



## Report of the Credentials Committee

### Second report

#### Composition of the Conference

1. Since 7 June 2002, when the Committee adopted its first report (*Provisional Record No. 5B*), credentials have been received from Chad, Haiti and Sao Tome and Principe. This brings the total number of member States at present represented at the Conference to 163. Taking into account that two of the newly accredited member States cannot exercise their right to vote (Haiti and Sao Tome and Principe), the number of States mentioned in paragraph 14 of its first report amount to 20. With regard to the number of incomplete delegations mentioned in paragraph 11 of its first report, the Committee regrets that this number has increased since at the time of drafting the current report, the delegations of six countries were exclusively governmental (Armenia, Belize, The former Yugoslav Republic of Macedonia, Madagascar, Sao Tome and Principe and Somalia).
2. In addition, the Committee wishes to emphasize that 149 Ministers or Vice-Ministers have participated this year in the Conference, compared to 152 last year. As of this day, the total number of persons accredited to the Conference is 3,778, amongst which 3,306 are registered. The attached list contains more details on the number of delegates and advisers registered.
3. The Committee also took note of the information compiled by the secretariat from the details provided by governments in the credentials form for the Conference concerning the payment of travel and subsistence expenses of delegations accredited to the Conference. This year, the governments of 86 member States (same as last year) had responded to this request for information. Fifty-three of those governments (as against 61 last year) had declared that they would pay the expenses of their whole delegation and 33 (as against 25 last year) had said that they only covered the expenses of some of the members of their delegations or only part of the expenses.
4. Finally, the Committee observes that out of the 30 member States which had been mentioned in paragraph 20 of its first report, only 12 had replied to its request to complete the information regarding the organizations and the function for each of the members of the Employers' and Workers' delegations. Seven States had not provided any information, whereas 11 States had not yet communicated all of the information that had been requested.

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## Objections

5. Of the 13 objections received this year, the Committee has completed the examination of the following five, which are listed below in French alphabetical order of the Members concerned.

### **Objection concerning the nomination of the Workers' delegation of Argentina**

6. An objection had been received by the Committee regarding the nomination of the Workers' delegation of Argentina from Mr. José Rigane and Mr. Horacio David Meguira, representatives of the Central de los Trabajadores Argentinos (CTA). The authors of the objection alleged that the Government designated the Workers' delegation in an irregular and discriminatory manner, as it included only representatives from the Confederación General del Trabajo (CGT) without consulting the objecting organization. The CTA with more than 800,000 members and 240 affiliated unions is, along with the CGT, the only trade union centre recognized by the Government of Argentina. Further, given its ample and recognized trade union activities on a social as well as institutional level, the Government had granted to the CTA the authority to determine the essential services, supervise the accountancy and records of its affiliates, supervise their meetings, general congresses and electoral processes. The CTA also submitted as evidence of its representative character the invitation from the Government to participate in the Tripartite Commission (*Comisión Tripartita Mixta*) which was created to adapt the trade union legislation in line with the observations of the Committee of Experts on the Application of Conventions and Recommendations' report submitted to the 86th Session of the Conference. Moreover, the objecting organization affirmed that on the occasion of a visit by a technical assistance mission of the ILO to Argentina, the CTA had been heard. In prior communications directed to the Committee, the Government had recognized the representative character of the CTA and had included one of its representatives in the Workers' delegation by virtue of article 2, paragraph 3(i), of the Conference Standing Orders. Similarly, the authors of the objection alluded to the case law of the Committee and the Permanent Court of International Justice that recalled the obligation that the Constitution imposes on the Government to undertake consultations with all the representative organizations, as does the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), ratified by Argentina in 1987. Accordingly, the objecting organization requested the inclusion of Mr. Rigane and Mr. Meguira in the Workers' delegation of Argentina by virtue of article 2, paragraph 3(i). However, in a subsequent communication they had requested their inclusion in the Workers' delegation as advisers.
7. In response to the Committee's invitation to submit a written reply, Ms. Noemi Rial, Secretary for Labour of the Ministry of Labour, Employment and Social Security and Government delegate to the Conference, explained that in Argentina there are two representative trade unions, the CGT and the objecting organization, the CTA. However, under national law only the organization with the greatest number of members enjoys general consultative status (*personalidad gremial*). The Government consulted with both organizations despite the fact that the CGT, with approximately 3,800,000 workers has the greatest number of members. As the Government failed to obtain an agreement on the Workers' delegation, it had only included members of the CGT in the delegation in accordance with the ILO Constitution and applicable national law. Thus, the CTA's objection was unfounded. The Government decided, nevertheless, to appoint to the Workers' delegation two representatives from the CTA under article 2, paragraph 3(i), of the Standing Orders of the Conference, while stressing that such a decision should not be understood to be a change in the criteria followed until now but rather a demonstration of

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good faith. In response to the CTA's modified conclusions, the Government indicated that as persons designated in accordance with article 2, paragraph 3(i), both CTA representatives could act as Workers' advisers if there were to occur two vacant advisers' positions as is currently the case, since up until now not all the CGT's advisers had registered at the Conference.

