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Committee on the Elimination of Discrimination against Women

Forty-third session

19 January-6 February 2009 Item 7 of the provisional agenda* Implementation of article 21 of the Convention on the Elimination of All Forms of Discrimination against Women

> Reports provided by the specialized agencies of the United Nations system on the implementation of the Convention in areas falling within the scope of their activities

Note by the Secretary-General

Addendum

International Labour Organization**

^{**} The submission of the present report by the International Labour Organization was delayed.



^{*} CEDAW/C/2009/I/1.

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Part I: Introduction

The provisions of article 11 of the Convention on the Elimination of All Forms of Discrimination against Women are dealt with in a number of International Labour Organization (ILO) Conventions. Of the 188 Conventions adopted so far, the information in the present report relates principally to the following:

- Equal Remuneration Convention, 1951 (No. 100), which has been ratified by 166 member States
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111), which has been ratified by 168 member States
- Workers with Family Responsibilities Convention, 1981 (No. 156), which has been ratified by 40 member States

Where applicable, reference is made to a number of other Conventions which are relevant to the employment of women:

Forced Labour

- Forced Labour Convention, 1930 (No. 29)
- Abolition of Forced Labour Convention, 1957 (No. 105)

Child Labour

- Minimum Age Convention, 1973 (No. 138)
- Worst Forms of Child Labour Convention, 1999 (No. 182)

Freedom of Association

- Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87)
- Right to Organize and Collective Bargaining Convention, 1949 (No. 98)

Employment Policy

- Employment Policy Convention, 1964 (No. 122)
- Human Resources Development Convention, 1975 (No. 142)

Maternity Protection

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

Night Work

- Night Work (Women) Convention (Revised), 1948 (No. 89) [and Protocol]
- Night Work Convention, 1990 (No. 171)

Underground Work

• Underground Work Convention, 1935 (No. 45)

Part-time Work

• Part-Time Work Convention, 1994 (No. 175)

Home Work

• Home Work Convention, 1996 (No. 177)

The application of ratified Conventions is supervised in ILO by the Committee of Experts on the Application of Conventions and Recommendations ("Committee of Experts"), a body of independent experts from around the world, which meets annually. The information submitted in Part II of the present report consists of observations and direct requests made by the Committee of Experts. Observations are comments published in the Committee of Expert's annual report, which is produced in English, French and Spanish, and submitted to the International Labour Conference. Direct requests (produced in English and French, and in the case of Spanish-speaking countries, also in Spanish) are not published in book form, but are made public. At a later date, they are published on the ILO database of supervisory activities, ILOLEX.

The explanations below are brief references to much more detailed comments made by the ILO supervisory bodies. The relevant comments of the Committee of Experts referred to in Part II can be found by going to:

www.ilo.org/public/english/standards/norm/index.htm and then referring to the APPLIS database.

Part II: Indications concerning the situation of individual countries

Armenia

- I. Among the relevant ILO Conventions, Armenia has ratified Conventions Nos. 100 and 111. It has also ratified Conventions Nos. 29, 87, 98, 105, 122, 138 and 182.
- II. Comments made by the ILO supervisory bodies. The pending comments of the ILO Committee of Experts relevant to the provisions of the Convention on the Elimination of All Forms of Discrimination against Women relate to the following:

Convention No. 100: In its 2007 direct request, the Committee of Experts noted that women are facing indirect and direct discrimination in remuneration, as well as vertical and horizontal segregation in the labour market, as a result of which the average rate of remuneration for women is 39 per cent of that for men. The Committee also noted the Government's indication that women are being gradually excluded from the economic branches where remuneration is comparatively high and are moving to branches where remuneration is low, such as the health, education and culture sectors. The underlying causes of that trend appear to be that employers prefer to hire men and that women face difficulties in combining work and family responsibilities, especially when they seek employment in the more profitable branches and occupations. The Committee expressed the hope that the Government would make all necessary efforts to address the indirect and direct discrimination in remuneration against women and the underlying causes of the vertical and horizontal segregation of women in the labour market, as well as the effect of such segregation on the disparities in remuneration between men and women.

