implementation of the technical cooperation programme and the decision of the Governing Body to note the information provided by the Office on this subject (Decision GB.343/INS/7)

Trade union rights and civil liberties. The Committee ***regrets*** to note that it has been examining since 2005 allegations of serious acts of violence against trade union leaders and members, including numerous murders and the related situation of impunity. The Committee also notes that the Committee on Freedom of Association examined at its session in October 2021 Case No. 2609, which brings together denunciations of acts of anti-union violence, including a very high number of murders of members of the trade union movement between 2004 and 2021 (see 396th Report, October 2021, Case No. 2609, paragraphs 307–348).

The Committee notes the information provided by the Government on the situation with regard to the investigations and prosecutions relating to the murders of 96 members of the trade union movement and its indications that: (i) 28 verdicts have so far been handed down, including 22 convictions (in relation to 19 murders, with three cases giving rise to two convictions each), five charges have been set aside and one security and remedial measure has been adopted; (ii) seven arrest warrants are still pending; (iii) three cases are at the stage of public hearings and trials; (iv) the criminal prosecutions lapsed in six cases in which the accused died; and (v) the other cases are still at the investigation stage. The Committee also notes the Government's indication that progress was reported in 2020 in 13 cases that are under investigation. The Committee also notes the information provided by the Government on the security measures taken for members of the trade union movement who are at risk, in the context of which: (i) 55 risk analyses were carried out for members of the trade union movement during the course of 2020, with one personal security measure being provided and 47 perimeter security measures; and (ii) between 1 June and 31 August 2021, 19 risk analyses were carried out for members of the trade union movement, with 15 perimeter security measures being adopted.

The Committee also notes that the Government refers to its replies provided in the context of Case No. 2609. The Committee takes due note in this regard of the detailed information provided by the Government on the active role played by the National Tripartite Committee on Labour Relations and Freedom of Association (hereinafter the National Tripartite Committee) and its Subcommittee on the Implementation of the Road Map in monitoring the response of the criminal justice system to acts of anti-union violence. The Committee takes special note in this respect of the high-level meetings held by the National Tripartite Committee with the Office of the Public Prosecutor and the plenary of the Supreme Court, and that the Subcommittee on the Implementation of the Road Map specifically requested the competent authorities to ensure: (i) the exhaustive investigation of all cases of murders of members of the trade union movement, with emphasis on a series of 36 cases of special relevance; (ii) the reactivation of the Technical Trade Union Forum in the Office of the Public Prosecutor and the Standing Technical Trade Union Forum for Comprehensive Protection in the Ministry of the Interior; (iii) the facilitation by the judicial authorities of current prosecutions for murders of members of the trade union movement; (iv) the assignment of a criminal analysis unit to the Special Prosecutor's Unit for Crimes against Trade Unionists; and (v) the strengthening of collaboration between the Office of the Public Prosecutor and the Ministry of the Interior in cases of requests for protection measures by members of the trade union movement.

The Committee takes due note of this information. It also observes that, despite the difficulties caused by the COVID-19 pandemic, two new convictions were handed down in 2021 in relation to murders of members of the trade union movement. At the same time, the Committee notes with ***deep concern*** : (i) the Government's indications that the Office of the Public Prosecutor recorded six new cases of murders of members of the trade union movement in 2020; and (ii) the observations of the national trade union confederations and the ITUC denouncing the murder on 7 May 2021 of Ms Cinthia del Carmen Pineda Estrada, a trade union leader of the Education Workers' Union of Guatemala (STEG), as well as other serious acts of anti-union violence committed in 2020 and 2021. While noting the Government's replies in relation to the investigations carried out into these crimes, the Committee once again recalls that trade union rights can only be exercised in a climate free from violence, intimidation and threats of any kind against trade unionists and that it is for governments to ensure that this principle is respected.

In light of the above, while taking due note of the action that the Government is continuing to take, the results reported and the difficulties involved in shedding light on the oldest murder cases, the Committee once again expresses ***deep concern*** at the allegations of further murders and other acts of anti-union violence committed in 2021 and the persistence of a high level of impunity, as there have still been no convictions for the great majority of the numerous recorded murders of members of the trade union movement. ***Emphasizing the importance of the initiatives called for by the Subcommittee on the Implementation of the Road Map, the Committee once again urges the Government to continue to take and intensify as a matter of urgency all the necessary measures to: (i) investigate all acts of violence against trade union leaders and members with a view to determining responsibilities and punishing the perpetrators and instigators of these acts, taking the trade union activities of the victims fully into account in the investigations; and (ii) provide prompt and effective protection for all trade union leaders and members who are at risk in order to prevent any further acts of anti-union violence. With reference to the specific action required in this regard, the Committee refers to the recommendations made by the Committee on Freedom of Association in Case No. 2609.***

Legislative issues

Articles 2 and 3 of the Convention. The Committee recalls that for many years it has been requesting the Government to take measures to:

·-amend section 215(c) of the Labour Code, which requires a membership of "50 per cent plus one" of the workers in the sector to establish a sectoral trade

union;

·-amend sections 220 and 223 of the Labour Code, which establish the requirement to be of Guatemalan origin and to work in the relevant enterprise or economic activity to be eligible for election as a trade union leader;

·-amend section 241 of the Labour Code, under the terms of which strikes have to be called by a majority of the workers and not by a majority of those casting votes;

·-amend section 4(d), (e) and (g) of Decree No. 71-86, as amended by Legislative Decree No. 35-96 of 27 March 1996, which provides for the possibility of imposing compulsory arbitration in non-essential services and establishes other obstacles to the right to strike;

·-amend sections 390(2) and 430 of the Penal Code and Decree No. 71-86, which establish labour, civil and criminal penalties in the event of a strike by public officials or workers in certain enterprises; and

·-ensure that the various categories of public sector workers (hired under item 029 and other items of the budget) enjoy the guarantees afforded by the Convention.

The Committee also recalls that in its comments in 2018, 2019 and 2020 it noted that: (i) the tripartite agreement concluded in February 2018 on the amendments sought in four of the six points indicated above (relating to the requirements to be elected as a trade union leader, compulsory arbitration in non-essential services, penalties applicable in the event of a strike, and the application of the guarantees of the Convention to various categories of public sector workers); (ii) the submission on 7 March 2019 of this tripartite agreement to the Labour Commission of the Congress of the Republic so that the examination of Bill No. 5199 could be set aside, as it did not have the support of the social partners, and instead a legislative reform could be adopted based on tripartite agreement; and (iii) the tripartite agreement concluded in August 2018 on the principles that should guide reforms on two of the other points in the above list relating, on the one hand, to the requirements for the establishment and operation of sectoral unions and, on the other, the conditions for strike ballots.

The Committee notes that in its latest report the Government confines itself to: (i) indicating that the legislative amendments requested by the Committee form part of the work plan of the National Tripartite Committee and its legislative subcommittee; (ii) recalling once again that Bill No. 5199, designed to respond to the Committee's observations, had been submitted to the Congress of the Republic on 27 October 2016, but that the social partners called for it to be set aside and the discussion was to continue with a view to reaching consensus on the reforms to be adopted; (iii) indicating that, at the meeting on 22 April 2021 of the National Tripartite Committee, the Government submitted a draft legislative initiative based on the tripartite agreements on the four points referred to above covered by a full tripartite agreement, which had been submitted to the Congress of the Republic on 7 March 2018, with a full discussion on the reasoning given for the draft legislative initiative.

While noting the information provided by the Government, the Committee observes with ***deep concern*** the lack of specific progress in bringing the legislation into conformity with the Convention, despite the repeated requests by the various ILO supervisory bodies and the Governing Body and the serious impact of the legislative provisions concerned on the effective exercise of freedom of association. In this regard, the Committee recalls that in its previous comments it noted with concern the indications by the trade union organizations that the combination of: (i) the fact that it is impossible to create sectoral unions as a result of the requirements of section 215(c); and (ii) that it is impossible in small enterprises, which account for almost all companies in Guatemala, to assemble the 20 workers required by section 216 of the Labour Code for the establishment of a union, mean that the great majority of workers in the country do not have access to the right to join unions. While emphasizing the importance of reforms of labour legislation being the subject of consultation with the social partners and, in so far as possible, giving rise to tripartite consensus, the Committee emphasizes that, in the last resort, it is the responsibility of the Government to take the necessary decisions to ensure compliance with the international commitments assumed by the State through the ratification of international labour Conventions. ***The Committee therefore urges the Government to take the necessary measures without delay to bring the national legislation into conformity with the Convention. The Committee hopes to receive specific information in the near future on the tangible progress achieved in this regard.***

Application of the Convention in practice

Registration of trade unions. In its previous comments, the Committee once again invited the Government and the trade unions to take major steps forward in their dialogue on facilitating the process of trade union registration. The Committee notes the Government's indication that it is strengthening the public register of trade unions of the General Directorate of Labour through the development of an information technology tool that will facilitate the processes. The Committee also notes from document GB.343/INS/7, submitted to the Governing Body at its session in October-November 2021, that: (i) the Office is providing assistance for the project for the strengthening of the public register of trade unions; (ii) according to the information provided by the Government, of the 52 applications for registration received in 2020 by the Ministry of Labour and Social Welfare, 28 resulted in registrations, 16 were rejected and eight are still being processed; and (iii) of the 39 applications received in 2021 between 1 January and 16 September, 12 resulted in registrations, nine were rejected and 18 are still being processed. ***Noting from the information provided by the Government that more than one third of the applications for registration of trade unions reviewed in the past two years have been rejected and a significant number of applications are still being processed several months after their submission, the Committee once again encourages the Government, with the technical assistance of the Office and in dialogue with the national representative organizations, to make progress in facilitating the process of trade union registration.***

Awareness-raising campaign on freedom of association and collective bargaining. The Committee recalls that this campaign is one of the commitments made by the Government through the Road Map adopted in 2013. In its previous comments, the Committee urged the Government, with the support of the social partners and the technical cooperation programme prepared by the Office, to take all the necessary measures to ensure that the awareness-raising campaign is given real visibility in the national mass media. The Committee notes the Government's indication that it is awaiting the approval of the Multiannual Operations Programme of the European Union programme on support for decent employment in Guatemala, which includes specific action to address the subjects of freedom of association and collective bargaining within the framework of the corresponding ILO Conventions. While noting that the action taken in response to the emergencies resulting from the COVID-19 pandemic may have made it difficult to take action in this regard, the Committee ***regrets*** the lack of specific initiatives for the dissemination of the awareness-raising campaign. ***The Committee therefore once again urges the Government to take measures for the effective dissemination of the awareness-raising campaign on freedom of association and collective bargaining in the national mass media.***

Regretting, despite the existence of the National Tripartite Committee and the technical assistance provided by the Office, the absence of specific progress over the past three years, the Committee urges the Government to take all the necessary measures to resolve, in the near future, the serious violations of the Convention that have been noted for many years.

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

Guinea - Bissau

Minimum Wage-Fixing Machinery Convention, 1928 (No. 26)

(Ratification: 1977)

Observation, 2021

Legislative developments. The Committee notes the inclusion, in the Government's report, of a copy of the new Labour Code, adopted by the Peoples' National Assembly in July 2021. The Committee also notes that sections 153 and 154 of the copy of the new Labour Code provide, among other matters, that the minimum wage shall be payable to all workers, including rural workers, without distinction based on sex or any other grounds, in an amount fixed annually by the Government, after consultation with the social partners. The Government indicates that after its promulgation, the new Labour Code will revoke the General Labour Act No. 2/86. ***The Committee requests the Government to provide a copy of the promulgated and published version of the new Labour Code.***

Article 3 of the Convention. Operation of the minimum wage-fixing machinery. In its previous comments, noting that the latest decree fixing the minimum wage had been adopted in 1988 (Decree No. 17/88 of 4 April 1988), the Committee requested the Government to adopt the necessary measures without delay to fix the minimum wage in application of sections 110 and 114 of the General Labour Act No. 2/86, and to provide information on any examination of the matter and on consultations held with the social partners. The Committee notes the Government's indication that Decree No. 17/88 has been subject to successive amendments. The Committee also notes the Government's indication that in 2012 and 2017 the minimum wage in the public service was readjusted by government ordinance. The Committee observes, with regard to the categories included in the application of Decree No. 17/88, which exclude the public service, that the Government makes no reference to ordinances recently fixing new minimum wage rates. The Committee further notes the Government's indication that no examination on the fixing of the national minimum wage rate has been undertaken to date, but that the Prime Minister's Ordinance of 9 June 2021 established a multidisciplinary commission, including trade union representatives, to conduct an analysis of the current level of inflation and to propose a national minimum wage. ***The Committee strongly hopes that the Government will take the necessary measures, based on proposals from the abovementioned commission, to fix an updated minimum wage as soon as possible, after consultation with the representative organizations of employers and workers, in application of the legislation in force. The Committee requests the Government to provide information in this regard.***

[The Government is asked to reply in full to the present comments in 2022.]

Hours of Work (Industry) Convention, 1919 (No. 1) *(Ratification: 1952)*
Weekly Rest (Industry) Convention, 1921 (No. 14) *(Ratification: 1952)*
Hours of Work (Commerce and Offices) Convention, 1930 (No. 30) *(Ratification: 1952)*
Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106) *(Ratification: 1958)*

Observation, 2021

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

In order to provide a comprehensive view of the issues relating to the application of the ratified Conventions on working time, the Committee considers it appropriate to examine Conventions Nos 1, 14, 30 and 106 in a single comment.

The Committee notes the observations of the Confederation of Public and Private Sector Workers (CTSP), received on 29 August 2018, the Association of Haitian Industries (ADIH), received on 31 August 2018, and the International Trade Union Confederation (ITUC), received on 1 September 2018.

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 in the Conference Committee on the Application of Standards (Conference Committee), including with regard to the impact of the 2017 Act to organizing and regulating work over a 24-period divided into three segments of eight hours (hereinafter: Act on working time) on the application of the ratified Conventions on working time. In its conclusions, the Conference Committee asked the Government to: (i) review in consultation with the most representative employers' and workers' organizations the conformity of the Labour Code and the Act on working time, with respect to the ratified ILO Conventions on working time; (ii) strengthen the labour inspectorate and other relevant enforcement mechanisms to ensure that workers benefit from the protection afforded by the Conventions; (iii) report to the Committee of Experts on these measures; and (iv) avail itself of technical assistance to address these matters.

The Committee notes that, at the end of the discussion in the Conference Committee, the Government recalled that the Conventions that Haiti had ratified were part of its body of domestic law under article 276-2 of the Constitution of Haiti, and took precedence over national laws in the hierarchy of standards and could be invoked without reserve before the courts. Taking note of the observations of the Committee of Experts concerning the application of the Act on working time, the Government indicated that it was planning to hold tripartite consultations to identify and overcome the main difficulties encountered in the application of the Act, and to issue orders or regulations. The Government also indicated that it was aware of the delay in finalizing the process of reforming the Labour Code. Discussions had begun at the level of the Prime Minister's Office and would be continued within a tripartite framework, in the spirit of the San José Agreement of 21 March 2018 signed by the social partners, taking into account the Office's recommendations.

Furthermore, the Committee notes that the CTSP, in its observations, expresses regret at the lack of progress on working time issues since the discussion in the Conference Committee. However, the CTSP indicates that discussions on the reform of the Labour Code have resumed. The Committee also notes that the ADIH confirms that tripartite discussions on the reform of the Labour Code resumed in August 2018. According to the ADIH, the Act on working time should be repealed and the employers' and workers' organizations should be consulted on the application of the Conventions ratified in this field. The Committee further notes that the ITUC refers to the discussion of the case during the Conference Committee and indicates in particular that: (i) the Act on working time, which liberalizes the regulations on this subject, is giving rise to serious abuses; (ii) the Act was adopted without consultation and outside the process of negotiation of a new Labour Code; and (iii) the situation is aggravated by the lack of resources for labour inspection. The ITUC refers in particular to: (i) workers in the informal economy and in domestic work who are subjected to indecent working conditions in terms of both working time and leave entitlement; (ii) security personnel and subcontracted workers in the textile sector, where there is a regrettable lack of fixed working hours and a refusal by employers to pay overtime; and (iii) workers in export processing zones who are particularly subjected to abuses. ***The Committee requests the Government to send its comments on all the above observations.***

Lastly, the Committee notes the Government's communication received on 30 October 2018 in which it informs the Committee that, further to the conclusions of the Conference Committee, it has requested ILO technical assistance to help it, inter alia, to submit the reports due, to strengthen the inspection services, to consolidate social dialogue with a view to pursuing social reforms, and to address the other matters raised by the Conference Committee. The Government also indicates that it hopes to receive this assistance before the next session of the International Labour Conference. ***The Committee hopes that this technical assistance will be made available without delay. The Committee requests the Government to provide detailed information on the results of the planned technical assistance, and also on the measures taken to ensure the effective application in law and practice of the ratified Conventions on working time.***

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

Hungary

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

(Ratification: 1957)

Observation, 2021

The Committee notes the observations of the Forum for the Co-operation of Trade Unions and its affiliate, the Public Collection and Public Culture Worker's Union, received on 3 May 2021, alleging that a legislative process concerning the status of cultural workers would not take into consideration the provisions of the Convention. ***The Committee requests the Government to provide its comments in this regard.***

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

The Committee notes the observations received on 1 September 2015 and 1 September 2017 from the International Trade Union Confederation (ITUC), alleging acts of anti-union dismissals, union busting and intimidation in several enterprises, and criticizing in particular the excessive limitation of the scope of collective bargaining and the employers' power to unilaterally modify the scope and content of collective agreements. The Committee also notes the observations of the workers' group of the National ILO Council at its meeting of 11 September 2017, included in the Government's report, which denounce that: (i) the law does not allow trade unions with less than 10 per cent representation among the workers to negotiate collective agreements, not even with respect to their own members; (ii) the law restricts the 'coalition' freedoms of trade unions for entitlement to collective bargaining so that they cannot seek to collectively attain the 10 per cent threshold; and (iii) in those cases where no trade union represents the required percentage, the workers' council is entitled to enter into a collective bargaining agreement (except on wage issues). ***The Committee requests the Government to provide its comments with respect to the observations of the ITUC and the workers' group of the National ILO Council, including to clarify whether the representativity threshold applies to collective agreements at both enterprise and industry levels.***

The Committee further notes several judgments of the Supreme Court of Hungary (Curia) supplied by the Government, which have a bearing on the Convention, in particular on the promotion of collective bargaining.

Article 1 of the Convention. Adequate protection against acts of anti-union discrimination. The Committee previously noted the Government's indications that: (i) section 82 of the Labour Code provides compensation not exceeding the worker's 12-month absence pay in case of unlawful dismissal of trade union officials or members; (ii) reinstatement is granted in case of dismissals violating the principle of equal treatment (section 83(1)(a)) or dismissals violating the requirement for prior consent of the union's higher body before the termination of a union official (section 83(1)(c)); and (iii) while the Labour Code does not contain penalties for acts of anti-union discrimination against union officials and affiliates, the Equal Treatment Authority (ETA) may, in such cases, levy fines. The Committee notes with ***interest*** the Government's indication that Bill No. T/17998 on the amendment of legislation related to the entry into force of the Act on the General Administrative Order, which will also bring about the harmonization of the Labour Code and relevant ILO Conventions, contains inter alia a provision amending the definition of worker representatives (section 294(1)(e) of the Labour Code), the purpose of which is to ensure that, in the event of unlawful termination of a worker representative, the possibility of requesting reinstatement into the original job will also be awarded to union officers, not only to elected representatives as is currently the case under section 83(1)(d). ***The Committee expects that the Government will take the necessary steps to ensure that union officials, union members and elected representatives enjoy effective protection against any act prejudicial to them, including dismissal, based on their status or activities, and requests the Government to provide information on developments in relation to the adoption of new legislative provisions in this regard. In the absence of the information solicited from the Government with respect to the working of the ETA, the Committee requests the Government once again: (i) to indicate whether, given that section 16(1)(a) of the Equal Treatment Act stipulates that the ETA may order the elimination of the situation constituting a violation of law, the ETA may order on that basis reinstatement in case of anti-union dismissals of trade union officials and members; (ii) to provide information as to whether the ETA may order compensation on the basis of section 82 of the Labour Code; and (iii) to provide information on the average duration of the proceedings before the ETA related to anti-union discrimination (including of any subsequent appeal procedures before the courts), as well as on the average duration of purely judicial proceedings.***

Article 2. Adequate protection against acts of interference. In its previous comments, the Committee, while noting the Government's indication that the Constitution and the current national legislation were sufficient to prevent acts of interference, had requested the Government to take steps to adopt specific legislative provisions prohibiting acts of interference. Noting that the Government provides no information in this respect, the Committee recalls that it considers that the provisions of the Labour Code and the Equal Treatment Act do not specifically cover acts of interference designed to promote the establishment of workers' organizations under the domination of employers or employers' organizations, or to place workers' organizations under the control of employers or employers' organizations through financial or other means. ***The Committee requests the Government once again to take all necessary measures to adopt specific legislative provisions prohibiting such acts of interference on the part of the employer and making express provision for rapid appeal procedures, coupled with effective and sufficiently dissuasive sanctions.***

Article 4. Collective bargaining in practice. ***The Committee requests the Government to provide information on the number of collective agreements signed, the sectors concerned and the share of the workforce covered by collective agreements.***

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

Iraq

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

(Ratification: 1962)

Observation, 2021

The Committee notes the observations of the General Federation of Iraqi Trade Unions (GFITU), received on 28 August 2019 and 20 October 2020, as well as the joint observations of the GFITU, the Conference of Iraq Federations and Workers Unions (CIFWU), the Federation of Independent Trade and Professional Unions in Iraq (FITPUI), the Federation of Workers' Councils and Unions in Iraq (FWCUI), the General Federation of Trade Unions and Employees of Iraq (GFTUEI), the General Federation of Trade Unions of the Republic of Iraq (GFTURI), the General Federation of Workers Unions in Iraq (GFWUI), the Iraqi Federation of Oil Unions (IFOU), and the Union of Technical Engineering Professionals (UTEP), received on 17 September 2020. The Committee further notes the Government's reply to these observations. The above observations, the content of which concerns mainly the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), are thus treated under Convention No. 87.

Trade union monopoly. The Committee previously recalled the need to remove any obstacles to trade union pluralism and noted with interest the Government's indication that Government Decision No. 8750 of 2005 had been repealed. It requested the Government to take the necessary measures to repeal the Trade Union Organization Act No. 52 of 1987. The Committee is examining the information provided in this respect under its comments concerning Convention No. 87.

Scope of the Convention. The Committee previously requested the Government to ensure that the rights in the Convention were applicable to all public servants not engaged in the administration of the State. It notes that section 3 of the Labour Code stipulates that its provisions do not apply to "public officials appointed in accordance with the Civil Service Law or a special legal text" and "members of the armed forces, the police and the internal security forces". The Committee recalls that the Convention covers all workers and employers, and their respective organizations, in both the private and the public sectors, regardless of whether the service is essential, and that the only exceptions authorized concern the armed forces and the police, as well as public servants engaged in the administration of the State. It further recalls that a distinction must therefore be drawn between, on the one hand, public servants who by their functions are directly employed in the administration of the State (for example, in some countries, civil servants in government ministries and other comparable bodies, and ancillary staff), who may be excluded from the scope of the Convention and, on the other hand, all other persons employed by the Government, by public enterprises or by autonomous public institutions, who should benefit from the guarantees provided for in the Convention. This second category of public employees includes, for instance, employees in public enterprises, municipal employees and those in decentralized entities, public sector teachers, as well as air transport personnel, whether or not they are considered in national law as belonging to the category of public servants (see 2012 General Survey on the fundamental Conventions, paragraphs 168 and 172). ***The Committee requests the Government to indicate in what manner it ensures that effect is given to the Convention with respect to public officials not engaged in the administration of the State who are excluded from the application of the Labour Code.***

Article 1 of the Convention. Protection against acts of anti-union discrimination. Sufficiently dissuasive sanctions. The Committee notes that section 11(2) of the Labour Code stipulates that whoever violates the sections relating to discrimination shall be punished by imprisonment for a period not exceeding six months and a fine not exceeding one million dinars (approximately US$685) or by any of the two sanctions. While taking due note of the above, the Committee considers that the amount of the fine referred to above may not be adequate to deter and prevent the repetition of acts of anti-union discrimination, in particular in large enterprises. ***The Committee therefore requests the Government to take the necessary measures to ensure that the sanctions actually imposed in cases of anti-union discrimination are sufficiently dissuasive. In this regard, the Committee requests the Government to provide information on the sanctions imposed in practice.***

Anti-union dismissal. The Committee notes that section 145 of the Labour Code provides that when the penalty of dismissal has been imposed on a worker, such decision may be challenged within 30 days before the Labour Court. It notes, however, that the Labour Code does not specify which sanctions are applicable in the event of anti-union dismissal. The Committee recalls in this respect that the reinstatement of a worker dismissed by reason of trade union membership or legitimate trade union activities with retroactive compensation constitutes, in the absence of preventive measures, the most effective remedy for acts of anti-union discrimination. It further recalls that the compensation envisaged for anti-union dismissal should be higher than that prescribed for other kinds of dismissal, with a view to the effective dissuasion of this type of dismissal, and that it should be adapted in accordance with the size of the enterprises concerned (see 2012 General Survey, paragraphs 182 and 185). ***Highlighting the importance that anti-union dismissals give rise to sufficiently dissuasive sanctions, the Committee requests the Government to specify which remedies may be imposed by the Labour Court in such cases, indicating in particular whether the Court is empowered to reinstate the dismissed workers in their positions.***

Rapid appeal procedures. The Committee notes that sections 1(26) and 8 of the Labour Code provide protection against anti-union discrimination and that, according to section 11(1) of the Labour Code, workers may resort to the Labour Court to file a complaint when exposed to any form of discrimination in employment and occupation. 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 2012 General Survey, paragraph 190). ***The Committee requests the Government to provide information regarding the length of the procedure to treat complaints against acts of anti-union discrimination and its application in practice.***

Article 2. Protection against acts of interference. The Committee notes that the Labour Code does not contain any provisions which explicitly prohibit acts of interference. The Committee recalls that under the terms of *Article 2* of the Convention, workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration. Acts of interference are deemed to include acts which are designed to promote the establishment of workers' organizations under the domination of an employer or an employers' organization, or to support workers' organizations by financial or other means, with the object of placing such organizations under the control of employers or employers' organizations (see 2012 General Survey, paragraph 194). ***The Committee requests the Government to indicate whether other laws or regulations explicitly prohibit acts of interference and provide for rapid procedures and sufficiently decisive sanctions against such acts.***

Article 4. Promotion of collective bargaining in practice. ***The Committee requests the Government to provide information on the measures taken or envisaged to promote collective bargaining, the number of collective agreements concluded and in force in the country, as well as the sectors concerned and the number of workers covered by these agreements.***

Kazakhstan

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

(Ratification: 2000)

Observation, 2021

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 1 and 28 September 2021, referring to the issues raised by the Committee below.

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 109th Session, June 2021)

The Committee notes the discussion that took place in the Conference Committee on the Application of Standards (the Conference Committee) in June 2021 concerning the application of the Convention. The Committee observes that the Conference Committee welcomed that further steps towards implementing the 2018 road map were made, in particular amendments to the law. However, it regretted that not all previous recommendations have been fully addressed so far. In this regard, the Conference Committee took note of the continuing restrictions in practice on the right of workers to form organizations of their own choosing, in particular the unduly difficult re-registration and deregistration processes, which undermine the exercise of freedom of association. The Conference Committee also noted with concern the numerous allegations of violations of the basic civil liberties of trade unionists, including violence, intimidation and harassment. The Committee notes that the Conference Committee requested the Government to: (i) bring all national legislation into line with the Convention to guarantee full enjoyment of freedom of association to workers' and employers' organizations; (ii) ensure that the allegations of violence against trade union members are completely investigated, notably in the case of Mr Senyavsky; (iii) stop judicial harassment practices of trade union leaders and members conducting lawful trade union activities and drop all unjustified charges, including the ban for trade unionists to hold any position in a public or non-governmental organization; (iv) continue to review developments in the cases of Mr Baltabay and Ms Kharkova; (v) resolve the registration of the Congress of Free Trade Unions (KSPRK) and the Industrial Union of Employees of the Fuel and Energy Sector so as to allow them to enjoy the full autonomy and independence of a free and independent workers' organization, to fulfil their mandate and to represent their constituents without further delay; (vi) review with the social partners the law and practice concerning the registration of trade unions with a view to overcoming existing obstacles; (vii) refrain from showing favouritism towards any given trade union and put an immediate stop to the interference in the establishment and functioning of trade union organizations; (viii) remove any existing obstacles in law and in practice to the operation of free and independent employers' organizations in the country, in particular repeal of provisions in the Law on the National Chamber of Entrepreneurs (NCE) on accreditation of employers' organizations with the NCE; (ix) ensure that workers' and employers' organizations are not prevented from receiving financial or other assistance by international workers' and employers' organizations; and (x) fully implement the previous recommendations of the Committee and the 2018 road map. The Committee also notes that the Conference Committee requested the Government to accept a direct contacts mission of the International Labour Office before the next session of the International Labour Conference with full access to the organizations and individuals mentioned in the observations of the Committee of Experts.