8. The Committee notes that after the objecting organization modified its conclusions, the Government had included on 10 June 2002 two representatives of that organization as advisers in the Workers' delegation. Since the Government had acted on the CTA's request the objection would be moot, for as long as the conditions which led to the inclusion of two of its representatives as advisers in the Workers' delegation remained unaltered. Noting that this is the third consecutive year that it had examined almost identical objections, the Committee recalls that when there are several representative workers' organizations in a country, the ILO Constitution imposes on a government the obligation to hold consultations with the most representative ones, even if national legislation, as invoked by a government, provides for a system of exclusive consultative status. In this respect, the Government committed itself to modify the legislation in question as a result of the comments of the ILO's supervisory bodies regarding Argentina's compliance with the provisions of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

### ***Objection concerning the nomination of the Workers' delegation of Cameroon***

9. The Committee had been seized of two objections presented by Mr. Gilbert Ndzana Olongo, Secretary-General of the Confédération des Syndicats indépendants du Cameroun (CSIC) and by Mr. Jean-Marc Bikoko, representative from the Centrale syndicale du Secteur public du Cameroun (CSP) concerning the Workers' delegation of Cameroon, that was composed of one delegate and one adviser, both from the Confédération syndicale des Travailleurs du Cameroun (CSTC).
10. Without denying the representative character of the CSTC, the CSIC considered that its own representativeness justified its inclusion in the Workers' delegation of Cameroon. The absence of dialogue by the Government with all the representative organizations for the nomination of the delegation was regretted by the CSIC. The CSIC constitutes a confederation of ten trade unions, regrouping a total of 120,000 workers. Following the restoration of political pluralism in the 1990s, trade union pluralism had developed in the country. Previously, the CSTC had been linked to the single party. Later, a number of the former leaders of the CSTC had constituted a new organization, the Union des Syndicats libres du Cameroun (USLC). As for it, the CSIC was founded on 25 November 2000. Trade unions in the public sector were also established and had been regrouped when the CSP was founded. Finally, there also existed a certain number of federations and national trade unions that had split from the CSTC. The CSIC and the CSP were independent from the Government, political parties and employers, contrary to the two aforementioned organizations. The Government feigned ignorance of these changes and continued to present the CSTC and the USLC, which it controlled, as the only representative trade union organizations in Cameroon. During the last session of the Conference, the Workers' delegation of Cameroon had been composed of three representatives from the CSTC and one from the USLC. In addition, no legal text provided for either criteria on the representative character of the trade union confederations. Article 20 of the Labour Code indeed only concerned the representativeness of trade unions, but not of confederations. Moreover, there was neither statistical data relating to the number of trade union members nor concerning the results of the shop steward elections. Contrary to the obligations imposed by the Constitution of the ILO, the Government had made a unilateral decision

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and treated certain trade union organizations in a discriminatory manner. In addition, the Government supported the CSTC and the USLC in a manner that constituted interference within the meaning of Article 2, paragraph 2, of the Right to Organize and Collective Bargaining Convention, 1949 (No. 98). The Government not only refused to include the other trade union confederations in the revision process of the Labour Code, but also to consult them about the composition of the Workers' delegation to the Conference and the organization of the shop steward elections.

- 11.** In its objection, the CSP indicated that it had been created in March 2000. It made similar allegations to those made by the CSIC with regard to the manner in which the Workers' delegation had been appointed. Whereas Cameroon counted with four trade union confederations, three from the private sector (CSTC, USLC, CSIC) and one from the public sector (CSP), the members of the Workers' delegation would appear to have come from only two of them. The CSP put forth the same argument as the CSIC with regard to the absence of regulations concerning the confederations representativeness. The decree to which reference is made in article 20 of the Labour Code had indeed never been adopted. The CSP joined to its communication copies of correspondence between itself and the authorities, showing that it was the main partner on social dialogue in the public sector. Most of the public sector trade unions, representing 170,000 civil servants are under the umbrella of the CSP as it is the only trade union confederation for the sector. Moreover, the president of the CSP was a member of the anti-corruption unit within the Ministry of Public Administration. On 1 April 2002, the CSP had requested the President of the Republic to take measures so that its members, as representatives of the public sector, be included, henceforth, in the official delegations of Cameroon to the sessions of the International Labour Conference.
- 12.** In a written communication addressed to the Committee in response to its request, Mr. Jean Mbappé Epanyaotto, Director of Labour and Government delegate of Cameroon to the Conference, recalled that, as the Government had already indicated last year to the Credentials Committee, the Labour Code determined the representativeness of the trade unions on the basis of the number of their members. Account being taken for the lack of transparency of the data provided by these organizations, the only method for the Government to objectively determine their respective representativeness, for the moment, depended on the results of the shop steward elections that last occurred from April to June 2000. The CSIC was founded after the organization of these elections and, thus, could not participate. As for the CSP, even if it participated with other organizations in a certain number of negotiations with the Government, it neither had a legally recognized existence nor had its file been deposited for registration. Further, it did not participate in the shop steward elections that were held in the spring of 2000. New elections, however, are now under way and all the trade unions may participate. It is only in the light of the election results that it will be possible to have a better idea of the representativeness of the various trade unions in the country. In addition, in order to permit the implementation of article 20 of the Labour Code relating to the determination of the representativeness of the trade unions, the Government had organized a national tripartite seminar. On its recommendation, the Government asked the various trade unions to communicate the number of their members to it, so that it could update the data in its possession. However, neither the CSIC nor the CSP transmitted the requested information. In addition, two executive boards disputed the leadership of the CSIC since its last congress, which was held at the beginning of the year. One of these executive boards is led by the author of the objection, who set in motion a legal procedure aimed at gaining recognition of the legitimacy of his authority. Moreover, according to the Government's information the CSIC has until now not been active. As regards the CSP, the author of the objection incorrectly referred to the number of civil servants in the country and not to the number of its own members. Taking into account the information that is available, neither the CSIC

