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IMPLEMENTATION OF THE INTERNATIONAL COVENANT  
ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Note by the Secretary-General

The Secretary-General has the honour to transmit herewith the thirty-second report of the International Labour Organization under article 18 of the International Covenant on Economic, Social and Cultural Rights, submitted in accordance with Economic and Social Council resolution 1988 (LX) \*.

[11 November 2003]

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\*Reproduced as received

# **Report on Progress In Achieving Observance of The Provisions of The International Covenant on Economic, Social And Cultural Rights**

**Complements and supersedes information provided to the Pre-Sessional Working Group**

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## Introduction

The present report has been established according to the arrangements approved by the Governing Body of the International Labour Office<sup>1</sup> to give effect to resolution 1988 (LX) of 11 May 1976 of the United Nations Economic and Social Council requesting specialized agencies to submit reports, in accordance with article 18 of the International Covenant on Economic, Social and Cultural Rights, on the progress made in achieving the observance of the provisions of the Covenant falling within the scope of their activities. According to these arrangements, the International Labour Office is entrusted with the task of communicating to the United Nations, for presentation to the Committee on Economic, Social and Cultural Rights, information on the results of the operation of various ILO supervisory procedures in the fields covered by the Covenant. It should remain open for the Committee of Experts on the Application of Conventions and Recommendations to report on particular situations whenever it deems this desirable or when specifically requested to do so by the Committee on Economic, Social and Cultural Rights.

This report will follow the approach adopted since 1985, and will contain: (a) indications concerning the principal ILO Conventions relevant to articles 6-10 and 13 of the Covenant; and (b) indications concerning ratification of these Conventions and comments made by ILO supervisory bodies with regard to the application of these Conventions by the States concerned (insofar as the points at issue appear to have a bearing also on the provisions of the Covenant). The latter indications are based mainly on the comments of the Committee of Experts resulting from its examination of the reports on the Conventions in question. Account was also taken of the conclusions and recommendations adopted under constitutional procedures for the examination of representations or complaints and, in the case of article 8 of the Covenant, of the conclusions and recommendations of the Committee on Freedom of Association of the ILO Governing Body following examination of complaints alleging violation of trade union rights. Given the increased recourse to the Joint ILO/UNESCO allegations procedure concerning teaching personnel, information on cases examined there are added under article 13 of the Covenant, when relevant to the country reports being examined.<sup>2</sup>

The list of countries for which information has been provided in the present report appears in the Contents. A recapitulatory list of States parties to the Covenant and of ILO reports containing information concerning them will be found in the Annex.

## **I. PRINCIPAL ILO CONVENTIONS RELEVANT TO ARTICLES 6-10 AND 13 OF THE COVENANT**

The following is a list of the principal ILO Conventions relevant to articles 6-10 and 13 of the Covenant.<sup>3</sup> Indications on the ratification of these Conventions by each State concerned are given in section II (indications concerning the situation of individual countries).

### **Article 6 of the Covenant**

Unemployment Convention, 1919 (No. 2)

Forced Labour Convention, 1930 (No. 29)

Fee-Charging Employment Agencies Convention, 1933 (No. 34)

Employment Service Convention, 1948 (No. 88)

Fee-Charging Employment Agencies Convention, 1949 (No. 96)

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

Indigenous and Tribal Populations Convention, 1957 (No. 107)

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

Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117)

Employment Policy Convention, 1964 (No. 122)

Paid Educational Leave Convention, 1974 (No. 140)

Human Resources Development Convention, 1975 (No. 142)

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

Termination of Employment Convention, 1982 (No. 158)

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

Employment Promotion and Protection Against Unemployment Convention, 1988  
(No. 168), Part II

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

### **Article 7 of the Covenant**

#### **Remuneration**

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

Minimum Wage-Fixing Machinery (Agriculture) Convention, 1951 (No. 99)

Minimum Wage-Fixing Machinery Convention, 1970 (No. 131)

#### **Equal remuneration**

Equal Remuneration Convention, 1951 (No. 100)

### **Safe and healthy working conditions**

White Lead (Painting) Convention, 1921 (No. 13)  
Marking of Weight (Packages Transported by Vessels) Convention, 1929 (No. 27)  
Protection Against Accidents (Dockers) Convention, 1929 (No. 28)  
Protection Against Accidents (Dockers) Convention, 1932 (No. 32)  
Safety Provisions (Building) Convention, 1937 (No. 62)  
Labour Inspection Convention, 1947 (No. 81)  
Radiation Protection Convention, 1960 (No. 115)  
Guarding of Machinery Convention, 1963 (No. 119)  
Hygiene (Commerce and Offices) Convention, 1964 (No. 120)  
Maximum Weight Convention, 1967 (No. 127)  
Labour Inspection (Agriculture) Convention, 1969 (No. 129)  
Benzene Convention, 1971 (No. 136)  
Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148)  
Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152)  
Occupational Safety and Health Convention, 1981 (No. 155)  
Occupational Health Services Convention, 1985 (No. 161)  
Asbestos Convention, 1986 (No. 162)  
Safety and Health in Construction Convention, 1988 (No. 167)  
Chemicals Convention, 1990 (No. 170)  
Night Work Convention, 1990 (No. 171)  
Labour Inspection (Seafarers) Convention, 1996 (No. 178)

### **Rest, limitation of working hours and holidays with pay**

Hours of Work (Industry) Convention, 1919 (No. 1)  
Weekly Rest (Industry) Convention, 1921 (No. 14)  
Hours of Work (Commerce and Offices) Convention, 1930 (No. 30)  
Forty-Hour Week Convention, 1935 (No. 47)

