



## Reports of the Credentials Committee

### Third report

#### Composition of the Conference

1. Since the publication of its second report (*Provisional Record No. 5C*), no significant modification had occurred with reference to the composition of the Conference. However, it is important to mention that an error crept into paragraph 1 of that Report, as it is Chad and not Haiti that is deprived of its right to vote by virtue of article 13, paragraph 4, of the Constitution.

#### Objections

2. Following, in the French alphabetical order, are the eight objections that the Committee had not been able to examine prior to the publication of its second report.

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

3. The Committee had before it an objection challenging the credentials of the Workers' delegation of Belarus submitted by the International Confederation of Free Trade Unions (ICFTU). The ICFTU alleged that the Government had not appointed the Workers' delegation in conformity with article 3, paragraph 5, of the ILO Constitution as there had been no consultation with the two main representative trade union confederations of Belarus: the Federation of Trade Unions of Belarus (FTUB) and the Congress of Democratic Trade Unions of Belarus (CDTUB). The FTUB had officially contacted the Government on 22 April 2002 with a request that they be included in the Workers' delegation that went without reply. The objecting organization viewed the actions of the Government as one step further in a process of continued deterioration of social dialogue in the country, which was evidenced by the failure of the National Council of Labour to meet since September 2001, as well as by increased obstacles to the registration, the activities and the functioning of both the FTUB and the CDTUB. The objecting organization further referred to the Government's failure to abide by the recommendation of the ILO's Committee on Freedom of Association on a complaint last discussed in November 2001 relating to allegations of denial of trade union registration, government interference in trade unions activities and dismissal of trade unionists.
4. In a written communication addressed to the Committee in response to its request, the Minister of Labour and Social Protection had indicated that prior to the appointment of the

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Workers' delegation to the Conference, the Government had carried out consultations amongst the most representative organizations, including the FTUB. These consultations had been carried out in writing, as had been done in the past without ever giving rise to any objection. According to the Government, as the structures of the trade unions in the country are in the process of reorganization, the Government is not in the possession of precise information with reference to the representativeness of the FTUB or the CDTUB. Under these circumstances, the Government had taken the decision to include in the Workers' delegation to the Conference representatives from the unions from the most important and widely known enterprises in the country, as is the case for the Workers' delegate and his adviser. Further, the Government indicated that in making this nomination, it had taken into account the comments formulated in the General Survey of 2000 on tripartite consultations, wherein the concept of the most representative employers' and workers' organizations is not only quantifiable through the number of members, but can include equally organizations that represent a significant portion of opinion.

5. Clarifications requested by the Committee were provided orally by Mr. Franz Vitko, President of the FTUB, and Mr. Oleg Podolinski, Chief of the International Affairs Department of the same organization, both accredited to the Conference within the ICFTU delegation. Messrs. Vitko and Podolinski provided figures that in their view demonstrate that the CDTUB and the FTUB were the two most representative workers' organizations in the country due to their membership – the first counting with 20,000 and the second with 4,000,000, regrouping 32 sectoral trade unions and 29,000 enterprise trade unions – and the number of the collective agreements they have concluded. Further, the two organizations whose representatives were accredited to the Conference, in addition to the fact that they are from single company trade unions without intersectoral or territorial representativeness (Minsk Automobile Plant and Minsk Refrigerator Plant), count with only 10,000 and 8,000 members, respectively. The first trade union had been affiliated with the FTUB until the beginning of the year and the second is still. Concerning the question of consultations held by the Government, Messrs. Vitko and Podolinski produced before the Committee the letter by which the Government had asked them to communicate to it the names of their representatives to the Conference. Although it was answered within the time limit that the Government had set, the Government never took action on their communication. It was only during the publication of the Provisional List of the delegations that they learned of the composition of the Workers' delegation of Belarus to the Conference. Previously, they had been apprised that the Government was going to nominate persons of its own choice under conditions that have led them to speculate that the nomination was undertaken in response to interests that do not correspond to those with the representation of the workers at the Conference.
6. Firstly, the Committee deplors that the Government did not reply to its invitation to appear before it in order to provide further information and clarifications on the issues raised in the objection. Although no representative from the Ministry of Labour had registered to the Conference, the Permanent Mission of Belarus in Geneva had been duly notified but did not provide a response or an explanation as to the Government's inability to reply to the convocation. In these circumstances, the Committee had no other choice but to rely on the information it had before it. In this respect, the Committee notes, on the one hand, the detailed figures provided by the representatives of the FTUB and the CDTUB, and on the other hand, the absence of any figures in the Government's written reply. The figures provided tend to demonstrate that the FTUB and the CDTUB are amongst the most representative organizations in the country, as confirmed by the fact that their representatives have been appointed as Workers' delegate to the Conference in recent years without any objection. The Committee notes, further, that a simple written request sent to the existing representative organizations cannot be considered to be proper consultations aimed at obtaining in good faith the agreement of the most representative organizations, as

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required by article 3, paragraph 5, of the Constitution. In addition, the Committee notes that one of the persons nominated this year in the Workers' delegation belonged to a union which is affiliated to the FTUB, and that the other belongs to a trade union which had withdrawn from FTUB at the beginning of the year. The Committee is of the opinion that the reference to the comments formulated in the General Survey of 2000 on tripartite consultations, is erroneous. The Committee considers that the concept of most representative organizations in the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), does not necessarily seem to correspond to that referred to in Article 3, paragraph 5.

7. These elements, taken together with the Committee on Freedom of Association's deep concern over allegations of Government interference in trade union activities cast serious doubts as to the actual purpose of this year's nomination. In light of all of the above, the Committee considers that the nomination of the Workers' delegation to the Conference had been in clear violation of article 3, paragraph 5, of the Constitution, thus warranting the invalidation of the credentials of the Workers' delegation. Since, in the absence of the Workers' delegation to the Conference, such recommendation would be without any practical purpose, the Committee decided not to propose it this year. It nevertheless expects that the Government would, next year, do its utmost to abide by the obligations it freely accepted when it became a Member of the ILO, including the obligation to nominate the Workers' delegation to the Conference after full consultations with the most representative organizations in the country and without any interference in this process.