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nor the CSP could until now have been regarded as representative by the Government. Concerning the USLC, it had not been consulted for the nomination of the Workers' delegation to the Conference, as it too had two executive boards that disputed the legitimacy of its leadership since the end of its congress that was held in March. In these circumstances the Government had consulted this year only the CSTC, by facsimile of 10 May for the purpose of nominating the Workers' delegate of Cameroon to the Conference. Finally, in response to the allegations of interference, the Government recalled that eager not to intervene in trade union activities it did not organize trade union consultations with a view to put in place a system of rotation. The Government, however, remains open to a proposal in this regard on the basis of agreement reached by the trade unions themselves.

13. The Committee takes note that the objecting organizations do not deny the representative character of the CSTC, but contend that due to their own representativeness the Government should have consulted them or included their representatives in the Workers' delegation of Cameroon to the Conference. As regards the CSIC, the latter represented that it regroups a total of 120,000 members, whilst not furnishing documents that support this statement despite the Committee's remarks made last year. Moreover, the CSIC had been constituted following the last shop steward elections and, as such, there do not exist for the moment objective and verifiable elements that would permit a determination of its representativeness. Turning to the CSP, the Committee notes the Government's recognition of this organization as social dialogue partner on several occasions, including the process leading to the adoption of new legislation. However, it notes that the CSP encompasses only the public sector and that it had not furnished any verifiable data on the number of its members. As in the case of the CSTC, its formation appears to be subsequent to the last shop steward elections. In light of the information provided, the Committee is not in possession of the necessary elements that would permit it to evaluate the representativeness of the objecting organizations, even if, with reference to the CSP the Government itself recognized its presence and capacity to act in the public sector. While noting that for reasons that the Committee had censured it in the past, the Government carried out consultations with only one of the two organizations, recognized by it as the most representative. Under the current circumstances, the Committee finds it difficult to reach conclusions as to whether proper consultations had been held. This being said, the Committee hopes that all existing trade union organizations, including the CSIC and the CSP, are indeed free to participate in the shop steward elections that are currently taking place in the country. The Committee further hopes that when the process for the nomination of the Workers' delegation to the next session of the Conference is commenced, the Government will consult the most representative trade unions as determined by the election results or pursuant to the criteria set by the Labour Code when the interested organizations will have communicated the relevant data to the Government. As regards the allegations that the Government by supporting certain trade unions constituted an act of interference, the Committee recalled that the objecting organizations can resort, if they so wish, to the supervisory procedures on the application of standards and in particular the Committee on Freedom of Association.
14. A communication from the CSTC regarding the objections of the CSIC and the CSP had been received after the Committee had finished its examination of the case.

***Objection concerning the nomination of the Workers' delegation of Djibouti***

15. An objection had been submitted to the Committee by Mr. Ahmed Djama Egueh, representative of the Union djiboutienne du Travail (UDT) and Mr. Kamil Diranen Hamed, representative of the Union générale des travailleurs djiboutiens (UGTD) and, who are the

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spokespersons for the Intersyndicale UDT/UGTD, regarding the Workers' delegation of Djibouti. According to the authors of the objection, the Workers' delegation nominated by the Government is composed of two alleged representatives of the UGTD and one alleged representative of the UDT, instead of the legitimate representatives of the workers. So far, the Government has not carried out the commitments it made during the Conference in June 2001, in particular, with regard to the reinstatement of the dismissed trade union leaders and members. In addition, the draft Labour Code prepared unilaterally by the Government is a step backwards and does not take into account the provisions of ILO Conventions and, in particular, those on freedom of association and collective bargaining.