In addition, the Committee of Experts noted that according to section 178(2) of the Labour Code, men and women shall get equal pay for the same or equivalent work. However, the Government in its report referred to the same or equal remuneration for the same work or work of equal value. The Committee stressed that "work of equal value" includes but goes beyond equal remuneration for "equal", the "same" or "similar" work, and also encompasses work that is of an entirely different nature, but which is nevertheless of equal value. Noting that the Labour Code, 2004, is being revised, the Committee asked the Government to take the opportunity to ensure that the amended version of the Labour Code would explicitly provide not only for equal remuneration for men and women for the same, similar or equal work but also for work of equal value within the meaning of article 1(b) of the Convention.

Convention No. 111: The first report of Armenia on the application of Convention No. 111 was examined by the Committee of Experts at its November-December 2008 session. Any comments by the Committee will be published in early 2009.

Cameroon

- I. Among the relevant ILO Conventions, Cameroon has ratified Conventions Nos. 100 and 111. It has also ratified Conventions Nos. 3, 29, 45, 87, 89, 98, 105, 138 and 182.
- II. Comments made by the ILO supervisory bodies. The pending comments of the ILO Committee of Experts relevant to the provisions of the Convention on the Elimination of All Forms of Discrimination against Women relate to the following:

Convention No. 89: In its 2004 direct request, the Committee referred to paragraphs 191-202 of its 2001 General Survey on the night work of women in industry, in which it observed that the present trend is no doubt to move away from a blanket prohibition against night work by women and to give the social partners the responsibility of determining the extent of the permitted exemptions. The Committee further recalled that member States are under an obligation to review periodically their protective legislation in light of scientific and technological knowledge with a view to revising all gender-specific provisions and discriminatory constraints. The Committee recalled that the Protocol of 1990 to Convention No. 89 was designed as a tool for smooth transition from outright prohibition to free access to night employment, especially for those States that wished to offer the possibility of night employment to women workers but felt that some institutional protection should remain in place to avoid exploitative practices and a sudden worsening of the social conditions of women workers. The Committee invited the Government to give favourable consideration to the ratification of the 1990 Protocol.

Convention No. 100: In its 2007 direct request, the Committee of Experts noted that section 61(2) of the Labour Code stipulates that "in equal conditions of work and professional ability, wages are equal for all workers, regardless of their origin, gender, age, status and religious beliefs". The Committee noted that that section does not fully reflect the principle of equal remuneration for men and women as set forth in the Convention, since that principle encompasses not only work in equal conditions or similar types of work, but also types of work which, while different, are of equal value. The Committee asked the Government to take all the necessary steps to give full legislative expression to the principle of equal remuneration for work of equal value.

In its previous comments, the Committee had noted observations made by the Union of Free Trade Unions of Cameroon concerning the application by certain employers, especially in remote areas, of different wage rates for men and women. The Government stated that in order to remedy that situation, it is the responsibility of the workers affected and the trade unionists to denounce such employers. In that regard, the Committee noted that according to a survey carried out with ILO assistance in September 2007, the provisions in force relating to proof of discrimination make it very difficult for workers to prove that they are victims of wage discrimination. It was found that that is one of the reasons why, despite the widespread awareness of recurrent discriminatory practices, not many discrimination-related disputes have been noted. The Committee asked the Government to provide information on the steps taken to

facilitate the bringing of wage discrimination complaints. The Committee also asked the Government to provide information on the manner in which labour inspections ensure the effective application of the Convention and particularly on the number of labour inspections carried out in remote areas and the nature of the reported violations of the principle of equal remuneration for men and women for work of equal value.

Convention No. 111: In its 2007 direct request, the Committee noted that, according to a survey of obstacles to the implementation of fundamental principles and rights at work in Cameroon carried out in September 2007 by the ILO Project to Support the Declaration on Fundamental Principles and Rights at Work, there are no provisions in Cameroonian legislation dealing specifically with sexual harassment. The survey also indicated that section 12 of the preliminary draft Uniform Act of the Organization for the Harmonization of Business Law in Africa regarding labour law prohibits any form of psychological or sexual harassment at work resulting from any kind of abusive and repetitive conduct. However, the Committee noted that, according to the survey mentioned above, it would be difficult to combat sexual harassment effectively under that section because of the gaps that exist in the preliminary draft of the Act regarding the burden of proof, protection of witnesses and applicable penalties. In view of the seriousness of sexual harassment in employment and occupation and the impact thereof, the Committee drew the Government's attention to the need to prohibit sexual harassment explicitly in law.