### ***Objection concerning the nomination of the Workers' delegate of Burundi***

8. An objection signed by the President, Mr. Hajayandi, of the Confédération de Syndicats du Burundi (COSYBU) had been submitted to the Committee concerning the nomination of the Workers' delegate of Burundi. The author of the objection contended that the COSYBU was the most representative workers' organization in the country. However, as was the case in the last two years, while the executive committee of the COSYBU had designated Mr. Hajayandi to represent the workers at the Conference, the Minister of Labour had designated a person of his own choice despite the fact that the organization had elected a new president during an extraordinary congress held on 29 April 2000. The author of the objection insisted on the fact that there are no internal problems within the COSYBU and that these are only maneuvers by the Government to impede this Confederation's functioning. The author of the objection joins a copy of the minutes prepared by the Government of a meeting held between the Ministry of Labour and the leaders of the unions affiliated to the COSYBU, that confirmed the Government's interference in the COSYBU's internal affairs.
9. In a written communication submitted to the Committee at its request, Mr. Adolphe Nahayo, Permanent Representative in Geneva and Head of the Burundi delegation, recalled that the COSYBU was the most representative workers' organization by reason of its membership and the number of its affiliates. It was, thus, that organization that had been consulted in January 2002 in order to designate the Workers' delegate to the Conference. The Government indicated that the Workers' delegate, Mr. Tharcisse Gahungu, who belonged to the COSYBU, was elected by that organization. Mr. Gahungu had been the Vice-President of the COSYBU since 14 December 1998 and his position in that union had never been challenged. In addition, Mr. Gahungu was the President of the Syndicat des travailleurs de l'Institut des sciences agronomiques du Burundi (ISABU), which was affiliated to the COSYBU. The Government also expressed its surprise concerning the fact that Mr. Hajayandi seemed to consider Mr. Gahungu an illegitimate workers' representative, while at the same time recognizing him as his Vice-President, as it appeared

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from COSYBU documents attached to the objection. Finally, the Government considered that the objection of Mr. Hajayandi had not been the COSYBU's objection, but his own and that he should seek a solution to the current crisis within the ruling bodies of the COSYBU.

10. In written communications submitted to the Committee at its request, both parties made reference to the minutes of meetings of the COSYBU's executive committee nominating Mr. Hajayandi, on the one hand, and Mr. Gahungu, on the other, as the Workers' delegate to the Conference. In addition, the Government insisted on the fact that Mr. Gahungu's nomination had been the result of the rivalry existing between Messrs. Hajayandi and Niyongabo, both of them claimed to be President of the COSYBU and proclaimed themselves to be the Workers' delegate to the Conference.
11. The Committee notes that this year again, it was not the representative character of the COSYBU that had been challenged, but the capacity of the person purporting to represent it. According to Mr. Hajayandi, who was the author of the objection and President of the COSYBU, the executive committee of that organization had given him the mandate to represent the workers of Burundi to the Conference this year. However, according to the Government, it was Mr. Gahungu, Vice-President of the COSYBU, who had been designated by the COSYBU's ruling bodies to represent the workers and the Government had merely accepted this choice. In addition, the Government indicated that the rivalry between Messrs. Hajayandi and Niyongabo, as they both claimed to be president of the COSYBU, had also influenced the nomination of Mr. Gahungu, whose function as Vice-President was not challenged. In this regard, the Committee took note of a spontaneous communication from Mr. Niyongabo in which he claimed to be the President of the COSYBU and to have been nominated by the executive committee of that organization to represent the workers. In these circumstances, the Committee could only observe that the questions raised by the objection appeared to be essentially internal to the COSYBU and, therefore, fell within the domain of the ruling bodies of this organization and not within the Committee's mandate. However, in view of the fact that it had been called upon to examine this case on several occasions in the past few years and that on each occasion the Government had to face allegations of interference, the Committee wishes to recall that it is for the most representative workers' organizations to nominate their representative to the Conference and that governments should respect this choice without any interference, whatsoever. Moreover, the Committee reiterates that the parties involved can have recourse to the ILO's supervisory bodies, particularly with regard to the question of freedom of association.

### ***Objection concerning the Workers' delegation of El Salvador***

12. The Committee had received an objection submitted by the Comisión Intersindical de El Salvador, which is composed of the Confederación Unitaria de Trabajadores Salvadoreños (CUTS); the Coordinadora Sindical de Trabajadores de El Salvador (CSTS); the Central de Trabajadores Salvadoreños (CTS); the Confederación General del Trabajo (CGT); the Confederación Autónoma de Trabajadores Salvadoreños (CATS); and the Central de Trabajadores Democráticos (CTD). This objection was supported by the International Confederation of Free Trade Unions (ICFTU). The objection was against the nomination of the Workers' delegation to the Conference, which included a representative from the Federación Nacional de Sindicatos de Trabajadores Salvadoreños (FENASTRAS), as delegate, and representatives from the Federación Unitaria Sindical de El Salvador (FUSS) and the Federación de Sindicatos de Trabajadores de la Construcción, Transporte y Similares (FESINCONTRANS), as advisers. The authors of the objection alleged that the said nomination occurred without consulting all the most representative workers'

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organizations in the country. They indicated that the Government, through the Superior Council of Labour, tripartite organ of the country, had usurped the representation of the workers since the trade unions that were involved in it, the FENASTRAS, the FUSS and the FESINCONTRANS, were not independent of the Government or the employers. In fact the Workers' delegate nominated by the Government, who had acted as an adviser for the Government and simultaneously as a representative of the FENASTRAS, organization which had been expelled from the Organización Interamericana de Trabajadores (ORIT) for its practices against the workers and in favour of the Government and the employers, had participated as an observer in the name of the Government in a tripartite meeting held in the Dominican Republic in May of 2002. Consequently, the authors of the objection considered that the delegate did not meet the legitimacy requirements of independence and representativeness so as to act in the name of the Salvadorian workers at the Conference. As for the advisers nominated by the Government, they too suffered from the same absence of independence and representative character. For that reason, the authors of the objection sought the invalidation of the credentials of the entire Workers' delegation as they were not in accordance with the constitutional dispositions and rules prescribed by the ILO.