- 16.** In a written communication submitted to the Committee at its request, Mr. Ali Yacoub Mahamoud, Adviser to the Minister of Labour and Head of the delegation of Djibouti at the Conference, emphasized that the members of the Workers' delegation had also been accredited at previous sessions of the Conference. He recalled that the issues raised in the objection concerning the procedure for the nomination of the Workers' delegation to the Conference had already been addressed thoroughly by the Government on numerous occasions and that the replies provided before were still relevant. Generally, it was neither for the Government nor for an international body to select the members of the Workers' delegation to the Conference. With regard to the aspects of the objection related to the legitimacy of the workers' representatives accredited to the Conference and the reinstatement of the dismissed trade union leaders, the Government considered that it only had an obligation to respond to those allegations before the competent bodies.
- 17.** Firstly, while indeed the Committee does not have the competence to appoint the members of the Workers' delegation, it recalls that its mandate is to examine the correctness of the nomination. In this regard, the Committee notes with regret that in its reply to the request for further information, the Government did not provide detailed observations concerning the substance of the objection and, in particular, did not answer the question concerning the holding of consultations prior to the nomination of the Workers' delegation. Having received neither detailed information from the author of the objection nor from the Government, the Committee nevertheless notes that in its 324th Report, the Committee on Freedom of Association insisted that "... the workers of Djibouti must be able to elect their trade union representatives freely" and, in particular, requested the Government "... to allow elections to be held in the different affiliated unions and general meetings by the UDT and UGTD under the sole supervision of independent judicial bodies". Moreover, the Committee on the Application of Standards, during last year's session of the Conference, "... shared the deep concern of the Committee of Experts and the Committee on Freedom of Association, particularly with regard to interference by the Government in the internal affairs of trade unions". While these issues do not fall directly within its mandate, the Committee had recalled in the past that the full application of article 3, paragraph 5, of the Constitution entails the respect of the principle of freedom of association. In the present case, while the Government had nominated the members of the Workers' delegation from the representatives of two organizations whose representativeness is not contested, the question at stake is not the representativeness of the organizations themselves, but the legitimacy of their representatives. As was the case last year, the Government did not reply to the allegations that the persons nominated as members of the Workers' delegation were not legitimate representatives of the UGTD and the UDT, since they had been elected after a congress whose results had been contested. Since doubts remained on this issue, the Committee is not convinced that the nomination of the Workers' delegation of Djibouti had been carried out in conformity with article 3, paragraph 5, of the Constitution. The Committee therefore expects that the Government will take the necessary measures in order to guarantee the free election of trade union leaders, including within trade union federations and confederations themselves. It also stresses the importance that the Government avail itself of ILO technical assistance, as the Committee had requested of it

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earlier. Finally, it hopes that this technical assistance will enable the Government to achieve this objective without delay and, at least, before the consultations for next year's nomination of the Djibouti Workers' delegation to the session of the Conference.

### ***Objection concerning the nomination of the Workers' delegation of Kiribati***

18. The Committee had before it an objection challenging the credentials of the Workers' delegate of Kiribati submitted by Mr. Tatoa Kaiteie as Secretary-General of the Kiribati Trade Union Congress (KTUC) and supported by the International Confederation of Free Trade Unions (ICFTU). The authors of the objection submit that Mr. Kaiteie was selected as the Workers' representative of Kiribati to the Conference at a meeting attended by all the individual trade unions affiliated with the KTUC. However, the Government had rejected KTUC's nomination due to a personal conflict between the Minister and Mr. Kaiteie as evidenced in a letter from the Ministry dated 15 May 2002. The KTUC rejected the Government's offer to submit an alternate nomination as it viewed it as interference in trade union activity.
19. Clarifications requested by the Committee were provided orally by Mr. Teiraoi Tetabea, Minister for Labour, Employment and Co-operatives, Head of the delegation to the Conference. Mr. Tetabea was accompanied by Mr. Raimon Taake, Acting Permanent Secretary, Ministry for Labour, Employment and Co-operatives, Government delegate and Mr. Tabukirake Baraniko, Chairman, Kiribati National Union of Teachers (KNUT), Workers' delegate to the Conference. Mr. Tetabea provided oral confirmation of the statements made in the Government's written communication of 15 May 2002 to the KTUC. In response to the Committee's request to clarify the reason why the Government had rejected the nomination of the person appointed by the KTUC, Mr. Tetabea referred to an incident that under local custom prevented the individuals involved from participating in the same events. However, Mr. Kaiteie had represented the workers of Kiribati at other meetings where the Minister had not been present. Also, both the representatives of the Government and the Workers' delegate that were present insisted that the election of the Workers' delegate within the KTUC had been the result of undue pressure and influence.
20. On 13 June, two days after the Committee had met with the Government, the Minister for Labour, Employment and Co-operatives notified the Conference secretariat of a modification in the Credentials of the Workers' delegation whereby the president of the KTUC was to replace the Worker's delegate, the latter having been appointed as his substitute.
21. The Committee, which was seriously concerned about the objection in that it raised problems very similar to those on which it had already clearly expressed its views on last year, welcomed the decision of the Government to rectify the matter. It stressed, however, that irrespective of national or cultural differences, governments had an obligation under the Constitution of the ILO to accept the choice of the most representative organizations of the person to be nominated as Workers' delegate. It therefore trusted that the Government of Kiribati would in future abide by this obligation.