The Committee raised continuing concern with respect to the unequal legal status of women regarding the right to own property, the laws on credit and bankruptcy, and the right of husbands to seek a court order to prevent their wives from engaging in certain occupations. Noting that women account for only 25 per cent of public servants and only 30 per cent of jobseekers in general, the Committee requested the Government to supply information on the measures taken within the national employment policy to promote gender equality in access to employment and training and to send information on the results achieved in this field.

The Committee noted section 82 of the Labour Code, which prohibits women from working at night in industry, and section 83 of the Labour Code, which provides for the adoption of an Order determining the types of work which women are not permitted to perform. The Order excludes women from work which exceeds their physical strength and from work considered to be hazardous or insalubrious. The Committee noted that, according to the above-mentioned survey, the vast majority of women interviewed suggested that the Order related to section 83 of the Labour Code should be updated periodically to adjust it to women's new occupational skills and capacities. The Committee requested the Government to supply information on the revision of the list of types of work which are prohibited for women and requested the Government to limit protective measures regarding women to measures intended to provide maternity protection.

Dominica

- I. Among the relevant ILO Conventions, Dominica has ratified Conventions Nos. 100 and 111. It has also ratified Conventions Nos. 29, 87, 98, 105, 138 and 182.
- II. Comments made by the ILO supervisory bodies. The pending comments of the ILO Committee of Experts relevant to the provisions of the Convention on the Elimination of All Forms of Discrimination against Women relate to the following:

Convention No. 100: In its 2007 direct request, recalling that section 24 of the Labour Standards Act provides that "no employer shall establish or maintain differences in wages between male and female employees employed in the same business who are performing, under the same working conditions, the same work or jobs regarding similar skill, effort and responsibility", the Committee of Experts again pointed out that that section is more restrictive than the principle of equal remuneration for men and women for work of equal value, as contained in the Convention. The Committee stressed that it is important to give full legislative expression to the principle of the Convention, providing not only for equal remuneration for equal, the same or similar work, but also prohibiting pay discrimination that occurs in situations where men and women perform different work that is nevertheless of equal value. The Committee asked the Government to amend section 24 accordingly.

Convention No. 111: In its 2007 direct request, the Committee of Experts noted that a National Policy and Action Plan for gender equality and equity had been approved by the Government in June 2006. The Committee asked the Government to indicate the specific measures taken or envisaged under the Action Plan to promote women's equality of opportunity and treatment in employment and occupation, including access to education and training.

Germany

- I. Among the relevant ILO Conventions, Germany has ratified Conventions Nos. 100 and 111. It has also ratified Conventions Nos. 3, 29, 87, 98, 105, 122, 138, 142 and 182.
- II. Comments made by the ILO supervisory bodies. The pending comments of the ILO Committee of Experts relevant to the provisions of Convention on the Elimination of All Forms of Discrimination against Women relate to the following:

Convention No. 100: In its 2007 direct request, the Committee of Experts welcomed the publication by the Government of an updated version of the guidelines for the implementation of the principles of equal remuneration for women and men for equal work and work of equal value entitled "Fair p(l)ay-Equal pay for women and men". The Committee also noted that the Government is encouraging collective bargaining parties to undertake joint initiatives and to promote the systematic analysis and redrafting of collective agreements, and that an analysis of the Federal Employees Collective Agreement to identify potential discrimination was ongoing. The Committee asked the Government to indicate the outcome of the analysis of the Federal

Employees Collective Agreement with regard to potential discrimination and on whether the results of the analysis have led to any changes in the collective agreement.