13. In a written communication directed to the Committee in response to its request, Mr. Jorge Isidoro Nieto Menéndez, Minister of Labor and Social Prevention and Head of the delegation from El Salvador to the Conference, recalled that the Superior Council of Labour, tripartite consultative organ of the executive branch included eight titular members and eight substitute members from each of the governmental, employer and worker sectors. The Superior Council of Labour was established by law in 1994 within the framework of technical cooperation assistance provided by the International Labour Office. Consultation with the Superior Council of Labour was mandatory in respect of El Salvador's participation in international forums that are related to matters within its competence such as, the composition of the delegation to the sessions of the International Labour Conference, as well as, in relation to the measures to give effect to the international labour standards. The nomination of the workers' representatives to the Superior Council of Labour corresponds to the federations and union confederations registered with the Ministry of Labour. In accordance with the Labour Code, so that a trade union can be legally recognized, it must be registered with the Ministry of Labour, but prior to its registration it must meet certain criteria. Of the six organizations integral to the Comisión Intersindical, author of the objection, only one, the CUTS, obtained legal recognition in 1978, although it had not adapted its statutes to the legislative reforms introduced in 1994 with the technical assistance of the ILO. With regard to the nomination of the Workers' delegation to the Conference, consultations occurred at the beginning of the year in the working sector of the Superior Council of Labour, between representatives of 13 legally recognized trade unions. Absent were two organizations that did not respond to the convocation, including one that had submitted the objection. These consultations occurred independently of the other two sectors. As a result of these consultations, all the consulted organizations agreed upon a nomination for the Workers' delegation, which the Government limited itself to including the names in the credentials of the delegation. The internal consultations between those organizations seemed to reflect a rotation system, as one of the objecting authors, as a representative of one of the consulted organizations was designated as Workers' delegate to the 88th Session of the Conference. As neither the Comisión Intersindical nor the unions that comprise it had legal personality and lacked for that reason representative character, the Government considered that the nomination had been carried out in conformity with the national standards in effect, as well as, with the provisions of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), whose ratification had been promoted by the Superior Council of Labour. Although the Government was open to considering all requests for legal recognition on the part of the trade unions that comprised the Comisión Intersindical, at the moment they did

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not meet the requirements to become members of the Superior Council of Labour or to justify the revision of its composition.

- 14.** Clarifications that were requested by the Committee were provided orally by Mr. Nieto Menéndez, who was accompanied by his adviser, Mr. Juan Sifontes and by Mr. Mario Castro Grande, Chargé d'affaires, ad interim, of the Permanent Mission in Geneva and substitute delegate at the Conference. Firstly, Mr. Nieto Menéndez explained that although the active working population of the country was approximately of 2,450,000, only half a million workers were employed in the formal sector. Of these, around 140,000 workers were members of trade unions. The 16 most representative trade unions, whose membership represents practically the totality of the organized workers of the country, were all members of the Superior Council of Labour. It fell to the working sector of the Council to reach an agreement with respect to the names of its representatives so as to nominate the Workers' delegation to the Conference. In this year's decision, 11 trade union organizations participated, which corresponds to nearly 120,000 workers. With regard to the procedure relative to the criteria for union registration and the registry, Mr. Nieto Menéndez explained that it was an automatic procedure by virtue of the fact that if the union gathered the necessary legal requirements, it would be attributed legal personality by the Ministry of Labour. Within these requirements is one pertaining to a minimum of members that had been reduced so as to give recognition to a greater number of unions. Concerning the objection, Mr. Nieto Menéndez was unaware of the reasons that their authors had not solicited registration of the organizations that they represented. Rather, he was surprised that the two people implicated in the objection, Messrs. Nerio and Gutiérrez had taken part in its initiation since both were members of the Superior Council of Labour. In fact, Mr. Nerio was substitute Vice-President of the Council and Mr. Gutiérrez had been nominated to the labour sector of the Council to represent the workers of El Salvador at the Conference of 2000.
- 15.** The Committee notes that according to the information provided by the Government, the nomination of the Workers' delegation was carried out in agreement with the most representative workers' organizations legally recognized in the country through a procedure where the organizations chose for themselves their representatives to the Conference. Although it is true that the authors of the objection, who were not present in Geneva, could not be invited to appear before the Committee to comment on the evidence provided by the Government, the objection did not contain any precise data as to the representativeness of the organizations that compose the Comisión Intersindical compared to the representativeness of the organizations sitting in the Superior Council of Labour, nor the reasons for which they had not requested their legal recognition that would have enabled them to sit on the Council. As to the allegations relating to the lack of independence of the persons accredited in the Workers' delegation, the fact that the trade union to which the Workers' delegate is a member was expelled from an international trade union organization for having taken positions in favour of the Government and the Employers' could constitute an inference in this respect, but in the absence of further information, it cannot be corroborated. The Committee notes the fact that one of the persons involved in the objection had been nominated as Workers' delegates in the past by the same Council, but that did not give rise to objections since its creation in 1994. Under these circumstances, the Committee considers that it had been presented with no evidence that would permit it to question the conformity of the nomination within the provisions of article 3, paragraph 5, of the Constitution. Consequently, the Committee decided not to uphold the objection. Notwithstanding, taking into account other official information available – the recent complaints before the Committee on Freedom of Association which had recommended a revision of the Labour Code of El Salvador with regard to the requirements for obtaining legal personality for a trade union, as well as extending freedom of association to public sector employees – the Committee wishes to recall that

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only the broadest recognition of the freedom of association can provide the best guarantee, so that the Workers' delegations to the Conference is the most representative possible of the workers.