### ***Objection concerning the nomination of the Workers' delegation of Morocco***

22. The Committee had before it an objection concerning the nomination of the Workers' delegation of Morocco, signed by Mr. El Miloudi El Moukhareq on behalf of the Union marocaine du travail (UMT) and supported by the Union syndicale des travailleurs du

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Maghreb arabe (USTMA) and the International Confederation of Free Trade Unions (ICFTU). Thereafter, on 7 June at 11.30 a.m., the UMT deposited a new communication concerning the same objection but this time signed by its Secretary-General, Mr. Benssedik. Also on 7 June at 11.30 a.m., the Confédération internationale des syndicats arabes (CISA) deposited a communication in which it supported the objection of the UMT. According to the objecting organizations, while only the UMT meets the criteria of the most representative workers' organization in accordance with article 3, paragraph 5, of the ILO Constitution, the Government, invoking a rotation system, had once again nominated a Workers' delegation led by organizations affiliated with the Government, as well as other political parties. The UMT claims to have demonstrated that it is the only organization that had been active in collective bargaining, since it was the only organization to have signed collective agreements at both the sectoral and national levels. It was also the first signatory of collective agreements at the enterprise level. Pertaining to the electoral results, the UMT claims to have finished first at the last shop steward elections in both the public and private sectors in 1997 and that these election results are the only reliable source of information on the representative character of the trade unions. In addition, the UMT is the sole organization to have a real capacity of mobilizing workers. Furthermore the UMT rejects the rotation system invoked by the Government, whereby the trade unions of the country are supposed to be designated alternately as members of the Workers' delegation to the Conference. The UMT claims that the said system constitutes interference by the Government and, moreover, that the UMT has never given its consent to it and that the system was not provided for in the ILO Constitution.

- 23.** In a written communication addressed to the Committee in response to its request, Mrs. Zakia El Midaoui, Chargé d'affaires ad interim to the Permanent Mission of Morocco in Geneva, advised on behalf of the Minister of Employment, Vocational Training, Social Development and Solidarity, that for several months, the Government had strengthened its collaboration strategy, consultations and dialogue with the three most representative trade union centres in Morocco, specifically, the CDT, the UMT and the UGTM. Within this framework, several commissions for consultation and follow-up had been created in which the three centres participated. In addition, the Government indicated that the UMT communicated on 29 May 2002, by telephone the names of its advisers for participation in the Conference, that is to say Mr. Chahir Farouk and Mr. El Miloudi El Moukhareq. The Government included these names as advisers in the credentials and the Ministry of Employment provided them on 30 May 2002 with two plane tickets at its expense, as well as the subsistence expenses for their stay in Geneva. Referring to article 26(4)(c), of the Conference Standing Orders, the Government considered that the acceptance by two representatives of the UMT to participate in the Conference as advisers of the Workers' delegate rendered their objection irreceivable. Moreover, the Government emphasized that the UMT had not cited either the name of the Workers' delegate whose credentials were challenged or his functions with his trade union, the UGTM, in contravention to article 26(4)(a) of the Standing Orders of the Conference.
- 24.** Concerning the designation of a UGTM representative as Workers' delegate to this year's Conference, the Government indicated that as per practice and in conformity with article 3, paragraph 5, of the ILO's Constitution, the Ministry of Employment had convoked the three most representative trade union centres to attend a consultation for the nomination of the Workers' delegate to the 90th Session of the Conference. On 7 May the representatives from the three trade unions attended the aforementioned meeting, but the UMT representative categorically refused to meet and consult with the representatives from the two other centres. Due to the UMT's refusal to agree upon the composition of the Workers' delegation to the Conference, the CDT and the UGTM forwarded to the Government an agreement wherein they decided to designate a representative from the UGTM as Workers' delegate to the Conference. This agreement, concluded without

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interference from the Government, demonstrated the absence of a unilaterally imposed rotation system. Indeed, the UGTM had occupied the position of Workers' delegate in 2000 and the UMT in 2001 (year when there were no objections on behalf of the CDT or UGTM). The rotation system alleged by the UMT would have resulted in the CDT holding the delegate's post. Lastly, regarding the independence of the CDT and the UGTM with respect to the Government, the latter made reference to the numerous strikes that the CDT and the UGTM had called since the change of the Government, as well as the many complaints presented by the CDT against the Government that are presently before the Committee on Freedom Association.