Holidays with Pay Convention, 1936 (No. 52)

Holidays with Pay (Agriculture) Convention, 1957 (No. 101)

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

Holidays with Pay Convention (Revised), 1970 (No. 132)

Part-time Work Convention, 1994 (No. 175)

Homework Convention, 1996 (No. 177)

Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180)

### **Article 8 of the Covenant**

Right of Association (Agriculture) Convention, 1921 (No. 11)

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

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

Workers' Representatives Convention, 1971 (No. 135)

Rural Workers' Organizations Convention, 1975 (No. 141)

Labour Relations (Public Service) Convention, 1978 (No. 151)

Collective Bargaining Convention, 1981 (No. 154)

### **Article 9 of the Covenant**

Workmen's Compensation (Agriculture) Convention, 1921 (No. 12)

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

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

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

Sickness Insurance (Industry) Convention, 1927 (No. 24)

Sickness Insurance (Agriculture) Convention, 1927 (No. 25)

Old-Age Insurance (Industry, etc.) Convention, 1933 (No. 35)

Old-Age Insurance (Agriculture) Convention, 1933 (No. 36)

Invalidity Insurance (Industry, etc.) Convention, 1933 (No. 37)

Invalidity Insurance (Agriculture) Convention, 1933 (No. 38)

Survivor's Insurance (Industry, etc.) Convention, 1933 (No. 39)



Survivor's Insurance (Agriculture) Convention, 1933 (No. 40)  
Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42)  
Unemployment Provisions Convention, 1934 (No. 44)  
Maintenance of Migrants' Pension Rights Convention, 1935 (No. 48)  
Social Security (Minimum Standards) Convention, 1952 (No. 102)  
Equality of Treatment (Social Security) Convention, 1962 (No. 118)  
Employment Injury Benefits Convention, 1964 (No. 121)  
Invalidity, Old-Age and Survivor's Benefits Convention, 1967 (No. 128)  
Medical Care and Sickness Benefits Convention, 1969 (No. 130)  
Maintenance of Social Security Rights Convention, 1982 (No. 157)  
Employment Promotion and Protection Against Unemployment, 1988 (No. 168)

#### **Article 10 of the Covenant**

##### **(a) Maternity protection (re para. 2)**

Maternity Protection Convention, 1919 (No. 3)  
Maternity Protection Convention (Revised), 1952 (No. 103)  
Maternity Protection Convention (Revised), 2000 (No. 183)

##### **(b) Protection of children and young persons in relation to employment and work (re para. 3)**

Minimum Age (Industry) Convention, 1919 (No. 5)  
Minimum Age (Sea) Convention, 1920 (No. 7)  
Minimum Age (Agriculture) Convention, 1921 (No. 10)  
Minimum Age (Trimmers and Stokers) Convention, 1921 (No. 15)  
Minimum Age (Non-Industrial Employment) Convention, 1932 (No. 33)  
Minimum Age (Sea) Convention (Revised), 1936 (No. 58)  
Minimum Age (Industry) Convention (Revised), 1937 (No. 59)  
Minimum Age (Non-Industrial Employment) Convention (Revised), 1937 (No. 60)

Minimum Age (Fisherman) Convention, 1959 (No. 112)  
Social Policy (Basic Aims and Standards) Convention, 1952 (No. 117)  
Minimum Age (Underground Work) Convention, 1965 (No. 123)  
Minimum Age Convention, 1973 (No. 138)  
Night Work of Young Persons (Industry) Convention, 1919 (No. 6)  
Night Work (Bakeries) Convention, 1925 (No. 20)  
Night Work of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 79)  
Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90)  
White Lead (Painting) Convention, 1921 (No. 13) (Article 3)  
Radiation Protection Convention, 1960 (No. 115) (Article 7)  
Maximum Weight Convention, 1967 (No. 127) (Article 7)  
Benzene Convention, 1971 (No. 136) (Article 11)  
Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16)  
Medical Examination (Seafarers) Convention, 1946 (No. 73)  
Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77)  
Medical Examination of Young Persons (Non-Industrial Occupations) Convention,  
1946 (No. 78)  
Medical Examination (Fishermen) Convention, 1959 (No. 113)  
Medical Examination of Young Persons (Underground Work) Convention, 1965 (No. 124)  
Worst Forms of Child Labour Convention, 1999 (No. 182)

### **Article 13 of the Covenant**

Human Resources Development Convention, 1975 (No. 142)

Reference is also made, when appropriate, to the ILO/UNESCO Joint Recommendation concerning the status of teachers, 1966, and to the work of the Joint ILO/UNESCO Committee which supervises their application.

## **II. INDICATIONS CONCERNING THE SITUATION OF INDIVIDUAL COUNTRIES**

For each article of the Covenant under consideration, these indications show the state of the ratification of the corresponding Conventions by the country in question, and references to the relevant comments of the supervisory bodies with regard to the application of these Conventions. Full copies of the comments of the Committee of Experts are available at the secretariat (in English, French and Spanish) and should be consulted for further details.

The absence of any such reference signifies either that there are no comments at the present time regarding the application of a particular Convention, or that the comments that have been made deal with points not relating to the provisions of the Covenant or to matters (for example, simple requests for information) which it would not appear to be necessary to deal with at this stage, or again that the Government's reply concerning the application of a Convention on which comments had been made has not yet been examined by the Committee of Experts.

