1. The ILO Committee of Experts on the Application of Conventions and Recommendations notes that at its 288th Session (November 2003), the Governing Body of the ILO approved the report of the tripartite committee set up to examine the representation alleging non-observance by China of Convention No. 97: Migration for Employment (Revised), 1949, with respect to the Special Administrative Region (SAR) of Hong Kong, made under article 24 of the ILO Constitution by the Trade Union Congress of the Philippines (TUCP).

The complaint concerned allegations that the Hong Kong administration approved certain measures that were harmful for Filipino workers and in violation of Article 6 of the Convention which provides for equality of treatment between migrant workers and nationals as regards remuneration, social security, employment taxes and access to legal proceedings. The specific measures included: (a) the reduction of the Minimum Allowance Wage (MAW) of foreign domestic workers by HK$400, effective April 2003; (b) the introduction of an employees. retraining levy by HK$400 imposed on employers of these workers, effective 1 October 2003; and (c) the possible exclusion of foreign domestic workers, who have not resided in Hong Kong SAR for at least seven years, from subsidized public health care services (see GB. 288/17/2). The Committee also notes the joint communication by the Indonesian Migrant Workers Union (IMWU), and the Asian Domestic Workers Union (ADWU) dated 15 January 2003, concerning the application of the Convention in Hong Kong SAR, which was sent to the Government of China on 27 February 2003 for its comments thereon, and which it will address in points 5 and 6 below.

2. The Committee notes that the Governing Body concluded that with regard to the proposed measure to exclude in future foreign domestic helpers, who had not resided for at least seven years in Hong Kong SAR, from public health care services, the residence requirement of seven years would be too long and the automatic exclusion of these workers from all public health care benefits would contravene Article 6(1)(b) of the Convention. It urged the Government not to take this particular measure and to take all necessary steps to ensure that the social security provisions of the standard employment contract are strictly enforced.

3. The Governing Body further determined that insufficient information was provided by both the complainant organization and the Government to permit it to reach any definite conclusions as to whether the measures to reduce the MAW of foreign helpers and to impose an employees. retraining levy on the employers of these workers contravened Article 6(1)(a) of the Convention. Nevertheless, the Governing Body believed that the imposition of the same levy on the employers of all imported workers, including domestic workers whose wages are already the lowest amongst migrant workers, while at the same time reducing the MAW wage of these workers with the same amount, would not be equitable. It urged the Government to review the above-described levy and minimum wage policies on imported workers, especially foreign domestic workers, taking into account the requirement of Article 6 of the Convention that non-nationals shall not be treated less favourably than nationals, and the principles of equity and proportionality. Xxx The Governing Body asked that the Committee of Experts on the Application of Conventions and Recommendations to continue to examine this matter (GB/288/17/2, paragraph 45).

4. The Committee follows the Governing Body in its conclusions as regards the abovementioned measures taken by the Hong Kong Administration concerning foreign domestic workers. It requests the Government to provide full information in its next report on: (a) the access to public health care services of foreign domestic helpers who have not resided for at least seven years in Hong Kong SAR; (b) the enforcement of the social security provisions of the standard employment contract; (c) any ongoing or planned review of the above-described levy and minimum

wage policies on imported workers, especially foreign domestic workers, taking into account the Committee's conclusions and recommendations as to the requirements of Article 6 of the Convention that non-nationals shall not be treated less favourably than nationals, and the principles of equity and proportionality; and (d) the wages paid to local domestic workers and any other comparable categories of local employees, as well as information on the number of underpayment complaints made by foreign domestic helpers and on the impact of the measures taken by the Government to encourage these workers to forward such complaints.

5. With regard to the comments made by the IMWU and the ADWU, the Committee notes the allegations that foreign domestic workers are particularly vulnerable to abuse and violations of their employment contracts and are facing problems such as payment of excessive fees, long working hours, denial of rest days, and physical, mental and sexual abuse and the underpayment of wages, the latter being particularly problematic for Indian, Indonesian and Sri Lankan domestic workers. The IMWU and the ADWU also allege that certain proposed or existing government policies discriminate against foreign domestic workers, such as the policy restricting employment of migrant workers in domestic work, the rule according to which foreign domestic helpers have to leave Hong Kong within two weeks after the termination of their contract, the proposals to set a quota for foreign domestic workers, the ban on live-out arrangements and the recent tax imposed on the employment of foreign domestic helpers. The Committee notes that the allegations made by the IMWU and AMWU on the underpayment of wages and the imposition on employers of foreign domestic workers of an employees, retraining tax, concern allegations that are related to those made by the TUCP, and which were addressed in points 1, 3 and 4 of the present observation.

6. With regard to the point raised by the AMWU and the IMWU on the rule according to which foreign domestic helpers have to leave Hong Kong within two weeks after the termination of their contract (.two-week rule.), the Committee refers to its previous comment in which it noted the information in the Government's report that the purpose of the .two-week rule, was to deter foreign domestic helpers from overstaying and taking up unauthorized work. It noted that the rule was exercised with flexibility and that in some cases (financial difficulties of, or abuse by, the employer) foreign domestic helpers may be allowed to change employers without returning to their home country. It also noted that foreign domestic helpers were allowed to apply for an extension of stay in Hong Kong (SAR) from the Immigration Department, to facilitate their pursuing claims at the Labour Department or attending civil proceedings in court. The Committee asks the Government to supply further information regarding the practical application of this possibility, including the number of applications for extension and the reasons for refusal by the Immigration Department. It also asks the Government to provide detailed information on the other allegations made by the IMWU and the ADWU concerning violations of the employment contract of foreign domestic workers and physical, sexual and mental abuse of these workers, as well as the abovementioned existing or proposed policies that are alleged to be discriminatory against foreign domestic workers.

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

[The Government is asked to report in detail in 2004.]