- 25.** Following the recommendations of the Credentials Committee reached at the 88th Session of the Conference, the Ministry of Employment addressed to the three most representative trade unions correspondence in 2001, asking them to communicate the collective agreements that remain in force as the majority had been concluded more than 40 years ago. To date, none of the organizations had responded to the Ministry's request and, thus, it did not have up-to-date information regarding the validity of the collective agreements. With regard to the adoption of objective and transparent criteria by the Government, it explained that it had proposed to include in the draft Labour Code a provision on trade union representativeness in Morocco in line with the criteria suggested by the Committee in 2000. However, none of the three trade unions accepted the criteria suggested by the Government in spite of its readiness since 1999 to accept any proposal or agreement amongst the three trade unions in this respect.
- 26.** Turning to the UMT's allegations that it had ranked first in the shop steward elections in private and public companies in 1997, the Government pointed out that in these elections the CDT obtained 20.93 per cent of the number of the elected delegates, the UMT 16.91 per cent and the UGTM 9.09 per cent. Nevertheless, taking into account the observations of the Committee on the reliability of this information and in the absence of any response on behalf of the three trade union centres as to the number of their members and affiliates, the Government had seized the ILO's Director-General of a request for a legal opinion on this question in May 2002. In the light of the ILO's reply, the Government considered the agreement reached between the CDT and the UGTM, which taken together they could be considered as being representative of the majority of workers of Morocco based on the aforementioned election results, was the only possible solution while awaiting for the three trade unions to provide other objective elements pertaining to their respective importance or to agree to define such criteria in the Labour Code.
- 27.** Firstly, the Committee notes with regard to the observations of the Government relative to the receivability of the objection the initial communication deposited by Mr. El Mokharek on behalf of the UMT, although dated 2 June was received in the ILO on 28 May. According to the Government, the UMT was approached on 29 May in order to obtain the names of two of its representatives as advisers to the Workers' delegate. Meanwhile, the name of the author of the objection already appeared in the credentials issued by the Ministry of Foreign Affairs on 28 May. In addition, the Committee observes that Mr. El Mokharek had actually registered for the Conference as of 6 June and that his organization, no doubt made aware of the fact that this could lead to the irreceivability of the objection under article 26, paragraph 4(c), of the Standing Orders of the Conference, considered it necessary to send the same objection under the signature of its Secretary-General. This new communication, nevertheless, was received after the expiration of the time limit set out in article 26, paragraph 4(a), of the Standing Orders. Under these circumstances, there remains doubt as to whether the question of the initial objection was made before its author had learned about the composition of the Workers' delegation to the Conference. However, since the USTMA and ICFTU supported the objection submitted by the UMT, the question of irreceivability is rendered moot. The question whether the communication in support of

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the UMT's objection submitted by the CISA after the expiration of the aforementioned deadline would be receivable under paragraph 4(a) of article 26 of the Standing Orders would become similarly irrelevant. With regard to the second issue of irreceivability put forth by the Government, it is not so much the identity of the person nominated as Workers' delegate or the organization to which he belongs that is at stake, but the extent to which the Government has met its obligation to appoint the Workers' delegation in agreement with the most representative organizations in the country.

- 28.** As to the substance of the objection, the Committee notes that none of the parties contest the fact that there exist in Morocco three main trade union centres. The problem arises, rather, as to which of the three organizations is the most representative and if the Government had nominated the Workers' delegation in concurrence with all the most representative organizations. Concerning the first point, the Committee observes that the only numbers available to it are the results of the 1997 shop steward elections, as well as, the number of collective agreements concluded. In the absence of quantifiable or verifiable evidence on the number of members and affiliations to the three centres, the Committee had already been called upon to examine this information at the time of two objections submitted in 1999 and 2000. This year, the objection was based on the results of the shop steward elections that had been held in 1997 and on the UMT's role in concluding collective agreements. The Committee notes in this connection that the UMT, itself, had in the past contested the reliability of the first item relied upon. Concerning the second, the majority of the collective agreements put forth by the UMT, had according to the Government, been concluded decades ago and were no longer in force. The Government indicated that this year it had invited all trade union centres to communicate to it their respective lists of active collective agreements, but had received no reply. Further, no response was submitted by any of the trade unions to another request made by the Government to furnish the number of members for their respective organizations and their affiliates. Moreover, the Committee notes that in 2001 a UMT representative had been nominated as Workers' delegate and that amongst his eight advisers, six had come from the other two trade unions. This composition did not give rise to any dispute by any of the three trade union centres, and nor has the inclusion of two advisers from the UMT given rise to objections this year from the CDT or the UGTM. The responsibility to respect the obligations prescribed in article 3, paragraph 5, of the Constitution certainly lies with the Government, but it is in the interest of the organizations themselves to participate in the consultations that the Government is obliged to hold. In effect, an agreement between several organizations that, taken together, could be considered as representative of the majority of workers of a country could lead to the exclusion of another representative organization from participating altogether at the Conference. This does not readily appear to be the case in Morocco, since based on the 1997 shop steward election results the CDT and the UGTM taken together do not represent the majority of the workers in the country. Therefore, only a consensus amongst the three main trade union centres appear to permit the representation of the largest number of workers of Morocco at the Conference, as long as the information available on their representativeness remains disputed and not easily verifiable. In this respect, the Committee notes the steps taken by the Government to include in the draft Labour Code criteria that would permit a better evaluation of the representativeness of the trade unions, seem to be in line with the Committee's previous conclusions on this case. The Committee observed however, that the parties involved had not yet been able to reach an agreement with regard to this criteria. Nevertheless, the Committee trusts that the Government will fulfil its obligation to establish, as soon as possible, objective criteria so as to permit the evaluation of the representativeness of the workers' organizations, and hopes that the Government will be able to rely on the active participation of all the trade union organizations. The Committee recalls that the Government may avail itself of ILO technical assistance in this regard.

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## Complaints

29. Following, are the complaints that the Committee had been able to examine until present. The Committee trusts that the Governments concerned shall meet their respective obligations prior to the closure of the Conference.