Convention No. 111: In its 2007 observation, the Committee of Experts noted with interest the entry into force, on 18 August 2006, of the General Equal Treatment Act and the Soldiers Equal Treatment Act, which were adopted with a view to implementing recent European directives concerning the principle of equal treatment. The Committee noted that the General Equal Treatment Act prohibits direct and indirect discrimination against employees based on race or ethnic origin, sex, religion or world view, disability, age or sexual orientation. The Act also prohibits harassment on any of these grounds and sexual harassment. The Committee noted with interest that the new legislation not only prohibits discrimination in employment and occupation but also establishes an obligation for the employer to take the measures necessary to protect employees from discrimination, including through preventative measures (section 12) such as information and training for staff concerning equal treatment, and to provide appropriate procedures to address cases of discrimination. The Committee noted the establishment of the Federal Non-Discrimination Office within the Federal Ministry for Families, Older Persons, Women and Youth and requested the Government to provide information on the practical application of the new legislation, including relevant administrative or judicial decisions and regarding the activities of the Non-Discrimination Office.

The Committee has again examined the application by Germany of Convention No. 111 at its November-December 2008 session. The comments of the Committee in that regard will be issued in early 2009.

Guatemala

- I. Among the relevant ILO Conventions, Guatemala has ratified Conventions Nos. 100, 111 and 156. It has also ratified Conventions Nos. 29, 45, 87, 89, 98, 103, 105, 122, 138, and 182.
- II. Comments made by the ILO supervisory bodies. The pending comments of the ILO Committee of Experts relevant to the provisions of the Convention on the Elimination of All Forms of Discrimination against Women relate to the following:

Convention No. 100: Article 102(c) of the Guatemalan Constitution provides for "equal wages for equal work performed under equivalent working conditions, and equal conditions of seniority and efficiency". Section 89 of the Labour Code provides that "equal wages shall be paid for equal work performed in equivalent posts, under the same conditions of efficiency and seniority within the same enterprise". The Committee of Experts, most recently in an observation of 2007, stressed that those provisions do not give full effect to the principle of equal remuneration of men and women for work of equal value, as set out in the Convention. The Committee pointed out that the concept of "work of equal value" includes but goes beyond equal remuneration for "equal", the "same" or "similar" work and also encompasses work that is of an entirely different nature, but which is nevertheless of equal value. The Committee urged the Government to redouble its efforts to give legislative expression to the principle set forth in the Convention.

Convention No. 111: In its 2007 observation, the Committee of Experts referred to communications from the Trade Union Confederation of Guatemala and the International Confederation of Free Trade Unions (now International Trade Union Confederation), concerning the administration of pregnancy tests and dismissal on the ground of pregnancy, especially in export processing enterprises (maquiladoras). The Committee noted that, according to the Government's report, the labour inspectorate had not received any complaints relating to the imposition of pregnancy tests as a condition for obtaining or keeping a job. The Government also referred to a study entitled "Analysis of gender-based discrimination against women at work, especially in the textile and export processing industries" conducted in the context of the cumple y gana (apply and win) programme. According to that analysis, no pregnancy testing had been reported in clothing and textile enterprises but there was still a high percentage of dismissals of pregnant workers which employers claimed were based on other grounds. The Committee recalled that the lack of complaints of discrimination based on pregnancy with regard to obtaining or keeping a job does not mean that this type of discrimination does not exist in practice, and the various communications and the study referred to by the Government indicate that there are problems in that respect. The Committee requested the Government to renew its efforts to tackle discrimination based on pregnancy with regard to obtaining or keeping a job and to strengthen the protection afforded to pregnant workers so that dismissals due to pregnancy which are said to be on other grounds cannot occur. The Committee also requested the Government to keep it informed in that respect.

Convention No. 182: In its 2006 observation, the Committee of Experts noted that the Government was evaluating the measures taken in the context of the National Plan of Action to combat the commercial sexual exploitation of girls, boys and young persons in Guatemala and the results achieved with a view to formulating a new plan. The Committee requested the Government to provide a copy of the new plan of action to combat the commercial sexual exploitation of girls, boys and young persons in Guatemala and to supply information on its implementation.

Convention No. 122: In its 2006 observation, the Committee noted that the Government was formulating a national employment and decent work policy to promote mass access to productive employment, improve employment levels, combat unemployment and underemployment and guarantee security of employment and income for workers. The crosscutting themes of the employment and decent work policy are gender and indigenous peoples. The Committee requested the Government to continue to provide information on the manner in which the Government ensures that employment occupies a central role in macroeconomic and social policies when formulating and implementing the national poverty reduction strategy and in promoting decent work.