When references are made to the "observation" of the Committee of Experts, their texts are published in the report of the Committee for the same year (Report III (Part 1A) of the corresponding session of the International Labour Conference). In addition, comments have been formulated in requests for information addressed directly by the Committee of Experts to the Governments in question; such comments are not published but the text is made available to the interested parties.

### **A. Guatemala**

Information concerning Guatemala has been supplied to the UN Committee on Economic, Social and Cultural Rights previously in 1995, 1996, and 2002.

The following relevant Conventions have been ratified and are in force for Guatemala (for full names see the list of Conventions in Part I above): 1, 11, 13, 14, 16, 19, 26, 29, 30, 58, 59, 77, 78, 79, 81, 87, 88, 90, 96, 98, 99, 100, 101, 103, 105, 106, 111, 112, 133, 117, 118, 119, 120, 122, 124, 127, 129, 131, 138, 141, 148, 154, 156, 159, 161, 162, 167, 169, and 182.

#### **Article 6**

In its 2002 observation on Convention No. 111, the Committee of Experts noted a communication by the International Confederation of Free Trade Unions (ICFTU) alleging that discrimination in employment is common in Guatemala, particularly in the case of women workers who make up the majority of the labour force in export processing zones. ICFTU indicated that sexual harassment and physical abuse are common and that women workers suffer intimidation and threats of reprisals by employers if they join unions. Furthermore, it was stated that the average period of education for young indigenous persons is 1.3 years, while the same figure for the non-indigenous population is 2.3 years, which the ICFTU interprets as an indication of serious discrimination.

The Committee observed that for more than ten years it has been pointing out the need to reform the labour legislation in order to effectively ensure equality of opportunity and treatment in employment and occupation. It noted that the relevant provisions have not yet been amended, although the draft Labour Code and draft Labour Procedure Code have been submitted to the Congress of the Republic.

The Government has submitted a report on the application of Convention No. 111 which will be examined by the Committee of Experts at its November-December 2003 session.

In its 2001 observation on Convention No. 169, the Committee noted that major problems remain in the implementation of the Peace Agreements as concerns the indigenous peoples of the country, and in the implementation of the Convention. It noted a lack of decentralization of administration to the regional level that was contemplated in order to provide indigenous peoples with a greater voice in the administration of their own affairs. The Committee also noted trade union comments on the lack of real consultation with the indigenous peoples of the country on the implementation of the Peace Agreements (Article 6 of the Convention). The United Nations Verification Mission in Guatemala (MINUGUA) stated in its September 2001 report, based on close observation in the country of the developing situation: "The Mission has noted on several occasions that the commitments made concerning the indigenous peoples are among those which have been least implemented. The overall balance of the application of the Agreements indicates that most of the actions which were provided for to overcome discrimination and provide to the indigenous peoples the place they should have in the Guatemalan nation, are still awaiting fulfilment. This does not correspond to the changes proposed in the Agreements, but instead favours the persistence of a monocultural and exclusive model." (Unofficial translation, paragraph 9.) While recognizing the complexity of the situation, the Committee nevertheless recalled that the ratification of the Convention was one element in the settlement of the internal conflict in the country which - as indicated in the preamble of the 1996 Peace Agreement - "brought an end to more than three decades of armed confrontation in Guatemala". It urged the Government to renew its efforts to overcome difficulties in the application of the Convention and the Peace Agreements.

## **Article 7**

### **Equal remuneration**

In its 2002 observation on Convention No. 100, the Committee noted that, according to the ICFTU, women suffer open discrimination in employment. The ICFTU asserted that women are concentrated in the informal sector and have a low participation rate in high-level jobs;

that there is sectoral gender segregation; and that women's status in the export processing industry is precarious. The ICFTU also indicated that women earn between 20 and 40 per cent less than men. The Committee again asked the Government to indicate whether it was considering the possibility of giving effect in law to the principle of equal remuneration for men and women for work of equal value. The Committee also asked the Government to provide information on the methodology used for objective job appraisal. The Government has submitted a report on the application of Convention No. 100 which will be examined by the Committee of Experts at its November-December 2003 session.

### **Safe and healthy working conditions**

In its 2002 observation on Convention No. 81, the Committee recalled observations made by the National Federation of State Workers' Unions (FENASTEG) and the Trade Union Confederation of Guatemala (UNSITRAGUA) concerning the application of the Convention. According to FENASTEG, the public administration interferes in the functions of labour inspectors. Furthermore, inspectors are not assured of stability of employment and do not have at their disposal the necessary resources and materials for the performance of their duties. It deplored the failure to comply with procedures for the application of the penalties imposed for infringements of legal provisions, and the exclusion from the scope of labour inspection of conflicts between State employees and their employers. In the view of UNSITRAGUA, labour inspectors should not be confined to the sole function of supervision and taking action in the event of infringements and should also discharge the functions of mediation and the education of employers. It added that the means of transport available to labour inspectors are inadequate and their expenses for professional travel are not reimbursed. Further, the remuneration of labour inspectors was inadequate it did not have the capacity to protect workers making complaints against any reprisals. The Committee notes that the Government did not reply to the points raised by these trade unions and provide additional information on the manner in which to provide information on how effect is given in law and practice to Articles 6, 11 and 15 of the Convention concerning, respectively, the status and conditions of service of labour inspectors, the arrangements for the use of transport

facilities and the reimbursement of travelling expenses for labour inspectors and; finally, the obligation of confidentiality with regard to the source of any complaint bringing to their notice a defect or breach of legal provisions.

In its 2002 observation on Convention No. 119, the Committee noted statistical information, disaggregated by sex, on inspection visits conducted and infringements involving accidents registered.