### ***Complaints concerning the non-payment of subsistence expenses of the Employers' delegates of Nicaragua and Peru***

30. The Committee examined a complaint alleging the non-payment of the subsistence expenses of the Employers' delegates of Nicaragua and Peru, which was submitted on their behalf by the Employers' group of the Conference. According to the Employers' group, both Employers' delegates had only received from their respective Governments subsistence expenses corresponding to eight days of stay in Geneva, thus, preventing them from being able to effectively attend the entire Conference. Although the financial difficulties of a State could justify in exceptional cases a limitation of the expenses borne by the Government, this circumstance did not appear applicable in this instance, since the governmental delegations of Nicaragua and Peru counted on 12 and six representatives, respectively.
31. In a written communication addressed to the Committee at its request, Mr. Virgilio Gurdían Castellón, Secretary of Labour and Head of the delegation of Nicaragua to the Conference, explained the efforts that meeting these expenses represented for the country and in particular for his Ministry, as its budget was in the process of being drastically reduced. This reduction had even affected the possibility of accrediting an adviser for each technical item on the agenda of the Conference. As a result, the Government had sent only three representatives from Nicaragua including the Minister, thus, requiring the delegation to rely on the representatives of the Permanent Mission in Geneva to attend to at least a portion of the technical items on the agenda. As for the Employers' delegate, his participation in the Conference demonstrated an important effort by the Government destined to be in conformity with the ILO's mandate, in line with the commitments towards democracy and respect for the labour and human rights at work. For this reason, the Government considered that this situation constituted a case of force majeure.
32. In a written communication addressed to the Committee in response to its request, Mr. José Echeandia Sotomayor, Vice-Minister of Labour of Peru, explained that the eight days of subsistence expenses covered for the Employers' delegate represented a considerable effort given the present fiscal deficit in the country, which was aggravated by the obligations of the Government of a social nature and its efforts to restore democratic order after one decade of dictatorial regime.
33. The Committee recalled that since the Conference decided to entrust to it in 1997, the responsibility of examining the complaints of the non-respect of the obligation prescribed in article 13, paragraph 2(a), of the Constitution, the Conference had already taken into account the different financial standings of member States. It had, therefore, decided to limit the Committee's mandate to the examination of complaints based on allegations pertaining to the following points: (i) breach of the minimum obligation to pay the expenses of a complete tripartite delegation; and (ii) the non-respect of a reasonable balance between the number of delegates and advisers of each group whose expenses are assumed by the Government.
34. As for the complaint pertaining to the Employers' delegate of Nicaragua, for want of a more explicit answer by the Government on the allegation contained in the complaint and

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in view of the information provided in the credentials form (according to which the Government had covered the totality of the travel and subsistence expenses for three governmental representatives and both the Employers' and Workers' delegates), there exists a series of doubts surrounding the measures taken by the Government to fulfil its obligations to cover the subsistence expenses necessary to guarantee the presence of a complete tripartite delegation throughout the complete duration of the Conference. On the other hand, with reference to the requirement to maintain a reasonable balance between the number of advisers for each of the three groups of the delegation, the Committee considered that the ability to rely on representatives of the Permanent Mission in Geneva represented an option not available to the Employers' and Workers' delegates so as to assure themselves the ability to follow the work of the Conference and its different committees. As a result, though not entailing any direct expenses of participation to the Government, the presence of representatives of the Permanent Mission in the governmental delegation had to be taken into account when determining if the constitutional obligation had been respected. Consequently, although understanding the financial reasons invoked by the Government, the Committee trusts that, at a minimum, the Government will bear the subsistence expenses of the Employers' delegate so as to permit him to stay for the duration of the Conference in Geneva, in the same manner as it had for the three governmental representatives who had travelled from Nicaragua. In any event the Committee hopes that in the future, the Government will endeavour to ensure a better balance in the numerical composition of the three groups that would permit each to follow the work of the Conference and its committees in similar conditions.

35. Referring to the complaint of the Employers' delegate of Peru, although the Committee was sensitive to the Government's arguments, the fact that of the 12 accredited governmental representatives had all registered and, that, apart from the six representatives of the Permanent Mission, the other six came from Peru, including three congressmen accredited as mere observers, cast serious doubts as to the Government's incapacity to cover, at the least, the full expenses of the Employers' delegate. The Committee, therefore, trusts that the Government will meet its duty to cover the subsistence expenses of the Employers' delegate for the entire duration of the present session of the Conference and hopes that, in the future, the Government will endeavour to ensure a better balance in respect to the number of members of each group whose expenses the Government bears.