Haiti

- I. Among the relevant ILO Conventions, Haiti has ratified Conventions Nos. 100 and 111. It has also ratified Conventions Nos. 29, 45, 87, 98, 105 and 182.
- II. Comments made by the ILO supervisory bodies. The pending comments of the ILO Committee of Experts relevant to the provisions of the Convention on the Elimination of All Forms of Discrimination against Women relate to the following:

Convention No. 100: In its 2007 direct request, the Committee of Experts noted that the Ministry for the Status of Women and Women's Rights had begun a review of the legislation in force, with a view to carrying out a revision of laws which discriminate on the basis of gender. The Committee noted, in particular, that this review of legislation also concerned the Labour Code provisions governing domestic workers. The Committee noted that that group of workers is often seriously affected by wage disparities between men and women for work of equal value and by the segregation of women in undervalued jobs. The Committee encouraged the Government to continue its review of the legislation in force so as to identify and eliminate discriminatory provisions, and asked the Government to provide information on the steps taken in practice to promote and apply equal remuneration for domestic workers. The Committee also asked the Government to provide information on the application in practice of section 317 of the Labour Code which provides that, for work of equal value, women shall receive a salary equal to that paid to male workers.

Convention No. 111: In its 2007 direct request, the Committee of Experts referred to the information provided by the International Confederation of Free Trade Unions (now International Trade Union Confederation), according to which sexual harassment frequently

occurs in export processing zones. The Committee noted the Government's statement that it is aware of isolated cases of sexual harassment in the export sector. It also noted that the Ministry of Social Affairs and Labour undertook to make proposals to the Tripartite Conciliation and Arbitration Board responsible for the redrafting of the Labour Code, with a view to the Board including provisions on sexual harassment in its work. The Committee expressed the hope that the new provisions would define and prohibit both quid pro quo sexual harassment and harassment in the form of a hostile working environment. The Committee also hoped that in its next report the Government would be able to indicate the measures taken in law and in practice to prevent and prohibit sexual harassment in the workplace, in particular in export processing zones.

Convention No. 29: In its comments under that Convention, most recently in its 2007 observation, the Committee of Experts addressed the issue of the exploitation of children employed as domestic servants, the so-called "restaveks". The Committee expressed its concern about the exploitative conditions, of which the children employed as domestic servants, within a framework of a relationship of total dependency, are victims. Taking into account the conditions in which such work may be carried out, their young age, and the fact that it is impossible for them to leave their work and the family in which they have been placed, the Committee considered that such labour may come under the definition of forced labour provided for in the Convention. The Committee urged the Government to take the necessary action without delay, and also to provide information on the measures taken to ensure the effective implementation of the existing repressive provisions in that area.

Libyan Arab Jamahiriya

- I. Among the relevant ILO Conventions, Libya has ratified Conventions Nos. 100 and 111. It has also ratified Conventions Nos. 3, 29, 87, 89, 98, 103, 105, 122, 138 and 182.
- II. Comments made by the ILO supervisory bodies. The pending comments of the ILO Committee of Experts relevant to the provisions of the Convention on the Elimination of All Forms of Discrimination against Women relate to the following:

Convention No. 100: In its 2007 direct request, the Committee of Experts noted that section 31 of the Labour Code No. 58 of 1970 provides that an employer shall not discriminate between men and women as to wages if "the nature and the circumstances of the work are the same". The Committee pointed out that "work that is the same nature or undertaken in the same circumstances" is narrower than the notion of work of equal value provided for in the Convention. However, it also noted that section 91 of the Code provides that all texts regulating the employment of workers shall apply to women and young persons without discrimination for work of equal value. Given the discrepancy in the wording of the two provisions, the Committee referred to its general observation of 2006 in which it underscores and clarifies the meaning of "work of equal value". It asked the Government to clarify that ambiguity in its legislation, and to consider amending the legislation so as to provide more

clearly for equal remuneration for men and women in situations where they perform different work which is nevertheless of equal value.