The Committee recalls that in their previous observations, the ITUC and the Federation of Trade Unions of Kazakhstan (FPRK) denounced the sentencing of a trade union leader Mr Baltabay to seven years of imprisonment in July 2019 for the alleged misappropriation of approximately US$28,000 of union dues. Mr Baltabay was released in August 2019 after being pardoned by the President and given a fine of US$4,000 in exchange for his remaining prison sentence. Mr Baltabay insisted on his innocence, refused to pay the fine or recognize the presidential pardon, and argued in court that criminal charges of large-scale misappropriation of funds levied against him were politically motivated and unfounded. The Committee further recalls that on 16 October 2019, Mr Baltabay was given a new prison sentence of five months and eight days of imprisonment for union-related activities and for not paying the fine. While Mr Baltabay was released from jail on 20 March 2020, the Committee notes that according to the ITUC, he is still banned from any public activity, including trade union activities, for seven years, as per the previous sentence.

The Committee notes from the ITUC observations, that Ms Larisa Kharkova, the Chairperson of the now liquidated Confederation of Independent Trade Unions of Kazakhstan (KNPRK), who was sentenced to four years of restriction on her freedom of movement and a five-year ban on holding any position in a public or non-governmental organization, continues to serve her sentence.

The Committee notes that the Government does not dispute the facts as outlined by the ITUC, but indicates that judicial decisions in the cases of Ms Kharkova and Mr Baltabay were made in respect of ordinary crimes, namely the "misappropriation and embezzlement of entrusted property" and the "abuse of office", and were not related to their participation in legal trade union activities. The Government indicates that the period of restricted freedom imposed on Ms Kharkova expires on 9 November 2021.

The Committee takes due note of the information provided and refers to the conclusions and recommendations of the Committee on Freedom of Association (CFA) which continues to examine cases of Mr Baltabay and Ms Kharkova in the framework of Case No. 3283 (see 392nd Report, October 2020). ***It requests the Government to indicate whether Ms Kharkova and Mr Baltabay are still prevented from holding a trade union office.***

The Committee recalls that it had previously noted with deep concern the ITUC allegation of assault and injuries suffered by Mr Dmitry Senyavsky, the Chairperson of a trade union of workers of the fuel and energy complex in the Karaganda region, and urged the Government to investigate the matter without delay and to bring the perpetrators to justice. The Committee had noted the information provided by the Government confirming the assault by unknown persons on 10 November 2018. According to a forensic medical report, Mr Senyavsky suffered mild damages to his health. The Committee recalls the Government's indication that while pretrial investigations were opened under section 293(2)(1) of the Criminal Code (disorderly conduct), they were later suspended pursuant to section 45(7)(1) of the Criminal Procedure Code (failure to identify the person who committed a crime) until new circumstances (evidence) would come to light.

The Committee notes the ITUC indication that no progress has been made in investigating the attack. The ITUC points out that absence of effective investigations and judgements against guilty parties reinforce the climate of insecurity for victims and impunity for perpetrators, which are extremely damaging to the exercise of freedom of association rights in Kazakhstan. The Committee notes the Government's indication that the work to solve this case continues. ***The Committee requests the Government to provide detailed information on all developments in this respect.***

Article 2 of the Convention. Right to establish organizations without previous authorization. The Committee recalls that following the entry into force of the Law on Trade Unions in 2014, all existent unions had to be re-registered. It recalls in this respect that the KNPRK affiliates were denied registration/re-registration, which ultimately led to the KNPRK's liquidation. The Committee further recalls the ITUC allegation of denials to register organizations, which previously formed the KNPRK, as well as the refusal to register the KSPRK (the name under which the successor of the KNPRK had last tried to re-register) and the Industrial Trade Union of Employees of the Fuel and Energy Sector. In its previous observation, the Committee had noted the Government's explanation that in the event that the registering authority (Ministry of Justice) identifies shortcomings, it issues a reasoned refusal. The Government further indicated that the KSPRK had received a reasoned refusal and that the Ministry of Labour and Social Protection of the Population (MLSPP) had held a series of meetings with the representatives of the Congress regarding the refusal to register it. The Government had pointed out that if the trade union in question rectified the indicated shortcomings, the Ministry of Justice stood ready to re-examine the application for registration. However,

according to the Government, the applicant had not yet addressed the relevant registering authority. Having duly noted the information provided by the Government, the Committee requested the Government to continue to provide information on the status of registration of the KSPRK and the Industrial Union of Employees of the Fuel and Energy Sector.

The Committee notes the ITUC indication that the KSPRK remains unregistered and that the Industrial Union of Employees in the Fuel and Energy Sector is undergoing a process of dissolution following a court decision dated 5 February 2021 to suspend its activities. The Committee further notes that the Government reiterates the information previously provided regarding the refusal to register the KSPRK and its predecessor and that the irregularities pointed out by the registering authority have not been addressed and no reapplication for registration has been submitted. The Government further indicates that by its decision of 6 May 2021, the civil and administrative appellate court decided not to change the verdict of the Shymkent special inter-district economic court of 5 February 2021 that the activities of the Industrial Union of Employees in the Fuel and Energy Sector should be suspended for six months. In order to resume its activities, the sectoral trade union was required, within six months of the court's February 2021 decision coming into effect, to resolve the irregularities regarding the numerical strength of its affiliates (subdivisions, member organizations) in territory covering more than half of the country's regions. As of August 2021, the union had not applied for registration of its affiliates. The Government also indicates that on 13 August 2021 Mr Kuspan Kosshygulov was appointed chairperson of the Union.

The Committee notes the Government's indication that there are currently three national trade union associations, 54 sectoral, 34 territorial and 365 local trade unions, which bring together around 3 million workers, or half of all the country's employees. Since the adoption of changes to the legislation in May 2020, one sectoral trade union (the "Byrlyk" union of workers in construction, housing and utilities, and transport, registered on 22 July 2021) and 37 local unions have been formed. The Government further indicates that a permanent working group exists to review areas of concern involving the registration of trade unions. Its members include representatives of the MLSPP, the Ministry of Justice and three national trade union associations (the FPRK, the Kazakhstan Labour Confederation and the "Amanat" Trade Union). While noting that new trade unions have been established and registered since the amendment of the legislation in 2020, the Committee observes that its longstanding concern regarding the registration of the KSPRK and the Industrial Union of Employees of the Fuel and Energy Sector is yet to be resolved. ***The Committee requests the Government to take the necessary steps for the resolution of the issue of registration of the KSPRK and the Industrial Union of Employees of the Fuel and Energy Sector so as to allow them to enjoy the full autonomy and independence of a free and independent workers' organization, to fulfil their mandate and to represent their constituents without further delay. The Committee further requests the Government to continue engaging with the social partners to review the difficulties identified by trade unions seeking registration with a view to finding appropriate measures, including legislative, to fully give effect to Article 2 of the Convention and to ensure the right of workers to establish organizations without previous authorization. It requests the Government to provide information on all progress made in this respect.***

With reference to the conclusions of the Conference Committee, the Committee encourages the Government to continue reviewing the application of the Law on the National Chamber of Entrepreneurs (NCE) in practice with the social partners to ensure that its provisions on accreditation of employers' organizations with the NCE do not hinder the right of employers' organizations to organise their administration and activities and to formulate their programmes.

Article 3. Right of organizations to organize their activities and to formulate their programmes. The Committee recalls that it had previously requested the Government to amend section 402 of the Criminal Code (2016), according to which an incitement to continue a strike declared illegal by the court was punishable by arrest for the duration of up to 50 days and in certain cases (substantial damage to rights and interest of citizens, mass riots, etc.) up to two years of imprisonment,

The Committee notes the Government's indication that on 9 June 2021, the President of the Republic signed a decree on further human rights measures to be taken in Kazakhstan following which, the Government approved a plan of urgent human rights-related measures, including in respect of the right to freedom of association. The Government points out, in particular, that with a view to implementing the ILO recommendations, the intention under the Plan is to work towards further changes to national legislation, including with a view to further reviewing section 402 of the Criminal Code. ***The Committee requests the Government to provide information on all steps taken thus far, and planned for the future, to review section 402 of the Criminal Code so as to ensure that simply calling for a strike action, even one declared illegal by the courts, does not result in detention or imprisonment.***

Article 5. Right of organizations to receive financial assistance from international organizations of workers and employers. The Committee had previously noted the Government's reference to its Ordinance No. 177 of 9 April 2018 "On the adoption of a list of international and state organizations, foreign and Kazakhstani non-governmental organizations and funds which can provide grants", which determined 98 international organizations allowed to provide grants to physical and legal persons in Kazakhstan. In this connection, the Committee welcomed the Government's indication that the MLSPP was ready to examine the possibility of including in that list the ITUC and the International Organisation of Employers if a request to that effect is made. The Committee notes that the Government reiterates its previous statement and indicates that any such request should outline the reasons and specific objectives and state the areas in respect of which the grants are provided. ***The Committee trusts that the list contained in the Ordinance will be amended, if need be upon the Government's initiative, to include international workers' and employers' organizations and requests the Government to provide information on the measures taken to that end.***

The Committee trusts that a direct contacts mission of the International Labour Office requested by the Conference Committee will take place as soon as the situation so permits.

Lebanon

Forced Labour Convention, 1930 (No. 29)

(Ratification: 1977)

Observation, 2021

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 2022, 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.

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 1 September 2018 and requests the Government to provide its comments in this respect.

Articles 1(1) and 2(1) of the Convention. Vulnerable situation of migrant domestic workers to conditions of forced labour. In its earlier comments, the Committee noted the observation of 2013 from the International Trade Union Confederation (ITUC), indicating that there are an estimated 200,000 migrant domestic workers employed in Lebanon. These workers are excluded from the protection of the Labour Law, have a legal status tied to a particular employer under the *kafala* (sponsorship) system, and legal redress is inaccessible to them. Moreover, they are subjected to various situations of exploitation, including delayed payment of wages, verbal, and sexual abuse. The Committee also requested the Government to take the necessary measures to ensure that the Bill regulating the working conditions of domestic workers, as well as the Standard Unified Contract (SUC) regulating their work are adopted in the very near future.

The Committee notes the Government's indication in its report that, the Bill regulating the working conditions of domestic workers was drafted in conformity with Domestic Workers Convention, 2011 (No. 189), and the Bill has been submitted to the Council of Ministers for discussion. The Bill will provide a certain number of safeguards, including social security coverage; decent accommodation; the timely payment of wages through bank transfer; hours of work (eight hours per day); sick leave; and a day of rest. The Government also indicates that a Steering Committee has been established under the Ministry of Labour in order to deal with issues related to migrant domestic workers and is composed of relevant Ministerial Departments, representatives of the private recruitment agencies, NGOs, certain international organizations, as well as representatives of certain embassies. A representative from the ILO Decent Work Technical Support Team in Beirut is also participating in the Steering Committee.

Moreover, the Government indicates that the Ministry of Interior and the Ministry of Labour have taken a series of preventive measures, including awareness raising campaigns through the media; the establishment of a shelter "Beit al Aman" for migrant domestic workers who are facing difficulties in collaboration with Caritas; the appointment of social assistants who look into the working conditions of migrant domestic workers in their workplaces; the training of labour inspectors on decent working conditions; and the conclusion of a series of Memoranda of Understanding (MOUs) with sending countries, such as the Philippines, Ethiopia and Sri Lanka. The Government further states that the Ministry of Labour has set up a specialized office for complaints and a hotline to provide legal assistance to migrant domestic workers. Moreover, under the Recruitment Agencies of Migrant Domestic Workers Decree No. 1/168 of 2015, it is prohibited to impose recruitment fees on all workers.

The Committee further notes that in its 2015 concluding observations, the UN Committee on the Elimination of Discrimination against Women (CEDAW) welcomed the various measures adopted by the State party to protect the rights of women migrant domestic workers, including issuing unified contracts, requiring employers to sign up to an insurance policy, regulating employment agencies, adopting a law criminalizing trafficking in persons and integrating such workers into the social charter and the national strategy for social development. The CEDAW, however, expressed concern that the measures have proved insufficient to ensure respect for the human rights of those workers. The CEDAW is equally concerned about the rejection by the Ministry of Labour of the application by the National Federation of Labour Unions to establish a domestic workers' union, the absence of an enforcement mechanism for the work contracts of women migrant domestic workers, limited access for those workers to health care and social protection and the non-ratification of the Domestic Workers Convention, 2011 (No. 189). The CEDAW was further concerned about the high incidence of abuse against women migrant domestic workers and the persistence of practices, such as the confiscation of passports by employers and the maintenance of the *kafala* system, which place workers at risk of exploitation and make it difficult for them to leave abusive employers. The CEDAW was deeply concerned about the disturbing documented reports of migrant domestic workers dying from unnatural causes, including suicides and falls from tall buildings, and about the failure of the State party to conduct investigations into those deaths (CEDAW/C/LBN/CO/4-5, paragraph 37).

While taking note of the measures taken by the Government, the Committee notes with ***concern*** that migrant domestic workers are subjected to abusive employer practices, such as retention of passports, non-payment of wages, deprivation of liberty and physical abuse. Such practices might cause their employment to be transformed into situations that amount to forced labour. ***The Committee therefore urges the Government to strengthen its efforts to provide migrant domestic workers with an adequate legal protection, by ensuring that the Bill regulating the working conditions of domestic workers will be adopted in the very near future and to provide a copy of the legislation, once adopted. The Committee also urges the Government to take the necessary measures to ensure that migrant domestic workers are fully protected from abusive practices and working conditions that amount to forced labour.***

Article 25. Penal sanctions for the exaction of forced labour. In its earlier comments, the Committee noted that according to the ITUC's information, it was found that a lack of accessible complaint mechanisms, lengthy judicial procedures, and restrictive visa policies dissuade many workers from filing or pursuing complaints against their employers. Even when workers file complaints, the police and judicial authorities regularly fail to treat certain abuses against domestic workers as crimes. The Committee also noted the Government's indication that section 569 of the Penal Code, which establishes penal sanctions against any individual who deprives another of their personal freedom, applies to the exaction of forced labour. It requested the Government to provide information on any legal proceedings which had been instituted on the basis of section 569 as applied to forced labour and on the penalties imposed.

The Committee further notes that in its 2015 concluding observations, the CEDAW observed that migrant domestic workers face obstacles with regard to their access to justice, including fear of expulsion and insecurity of residence.

The Committee notes the Government's indication that the work of migrant domestic workers is regulated by the SUC and that the application of section 569 of the Penal Code is of the competency of the judiciary when a violation is detected. The Committee also notes copies of court decisions provided by the Government. It observes that the cases are related to non-payment of wages, harassment and working conditions of migrant domestic workers. In all cases employers have been sentenced to pay a monetary penalty to compensate the workers.

While noting this information, the Committee recalls that *Article 25* of the Convention provides that the exaction of forced labour shall be punishable as a penal offence. ***The Committee therefore urges the Government to take the necessary measures to ensure that employers who engage migrant domestic workers in situations amounting to forced labour are subject to really adequate and strictly enforced penalties. It requests the Government to provide information on measures taken in this regard.***

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

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

Liberia

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

(Ratification: 1962)

Observation, 2021

The Committee notes the observations made by the African Regional Organisation of the International Trade Union Confederation (ITUC-Africa), received on 31 August 2021, denouncing the dissolution of a trade union by a state-owned company; the use of police force to break up peaceful strikes; and the arrest of union leaders and wrongful dismissal of workers for their participation in strike actions. ***The Committee requests the Government to provide its comments in this regard.***

The Committee had previously noted the observations made by the National Health Workers' Union of Liberia (NAHWUL), received on 1 October 2020, alleging the Government's failure to grant it legal recognition, which it considered even more detrimental in the context of the COVID-19 pandemic, as well as infringements of the right to strike. The Committee notes the Government's reply that, since 2018, the Ministry of Health has given functional acceptance of NAHWUL as a body representing its members, pending the revision of appropriate national laws. The Government states that this has entailed the reinstatement to employment of the NAHWUL leadership, their integration into decision making and privileges such as study opportunities, and their involvement in the monitoring of the conditions of health workers around the country, with provision of logistical and other support. ***The Committee requests the Government to provide additional information as to other pending allegations raised in NAHWUL's observations and, recalling the recommendations of the Committee on Freedom of Association concerning case No. 3202 [see Report No 384, paragraph 387], to inform on the specific steps taken to ensure that this organization can be granted full legal recognition without further delay.***

Scope of application. In its previous comments, the Committee had noted that section 1.5(c)(i) and (ii) of the Decent Work Act of 2015 (the Act) excluded from its scope of application work falling within the scope of the Civil Service Agency Act. The Committee had previously noted the Government's indication in 2012 that the legislation guaranteeing the right of public employees to establish trade unions (the Public Service Ordinance) was being revised with the technical assistance of the Office and had requested it to report on any developments in this regard. The Committee notes the Government's indication that the employees of state enterprise are already being represented by unions of their choosing, and that other public servants, including public defenders and prosecutors, have their collective bodies that seek their wellbeing and articulate their interests without seeking to be described as unions. The Committee further notes the Government's acknowledgement that the Act does not cover workers in the mainstream public sector and indicates that a national labour conference was convened in 2018 to create a framework for the harmonization of the Act and the Civil Service Standing orders. ***Recalling that all workers, with the sole possible exception of the police and the armed forces, are covered by the Convention, the Committee requests the Government to provide specific information on developments in this regard and to detail what legal provisions ensure that public sector workers enjoy the rights and guarantees set out in the Convention, including provisions drafted or envisaged for enactment and the time frame expected for such enactment.***

The Committee had noted that section 1.5(c)(i) and (ii) of the Act also exclude from its scope of application, officers, members of the crew and any other persons employed or in training on vessels. The Committee had therefore requested the Government to indicate how the rights enshrined in the Convention are ensured to maritime workers, including trainees, and to indicate any laws or regulations adopted or envisaged covering this category of workers. The Committee notes the Government's indication that Liberia's Maritime Regulations 10-318.3, addressed to accommodation and recreational facilities, incorporate by reference the terms of the Maritime Labour Convention (MLC) as inherent parts of the conditions of work on flagged vessels and that a further review of how these provisions are applied in practice is planned in line with the report on the MLC, which is due in 2022. ***Noting that the Government has not provided the specific information requested regarding how the particular rights enshrined in the Convention are ensured to maritime workers, the Committee once again requests that the Government provide detailed information as to how, both in law and in practice, these particular rights are ensured to maritime workers, including trainees.***

Article 1 of the Convention. Right of workers, without distinction whatsoever, to establish organizations. The Committee had noted that section 2.6 of the Act provided that all employers and workers, without distinction whatsoever, may establish and join organizations of their own choosing without prior authorization, and subject only to the rules of the organization concerned, and that section 45.6 of the Act recognized the right of foreign workers to join organizations. The Committee had requested the Government to indicate whether, in addition to the right to join organizations, foreign workers are entitled to establish organizations of their own choosing. The Committee notes the Government's indication that the right to establish organizations exists for foreign workers, that there is no prohibition to the establishment of bodies solely composed of foreign workers or foreign employers and it refers in this respect to existing bodies like the World Lebanese Cultural Union and the Indian Community, although adding that these consist of both employers and employees and give attention to issues affecting the wellbeing of people of their nationality in general. ***Having duly noted this information, the Committee requests the Government to take any necessary measures, including through the amendment of section 45.6 of the Act, to ensure that the right to establish organizations to defend their occupational interests is fully recognized to foreign workers both in law and in practice, as well as to provide information on any developments in this regard.***

Article 3. Determination of essential services. The Committee had noted that the National Tripartite Council (established under section 4.1 of the Act) has the function to identify and recommend to the Minister services that are to be considered essential, which are those that in the opinion of the National Tripartite Council, if interrupted, would endanger the life, personal safety or health of the whole or any part of the population (section 41.4(a) of the Act). The Committee had further noted that upon considering the recommendations of the National Tripartite Council, the President decides whether or not to designate any part of a service as an essential service and publishes a notice of the designation of that essential service in the *Official Gazette* (section 41.4(c) of the Act), and in making this decision, the President is neither bound by nor obliged to follow the recommendations of the National Tripartite Council (section 41.4(d) of the Act). The Committee had therefore requested the Government to indicate whether, in determining which services are considered essential, the President is bound by the definition of the notion of essential services set out in section 41.4(a) of the Act, and had also requested the Government to provide information on how the designation of essential services (section 41.4 of Act) has operated in practice. The Committee notes the Government's indication that since the Act took full effect in 2018, the nation has been gradually setting up its required structures and instituting its full provisions, and that the formal designation of essential services is one of those tasks that is subject to the recommendation of the National Tripartite Council, which is yet to occur. The Committee notes that the Government emphasizes that placement of industries or workers in different categories as a method of epidemic response or control should not be perceived as a designation of essential services within the context of section 41.1 of the Act. ***The Committee requests the Government to continue to provide information on any developments with regard to the designation of essential services by the National Tripartite Council and how such designation operates in practice, as well as to clarify whether the President is also bound by the definition of the notion of essential services set out in section 41.4(a) of the Act (services the interruption of which would endanger the life, personal safety or health of the whole or any part of the population of Liberia), and to provide information on any presidential decisions concerning the designation of essential services and how such designation operates in practice.***

Malawi

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

(Ratification: 1965)

Observation, 2021

The Committee notes the observations of the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) received on 30 August 2021 concerning women workers on tea plantations and in agriculture.

Article 1(1)(a) of the Convention. Discrimination based on sex. Sexual harassment. In its previous observation, the Committee asked the Government to: (1) amend section 6(1) of the Gender Equality Act (GEA) of 2013 to ensure that the term "reasonable person" in the definition of sexual harassment no longer refers to the harasser, but to an outside person; (2) provide information on the measures adopted pursuant to section 7 of the GEA to ensure that employers have developed and are implementing appropriate policies and procedures aimed at eliminating sexual harassment in the workplace; and (3) take steps to address sexual harassment in the public service, including the provision of adequate reporting procedures, remedies and sanctions. In addition, the Committee encouraged the Government to consider conducting awareness-raising campaigns, in cooperation with workers' and employers' organizations, focusing specifically on sexual harassment in employment and occupation. The Committee notes that in its report the Government indicates that the Department of Human Resource Management and Development (DHRMD), in partnership with Ministry of Gender, is in the process of developing a Sexual Harassment Workplace Policy pursuant to section 7 of the GEA. In addition, the DHRMD has conducted awareness-raising campaigns on sexual harassment in some ministries, departments and agencies, such as agriculture, defence, competition and fair trade, and district councils. The Committee also notes from the submissions of the Working Group on the Universal Periodic Review (UPR) carried out under the auspices of the United Nations, that the National Human Rights Commission stated that violence against women continues to resurface in the county (A/HRC/WG.6/36/MWI/3, 28 February 2020, paragraph 6).

The Committee notes from the observations of the IUF that, on 6 April 2021, the National Human Rights Commission announced that it would embark on an exercise to audit all public and private institutions on their compliance with the provisions of the GEA and ensure that they have workplace policies on sexual harassment. The IUF also states that, in December 2019, a London-based law firm filed a case on behalf of 36 Malawian women alleging that they had been subjected to gender-based violence and harassment (including rape and sexual harassment) while working on tea estates in Mulanje and Thyolo districts. In March 2021, the same law firm filed another complaint in London's High Court concerning 22 instances of sexual harassment, 13 instances of sexual assault, 11 instances of coerced sexual relations and 10 instances of rape on tea plantations and macadamia nut orchards in southern Malawi. These alleged cases happened between 2014 and 2019. The IUF states that the Malawian tea industry is the country's biggest private sector employer, employing 50,000 workers, of whom 30 per cent are women, who are mainly employed as seasonal workers. It emphasizes that the fact that the workers' complaint was made public and dealt with through a law firm based in the United Kingdom indicates that the established procedures in Malawi at the local and national levels are inadequate for victims of gender-based violence in the workplace who are seeking to achieve justice and to ensure an end to sexual harassment on tea estates.

The IUF refers to a meeting convened on 7 April 2021 with its affiliates in Malawi to discuss these cases. Subsequently, an IUF affiliate, the Plantations and Agricultural Workers Union (PAWU), met the Tea Association of Malawi Limited (TAML) and agreed to investigate cases of sexual harassment on tea plantations. Eleven managers and supervisors who were found to be involved in sexual harassment cases were dismissed. The IUF also states that its affiliates are currently working on awareness-raising activities to tackle sexual harassment on tea plantations. According to the IUF, the existing legal framework, as well as current initiatives that aim to stop gender-based violence, are not sufficient to eradicate the systemic problem of gender-based violence and sexual harassment on tea plantations. The IUF reports that male supervisors abuse their position of power (for example, hiring rights, allocation of tasks) and use it to demand sexual favours from women and/or to commit violence, especially on women employed under seasonal, and hence precarious, contracts. The IUF believes that women workers in agriculture and other sectors are also subject to sexual harassment. ***Noting with serious concern the gravity of these allegations, the Committee requests the Government to provide its comments in this respect and expresses the firm hope that the Government will consider requesting technical assistance to address the matters raised by the IUF. The Committee urges the Government to: (i) undertake, in cooperation with the organizations of workers and employers, an evaluation of the existing legal framework on sexual harassment and, in particular, to amend the definition of sexual harassment in section 6(1) of the Gender Equality Act of 2013 to explicitly include hostile work environment harassment; (ii) identify the initiatives taken to date to prevent and address sexual harassment in the public and private sectors, and the procedures and remedies available to victims, with a view to identifying existing gaps and risk factors and designing effective interventions to strengthen the protection of women workers against sexual harassment; (iii) provide information on the results of the evaluation and the actions envisaged as a follow-up; (iv) increase the capacity of the competent authorities, including labour inspectors, to prevent, identify and address cases of sexual harassment in employment and occupation, including on tea plantations; (v) continue undertaking awareness-raising campaigns in collaboration with the social partners; (vi) provide information on the adoption of the Sexual Harassment Workplace Policy pursuant to section 7 of the Gender Equality Act and its implementation; and (vii) consider amending section 6(1) of the Gender Equality Act to ensure that the term "reasonable person" in the definition of sexual harassment no longer refers to the harasser, but to an outside person.***

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

[The Government is asked to supply full particulars to the Conference at its 110th Session and to reply in full to the present comments in 2022.]

Malaysia

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

(Ratification: 1961)

Observation, 2021

The Committee notes the observations of the Malaysian Trades Union Congress (MTUC), received on 30 August 2019, denouncing violations of the Convention in practice, including numerous instances of anti-union discrimination, employer interference and violations of the right to collective bargaining in a number of enterprises. The Committee further notes that specific violations of the Convention in practice were also previously denounced in the 2016, 2017 and 2018 observations of the International Trade Union Confederation (ITUC) and the 2015 MTUC observations and ***regrets*** that the Government has not yet provided its reply to these concerns. ***The Committee requests the Government to take the necessary measures to address all of the above allegations, in particular to ensure that allegations of anti-union discrimination and interference are rapidly investigated, that effective remedies are ordered and that sufficiently dissuasive sanctions are imposed on the perpetrators. The Committee trusts that the Government will be in a position to provide detailed information in this regard.***

Ongoing legislative reform. The Committee previously noted that a holistic review of the main labour laws (including the Employment Act, 1955, the Trade Union Act, 1959 and the Industrial Relations Act, 1967 (IRA)) was ongoing in the country. The Committee welcomes the Government's indication that it has been working closely with the Office in the labour law review and that the IRA has been amended through the Industrial Relations (Amendment) Act, 2020, with effect from January 2021. The Committee will address the amendments to the IRA in more detail below. It further notes the Government's statement that the Employment Act and the Trade Union Act are currently undergoing the due processes to be amended and tabled at the Parliament. ***The Committee trusts that the Government's continued cooperation with the Office will facilitate the review of the Employment Act and the Trade Union Act and contribute to achieving full conformity of these laws with the Convention. The Committee requests the Government to provide information on any developments in this regard.***

Article 1 of the Convention. Adequate protection against anti-union discrimination. Effective remedies and sufficiently dissuasive sanctions. In its previous comment, the Committee requested the Government to provide detailed information on the general remedies effectively imposed for acts of anti-union discrimination dealt with through sections 5 and 8 of the IRA (referral of a complaint to the Director-General or to the Industrial Court and used in the vast majority of reported anti-union discrimination cases), as well as the sanctions and measures of compensation in relation to anti-union discrimination acts under section 59 of the IRA (a process before a criminal court with a higher standard of proof (beyond reasonable doubt), explicitly providing for penal sanctions and the possibility of reinstatement, but only used in less than 6 per cent of reported cases). In light of that information, the Committee requested the Government to take any necessary measures to ensure that the rules and procedures relating to anti-union discrimination afford adequate protection, without placing on victims a burden of proof that constitutes a major obstacle to establishing liability and ensuring an appropriate remedy.