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

16. The Credentials Committee had received an objection regarding the nomination of the Workers' delegation of Guatemala from the Comité Ejecutivo de la Federación Nacional de Sindicatos del Estado de Guatemala (FENASTEG). According to the objecting organization the nomination of the Workers' delegation contravened article 3, paragraph 5 of the Constitution, since it had been submitted without consulting all of the representative workers' organizations, which includes FENASTEG. The objecting organization alleged that the nomination had been arbitrary as it had considered that the delegation to the Conference did not represent it.
17. In a written communication addressed to the Committee in response to its request, Mr. Victor Hugo Godoy Morales, Minister of Labour and Social Welfare and Head of the delegation to the Conference, indicated that, according to the usual practice, the Employers' and Workers' delegations had been nominated after the most representative organizations of each sector had been consulted. Due to the particular character of the labor union movement in the country, the trade unions and the federations are gathered into confederations which do not possess a legal personality, but are the ones that enjoy recognition by the workers. These are thus the ones that had been consulted for the composition of the Workers' delegation. At the beginning of May 2002, the Government had invited the three most representative trade unions of the country, that is to say the Unión Guatemalteca de Trabajadores (UGT), the Unión Sindical de Trabajadores de Guatemala (UNSITRAGUA) and the Unidad de Acción Sindical y Popular (UASP), so as to nominate the representatives to the Conference. With regard to the FENASTEG, the Government indicated that most of the unions belonging to that Confederation were also affiliated to the three aforementioned confederations.
18. The Committee notes that while the Government did not reply to all its questions, the objection consisted of a simple allegation and did not contain the slightest proof of the reason according to which, either the delegation nominated by the Government was not representative, or its own representativeness was such that it should have been consulted. In addition, the Committee observes that it was only following its request that the initial objection which was sent through email with only an email address for reference, was later sent in a more appropriate form enabling the Office to verify its seriousness and authenticity. The Committee considers that it cannot exercise its mandate in a useful manner in these circumstances.

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

19. An objection concerning the nomination of the Workers' delegation of Haiti had been submitted to the Committee by the Secteur syndical haïtien (SSH). The objecting organization claims to regroup the most representative workers' organizations of the country. In March 2002, the SSH sent to the Ministry of Social Affairs a list of the people it had selected to be the Workers' delegate and advisers of Haiti to the Conference. However, the Government did not follow the list provided by the SSH and chose instead to nominate people who were members of the political party of the President of the Republic.

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20. In a written communication to the Committee furnished on 17 June in response to its request for information by 14 June, the Government indicated that all the trade union organizations had been invited to jointly agree upon to name the representatives to the Conference and which they indeed did so. The Government added that the SSH is not a recognized organization by the Ministry of Social Affairs.
21. In the first instance, the Committee deplores that the Government had not responded sooner to the communication inviting it to provide its observations. If it is true that the two-day deadline set by the Committee to the Government is very constraining, it is no less true than the Government would have benefited from a longer time if it would have met its obligation and presented its credentials in time so that the nominations could appear in the Provisional List of the delegations. It is, however, only on 11 June that the Government communicated the credentials of its tripartite delegation, i.e. even after the Revised List of the delegations had been produced. In addition, the Government has in Geneva a Permanent Mission, to which a copy of the request for information by the Committee had been transmitted by facsimile. The Permanent Mission could have collected the requested information and, accordingly, transmitted it within the prescribed time limit. Under these circumstances, it could lead the Committee to arrive at a conclusion concerning the objection only on the basis of the information communicated to it by the authors of the objections. Nevertheless, the Committee did not have the necessary evidence to permit it to examine this matter. Indeed, the objection itself did not contain the necessary elements to permit an examination of either the representativeness of the workers' organizations in question or of the procedure followed by the Government to carry out the nomination, similarly the Government's late reply did not indicate the manner in which the consultations it said had been held were carried out.

***Objection concerning the nomination of the Workers' delegate of Myanmar***

22. The Committee had before it an objection concerning the nomination of the Workers' delegate of Myanmar submitted by the International Confederation of Free Trade Unions (ICFTU). The objecting organization asserted that the appointment of the Workers' delegate had not been made in accordance with article 3, paragraph 5, of the ILO Constitution. According to the Provisional List of delegations, the Workers' delegate is a worker at the Myanmar Texcamp Industries, Ltd. In the absence of free trade unions, the person appointed could not have been freely chosen by the workers and be as representative as possible of all workers in the country. In addition, the ruling military regime largely controls the textile sector in Myanmar where numerous workers' rights violations are reported and where the right to organize is particularly repressed. In its conclusions last year the Committee had refrained, not without reservations, from proposing invalidation of the credentials of the Workers' delegate. However, the Government seemed to have again ignored its constitutional obligations. Therefore, the ICFTU urged the Committee to propose the invalidation of the credentials of the Workers' delegate of Myanmar.
23. In a written communication addressed to the Committee at its request, Mr. Soe Nyunt, Director-General of the Department of Labour and Government delegate to the Conference, indicated that, further to the recommendations made by the Committee at last year's Conference, the Government of Myanmar sought the ILO's assistance in April 2002 with a view to ensuring that the nomination of the Workers' delegate be made in accordance with article 3, paragraph 5, of the Constitution. On this occasion, ILO officials recommended that the delegate be chosen by industrial associations of workers. Since the only organized workers' structures existing in the country are the Workers' Welfare Associations, present in 18 industrial zones of Myanmar, the Government invited in

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February 2002 these associations to elect worker representatives according to a proportional system based on the number of workers in each zone. In total, 47 such representatives were elected. The 47 elected workers' representatives met on 8 May 2002, under the supervision of a committee established by the Government to ensure that the elections were properly conducted and elected Ms. Nu Nu Lwin to represent the workers of Myanmar at the present session of the Conference. The managing director of the Myanmar Texcamp Industries, Ltd., issued a written statement confirming that Ms. Lwin had been an employee of this company for the preceding three years. The Government accordingly nominated Ms. Lwin as the Workers' delegate of Myanmar to the Conference.