Convention No. 111: In its 2007 observation, the Committee of Experts noted Decision No. 258, 1989, of the General People's Committee relating to the rehabilitation and training of Libyan women. It noted that certain of its provisions refer to "suitable job opportunities to women", to training for "occupations and skills that are suitable to their psychological and physical make-up", and study fields that are "suitable to women's nature and their social conditions". The Committee reminded the Government that social stereotypes that deem certain types of work as "suitable to women's nature or social conditions" or to "their psychological and physical make-up" are likely to lead to women and men being channelled into different education and training and subsequently into different jobs and career tracks, thus encouraging occupational segregation. While more fields of training and employment may be opening up for women, the Committee expressed its concern that the practical effect of those provisions may result in inequalities in the labour market and occupational gender stereotyping. The Committee asked the Government to clarify the meaning of "suitable job opportunities", "suitable to their psychological and physical make-up", and "suitable to women's nature and their social conditions", and to provide information on the measures taken or envisaged to ensure that women are not excluded or discouraged from participating in vocational training courses or denied job opportunities in traditionally male areas.

The Committee noted from the statistics provided in the Government's report that the percentage of economically active women increased from 15.65 per cent in 1995 to 29.59 per cent in 2006. The Committee welcomed that increase but believes that women's economic activity rate remains low compared to that of men (60.48 per cent in 2006).

Rwanda

- I. Among the relevant ILO Conventions, Rwanda has ratified Conventions Nos. 100 and 111. It has also ratified Conventions Nos. 29, 87, 89, 98, 105, 138 and 182.
- II. Comments made by the ILO supervisory bodies. The pending comments of the ILO Committee of Experts relevant to the provisions of the Convention on the Elimination of All Forms of Discrimination against Women relate to the following:

Convention No. 100: In its 2007 observation, the Committee of Experts recalled that article 84 of the Labour Code provides that equally competent workers carrying out the same type of work under the same conditions must be equally remunerated, without any consideration as to their origin, sex or age. The Committee previously noted that that provision is narrower than the principle of the Convention because it emphasized equal remuneration for the "same work" rather than for work of equal value as required by the Convention. In its report, the Government stated that the draft Labour Code no longer provides for the provisions currently contained in section 84 and that section 7 of the draft Labour Code, more generally, prohibits any discrimination based on sex in employment, including as regards remuneration. The

Committee observed that, while a general prohibition of discrimination based on sex in employment is important, it may not be sufficient in itself to ensure the full application of the principle of equal remuneration for men and women for work of equal value, as set out in the Convention. The Committee, therefore, urged the Government to ensure that equal remuneration provisions in accordance with the Convention would be introduced into the Labour Code, giving full legislative expression to the principle of equal remuneration for men and women for work of equal value.

Convention No. 111: In its 2007 observation, the Committee of Experts noted that according to comments received from workers' organizations, discrimination on the grounds of sex, ethnicity, religion, political affiliation or social origin continued to exist in practice, despite the fact that the law prohibits such discrimination. In reply to those comments, the Government indicated that no cases of discrimination had been reported to the labour inspection services. No information was provided on whether and how the National Human Rights Commission, the Office of the Ombudsperson or the courts had addressed instances of discrimination.

The Committee emphasized that prohibiting discrimination in law is an important element in ensuring the application of the Convention. However, a national policy to promote equality of opportunity and treatment in employment and occupation, as envisaged under article 2 of the Convention, also requires the Government to take specific measures to ensure that equality of opportunity and treatment can be enjoyed in practice. In that regard, the Committee recommended that the Government examine whether the available administrative and judicial remedies are appropriate to address discrimination in employment and occupation, as well as any other obstacles for the detection and resolution of instances of discrimination in employment and occupation. In that context, the Committee recommended that awareness-raising and training on equality issues be strengthened. The Committee requested the Government to provide detailed information on the measures taken or envisaged in that regard, indicating how cooperation with workers' and employers' organizations and other appropriate bodies, such as the National Human Rights Commission, has been sought. The Committee also requested the Government to indicate any cases of discrimination in employment and occupation dealt with by the competent authorities.

The Committee noted the Government's indication that section 16 of the draft Labour Code provides that a worker cannot be sanctioned for having been sexually harassed or for having objected to acts of sexual harassment by the employer, a representative of the employer or any other person abusing his or her authority. The same provision also protects workers who report sexual harassment. The Committee hoped that the new provisions on sexual harassment would not only address the protection of workers from reprisals, but also define and prohibit sexual harassment as such. The Committee requested the Government to keep it informed of the steps taken to include appropriate provisions on sexual harassment in the Labour Code.