The Committee notes that, with a view to expediting the procedure with respect to anti-union discrimination, the Government indicates that under section 8 as amended, the Director-General of Industrial Relations may take any steps or make enquires to resolve the matter and if not solved, may, if he/she thinks fit, refer the matter directly to the Industrial Court without having to first refer the matter to the Minister. The Committee observes however that the Director-General would appear to retain certain discretion in this regard and it is not evident on what basis the decision not to refer a case would be made. As regards effective remedies for anti-union discrimination, the Committee notes the Government's indication that the amendments to section 30(6A) of the IRA allow the Industrial Court to have at its disposal a full range of remedies to be awarded to a worker dismissed for anti-union reasons. In this respect, the Committee further observes with ***interest*** that: (i) section 33B of the IRA, as amended, stipulates that an award of the Industrial Court for reinstatement or reemployment of a worker may not be subject to a stay of proceedings by any court; and (ii) pursuant to new section 33C, a worker dissatisfied with an award of the Industrial Court may appeal to the High Court within 14 days of receiving the award, suggesting that the Industrial Court's decision will be subject to appeal on facts and law. While welcoming these amendments, the Committee observes that the Government does not provide information on the remedies imposed in practice for acts of anti-union discrimination dealt with through section 8 of the IRA, nor on the sanctions and measures of compensation awarded in practice for anti-union discrimination acts under section 59 of the IRA. ***The Committee therefore requests the Government once again to: (i) provide detailed information on the general remedies imposed in practice for acts of anti-union discrimination dealt with through sections 5, 8 and 20 of the IRA, whether by the Director-General or the Industrial Court, especially in view of the above amendments to the relevant provisions, as well as on the sanctions and measures of compensation awarded in practice in relation to anti-union discrimination acts under section 59 of the IRA; (ii) in light of this information, to take any necessary measures to ensure that workers who are victims of anti-union discrimination can lodge a complaint directly before the courts in order to access expeditiously adequate compensation and the imposition of sufficiently dissuasive sanctions and recalls its recommendation to consider reversal of the burden of proof once a prima facie case is made; and (iii) to provide information on the average duration of the proceedings under section 8 of the IRA, in view of the amendments to expedite the process, as well as on the number of cases in which the complaint was resolved by the Director-General, as opposed to instances referred to the Industrial Court.***

Articles 2 and 4. Trade union recognition for purposes of collective bargaining. Criteria and procedure for recognition. Exclusive bargaining agent. The Committee recalls that under section 9 of the IRA, when an employer rejects a union's claim for voluntary recognition for the purpose of collective bargaining, the union has to inform the Director-General who should take appropriate action, including a competency check through a secret ballot, to ascertain whether the union has secured the required ballot (50 per cent plus one) of the workers or class of workers, in respect of whom recognition is being sought. Having observed the concerns raised by the MTUC and the ITUC in this regard (the use of the total number of workers on the date of the request and not at the time of the ballot, leading to large discrepancies, as well as the lack of protection against employer interference in the secret ballot procedure), the Committee requested the Government to take the necessary steps to ensure that the recognition process provides safeguards to prevent acts of interference and that if no union reaches the required majority to be declared the exclusive bargaining agent, minority trade unions should be able to negotiate, jointly or separately, at least on behalf of their own members.

The Committee notes the Government's indication that: (i) the recognition process was reviewed, in consultation with the social partners, and is, in the Government's view, adequate; (ii) concerns pertaining to the formula currently used for the secret ballot have been acknowledged and will be reviewed subject to consultations and views from stakeholders through the National Labour Advisory Council; (iii) a simple majority is a minimum requirement which will be maintained in order for a trade union to become exclusive bargaining agent and the social partners agree with it; and (iv) the Government continuously takes the necessary steps to ensure that the recognition process provides safeguards to prevent acts of interference and the parties may lodge a complaint in case of interference under section 8 and 18 of the IRA. The Committee observes in this regard that the main amendments to section 9 relate to expediting the process, addressed in more detail below, and to clarifying that, in case of refusal to grant recognition by the employer: (i) the Director-General shall ascertain the scope of membership of the trade union on the date of the claim, whether it is in accordance with the union's constitution (instead of ascertaining the competence of the trade union to represent the workers concerned, as previously stipulated by the IRA); and (ii) by way of secret ballot, the Director-General, shall ascertain the percentage of workers, in respect of whom recognition is being sought, who indicate support for the trade union making the claim (instead

of ascertaining the percentage of workers who are members of the trade union making the claim, as previously stipulated). While taking due note of the above, the Committee observes that the Government does not provide details as to the steps it indicates it is taking to ensure safeguards against employer interference during the recognition process and understands from the Government's report that the formula used in the secret ballot by the Director-General to ascertain the percentage of workers who support the union, in case of employer's refusal to grant recognition (denounced by the MTUC and the ITUC), needs to be further reviewed. It observes that the Committee on Freedom of Association also examined allegations of employers' refusal to recognize trade unions as collective bargaining agents and the weaknesses of the existing secret ballot process and referred the legislative aspect of the case to this Committee (see Case No. 3334, 391st Report, October 2019, paragraphs 374 and 382 and 393rd Report, March 2021, paragraphs 28 and 31). The Committee wishes to recall in this regard that the recognition procedure should seek to assess the representativeness existing at the time the ballot vote takes place to take into consideration the actual size of the workforce in the bargaining unit and that the process should provide safeguards to prevent acts of employer interference. ***In line with the above, the Committee trusts that any further necessary amendments will be made to the secret ballot process, in consultation with the social partners, so as to effectively address the concerns raised by the trade unions in this respect, and to ensure that the recognition process as a whole, regarding both the initial employer response and the verification procedure with the Director-General, provides safeguards to prevent acts of employer interference. The Committee trusts that the amendments already made to the recognition process will contribute to these efforts and requests the Government to indicate their effect in practice. The Committee further requests the Government to provide additional details on the steps the Government indicates it is taking to ensure sufficient safeguards against employer interference in the recognition process.***

The Committee further observes, in relation to the recognition procedure and the right to collective bargaining, that additional amendments were made to the IRA, but are not yet in force, adding new section 12A relating to exclusive bargaining rights. The Committee understands that this provision was introduced to govern situations where more than one trade union obtains recognition for the purpose of collective bargaining and provides for a procedure to determine which trade union will benefit from the exclusive bargaining rights to represent the workers (agreement among the unions or determination by the Director-General, including through a secret ballot based on the highest number of votes). ***Noting in this regard the Government's general indication that simple majority is a requirement for a trade union to become an exclusive bargaining agent but observing that the law does not make reference to this threshold, the Committee requests the Government to specify the manner in which collective bargaining rights are granted and exercised when no trade union has reached the 50 per cent requirement once section 12A comes into force and to provide information on its application in practice. In this regard, the Committee also requests the Government to indicate whether in situations where no union is declared the exclusive bargaining agent, collective bargaining can be exercised, jointly or separately, by all unions in the unit, at least on behalf of their own members.***

Duration of recognition proceedings. In its previous comment, the Committee requested the Government to provide additional information on the administrative and legal actions undertaken by the Department of Industrial Relations to expedite the recognition process and to take any necessary measures to further reduce the length of proceedings. The Committee notes the Government's indication that the amendments to the IRA confer the powers to determine the matters related to the recognition of trade unions previously vested in the Minister of Human Resources to the Director-General of Industrial Relations, thus expediting the dispute resolution processes relating to claims for recognition by trade unions. ***Welcoming these amendments, the Committee requests the Government to indicate the effect they have on the recognition procedure, in particular to indicate the average duration of the process, both for voluntary recognition and for instances where recognition is determined by the Director-General. Further observing that section 9(6) of the IRA providing for the final nature of the decision on recognition by the Director-General has been deleted, the Committee requests the Government to indicate whether such decision may now be appealed by the concerned union or the employer.***

Migrant workers. In its previous comment, the Committee welcomed the Government's statement that current laws do not prohibit foreign workers from becoming trade union members but observed that the Government did not provide any information on the announced legislative amendment to enable non-citizens to run for election for union office if they have been legally residing in the country for at least three years or in response to a series of concerns that had been previously noted by the Committee. The Committee ***regrets*** that the Government's report is limited to reiterating that foreign workers are eligible to becoming members of a trade union and to hold trade union office upon approval of the Minister, if it is in the interest of such union (a condition which, in the Committee's views, hinders the right of trade union organizations to freely choose their representatives for collective bargaining purposes) and does not elaborate on any of the concerns previously raised on limitations on collective bargaining of migrant workers in practice. The amendments to the IRA also do not seem to address these issues. ***The Committee therefore reiterates its request to the Government to take the necessary measures to ensure the full utilization of collective bargaining by migrant workers, including as to enabling foreign workers to run for trade union office, and to provide information on any developments in this regard, whether legislative or other.***

Scope of collective bargaining. In its previous comment, the Committee expressed firm hope that section 13(3) of the IRA would be amended in the near future to remove its broad restrictions on the scope of collective bargaining (restrictions with regard to transfer, dismissal and reinstatement, some of the matters known as "internal management prerogatives"). The Committee notes the Government's indication that while section 13(3) was retained during the labour law reform, so as to maintain industrial harmony and speed up the collective bargaining process, the provision is not obligatory in that, if both parties agree, they may negotiate the subject matters stipulated therein. The Government adds that additional amendments were introduced to section 13(3) of the IRA, allowing trade unions to raise questions of a general character relating to transfers, termination of services due to redundancy, dismissal, reinstatement and assignment or allocation of work. While welcoming these amendments, the Committee considers that it remains unclear how the possibility to raise questions of a general character on matters that are within the scope of legislative restrictions on collective bargaining would be articulated in practice. ***The Committee therefore requests the Government to indicate the practical implications of the amendment of section 13(3) of the IRA on the scope of collective bargaining, in particular to clarify the meaning of the new wording – questions of a general character. While further noting the Government's indication that the parties may, if they agree, negotiate the matters prohibited by section 13(3) of the IRA, the Committee invites the Government to consider lifting the broad legislative restrictions on the scope of collective bargaining, so as to promote the right to bargain freely between the parties, without any intervention by the Government.***

Compulsory arbitration. In its previous comment, the Committee noted that section 26(2) of the IRA allows compulsory arbitration by the Minister of Labour of his own motion in case of failure of collective bargaining and expressed hope that the Government would take any necessary measures to ensure that the legislation only authorizes compulsory arbitration in essential services in the strict sense of the term, for public servants engaged in the administration of the State or in cases of acute national crisis. The Committee notes the Government's statement that amendments have been made to section 26(2) of the IRA, enabling trade unions to engage freely and voluntarily in collective bargaining, except in certain situations, but that this provision is not yet enforced. The Committee observes, in particular, that pursuant to the new wording of section 26(2) of the IRA, the Minister may of his/her own motion refer any trade dispute to the court if satisfied that it is expedient to do so provided that where the trade dispute relates to a refusal to commence collective bargaining or a deadlock in collective bargaining, reference to the court shall not be made without the consent in writing of the parties, unless: (a) the trade dispute relates to the first collective agreement; (b) the trade dispute refers to any essential services specified in the First Schedule; (c) the trade dispute would result in acute crisis if not resolved expeditiously; or (d) the parties to the trade dispute are not acting in good faith to resolve the trade dispute expeditiously. The Committee notes with ***interest*** that the amendments made restrict compulsory arbitration to instances generally compatible with the Convention, except to the extent that the

reference in section 26(2) to “any Government service” and “the service of any statutory authority”, as well as the reference to a number of Government services in point 8 of the First Schedule, may go beyond what can be considered as public servants engaged in the administration of the State, and point 10 of the First Schedule, which considers as essential services businesses and industries connected with the defence and security of the country (while the armed forces may be exempt from the provisions of the Convention, businesses and industries connected with them should be afforded the full guarantees of the Convention). ***In line with the above, the Committee trusts that these amendments will enter into force without delay and invites the Government to continue to engage with the social partners with a view to: (i) further delimiting the categories of Government services in section 26(2) and point 8 of the First Schedule, so as to ensure that compulsory arbitration may only be imposed on those public servants engaged in the administration of the State; and (ii) removing businesses and industries mentioned in point 10 of the First Schedule from its the scope of application.***

Restrictions on collective bargaining in the public sector. The Committee has for many years requested the Government to take the necessary measures to ensure for public servants not engaged in the administration of the State the right to bargain collectively over wages and remuneration and other working conditions and emphasized that simple consultations with unions of public servants not engaged in the administration of the State did not meet the requirements of *Article 4* of the Convention. The Committee notes that the Government, on the one hand, asserts that it has taken the necessary measures to ensure that public officers are given fair opportunities to collectively bargain over wages and remuneration and other working conditions, in conformity with *Article 4* of the Convention, subject to the applicable laws and regulations governing the employment of civil servants, and on the other hand, reiterates that collective bargaining is done through the National Joint Council and the Departmental Joint Council, as stipulated in Service Circular No. 6/2020 and Service Circular No. 7/2020, or through direct engagement with the Government. While taking due note of the above, the Committee observes that the Government does not provide any details as to the content of the Circulars or the measures it indicates it has taken to ensure that public officers are given fair opportunities to collectively bargain, that section 52 of the IRA explicitly excludes workers employed by the Government or any statutory authority from the collective bargaining machinery of the Act and that it, therefore, remains unclear what precise substantial changes were made to the existing regime of collective bargaining in the public sector. ***In line with the above, the Committee requests the Government to provide further information in this respect, in particular to: (i) indicate the concrete changes made to the existing regime of collective bargaining in the public sector; (ii) to specify the content of Service Circular No. 6/2020 and Service Circular No. 7/2020 or any other applicable legal provisions, which, according to the Government, ensure that public servants can bargain collectively in conformity with Article 4 of the Convention; and (iii) provide information on collective bargaining undertaken in the public sector and any agreements concluded.***

Collective bargaining in practice. In its previous comment, the Committee requested the Government to provide statistical information in relation to collective bargaining in the country. The Committee notes that the Government refers to statistical information by the Industrial Court but observes that no such information has been provided. It further notes that the Government points to additional measures taken to promote the full development and utilization of collective bargaining under the Convention, including engagement sessions with the social partners during the process of legislative amendments and industrial visits conducted to workplaces to promote industrial harmony. The Committee notes, however, the concerns expressed by the MTUC as to the low percentage of workers covered by collective agreements (1 to 2 per cent) and the declining level of trade union density (6 per cent). ***The Committee encourages the Government to continue to provide statistical information on the number of collective agreements concluded and in force, the sectors concerned and the number of workers covered by these agreements, as well as on any additional measures undertaken to promote the full development and utilization of collective bargaining under the Convention.***

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

Maldives

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

(Ratification: 2013)

Observation, 2021

The Committee notes the observations of the Maldivian Trade Union Congress (MTUC), received on 26 September 2021, denouncing the absence of a legal framework to enforce the rights guaranteed by the Convention, resulting in the impossibility to freely join trade unions and exercise union activities. The MTUC also alleges threats and interference in union affairs by State authorities. ***The Committee requests the Government to provide its comments on the MTUC observations.***

Legislative framework. In its previous comment, the Committee requested the Government to take the necessary measures to achieve the adoption of the draft Industrial Relations Act and ensure its full conformity with the Convention. The Committee notes the Government's indication that the adoption of the Industrial Relations Bill has been included in the Government's Strategic Action Plan 2019-2023 as a priority, that it continues to be reviewed for alignment with international obligations and that it is expected to be sent to the Parliament for final decision and adoption in the near future. The Government states that the Bill provides for registration of workers' and employers' organizations, effective mechanisms for resolving industrial disputes and the establishment of a Tripartite Labour Dialogue Forum to foster co-operation on labour issues. The Government further informs that the Associations Bill, which was drafted through a consultative process with the relevant stakeholders and which seeks to align the protection of the right to freedom of association with the principles of the Convention (right to participate in associations, registration, dissolution, etc.) was submitted to the Parliament in October 2019. The Committee notes however the concerns raised by the MTUC in relation to the legislative reform that: (i) despite ILO technical assistance since 2013, the Industrial Relations Bill has not yet been adopted and workers' associations were not consulted in its elaboration; and (ii) the Associations Bill does not cover trade union formation and trade union rights should be protected in the Industrial Relations Bill. The Committee further notes that the Committee on Freedom of Association (CFA), when examining Case No. 3076 concerning the Maldives: (i) observed with deep concern allegations that the Government's systematic failure to ensure effective protection of trade union rights both in law and in practice led to a denial of the right to freedom of association to workers in the country, including denial of freedom of assembly, enforced by the police; and (ii) requested the Government to take the necessary legislative and enforcement measures, in consultation with the social partners concerned, to address those allegations and to ensure that protection for trade union rights, in particular the right to freedom of assembly, is fully guaranteed both in law and in practice and referred the legislative aspects of the case to this Committee (see Case No. 3076, 391st Report, October 2019, paragraphs 410 and 412(h); 395th Report, June 2021, paragraphs 282 and 283). ***In view of the above and recalling that the Industrial Relations Bill and the Associations Bill have been pending adoption for several years, the Committee expects that they will be adopted without delay, following meaningful consultation with workers' and employers' organizations, and will address all of the Committee's observations below so as to ensure their full conformity with the Convention and contribute to the promotion of freedom of association in the country. The Committee invites the Government to continue to avail itself of the technical assistance of the Office, should it so desire, and requests it to provide a copy of the amended laws once adopted.***

Pending the adoption of the above Bills and emphasizing the desirability of establishing a comprehensive legislative framework regulating collective labour relations, the Committee has been examining the legislation currently in force, taking into account the legislative proposals indicated by the Government.

Associations Act, 2003

Article 2 of the Convention. Right of workers and employers, without distinction whatsoever, to establish organizations. The Committee previously requested the Government to take the necessary measures to amend section 6(b) of the Associations Act, so as to allow minors who have reached the minimum legal age for admission to employment (16 years) to be able to exercise their trade union rights. The Committee notes the Government's indication that deliberations are ongoing at the Committee stage of the Parliament to allow minors who have attained the legal age of employment under the Child Rights Protection Act, 2019 to be able to exercise trade union rights under the new Associations Bill. ***The Committee expects the proposed legislative amendments to ensure that minors who have attained the legal age of employment will be able to exercise their trade union rights.***

Right to establish organizations without previous authorization. In its previous comment, the Committee requested the Government to take the necessary measures to amend section 9(a) of the Associations Act to limit the discretionary power of the Registrar to refuse the establishment of an organization. The Committee notes the Government's statement that section 34(a) of the new Associations Bill obliges the Registrar to accept any names that do not fall within the situations listed in the section and that administrative decisions are subject to judicial review. ***Observing that the Government does not provide any details as to the permitted grounds for rejecting a proposed name under section 34(a) of the Associations Bill, the Committee expects these to be sufficiently restrictive so as to limit the Registrar's discretionary power, ensuring that registration is a mere formality and does not amount to a previous authorization contrary to Article 2 of the Convention.***

The Committee further requested the Government to take the necessary measures to amend section 37(b) of the Associations Act to ensure that the exercise of legitimate trade union activities is not dependent upon registration and is not subject to penalties. The Committee welcomes the Government's indication that section 37(b) will be repealed in the new Bill, which does not prohibit the operation of unregistered associations.

The Committee also requested the Government to provide statistics on the number of workers' and employers' organizations registered, the sectors and the number of workers covered. The Committee notes that the Government provides a list of registered associations in the social, recreational and sports domains, without however specifying whether some of them are associations of workers and employers, and further indicates that an NGO portal is being developed to enhance data collection and extraction. The Committee observes that the MTUC contends that the Government does not have a mechanism to collect data on workers' organizations and that the NGO portal will not solve this issue. ***The Committee encourages the Government to take the necessary measures to enable collection of data on the number of workers' and employers' organizations registered in the country, the sectors in which they are active and the number of workers covered, and requests it to provide statistics in this regard.***

Right of workers and employers to establish organizations of their own choosing. In its previous comment, the Committee requested the Government to provide information on whether workers and employers, engaged in more than one occupation or sector, could join more than one organization. The Committee welcomes the Government's clarification that they can and that there are no legislatives bars to such activities.

Article 3. Freedom to elect representatives. The Committee previously requested the Government to take the necessary measures to amend section 24 of the Associations Act so as to ensure that minors who are eligible for employment are also eligible for trade union office. The Committee notes the Government's indication that deliberations are ongoing to allow minors eligible for employment to exercise trade union rights under the new Associations Bill. ***The Committee expects the proposed legislative amendments to ensure that minors who have attained the legal age of employment will be able to exercise their trade union rights, including the right to be eligible for trade union office.***

The Committee further notes that the Government informs that under the new Associations Bill, a person cannot become a member of the executive committee of an association if they are already an executive committee member of another association. ***Recalling that such restrictions can unduly infringe the right of organizations to elect representatives in full freedom by preventing qualified persons from holding trade union office if they are***

already engaged in a similar position in another association, the Committee requests the Government to take the necessary measures to review the relevant provisions of the Associations Bill so as to allow persons to hold trade union office in more than one association, subject only to the statutes of the organizations concerned.

Right to organize administration and activities and to formulate programmes. In its previous comment, having noted that the Associations Act contained a number of provisions which regulate in detail the internal functioning of associations (sections 5(f), 10, 11, 14(b), 18, 23 and 31), the Committee requested the Government to take the necessary measures to amend these provisions. The Committee welcomes the Government's indication on the proposed amendments to sections 10 and 11 (changes to the association's name), 18 (changes to an association's governing regulations) and 31 (voluntary winding-up of associations), which remove detailed regulation and limit the discretionary powers of the Registrar in relation to some aspects of the internal functioning of associations. ***Observing, however, the Government's statement that sections 5(f) (stipulating that any money or property of the association after its dissolution will be given away to another non-profit association or to a government-approved charity) and 23 (providing detailed instructions on how to address debts of an association) have not been substantively changed, the Committee reiterates its request in this regard.***

The Committee further requested the Government to indicate the necessary prerequisites for a workers' or employers' association to be able to receive foreign assistance in line with section 22 of the Associations Act. The Committee notes the Government's clarification that it is section 34 of the Associations Regulation, 2015 that stipulates the prerequisites to receive foreign assistance by associations (approval from the Registrar before seeking and accepting assistance from foreign parties and submission of documents with details on the party seeking foreign assistance, the party providing assistance, as well as on the amount and purpose for which it is being sought). The Government adds that these prerequisites are being amended through the new Associations Bill but does not specify in what manner. ***Recalling that provisions requiring approval by the authorities of financial assistance from abroad can result in control over the financial management of organizations and restrictions on their right to organize their administration and activities, which control and restrictions are incompatible with Article 3 of the Convention, the Committee expects the Government to ensure that the amendments proposed by the Associations Bill will be fully in line with the Convention.***

Article 4. Administrative and judicial dissolution. In its previous comment, having observed that under sections 32(a) and 33 of the Associations Act, an association could be dissolved by the Registrar or the courts for overly broad reasons, the Committee requested the Government to take the necessary measures to amend these provisions. The Committee notes the Government's indication that under Chapter 10 of the Associations Bill the Registrar will be required to follow the procedure stipulated in the relevant sections and will have to apply to court to obtain an order to dissolve an association, but observes that the Government does not provide any details on the actual procedure or on the grounds on which such a dissolution may be requested. ***Recalling once again that dissolution of a workers' or employers' organization is an extreme measure with serious consequences upon the right to organize which should only be used in limited circumstances, the Committee requests the Government to ensure that the proposed amendments will only allow dissolution of an association following a judicial decision on the basis of precise and predetermined criteria.***

Article 5. The right to form federations and confederations. The Committee previously requested the Government to take the necessary measures, including through the adoption of specific legislative provisions, to ensure that workers' and employers' organizations can form federations and confederations, and affiliate with international organizations. The Committee notes that according to the Government, while there are no specific legislative provisions governing the issue, there are no legal barriers to forming federations or confederations or to affiliate with international organizations. ***Observing, however, the MTUC concerns that neither the Government nor the judicial system recognize federations and confederations of unions or international affiliation and further observing the Government's indication that the issue could be considered for inclusion in the draft Industrial Relations Bill, the Committee requests the Government to include in the ongoing reform process the consideration and adoption of any necessary legislative provisions and other measures to ensure that workers' and employers' organizations can, both in law and in practice, form federations and confederations, and affiliate with international organizations.***

Associations Regulation, 2015

The Committee notes that the Government provides a copy of the Associations Regulation, which currently implements the Associations Act, and observes that it contains a number of provisions which are not in line with the Convention and need amending: sections 4(a) (obligatory registration), 4(c) and 24(ii) (founding members and members of the executive committee must be 18 years old); 4(d) (prohibition to have any criminal record for the person registering the association); 13(a) (detailed regulation of the name of the association); 15(d) (penalty for use of a seal, flag, colour or motto without registration); 17(b)(vi) (detailed regulation of the financial assets); 19(a) (restrictions as to the objectives of the association); 23(a) (only nationals can be elected as President, Secretary and Treasurer); 24(i) (members of the executive committee must be members of the association); 30(a) (detailed regulation of annual reports and accounts); 36(a) (audit by government-accredited audit firm for certain associations); 38 (police inspection with court order if activities undermine societal harmony); 40(ii), 42 and 43 (dissolution of an association by the Registrar or the courts for overly broad reasons); 41 (requirement of a special resolution for voluntary dissolution); 44(a)(iii) and 45(a) (detailed regulation on the use of assets after dissolution), as well as sections 12(a)-(b), 14(a), 16(b), 20, 26(c), 29, 34(a), 35(b), 37(a) and 39(a) providing for excessive discretionary power of the Registrar in relation to associations' establishment, administration, activities and suspension. ***In line with the Committee's requests and expectations above, and considering that the Associations Act is being amended, the Committee fully expects the Government to ensure that, in the framework of the current legislative reform, the Associations Regulation will also be amended to ensure its full conformity with the Convention.***

Freedom of Peaceful Public Assembly Act, 2013, and Regulation governing dispute resolution between the employer and the employee, 2011

In its previous comment, the Committee requested the Government to repeal section 24(b)(7) of the Freedom of Peaceful Public Assembly Act and amend sections 5, 7, 8 and 11 of the Regulation on dispute resolution, so as to remove undue restrictions on the right to strike and ensure that all workers covered by the Convention, including those in island resorts, can in practice exercise their right to strike. The Committee notes that, according to the Government, restrictions to assemble in tourist resorts, imposed by section 24(b)(7) are in place considering the "one island one resort" situation and the strategic importance of the tourism industry to the Maldives. The Government asserts that the provision does not completely prohibit the right to assemble in island resorts, as it allows for the right to be exercised with permission from the police. The Committee observes in this regard the concerns raised by the MTUC that since workers in tourist resorts live in remote islands, the restriction to assemble imposed by section 24(b)(7) completely denies any form of assembly or gathering without approval of the resort's owners and that the police have never allowed workers to perform any such activities. In view of the above and observing that the Government does not provide any information on the measures taken to address the restrictions placed on strikes by sections 5, 7, 8 and 11 of the Regulation on dispute resolution, the Committee recalls once again that these restrictions on the right to assemble and strike, together with the limitation in section 24(b)(7) of the Freedom of Peaceful Assembly Act, are so broad that they could seriously impede the right of workers' organizations to organize their activities, including through strike action, especially considering that any stoppage of work could be considered to harm the employer or the workplace or obstruct customer services, in particular in tourist resorts. As to the geographical particularities of island resorts, the Committee also recalls that in situations in which a substantial restriction or prohibition of strike action would not appear to be justified but where, without calling into question the right to strike of the large majority of workers, there is a need to ensure that users' basic needs are met or that facilities operate safely or without interruption, such as in public

services of fundamental importance, consideration might be given to introducing negotiated minimum service (defined through participation of workers' organizations concerned along with the employer). ***The Committee therefore requests the Government once again to take the necessary measures to repeal section 24(b)(7) of the Freedom of Peaceful Public Assembly Act and amend sections 5, 7, 8 and 11 of the Regulation on dispute resolution, so as to remove undue restrictions on the right of workers' organizations to organize their activities and ensure that all workers covered by the Convention not performing essential services in the strict sense of the term, including those in island resorts, can in practice exercise their right to strike.***

Finally, having observed that section 6 of the Regulation on dispute resolution did not set any time limit for the exhaustion of the obligatory grievance redress mechanism at the employer level before a strike could take place, the Committee requested the Government to provide information on the application in practice of section 6 of the Regulation. The Committee notes that the Government informs that the Industrial Relations Bill intends to amend the procedures stipulated in the Regulation without however indicating what concrete amendments will be made to section 6 of the Regulation. ***Recalling once again that obligatory grievance redress mechanisms at the employer level should not be so complex, or without time limits, or so slow in implementation, that a lawful strike becomes impossible in practice or loses its effectiveness, the Committee expects that the grievance redress mechanism, as amended by the Industrial Relations Bill, will be in full conformity with the above.***

Mauritius

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

(Ratification: 1969)

Observation, 2021

The Committee notes the observations made by the Confederation of Free Trade Unions and the State and Other Employees Federation, dated 26 August 2021, concerning matters examined in the present comment.