In its 2002 observation on Convention No. 129, the Committee noted the comment by UNSITRAGUA that labour inspectors in agriculture are confronted by a very specific difficulty in the exercise of their function, namely the inability to communicate with agricultural workers in certain regions who do not speak the national language. The Committee considered that it is indispensable for labour inspectors to be able to communicate in a sufficient manner with the employers and workers they cover to ensure a minimum effectiveness of their inspection visits, both of a preventive and enforcement nature, as well as in the provision of information and technical advice. It therefore requested the Government to take all necessary measures to resolve this linguistic problem, for example by supplying labour inspectors with interpreters or other appropriate means of communication and to transmit any relevant information regarding such measures to the Committee.

### **Rest, limitation of working hours and holidays with pay**

In its 1998 observation on Convention No. 1, the Committee recalled its previous comments concerning in particular section 122 of the Labour Code, which provided that a working day including overtime could not exceed 12 hours. Noting that the Labour Code, as amended in 1995, reproduces this same provision, the Committee recalled once again that the exceptions envisaged by Article 6 of the Convention must remain within reasonable limits, and the authorization of up to four overtime hours a day without other guarantees, such as for example a monthly or an annual limit, considerably exceeds the exceptions authorized by the Convention.

**Article 8**

In its 2002 observation on Convention No. 87, the Committee noted comments made by a number of trade unions on the application of the Convention referring to serious acts of violence against trade unionists. Furthermore, various cases before the Committee on Freedom of Association (Cases Nos. 1970 and 2179) confirm the existence of a high number of murders, acts of violence and death threats against trade unionists. The Committee noted and welcomed the Government's indication of the establishment of a special unit in the General Inspectorate, which has begun operations, to improve the effectiveness of penal investigations of acts of violence against trade unionists, a unit which is currently investigating 50 cases.

The Committee also noted the requirement under the Constitution to be of Guatemalan origin to be a trade union leader and requirement to be actually working in the enterprise or the occupation in order to be eligible for trade union office (sections 220 and 223 of the Labour Code). The Committee requested the Government to amend the legislation and the Constitution to ensure that workers' organizations can determine in full freedom the conditions for the election of their officers and can therefore elect the representatives of their own choosing. The Committee also requested the amendment of the following provisions of the labour legislation: (i) requirement that to call a strike the workers must constitute 50 per cent plus one of those working in the enterprise (without including in the total workers in positions of confidence or who represent the employer) (section 241 of the Labour Code); (ii) imposition of compulsory arbitration without the possibility of resorting to a strike in public services which are not essential in the strict sense of the term, such as public transport and energy provision, and the prohibition of sympathy strikes by trade unions (section 4(d), (e) and (g) of Legislative Decree No. 71-86, as amended by Legislative Decree No. 35-96 of 27 May 1996).

In its 2002 observation on Convention No. 98, the Committee noted that it has been referring for several years to the lack of any consultation procedure (in the context of collective bargaining in the public sector, regulated by Legislative Decree No. 35-96) to enable trade



unions to express their views to the financial authorities so that the latter can take them duly into account in preparing the budget. The Committee requested the Government to provide fuller information on the consultation and negotiation procedures covering the terms and conditions of employment of workers in the public sector, and particularly whether sufficient time is given to trade union organizations prior to the discussion of the budget.

The Committee also noted that the International Confederation of Free Trade Unions (ICFTU) made an observation on the application of the Convention in a communication dated 10 January 2002. The ICFTU refers in general terms to: (1) the dismissal of unionized workers and the impossibility of achieving compliance with judicial decisions ordering the reinstatement of these workers in banana enterprises (a subject addressed in the paragraphs above); and (2) the existence of anti-union conduct in enterprises in export processing zones where collective agreements cannot be negotiated and do not exist and where workers who attempt to establish trade unions are physically aggressed by groups organized by enterprises (for example, in the export processing enterprises Cimatextiles and Choi Shin) and threatened with dismissal. The Committee requested the Government to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations, on the one hand, and workers' organizations, on the other, with a view to the regulation of terms and conditions of employment by means of collective agreements in enterprises in export processing zones and to provide information in its next report on any new collective agreement concluded in this sector.

## **Article 10**

### **Maternity protection**

In its 2000 direct request on Convention No. 103, the Committee stressed the need to amend the legislation in force which allows the employer to be required to bear the cost of maternity benefits for women workers who are not yet covered by the social security scheme (Chapter X, section 10 of the Basic Act respecting the IGSS) and women workers who are members of

the social security scheme but have not completed the requisite qualifying period (section 23 of the Regulations on sickness and maternity protection and section 24 of the Regulations on cash benefits). The Committee asked the Government to continue to take all necessary steps to extend the coverage of the IGSS to the entire national territory and to all women wage earners protected by the Convention, so that employers are not liable for the cost of the maternity benefits payable to the women they employ.

### **Protection of children and young persons in relation to employment and work**

In its 2002 observation on Convention No. 138, the Committee noted that in its communication dated 10 January 2002, the ICFTU stated that child labour is very widespread in Guatemala. The ICFTU referred to government statistics which indicate that about 821,875 children between the ages of seven and 14 years are economically active, most of them in agriculture or in informal urban activities such as shining shoes or street entertainment. Children are also involved in begging. The Committee requested the Government to supply statistical data regarding the number of children and young persons who are working and have undergone the medical examinations stipulated in the Convention, extracts from the reports of the inspection services relating to infringements noted and penalties imposed and any other information which relates to the practical application of the Convention.