24. Clarifications requested by the Committee were provided orally by Mr. Nyunt who was accompanied by Messrs. Tun Shin, Director-General, Attorney-General's Office, and Tun Ohn, Counsellor with the Permanent Mission in Geneva. The Government confirmed that as of the change in regime since 1988, there do not exist any other workers' organizations then the Workers' Welfare Associations as mentioned in his written communication. The Associations' statutes, a sample of which was communicated to the Committee vary, but do have some common principles, notably, the participation of employers and governmental representatives on their executive committee. Ostensibly, for the reason of the Government's will to reinforce tripartitism while awaiting for the adoption of the new Constitution. In response to a request for clarifications, with respect to the extent of which the elected delegates from the 18 industrial zones could be regarded as representative of the whole of the workforce of Myanmar, the Government indicated that according to statistical projections, the active workforce of the country counted with 23.7 million people, of which 300,000 workers were employed in the industrial zones – the latter being the only organized workers. Myanmar has more than 5,000 medium and big companies (employing more than ten and 50 workers, respectively). Approximately 1,700 of them are located within the aforementioned 18 industrial zones of the country and the majority are primarily active in the textile sector. Over the next year, the Government intends to increase the number of industrial zones from 18 to 26 and, consequently, the number of workers consulted for purposes of nominating the Workers' delegation to the Conference. In response to a request for clarification on the role of the committee charged with supervising that the elections are carried out properly, the Government affirmed that the representatives elected by the Workers' Welfare Associations had been selected only by workers and that no representative of the Government was present during the electoral meetings. At the request of the Committee, the Government produced the list of the 47 representatives elected in the 18 industrial zones, which chose the Workers' delegate to the Conference. Finally, the Government insisted that as the Committee had asked of it last year, it had requested the assistance of the Office on the matter. This question was the subject of a meeting on 3 April 2002 between ILO officials and representatives of the Permanent Mission.
25. The Committee regretted that it had been called upon to examine this case for the fourth consecutive year. Indeed in 1999, the Government had nominated as the Workers' delegate the President of the executive committee of the Workers' Welfare Association from a single enterprise that employed 16,000 people. The Committee had concluded, at the time, that the nomination had been made in complete contradiction with the ILO Constitution, from the quality of the person nominated as delegate to his lack of representativeness of the whole of the workers of Myanmar. The Committee had indeed considered that if the application of article 3, paragraph 5, of the Constitution is not possible because of absence of trade unions in the country, the Constitution – such as it must be read at the dawn of the twenty-first century – did not exonerate the Government from ensuring that the non-governmental delegates to the Conference are representative, respectively, of employers and workers. Following the recommendations the Committee had then made, the following year, the Government had nominated as Workers' delegate the representative of a non-

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governmental organization that regrouped 15,000 nurses, midwives and in-home assistants. The Committee, however, had concluded that that nomination had not been made in conformity either with the ILO Constitution, particularly as this organization could not claim to be representative of the whole of the workers in the country. In spite of this conclusion, the Government nominated the same person last year. The Committee, however, once again abstained from proposing invalidation assuming that the Government "... would without delay seek the ILO's assistance so that the nomination of the Workers' delegate would as soon as possible be made in accordance with article 3, paragraph 5, of the Constitution. ...". The reference to this provision was made with the assumption that trade unions should exist in a State which, like Myanmar, had ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), irrespective of the fact that the supervision of the application of this Convention is within the mandate of other bodies and not the Committee itself.

26. This year, the Government abstained from nominating for a third time the same Workers' delegate to the Conference and the Committee notes in this respect, the Government had widened its consultations to 18 industrial zones. Nevertheless, the Workers' delegate that it had nominated this year can in no event be considered representative of the whole of the workers in Myanmar. As the Government had, itself, admitted only 300,000 of the 23.7 million workers that are in the country are employed within these 18 industrial zones. The Committee takes note that the Government had indicated to it, its intention to further broaden to workers in six additional industrial zones, its consultations for the purpose of nominating the Workers' delegate to the Conference for next year. Nothing impedes, if the Government genuinely has the will, from it further extending its consultations to other categories of workers. Such as, the 80,000 people employed in state enterprises or those that work in large enterprises located outside these industrial zones.
27. The Committee, however, is gravely concerned by the information that has surfaced this year in the case as it confirms the absence of any trade union organization in the country. Indeed, it is evident from the documents annexed to the Government's written communication that the Workers' Welfare Associations are completely distinguishable from trade unions, not only through their composition – as representatives of the Government and the employers are members of their executive committees – but also their activities. Concerning this last point, it appears that upon examining the statutes of one of these associations, their role is not to defend the interests of the workers, but rather solely to provide certain social services. Equally, the Committee remains gravely concerned by the fact that the Government and the employers seem to interfere in the process of nominating the Workers' delegate to the Conference, as demonstrated by the composition of the executive committees of the Workers' Welfare Associations. The Committee, also, expresses serious doubts concerning the extent to which the elections of the delegate were freely carried out. Indeed, if as the Government itself testified that only workers had been present during the meetings organized for the purposes of this election, the documents that it itself had furnished evince that the committee charged with supervising that the election had been carried out properly had been composed of Government representatives. This committee, in particular, was to prepare the report on the voting procedure and the minutes of the electoral meeting. The Committee had not been convinced that solely representatives of the workers had participated in the meeting, thereby, being able to freely carry out the election of their delegate to the Conference. These circumstances, apart from the question of whether the Government had respected its obligations to abide by the Conventions that it had ratified, is contrary to the principles of the ILO's Constitution, guarantor of tripartism.
28. In spite of these serious failures, the Committee trusts that the changes carried out this year with reference to the procedure for nominating the Workers' delegate to the Conference

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constitute the inception of a genuine will to change by the Government. The Committee hopes that the Government will fulfil without delay its constitutional obligations and, in particular, that it will refrain from any interference in the activities of the workers' organizations, will respect the autonomy of the groups and guarantee elections are freely carried out for the representation of the workers' representatives to the Conference. Noting that the consultation between the Government and the ILO took place this year after the Government had initiated the procedure for the nomination of the Workers' delegate to the Conference, the Committee hopes that if the Government decides to again call upon the Office on this matter, it will do so under conditions that will permit such consultations to be useful. In the interim, the Committee decided not to propose to the Conference to take action on the objection this year.