Legislative developments. In its last comment, the Committee noted the Government's indication that a revision of the Employment Rights Act (2008) and the Employment Relations Act 2008 (ERA 2008) was under way. The Committee takes note of the Government's indication that: (i) the Employment Rights Act (2008) was replaced by the Worker's Rights Act 2019 (WRA) (Act No. 20) and (ii) the ERA 2008 was amended by the Employment Relations (Amendment) Act 2019 (Act No. 21).

In addition, the Committee welcomes the establishment of the National Tripartite Council provided for under section 28(j) of the ERA 2008, as amended in 2019, which aims at promoting social dialogue and consensus building on labour, industrial relations or socio-economic issues of national importance and other related labour and industrial relations issues. ***Observing that the Council shall make recommendations to the Government on issues relating, inter alia, to the review of the operation and enforcement of the labour legislation, the Committee requests the Government to provide information on the recommendations made by the Council in relation to matters covered by the Convention, including as to giving effect to the Committee's comments.***

Article 1 of the Convention. Adequate protection against acts of anti-union discrimination. In its last comment, the Committee requested the Government to continue to provide statistical data on the number of complaints of anti-union discrimination, their outcome and the number and nature of sanctions imposed or remedies awarded. It also requested it to pursue its efforts, in particular in the export processing zones (EPZs), to ensure that all allegations of anti-union discrimination give rise to expeditious investigations The Committee takes note of the Government's indication that Act No. 21 introduced the following amendments to the ERA to enhance protection of workers against acts of anti-union discrimination:

– new subsection 31(1)(b)(iii) provides that no person shall discriminate against, victimize or otherwise prejudice a worker or an accredited workplace representative on any employment issue on the ground of his trade union activities;

– new subsection (1A) provides for stringent conditions to curb any decision to terminate workers' employment in relation to trade union membership or activities; and

– in section 2 of the ERA, the definition of labour dispute has been broadened to include reinstatement of a worker where the employment is terminated on the grounds specified in section 64(1A) (above-mentioned).

The Committee takes note with ***interest*** of the abovementioned measures introduced by Act No. 21 to the ERA which complement the protection against acts of anti-union discrimination already provided for in the legislation. ***The Committee requests the Government to indicate the impact in practice of the legislative amendments and to provide statistical data in that regard, including on the number of complaints of anti-union discrimination, including anti-union dismissals, brought before the competent authorities (labour inspectorate and judicial bodies), their outcome and the number and nature of sanctions imposed or remedies awarded.***

In its last comment, the Committee invited the Government to engage in a dialogue with the national social partners with a view to identifying possible adjustments to improve the rapidity and efficiency of the conciliation proceedings. The Committee takes note that the Government indicates that section 69 of the ERA, as amended in 2019, provides for a timeframe for the expeditious resolution of disputes involving anti-union discrimination: 45 days at the Commission for Conciliation and Mediation (CCM) and, if no agreement is reached, the Employment Relations Tribunal (ERT) (an arbitration tribunal) must make an award within 90 days. ***The Committee also observes that section 87(2) of the ERA, as amended in 2019, has doubled the number of the CCM members and expresses the firm hope that this will contribute to improving the rapidity and efficiency of the conciliation procedures.***

Having taken note of allegations made by social partners concerning the excessive length of judicial proceedings in rights disputes (six to seven years), the Committee had requested the Government to take measures with a view to accelerating relevant judicial proceedings and to provide statistical data on their average duration. ***Regretting that no information was provided in this regard, the Committee requests the Government once again to take measures with a view to accelerating relevant judicial proceedings and to provide statistical data on their average duration, including with respect to cases that may arise in EPZs.***

Article 4. Promotion of collective bargaining. The Committee takes note of the Government's indication that Act No. 21 introduced the following amendments to the ERA concerning collective bargaining:

– Section 51(1)–(4) of the ERA was amended to facilitate the process of collective bargaining by drawing up a procedure agreement in view of signing a collective agreement. According to the Government, this will further encourage the union and management to proceed with the negotiations keeping abreast good faith at all times with a view to reaching a collective agreement.

– Section 88(4)(e) of the ERA was amended to widen the scope of the CCM with the aim at reinforcing the mutual trust between employer and employees.

– Section 69 of the ERA was amended to promote the settlement of labour disputes. Section 69(3) has been specifically introduced to make the recommendation of the President of the CCM binding should both parties to a labour dispute agree to confer upon the President such power. The Government indicates that this provision was added to provide a speedy solution to break the deadlock between the parties instead of having recourse to the Tribunal, thus saving time, which is crucial in industrial matter.

– Section 69(9)(b) was amended to enable both the union or the employer to request the CCM to refer a labour dispute to the ERT (arbitration tribunal) once the conciliation attempt has failed. The Government indicates that prior to the amendment; the CCM could only refer to the ERT cases brought by an individual worker. The Committee observes that, while section 63 of the ERA provides that the parties may jointly refer a dispute for voluntary arbitration, section 69(9)(b), as amended, concerns the referral of a dispute to an arbitration tribunal at the request of one of the parties. ***Recalling that compulsory arbitration in the case that the parties have not reached agreement is generally contrary to the principles of collective bargaining, the Committee requests the Government to clarify whether the revised section 69(9)(b) does allow for compulsory arbitration at the request of one party.***

– Section 87(2) was amended to reinforce the human resource of the CCM. The Committee recalls that in its previous comments it had noted allegations in relation to the lack of human resources at the CCM. As mentioned in the present comment under *Article 1* of the Convention, it appreciates that the revised section 87(2) has doubled the number of its members. The Committee ***regrets*** to note, however, that the revised section 87(2) has removed the requirement for the Minister to hold consultations with the most representative organizations of workers and employers in relation to the appointment of conciliators or mediators. ***The Committee requests the Government to clarify the rationale behind the removal of consultations to social partners under this section.***

The Committee takes due note of the above-mentioned amendments and expresses the hope that, as indicated by the Government, they will contribute to facilitating collective bargaining. The Committee requests the Government to indicate the impact of the legislative amendments in

practice.

In its previous comment, the Committee expressed its expectation that the Government would continue to carry out and strengthen inspections and sensitization activities with respect to collective bargaining. The Committee notes the Government's indication that: (i) 132 sensitization activities carried out between 2017 and 2021 benefited 2,660 workers in the EPZ/textile sector; and (ii) 161 inspection visits carried out in the EPZ sector covered 21,273 local workers and 1,284 inspection visits in undertakings in the manufacturing sector covered 231,793 migrant workers. The Committee notes that 64 collective agreements have been registered with the Ministry of Labour from 2017 to 2020 and that neither of them pertains to the EPZ sector. The Committee also notes the Government's indication that the COVID-19 pandemic has somehow affected the activities of the Ministry. ***The Committee takes note of the information provided and requests the Government, in consultation with the social partners, to strengthen these activities, in particular in the EPZs, textile sector, sugar industry, manufacturing sector and other sectors employing migrant workers. It also requests the Government to continue to supply statistics on the functioning of collective bargaining in practice (number of collective agreements concluded in the private sector, especially in EPZs; branches and number of workers covered).***

Interference in collective bargaining. In its previous comment the Committee expressed the hope that the Government would continue to refrain from unduly interfering in and give priority to collective bargaining of a voluntary nature as the means of determining terms and conditions of employment in the sugar sector in particular and in the private sector in general. The Committee also requested the Government to provide its comments on observations made by Business Mauritius that the Remuneration Orders of the National Remuneration Board (NRB) were so elaborated and prescriptive that they acted as a disincentive to collective bargaining. The Committee notes that the Government states that: (i) as from 24 October 2019, the core conditions of employment of workers under Remuneration Orders (ROs) have been harmonized with the adoption of the WRA; (ii) the ROs have been repealed and replaced by 32 Remuneration Regulations, which provide for conditions of employment specific to the sector; (iii) a National Minimum Wage (NMW) was introduced as from January 2018 and was last reviewed in January 2020 and (iv) payments of additional remuneration continue to be made following recommendations by a national tripartite forum, chaired by the Prime Minister. ***The Committee expresses the firm hope that these developments will contribute to prioritizing bipartite collective bargaining of a voluntary nature as the means of determining terms and conditions of employment in the private sector in general.***

Article 6. Collective bargaining in the public sector. In its previous comments, the Committee invited the Government, together with the professional organizations concerned, to study ways in which the current system could be developed to effectively recognize the right to collective bargaining of public servants who are not engaged in the administration of the State. The Committee notes that the Government states that: (i) salary determination in the private sector is completely different than in the public sector; (ii) in the private sector, the wage fixing institution establishes a floor wage and this eventually gives room to collective bargaining; and (iii) this system cannot be imported to the public sector as the Pay Research Bureau (PRB) establishes a ceiling wage for public sector employees. The Committee notes that the Confederation of Free Trade Unions and the State and Other Employees Federation precisely highlight that collective bargaining does not exist in the public service since the setting up of the PRB. The Committee takes note that the Government states that with a view to promoting social dialogue in the public service, an Employment Relations Committee (ERC) is being set up by the Ministry of Public Service, Administrative and Institutional Reforms comprising representatives from Management and the four most representative federations of the Civil Service. Such Committee would, inter alia, consider any matter relating to or arising out of the course of employment of public officers and would make recommendation to appropriate instances. The draft regulation has been finalized after consultations with different stakeholders and is presently at the level of the Attorney-General's Office for vetting. ***The Committee welcomes these developments, which aim at promoting social dialogue in the public service. It requests the Government to transmit a copy of the ERC once it has been adopted.*** The Committee must recall, however, that, pursuant to *Article 6* of the Convention, all public servants, other than those engaged in the administration of the State, should enjoy collective bargaining rights, and that, under the Convention, the establishment of simple consultation procedures for public servants who are not engaged in the administration of the State (such as employees in public enterprises, employees in municipal services, public sector teachers, etc.), instead of real collective bargaining procedures, is not sufficient. ***The Committee therefore invites once again the Government, together with the professional organizations concerned, to take the necessary measures to effectively recognize the right to collective bargaining of public servants who are not engaged in the administration of the State.***

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

Myanmar

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

(Ratification: 1955)

Observation, 2021

The Committee notes with the ***deepest concern*** the observations made by the International Trade Union Confederation (ITUC) in a communication received on 1 September 2021 referring to the systemic violence against workers and harsh suppression of civil liberties carried out by the military junta after it seized power on 1 February, relentlessly cracking down on the crowds of protesters calling for the return of democracy. While the reply provided on 19 November 2021 contends that the peaceful protests had evolved into riots and ultimately reached a stage of insurrection and terrorism, retaliating against members of security forces with all available weapons and forcing them to respond, the Committee cannot but ***deplore*** the allegations that ever since the junta's seizure of power, daily demonstrations have been met with increasing brutality with hundreds killed, many more wounded and over 2,700 arrested and charged, with some already sentenced.

Civil liberties. The Committee ***deeply regrets*** to note the information provided by the ITUC that trade unionists have been specifically targeted with numerous cases of arrests and killings of trade union leaders and unionists and the wholesale violation of their civil liberties. The ITUC refers in particular to: the shooting of Chan Myae Kyaw, a truck driver at a copper mine and a member of IndustriALL's affiliate Mining Workers' Federation of Myanmar (MWFM), who was killed by soldiers on 27 March 2021 during a demonstration in Monywa; a military ambush of protesters on March 28 and 29 in South Dagon Industrial Zone, killing Nay Lin Zaw, a union leader in the wood processing sector and a member of Myanmar Industry Craft Service-Trade Unions Federation (MICS-TUF); and the shooting in the head of 21 year old Zaw Htwe, a garment worker and a member of Solidarity Trade Union of Myanmar (STUM).

The Committee notes the reply to the ITUC comments that any deaths due to security forces acts were in limited response to terrorist acts, the relevant police have these death cases on files in accord with the legal procedures and systematically registered the case records of all deaths as well as assisted their funeral affairs. According to the lists of Myanmar Police Force, 361 civilians were killed during the reporting period, of which only 193 were due to members of the security forces with Riot Control Agents (RCA) while clearing barricades and defending themselves from the terrorist acts. The remaining 168 were dead by other causes e.g., assassinated by others with arms, fell from buildings and disease, not relevant to the members of security forces. It is added that exaggerated and falser reports in this regard are aimed at discrediting the Government and the military. As to the specific deaths raised by the ITUC, it is indicated that no casualties were found after the protest at the copper mine where Chan Myae Kyaw is said to have been shot, there were no events of a crackdown by security guards in Dagon township where Nay Lin Zaw is said to have died, and an inquest has been filed at Shwepyithar Township Police Station concerning the death of Zaw Htwe.

The Committee is bound to recall that the mobilization of the Civil Disobedience Movement was due in the first instance to the military seizure of power and destitution of the civilian government. In these circumstances, it must refer to the examination by the Committee on Freedom of Association of the grave allegations of numerous attacks by the military authorities following the coup d'état on 1 February 2021 in Case No. 3405 (see 395th Report, June 2021, paragraphs 284–358). The Committee further observes that the ILO Governing Body had on its agenda an update on the situation in Myanmar and on additional measures to promote the restoration of workers' rights at its 341st, 342nd and 343rd Sessions (March, June and November 2021), at which it, inter alia: expressed profound concern about developments since 1 February and called on the military authorities to respect the will of the people, respect democratic institutions and processes and restore the democratically elected Government (GB.341/INS/17(Add.1) (March)); expressed profound concern that the situation had deteriorated and that no progress had been made in this regard (GB.342/INS/5 (June)); and expressed profound concern that the military authorities have continued with the large-scale use of lethal violence and with the harassment, ongoing intimidation, arrests and detentions of trade unionists (GB.343/INS/8 (November)). Finally, the Committee takes note of the Resolution for a return to democracy and respect for fundamental rights in Myanmar adopted by the International Labour Conference at its 109th Session (2021) which calls upon Myanmar to cease all attacks, threats and intimidation by the military against workers, employers and their respective organizations, and the general population, including in relation to their peaceful participation in protest activities (ILC.109/Resolution II).

The Committee recalls that freedom of association can only be exercised in conditions in which fundamental human rights are fully respected and guaranteed, and in particular those rights relating to human life and personal safety, due process and the protection of premises and property belonging to workers' and employers' organizations. The killing, disappearance or serious injury of trade union leaders and trade unionists requires the institution of independent judicial inquiries in order to shed full light, at the earliest date, on the facts and the circumstances in which such actions occurred and in this way, to the extent possible, determine where responsibilities lie, punish the guilty parties and prevent the repetition of similar events. ***While noting the cursory information provided in respect of the deaths noted above, the Committee calls for a full and independent investigation into the circumstances of the killings of Chan Myae Kyaw, Nay Lin Zaw and Zaw Htwe and requests to receive a full report of the outcome and the measures taken to prosecute and punish the guilty parties.***

The ITUC further refers to the arrest on 18 February 2021 of a union leader from the MICS-TUF who has been sent to Insein Prison and the arrest on 15 April 2021 of the director of STUM, who was charged under section 505-A of the Penal Code, which means she is not eligible for bail and faces up to 3 years in prison. Also in May, forces were deployed to arrest another 22 unionists, including seven members of Myanmar Transport Federation with another 11 warrants pending against national leaders of the Confederation of Trade Unions of Myanmar (CTUM) and other trade unions. On 4 June 2021, the passports of 28 CTUM members were cancelled. Finally, the ITUC recalls a number of arrests, detentions and attacks against trade unionists exercising their right to peaceful industrial action in 2019 and 2020.

In reply it is stated that tens of thousands of prisoners were pardoned on 12 February and 17 April respectively, while pending cases for 4,320 defendants were closed on 18 October with amnesty granted to 1,316 prisoners. As for the cancellation of the passports of 28 CTUM members, it is stated that false news had been perpetrated by the leaders of the organization to discredit the State Administration Council and the military giving rise to charges against the CTUM Chairperson for violation of section 505 of the Penal Code, while he and 28 CTUM members were also charged under section 124-A. The Government cancelled their passports as they were fleeing the arrest warrants due to be issued. ***As regards the serious allegations of a number of arrests, detention and attacks against trade unionists for exercising their right to peaceful industrial action and participating in the civil disobedience movement for the restoration of democracy, as well as the cancellation of their passports, the Committee calls for all measures to be taken to ensure full respect for the basic civil liberties necessary for the exercise of freedom of association, including freedom of opinion and expression, freedom of assembly, freedom of movement, freedom from arbitrary arrest and detention and the right to a fair trial by an independent and impartial tribunal, so that workers' and employers' organizations can carry out their activities and functions without threat of intimidation or harm and in a climate of complete security.***

In this regard, the Committee further notes the ITUC's indication that some of the arrested trade unionists were charged under section 505-A of the Penal Code which sets forth a broad and vague definition of the term "treason" to include attempts "to hinder, disturb, damage the motivation, discipline, health and conduct of the military personnel and government employees and cause hatred, disobedience, or disloyalty toward the military and the government." The

Committee further notes that section 124 A of the Penal Code was amended by the military authorities in February using similarly broad wording to make it a criminal act "to sabotage or hinder the success of performance of the Defence Services and law enforcement organizations" under a penalty of up to 20 years' imprisonment. While having been informed that the director of STUM has been released, the Committee observes that the far-reaching nature of the drafting of this section can favour the categorization as treason of any exercise of dissent in a manner so as to compromise the exercise of basic civil liberties necessary to the full exercise of trade union rights. ***The Committee therefore calls specifically for the immediate release of the leader of MICS-TUF and any other trade unionists still being detained or imprisoned for having exercised their trade union rights protected under the Convention, including their engagement in the civil disobedience movement. Just as the Committee on Freedom of Association, the Committee further calls for the repeal of section 505-A of the Penal Code and also calls for the amendment of section 124 A in light of its similar nature.***

As regards the ITUC comments concerning the announcement of a new cyber security law which criminalizes any statement against any law with sanctions of imprisonment and heavy fines, the Committee notes the reply that the Cyber Law has not yet been promulgated but observes that elements of this draft law were introduced into the Electronic Transaction Act (ETA), adopted on 15 February 2021, which provides in section 38(c) that any person that is convicted of making fake news or false news (not defined) in a cyberspace with the aim of alarming the public, making someone lose his or her faith, disrespecting someone or dividing unity, shall be imprisoned for a minimum of one year to a maximum of three years or fined not more than 5 million in kyat or both. The Committee observes with ***deep concern*** that this provision is vaguely worded and likely to undermine freedom of expression and other basic civil liberties under the threat of heavy penalties, including imprisonment. ***The Committee therefore urges that section 38(c) be revised with a view to ensuring full respect for the basic civil liberties necessary for the exercise of freedom of association so that workers' and employers' organizations can carry out their activities and functions without threat of intimidation or harm and in a climate of complete security.***

Additionally, the Committee recalls that, in its previous comments, it had taken note of the new Law on the Right to Peaceful Assembly and Peaceful Procession, adopted on 4 October 2016, and observed that the Chapter on Rules and the corresponding Chapter on Offences and Penalties could give rise to serious restrictions of the right of organizations to carry out their activities without interference. The Committee requested the Government to ensure that workers and employers are able to carry out and support their activities without threat of imprisonment, violence or other violations of their civil liberties by police or private security and to inform of any sanctions imposed on workers' or employers' organizations under the Law. The Committee observes in this regard that the ITUC refers to a number of incidents in 2019 and 2020 where workers and union leaders engaged in peaceful protests had been prosecuted and convicted under this Law, but who have since been released. The Committee ***deeply regrets*** that Myanmar's report this year simply states that the Law on the Right to Peaceful Assembly and Peaceful Procession, 2016, was enacted to ensure every citizen has the right to carry out activities in line with the law, without providing any information in reply to the detailed examples of prosecution and conviction provided by the ITUC. ***The Committee must therefore urge that all steps be taken to ensure that workers and employers are able to carry out and support their activities without threat of imprisonment, violence or other violations of their civil liberties by police or private security and that the Law on the Right to Peaceful Assembly and Peaceful Procession not be used in any way to restrict these rights.***

Labour law reform process. Despite the deeply concerning deterioration of the situation in the country and the Committee's strong conviction that priority must be given to the restoration of democratic and civilian rule, it wishes to recall its previous comments concerning the labour law reform process in the country for further action once the democratic institutions and processes and democratically elected government are restored.

Article 2 of the Convention. As regards the membership requirements and pyramidal structure set out in the Labour Organization Law (LOL), the Committee recalls that it had encouraged the Government to pursue consultations within the framework of the National Tripartite Dialogue Forum (NTDF) so as to ensure that all workers and employers, without distinction whatsoever, are able, not only in law but also in practice, to fully exercise their rights under the Convention, bearing in mind key difficulties faced by parts of the population, such as those in remote areas.

The Committee notes from this year's report the information that, since the law's entry into force, 2,887 basic labour organizations, 161 township labour organizations, 25 region or state labour organizations, nine labour federations, one labour confederation and 27 basic employer organizations, one township employer organization and one employer federation have been registered under the law.

As regards the possible denial of registration, the Committee once again requests information on any denials of registration, including reasons for such decisions and procedures for review and appeal of such denials.

Article 3. The Committee further noted the restrictions for eligibility to trade union office set out in the Rules to the LOL, including the obligation to have been working in the same trade or activity for at least six months (no initial time period should be required) and the obligation for foreign workers to have met a residency requirement of five years (this period should be reduced to a reasonable level such as three years), as well as the requirement to obtain permission from the relevant labour federation under section 40(b) of the LOL in order to go on strike.

The Committee once again expresses its expectation that, as soon as conditions permit, all of the above matters will be reviewed within the framework of the legislative reform process in consultation with the social partners so as to ensure fully the rights of workers and employers under the Convention.

The Committee further notes from the report that the Settlement of Labour Disputes Law was amended in 2019 and requests the final adopted text, as well as the Settlement of Labour Disputes Rules to implement the law, to be transmitted for its consideration.

Special economic zones (SEZs). The Committee notes the information provided in relation to the settlement of labour disputes in SEZs and the setting up of Workplace Coordinating Committees (WCCs) both inside and outside of the zones. It notes further that labour disputes occurring in SEZs have been settled by the Special Economic Zone Management Committee and all disputes have been settled by agreement up to now. If no agreement is reached, such disputes shall be dealt with under the Settlement of Labour Disputes Law. ***The Committee expects that all necessary measures will be taken to guarantee fully the rights under the Convention to workers in SEZs, including by ensuring that the SEZ Law does not contradict the application of the LOL and the Settlement of Labour Disputes Law in the SEZs, and suggests that this matter be followed up within the framework of the NTDF as soon as conditions permit.***

The allegations and issues raised in this comment relating to numerous deaths, massive detentions and arrest of trade unionists and a momentous attack on basic civil liberties have given rise to the Committee's deepest concern. The Committee deeply regrets that despite several decisions by the ILO Governing Body in March, June and November of this year and the Committee on Freedom of Association's recommendations and the International Labour Conference's Resolution in June, no steps have been taken to address these grave concerns or to rectify the serious infringements on fundamental rights introduced this year in the Penal Code and the Electronic Transaction Act and the ongoing concerns with respect to the Law on the Right to Peaceful Assembly and Peaceful Procession of 2016.

In these circumstances, and given the urgency of addressing these matters affecting the fundamental rights of workers and employers, their physical integrity and freedom, and the likelihood of irreversible harm, the Committee considers that this case meets the criteria it has developed to be asked to come before the Conference.

[The Government is asked to supply full particulars to the Conference at its 110th Session and to reply in full to the present comments in 2022.]

Netherlands - Sint Maarten

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

(Ratification: 1951)

Observation, 2021

The Committee notes the joint observations of the Sint Maarten Hospitality and Trade Association (SHTA) and the International Organization of Employers (IOE) received on 1 September 2021 and referring to the matters addressed below.

Article 3 of the Convention. Right of organizations to elect their representatives in full freedom. The Committee previously noted the observations of the SHTA received on 30 September 2020, which alleged that the Chamber of Commerce and Industry (COCI), a governmental agency, had established the Soualiga Employer Association (SEA), an umbrella organization to represent employers, including at the tripartite Social Economic Council (SER). The SHTA alleged that through the COCI and the SEA, the Government was attempting to establish an employer representative organization that is more in line with its position and does not reflect actual diligent representation and that this appeared to be an attempt to marginalize the existing employer representative groups. The Committee requested the Government to provide its comments on these serious allegations.

The Committee notes the Government's reply to these observations, received on 19 July 2021. It takes note of the Government's indication that: (i) the SER is an independent advisory organization where representatives from employers' and workers' organizations and independent experts discuss draft legislation and conduct social research into the effects of governmental decisions; (ii) the Government decided to restructure the board of the SER to resolve the unbalanced representation of employers' organizations; (iii) it mandated the COCI to facilitate the establishment of an umbrella employer organization from which the various employers' organizations would obtain membership, which led to the establishment of the SEA on 4 September 2020; (iv) while the COCI was executing its mandated instruction, the SHTA, together with three other employers' organizations, established the Sint Maarten Employers Council (ECSM), as an umbrella employers' organization incorporated under the laws of Sint Maarten; and (v) both the SEA and the ECSM are currently represented on the board of the SER.

On the other hand, the Committee notes with ***concern*** that the SHTA and the IOE allege that: (i) the establishment of the SEA did not comply with the Ministerial Decree "Instructions for regulations", which required consultations with relevant stakeholders, such as employers' organizations; (ii) the COCI, as a government agency, could not set up an umbrella employers' association, especially when recognized employers' associations were not consulted; (iii) the SEA undermines the employers' right to freely choose their representation under article 12 of the Constitution of Sint Maarten; (iv) the COCI and SEA intend to provide room for government-owned companies as employers' representatives and attempt to marginalize existing employer representative groups; and (v) the ECSM has filed an appeal against the appointments to the SER made by the SEA.

In light of these observations denouncing that the SEA was created through government action with the aim of marginalizing the hitherto most representative employers' organizations in the country, the Committee must emphasize that, under the Convention, it is the prerogative of employers and their organizations to determine the conditions for electing their representatives and to establish higher level organizations, and the authorities should refrain from any undue interference in the exercise of these rights, including interference through the promotion or favouring of organizations that are not freely established or chosen by employers and their organizations.

The Committee requests the Government to take the necessary measures to review, in consultation with the employers' organizations concerned, the above-mentioned developments, in particular as to the establishment and operation of the SEA and its participation in the SER, in order to ensure complete respect for the rights of employers and their organizations to establish and join organizations of their own choosing and to elect their representatives in full freedom, and redress any interference from the public authorities in this regard. The Committee further requests the Government to provide information on the result of the appeal challenging the appointments to the SER made by the SEA and recalls that it may avail itself of the technical assistance of the Office.

The Committee also reiterates its request that the Government reply in full to its other pending comments under the Convention, adopted in 2017.

[The Government is asked to send a detailed report in 2022.]

New Zealand

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

(Ratification: 2003)

Observation, 2021

The Committee notes the observations of Business New Zealand (BusinessNZ) and the International Organisation of Employers (IOE) received on 1 September 2021 and the Government's reply thereto. The Committee further notes the observations of the New Zealand Educational Institute (NZEI) received on 6 September 2021 and the Government's reply, as well as the observations of the New Zealand Council of Trade Unions (NZCTU) communicated with the Government's report.