In its 2002 direct request on Convention No. 138, the Committee noted that the Labour Code is not applicable to labour that does not arise from a contract, such as self-employment. The Committee noted that the Convention applies to all sectors of economic activity and covers all forms of employment or work, whether or not there is a contractual labour relationship and whether or not the work is paid or unpaid. The Committee also noted, that the Labour Code contains no definition of the term minor, and that it is therefore impossible to determine the minimum age at which a minor can be employed to do dangerous work. The Committee requested the Government to indicate the minimum age for admission to employment in dangerous work. The Committee also asked the Government to indicate whether the types of dangerous employment or work prohibited to adolescents aged below 18 years have been determined, in accordance with Article 3, paragraph 2, of the Convention.

The Committee also noted that according to section 171 of the Labour Code, the duration of an apprenticeship is fixed by contract in the light of factors such as the age of the apprentice, the grade, methods of instruction and nature of the work. The general labour inspectorate must ensure that the duration of the contract is respected. The Committee noted that section 171 of the Labour Code does not specify any minimum age for apprenticeship, and also noted that, under the terms of section 150 of the Labour Code, the general labour inspectorate can issue written authorization for normal day work by minors aged below 14 years or reduce the standard daily working hours for minors. The Committee therefore requested the Government to supply information on the measures taken or envisaged to apply Article 6 of the Convention by ensuring that no minor aged below 14 years will be admitted to an apprenticeship. The Committee also requested the Government to indicate the measures taken or envisaged to specify that only minors aged between 12 and 14 years should be allowed to carry out light work.

The Committee of Experts furthermore addressed a direct request to the Government in 1999 on Conventions Nos. 30, 117, 154, 156, in 2000 on Convention No. 159, in 2001 on Conventions Nos. 77, 78, 81, and 169, and in 2002 on Conventions Nos. 16, 87, 100, 111, 122, and 129.

## **B. Moldova**

Information concerning Moldova has not yet been supplied to the UN Committee on Economic, Social and Cultural Rights.

The following relevant Conventions have been ratified and are in force for Moldova (for full names see the list of Conventions in Part I above): 11, 29, 47, 81, 87, 88, 98, 99, 100, 103, 105, 111, 117, 119, 122, 127, 129, 131, 132, 135, 138, 141, 142, 151, 154, 155, 158, and 182.

## **Article 6**

In its 2002 direct request on Convention No. 111, the Committee noted that section 82 of the Labour Code prohibits discrimination in the determination of remuneration, and excludes, among the banned grounds of discrimination, race, colour, political opinion and social origin. Therefore, the Committee asked the Government to indicate how protection against discrimination on the grounds of race, colour, political opinion and social origin is afforded in practice in so far as determination of remuneration is concerned, and if the Government intends to extend the coverage of this provision to all the criteria set forth in the Convention. The Committee also requested the Government to provide information on the measures taken to eliminate discrimination and promote equality of opportunity and treatment in the labour market for national minorities.

## **Article 7**

### **Equal remuneration**

The Government submitted a first report under Convention No. 100 and a comparative analysis has been prepared for examination by the Committee of Experts at its session 2003.

### **Safe and healthy working conditions**

In its 2002 direct request on Convention No. 81, the Committee noted that, contrary to the requirements of the Convention, labour inspectors are not required to notify the employer or his representative of their presence on the occasion of an inspection visit and that they decide at their discretion whether to do so or not. The Committee asked the Government to take the necessary measures to bring the law and practice into conformity in this respect, so that labour inspectors only avail themselves of the right to refrain from notifying the employer or his representative of their presence in cases where they consider that such notification may be prejudicial to the effectiveness of the inspection.

In its 2002 direct request on Convention No. 127, the Committee noted the Government's indication that, although the terms "regular manual transport of loads" and "manual transport of loads" are not defined in the national legislation, their definition is derived from national practice. The Committee, while noting the definitions adopted in practice, invited the Government to consider the possibility of including these definitions in the national legislation.

## **Article 8**

In its 2002 direct request on Convention No. 87, the Committee asked the Government to indicate whether section 7(1) of the Law on Trade Unions, under which workers have the right to establish and join trade unions of their own choosing without previous authorization by the public authorities, repeals section 238 of the Labour Code which appeared to maintain a system of trade union monopoly at the level of the enterprise, institution or organization. The Committee noted the Government's indication that the new Labour Code, currently being drafted by the working group created by the Parliament, will repeal section 238. The Committee also requested the Government to indicate whether trade unions (primary trade unions and the territorial, sectoral and intersectoral trade unions) which are not affiliated to national, sectoral and intersectoral trade unions may be granted legal personality and hence engage fully in the activities of defending and promoting the interests of their members.

The Committee also noted that the Law on Trade Unions does not address the issues repeatedly raised by the Committee, in particular those regarding: broad powers of the minister to impose arbitration; nature of the services on which strikes may be restricted or prohibited subject to certain conditions; and risks arising from the application of provisions making strike organizers liable for material damage. The Committee noted the Government's indication that a draft Labour Code will include the provisions from the previously drafted Bill on the Settlement of Collective Labour Disputes. The Committee expressed its hope that the new Labour Code would take into account the concerns previously expressed in this regard and will ensure the right of workers' organizations to organize their activities and formulate their programmes without interference by the public authorities.

With reference to its previous comments, the Committee noted the Government's indication that section 203/4 of the Criminal Code provides for criminal responsibility for participation in collective action, which disrupts transport, or public and social establishments, enforceable by imprisonment of up to three years. The Committee requested the Government to take the necessary steps to repeal this provision.