***Complaint concerning the non-payment of travel and subsistence expenses of the Employers' delegation of Venezuela***

36. The Committee examined a complaint submitted by the Employers' group of the Conference on behalf of the Employers' delegation of Venezuela. It was alleged that the Government had not covered any of the travel or subsistence expenses of any of the members of the Employers' delegation, whereas the governmental delegation counted on at least 11 representatives. This situation is all the more serious in that the Government had already failed to fulfil its constitutional obligation in prior years.
37. In a written communication to the Committee in response to its request, Mr. Rubén Daro Molina, Director of the International Relations and Liaison with the ILO of the Ministry of Labour, and Substitute Delegate to the Conference, recalled that the Government had already provided information in this respect in the credentials' form that it had submitted. In this form, the Government had indicated that it would only cover the travel and subsistence expenses of the Employers' delegate (as well as those of the Workers' delegate). This decision, along with the reasons of a budgetary nature that had motivated it, was properly communicated to the employers' organization whose representatives are present at the Conference. The Government also invited the employers' organization,

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FEDECAMARAS, to contact the competent services of the Ministry of Labour so that the Employers' delegate could receive his travel and subsistence payments.

38. The Committee observed that the complaint referred to the two situations mentioned in article 26, paragraph 9(a) and (b), of the Standing Orders. With regard to the first, related to the minimum obligation to cover the expenses of a complete tripartite delegation, although the Government had committed itself to cover the travel and subsistence expenses of the Employers' delegate, the Committee recalled as it had in the past, that the amount of the participation costs had to be made available to the interested individuals before the commencement of the Conference. However, the fact that the communication directed to FEDECAMARAS was dated 31 May, on the eve of the opening of the Conference, did not seem sufficient to permit the delegate to make the necessary arrangements for the trip and stay in Geneva without having to advance funds. The Committee trusts, therefore, that the Employers' delegate would receive the totality of his expenses during his presence in Geneva and that, in the future, the Government would take the necessary measures to ensure that these participation costs are made available to the interested delegates sufficiently in advance.
39. Turning to the second aspect of the complaint, the Committee observed that 11 accredited members of the governmental delegation, including the seven that came from the capital, had registered, whereas, in the Employers' delegation only two of the five accredited members of the Employers' delegation had done so. Similarly, in the Workers' delegation only three of the 11 accredited members had registered. No doubt, this indicates that the absence of a large portion of the delegations was probably due to the non-payment of their expenses. This disparity casts doubts as to the budgetary reasons invoked by the Government and constituted a serious and manifest imbalance that the Government is obliged to remedy during the present session of the Conference by assuming the expenses of participation for a reasonable and balanced number of advisers for each of the Employers' and Workers' delegations in order to restore the balance envisaged in article 26, paragraph 9(b), of the Standing Orders.

## **Communications**

40. The Committee had received a certain number of communications and has examined, up until now, one amongst them which is contained below.

### ***Communication concerning the Workers' delegation of Yugoslavia***

41. The Committee received a communication from the International Confederation of Free Trade Unions (ICFTU), alleging that the Government of Yugoslavia had not held proper consultations before nominating the Workers' delegation to the Conference. In particular, the Government had not consulted nor included in its delegation a representative of the Confederation of Independent Trade Unions of Montenegro (SSSCG/CITUM), which is comprised of 90,000 members and should therefore be considered among the most representative workers' organizations of the country. The ICFTU urged the Credentials Committee to examine whether the Government of Yugoslavia ensured that the composition of the Workers' delegation be as representative as possible of the workers in the country, in conformity with article 3, paragraph 5, of the ILO Constitution.
42. Having been apprised of the communication, Mr. Milorad Scepanovic, Permanent Representative in Geneva and Head of the delegation of Yugoslavia to the Conference, informed the Committee in writing that the Government had held on 26 April 2002 a

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meeting to which were invited all relevant trade unions, including the Confederation of Independent Trade Unions of Yugoslavia with which the Confederation of Independent Trade Unions of Montenegro is affiliated. The participants at this meeting agreed to nominate Mr. Branislav Canak as Workers' delegate to the current session of the Conference, in application of a rotation system. Under this system, the Workers' delegate is nominated each year from a different workers' organization and all interested trade unions can designate advisers, provided that sufficient financial resources are available.

43. The Committee notes that the communication of the ICFTU had neither been drafted as an objection, nor did it aim to challenge the credentials of the Workers' delegation of Yugoslavia. It also notes that according to the information provided by the Government, while it did not directly consult with the Confederation of Independent Trade Unions of Montenegro in order to designate the Workers' delegation to the Conference, it nevertheless consulted the trade union confederation to which this organization is affiliated. According to information concerning the case that had been obtained last year, the Confederation of Independent Trade Unions of Montenegro did not consider, itself, that the Confederation of Independent Trade Unions of Yugoslavia could represent it. Moreover, according to the information in the Office's possession, the Confederation of Independent Trade Unions of Montenegro is directly affiliated with the ICFTU, despite the fact that the Confederation of Independent Trade Unions of Yugoslavia claims to represent it at the international level. In these circumstances, although the Committee considers that this communication does not call as such for any action on its part, it does recall as it had already done last year and was stressed at the European Regional meeting held in 2000, that the governments are obliged to consult all the autonomous and most representative workers' organizations that exist in the country.

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44. This report was adopted by the Credentials Committee unanimously. It is submitted to the Conference in order that the Conference may take note of it.

Geneva, 14 June 2002.

*(Signed)* Mr. J. M. Oni,  
Chairperson.

Ms. L. Sasso-Mazzufferi

Mr. U. Edström



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