Scope of the Convention. In its previous comments, the Committee had noted that pursuant to an amendment from 2010 to the Employment Relations Act (ERA), workers engaged in film production work are considered to be independent contractors rather than employees, unless they have a written employment agreement that provides that they are employees and were thus not covered by the provisions of the ERA. The Committee requested the Government to take any necessary measures, in consultation with the social partners, to ensure that all film and television workers, including those engaged as self-employed workers, can fully enjoy the rights and guarantees set out in the Convention. The Committee notes with ***interest*** the Government's indication that it established the Film Industry Working Group in 2017 consisting of industry, business and worker representatives to find a way to restore workers' rights in the industry. The Working Group made recommendations in October 2018 suggesting a bespoke workplace relations regime for contractors in the screen industry which were accepted by the Government in June 2019 and given form in the Screen Industry Workers Bill, which is currently awaiting its second reading. The Bill will provide clarity about the employment status of people doing screen production work, introduce a duty of good faith and mandatory terms for contracting relationships in the industry, allow collective bargaining at the occupation and enterprise levels, and allow access to employment institutions to resolve disputes arising from contracting relations collective bargaining in the industry. ***The Committee trusts that the measures proposed will ensure that all film and television workers can fully enjoy the rights and guarantees set out in the Convention and requests the Government to transmit a copy of the final version of the Bill as soon as it has been approved and to provide information on its application in practice.***

Article 4. Promotion of collective bargaining. In its previous comments, the Committee requested the Government to, in consultation with the social partners, review and assess the application of section 50(K) of the Employments Relations Act (ERA), which permits any party to apply to the Employment Relations Authority for a determination as to whether bargaining has concluded, with a focus on the restriction this provision may have on further initiation of bargaining, and its impact on the conclusion of collective bargaining agreements. The Committee further requested the Government to provide information on the impact of section 44A, B and C of the ERA which provided an opt-out possibility for employers presented with a notice initiating collective bargaining including them and other employers. The Committee notes with ***satisfaction*** the information provided by the Government that both these sections were repealed on 12 December 2018 through the Employment Relations Amendment Act and further notes a number of other amendments aimed at strengthening collective bargaining and union rights in the workplace.

Voluntary nature of collective bargaining. The Committee notes the detailed observations made by BusinessNZ and the IOE in which they assert that sections 31 and 33, as amended by the Employment Relations Amendment Act 2018, and 50J of the ERA, are inconsistent with the principle of free and voluntary collective bargaining enshrined in *Article 4* of the Convention. In particular, the organizations refer to the obligation in sections 31 and 33 to conclude a collective agreement unless there is a "genuine reason", based on reasonable grounds, not to, regardless of the fact that negotiations may be initiated by a union on behalf of as few as two unionised employees. Prior to the changes to these sections, employers and unions were required to bargain in good faith but bargaining could be terminated without agreement as long as it was clear that all matters had been considered and responded to in good faith. According to BusinessNZ and IOE, now, once bargaining is initiated, the process mandated by the good faith obligations must be followed to its logical conclusion no matter how many or how few employees are affected by the outcome.

The Committee notes the Government's indication that the amendments to sections 31 and 33 ensure that parties genuinely attempt to reach an agreement but they will not have to settle a multi-employer collective agreement if their reason not to do so is based on reasonable grounds. According to the Government, these provisions seek to encourage the full utilisation of the process for good faith collective bargaining by putting in place mechanisms that require parties to make every effort to conclude an agreement, consistent with the duty of good faith. The underlying assumption is that if employers and unions are bargaining in good faith, they intend to reach a collective settlement and that this should result in an agreement unless they are genuinely unable to conclude. The Government indicates that the provisions originally resulted from a review of the principal Act giving rise to amendments in 2004 which identified the need to address the issue of "surface bargaining" where engagement was on matters of form rather than substance, or where deadlocks on some individual issues led to deadlock on the entire negotiation. These provisions were removed in 2015 but restored in 2018 returning the situation to that which existed from 2004 to 2015. The Government adds that the provisions do not make settlement mandatory as good faith bargaining may not always result in a collective agreement in all cases and hence the recognition of "genuine reason" and considers that if the parties are negotiating in good faith they should be able to provide genuine reasons for not being able to conclude. The Government therefore states that it does not agree with the views of BusinessNZ that the provisions impose an absolute duty to conclude contrary to *Article 4.* Finally, the Government considers that the number of employees affected by the outcome is irrelevant.

The Committee further notes that BusinessNZ and the IOE also refer to section 50J which permits the courts to compulsorily fix the terms of a collective agreement where the bargaining parties have not been able to conclude. In their view, this constitutes arbitrary imposition of compulsory arbitration contrary to the principle of free, voluntary negotiation. They note that while this provision was introduced on 1 December 2004, it was not an issue in practical terms until it was first invoked in February 2019 in a case in which bargaining had been protracted and acrimonious and had come to a standstill.

The Committee notes that the Government for its part rejects the interpretation that this amounts to arbitrary imposition of collective agreement terms and states that section 50J does not apply simply because the parties cannot reach agreement over a particular matter or more generally. The Government emphasizes that the section provides a specific remedy of last resort for a serious and sustained breach of the duty of good faith. In such cases, the Employment Relations Authority may make a determination fixing the provisions of the collective agreement following the application of a party only if all of the following conditions are met: the breach of duty relates to bargaining; it was sufficiently serious and sustained as to significantly undermine bargaining; all other reasonable alternatives for reaching agreement have been exhausted; fixing the provisions of the agreement is the only effective remedy for the party affected; and the authority considers it is appropriate in the circumstances so to do. The Government adds that the Committee in its 2012 General Survey (paragraph 247) has already referred to the need for measures to address improper practices in collective bargaining such as proven bad faith and unwanted delays and that compulsory arbitration may be acceptable when, after protracted and fruitless negotiations, it becomes obvious that the deadlock will not be broken without some initiative by the authorities. The Government emphasizes that the sole case of the use of this remedy in this 15-year period involved protracted bargaining over several years and the prior use of mediation and facilitation and the matter was brought before the Employment Court which held that the employer had breached the duty of good faith in 2015 and continued to do so by delaying and attempting to frustrate bargaining. The Government

asserts that there was thus neither an arbitrary process nor outcome but rather a prolonged process involving careful consideration by independent bodies and the need to provide a remedy to the affected party only when specific conditions are met and after all other avenues have been exhausted.

Finally, the Committee notes the observations of the NZCTU which support the 2018 amendments to the Act, which it considers have advanced the extent to which New Zealand law gives effect to its obligations under the Convention to develop mechanisms for the promotion of collective bargaining, support the rights of workers and their unions to freely organize, and protect union members from discrimination.

The Committee observes that the amendment to section 31 of the Act specifically provides that the object of Chapter 5 on collective bargaining includes the duty of good faith that requires parties bargaining for collective agreements to conclude a collective agreement unless there is a genuine reason, based on reasonable grounds, not to, while section 33 which previously provided that the duty of good faith did not include a duty to conclude an agreement has been replaced by a section defining the elements for determining what may or may not constitute "genuine reason". In this respect, section 33 subsection 2 specifies that "a genuine reason not to conclude an agreement does not include opposition or objection in principle to bargaining for, or being a party to, a collective agreement or to including rates of wages or salary in a collective agreement or disagreement about including a bargaining fee clause" and adds the situation of unsettled pay equity claims. Subsection 3 provides that opposition to concluding a multi-employer collective agreement is a genuine reason if that opposition is based on reasonable grounds. The Committee notes that these provisions, which had been effective in the country for over a decade in the past and have been reintroduced, do provide a certain flexibility to employers in the collective bargaining process not to conclude an agreement based on notions of good faith and genuine reason and that the amended section 33 appears to principally aim at deterring situations where a party is simply in principle opposed to bargaining or including wage rates or where there is disagreement about a bargaining fee clause. The Committee further observes, however, that section 50J providing for the possibility of the Employment Relations Authority to fix provisions of a collective agreement where there has been a serious and sustained breach of the duty to bargain collectively in good faith is connected with the re-introduction of the amendments to sections 31 and 33 and may therefore also be invoked where a breach of the duty to bargain collectively in good faith concerns the non-conclusion of a collective agreement without genuine reason. The Committee considers that, under the Convention, ensuring the voluntary nature of collective negotiations is inseparable from the principle of negotiation in good faith if the machinery to be promoted under *Article 4* of the Convention is to have any meaning. The Committee recalls in this respect that the overall aim of this *Article* is the promotion of good faith collective bargaining with a view to reaching an agreement on terms and conditions of employment. The Committee observes that sections 31, 33 and 50J as currently drafted had not given rise to any comments by the social partners for the decade in which they were jointly in force until the application of section 50J in 2019 imposing a collective agreement for a period of 14 months on an employer found to have been in serious and sustained breach of the duty of good faith. The Committee observes that the Act provides for significant consideration before section 50J can be applied, including the right of appeal to the Employment Court for a determination of the existence of a serious and sustained breach. The Committee notes that more information would be required in order to determine whether the good faith obligation in section 33 may hinder the voluntary nature of collective bargaining. ***Recalling the limited circumstances in which compulsory arbitration may be imposed as referred to by the Government and BusinessNZ and IOE, the Committee requests the Government to provide detailed information on the use and practical implementation of sections 31, 33 and 50J and in particular on any specific cases where genuine reason not to conclude a collective agreement was either found to be present or not and the resulting consequences.***

Fair pay agreements. The Committee notes the concerns raised by BusinessNZ and the IOE in relation to the Government's announced intention to introduce Fair Pay Agreements (FPAs) covering all employees in an industry or occupation. Only unions would be allowed to initiate bargaining for an FPA and they will specify whether it will be industry-based or occupationally based, as well as the scope and coverage. There is no ability for employers to opt out and any disputes will go to compulsory arbitration with no right of appeal against the terms that are fixed. According to BusinessNZ and the IOE, many of the proposed provisions of the FPA process are also physically cumbersome, unworkable and ultimately ineffective. On the initiation of the process, BusinessNZ and the IOE indicate that the union must show that it represents at least 1000 workers or 10 per cent of the workforce or it is in the public interest to have an FPA for that industry or occupation. It is then for the Government to administer the public interest test, thus inserting itself into the FPA bargaining process. Secondly, they note that union density is very low particularly in the private sector where it is around 9 per cent which means that almost any industry or occupation can be forced into bargaining for an FPA by a union that represents a tiny fraction of the workforce to be covered. In their view, this would be contrary to the principle whereby the most representative organizations have primacy of rights to collective bargaining. They further raise concerns about the mode for ratification of an FPA through a simple majority vote of employers and employees, with smaller employers' votes to be weighted according to the number of employees. Two failed ratification votes however will result in an arbitrated outcome being imposed, without a right of appeal. They consider this contrary to the principle of free and voluntary collective bargaining as well as of the good faith obligations in the domestic law governing collective bargaining generally, while further observing that extensive good faith obligations in the Act will be difficult to meet with respect to ratification. Finally, they refer to a number of statements of the Government which they consider demonstrate the Government's cognizance that its proposals would not be in compliance with the Convention and maintain that the nature of all of the alleged breaches is so significant that failure to address them risks weakening the ILO core values and integrity of the standards supervisory system.

The Committee notes the Government's indication that FPAs are the result of a long, considered and inclusive policy process undertaken over several years. The Government indicates that the FPA Bill is expected to be introduced later in 2021, however at this point the legislation is yet to be drafted, tabled in Parliament, and heard by the Select Committee (including the hearing of public submissions), let alone be voted into law and take effect. The Government nevertheless provides context to the FPA system including entrenched weaknesses in the labour market with wages lagging behind increases in labour productivity and low-quality jobs having grown significantly in prevalence. A decentralised and uncoordinated system of collective bargaining has been operating in the country since the 1990s with the result that most employees are not covered in a union or by a collective agreement, with collective bargaining coverage at around 17 per cent for the last two decades, down from around 70 per cent 30 years ago. Most collective bargaining is confined to the enterprise level and most bargaining per se happens between individual employers and individual employees. The Government also indicates that there is increasing evidence of a race to the bottom in some sectors and believes that the current employment regulatory landscape does not promote effective multi-employer or occupational or cross-industry bargaining at levels that might reduce the negative factors of low wages and wage growth, the decoupling of wages from productivity growth, poor labour practices vulnerability, and an over-reliance on statutory minimum conditions as the norm rather than a floor for bargained terms and conditions. The Fair Pay Agreement Working Group recommended an approach to developing an FPA system to create a new bargaining mechanism to set binding minimum terms at the industry or occupation level. According to the Government, these will build on national minimum standards and provide a new floor for enterprise level collective agreements where an FPA has been concluded, thus improving outcomes for employees with low bargaining power. Firms will benefit from better sector-wide co-ordination and dialogue, which should reduce transaction costs and allow parties to capitalise on the potential to address industry or occupation-wide issues and opportunities. The level playing field provided by FPAs will support firms to improve wages and conditions without fear of being undercut on labour costs by competitors and create incentives to increase profitability or market share through increased investment in training, capital and innovation. The Government adds that it is therefore important to note that the policy elements that have been developed to date reflect New Zealand's particular situation and the factors that have led to it (as noted above) and that the key aim of an FPA system is to drive enduring, transformational system-wide change benefitting workers – in particular those in low paid jobs, or in sectors where there is low or no effective collective

representation or bargaining. To embed and support this change requires specific measures to incentivise use of the system and generate effective and wide-reaching outcomes that demonstrate its benefits. In light of the rationale and objectives for FPAs, the Government considers that it is appropriate that only workers, through unions, be able to initiate bargaining for an FPA. As regards the threshold for triggering negotiation, the issues raised by BusinessNZ regarding the generally low level of unionisation in New Zealand actually highlight why this level of threshold is necessary. Employees will be represented in bargaining by registered unions. Unions other than the one that applies to initiate FPA bargaining, will be able to decide whether they want to be a bargaining party to that FPA. Union bargaining parties will also have an obligation to represent non-union members within coverage. The Government further contends that it is not 'inserting itself into the bargaining process' as alleged by BusinessNZ – the administration of legislative frameworks for collective bargaining by the competent authority is a common and necessary feature of bargaining systems generally. Nor is the extension of bargaining outcomes to employers and workers not directly involved in the original bargaining a unique feature of FPAs, which will apply to whole sectors or occupations once settled. The Collective Agreements Recommendation, 1951 (No. 91) of the ILO makes explicit provision in its guidance for this. The use of arbitration also needs to be seen against the objective of FPAs of promoting sectoral collective bargaining as a means of addressing the situation of low paid, vulnerable workers and the fact that industrial action by either side will be prohibited within the FPA system. Only if all other reasonable alternatives for settling the dispute have been exhausted or a reasonable time period has elapsed within which the bargaining sides have used their best endeavours to identify and use reasonable alternatives to negotiate and conclude a FPA, and bearing in mind that industrial action is not permitted within the FPA system, will the Authority then be able to proceed to determine the matter. The Government reiterates that, although compulsory arbitration is generally seen as inconsistent with Convention No. 98, it is permissible in specific circumstances as highlighted in the 2012 Committee's General Survey (paras. 247 and 250), including when, after protracted and fruitless negotiations, it becomes obvious that the deadlock will not be broken without some initiative by the authorities or in its use in first agreements.

The Committee notes the observations of the NZCTU supporting the development of legislation to allow bargaining of industry standard agreements, to be known as Fair Pay Agreements. In its view, the direction indicated by the Government for the development of this legislation gives effect to *Article 4* of the Convention by implementing mechanisms appropriate to the country's national conditions for the negotiation and regulation of terms and conditions at an industry sector level. The Government's development of the Fair Pay Agreement mechanism has proceeded on the basis of recommendations from a tripartite working group, with the participation of the NZCTU and BusinessNZ and which were developed in the context of New Zealand's specific national conditions, including the absence of existing effective mechanisms to facilitate industry-level sector bargaining. The Committee further notes the NZEI's view that there is an urgent need for this system to be developed to address previous lacunae and for education to take place to ensure that both employers and employees understand the potential benefits the system can afford them and are able to engage effectively in the system.

The Committee observes that the FPA system is aimed at promoting collective bargaining, especially for low-paid workers and those in vulnerable situations, where trade union representation has been particularly low and, according to the Government, is based on recommendations emanating from a tripartite working group including the main social partners in the country. While no legislation has apparently yet been drafted, the Committee takes note of a number of concerns that have been raised by BusinessNZ and the IOE and the explanations provided by the Government. As regards the initiation of negotiations, while the Committee observes that it has found over the years a variety of industrial relations systems to be in conformity with the Convention including those that are not based on a system of most representative organizations, the Committee does consider that nothing should impede the possibility of representative employers' organizations or multiple employers in the industry or occupation to initiate negotiations should they so wish. As regards the concern that any disputes will go to compulsory arbitration with no right of appeal against the terms that are fixed while employers are not able to opt out, the Committee first wishes to recall that compulsory arbitration in the case that the parties have not reached agreement is generally contrary to the principles of collective bargaining. In the Committee's opinion, compulsory arbitration is only acceptable in certain specific circumstances, namely: (i) in essential services in the strict sense of the term, that is those the interruption of which would endanger the life, personal safety or health of the whole or part of the population; (ii) in the case of disputes in the public service involving public servants engaged in the administration of the State; (iii) when, after protracted and fruitless negotiations, it becomes obvious that the deadlock will not be broken without some initiative by the authorities; or (iv) in the event of an acute crisis. As regards the possibility of employers to opt out, while duly noting the Government's distinction between an agreement which covers the industry or sector fully at the outset and a collective bargaining agreement between some parties in a given industry or sector and extended through government action to cover the entire sector, the Committee considers that a number of the principles set out in Recommendation No. 91, namely, that the collective agreement covers a number of the employers and workers concerned which is, in the opinion of the competent authority, sufficiently representative bearing in mind the specific conditions, and that the employers and workers to whom the agreement would be made applicable should be given an opportunity to submit their observations, are a sound basis for development of industry-wide agreements. ***In light of the above, the Committee requests the Government to take the above considerations into account in its drafting of the FPA Bill and requests it to transmit a copy of the proposed provisions as soon as they are drafted.***

COVID-19. Finally, the Committee notes the comments of the NZEI concerning the challenges of the COVID-19 pandemic and that, throughout the pandemic response, the Government has consulted with education unions ahead of all advice going out to schools; been responsive to feedback; continued to pay the salaries and wages of school employees and provided additional funding in specific circumstances, such as supporting vaccinations. The Committee further notes the NZEI concerns however that in the early childhood sector, which is largely privately operated, the impact has been much more severe. There is very limited collective agreement coverage in the sector and few other industrial mechanisms for setting out employment terms and conditions for employees, while employers exercise considerable power over decision making with little or no union engagement. The NZEI emphasizes that the COVID-19 response requires a carefully nuanced conversation and unions should be involved. As regards vaccinations, the NZEI indicates that the Ministry of Education has also consulted with education unions on recent advice about vaccination and generally been responsive to feedback. The Government in its reply adds that it is conscious of the need to achieve an appropriate balance of individual rights, workplace health and safety duties and public health objectives and has been consulting with affected sectors and unions – directly and via the peak union body, the NZCTU, throughout the process of policy development.

Nicaragua

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

(Ratification: 1967)

Observation, 2021

The Committee notes the observations of the International Organization of Employers (IOE), received on 1 September and 25 October 2021, denouncing acts of persecution, intimidation and repression against leaders of the Superior Council for Private Enterprise (COSEP) and against the business sector affiliated with COSEP, as well as the arbitrary detention of employer leaders without warrant and legal due process. The IOE specifically denounces the arbitrary detention on 8 June 2021 of the former president of COSEP, José Adán Aguerri Chamorro, accused of the crime of conspiracy for undermining national integrity. The IOE also denounces the detention on 21 October 2021, without warrant, of Michael Healy, President of COSEP, as well as its Vice-President, Álvaro Vargas Duarte.

The Committee takes note of the Government's general reply, which indicates that the detention of Mrs. Aguerri Chamorro, Healy and Vargas Duarte is not related to their activities as employers, but that they are being investigated and prosecuted for various criminal acts. The Government also indicates that their detention was carried out in observance of all rights and guarantees, respecting physical and legal security and integrity. The Committee ***regrets*** to note that in its reply the Government merely states that the employer leaders were detained for common law crimes, without providing any information or documentation regarding the charges brought against them, the legal or judicial proceedings instituted and the outcome of such proceedings. The Committee observes that the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights have condemned the detention of the employer leaders and have urged the Government to proceed with their immediate release. The Committee recalls that the rights conferred upon the workers' and employers' organizations protected by the Convention are void of meaning if there is no respect for fundamental freedoms, such as the safety and physical integrity of persons, the right to protection against arbitrary arrest and detention, and the right to a fair trial by independent and impartial tribunal. It also recalls that the arrest of employer officials for reasons linked to actions relating to legitimate demands is a serious restriction of their rights and a violation of freedom of association.

Expressing its deep concern at the seriousness of these allegations, the Committee requests the Government to provide precise information on the detentions and, in particular, on the judicial proceedings instituted and their outcome. In the absence of any specific indication of the charges giving rise to the detention of the employer leaders, the Committee urges the Government to take the necessary measures to ensure the safety of Mr Aguerri Chamorro, Healy and Vargas Duarte and ensure their immediate release if their detention is related in any way to the exercise of their functions as employer leaders. It also requests the Government to provide its comments relating to all other issues raised by the IOE, including those regarding the Act regulating foreign agents No. 1040, adopted on 15 October 2020, and the allegation that several sections therein place unacceptable restrictions on freedom of association.

Article 3 of the Convention. Right of workers' organizations to organize their activities in full freedom and to formulate their programmes. The Committee recalls that for several years it has been referring to the need to take steps to amend sections 389 and 390 of the Labour Code, which provide that collective disputes shall be referred to compulsory arbitration when 30 days have elapsed since the calling of the strike. In this regard, the Committee notes the Government's indication that: (i) since 2007 to date, the provisions of these articles have not been applied and there has been no need to establish an Arbitration Tribunal; and (ii) the Government has prioritized dialogue to resolve labour disputes in both the public and private sectors by setting up roundtables for dialogue in which the Ministry of Labour participated as facilitator. The Government adds that thus far, the results have been successful and it is therefore not currently necessary to amend sections 389 and 390 of the Labour Code. While taking due note of the Government's indications regarding the emphasis placed on dialogue as a solution to labour disputes, the Committee can only insist once again on the need to amend the abovementioned provisions of the Labour Code, as the imposition of compulsory arbitration to end a strike, beyond the cases in which a strike may be limited or even prohibited, is contrary to the right of workers' organizations to freely organize their activities and formulate their programmes. ***Regretting the lack of progress in this respect, the Committee urges the Government to take the necessary measures to amend sections 389 and 390 of the Labour Code in order to ensure that compulsory arbitration is only possible in cases where strikes may be limited or even prohibited, namely in cases of conflict within the civil service relating to officials exercising authority on behalf of the State, in essential services in the strict sense of the term or in the event of an acute national crisis. The Committee requests the Government to provide information on any developments in this regard.***

Article 11. Protection of the right to organize. In its previous comment, the Committee noted the Government's various initiatives aimed at promoting the right to organize and requested it to provide information concerning their implementation. The Committee notes the information provided by the Government in this respect and notes that the Government's initiatives have been focused, inter alia, on building trust among the members of trade union organizations in terms of guaranteeing their right to freedom of association, removing red tape in the registration procedures of trade union organizations, promoting the organization of own-account workers, and providing ongoing training for trade union leaders. The Committee notes that, according to the Government, as a result of the abovementioned policies to promote and encourage unionization between 2018 and 2021, 111 new trade union organizations were formed, affiliating 3,902 workers, and 2,884 trade union organizations were updated that grouped together 222,370 workers. ***The Committee takes due note of this information and requests the Government to continue providing information regarding the initiatives aimed at promoting the right to organize and the results of said initiatives.***

[The Government is asked to reply in full to the present comments in 2022.]

Nigeria

Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) *(Ratification: 1961)*

Protection of Wages Convention, 1949 (No. 95) *(Ratification: 1960)*

Observation, 2021

In order to provide a comprehensive view of the issues relating to the application of the ratified Conventions on wages, the Committee considers it appropriate to examine Conventions Nos 26 (minimum wage) and 95 (protection of wages) together.

Article 1 of Convention No. 26. Scope of minimum wage protection. In its previous comments, the Committee requested the Government to extend the scope of the National Minimum Wage Act to all workers in need of such protection, in the context of its next minimum wage revision. The Committee takes note that, in its report, the Government refers to the adoption of the National Minimum Wage Act 2019, which reduces the minimum size of the establishments to which the Act applies, from 50 to 25 persons (section 4). However, the Committee observes that the Act otherwise replicates the exclusions already foreseen in the previous National Minimum Wage Act. ***With reference to its latest comment under the Equal Remuneration Convention, 1951 (No. 100), the Committee requests the Government to take the necessary measures to extend the minimum wage coverage to the categories of workers currently excluded, which are in need of such protection.***

Article 4(1). System of supervision and sanctions. The Committee previously requested the Government to provide comments on the observations of the Nigeria Labour Congress (NLC) alleging that governments at the state level are reluctant to implement the law on minimum wage. In this regard, the Committee notes the Government's indication that the authorities at the state level appear not to comprehend fully the principles of the national minimum wage, and that technical assistance from the Office would be necessary to sensitise them on the provisions of the Convention. ***The Committee recalls that each Member which ratifies this Convention must take the necessary measures, by way of a system of supervision and sanctions, to ensure that the employers and workers concerned are informed of the minimum wage rates in force, and requests the Government to provide further information on how it ensures that the national minimum wage is applied at all levels.***

Article 2 of Convention No. 95. Protection of wages of homeworkers and domestic workers. In its previous comment, the Committee noted the Government's indication that the Labour Standards Bill, which should apply to homeworkers and domestic workers, had been withdrawn from the National Assembly and was being reviewed by the stakeholders. The Committee notes that in its report, the Government indicates that, once adopted, the Labour Standards Bill will apply to domestic workers, but it does not mention homeworkers nor does it provide any additional information on measures taken to protect the wages of these categories of workers currently excluded from the Labour Act. ***The Committee requests the Government to take the necessary measures to guarantee the protection of wages of homeworkers and domestic workers, including through the adoption of the Labour Standards Bill, and to provide information in this regard.***

Articles 6 and 12(1). Workers' freedom to dispose of their wages and regular payment of wages. The Committee had previously requested the Government to revise section 35 of the Labour Act, which allows the Minister of Labour to authorize deferred payment of up to 50 percent of workers' wages until the completion of their contract. ***While noting the Government's indication that the Federal Ministry of Labour and Employment has not acted upon section 35 of the Labour Act in recent years, the Committee once again requests the Government to take the necessary measures to bring section 35 of the Labour Act into conformity with the Convention and to provide information in this regard.***

Article 7(2). Work stores. In response to the Committee's request for information on measures to give effect to *Article 7(2*), the Government only indicates that this matter is covered by the Labour Standards Bill, which has not yet been adopted. ***The Committee requests the Government to take the necessary measures to ensure that, where access to stores or services other than those operated by the employer is not possible, goods are sold and services provided at fair and reasonable prices and for the benefit of the workers, in accordance with Article 7(2).***

Article 12(1). Regular payment of wages. The Committee previously noted the NLC's observations regarding issues of non-regular payment of wages in several states. In this regard, the Committee notes the Government's indication that wage arrears has become an issue of great concern for the social partners, and that it is planning to engage all relevant authorities to deliberate and find a lasting solution. ***The Committee requests the Government to continue to take the necessary measures, such as reinforcing supervision and strengthening sanctions, to address this issue, and to provide information on the progress made in this respect.***

Article 14. Information on wages before entering employment and wage statements. Following its previous comments on measures taken to give effect to *Article 14,* the Committee notes the Government's indication that, in practice, workers receive payslips each month, in both the public and private sectors. ***The Committee requests the Government to indicate the measures taken to ensure that workers are informed, in an appropriate and easily understandable manner before they enter employment and when any changes take place, of the conditions in respect of wages under which they are employed, in accordance with Article 14(a).***

Philippines

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

(Ratification: 1953)

Observation, 2021

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 20 and 29 September 2021, referring to matters addressed below, denouncing a deteriorating situation in the country and requesting the Committee to consider an out-of-cycle review of the application of the Convention by the Philippines. ***The Committee requests the Government to provide its reply thereto.***

Given the urgency of the matters and the questions of life, personal safety and fundamental human rights raised therein, as well as up-dated information on the Committee's previous observations submitted by the Government in June 2021, the Committee decided to proceed to an examination of the application of the Convention by the Philippines outside of the regular reporting cycle.

Action plan to implement the 2019 Conference Committee conclusions and achieve full compliance with the Convention. High-level tripartite mission. In its previous comment, the Committee noted 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 and observed 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 further noted the Government's request for guidance on giving effect to these conclusions, expressed trust that, as soon as the situation so permitted, the Government would receive a high-level tripartite mission, as requested by the Conference Committee, and reminded the Government that, in the meantime, it could avail itself of the technical assistance of the Office, including in order to elaborate a plan of action, detailing progressive steps to be taken to achieve full compliance with the Convention.