In its 2001 observation on Convention No. 98, the Committee noted with satisfaction the law on trade unions dated 7 July 2000, which complies with the requirements of the Convention.

The Committee of Experts furthermore addressed a direct request to the Government in 2002 on Conventions Nos. 88, 105, 122, and 129.

### **C. Russian Federation**

Information concerning the Russian Federation has been supplied to the UN Committee on Economic, Social and Cultural Rights previously in 1997.

The following relevant Conventions have been ratified and are in force for the Russian Federation (for full names see the list of Conventions in Part I above): 11, 13, 14, 16, 27, 29, 32, 47, 52, 73, 77, 78, 79, 81, 87, 90, 98, 100, 103, 105, 106, 111, 113, 115, 119, 120, 122, 124, 138, 142, 148, 155, 156, 159, 162, and 182.

#### **Article 6**

In its 2002 observation on Convention No. 29, the Committee requested the Government to reply to the communication of the ICFTU concerning the problem of trafficking of persons for sexual and labour exploitation. While pointing out that there are no accurate statistics, the ICFTU alleged that there was little doubt that thousands of persons are trafficked from the Russian Federation to other countries, including Canada, China, Germany, Israel, Italy, Japan, Spain, Thailand and the United States. It is also alleged that internal trafficking within

the Russian Federation is taking place; women are generally forced to work as prostitutes while men are trafficked into agricultural or construction work. There are also said to be confirmed cases of children being trafficked for sexual exploitation. The ICFTU refers to allegations that organized criminal gangs operate through false employment agencies offering good jobs abroad, and that women, who make up 63 per cent of the registered unemployed, are particularly vulnerable to these offers. On arrival, their papers are taken away and traffickers use coercion and violence to control them. The victims often find themselves in debt bondage as they owe the traffickers recruitment and transport costs which are then inflated with charges for food, accommodation and interest on the debt. The ICFTU indicated that there is currently no specific law against trafficking in the Russian Federation. Traffickers are most often prosecuted for document fraud, if at all. It is pointed out that widespread corruption, lack of resources, and a lack of understanding of trafficking issues mean law enforcement agencies rarely investigate cases.

In its 2002 observation on Convention No. 111, the Committee noted with interest that provisions of the new Labour Code adopted by the State Duma on 30 December 2001 cover all of the grounds of discrimination prohibited by the Convention. The Committee welcomed this development and requested the Government to provide information on the application and impact in practice of the new Labour Code on equality in employment and occupation. The Committee also asked the Government to continue providing information on the measures taken or envisaged to improve the situation of women in the labour market, to promote their access to employment and decision-making positions and to improve their working conditions. Further, the Committee reiterated its request to the Government to provide information regarding the employment situation of ethnic minorities.

In its 2002 direct request on Convention No. 156, the Committee requested the Government to indicate the manner in which the Convention is applied to foreign workers residing in the

territory of the Russian Federation. The Committee also noted that, while the report makes reference to the Plan of Action on the Advancement of Children 1998-2000 and to national plans of action on the advancement of women and enhancement of their role in society, it did

not indicate whether the Government has enunciated an explicit national policy aimed at enabling men and women workers with family responsibilities to be employed without discrimination and to assist them in reconciling their work and family obligations.

Accordingly, the Committee hoped that the Government would be able to indicate that action has been taken in this regard.

## **Article 7**

### **Equal remuneration**

In its 2001 direct request on Convention No. 100, the Committee noted the Government's statement that there are still some discrepancies between the remuneration of men and women workers, due to men having higher qualifications and performing more highly qualified work. It asked the Government to continue to take promotional measures to improve women's position in the labour market and to ensure the principle of equal remuneration for men and women workers for work of equal value and to report on the impact of such measures.

### **Safe and healthy working conditions**

In its 2002 direct request on Convention No. 148, the Committee noted that the provisions of the new Labour Code do not require compliance with specific standards relating to the working environment, and more particularly air pollution, noise and vibration. The Committee noted that, with the exception of section 221 of the Code, which refers to hazardous work or work performed under hazardous conditions and work performed under special climatic conditions or which is associated with air pollution for which special equipment is to be provided to workers, there are no other provisions giving effect to the requirements of the Convention. However, the Committee noted that the Code contains provisions which could provide a basis for the adoption of legislation respecting the working environment, and particularly air pollution, noise and vibration.



## **Article 8**

In its 2002 observation on Convention No. 87, the Committee noted with satisfaction that the Labour Code of 2002 contains no reference to an imposed trade union monopoly. The Committee also noted that according to section 11 of the Labour Code, restrictions provided for by federal law may apply to managers of organizations, personnel combining jobs, women, persons bearing family responsibilities, youth, state employees and others. It further notes that members of directors' councils of the organizations (with the exception of members who concluded a labour contract with the organization) and persons whose relationship with an employer is regulated by the civil law contract are excluded from the scope of the Labour Code. Recalling that the Convention provides that all workers, without distinction whatsoever, should have the right to establish and join organizations in the furtherance and defence of their occupational interests, with the sole possible exception being that of armed forces and the police, the Committee requested the Government to indicate whether any restrictions have been imposed on the right to organize of these workers and to provide clarification in respect of those persons considered to be regulated by a civil law contract, who are excluded from the scope of the Code.