### ***Objection concerning the nomination of the Workers' delegate of Nepal***

29. The Committee had before it an objection challenging the credentials of the Workers' delegate of the Kingdom of Nepal submitted by the General Federation of Nepalese Trade Unions (GEFONT) and associated thereto by the President of the Nepal Trade Union Congress (NTUC). The GEFONT submits that it is the most representative organization in that it has 310,575 individual memberships and the highest number of active affiliated trade unions as demonstrated by the Unions Registration Record (GEFONT, 853; NTUC, 630; Democratic Confederation of Trade Union (DECONT), 28; others, 284). Despite the GEFONT's reminder to His Majesty's Government of its obligation under article 3, paragraph 5, of the Constitution of the organization, conveyed on 6 May 2002, by the deadline for the submission of credentials on 21 May 2002, the Government had held no consultation nor had it made public the names of the Workers' delegation. The GEFONT further submits that its objection was not to the effect that its representative be appointed the Workers' delegate. Rather, it aims that the nomination be made in accordance with not only article 3, paragraph 5 of the ILO Constitution, but also with national law. Specifically, section 26(a) of Trade Union Act, 1992, states, "... while nominating a representative from trade unions or having trade unions represented, HMG shall do so on a proportionate basis or on a rotational basis in case there are several trade unions connected with the concerned subject matter".
30. In response to a request from the Committee, Mr. Prem Nidhi Gyawali, Secretary, Ministry of Labour and Transport Management, Governmental delegate stated on behalf of the Government in a written communication dated 10 June 2002 that the GEFONT, NTUC and DECONT are the most representative trade unions at the national level in the country. As such, pursuant to the Trade Union Act of 1992, the three organizations qualify for participation in the Conference. Further, they are considered to be of equal stature as there is no defined criteria in the Trade Union Act to determine the most representative organization on the basis of size or numbers of members. It merely provides for their participation on either a proportionate basis or through a system of rotation. In prior years, both the GEFONT and NTUC had been nominated as Workers' delegate to the Conference, but not the DECONT whose representative had been appointed this year in accordance with the rotation system.
31. Clarifications requested by the Committee were provided orally by Mr. Gyawali, who was accompanied by Mr. Jib Raj Koirala, Deputy Permanent Representative in Geneva and substitute delegate. Mr. Gyawali confirmed the statements made in the Government's communication of 10 June that the Government recognized the GEFONT, NTUC and DECONT as the most representative trade unions at the national level. On the matter of their respective trade union affiliations as demonstrated by the Union Registration Record, Mr. Gyawali could neither elaborate nor dispute the numbers that had been provided by the

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GEFONT. With reference to the utilization of a proportional versus rotational system for the nomination of the Workers' delegate to the Conference, Mr. Gyawali explained that as the three trade unions, GEFONT, NTUC and DECONT, were considered of equal stature by the Government then a system of rotation had been applied pursuant to the Trade Union Act. Mr. Gyawali added that this also afforded all unions similar opportunities to attend the Conference. The Government could only bear the expenses of one person in the Workers' delegation, but was not opposed to appointing advisers from other unions if they covered their own expenses. In reply to a request for clarification as to whether consultations had been held between the Government and the three trade unions, Mr. Gyawali stated that as the Government had decided to utilize the system of rotation no such consultations had been deemed necessary. In conclusion, Mr. Gyawali emphasized that the Government was prepared to review the nomination process as of next year's Conference.

32. The Committees notes that the Government had nominated the Workers' delegate to the Conference without consulting the most representative organizations and without having proceeded to an evaluation of their respective importance, followed a rotation system decided by it. As stated on numerous occasions by the Committee, the rotation system can only serve as a method of nominating the Workers' delegation if the most representative organizations in the country have so decided in agreement amongst themselves. Therefore, the rotation system can under no circumstance be imposed unilaterally by the Government irrespective of national law. In this regard the Committee notes, however, that the Nepalese Trade Union Act itself provides for a proportionate system which, failing an agreement between the most representative organizations, is required under the Committee's case law. While noting the Government's assertion that the three unions in the country were of equal stature, registration records maintained by the Government existed in the country. According to the records provided by the GEFONT to the Committee, the GEFONT and NTUC, clearly outnumbered the DECONT. Since the Government had not even attempted to hold consultations as it is obliged to under the ILO Constitution, it had no choice but to nominate the Workers' delegate from the members of the most representative organizations, that is the GEFONT and NTUC. The Committee regrets that the nomination of the Workers' delegate of Nepal had been in violation of article 3, paragraph 5, of the Constitution, but relying on the Government's expression of willingness to correct the situation prior to next year's Conference it decided to propose no action be taken on the objection this year.

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

33. The Committee had received an objection submitted by the Confederación Nacional de Funcionarios y Empleados Estatales (CONFEE) concerning the nomination of the Workers' delegation of Paraguay. The author of the objection alleged that the Government had in an irregular manner nominated the members of the Workers' delegation to the Conference, as they did not work in the public administration of the country and, as a result, they could not be representative of the civil servants of Paraguay.
34. The Committee deplores that the Government had not responded to the request for information that had been directed to it. For reasons similar to those mentioned by the Committee in relation to the examination of the objection of nomination of the Workers' delegation of Haiti (see paragraph 21 above), the Committee warned that for want of a reply by the Government or ample justification for its absence, the Committee could decide to examine the objection and hold in favour of the allegations of the objecting organization. Nevertheless, as was the case in Haiti the objection lacked sufficient information that would permit the Committee to proceed with its examination.

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## Complaints

35. Since the publication of its second report, the Committee had been able to examine the other two complaints that it had received.