The Committee notes the Government's indication that in an April 2021 communication to the ILO the Government expressed its intention to accept a high-level mission as a sincere gesture of its continuing commitment under international instruments and of its enduring partnership with the ILO in upholding the fundamental rights of workers. However, due to the ongoing global health crisis, the Government was not yet inclined to accept an in-person mission and considered conducting a virtual one. The Committee observes that due to the COVID-19 pandemic, the high-level tripartite mission has not yet taken place but that, in view of the Government's request for guidance in respect of the application of the 2019 Conference Committee's conclusions, a virtual exchange was organized by the Office in September 2021 between the Government, national social partners and designated representatives from the workers' and the employers' groups of the Conference Committee, in order to clarify any outstanding confusion in respect of the Conference Committee's conclusions and to assist the Government and the social partners to take effective action for their implementation. The Committee notes that the report of the virtual exchange was circulated to all the parties that met and was submitted to the Committee by the ITUC, as additional observations to its earlier submission requesting an out-of-cycle examination of the application of the Convention, and was also transmitted to the Government. The Committee observes that the report of the virtual exchange concluded that despite measures undertaken and further commitments by the Government, as well as the existence of a number of institutions and strong support from the ILO and other partners, the discussion failed to bring forward evidence of tangible progress on the four areas of concern highlighted by the Conference Committee and that the Government should therefore adopt a time-bound plan of action in consultation with the social partners and with support from the ITUC and the International Organization of Employers (IOE) to address each of the four areas of concern. The report also emphasized that the virtual exchange was not a replacement for a mission, that there continued to be a pressing need for a high-level tripartite mission to travel to the Philippines and that it would be critical for the mission to take place before the 2022 International Labour Conference, taking into account the sanitary conditions prevailing in the country. ***In these circumstances and given the continuing urgency of the matters raised, as denounced by the trade unions below, the Committee calls on the Government to elaborate a plan of action, in consultation with the social partners, detailing progressive steps to be taken to implement the conclusions of the 2019 Conference Committee and to achieve full compliance with the Convention. The Committee reminds the Government of the possibility to avail itself of ILO technical assistance in this regard. The Committee also expects that the high-level tripartite mission will be able to visit the country before the next International Labour Conference, taking into account the sanitary conditions in the country.***

Civil liberties and trade union rights

2019 and 2020 ITUC observations and 2019 Education International (EI) observations. In its previous comment, the Committee noted with deep concern the grave allegations of violence and intimidation of trade unionists communicated by the ITUC in 2019 and 2020 and EI in 2019, as well as the Government's detailed reply thereto, and expressed trust that all of these allegations would be duly investigated and perpetrators punished to effectively prevent and combat impunity. The Committee notes that the Government reiterates previously provided information on the measures taken to address the above allegations and on the domestic remedies available to victims of human rights violations and adds minor updates on the status of the investigations in some of the cases. With regard to the allegations of red-tagging, it indicates that Senate Bill No. 2121 (seeking to fix legal gaps and institutionalize a system of accountability by criminalizing red-tagging and providing penalties as deterrence thereto) was filed in March 2021. ***The Committee welcomes this initiative and requests the Government to provide information on the progress made in the adoption of Senate Bill No. 2121. It expects that the grave allegations of violence and intimidation referred to above will be duly investigated and perpetrators punished to effectively prevent and combat impunity and requests the Government to provide updated information in this respect.***

2020 joint observations of EI, the Alliance of Concerned Teachers (ACT) and the National Alliance of Teachers and Office Workers (SMP-NATOW). In its previous comment, the Committee requested the Government to provide its reply to the 2020 joint EI, ACT and NATOW observations, denouncing extra-judicial killings of eight trade unionists in the education sector and other serious violations of civil liberties, as well as challenges in the application and implementation of the right to freedom of association. The Committee takes due note of the Government's reply in this regard and ***regrets*** to observe that, while quite extensive, it is limited to general statements on the domestic remedies available against violations of human and trade union rights, to refuting the allegations that unionism is equated to communism and to indicating in general that the cases were subjected to monitoring by the Regional Tripartite Monitoring Bodies (RTMBs) and proceed under the regular process of criminal investigation, prosecution and litigation. ***In view of the lack of details on the progress made in investigating the concrete and serious allegations of violence set out in detail in the 2020 joint EI, ACT and NATOW observations, the Committee expects the Government to ensure that all measures are being taken to address these specific incidents, in particular that they are properly investigated, so as to establish the facts, determine culpability and punish the perpetrators. The Committee requests the Government to provide information on the measures taken in this respect and on the progress in investigations.***

New allegations of violence and intimidation. 2021 ITUC observations. The Committee notes that, in its latest communication, the ITUC denounces a severely deteriorating situation in the country since 2019, characterized by increased repression against the independent trade union movement and extreme

violence against and persecution of unionists, including extra-judicial killings, physical attacks, red-tagging, threats, intimidation, harassment, stigmatization, illegal arrests, arbitrary detention and raiding of homes and union offices, as well as the Government's institutional failure to address these issues, exacerbating the culture of impunity. The ITUC also alludes to the adoption of additional measures, allegedly worsening the situation of trade unions in the country, including: the establishment of the National Task Force to End Local Communist Armed Conflict (NTF-ELCAC); the creation of the Joint Industrial Peace and Concern Office (now referred to as the Alliance for Industrial Peace and Program Office (AIPPO)) in export-processing zones; the adoption of the Anti-Terrorism Act, 2020; and abuse in the use of judicial search warrants. According to the ITUC, the above situation leads to a climate of pressure and fear, exposing workers engaged in trade union activities to imminent danger and undermining the ability of workers to exercise the rights guaranteed by the Convention.

The Committee notes with ***deep concern*** these grave allegations, as well as the following concrete incidents denounced and described in great detail by the ITUC: (i) the extra-judicial killing of 10 trade unionists (some of whom were mentioned in previous observations of the trade unions); (ii) at least 17 cases of arrests and detention, in particular following police dispersal of a protest and police raids on union offices and unionists' homes (November-December 2020 and March 2021), as well as additional incidents of arrests and detention since 2019; (iii) 17 cases of red-tagging, intimidation and harassment, including against leaders and members of the ACT, the Kilusang Mayo Uno (KMU), the Philippines National Police Non-Uniformed Personnel Association Inc. (PNP-NUPAI) and other workers' organizations; and (iv) 12 cases of forced disaffiliation campaigns and seminars, including for public school teachers, workers at a beverage producing company and palm oil plantation workers. The Committee observes in this regard that, when examining Case No. 3185 concerning the Philippines, the Committee on Freedom of Association also expressed deep concern at the gravity of similar allegations, as well as their repeated and prolonged nature, resulting in a climate of violence and impunity with an extremely damaging effect on the legitimate exercise of trade union rights in the country, and expressed trust that the Government would prioritize investigation into these serious incidents (see 396th Report, November 2021, Case No. 3185, paragraphs 524–525 and 528(b)). ***In these circumstances, given the extreme seriousness of the allegations and their repeated nature, the Committee urges the Government to take all necessary measures to address the issues of violence and intimidation raised and, in particular, to conduct prompt and effective investigations into all allegations of extra-judicial killings of and assaults against trade unionists, so as to determine the circumstances of the incidents, including any links to trade union activities, determine culpability and punish the perpetrators. The Committee requests the Government to provide detailed information in this respect.***

Pending cases of alleged killings of trade union leaders. For several years, the Committee has been requesting the Government to ensure that the investigations into the killings of trade unionists Rolando Pango, Florencio "Bong" Romano and Victoriano Embang are completed to shed full light on the facts and the circumstances in which such actions occurred and, to the extent possible, determine responsibilities, punish the perpetrators and prevent the repetition of similar events. ***Observing with regret that the Government simply reiterates that the cases are being handled through the regular course of criminal investigation and prosecution, without providing details as to any progress made, the Committee reiterates its previous request and expects the Government to be in a position to report substantial progress in this regard.***

Monitoring mechanisms. In its previous comment, the Committee requested the Government to take the necessary measures to ensure that all of the existing monitoring mechanisms can function properly and efficiently, so as to contribute to effective and timely monitoring and investigation of allegations of extra-judicial killings and other forms of violence against trade union leaders and members. The Committee notes the Government's indication that: (i) to help ensure that the RTMBs are able to carry out their mandate, mediator-arbiters from the Department of Labour and Employment (DOLE) regional offices were designated to act as focal persons in their respective RTMBs and are tasked to assist in the processing of cases so as to provide more responsive and inclusive reports; (ii) as for the Tripartite Validating Teams, their establishment is case-based when there is a need for further validation or review, but in addition to the previously mentioned challenges concerning security of its members, it is currently not advisable to create such teams given the health risks relating to the COVID-19 pandemic; (iii) the operationalization of the Administrative Order No. 35 Inter-Agency Committee (AO35 IAC) was affected by leadership and administrative changes within the Department of Justice and the secretariat has also undergone leadership changes, as a result of which it is now more active in engaging with tripartite monitoring bodies and the concerned groups and organizations in the deliberation of cases; (iv) the Secretary of Labour and Employment is an observer in AO35 IAC meetings, as well as its technical working group (TWG) meetings; (v) the AO35 secretariat welcomes ILO training programmes which aim at incorporating a labour perspective into the work of the AO35 secretariat and the TWG and at showing the relevance of the principles of freedom of association and collective bargaining for their work; (vi) one of the trainings resulted in the identification of strategies for better handling of cases involving workers and trade unions, which may be considered as policy recommendations in the ongoing review of the AO35 operational guidelines; and (vii) the investigation into the case of Dennis Sequeña, previously referred to by the Government and the social partners, was closed due to difficulties in convincing the family of the victims to cooperate but the AO35 task force will look into other avenues to continue its investigation. While taking due note of the Government's information, the Committee ***regrets*** that despite a number of initiatives undertaken, trade unions continue to raise concerns as to numerous allegations of violence perpetrated against trade union members for which the presumed perpetrators have not yet been identified and the guilty parties punished. ***In view of the above, the Committee trusts that the review of the operational guidelines of the monitoring mechanisms will be completed without delay and, together with the above adjustments, will contribute to ensuring the full operationalization of all existing monitoring mechanisms so that they can function properly and efficiently. Further noting the call of the trade unions for full operationalization and strengthening of the existing monitoring and investigative mechanisms, the Committee requests the Government to continue to take all necessary measures to this effect, including allocating sufficient resources and staff and providing all necessary security to these personnel, in order to ensure effective and timely monitoring and investigation of all pending labour-related cases of extra-judicial killings and other violations against trade union leaders and members. The Committee also 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. Training. The Committee previously encouraged 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. The Committee notes the Government's indication that several ongoing projects, including the EU-GSP Trade for Decent Work Project, allow for participation of various government offices, aim at strengthening social dialogue and better application of international labour standards and focus on the principles of freedom of association and the right to collective bargaining, as well as occupational safety and health in the context of the COVID-19 pandemic. According to the Government, these projects involve activities that will help improve the monitoring and investigative mechanisms for resolution of labour-related cases and improve national laws and policies on freedom of association and collective bargaining based on ILO Conventions. ***Welcoming the above information, the Committee encourages the Government to continue to pursue its efforts in terms of training and capacity-building of State actors, with the aim of increasing the investigative capacity of the concerned officials and providing sufficient witness protection, and ultimately contributing to combating impunity.***

Measures to combat impunity. Pending legislative matters. The Committee previously noted that the Committee on Freedom of Association referred a number of legislative aspects to this Committee and requested the Government to provide information on the progress made in: (i) the adoption of the Bill

concerning enforced and involuntary disappearances; and (ii) the previously announced review by the Supreme Court and the Commission on Human Rights of the witness protection programme on the writ of amparo adopted in 2007, as well as of the application of the Anti-Torture Act No. 9745 and of Act No. 9851 on crimes against international humanitarian law, genocide and other crimes against humanity. The Committee notes the Government's indication that to date, House Resolution No. 392 (calling for justice for the victims and to urge the House Committee on Human Rights to investigate, in aid of legislation, the spate of enforced disappearances in the country) was filed in October 2019 and is currently pending with the Committee on Rules. The Government adds that in March 2021, the Supreme Court announced a five-week information gathering on the extent of threats against lawyers, after which it will decide on the next course of action. ***Taking due note of the above, the Committee requests the Government to continue to provide information on any developments with respect to all pending legislative matters referenced above.***

Anti-Terrorism Act. In its previous comment, having noted the concerns expressed by the ITUC over the adoption of the Anti-Terrorism Act, 2020, which it alleged aimed at silencing dissenting voices and further entrenched State repression and hostility against workers and trade unionists, the Committee requested the Government to provide information on any aspects of implementation of the Act that affect trade unionists or trade union activities. ***Observing with concern that, according to the information contained in the ITUC communication, the law has been used to label trade unions, such as COURAGE and ACT, as terrorist organizations, the Committee reiterates its previous request in this regard and requests the Government to take any necessary measures to ensure that the Act does not have the effect of restricting legitimate trade union activities.***

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. ***Considering that the Government does not provide any updated information and fails to show any substantial progress in the adoption of the numerous amendment bills, the Committee reiterates all of its previous comments and requests in this respect and expects the Government to be in a position to report progress on this matter.***

The Committee further reiterates its comments contained in the 2020 request addressed directly to the Government.

Solomon Islands

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

(Ratification: 2012)

Observation, 2021

Articles 3(a) and 7(1) of the Convention. Worst forms of child labour and penalties. Sale and trafficking of children. The Committee previously noted that section 77 of the Immigration Act No. 3 of 2012 criminalizes trafficking of persons under 18 years of age (including for the purpose of sexual exploitation, forced labour or slavery), establishing as penalty for this offence a fine or imprisonment. The Committee notes that the Government indicates in its report that the Solomon Islands Immigration Division has reported three cases of trafficking of children in the period January–March 2020, which have ended in acquittals. The Committee also notes the adoption of the Penal Code (Amendment) (Sexual offences) Act (2016), which, under section 145, establishes a sanction of 25 years of imprisonment for persons engaging in internal trafficking of persons when the victim is a child. However, the Committee notes that the Government, in its report under the Minimum Age Convention, 1973 (No. 138), indicates that there is evidence of sale and trafficking of children, particularly of girls, by their parents to foreign workers. The Committee also notes that the United Nations Committee on the Rights of Child, in its 2018 concluding observations expresses its serious concern about the sale of children to foreign workers in the natural resource sector for the purpose of sex (CRC/C/SL/B/CO/2-3, 28 February 2018, paragraph 48). The Committee further notes that the *Community Health and Mobility in the Pacific, Solomon Islands Case Study* published in 2019 by the International Organization for Migration (IOM) highlights the high number of reported cases of sexual exploitation and trafficking involving children in communities near logging camps (page 46). ***The Committee requests the Government to take the necessary measures to ensure that thorough investigations and prosecutions against persons who engage in the sale or trafficking of children are carried out, and that sufficiently dissuasive penalties are imposed in practice. The Committee also requests the Government to continue to provide information on the number of investigations, prosecutions, convictions and penalties imposed on the offenders on the basis of section 77 of the Immigration Act No. 3 of 2012 and section 145 of the Penal Code (Amendment) (Sexual Offences) Act of 2016, including information on the number of acquittals.***

Clause (b). Use, procuring or offering of a child for prostitution. The Committee previously noted that section 144 of the Penal Code, as amended up to 1990, did not criminalize procuring of male children for prostitution. It also noted that the definition of the crime of disposing of minors for immoral purposes (including prostitution), contained in section 149 of that Code, did not protect children between the age of 15 and 18. The Committee, accordingly, requested the Government to take the necessary measures to prohibit using, procuring or offering of both boys and girls under the age of 18 for the purpose of prostitution. The Committee notes with ***satisfaction*** that, through the adoption of the Penal Code (Amendment) (Sexual offences) Act (2016), the Penal Code was amended to protect all children under the age of 18 from prostitution, in line with the Committee's previous comments. Section 141(2) of the Amendment stipulates that the person who procures or attempts to procure another person to provide commercial sexual services, either in Solomon Islands or elsewhere, is punishable by a penalty of up to 20 years of imprisonment if the victim is under 15 years of age, and up to 15 years of imprisonment in other cases. According to section 143, the person who obtains commercial sexual services from a child, or induces, invites, persuades, arranges or facilitates its provision is liable to up to 20 years of imprisonment if the child is under 15 years of age, or to up to 15 years of imprisonment in other cases. The same sanction applies to the parent or guardian who permits the child to be used for the provision of commercial sexual services as well as for the person who benefits from such service. ***The Committee requests the Government to provide information on the application, in practice, of sections 141(2) and 143 of the Penal Code (Amendment) (Sexual Offences) Act 2016, including the number of investigations, prosecutions, nature of the offences, convictions and types of sanctions imposed on the offenders.***

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

Tajikistan

Labour Inspection Convention, 1947 (No. 81)

(Ratification: 2009)

Observation, 2021

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2021.

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 109th Session, June 2021)

The Committee notes the 2021 conclusions of the Committee on the Application of Standards (Conference Committee) on the application of Convention No. 81 by Tajikistan, which urged the Government to:

·– take all necessary measures to ensure that no moratorium or other restrictions of this nature on labour inspections be placed in the future;

·– provide information on the developments regarding labour inspections, including on the number of inspection visits undertaken by the labour inspectors, disaggregated by type of inspections and by sectors;

·– take all necessary legislative measures to ensure that labour inspectors are empowered to make visits without previous notice, and that they are able to undertake labour inspections as often and as thoroughly as is necessary to ensure the effective application of the legal provisions and to guarantee the powers of the state inspectorate in line with the Convention;

·– revive the functioning of the Council for the Coordination of the Activities of Inspection Bodies so as to ensure the effectiveness and the efficiency of both labour inspectorates;

·– implement outcome 2.2 of the Decent Work Country Programme 2020–24, in order to increase the effectiveness of the labour inspection;

·– publish reports on the work of the inspection services and transmit those reports to the ILO in line with *Articles 19* and *20* of the Convention; and

·– involve the social partners in implementing those recommendations.

In addition, the Conference Committee invited the Government to accept an ILO technical advisory mission within the framework of the ongoing technical assistance in the country.

In this regard, the Committee welcomes the communication from the Ministry of Labour, Migration and Employment in September 2021, indicating its readiness to receive, in the first quarter of 2022, the ILO technical advisory mission called for by the Conference Committee. ***The Committee expects that all outstanding issues will be addressed in the framework of the mission.***

Articles 3, 4, 5(b), 17 and 18 of the Convention. Operation of the labour inspection system under the supervision and control of a central authority. Duality of inspection functions assumed by state and trade union labour inspectors. The Committee previously requested the Government to clarify the relationship between the State Inspection Service for Labour, Migration and Employment (SILME) and the trade union inspectorate established by the Federation of Independent Trade Unions. It also requested information on the modalities in place to ensure effective cooperation between both inspectorates, and on the relationship between those inspectorates and the Council for the Coordination of the Activities of Inspection Bodies. In this context, the Committee notes that, according to the Government's report, the SILME is under the supervision and control of the Prosecutor General's Office of the Republic of Tajikistan, and that it has official cooperation channels established with prosecution agencies, executive government authorities, local government authorities and financial bodies. The Committee also notes from the information provided by the Government that the Council for the Coordination of the Activities of Inspection Bodies appears to play both a coordinating role between the SILME and the trade union inspectorate, and a role akin to supervision over the SILME. For instance, pursuant to section 6 of the Law on Inspections of Economic Entities No. 1269 (Law No. 1269), as last amended in 2020, the remit of this Council includes reviewing annual inspection body reports, with an annual assessment of the effectiveness and efficiency of inspections, and ensuring that inspection bodies comply with inspection rules. The Committee further notes that, according to sections 29 and 37 of Law No. 1269 and to information provided by the Government, the SILME is required to report to multiple bodies, including the Council for the Coordination of the Activities of Inspection Bodies, and the Prosecutor General's Office. Regarding the trade union inspectorate, the Committee notes the Government's indication that the rights and obligations of trade union inspectorates are defined in the Labour Code, the Trade Unions Act and the Regulations on the Trade Union Labour Inspectorate, approved by a decision of the General Council Executive Committee of the Federation of Independent Trade Unions. The Government indicates that representatives of the Federation of Independent Trade Unions and the trade union inspectorate participate actively in initiatives of the Ministry of Labour, Migration and Employment and of the SILME relating to improved cooperation between labour inspectorates, and that these bodies regularly exchange information, including through roundtable events, seminars and conferences. The Government also refers to the role of the Council for the Coordination of the Activities of Inspection Bodies to increase the effectiveness of cooperation between both inspectorates, and indicates that the Council has met annually to coordinate the activities of the inspectorates. In this regard, the Committee notes with ***interest*** the Government's indication that measures adopted in June 2021 have allowed the Council to resume its work. ***The Committee requests the Government to provide further information on the manner in which the activities of the SILME are supervised and controlled, including on the setting and review of priorities by the Council for the Coordination of the Activities of Inspection Bodies and the role of the Prosecutor General's Office. It also requests the Government to provide further information on the manner in which the trade union inspectorate, which operates under the direction of the executive boards of national and regional trade union committees, defines its priorities of action in practice, including examples of how the trade union inspectorate coordinates its activities with those of the SILME and examples of how it operates independently of the SILME.***

Articles 6, 10 and 11. Status and conditions of service of labour inspectors. Number of labour inspectors and material means at their disposal. The Committee previously requested information on the status and conditions of service of state labour inspectors, on the sources of funding for the trade union labour inspectorate, as well as on the numbers of labour inspectors in both inspectorates, and the material means at their disposal. Regarding the SILME, the Committee takes due note of the Government's indication that labour inspectors are civil servants, whose status and conditions of service are guaranteed under the Civil Service Act, which provides them with stability of employment. The Government maintains that, in accordance with this Act, wages, wage adjustments and annual pay rises of not less than 15–20 per cent for labour inspectors are determined by presidential decree, and that effective social protection measures are guaranteed under national legislation. The Committee also notes that, according to the Government, staff turnover at the SILME is one of the lowest among state bodies. In this respect, the Committee notes that there are 60 labour inspectors in the SILME as of July 2021 (with 28 in the central office and 32 in regional offices), and that the SILME also has 33 support staff. In addition, the Committee notes the detailed information provided by the Government on the material means at the disposal of the SILME, in terms of IT and other equipment, internet access and transportation. Nevertheless, the Committee observes that, pursuant to section 37(1) of Law No. 1269, the performance of an inspection body official conducting an inspection shall be assessed based on criteria which includes feedback from the inspected economic entity regarding the inspection body official.

With regard to the trade union inspectorate, the Committee notes that pursuant to sections 1.7 and 1.8 of the Regulations on the Trade Union Inspectorate,

chief inspectors are dismissed and appointed by the board of trade union bodies, and the funding of the inspectorate is provided from trade union funds and other sources not prohibited by legislation. In this respect, the Committee notes the observations of the ITUC, which refer to the decrease in the number of trade union labour inspectors in 2021 to 24 (from 28 in 2020, and 36 in 2018), and which note that information on the sources of funding for trade union inspection services is still very limited. ***The Committee requests the Government to provide its comments in respect of the observations of the ITUC. It also requests the Government to indicate how the independence of labour inspectors is ensured in practice, in respect of the requirement that the performance of an inspection body official be assessed based on criteria including feedback from economic entities. In addition, the Committee requests the Government to take measures to improve the situation with respect to the funding for and the number of trade union labour inspectors, and to provide further information on the material means at their disposal in practice.***

Articles 12 and 16. Powers of labour inspectors. 1. *Moratorium on inspections.* Following its previous comments on this matter, the Committee takes due note of the Government's indication that the moratorium on inspection has expired on 1 January 2021. The Committee notes that, according to the Government, the labour inspectorate now works according to its normal schedule, and labour inspectors decide on the frequency of inspection visits, based on the information available on the status of enterprises' compliance with labour regulations. The Committee also notes in this regard that the annual report on the work of the labour inspectorate covering the period 2020–21 (Annual Report on Labour Inspection 2020–21) provides detailed statistics on the number of inspection visits carried out by the SILME in the reporting period, disaggregated by sector. ***Taking due note of these developments, the Committee expects that no moratorium of this nature will be placed on labour inspection in the future. It requests the Government to continue to provide statistics on the number of inspection visits undertaken by the SILME, disaggregated by type of inspections (scheduled, unscheduled, additional, or follow-up) and by sectors.***

2. *Other restrictions on the powers of labour inspectors.* The Committee previously noted with concern the restrictions in Law No. 1269 on the power of inspectors, including with regard to: (i) frequency of inspections (section 22); (ii) duration of inspections (section 26); (iii) the ability of labour inspectors to undertake inspection visits without previous notice (sections 16, 19, 21 and 24); and (iv) the scope of inspections (section 25). The Committee notes with ***concern*** that the restrictions under Law No. 1269 appear to be still in force. However, according to the Government, these restrictions do not apply to trade union labour inspectors. The Government also indicates that labour inspectors in the SILME can make inspection visits without previous notice in exceptional cases, when there is information on serious violations of standards that threaten workers' lives and health, or when responding to submitted complaints, claims or enquiries, and provided that the Council for the Coordination of the Activities of Inspection Bodies is notified. The ITUC observations underline in this regard that the requirements of *Articles 12* and *16* of the Convention should apply to all labour inspectors, and that it is therefore necessary to restore the powers of state labour inspectors fully, to ensure compliance with the Convention. In this respect, the Committee notes the Government's statement that the SILME has communicated the position of its leadership to the Council for the Coordination of the Activities of Inspection Bodies regarding strict compliance with the requirements of the Convention. The Committee also welcomes the Government's indication that a protocol-resolution of the Council has assigned to the Ministry of Justice, the Committee for State Property Investment and Management, and other relevant governmental agencies, the task to consider this matter and submit the necessary proposals to harmonize the relevant legislation. In addition, the Government refers to the existence of a due diligence checklist for inspections, compiled by SILME specialists, which formalizes the wide-ranging powers of labour inspectors to conduct unscheduled, surprise, targeted and verification inspections. ***With reference to its general observation of 2019 on the labour inspection Conventions, the Committee urges the Government to pursue its efforts and continue to take all the necessary measures to bring its national legislation into full conformity with Articles 12 and 16 of the Convention. It requests the Government to continue to provide information on the measures taken and the developments in this regard, and to communicate a copy of the due diligence checklist established by the SILME for inspections. In addition, the Committee requests the Government to provide statistics regarding the number of inspection visits undertaken by labour inspectors of the SILME without previous notice, as compared to inspection visits undertaken with prior notice, and similar statistics regarding inspections undertaken by trade union labour inspectors.***

Article 13. Preventive measures in the event of a danger to the safety and health of workers. The Committee previously requested information on the application in practice of *Article 13* of the Convention and of inspectors' temporary suspension powers under section 30 of Law No. 1269 related to occupational safety and health (OSH). In this regard, the Committee notes that the Government does not provide information regarding the application of section 30 of Law No. 1269, but refers to the application of section 3(7) of the Regulations of the SILME, approved by Government Decision No. 299 of 3 May 2014, as amended in 2020 (SILME Regulations). Section 3(7) of the SILME Regulations provides that the SILME has the authority to: (i) suspend the activities of organizations, production sites and individual entrepreneurs in accordance with national laws, when activities jeopardize employees' lives and health and until OSH infringements are addressed; and (ii) prohibit the use of non-compliant work clothes and footwear, and personal protective equipment. The Committee notes the Government's indication that, in 2020 and the first semester of 2021, labour inspectors of the SILME have halted the activities of enterprises, production sites and sole trader industrial plants in 95 instances, until the violations had been remedied and the inspectors' regulatory requirements had been implemented. The Annual Report on Labour Inspection 2020–21 also contains statistics on the reports issued by the SILME containing instructions to remedy infringements of standards on protection of workers, in connection with plans for the construction of new industrial facilities, for the renovation of industrial facilities, and for the installation of machinery, mechanisms and other industrial equipment. The Committee notes the Government's indication that trade union labour inspectors have the right to impose a suspension of work in the event of a threat to workers' lives. Pursuant to Part II of the Regulations on the Trade Union Inspectorate, the trade union labour inspectors also have the right to issue orders for employers to eliminate detected violations of labour protection requirements, execution of which is obligatory. ***The Committee requests the Government to provide statistics regarding the application in practice of trade union labour inspectors' powers to suspend work in the event of a threat to workers' lives, and to issue orders for employers to eliminate detected violations of labour protection requirements.***

Articles 20 and 21. Obligation to publish and communicate an annual report on the work of the labour inspectorate. The Committee notes with ***interest*** that the Government has communicated the Annual Report on Labour Inspection 2020–21, which includes detailed information on the subjects covered by *Article 21(a)*, *(b)*, and *(d)–(g)* of the Convention. The Committee observes that this annual report does not appear to contain statistics of workplaces liable to inspection and the number of workers employed therein (*Article 21(c)*). ***The Committee requests the Government to take the necessary measures to ensure that annual reports on the work of the labour inspectorate continue to be published and transmitted to the ILO in accordance with Article 20 of the Convention in the future, and that they contain all the information covered by Article 21(a)–(g).***

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

Turkmenistan

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

(Ratification: 1997)

Observation, 2021

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2021, which refer to issues examined by the Committee in the present comment. ***It requests the Government to provide a reply to the ITUC observations.***

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 109th Session, June 2021)

The Committee notes the detailed discussion, which took place at the 109th Session of the Conference Committee on the Application of Standards in June 2021.