Regarding the quorum required for a strike ballot, the Committee noted section 410 of the Labour Code, which provides that a minimum of two-thirds of the total number of workers should be present at the meeting and the decision to take a strike should be taken by at least half of the number of delegates present. Considering that the quorum set out for a strike is too high and may potentially impede recourse to strike action, particularly in large enterprises, the Committee requested the Government to amend its legislation so as to lower the quorum required for a strike ballot.

The Committee further noted that section 410 of the Labour Code maintains the obligation to declare a "possible" duration of the strike, and requested the Government to amend its legislation so as to ensure that no legal obligation to indicate the duration of a strike is imposed on workers' organizations.

Furthermore, the Committee noted section 412 of the Labour Code, which provides that in the event of a disagreement between the parties on the minimum services to be provided in organizations (enterprises) the activities of which ensure safety, health and life of the people, and vital interests of society, the decision is made by an executive body. However, the Committee noted from the Government's report that minimum services are to be ensured in every sector of activity. The Committee requested the Government to amend its legislation so as to ensure that any disagreement concerning minimum services is settled by an independent body having the confidence of all the parties to the dispute and not the executive body and to keep it informed of measures taken or envisaged in this regard.

The Committee also noted that the right to strike may not be exercised during the period of emergency and in essential services as well as when restrictions are provided for by the federal law. The Committee therefore requested the Government to review its legislation so as to ensure that in those cases any disagreement concerning a collective agreement is settled by an independent body and not by the Government.

## **Article 10**

### **Protection of children and young persons in relation to employment and work**

In its 2000 observation on Convention No. 138, the Committee recalled that the minimum age for employment was lowered to 15 years of age from the previous 16, by virtue of federal Act No. 182-FZ of 24 November 1995. It pointed out that the minimum age for admission to employment or work of 16 years had been specified at the time of ratification in accordance with Article 2(1) of the Convention, and that the lowering of the existing minimum age is contrary to the principle of the Convention, which is to raise progressively the minimum age. The Committee will examine this question again at its November-December 2003 session

[Section 63 of the Labour Code, adopted subsequently to the Committee's observation, provides that it shall be permitted to conclude labor contract with persons attaining the age of sixteen].

The Committee of Experts furthermore addressed a direct request to the Government in 1999 on Convention Nos. 103, and in 2000 on Convention No. 79, and in 2002 on Conventions Nos. 16, 73, 119, 120, and 148.

#### **D. Yemen**

Information concerning Yemen has been supplied to the UN Committee on Economic, Social and Cultural Rights previously in 1990 and 1991.

The following relevant Conventions have been ratified and are in force for Yemen (for full names see the list of Conventions in Part I above): 14, 16, 29, 58, 59, 81, 87, 98, 100, 105, 111, 122, 131, 132, 135, 138, 156, and 159.

#### **Article 6**

In its 2001 direct request on Convention No. 29, the Committee noted that section 35(2) of the Labour Code (Act No. 5 of 1995) lays down an exhaustive list of cases where a worker may unilaterally terminate his or her contract of employment without prior written notice, and section 36 lays down an exhaustive list of cases where either party to a contract of employment may terminate it with notice. The Committee asked the Government to clarify whether a worker has right to terminate his contract of employment at his own request without indicating any specific reason, simply by means of notice of reasonable length. The Government indicated in its report that, in reality, resignation can be submitted without indicating a reason, provided that the request is submitted at least one month prior to the date of resignation, and that it intends to add a legal text to the Labour Code in this regard when it amends it. The Committee hoped that such amendments would be made in order to bring the legislation into conformity with the Convention on this point.

The Committee previously noted that section 90(4) of Act No. 67 of 1991 concerning military service refers to resignation as one of the grounds for termination of service of career

military personnel. Section 95 of the Act stipulates that the Minister may accept the resignation of an officer provided that the reason for his resignation is beyond his control and he spent eight years in effective service. Section 96 lays down similar provisions for the resignation of non-commissioned officers, which may be accepted only if requested for reasons beyond their control (and after seven years of effective service). The Committee expressed its hope that the necessary measures would be taken with a view to bringing the above provisions into conformity with the Convention and that career military servicemen will not be denied the right to leave the service in peacetime within a reasonable period, either at specified intervals or with previous notice, subject to the conditions which may normally be required to ensure the continuity of the service.

In its 2001 direct request on Convention No. 105, the Committee noted that under sections 96, 98 to 100 and 101(b), (c) and (e) of the Merchant Shipping Ordinance, seafarers may be forcibly conveyed on board ship to perform their duties, and certain breaches of discipline by seafarers are punishable with imprisonment involving an obligation to perform labour. The Committee expressed the hope that the legislation on merchant shipping would be brought in conformity with the Convention, ensuring that no provisions prescribing the forcible conveyance of seamen on board, and that no sentences of imprisonment involving an obligation to perform labour for breaches of discipline could be imposed.

The Committee also noted that, according to section 104 of Act No. 25 of 1990 on the press and printings, violation of restrictions provided for in section 103 may be punished by imprisonment which involves an obligation to work, by virtue of Chapter 4 of Act No. 48 of 1991 on the organization of prisons. This is incompatible with the protection afforded by Article 1(a) of the Convention to the expression of political views or views ideologically opposed to the established political, social or economic system, in so far as section 103 of Act No. 25 of 1990 prohibits, inter alia, printing, publishing and disseminating views opposing the goals and principles of the Yemeni revolution or prejudicial to the Yemeni or Islamic civilization, as well as information containing direct criticism of the Head of State. Moreover, certain other prohibitions in section 103 are worded in so general terms that information is required on their interpretation by the courts in order to evaluate their

compatibility with the protection afforded by the Convention, e.g. where section 103 prohibits printing, publishing and disseminating views prejudicial to the national unity or to the public morality, personal dignity and individual liberties, or "deliberately false" information with a view to influencing the economic situation and provoking disorder in the country. The Government indicated that it would discuss them with the competent bodies with a view to introduce the necessary amendments in order to bring the abovementioned provisions into conformity with the Convention.