### ***Complaint concerning the non-payment of the expenses of the Workers' delegate of Guinea-Bissau***

36. The Committee received on 12 June a complaint from the Workers' delegate of Guinea-Bissau, member of the Union nationale des Travailleurs (UNTG) alleging that the Government had covered his expenses corresponding to only 9-12 June. The complainant, who was registered to address the plenary on 13 June, would thus be prevented from exercising his rights while the two advisers in the Workers' delegation, had had their expenses covered in full by the Government through the end of the Conference. The complainant indicated that he would not delegate his rights to any of the members of the delegation.
37. In a written communication to the Committee in response to its request, Mr. Carlos Pinto Pereira, Minister for Public Administration and Labour and Head of the delegation to the Conference, provided evidence to the effect that the Government had covered similar expenses in respect of the two Workers' delegate's advisers, for a duration of eight days. He asserted that similar treatment had been given to the Workers' delegate. Due to the financial constraints the country faces at present, the Minister himself had only spent six days at the Conference.
38. The Committee noted that the delegation of Guinea-Bissau to the Conference was composed of three representatives in the Government delegation and of two and three representatives, respectively, in the Employers' and Workers' delegations. While it appeared from the Government's reply that it had covered similar expenses in respect of the two advisers, the Committee noted that evidence had not been furnished as to whether the Government had also covered the expenses of the Workers' delegate nor to what extent. At the same time, it would appear from the Government's reply that it could only afford the participation expenses of all the members of the tripartite delegation for a limited duration. If this is the case, the Committee would like to commend the Government's efforts to ensure similar treatment in respect of all its delegations as well as its respect for a clear balance between the number of participants appointed in the Government, Employers' and Workers' delegation. However, noting that the minimum obligation imposed by article 13, paragraph 2(a), of the Constitution is to cover the travelling and subsistence expenses of at least a full tripartite delegation for the whole duration of the Conference, the Committee considers that the Government should have used the financial means available to it to meet this minimum obligation. Indeed, only if participation is ensured for the whole duration of the Conference, may the members of the tripartite delegation take an active part in the Conference and decide, in full independence of each other, when and how they may wish to exercise their speaking and voting rights.

### ***Complaint concerning the non-payment of the travel and subsistence expenses of the Employers' delegate of Nepal***

39. The Committee examined a complaint concerning the non-payment of the travel and subsistence expenses of the Employers' delegate of Nepal submitted on his behalf by the Employers' group of the Conference. According to the Employers' group, the delegate had received no financial support towards his participation in the Conference, whereas the Government seemed to have met the participation expenses of the Workers' delegate.

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40. In a note verbale addressed by the Permanent Mission of Nepal to the Committee, in response to its request, the Government asserted that all members of the tripartite delegation had received similar treatment with regard to their subsistence expenses. All of them, including the Government delegates, had received an allowance for a period of eight days only.
41. The Committee noted that the Government had only replied on the subsistence expenses and regrets it had not provided any indication as to the travel expenses that, according to the complainant, had not been covered. The Committee recalled that the Constitution imposed on member States an obligation to cover at least the subsistence expenses of a full tripartite delegation for the whole duration of the Conference. However, in cases where exceptional financial constraints prevent Members from meeting this obligation, the Committee considered that the solution for this Member could be to apply the same restrictions to all participants. However, as is the case for Nepal, a number of governments can rely on the support of their Permanent Missions in Geneva to ensure participation of a governmental delegation for the whole duration of the Conference, including the last days, when the most important votes occur. In the circumstances, the Committee considered that the Government should have weighted this advantage in favor of the governmental delegation when determining the distribution of its limited resources among the tripartite delegation. Hoping that the Government had effectively treated the Employers' delegate similarly as the other members of the delegation this year and, that in the future, would take into account the aforementioned advantage, the Committee decided to take no action on the complaint.

## **Communications**

42. Since the publication of the second report, the Committee had been able to examine the five other communications that it had received.

### ***Communications concerning the delegation of Iraq***

43. The Committee had before it three separate communications from the Worker Communist Party of Iraq, the Espace Femmes of Fribourg and the Union Syndicale Vaudoise all to the effect that all members in the Iraqi delegation be expelled from the Conference for reasons pertaining to the legitimacy and acts of the ruling regime. Having regard to Resolution 396(V) of the United Nations General Assembly, the Committee considered that it could not act upon the communications.

### ***Communication concerning the delegation of Kenya***

44. The Committee had before it a communication from the Central Organisation of Trade Unions (COTU) of Kenya explaining that the Workers' representatives of Kenya had decided not to attend the Conference as a sign of protest against acts of interference by the Government in the National Security Fund. The Workers not being present at the Conference, COTU requested that the Government be refused to participate in the Conference. The Committee considered that the communication did not fall within its mandate and noted that two representatives from COTU had registered at the Conference.

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***Communication concerning the non-payment of the travel and subsistence expenses of the Workers' delegate of Swaziland to the 88th Session of the Conference***

45. The Committee received on 13 June a communication from the Workers' delegate of Swaziland, Mr. Jan J. Sithole, concerning the non-payment of his travel and subsistence expenses to the 88th Session of the Conference (June 2000), a matter which had already been considered by the Committee during the last two years. Notwithstanding the Committee's position and Mr. Sithole's several reminders, the Government had still paid none of the expenses it had itself committed to cover.
46. The Committee was stunned that the issue raised in the communication had not yet been resolved and trusted that this issue would be solved without delay so as to avoid a situation whereby, if seized again next year of a communication aimed at the execution of the Government's obligation, it would be called upon to submit the matter to the Conference for decision.