Article 1(b) of the Convention. Imposition of forced labour as a method of mobilizing and using labour for purposes of economic development. Cotton production. The Committee notes that, in its conclusions adopted in June 2021, the Conference Committee urged the Government to take effective and time-bound measures to: (i) ensure, in law and in practice that no one, including farmers, public and private sector workers and students, is forced to work for the state-sponsored cotton harvest, or threatened with punishment for the lack of fulfilment of production quotas; (ii) report on the status of section 7 on the recruitment of citizens to work in enterprises, institutions and organizations in cases of emergencies of the Act on the legal regime governing emergencies of 1990; (iii) eliminate the compulsory quota system for production and harvesting of cotton; (iv) prosecute and sanction appropriately any public official who participates in the forced mobilization of workers for the cultivation or harvest of cotton; (v) develop, in consultation with the social partners and with ILO technical assistance, an action plan aimed at eliminating, in law and practice, forced labour in connection with state-sponsored cotton harvesting, and improving recruitment and working conditions in the cotton sector in line with International Labour Standards; and (vi) allow independent social partners, press and civil society organizations, to monitor and document any incidences of forced labour in the cotton harvest without fear of reprisals.

In its previous comments, the Committee noted with deep concern the continued practice of forced labour in the cotton sector. It also observed that there had been no meaningful progress to address the issue of mobilization of persons for forced labour in the cotton harvest since the discussion of the case by the Conference Committee in June 2016 and the following visit of an ILO technical advisory mission to the country.

The Committee also noted that the United Nations Committee on Economic, Social and Cultural Rights, in its concluding observations of 2018, expressed concern at the reported continued widespread use of forced labour among workers and students under threat of penalties during the cotton harvest (E/C.12/TKM/CO/2, paragraph 23). It also noted from the Summary of Stakeholders' submissions of 2018 to the United Nations Human Rights Council that people forced to pick cotton had been compelled to sign declarations on "voluntary" participation in the harvest (A/HRC/WG.6/30/TKM/3, paragraph 49).

The Committee noted the ITUC's observations of 2020 alleging the widespread use by the State of forced labour in cotton harvesting. The ITUC indicated in particular that, during the 2019 cotton harvest, public sector employees, including teachers, doctors, municipal service and utility companies' employees, continued to be mobilized for cotton picking or forced to pay for replacements pickers. For the second time in 15 years, teachers were forced to spend their nine-day autumn break picking cotton. Those unable or unwilling to pick cotton had to pay a substantial part of their income. As of October 2019, teaching staff had each paid 285 Turkmenistan manats (US$16) while their average monthly income is around US$90.

In this respect, the Committee notes the Government's statement in the written information provided to the Conference Committee that, for the period 2015-2020, the percentage of manually harvested cotton dropped from 71 per cent to 28 per cent due to the mechanization of cotton harvesting. The Government points out that the prevalent use of harvesting machines in the process of picking cotton demonstrates the absence of the need to massively involve human resources in this process.

The Committee further notes the Government's statement, in its communication dated 25 October 2021, that it has accepted a high-level mission of the ILO, as requested by the Conference Committee.

The Committee also notes the indication by the Government, in its report, that the policy of the Government is aimed at the maximum automation of manual labour in the agricultural sector and that the use of public sector employees' labour in picking cotton is not economically viable. The Government further indicates an absence of a system of mandatory quotas for the production of cotton in Turkmenistan and that the conditions of cotton production, including its volume and the purchase price, are regulated by a contract concluded between the State and a tenant. The Government also indicates that no cases of forcing citizens to pick cotton or the coercion of payments by citizens of funds intended for cotton harvesting have been registered by the law enforcement bodies.

The Committee takes note of the indication by the Government that the Act on the legal regime governing emergencies of 1990 was repealed by the State of Emergency Act of 2013 (section 31(2)) and that a state of emergency has never been introduced in Turkmenistan. The Committee also takes note of the National Human Rights Action Plan (NAP) 2021-2025 elaborated with the participation of a wide range of stakeholders. The Government indicates that the NAP 2021-2025 has a section on freedom of labour which foresees various measures particularly aimed at preventing the use of forced labour by ensuring compliance with legislation and strengthening control over its observance. In this respect, the Government points out that the NAP 2021-2025 can serve as a basis for addressing the issues raised by the Conference Committee.

The Committee however notes that, in its 2021 observations, the ITUC reiterates once again the systemic recourse to the use by the State of forced labour in picking cotton. In particular, during the 2020 cotton harvest, public sector employees and students continued to be mobilized to work in cotton fields. The ITUC indicates that mobilized persons are forced to work excessively long hours in poor sanitary conditions without protective equipment. As previously highlighted by the ITUC, in order not to participate in the cotton harvesting, persons had to pay the amounts representing a substantial part of their income for replacement pickers. The ITUC points out that the mechanization of the cotton harvesting process does not seem to offer the necessary guarantees in order to put a lasting end to the systematic practice of forced labour in Turkmenistan.

The Committee further notes that the United Nations Special Rapporteur on contemporary forms of slavery, including its causes and consequences, in the communication dated 30 August 2021 to the Government of Turkmenistan, expressed his deep concern about the working and living conditions of cotton workers. The Special Rapporteur indicates that, according to the information received, tens of thousands of citizens, public sector workers and workers of private companies are subjected to forced labour, as they are coerced to work in the cotton fields under the threat of dismissal from their own jobs. Cotton workers reportedly have to pay for their own transport, accommodation and food and they do not receive their wages or have very low salaries. Furthermore, workers do not have access to medical assistance when needed and they cannot afford medical care themselves due to their low incomes. If the cotton production quotas imposed by the State are not met, agricultural associations, enterprises and organizations, schools, construction organizations, public utilities services and hospitals of the respective region can be obliged to supply cotton, by purchasing cotton elsewhere.

While noting certain measures taken by the Government to address the issue of forced labour in cotton harvesting, including measures aimed at the reduction of manual harvesting, the Committee once again expresses its ***deep concern*** at the continued practice of forced labour in the cotton sector. ***Taking due note of the Government's stated commitment to collaborate with the ILO and implement this Convention, the Committee strongly urges the***

Government to pursue its efforts to ensure the complete elimination of the use of compulsory labour of public and private sector workers as well as students in cotton production. The Committee strongly encourages the Government to continue to engage in cooperation with the ILO and the social partners to ensure the full application of the Convention in practice. In this regard, it encourages the Government to consider developing a National Action Plan, in close collaboration with the social partners and the ILO, to improve recruitment and working conditions in the cotton sector. It requests the Government to provide information on the measures taken to this end and the concrete results achieved. The Committee welcomes the Government's acceptance of the high-level mission requested by the Conference Committee, which will visit the country in 2022, and trusts that the high-level mission will be able to note significant progress in this respect.

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

[The Government is requested to reply in full to the present comments in 2022.]

Tuvalu

Maritime Labour Convention, 2006 (MLC, 2006)

(Ratification: 2012)

Direct Request, 2021

Impact of the COVID-19 pandemic. The Committee takes note of the observations of the International Transport Workers' Federation (ITF) and the International Chamber of Shipping (ICS), received by the Office on 1 and 26 October 2020 and 4 October 2021, alleging that ratifying States have failed to comply with certain provisions of the Convention during the COVID-19 pandemic. ***Noting with deep concern the impact of the COVID-19 pandemic on the protection of seafarers' rights as laid out in the Convention, the Committee refers to its general observation of 2020 and its comments on the General Report of 2021 on this issue.***

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

The Committee notes the Government's first report on the application of the Maritime Labour Convention, 2006, as amended (MLC, 2006). It notes that the MLC, 2006, is the first ILO Convention ratified by Tuvalu. The Committee notes that the amendments to the Code approved by the International Labour Conference in 2014, introducing the new *Standard A2.5.2* and replacing *Standard A4.2* by *Standards A4.2.1* and *A4.2.2,* entered into force for Tuvalu on 18 January 2017. The Committee also notes the efforts undertaken by the Government, particularly through the adoption of regulations, for the implementation of the Convention. Following a first review of the information and documents available, the Committee draws the Government's attention to the following issues. If considered necessary, the Committee may come back to other matters at a later stage.

Article II of the Convention, paragraphs 1(f), 2, 3 and 7. Scope of application. Seafarers. The Committee notes that according to section 2(1) of the Merchant Shipping (Maritime Labour Convention, 2006) Regulations (thereafter, the Regulations), a seafarer is defined as any person who is employed in any capacity on board a ship to which the Regulations apply. The Committee also notes that this definition contains a list of persons who are not considered seafarers, including: (i) scientists, researchers, divers, specialist off-shore technicians and so forth, whose work is not part of the routine business of the ship; (ii) harbour pilots, inspectors, surveyors, auditors, superintendents, etc. who although trained and qualified in maritime skills and perform key specialist functions, their work is not part of the routine business of the ship; (iii) guest entertainers, repair technicians, portworkers whose work is occasional and short term with their principal place of employment being ashore; and (iv) non-marine personnel, employed under outsourced service agreements, the terms of which determine the conditions under which the service provider will supply the necessary personnel. ***The Committee requests the Government to indicate whether these determinations have been made after consultations with the shipowners' and seafarers' organizations concerned, as required by Article II, paragraphs 3 and 7, of the Convention.***

Regarding the last element of the list – non-marine personnel – the Committee recalls that under the terms of the resolution concerning information on occupational groups, adopted by the 94th (Maritime) Session of the International Labour Conference in 2006, "Persons who regularly spend more than short periods aboard, even where they perform tasks that are not normally regarded as maritime tasks, may still be regarded as seafarers for the purpose of this Convention regardless of their position on board." ***The Committee therefore requests the Government to indicate how the decision to exclude non-marine personnel from the definition of "seafarer" in the Regulations takes into account this resolution.***

Article II, paragraph 6. Scope of application. Ships under 200 gross tonnage. The Committee notes that section 2(4) of the Regulations provides that where the competent authority determines that it would not be reasonable or practicable at the present time to apply certain details in provisions of "this Merchant Shipping (Maritime Labour Convention, 2006) Regulations" to a ship or particular categories of ships, those details will not apply to seafarers on the ship or ships concerned to the extent that those seafarers are covered by other provisions relating to those details and that the other provisions fully implement the relevant provisions of the Regulations of the Convention. Such a determination may only be made in consultation with the shipowners' and seafarers' organizations and may only be made with respect to ships of less than 200 gross tonnages not engaged in international voyages. The Committee recalls that the flexibility provided for in *Article II, paragraph 6,* only pertains to "certain details of the Code" of the Convention, that is, Standards and Guidelines and cannot be extended the content of its Regulations. ***The Committee therefore requests the Government to indicate the measures taken to revise section 2(4) of the Regulations to ensure full conformity with the provisions of Article II, paragraph 6, thereby restricting the use of this flexibility in relation to the aspects covered by Standards and Guidelines of the Convention.***

Article VI, paragraphs 3 and 4. Concept of substantial equivalence. The Committee notes that the application form for the Declaration of Maritime Labour Compliance (DMLC), Part I, states that "any areas where substantial equivalency or exemption may be required should be highlighted to the Administration for consideration and insertion into the ship specific DMLC Part I". Marine Circular MC-13/2012/1 also states that after a gap analysis is carried out, the shipowner/operator should, through the completion and submission of the DMLC application form, highlight to the Administration any areas of concern where substantial equivalency or exemption may be permitted. While noting that such possibility for the shipowner to request substantial equivalence is not contained in the Regulations, the Committee recalls that the concept of substantial equivalence is not a matter for administrative discretion but is a matter to be decided by a Member that must first make sure, in accordance with *Article VI, paragraphs 3* and *4,* that it is not in a position to implement the rights and principles in the manner set out in Part A of the Code of the Convention. The Committee recalls that explanations are required where a national implementing measure differs from the requirements of Part A of the Code. In particular, the Committee needs information on the reason why the Member was not in a position to implement the requirement in Part A of the Code, as well as (unless obvious) on the reason why the Member was satisfied that the substantial equivalence met the criteria set out in *Article VI, paragraph 4.* ***The Committee requests the Government to provide detailed information, as explained above, with respect to the adoption of substantial equivalence(s), including concrete examples, and to ensure that any use of such possibility will be regulated and follow the procedure of Article VI, paragraphs 3 and 4.***

Regulation 1.1 and Standard A1.1, paragraph 1. Minimum age of seafarers. The Committee notes that, while section 3(1) of the Regulations provides for a minimum age of 16 to work on board a ship, section 85(1) of the Employment Act provides that the minimum age of 15 applies to work on board a ship and section 85(2) allows for exceptions to the employment of a person under the age of 15 years to work upon a school-ship or a training-ship. The Committee recalls that *Standard A1.1, paragraph 1,* provides that the employment, engagement or work on board a ship of any person under the age of 16 shall be prohibited and that no exceptions are permitted in this respect. The Committee draws the attention of the Government to the need to avoid any inconsistencies in the legislation so as to ensure full conformity with the Convention. ***The Committee therefore requests the Government to take the necessary steps to review its legislation in order to give full effect to Standard A1.1, paragraph 1.***

Regulation 1.1 and Standard A1.1, paragraph 4. Determination of types of work which are likely to jeopardize the health and safety of seafarers under 18 years. The Committee notes that section 3(2) of the Regulations prohibits the employment, engagement or work of seafarers under the age of 18 where the work is likely to jeopardize their health or safety. It also notes the list of hazardous activities provided for in Marine Circular MC-9/2012/1 on health and safety issues for seafarers under the age of 18 and hazardous work which is in conformity with the Convention. At the same time, the Committee notes that section 87(b) of the Employment Act, which prohibits work on a ship as a trimmer or stoker for male persons under 18, also provides for possible exceptions to this

prohibition in the case of a person between the ages of 16 and 18 to be employed as a trimmer or stoker on a ship mainly propelled by means others than steam or on a ship exclusively engaged in the coastal trade, and if the person is certified by a medical practitioner to be physically fit for such work. The Committee recalls that *Standard A1.1, paragraph 4,* provides that the employment, engagement or work of seafarers under the age of 18 shall be prohibited where the work is likely to jeopardize their health or safety and that no exceptions are permitted in this respect. ***The Committee requests the Government to take the necessary measures to ensure full conformity with this requirement of the Convention.***

Regulation 1.2 and Standard A1.2, paragraph 8. Exceptional cases in which a seafarer may work without a valid medical certificate. The Committee notes that section 4(7) of the Regulations which provides for exceptional cases in which a seafarer may work without a valid medical certificate complies with the conditions contained in *Standard A1.2, paragraph 8,* by allowing a seafarer to work without a valid medical certificate only in urgent cases until the next port of call where the seafarer can obtain a medical certificate from a qualified medical practitioner, provided that: (a) the period of such permission does not exceed three months; and (b) the seafarer concerned is in possession of an expired medical certificate of recent date. However, the Committee also notes that section 87(c) of the Employment Act provides for possible exceptions to the requirement of a valid medical certificate in urgent cases, but without specifying the safeguards of *Standard A1.2, paragraph 8.* ***The Committee therefore requests the Government to review its legislation in order to ensure full conformity with the Convention.***

Regulation 2.3 and the Code. Hours of work and hours of rest. The Committee notes that while the DMLC, Part I, only refers to the minimum hours of rest regime, section 9(2) and (4) of the Regulations reproduces the provisions of *Standard A2.3, paragraph 5,* of the Convention, thereby providing for the alternative between maximum hours of work and minimum hours of rest. The Committee recalls that, under *Standard A2.3, paragraph 2,* each Member shall fix either a maximum number of hours of work or a minimum number of hours of rest. The Committee considers that the determination of the system of hours of work or hours of rest has to be made by the competent authority and cannot be left to collective agreements or to the selective application by shipowners or masters. ***The Committee requests the Government to take the necessary measures to fix either a maximum number of hours of work or a minimum number of hours of rest in conformity with these provisions of the Convention.***

The Committee notes that, as provided in *Standard A2.3, paragraph 13,* of the Convention, section 9(12) of the Regulations stipulates that the competent authority may authorize or register collective agreements permitting exceptions to the limits set out regarding minimum hours of rest and maximum hours of work. ***Noting the absence of information in this regard, the Committee requests the Government to indicate if any such agreement has been authorized and, if so, to provide a copy of it.***

Regulation 2.4 and the Code. Entitlement to leave. The Committee notes that section 10(4) of the Regulations stipulates that any agreement to forgo the minimum annual leave with pay, except in cases provided for by the competent authority, is prohibited. ***Recalling the fundamental importance of paid annual leave to protect the health and well-being of seafarers and to prevent fatigue, the Committee requests the Government to ensure that any agreements to forgo the minimum annual leave with pay is prohibited, except in specific cases restrictively provided for by the competent authorities.***

Regulation 2.5 and Standard A2.5.2. Financial security in the event of abandonment. In relation to the 2014 amendments to the Code of the Convention, the Committee recalls that, pursuant to *Standard A2.5.2,* the Government shall ensure the provision of an expeditious and effective financial security system to assist seafarers in case of their abandonment. The Committee notes, in this regard, that section 11(4) of the Regulations provides that all ships flying the flag of Tuvalu must provide the competent authority with evidence of financial security to ensure that seafarers are duly repatriated. It further notes that the DMLC, Part I, indicates that shipowners shall ensure that all seafarers are covered by a financial security provider for repatriation even in the event of abandonment and that ships must carry on board a certificate or other documentary evidence of financial security. However, the Committee notes that there are no specific provisions relating to the abandonment of seafarers in the Regulations. The Committee brings the Government's attention to the following questions included in the revised report form for the Convention: (a) does national legislation require the provision of an expeditious and effective financial security system to assist seafarers in the event of their abandonment? (if yes, specify if the financial security system was determined after consultation with the shipowners' and seafarers' organizations concerned); (b) has your country received requests to facilitate repatriation of a seafarer and, if yes, how did your country respond?; (c) what are the circumstances under which a seafarer is considered abandoned according to national legislation?; (d) does national legislation provide that ships that need to be certified according to Regulation 5.1.3 must carry on board a certificate or other documentary evidence of financial security issued by the financial security provider? (if yes, specify if the certificate or other documentary evidence must contain the information required by Appendix A2-I and has to be in English or accompanied by an English translation, and if a copy must be posted in a conspicuous place on board); (e) does national legislation require that the financial security system is sufficient to cover outstanding wages and other entitlements, all expenses incurred by the seafarer (including the cost of repatriation), and the essential needs of the seafarers, as defined in *Standard A2.5.2, paragraph 9*?; and (f) does national legislation provide for at least 30 days of notice by the financial security provider to the competent authority of the flag State before the financial security can cease? ***The Committee requests the Government to reply to the abovementioned questions, indicating in each case the applicable national provisions. The Committee also requests the Government to provide a copy of a model certificate or other documentary evidence of financial security containing the information required in Appendix A2-I of the Convention (Standard A2.5.2, paragraph 7).***

Regulation 2.7. Manning levels. The Committee notes that section 13(2) of the Regulations refers to the need to take into account the requirements concerning food and catering when determining, approving or revising manning levels. It notes, however, that nor the DMLC, Part I, nor the sample manning document contained in the Merchant Shipping (STCW Convention, 2010) Regulations to which the Government refers, mention ship's cook or catering staff. The Committee recalls that, under *Standard A2.7, paragraph 3,* the competent authority must take into account all the requirements within *Regulation 3.2* and *Standard A3.2* concerning food and catering when determining manning levels. ***The Committee requests the Government to indicate the measures taken to ensure that full effect is given to this provision of the Convention.***

Regulation 4.2 and Standards A4.2.1 and A4.2.2. Shipowners' liability. Financial security in the event of death or long-term disability. In relation to the 2014 amendments to the Code of the Convention, the Committee recalls that pursuant to *Standards A4.2.1* and *A4.2.2,* national laws and regulations shall provide that the financial security system to assure compensation in the event of the death or long-term disability of seafarers due to an occupational injury, illness or hazard meet certain minimum requirements. In this regard, the Committee notes that section 18(3) of the Regulations states that shipowners must provide financial security to assure compensation in the event of the death or long-term disability of seafarers due to an occupational injury, illness or hazard. However, the Regulations do not contain provisions ensuring that all seafarers are covered by a financial security provider for contractual claims despite the DMLC, Part I, stating that shipowners shall ensure that seafarers are covered by a financial security provider for contractual claims which refer to any claim relating to death or long-term disability of a seafarer due to an occupational injury, illness or hazard and that a certificate or other documentary evidence of financial security issued by a financial security provider shall be posted in a conspicuous place on board and easily available to the seafarers. The Committee brings the Government's attention to the following questions included in the revised report form for the Convention: (a) what is the form taken by the system of financial security and was it determined after consultation with the shipowners' and seafarers' organizations concerned?; (b) how national laws and regulations ensure that the system of financial security meets the following minimum requirements: (i) payment of compensation in full and without delay; (ii) no pressure to accept payment less than the contractual amount; (iii) interim payments (while situation is being assessed) to avoid undue hardship; (iv) offsetting payment

against any damages resulting from any other claim made by the seafarer against the shipowner and arising from the same incident; and (v) persons who can bring the claim for contractual compensation (seafarer, her/his next of kin, representative or designated beneficiary)?; (c) does national legislation provide that ships must carry on board a certificate or other documentary evidence of financial security issued by the financial security provider? (if yes, specify if the certificate or other documentary evidence has to contain the information required in Appendix A4-I, be in English or accompanied by an English translation, and if a copy must be posted in a conspicuous place on board); (d) does national legislation provide: (i) for at least 30 days of notice by the financial security provider to the competent authority of the flag State before the financial security can cease; (ii) that the competent authority is notified by the financial security provider if a shipowner's financial security is cancelled or terminated; and (iii) that seafarers receive prior notification if a shipowner's financial security is to be cancelled or terminated?; and (e) how does national legislation ensure that effective arrangements are in place to receive, deal with and impartially settle contractual claims relating to compensation in the event of the death or long-term disability of seafarers due to an occupational injury, illness or hazard, through expeditious and fair procedures? ***The Committee requests the Government to reply to the abovementioned questions, indicating in each case the applicable national provisions. The Committee also requests the Government to provide a copy of a model certificate or other documentary evidence of financial security containing the information required in Appendix A4-I of the Convention (Standard A4.2.1, paragraph 14).***

Regulation 4.4 and the Code. Access to shore-based welfare facilities. The Committee notes the Government's indications that there was one shore-based welfare facility operating in Tuvalu from 2009 to 2015 that is no longer operational. The Committee further notes that section 20(1) of the Regulations provides that the competent authority shall promote the development of welfare facilities in appropriate ports of Tuvalu. ***The Committee requests the Government to provide information concerning any progress achieved in this regard.***

Regulation 4.5 and Standard A4.5. Social security. The Committee notes that in accordance with *Standard A4.5, paragraphs 2* and *10,* the Government has specified at the time of ratification that protection would be provided for the following branches of social security: medical care; sickness benefit and employment injury benefit. The Committee notes that according to section 21 of the Regulations, the competent authority shall cooperate, through bilateral or multilateral agreements or other arrangements, to ensure the maintenance of social security rights, provided through contributory or non-contributory schemes, which have been acquired, or are in the course of acquisition, by all seafarers regardless of residence. ***The Committee requests the Government to specify whether Tuvalu participates in any such bilateral or multilateral arrangements regarding the provision of social security protection to seafarers (Standard A4.5, paragraphs 3, 4 and 8). It further requests the Government to indicate if consideration has been given to ways to provide benefits to non-resident seafarers working on ships flying its flag who do not have adequate social security coverage (Standard A4.5, paragraphs 5 and 6).***

Regulation 5.1.2 and the Code. Authorization of recognized organizations. The Committee notes the Government's indication that inspection and certification functions under the Convention have been delegated to a number of recognized organizations listed in Marine Circular MC-13/2012/1. The Committee notes, however, that the Government has not provided examples of the agreements signed with such organizations. ***The Committee accordingly requests the Government to provide copies of such agreements.***

Regulation 5.1.3 and Standard A5.1.3, paragraph 10. Declaration of Maritime Labour Compliance (DMLC). The Committee notes that the DMLC, Part I, form available on the Tuvalu Ship Registry's website, contains concise information on the main content of the national requirements embodying the relevant provisions of the Convention on the list of 16 matters to be inspected. However, the form does not contain the necessary reference to the national legal provisions, as required under *Standard A5.1.3, paragraph 10(a)*. Moreover, under certain items, the DMLC, Part I, does not accurately reflect the content of the national legislation. This is the case for example under item 6 (hours of work or rest), where the DMLC indicates that the national system is based on hours of rest, whereas the national legislation provides for an option between hours of work and hours of rest. The Committee recalls that the DMLC, Part I, must identify the national requirements, as contained in the legislation. ***The Committee requests the Government to review the DMLC, Part I, in order to ensure that it identifies the national requirements embodying the relevant provisions of the Convention by providing a reference to the relevant national legal provisions as well as, to the extent necessary, concise information on the main content of the national requirements.***

In addition, the Committee observes that the DMLC, Part II, is a blank form and is not an example of an approved DMLC, Part II, that has been drawn up by a shipowner to set out the measures adopted to ensure ongoing compliance with the national requirements and measures proposed to ensure that there is continuous improvement, as provided under *Standard A5.1.3, paragraph 10(b).* ***The Committee requests the Government to provide one or more examples of an approved DMLC, Part II.***

Regulation 5.2 and the Code. Port State responsibilities. The Committee notes the information provided by the Government according to which Tuvalu is not a member of any Memorandum of Understanding (MoU) on Port State Control. The Committee also notes that under section 23(3) of the Regulations, the competent authority shall establish an effective port State inspection and monitoring system to help ensure that the working and living conditions for seafarers on foreign ships entering a port of Tuvalu meet the requirements of the Convention including seafarers' rights. The Committee notes however, that the Government has not provided information about the actual development of this system by the competent authorities nor about its implementation in practice. ***The Committee requests the Government to provide detailed information in this regard.***

Additional documentation requested. The Committee notes that the Government has omitted to provide some of the documents requested in the report form. ***The Committee would be grateful if the Government would provide the following documents and information:*** an example of the approved document for seafarers' records of employment (*Standard A2.1, paragraphs 1* and *3*); *an example of the kind of documentation that is accepted or issued with respect to the financial security that must be provided by shipowners* (*Regulation 2.5, paragraph 2,* and *Standard A4.2.1, paragraph 1(b)*); a standard document issued to or signed by inspectors setting out their functions and powers *(Standard A5.1.4, paragraph 7*); a copy of any national guidelines issued to inspectors in implementation of *Standard A5.1.4, paragraph 7;* and a copy of the form used for an inspector's report *(Standard A5.1.4, paragraph 12).*

United Kingdom of Great Britain and Northern Ireland

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

(Ratification: 1999)

Observation, 2021

The Committee notes the observations of the Trades Union Congress (TUC) received on 30 August 2021 and communicated to the Government. The Committee also takes note of the Government's reply.

Article 1(1)(a) of the Convention. Protection against discrimination based on social origin and political opinion. Law and practice. In its previous comments, the Committee noted that the Equality Act 2010 did not specifically refer to the grounds of social origin and political opinion. It requested the Government to provide concrete examples of how cases alleging discrimination based on social origin and "caste" are dealt with by courts and tribunals, and information on the number of cases of discrimination based on political opinion and on the measures taken to protect workers against such form of discrimination.

Discrimination based on social origin. With regard to the protection against discrimination based on membership of a "caste", the Government, in its report, states that it is aware of only three cases brought before the courts that involved considerations of caste and its relation to social origin. In *Naveed v. Aslam* (2012), the Employment Tribunal declared that the complaint was not well-founded as the "incidents were entirely unrelated to the claimant's caste (or indeed to any other racially tainted characteristic)". In *Begraj v. Manak* (2014), the case was not concluded after the judge in charge of the Employment Appeal Tribunal recused herself. In *Tirkey v. Chandhok* (2014), the Employment Appeal Tribunal found in favour of the claimant's contention that she was discriminated against because of her low status including by reason of her caste. While the judge accepted that "caste" was not explicitly part of the Equality Act 2010, he also stated that many of the identifying features of a person's descent which determined their caste related to their "ethnic origins" and this is explicitly protected under the Equality Act. The claimant was awarded compensation of £180,000. In the Government's view, this judgment means that it is likely that anyone who believes that they have been discriminated against because of caste could now bring a race discrimination claim under the existing ethnic origin limb of the race provisions of the Equality Act 2010 because of their descent. The Government considers therefore that the best way to provide the necessary protection against unlawful discrimination because of caste is by relying on emerging case-law as developed by courts and tribunals. Consequently, section 9(5) of the Equality Act 2010 providing that a Minister of the Crown: (1) must by order amend this section so as to provide for caste to be an aspect of race, and (2) may by order amend this Act so as to provide for an exception to a provision of this Act to apply, or not to apply, to caste or to apply, or not to apply, to race in specified circumstances, will be repealed. In this regard, the Committee takes note of the observations of the TUC on the employment situation of working-class workers. The TUC emphasizes that people from working class backgrounds still earn less than those from middle class backgrounds, even when they have the same qualifications and do the same type of job. Even when those from working-class backgrounds attend university, they still enter the job market earning less than those from middle-class and private-school backgrounds. The TUC's analysis of data provided by the Higher Education Statistics Agency (HESA) shows that graduates with parents in "professional and routine" jobs are more than twice as likely as working-class graduates to start on a high salary, no matter what degree level they attain. The Government refers in its response to the National Living Wage and the National Minimum Wage that it states provide essential protection for the lowest paid workers.