In its 2002 direct request on Convention No. 111, the Committee noted the Government's statement that it is continuing to apply the Labour Code to casual workers, household workers and agricultural workers, although they are excluded from its scope of application and that no new legislation has been drawn up to directly cover them. Considering that a majority of women work in these areas, the Committee encouraged the Government to consider extending formal legal protection to these workers from discriminatory practices. The Committee also encouraged the Government to take measures to overcome social traditions and customs which have a negative impact on the enjoyment by girls and women of their equal opportunities and treatment in education, skill development, employment and occupation. Noting the Government's efforts to offer vocational training in different fields to improve women's competence in income-generating activities, the Committee noted that vocational and skills training for women should correspond to the needs of the labour market, include areas beyond work traditionally considered to be "female", and include components enabling women to start their own businesses and projects. The Committee requested the Government to continue to provide information on steps taken to promote women's access to vocational training and their integration into the labour market.

## **Article 7**

### **Equal remuneration**

In its 2001 direct request on Convention No. 100, the Committee recalled that section 67 of the Labour Code contains a provision limiting female workers' entitlement to wages equal to those of men if they perform the same work under the same conditions and specifications, while requiring equal wages to be paid to Yemenis and non-Yemenis if their working conditions, qualification, experience and competence are equal. The Committee requested the Government to provide information on the measures taken with a view to amending section 67 of the Labour Code to bring it fully in line with the Convention which requires equal remuneration for work of equal value.

### **Article 8**

For a number of years, the Committee of Experts has requested the Government to amend or repeal the provisions on trade union monopoly, which remained in the Labour Code of 1995 (sections 2, 131(c) and 145(2)). In this respect, the Committee noted in its 2001 observation with concern that a new Bill also referred by name to the General Federation providing that this Confederation shall assume the leadership of the trade union movement. In its 2002 observation on Convention No. 87, the Committee noted the Government's indication that the General Union of Yemeni Trade Unions was not appointed by the public authority but rather elected by the trade unions. The Committee considered that the naming of a particular union confederation in the legislation renders such diversity impossible; for instance, if in the future some trade unions were to desire to form a different confederation. The Committee therefore trusted that the new amendments would take into account this issue and the previous concerns of the Committee, in particular those regarding strict conditions for exercising strike action and the right to organize of workers not covered by the current Labour Code.

In its 2001 observation on Convention No. 98, the Committee noted that in previous comments it had observed that the draft Trade Union Act did not include specific provisions accompanied by effective and sufficiently dissuasive sanctions that guaranteed the protection of workers against acts of anti-union discrimination by employers, and had requested the Government to amend the draft Act to ensure such protection. The Committee requested the

Government to ensure that the reformulated draft Trade Union Act guarantees the protection of workers against all acts of anti-union discrimination by employers.

The Committee had also in its previous comments, urged the Government to ensure that the draft Trade Union Act contained provisions for rapid appeal procedures, coupled with effective and dissuasive sanctions to protect workers' organizations against acts of interference by employers. In its report, the Government indicates that section 8 of the draft Trade Union Act prohibits direct and indirect interference in the functioning of trade union organizations, and that no person may be coerced into joining or withdrawing from an organization or from exercising their trade union rights. The Government also indicates that section 136(4) of the Labour Code provides that all cases relating to labour matters shall be considered urgent, and that according to section 136(1) of the Labour Code, litigating parties wishing to appeal an award of the Arbitration Committee may submit a petition for an appeal to the Labour Division of the competent Court of Appeal within one month of the notification of the award. Furthermore, the Government indicates that it will make every effort to include the penalties provided for under Article 2 of the Convention in the draft Trade Union Act during discussions between the Labour Force Committee and social partners. The Committee requested the Government to ensure that the draft Trade Union Act will contain such provisions.

The Committee of Experts furthermore addressed a direct request to the Government in 2001 on Conventions Nos. 16 and 122, and in 2002 on Conventions Nos. 81 and 135.

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## Notes

<sup>1</sup> Decisions of the Governing Body at its 201st session (November 1976) and at its 236th session (May 1987).

<sup>2</sup> Information on the procedures and machinery for the implementation of ILO standards, including the operation of its supervisory bodies, can be found in United Nations Action in the Field of Human Rights (United Nations publication, Sales No. E.94.XIV.11), chap. II, sect. C.1. Further information can be found on the ILO's Internet website at [www.ilo.org](http://www.ilo.org).

<sup>3</sup> There are, in addition, particularly for articles 7 and 9, a number of Conventions dealing with corresponding matters in particular occupational sectors (e.g. road transport, seafarers, fishermen, dock workers, plantation workers, nursing personnel) or with particular categories of workers (e.g. migrant workers, workers in non-metropolitan territories). These Conventions are not included in the present list but are taken into account in the indications concerning the situation in individual countries.

## ANNEX

### Index of countries on which the ILO has supplied information since 1978

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Argentina	E/1995/5, E/C.12/1999/SA/1
Armenia	E/C.12/1999/SA/1
Australia	E/1979/33, E/1981/41, E/1985/63, E/1986/60
Austria	E/1981/41, E/1987/59, E/1988/6, E/1995/5
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