***Communication concerning the participation of the Employers' delegate of Tajikistan to the Conference***

47. The Committee considered a communication addressed to the International Labour Organization by Mr. Matluba Uljabaeva, Head of the Board of National Association of Small and Middle Size Business of Tajikistan, Employers' organization to which the Employers' delegate of Tajikistan to the Conference belonged. In the communication, the organization was asked to pay the travel and subsistence expenses of this delegate to the Conference, as the Government had not offered to cover his expenses and the Employers' organization itself had no financial means to ensure the participation of its representative to the Conference.
48. Although the Committee cannot act upon this communication, it wishes to recall that, since 1997, the Conference had amended its Standing Orders to confer on the Credentials Committee competence to examine complaints alleging the non-observance by member States of their obligation under article 13, paragraph 2(a), of the Constitution to pay the travel and subsistence expenses of at least a full tripartite delegation. Consideration by the Committee of such complaints is, however, subject to certain conditions of receivability set out in article 26, paragraph 10, of the Standing Orders of the Conference: (a) that the complaint be submitted before 10 a.m. of the seventh day from the opening of the Conference; and (b) that the complaint be lodged by a delegate or adviser accredited to the Conference or by a person or organization acting on his or her behalf.

***Communication concerning the composition of the delegation of the International Confederation of Free Trade Unions***

49. Despite the content of paragraph 75 of last year's Second Report of the Committee, it received once again a communication concerning the inclusion of Mr. Maung-Maung, the Secretary-General of the Federation of Trade Unions of Myanmar in the delegation of the International Confederation of Free Trade Unions (ICFTU), submitted by Mr. Soe Nyunt, Government delegate of Myanmar to the Conference. The communication, which was stated to be an objection against the credentials of Mr. Maung-Maung, was to the effect that he had no locus standi as a representative of the workers nor as a representative of the Federation of Trade Unions. His admission to the Conference or his ability to address the Conference or its committees, as he already had, should therefore be denied to him, in conformity with article 3, paragraphs 1 and 5, of the ILO Constitution.

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50. The questions raised in the communication of the Government of Myanmar were mentioned during the meeting which was held between the Committee and the Government for the purpose of discussing the objection to the nomination of the Workers' delegate of Myanmar (see paragraphs 22-28 above). On this occasion, the Committee recalled that under article 5, paragraph 2, and of article 26, paragraph 3, of the Standing Orders of the Conference, objections may only relate to nominations of the delegates or advisers of the tripartite delegation of members States which are alleged not to have been made in accordance with the provisions of article 3 of the ILO Constitution. Neither the Constitution nor the Standing Orders provide a procedure to challenge the nomination of other participants, such as representatives from non-governmental international organizations with which standing arrangements for their participation in the Conference have been made under article 2, paragraph 3(j), of the Standing Orders of the Conference. Only eight organizations, including the ICFTU, benefit from these standing arrangements on the basis of a specific decision by the Governing Body of the ILO. Inclusively, they play a significant role in the functioning of the ILO and notably providing independence to the groups, as they constitute the permanent secretariat of the Employers' and Workers' groups during the various tripartite meetings and, specifically, at the Conference. This is similar to the role that the Permanent Missions play with respect to the Governments and their respective delegations. The representatives of these organizations do not enjoy all rights, notably the voting rights that members of a national delegation enjoy. They, however, enjoy the right to speak in a plenary sitting and in the Committees of the Conference, under the conditions set forth by article 14, paragraph 10, and article 56, paragraph 9, respectively, of the Standing Orders. Under the terms of these provisions, when a representative of such an organization wishes to speak or to distribute a written communication, a decision on this point is within the discretion of the Chairperson in agreement with the Vice-Chairpersons and cannot be disputed in any manner. If such an agreement cannot be reached, the question is submitted for decision without debate to the Conference or, as the case may be, to the Committee.

51. The Committee hopes that these details will make it possible to definitively dispel all misunderstandings that the Government may have concerning the rules and practices that govern the operation of the Conference and its groups, and in particular the autonomy of the latter.

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52. In concluding the examination of this year's objections, the Committee would like to convey to the Conference a number of general observations flowing from its experience.

53. For the balance of interests between the Government and the social partners to function – as reflected in the composition of national delegations to the Conference required by article 3, paragraph 1, of the Constitution – to function, it is essential that only true representatives from each group participate in the Conference. To achieve this purpose the Constitution affords the Conference the possibility, under certain conditions, of invalidating the credentials of any delegate or adviser whose nomination is deemed to be contrary to the provisions of article 3 of the Constitution, and in particular of those in paragraph 5. Pursuant to this paragraph, “the Members undertake to nominate non-Government delegates and advisers chosen in agreement with the industrial organizations, **if such organizations exist**, which are most representative of employers or workpeople, as the case may be, in their respective countries”. Such is the framework in which the Credentials Committee has exercised its mandate throughout 80 years. However, with the adoption of the 1998 Declaration, it became clear that membership in the Organization in the twenty-first century entailed an obligation on all Members, irrespective of their

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ratification of the corresponding Conventions, to respect, promote and realize the fundamental principles and rights at work, including freedom of association.

- 54.** The principle of freedom of association is today, more than ever, premised on tripartism, one of the very founding principles of the ILO. Thus, in 1999, the Committee considered that member States, irrespective of the reservation in Article 3, paragraph 5, had an obligation under paragraph 1 of the same article, to ensure that the Employers' and Workers' delegations to the Conference are as representative as possible of the employers and the workforce of the Member and that they are chosen in full independence by the employers and the workers themselves. Since 1999, there continues to be a significant number of cases of serious interference by governments in the free election, by notably, the workers' themselves of their representatives to the Conference as well as of cases where governments do not recognize freedom of association altogether. While in most cases the Committee believes that the means at its disposal permit it to contribute to ensuring respect for tripartism, where problems arise from a lack of political will to respect the principles of the ILO, the Committee is of the view that the conditions under which the remedies provided for in the Constitution can be exercised do not permit the organization to guarantee the proper functioning of tripartism and that other remedies should be envisaged. The Committee would accordingly like to request the Governing Body, through the Conference, to examine this situation as a matter of urgency.
- 55.** The Credentials Committee adopted this report unanimously. It is submitted to the Conference in order that the Conference may take note of it.

Geneva, 18 June 2002.

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

Ms. L. Sasso Mazzufferi

Mr. U. Edström