While taking note of the information provided by the Government on the case law regarding discrimination based on "caste", the Committee recalls that discrimination and lack of equal opportunities based on social origin refers to situations in which an individual's membership of a class, socio-occupational category or caste determine his or her occupational future (see 2012 General Survey on the fundamental Conventions, paragraph 802). The Committee notes that there has been only one successful case of discrimination connected to "caste", which may indicate that the absence of explicit mention of it in the Equality Act demonstrates a lack of awareness of its protection under the Act. The Committee notes with ***regret*** the fact that the Government is proposing to repeal section 9(5)(a) of the Equality Act 2010.

Further, the notion of "social origin" is broader in scope than the notion of "caste" referenced in the case law reported by the Government. The Committee takes note of the Government's response to the TUC's comments that it does not propose to introduce the socio-economic duty under Part 1 of the Equality Act 2010 for England or in respect of Great-Britain wide bodies, and notes with ***regret*** that the Government does not propose to add a new characteristic to the Equality Act 2010 addressing social origin.

Discrimination based on political opinion. With regard to cases relating to discrimination based on political opinion, the Government indicates that there are no central records on the number of cases brought domestically, broken down by protected characteristic. It is open to people to contest that their political beliefs are so strong that they can be captured by the religion or belief provisions within the Equality Act 2010, and domestic courts have been open to considering such cases on their individual merits. Discrimination on the basis of political opinion is therefore protected against. Furthermore, the Committee notes that while the Equality Act 2010 covers "philosophical belief", it does not appear to cover "political opinion". The Committee notes that protection for political opinion implies protection in respect of the activities of expressing or demonstrating opposition to established political principles and opinions, and covers discrimination based on political affiliation. The notion of "belief" explained by the Government is narrower than the concept of political opinion enshrined in the Convention (see 2012 General Survey, paragraph 805).The Committee also recalls 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 2012 General Survey, paragraph 853). ***The Committee requests the Government to take steps to ensure that at least all the prohibited grounds of discrimination specified in Article 1(1)(a) are included in the legislation and that, in the meantime, workers are protected in practice against discrimination based on their social origin and political opinion. It further asks for detailed information on the measures adopted to address discrimination faced by workers from working-class backgrounds reported by the TUC, as well as on any cases relating to claims of discrimination based on social origin or political opinion, including the facts of those cases (such as the scope and particulars of discrimination based on social origin, at least in terms of salaries and opportunities for advancement) and the remedies provided.***

Discrimination based on religion. The Committee previously requested the Government to continue to provide information on the measures taken or envisaged to address discrimination and stereotyped attitudes concerning religion, including on the impact of these measures on access to employment and education for the Muslim community. The Committee takes note of the indication that the Government engages with Muslim communities through a number of faith and integration projects. These projects are often geographically targeted to address problems faced by the communities where there can be high degrees of segregation and often seek to address issues of disadvantage or exclusion that create barriers to integration and employability. ***Noting this information, the Committee requests the Government to provide data on the impact of the measures taken on access to employment and education for the Muslim community, as well as any other activities undertaken specifically in the field of discrimination in employment and occupation.***

Northern Ireland. The Committee has been asking the Government to take steps to abolish the exclusion of teachers from protection against discrimination on the ground of religious belief in Northern Ireland (section 71(1) of the Fair Employment and Treatment (NI) Order, 1998). The Committee notes with ***regret*** that the Government's report does not contain any information in this regard. ***The Committee once again requests the Government to take steps to repeal the exclusion of teachers from protection against discrimination on the ground of religious belief in Northern Ireland provided in section 71(1) of the Fair Employment and Treatment (NI) Order, 1998.***

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

Venezuela (Bolivarian Republic of)

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

(Ratification: 1982)

Observation, 2021

The Committee notes the observations, relating to the application of the Convention in law and practice, made by the following organizations: the Federation of University Teachers' Associations of Venezuela (FAPUV), dated 12 March and 3 June 2021; MOV7 The Voice of Alcasa, dated 6 April 2021; the Confederation of Workers of Venezuela (CTV), the Independent Trade Union Alliance Confederation of Workers (ASI) and FAPUV, dated 22 July and 30 August 2021; ASI, dated 31 August 2021; and the Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS), supported by the International Organisation of Employers (IOE), dated 1 September 2021; and also the Bolivarian Socialist Confederation of Urban, Rural and Fishery Workers of Venezuela (CBST-CCP), dated 8 September 2021. ***The Committee requests the Government to send its comments in this regard.***

Follow-up to the recommendations of the Commission of Inquiry (complaint made under article 26 of the Constitution of the ILO)

In its previous observation, the Committee noted the conclusions and recommendations of the report of the Commission of Inquiry regarding the application of the Convention. The Committee notes the discussion which took place during the 343rd Session (November 2021) of the Governing Body on the consideration of all possible measures, including those provided in the ILO Constitution, required to ensure the Bolivarian Republic of Venezuela's compliance with the recommendations of the Commission of Inquiry, and also the decision adopted in this respect. The Committee observes that the Governing Body, at its 344th Session (March 2022), will once again assess progress made by the Government to ensure compliance with the recommendations of the Commission of Inquiry and will pursue its consideration of possible measures to achieve this objective.

Civil liberties and trade union rights. Climate free from violence, threats, persecution, stigmatization, intimidation or any other form of aggression, in which the social partners are able to exercise their legitimate activities, including participation in social dialogue with full guarantees. The Committee recalls that the Commission of Inquiry recommended: (i) the immediate cessation of all acts of violence, threats, persecution, stigmatization, intimidation or other forms of aggression against persons or organizations in relation to the exercise of legitimate employers' or trade union activities, and the adoption of measures to ensure that such acts do not recur in future; (ii) cessation of the use of judicial proceedings and preventive and non-custodial measures, including the subjection of civilians to military jurisdiction, for the purpose of undermining freedom of association; (iii) the immediate release of any employer or trade unionist who is imprisoned in relation to the exercise of the legitimate activities of their organizations, as is the case for Rodney Álvarez; (iv) the independent investigation without delay of all allegations of violence, threats, persecution, stigmatization, intimidation and any other forms of aggression that have not been duly elucidated, with a view to clarifying responsibilities and identifying the perpetrators and instigators, while ensuring the adoption of appropriate protection, penalization and compensation measures; (v) the adoption of the necessary measures to ensure the rule of law, and particularly the independence from the executive authorities of the other branches of State authority; and (vi) the organization of training programmes with the ILO to promote freedom of association, tripartite consultation and social dialogue in general, including on full respect for its essential conditions and basic rules, in accordance with international labour standards. In light of the information provided by the Government and the social partners in the Committee's previous observation, and expressing deep concern at the almost total absence of progress, the Committee firmly urged the Government to take the necessary measures to investigate and take action promptly with regard to all the pending allegations of violation of the Convention relating to civil liberties and trade union rights.

With regard to the situation of the trade unionist Rodney Álvarez, the Committee notes the Government's indication that on 11 June 2011 he was sentenced to 15 years' imprisonment for the common crime of homicide and not for the exercise of trade union activities. The Government explains that the convicted person enjoys guarantees to submit the corresponding appeals to the higher courts and that once the sentence is executed the guarantee applies whereby the time spent by the person in custody during the trial will be deducted from the sentence to be served. The Government also once again denies in general terms the alleged use of judicial proceedings as an anti-union practice. The Committee also notes the observations of various social partners (the CTV, ASI and FAPUV) condemning the fact, as was ascertained by the Commission of Inquiry, that the proceedings brought against Mr Álvarez reflect the lack of separation of powers in the country and implied a clear denial of justice, with eight interruptions and up to 25 preliminary hearings, and with Mr Álvarez having been the victim of three serious knife and gun attacks perpetrated with total impunity during the more than ten years in which he was held in pretrial custody. As regards the trial, these organizations condemn the fact that nothing in the judicial file confirms that Mr Álvarez was armed, let alone that he fired the shots; that the judge dismissed all the defence witnesses who were present at the scene and who saw that another person perpetrated the killing; and that the statement by the National Guard officer on security duty at the enterprise at the time, who declared that he had detained that other person for firing shots, was disregarded. ***Noting with deep concern the serious additional allegations of violation of due process in this case, the Committee urges the Government to implement immediately the recommendations of the Commission of Inquiry in this regard.***

With regard to the other pending issues, the Committee notes that the Government denies the suggestion of alleged deficiencies in the rule of law or the separation of powers in the country and asserts that the allegations and observations made by the social partners have been addressed, evaluated and referred to the corresponding public authorities. The Government also asserts that it has made progress in improving observance of the Convention, as shown by the broad and inclusive social dialogue, with full guarantees and without exclusion, maintained with the workers' and employers' organizations who voluntarily requested it. In this regard, the Government reiterates the information given to the Governing Body, indicating that: (i) since February 2020, bipartite dialogue round tables have been set up to discuss matters related to the Convention and other subjects of national interest raised by the social partners. The invitation to participate was accepted by FEDECAMARAS, the Federation of Craft, Micro, Small and Medium-Sized Industries and Enterprises of Venezuela (FEDEINDUSTRIA), the CBST-CCP, ASI, the General Confederation of Labour (CGT), the National Union of Workers of Venezuela (UNETE), the Confederation of Autonomous Trade Unions (CODESA), (which deposited a document and then withdrew), as well as the CTV (which sent a communication indicating that it would not attend the dialogue proposed as a dispute settlement mechanism); (ii) meetings continued to be held subsequently according to the requests made by the social partners, with progress made on some matters referred to in this Committee's observations; (iii) from 21 May to 23 June 2021, the "Great National Dialogue on the world of work" (*Gran encuentro de diálogo nacional del mundo del trabajo)* was held as a virtual forum, with six work sessions, one of which with part of another were devoted to the review of legislative and practical matters related to observance of the Convention; (iv) at these sessions the participants were able to express their views and make lengthy presentations on subjects related to the application of the Convention, in an atmosphere of respect and good will, with extensive participation from the social partners – FEDECAMARAS, FEDEINDUSTRIA, the CBST-CCP, ASI, UNETE, the CTV (all of which participated in the first two sessions), CODESA (which only attended the first session), and the CGT (which expressed interest but had connection problems); (v) with regard to the employers' sector, a public statement was forwarded, issued by the National Authority for the Defence of Socio-Economic Rights (SUNDDE), making a general appeal to any parties who had a pending measure of temporary control imposed under the Act on fair prices to reach out to the SUNDDE ; (vi) at this dialogue meeting, the Government gave an undertaking to set up a face-to-face technical working group on the Convention, including with regard to particular cases on the subject of land. This working group started its work on 30 July 2021, which was continued on 17 August 2021 with the drawing up of its agenda; and (vii) other dialogue forums have been opened at the highest level between the executive authorities and the social partners, for example the appeal to FEDECAMARAS by the Executive Vice-President of the Republic to attend the Higher Council on the Productive

Economy. The Government concludes by stating that, contrary to the alleged policy of violence, threats, persecution or other forms of aggression directed at the social partners, efforts have been made to continue reinforcing dialogue forums. As regards the allegations concerning land, the Committee duly notes the information forwarded by the Government to the Governing Body on measures to address the requests made by FEDECAMARAS, in particular: the establishment of round tables for meetings at the National Land Institute (INTI) to seek solutions to the cases raised by the National Federation of Stockbreeders of Venezuela (FEDENAGA), with the list presented by FEDECAMARAS being included on the agenda; and the setting up of a technical committee to discuss matters of interest to FEDENAGA and INTI, including the list of cases of estates involved in disputes (the Government stated that so far FEDENAGA had prioritized 12 cases, and the administrative procedures implemented were being reviewed to determine possible solutions to the cases raised, as well as stating that progress had been made in the certification of estates that could be improved or are productive).

The Committee also notes the CBST-CCP's assertion that the State has been promoting correct observance of the Convention and emphasizes that this year invitations were issued to take part in a social dialogue which was guaranteed to be wide-ranging and to include the workers' and employers' organizations, with the voluntary presence of the latter. The CBST-CCP categorically rejects the observations of the social partners who allege that the State is fomenting a policy of violence, persecution and aggression, and asserts that in reality it has been the guarantor of free trade union activity for all organizations without distinction.

The Committee also notes that the observations received from the other social partners allege a lack of progress in implementing this group of recommendations, as well as further violations of the Convention, which are listed below.

FEDECAMARAS: (a) refers to hostile or intimidatory messages against the organization and its president – in particular, derogatory statements against the latter by the President of the Republic in a broadcast by the state television channel, as well as disparaging messages in a programme directed by a member of parliament on the same TV channel; (b) denounces the fact that measures restricting freedom of association for leaders of FEDECAMARAS remain in place, consisting of a court summons and a ban on disposing of or levying charges on its property (the Government was consequently presented with a list of cases evaluated by the Commission of Inquiry and a list of illegally invaded or seized land); (c) indicates that the recommendation to organize training programmes to promote freedom of association has not been implemented; and (d) while FEDECAMARAS recognizes the initiative launched by the Government to hold several cycles of meetings with it and with other employers' and workers' organizations, and the fact that government representatives have undertaken some bridge-building with FEDECAMARAS, the federation points out that to date the recommendations of the Commission of Inquiry have not been accepted by the Government and the meetings have been held without the conditions recommended by the Commission being met (despite multiple requests being made by FEDECAMARAS to implement them with the necessary guarantees so that the talks can have a real impact) and without any concrete solutions being reached; for this reason, FEDECAMARAS considers that these are exploratory, bridge-building meetings but they do not constitute the structured dialogue round tables recommended by the Commission of Inquiry, and it asks that the ILO establish the mechanisms that it considers the most appropriate for formalizing the Office's participation or presence in the dialogue process.

The CTV, ASI and FAPUV: (a) report numerous cases of arbitrary detention of trade unionists and trade union leaders, as well as members of non-governmental organizations which defend human rights, in connection with the exercise of the right to peaceful protest and freedom of expression. In this regard, they denounce the fact that action in defence of labour rights, and of human rights, is being criminalized and liable to prosecution. These organizations claim that prosecution charges are accepted almost automatically by the courts – with the detained person being deprived of freedom and subjected to preventive measures that carry restrictions, some of them verbal so as not to leave any trace – with the detainees often being obliged to accept a public defender who assists the Public Prosecutor's Office with the prosecution, with evident bias on the part of judges operating on behalf of the executive authorities, as a result of which the trade union movement is left completely defenceless; and (b) in particular they condemn the detention and imprisonment of the following trade union leaders: (i) Mr Guillermo Zárraga, secretary of the Union of Petroleum, Gas and Energy Workers of the State of Falcón (SUTPGEF), arrested on 11 November 2020 by the Bolivarian National Intelligence Service (SEBIN), remaining in detention at the headquarters of the Directorate-General for Military Counterintelligence (DGCIM), and subjected to criminal proceedings tainted with irregularities, on charges of terrorism, criminal conspiracy and treason; (ii) Mr Eudis Girot, a trade union leader in the petroleum industry, arrested by the DGCIM on 18 November 2020 in Puerto La Cruz, also accused of terrorism, among other charges, and remaining in custody in Rodeo III prison; (iii) and Mr Mario Bellorín and Mr Robert Franco, president and general secretary, respectively, of the Union of Education Professionals–Association of Teachers of Venezuela (SINPRODO–CPV), Carúpano, State of Sucre, arrested on 26 December 2020 while on a visit to a private residence there which was raided. Mr Bellorín was released a few hours after his arrest, but this was not the case for Mr Franco, who was transferred to SEBIN headquarters in Caracas (Helicoide), where he remains in custody. In addition, MOV7 The Voice of Alcasa denounces harassment and assaults of workers who participated in trade union activities or protests.

While welcoming the efforts at bridge-building and the meetings held, open to all social partners, and the commitments made by the Government to continue the dialogue on observance of the Convention through technical round tables, the Committee notes with ***regret*** the lack of specific results highlighted by most of the social partners, and also the absence of concrete replies and information on the occurrences reported by the social partners in previous observations (even though the Government asserts that the allegations and observations made by the social partners have been addressed, evaluated and referred to the relevant authorities, it does not provide any specific information in this regard). The Committee also notes with ***deep concern*** that various employers' and workers' organizations make new, serious additional allegations of violations of civil liberties and trade union rights. These organizations claim that at the dialogue round tables – at which the Government indicates that the pending issues are being addressed – general statements have been made but concrete solutions have still not been reached, and the procedures for dialogue recommended by the Commission of Inquiry have not been respected (no minutes were produced, no consensus was reached regarding agendas and timelines, no independent chairperson or secretariat were appointed, nor were the meetings held with the presence of the ILO despite requests to this effect).

In light of the above, the Committee reiterates the recommendations of the Commission of Inquiry and firmly urges the Government, in dialogue with the organizations concerned through the relevant bipartite or tripartite round tables, to take the necessary measures quickly to ensure implementation of the above-mentioned recommendations. In this regard, the Committee firmly urges the Government to investigate and take appropriate action with respect to the pending allegations of violations of the Convention regarding civil liberties and trade union rights – contained in the Commission of Inquiry's report or subsequently brought before this Committee – in order to ensure a climate free of violence, threats, persecution, stigmatization, intimidation or any other form of aggression in which the social partners can exercise their legitimate activities, including participation in social dialogue with full guarantees. The Committee requests the Government to provide detailed information on the follow-up action taken.

Articles 2 and 3 of the Convention. Respect for the autonomy of employers' and workers' organizations, particularly in relation to the Government or political parties, and suppression of all interference and favouritism by the state authorities. The Committee recalls that the Commission of Inquiry recommended: (1) the adoption of the necessary measures to ensure in law and practice that registration is a mere administrative formality and that in no event can it imply previous authorization; (2) the elimination of "electoral abeyance" and the reform of the rules and procedures governing trade union elections, so that the intervention of the National Electoral Council (CNE) is really optional and does not constitute a mechanism for interference in the life of organizations, and that the pre-eminence of trade union independence is guaranteed in election processes and delays are avoided in the exercise of the rights and activities of

employers' and workers' organizations; (3) the elimination of any other use of institutional machinery or types of action that interferes in the independence of employers' and workers' organizations and their mutual relations. In particular, the Commission recommended the adoption of any necessary measures to eliminate the imposition of control institutions or mechanisms, such as Workers' Production Boards (WPBs), which may in law or in practice restrict the exercise of freedom of association; (4) the establishment, with ILO assistance, of criteria that are objective, verifiable and fully in accordance with freedom of association to determine the representativeness of both employers' and workers' organizations; and (5) in general, the elimination in law and practice of any provisions or institutions that are incompatible with freedom of association, including the requirement to provide detailed information on members, taking into account the conclusions of the Commission and the comments of the ILO supervisory bodies.

The Committee notes that the Government denies the allegations of interference and failure to respect the independence of employers' and workers' organizations, as well as favouritism on the part of the authorities towards organizations supposedly linked to them, indicating that it has demonstrated its strict observance of freedom of association and its policy to take account of all representative organizations.

With regard to the issues concerning trade union registration, the Committee notes that, in the information provided to the Governing Body, the Government indicates that the technical working group on the Convention discussed whether to establish an agenda item dealing with the National Trade Union Registry (RNOS). ***The Committee requests the Government to keep it informed of any developments in this respect.***

With regard to the creation of the WPBs, the Committee notes that the Government reiterates what it indicated previously to the supervisory bodies, including the Commission of Inquiry, emphasizing that far from excluding or affecting freedom of association, the WPBs promote the organization of the working class and foster its participation in the management of productive activity, and in no case do they replace the trade unions or are contrary to them, as established by section 17 of the WPB Constitutional Act. The Government adds that the Ministry of People's Power for the Social Process of Labour has not received any formal complaints of specific cases in which the organization of WPBs in workplaces had interfered with the smooth functioning of the latter. The Committee notes the observations of the CBST-CCP, reiterating that WPBs are not trade unions by nature and do not have competencies that prevent the exercise of freedom of association, and emphasizing that work is being done within the CBST-CCP on activating the organization of the working class as a source of leadership and change through the WPBs, aimed at efficient production. The Committee also notes, however, the observations of the other social partners (FEDECAMARAS, ASI, CTV and FAPUV) warning that instead of implementing the recommendations of the Commission of Inquiry – such as that of subjecting the WPB Act to tripartite consultation – the Government continues to promote the formation and action of the WPBs. The social partners denounce the fact that, in practice and together with the workers' militias, the WPBs are being used to attack or replace the independent trade union movement.

With regard to trade union elections, the Government indicates that, in the context of the "Great National Dialogue on the World of Work", the subject of the election of trade union committees was discussed and explanations were provided on this matter. The Government reiterated what it had indicated previously: that the National Electoral Council (CNE) carries out support activities only where requested by the trade union organizations and that organizations can conduct their elections with or without CNE assistance, according to the terms of the union constitutions and any future amendments, and in line with the free wishes of each organization. In this regard, the Committee notes that although the Government reiterates that intervention by the CNE is optional, the Commission of Inquiry had already established that this affirmation or clarification had not been sufficient to resolve the problems identified and to address the numerous allegations of interference in electoral procedures. In this regard, the Committee notes that: although, on the one hand, the observations of the CBST-CCP indicate that various organizations affiliated to the confederation reportedly started or completed processes of reform to their constitutions to permit the holding of fully independent elections and affirm that the organizations affiliated to the Bolivarian confederation have made free use of the right to hold trade union elections without any kind of interference from the electoral authorities; on the other hand, the observations of the other workers' organizations (in particular ASI, CTV and FAPUV) emphasize that no changes have been made in either law or practice regarding government policy on the registration of trade union organizations and "electoral abeyance". These organizations assert that the problems identified by the Commission of Inquiry are still restricting the possibility of trade union organizations being authorized by the executive authorities to perform essential functions such as collective bargaining. In this regard, these workers' organizations emphasize that there is no progress as regards intervention by the CNE in trade union elections, and claim that this will continue to delay the holding of elections and the renewal of their executive committees. For example: (i) they denounce the persistence of interference and obstacles in the electoral process by the CNE in the case of organizations such as the National Union of Men and Women Public Officials in the Legislative Career Stream, and Men and Women Workers at the National Assembly (SINFUCAN) and the Union of Petroleum, Gas and Energy Workers of the State of Falcón (SUTPGEF); (ii) they warn of long delays that can be ascribed to the authorities regarding the approval of reforms to union constitutions (for example, 28 months to approve the reform of the constitution of the National Union of Workers of the National Institute for Socialist Training and Education (SINTRAINCES)); and (iii) they claim that the Ministry for University Education, apart from obstructing the participation of organizations affiliated to FAPUV in collective bargaining (alleging that these organizations are in "electoral abeyance", which they assert is the result of interference by the CNE), treats the organizations unequally since it is negotiating with a minority organization that has never held elections.

In light of the above, with regard to these two headings of the recommendations relating to the independence of employers' and workers' organizations, the Committee ***deplores*** the fact that the Government does not provide information on specific progress made with respect to the specific allegations made in the previous observations of multiple social partners and only reiterates statements already made to the Commission of Inquiry. The Committee also notes with ***concern*** that the social partners' denunciations continue in the most recent observations of FEDECAMARAS, ASI, CTV and FAPUV, with regard to the action of the WPBs and interference and obstacles regarding electoral procedures and the registration of trade unions.

In view of these circumstances, the Committee once again refers to the conclusions of the Commission of Inquiry and reiterates the specific recommendations set forth above on the need to ensure respect for the independence of employers' and workers' organizations, and also to eliminate all interference and favouritism on the part of the government authorities. Also in this respect, the Committee urges the Government to refer all the pending allegations to the respective dialogue round tables with the organizations concerned – including the allegations of interference and obstacles regarding electoral procedures and also the use of WPBs as mechanisms that restrict the exercise of freedom of association – in order to make tangible progress as quickly as possible.

Articles 2 and 3. Legislative issues. The Committee recalls that it has been asking the Government for several years to take the necessary steps, in consultation with the most representative workers' and employers' organizations, to revise various provisions of the Basic Labour Act (LOTTT), in particular sections 367, 368, 387, 388, 395, 402, 403, 410, 484 and 494. The Committee also recalls that the Commission of Inquiry recommended in general the submission to tripartite consultation of the revision of laws and standards, such as the LOTTT, which revisions raise problems of compatibility with the Convention in light of the conclusions of the Commission of Inquiry and the comments of the ILO supervisory bodies.

The Committee notes the Government's indication that: (i) in the context of the dialogue round tables held in February and March 2021 the Committee's comments on the revision of laws and standards that give effect to ILO Conventions were referred to the National Assembly; and that (ii) in the context of the "Great National Dialogue on the World of Work", stakeholders in the world of work were invited to make contributions towards the updating of the LOTTT regulations. Furthermore, the Committee welcomes the undertaking given by the Government to the Governing Body to hold consultations with the social partners on draft laws or their respective amendments, instigated by the National Assembly, which are connected with international labour standards.

However, the Committee notes with ***concern*** the observations of the CTV, ASI and FAPUV, warning of the use of the Constitutional Act against hatred and

promoting peaceful co-existence and tolerance, and also of accusations of terrorism, as a pretext for criminalizing trade union activity, carrying out arbitrary detentions of trade union leaders and sentencing them to imprisonment for exercising their freedom of expression.

The Committee reiterates the above-mentioned recommendations relating to legislative issues and urges the Government, in the context of the dialogue round tables, to submit to tripartite consultation without further delay the revision of the laws and standards, such as the LOTTT, which raise problems of compatibility with the Convention in light of the conclusions of the Commission of Inquiry (such as those regarding trade union registration, "electoral abeyance" or the WPBs) and the comments of the other ILO supervisory bodies. The Committee also requests the Government, in view of the social partners' allegations, to include in the above-mentioned tripartite dialogue the discussion of the impact on the exercise of freedom of association of the Constitutional Act against hatred and promoting peaceful co-existence and tolerance, and also of any measures needed to ensure that the application of this Act cannot restrict or suppress the exercise of freedom of association.

The Committee welcomes the gatherings, meetings and dialogue forums, open to all the social partners, which have been held, as well as the setting up of a face-to-face technical round table for addressing issues regarding the application of the Convention, and duly notes that the Government reiterates its willingness to strengthen these dialogue forums to improve the observance of the Convention. However, the Committee notes with ***deep concern*** that: (i) the Government does not provide specific replies to the multiple serious allegations made in the Committee's previous comment; (ii) as highlighted by the observations of a number of social partners, the dialogue held so far still does not meet the necessary conditions to be effective, nor has it yielded concrete solutions to the pending issues, and so, regrettably, no significant further progress can be observed in the application of the recommendations of the Commission of Inquiry; and (iii) allegations of serious violations of the Convention continue to be made, referring to the persistence of systemic patterns or problems to which attention was drawn by the Commission of Inquiry.

The Committee notes that the Government once again refers to its request for ILO assistance in order to determine the representativeness of employers' and workers' organizations, considering that this will be fundamental for determining representativeness according to objective verifiable criteria which fully respect freedom of association. The Government points out that pending this important technical assistance it continues to follow the policy of taking account of all representative organizations without giving privileges to one or the other. Moreover, the Committee notes the assertion by FEDECAMARAS that assistance should not be limited to the subject of representativeness, but should also fully encompass the recommendations and the dialogue process in themselves, emphasizing that ILO backing for social dialogue will constitute valuable support. In this regard, the Committee reiterates that, since the recommendations are interrelated and need to be considered together, they should be implemented in a holistic manner and in a climate in which the social partners can exercise their legitimate activities, including participation in social dialogue with full guarantees, and with full respect for the independence of employers' and workers' organizations. ***The Committee once again recommends that technical assistance should be defined on a tripartite basis in the context of dialogue round tables and in light of these considerations.***

The Committee firmly urges the Government to, with ILO technical assistance, take the necessary steps, through the above-mentioned dialogue round tables and in the manner indicated in the Commission of Inquiry's report, to ensure that the recommendations are fully implemented, so that tangible progress can be noted in the near future. The Committee also reiterates that it is vital that the issues raised above receive the full and ongoing attention of the ILO and its supervisory system so that firm and effective measures are adopted to ensure full observance of the Convention in law and practice.